No. 25-1179

SUPREME COURT OF THE UNITED STATES

BRIAN L. SAULSBERRY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Where the plea colloquy clearly indicated the defendant-petitioner's disagreement with the factual admissions stated in a written plea agreement, included multiple recesses upon the defendant's repeatedly expressed desire to plead "not guilty," and resulted in the district court judge expressing that the colloquy was problematic, should the defendant be permitted to withdraw his guilty plea several days after finally stating "yes" to the district court's inquiry whether he admitted to the facts stated in the written plea agreement?

II. Whether the Sixth Circuit misinterpreted Federal Rule of Criminal Procedure 11, thus flouting the constitutional rights recognized in *Boykin v. Alabama*, 395 U.S. 238 (1969), and *McCarthy v. United States*, 394 U.S. 459 (1969), by dismissing Petitioner's appeal from the district court's order refusing to permit him to withdraw a guilty plea where the district court itself characterized the plea colloquy as "suboptimal for all involved," stated it was "the longest change of plea this Court has ever conducted," tried to stop proceedings "on numerous occasions," expressed being "not comfortable with this," and the defendant declared "I want to plead not guilty" twice before ultimately succumbing to mere agreement with the written plea agreement he had recently signed because defense counsel told him to "stop fucking around" and warned that his "elderly mother may not live to see him free again" if he did not tell the court that the written statement was factually accurate.

III. Whether the district court's immediate grant of a defense attorney's motion to withdraw, where the defendant had not been consulted and had exhausted his resources to pay his attorneys in advance, constituted a deprivation of the Sixth Amendment right to counsel of choice warranting an automatic reversal of his subsequent conviction.

IV. Whether the Sixth Circuit departed from the constitutional requirements as correctly stated in *United States v. Bashara*, 27 F.3d 1174 (6th Cir. 1994), and *United States v. Ellis*, 470 F.3d 275 (6th Cir. 2006), by affirming denial of pre-sentence guilty plea withdrawal despite the district court's findings that: (a) the plea colloquy was "suboptimal for all involved"; (b) "minimal time elapsed" between plea and withdrawal motion (11 days); (c) there would be "minimal prejudice (if any) to the government"; and (d) the court "tried to stop the proceedings on numerous occasions."

V. Whether the Sixth Circuit's reliance on the guilty plea to dismiss the appeal in this case constitutes an unacceptable degree of conflict with other Circuits in a matter of constitutional importance affecting the 95% of federal criminal cases resolved through guilty pleas.

VI. Whether petitioner's prosecution violated the First and Fifth Amendments when federal felony charges carrying up to 20 years' imprisonment arose directly after he filed EEOC complaints against his recently appointed supervisor, who provided significant information to the prosecution.

VII. Whether permitting the guilty plea to stand despite defendant's effort to withdraw it and multiple well-documented constitutional violations undermines the integrity of the guilty plea system.

LIST OF ALL PARTIES

All parties to the proceeding in the court whose judgment is sought to be reviewed are listed in the caption.

CORPORATE DISCLOSURE STATEMENT

Petitioner Brian L. Saulsberry is an individual. No corporate disclosure statement is required under Supreme Court Rule 29.6.

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit is unreported and is reproduced in the Appendix to this petition at A-002. The district court's order denying petitioner's motion to withdraw his guilty plea is unreported and is reproduced in the Appendix to this petition at A-010.

JURISDICTION

The judgment of the United States Court of Appeals for the Sixth Circuit was entered on August 28, 2025. A petition for rehearing was denied on October 10, 2025. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The following constitutional and statutory provisions are involved in this case:

Constitutional Provisions:

U.S. Const. amend. IV:
"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons

or things to be seized."

U.S. Const. amend. V:
"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

U.S. Const. amend. VI:
"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence."

Statutory Provisions:

12 U.S.C. § 3401 (Right to Financial Privacy Act):
"For the purpose of this chapter, the term 'financial institution' means any office of a bank, or any office of a production credit association, of a bank for cooperatives, or so much of a credit union as is operating in any State or territory of the United

States * * *"

Rules:

Fed. R. Crim P. 11:

* * *

(b) Considering and Accepting a Guilty or Nolo Contendere Plea.
(1) Advising and Questioning the Defendant. Before the court accepts a plea of guilty or nolo contendere, the defendant may be placed under oath, and the court must address the defendant personally in open court. During this address, the court must inform the defendant of, and determine that the defendant understands, the following:
(A) the government's right, in a prosecution for perjury or false statement, to use against the defendant any statement that the defendant gives under oath;
(B) the right to plead not guilty, or having already so pleaded, to persist in that plea;
(C) the right to a jury trial;
(D) the right to be represented by counsel—and if necessary have the court appoint counsel—at trial and at every other stage of the proceeding;
(E) the right at trial to confront and cross-examine adverse witnesses, to be protected from compelled self-incrimination, to testify and present evidence, and to compel the attendance of witnesses;
(F) the defendant's waiver of these trial rights if the court accepts a plea of guilty or nolo contendere;
(G) the nature of each charge to which the defendant is pleading;
(H) any maximum possible penalty, including

imprisonment, fine, and term of supervised release;
(I) any mandatory minimum penalty;
(J) any applicable forfeiture;
(K) the court's authority to order restitution;
(L) the court's obligation to impose a special assessment;
(M) in determining a sentence, the court's obligation to calculate the applicable sentencing-guideline range and to consider that range, possible departures under the Sentencing Guidelines, and other sentencing factors under 18 U.S.C. § 3553(a);
(N) the terms of any plea-agreement provision waiving the right to appeal or to collaterally attack the sentence; and
(O) that, if convicted, a defendant who is not a United States citizen may be removed from the United States, denied citizenship, and denied admission to the United States in the future.
(2) Ensuring That a Plea Is Voluntary. Before accepting a plea of guilty or nolo contendere, the court must address the defendant personally in open court and determine that the plea is voluntary and did not result from force, threats, or promises (other than promises in a plea agreement).
(3) Determining the Factual Basis for a Plea. Before entering judgment on a guilty plea, the court must determine that there is a factual basis for the plea.

* * *

(d) Withdrawing a Guilty or Nolo Contendere Plea. A defendant may withdraw a plea of guilty or nolo contendere:
(1) before the court accepts the plea, for any reason or no reason; or

(2) after the court accepts the plea, but before it imposes sentence if:
(A) the court rejects a plea agreement under Rule 11(c)(5); or
(B) the defendant can show a fair and just reason for requesting the withdrawal.

STATEMENT OF THE CASE

This case provides an important opportunity for the Court to articulate the parameters of Federal Rule of Criminal Procedure 11(b) and (d) in the context of a questionable guilty plea that the defendant sought to withdraw almost immediately. The case thus affords a vehicle to ensure national uniformity and constitutional compliance in the process of accepting guilty pleas, which resolve 95% of all criminal prosecutions within the federal system.

Here, the district court ultimately accepted Petitioner's "yes" response to the question whether his signature on a written plea agreement indicated his admission to the statements therein after he clearly and repeatedly sought to plead not guilty during several hours of colloquy. Petitioner then filed a pro se motion to withdraw his plea 11 days later, but the motion was denied by the district court.

The Sixth Circuit then dismissed Petitioner's appeal from the district court's denial of his motion to withdraw, citing the waiver of appeal rights stated in the written plea agreement.

The process conflicted with the requirements embedded in Rule 11 to satisfy constitutional requirements previously articulated by this Court, and it is therefore of national importance for the Court to review the record and provide guidance on precisely what those requirements mean in the context of a defendant whose change of plea is of questionable voluntariness.

This case arises from the district court's refusal to permit withdrawal of Petitioner's guilty plea 11 days after it was, eventually, accepted following an extended and circuitous colloquy in which the district court effectively abandoned the requirements of Fed. R. Crim. Pro. 11(b) by accepting Petitioner's reluctant confirmation of the statements he had signed in the written plea agreement earlier that day despite having told the court (in the same colloquy) that he wished to plead not guilty and refusing to state his guilt directly upon questioning. The Sixth Circuit then relied upon the written plea agreement as a basis for dismissing Petitioner's appeal, thus adopting an approach to Fed. R. Crim. Pro. 11(d) that conflicts with this Court's precedent, constitutional principles, and precedent of multiple Circuits of the U.S. Court of Appeals. Accordingly, Petitioner now seeks this Court's review and prays that a ruling by this Court may create national consistency for the 95% percent of criminal cases that result in plea agreements.

A. Nature of the Criminal Prosecution

Petitioner Brian L. Saulsberry worked as a federal employee with the Internal Revenue Service in Memphis, Tennessee. On May 21, 2021, Saulsberry filed Equal Employment Opportunity Commission (EEOC) complaints workplace discrimination by his supervisors: Territory Manager Ross Sickler and Department Manager Timothy Marshall. Almost immediately thereafter, Sickler began to take actions that led to the criminal prosecution of Saulsberry underlying this case.

Ross Sickler had been promoted to Territory Manager in March 2020 and had been onsite at the Memphis campus since October 2020 less than four months when he initiated the investigation that would transform petitioner's life. On January 14, 2021, Sickler contacted the Treasury Inspector General for Tax Administration (TIGTA) and initiated Investigation 76-2102-0018-I, alleging that petitioner had committed time theft totaling $5,048.75 over 201.95 hours.

TIGTA Report 76-2102-0018-I documents this investigation and reveals several disturbing aspects of the government's conduct. First, Sickler included defamatory allegations that petitioner was "having an affair with a non-employee" and suggested this explained his alleged absences from work. These character assassination attempts were irrelevant to any legitimate administrative inquiry but served to prejudice investigators against petitioner.

Second, and most critically, the investigation exceeded its scope by unlawfully accessing the petitioner's private financial records. The report states that "during the investigation it was identified between April 2020 through August 2020, SAULSBERRY applied for multiple Small Business Administration (SBA) Economic Injury Disaster Loan (EIDL)" applications. The report details petitioner's private SBA loan records, bank account numbers, and business financial information, all obtained without warrant, subpoena, or petitioner's consent, in violation of the Fourth Amendment and the Right to Financial Privacy Act, 12 U.S.C. § 3401 *et seq.*

Crucially, petitioner had maintained IRS-approved outside employment authorization since August 2015 for his "Real Estate Development & Acquisition Company." The TIGTA report confirms this authorization was updated and approved as recently as March 1, 2020. Petitioner's loan applications were prepared with CPA-reviewed tax documents, and to this date, the Small Business Administration has never stated that petitioner did anything wrong with respect to his loan applications.

On May 19, 2022, petitioner was indicted by a federal grand jury on two counts of wire fraud (18 U.S.C. § 1343) and two counts of money laundering (18 U.S.C. § 1957), carrying potential sentences of up to 20 years imprisonment. The transformation of a $5,048.75 administrative time-theft matter into federal felony charges carrying decades of imprisonment epitomizes the retaliatory nature of this prosecution.

B. Counsel of Choice Concerns

Petitioner's counsel of choice throughout the prosecution, whom he paid, consisted of a "team" of Madeleine Christie Savage-Townes, who had deep experience in prior IRS-related litigation, and Michael Scholls, who had significant prior federal criminal litigation experience. This was important to Petitioner because he believed experience in IRS matters was critical to understanding the financial and administrative aspects of his case, and that federal criminal defense experience was essential to understanding significant aspects of the litigation.

However, on December 20, 2022, Ms. Savage-Townes' moved to withdraw without consulting Petitioner. Petitioner would have opposed the motion if given the opportunity, partially because he paid Ms. Savage-Townes in advance and, thereby, had exhausted a significant portion of the resources available to him for mounting a defense to the prosecution. The District Court granted the motion on the same day it was filed without any apparent inquiry and with no input from Petitioner.

Petitioner has stated repeatedly, including at a March 6, 2024 hearing on his motion to withdraw his guilty plea, that he believed Ms. Savage-Townes' tax expertise was essential to his defense and did not approve of her withdrawal. Moreover, Petitioner contends that the trial court's grant of Ms. Savage-Townes' motion to withdrawal left his defense team unbalanced in that it lacked an experienced IRS attorney in a prosecution targeting him for financial matters subject to the purview of the agency.

C. Consistent Assertion of Innocence

From his initial appearance through the eve of trial, petitioner consistently maintained his innocence. This was not the equivocation of a guilty defendant seeking favorable terms, but the steadfast assertion of an innocent person wrongly accused.

Petitioner retained attorney Madeleine Savage-Townes and later Michael Scholl. Throughout 2023,

petitioner repeatedly communicated his innocence to counsel through documented emails:

- January 18, 2023: Petitioner asked Scholl if he could assert a claim against the Department of Justice for bad faith prosecution.

- February 23, 2023: Petitioner told Scholl that the DOJ should provide a letter "acknowledging my innocence."

- May 26, 2023: Petitioner stated the DOJ should provide correspondence "that acknowledges I did not commit any wrongdoing."

- June 7, 2023: Petitioner wrote to Scholl: "There is no doubt I am innocent and have acted above board on the loans."

These communications establish that the petitioner never wavered in his assertion of innocence. His goal was never to negotiate a favorable plea, but to convince the government that they had targeted the wrong person.

D. "A Lot of Confusion" Before the Plea Agreement

The week leading to the petitioner's guilty plea was marked by what defense counsel himself characterized as "a lot of confusion" with "a lot of things happening at once." This confusion was not accidental, it was the product of last-minute pressure

applied to an innocent defendant on the eve of trial.

On November 30, 2023, just five days before the scheduled December 5 trial, Michael Scholl recommended a guilty plea for the first time after over a year of petitioner asserting innocence. Scholl told petitioner that his "elderly mother may not live to see him free again" if he proceeded to trial, a coercive threat that exploited petitioner's filial bonds to pressure acceptance of the government's offer.

The compressed timeframe created the chaos that Scholl acknowledged. Multiple versions of plea agreements circulated on December 4, 2023, the day before the hearing. At 2:11 PM, the government sent a first version for a money laundering count. At 11:58 AM, they sent a second version for a wire fraud count. Scholl sent redlined edits, and the government sent a "clean, updated" final version that afternoon. Critically, Scholl never forwarded any of these versions to the petitioner.

When petitioner arrived at the federal courthouse on December 5, 2023, at approximately 10:30 AM, he told Scholl "The very first thing" that he "thought about everything, I want to plead not guilty." Instead of supporting his client's decision, Scholl presented him with the written plea agreement while sitting on a hallway bench, the first-time petitioner had seen any version of the document.

Petitioner later testified he felt "so jarred that all of this was happening right now" and was

"wrestling with the whole notion of going along with something like this." Nevertheless, under pressure and with no time to meaningfully review the document, petitioner signed the plea agreement on the hallway bench minutes before the hearing.

E. The "Suboptimal" Plea Colloquy

What followed was what the district court itself would later characterize as "suboptimal for all involved" a plea colloquy so deficient that the judge repeatedly tried to stop it and send the case to trial.

The First Attempt: The colloquy began at approximately 11:00 AM. As the district court reviewed the elements of the offense and the concept of reasonable doubt, petitioner became confused and disoriented. When the court asked about his right to plead not guilty, the petitioner firmly declared: "I want to plead not guilty." The court responded, "Okay. We'll go to trial next week," and announced a recess.

The First Recess: During the recess, Scholl told petitioner there was "a big problem" because the signed plea agreement would be used against him at trial as "a full confession." When the petitioner asked what could be done, Scholl could only respond "I don't know." Petitioner understood this to mean his situation was "unrecoverable" and "without recourse."

The Second Attempt: The colloquy resumed at approximately 12:00 PM. Again, the court

struggled with the petitioner's responses regarding criminal intent. After the government presented its evidence, the court asked the petitioner what he did wrong. Petitioner denied illicit intent, prompting the court to state: "I don't understand how I can take that plea."

At this point, Scholl began conducting an adverse examination of his own client, highlighting evidence against the petitioner rather than defending him. This extraordinary breach of the attorney-client relationship left the petitioner feeling he had no advocate in the courtroom. When Scholl's questions again failed to elicit admissions of criminal intent, the court stated: "We just need to go to trial, gentlemen."

The Second Recess: Scholl requested additional time to speak with the petitioner. During this recess, Scholl told petitioner to "stop fucking around" and said "you're hearing the questions in plain English, stop F'ing around." When the petitioner asked, "Can't you just leave me alone, let me go home?", Scholl replied "no, we've got to go through this process."

The Third Attempt: When the colloquy resumed, petitioner's responses had deteriorated to "yes," "I'll say yes," "just yes," and "just yes so I can—yes, whatever." The court observed: "I'm not comfortable with this" and noted that "to the extent he's saying yes, which is very tenuous, he's saying that to get it over with as opposed to" admitting guilt.

Despite these obvious signs that the plea was

not knowing, intelligent, and voluntary, the court ultimately accepted it after petitioner had been worn down by hours of pressure and his attorney's abandonment of his advocate role.

F. Motion to Withdraw and Appeal

On December 16, 2023, just eleven days after entering his guilty plea, petitioner filed a *pro se* motion to withdraw his plea. The motion was timely filed before sentencing and demonstrated petitioner's immediate recognition that his plea had been coerced.

The district court conducted an evidentiary hearing on the withdrawal motion, during which both petitioner and Scholl testified to the circumstances described above. Despite acknowledging that the plea colloquy was "suboptimal for all involved," that it was "the longest change of plea this Court has ever conducted," that the court "tried to stop the proceedings on numerous occasions," that "minimal time elapsed" between the plea and withdrawal motion, and that there would be "minimal prejudice (if any) to the government," the district court denied the motion to withdraw.

The court's reasoning focused solely on the fact that petitioner "implored the Court to accept his plea deal" each time the court tried to stop the proceedings. This reasoning ignored the undisputed evidence of why petitioner implored the court because his attorney had told him his situation was "unrecoverable," had conceded defeat in open court, and had told him to "stop fucking around."

On September 27, 2024, the district court sentenced the petitioner to 18 months imprisonment. Petitioner appealed, and on August 28, 2024, the United States Court of Appeals for the Sixth Circuit dismissed the appeal and, thereby, effectively affirmed both the denial of the withdrawal motion and the conviction.

REASONS FOR GRANTING THE WRIT

A. Procedure Below Conflicts with Rule 11

This case presents multiple constitutional violations that strike at the heart of the federal criminal justice system. As this Court emphasized in *Missouri v. Frye*, 566 U.S. 134, 143 (2012), over 95% of federal criminal convictions result from guilty pleas, not trials. The Court noted that "ours 'is for the most part a system of pleas, not a system of trials,'" making the constitutional protections surrounding guilty pleas critically important to the system's integrity.

The primary rule governing the entry and withdrawal of guilty pleas in federal criminal cases is Fed. R. Crim. Pro. 11, which was adopted in part to ensure compliance with constitutional principles articulated by this Court. Of the most direct relevance to this matter are subsection (b), which requires that the court address the defendant in open court and establishes the terms for doing so, and subsection (d), which governs the withdrawal of a guilty plea.

In the present case, the district court should not have accepted Petitioner's guilty plea because it is clear from the colloquy that it was not voluntary and Petitioner was repeatedly unwilling to state the factual basis for the plea (*i.e.*, that he actually committed the acts constituting the crime). Instead, both the district court and defense counsel acknowledged on the record that they were trying to "save [Petitioner] from himself" because he had previously signed a written plea agreement that contained factual admissions likely to be used against him if the case went to trial.

Regardless of the presumably salubrious motive to save a defendant from a potential guilty verdict based on his apparent admissions, the district court's acceptance of the plea in this case runs directly counter to the very purposes of Rule 11(b)'s requirement for an on-the-record colloquy to determine whether the plea is, in fact, knowing and voluntary. The court itself stated, "it's become clear that he doesn't agree with what's in the plea agreement even though he signed his name" and then, despite that statement, accepted the written plea agreement as the sole factual statement supporting entry of the guilty plea.

Not only did the proceedings violate Rule 11(b), but Petitioner then moved the court – *pro se* because he believed his lawyer had forced him into a false guilty plea – to withdraw the plea just 11 days later. This circumstance is the quintessential basis for withdrawing a guilty plea contemplated by Rule 11(d). Accordingly, denial of the motion to withdraw the plea, followed by the Sixth Circuit's dismissal of the appeal on the basis of a waiver in the written

plea agreement, signals the development of an approach to pleas in the Sixth Circuit that fundamentally conflicts with Rule 11, this Court's precedent, and the foundational constitutional requirements undergirding the law in this area.

The problem is particularly egregious because of the circumstances underlying the entire prosecution, which suggest a retaliatory motive, improper prosecutorial tactics, and a high probability of innocence. In other words, in the absence of review by this Court, this case stands for the proposition that even a federal employee may be targeted, illegally investigated, and pressured by his own attorney into admitting guilt for purposes of conviction despite his persistent claims that he did not actually commit the acts constituting the crime. To enforce this outcome, despite the defendant's near-immediate effort to withdraw the plea, through a decision that denies the right to appeal on the basis of the written plea agreement functionally eviscerates Rule 11 and the background precedent and constitutional rights that underlie it.

This case presents the extraordinary circumstance of a federal district judge admitting that a guilty plea colloquy was "suboptimal for all involved," acknowledging it was "the longest change of plea this Court has ever conducted," stating she "tried to stop the proceedings on numerous occasions," and finding "minimal time" and "minimal prejudice" regarding withdrawal yet still denying the defendant's timely motion to withdraw his guilty plea. If such obvious constitutional deficiencies do not warrant relief, the protections of *Boykin v.*

Alabama, 395 U.S. 238 (1969), and *McCarthy v. United States*, 394 U.S. 459 (1969), become meaningless.

The constitutional violations here did not occur in isolation. This case presents a cascade of compounding errors: retaliatory prosecution documented in government records, unlawful access to private financial information, ineffective and coercive counsel who threatened the defendant about his elderly mother, denial of exculpatory evidence, and a plea colloquy so deficient that the judge herself characterized it as "suboptimal." When these violations are viewed cumulatively, they reveal a systematic breakdown of constitutional protections that requires this Court's intervention.

B. Permitting Withdrawal of Counsel of Choice Without Consultation Resulted in a Sixth Amendment Violation

In *United States v. Gonzalez-Lopez*, 548 U.S. 140, 150 (2006), this Court explained that in the context of "[m]any counseled decisions, including those involving plea bargains," deprivation of the Sixth Amendment right to counsel of choice warrants automatic reversal of a conviction because even "[h]armless-error analysis in such a context would be a speculative inquiry into what might have occurred in an alternate universe." In this case, the trial court's order permitting attorney Savage-Townes to withdraw without any consultation of Petitioner fundamentally undermined the legal team that he was assembling by depriving him of counsel with a background in precisely the financial matters and administrative context on which the government's

allegations focused. Due to this sudden loss of his counsel of choice, Petitioner was then pressured by his general criminal attorney to accept a plea agreement about which he was underinformed and deeply hesitant.

Further, in this case, the petitioner expressed his concerns about choice of counsel in open court during the March 6, 2024 hearing on his motion to withdraw his guilty plea, but such concerns were utterly ignored by the district court and the Sixth Circuit. Thus, the present case offers an important opportunity to explore and refine the Sixth Amendment rights articulated in *Gonzalez-Lopez* in the context of a legal team assembled for their different areas of expertise.

Sixth Circuit caselaw on the question suggests that it is developing a body of precedent that over-emphasizes the calendaring concerns of the trial courts to the detriment of the core Sixth Amendment right to counsel of choice. *See Pouncy v. Palmer*, 2025 U.S. App. LEXIS 11315, *32, 2025 LX 87860, 2025 FED App. 0236N, 2025 WL 1341850 (6th Cir. 2025); *United States v. Pancholi*, 148 F.4th 382, 395 (6th Cir. 2025). Moreover, the Sixth Circuit, in particular, has repeatedly emphasized that it "has recognized that the right to counsel of one's choosing can be balanced against public interest, fairness, and the trial court's schedule." *Nawaz Ahmed v. Shoop*, 2024 U.S. App. LEXIS 28143, *6, 2024 LX 54453, 2024 WL 5125984 (6th Cir. 2024).

In this way, the Sixth Circuit is developing a body of precedent that contradicts this Court's clear guidance that "Courts may not overlook [the Sixth

Amendment's] command, no matter how noble the motive." *Hemphill v. New York*, 595 U.S. 140, 154, 142 S. Ct. 681, 693 (2022). This is particularly important with regard to a criminal defendant's Sixth Amendment rights that are structural. *See McCoy v. Louisiana*, 584 U.S. 414, 427, 138 S. Ct. 1500, 1511 (2018). This is because "'the right at issue is not designed to protect the defendant from erroneous conviction but instead protects some other interest,' such as 'the fundamental legal principle that a defendant must be allowed to make his own choices about the proper way to protect his own liberty.'" *Id.* (citing *Weaver v. Massachusetts*, 582 U. S. 286, 295, 137 S. Ct. 1899, 1908, 198 L. Ed. 2d 420, 432 (2017).

The district court's immediate granting of attorney Savage-Townes' motion to withdraw, without Petitioner having been consulted, left Petitioner in a vulnerable position. While he had paid Savage-Townes in advance, and paid attorney Scholl, Petitioner's resources were drained during the prosecution of this case and, therefore, he was unable to hire new counsel. Instead, once he was forced to make a *pro se* motion to withdraw his guilty plea by the withdrawal of Scholl, Petitioner then required the assistance of an appointed federal public defender. Thus, Savage-Townes' withdrawal fractured Petitioner's defense team irrevocably.

Accordingly, granting Savage-Townes' motion to withdraw undermined Petitioner's ability to make choices about how to protect his liberty by depriving him of the right to counsel of choice. This structural defect then became a major contributing factor in creating the circumstances in which Petitioner was

pressured to accept a guilty plea that he repeatedly professed in open court that he did not wish to enter. This type of unjust situation resulting in criminal conviction, completely ignored by the district court and Sixth Circuit below, is precisely what the Sixth Amendment right to counsel of choice articulated in *Gonzalez-Lopez* functions to prevent. As such, these circumstances warrant an immediate and automatic reversal of Petitioner's conviction.

B. The Plea Colloquy Violated Boykin and McCarthy

The guilty plea colloquy in this case violated the constitutional requirements established in *Boykin v. Alabama* and *McCarthy v. United States* that guilty pleas be knowing, intelligent, and voluntary. The district court's own characterization of the proceedings as "suboptimal" understates the constitutional deficiencies that permeated the December 5, 2023, hearing.

The judge repeatedly stated she could not accept the plea. During the colloquy, Judge Lipman said multiple times "I don't understand how I can take that plea" and "We just need to go to trial, gentlemen." She told the petitioner "I don't know what's going on. You have got to concentrate on what I'm saying and answer my questions." When government counsel arrived, the judge asked, "Mr. Campbell, what would you like to add to this mess."

Petitioner declared "I want to plead not guilty"

twice. This was not equivocation or confusion, these were clear, unambiguous assertions of innocence. The first time, the judge responded "Okay. We'll go to trial next week" and recessed. After defense counsel's coercive pressure during the recess, petitioner was brought back, and the colloquy was attempted again. When problems persisted, there was a second recess, during which counsel told petitioner to "stop fucking around." Only after this verbal abuse did the petitioner begin responding with tentative "yes" answers.

The colloquy required three separate attempts spanning hours. The district court later acknowledged this was "the longest change of plea this Court has ever conducted" and that she "tried to stop the proceedings on numerous occasions." Such length did not reflect thoroughness, it reflected fundamental problems with the plea's voluntariness.

Defense counsel's conduct was coercive, not supportive. Rather than advocating for his client, Scholl conducted an adverse examination highlighting evidence against petitioner, told him his "elderly mother may not live to see him free again" if he went to trial, and during a recess told him to "stop fucking around." This is not the effective assistance required by the Sixth Amendment; it is coercion that rendered the plea involuntary.

Petitioner's final responses demonstrated lack of voluntary consent. By the third attempt, petitioner's responses had deteriorated to "yes," "I'll say yes," "just yes," and "just yes so I can—yes, whatever." The judge stated, "I'm not comfortable

with this" and observed that petitioner was "saying yes...to get it over with as opposed to" admitting guilt.

These deficiencies, acknowledged by the district court itself, violate the core requirements of *Boykin* and *McCarthy*. A plea extracted after a defendant twice declares his innocence, through counsel's threats about elderly parents, and resulting in a judge's admission that the proceedings were "suboptimal," cannot satisfy constitutional standards.

C. The Sixth Circuit Departed From *Bashara*

The Sixth Circuit's dismissal of Petitioner's appeal of the district court's denial of his motion conflicts with its own precedent in *United States v. Bashara*, 27 F.3d 1174 (6th Cir. 1994), and *United States v. Ellis*, 470 F.3d 275 (6th Cir. 2006). These cases establish that pre-sentence withdrawal motions should be evaluated under a flexible, multi-factor balancing test, with *Ellis* noting that such motions should be "freely allowed."

The district court made findings that strongly favored withdrawal. The court acknowledged: (1) the plea colloquy was "suboptimal for all involved"; (2) it was "the longest change of plea this Court has ever conducted"; (3) the court "tried to stop the proceedings on numerous occasions"; (4) "minimal time elapsed" between the plea and withdrawal motion (11 days); and (5) there would be "minimal

prejudice (if any) to the government."

These findings should have compelled granting the withdrawal motion under *Bashara*. When a court admits the plea colloquy was deficient, acknowledges minimal time and minimal prejudice and finds that it repeatedly tried to stop the proceedings, the *Bashara* factors clearly favor withdrawal.

The district court's reasoning was inadequate. The court focused solely on the fact that petitioner "implored the Court to accept his plea deal" each time the court tried to stop the proceedings. This reasoning ignored the undisputed record showing why petitioner implored the court: his attorney had told him his situation was "unrecoverable," had said "I don't know" what to do, and had conceded defeat in open court by stating the signed plea agreement would be used against petitioner at trial.

A defendant who "implores" the court after his attorney declares the situation hopeless is not making a voluntary choice, he is succumbing to coercion. The district court's failure to consider the coercive circumstances that produced petitioner's "imploring" represents a departure from the required *Bashara* analysis.

D. Circuit Split on Pre-Sentence Withdrawal Standards

The Sixth Circuit's restrictive approach to pre-sentence guilty plea withdrawal conflicts with more

liberal standards applied by other circuits, creating a split on an issue affecting most federal criminal cases. The conflict is most apparent if one considers the Fifth Circuit's opinion in *United States v. Price*, 538 F.2d 722, 723 (5th Cir. 1976), which involved relatively similar facts, but is also apparent in multiple opinions from other Circuits.

Fourth Circuit: In *United States v. Truglio*, 493 F.2d 574 (4th Cir. 1974), the Fourth Circuit established that pre-sentence withdrawal should be liberally granted to ensure that defendants are not bound by improvident pleas.

Fifth Circuit: The Fifth Circuit in *United States v. Price*, 538 F.2d 722 (5th Cir. 1976), applies a "fair and just reason" standard that is liberally construed in favor of defendants seeking pre-sentence withdrawal.

Seventh Circuit: The Seventh Circuit has established a strong presumption in favor of allowing pre-sentence withdrawal, recognizing that the interests of justice are better served by permitting defendants to go to trial rather than being bound by questionable guilty pleas.

The Sixth Circuit's approach is increasingly restrictive. By upholding denial of withdrawal despite the district court's acknowledgment of "suboptimal" proceedings and "minimal prejudice," the Sixth Circuit has departed from the liberal approach of sister circuits.

This split affects 95% of federal cases. As this Court noted in *Frye*, most federal criminal cases are resolved through guilty pleas. National uniformity in pre-sentence withdrawal standards is essential to ensure that constitutional protections remain meaningful across all federal districts.

E. Problems in the Underlying Prosecution

In addition to the national importance of issues that would be directly on appeal if the writ is issued, this case is a particularly good vehicle for the Court to clarify legal requirements surrounding guilty pleas because there are many indicators of impropriety throughout the entire prosecutorial process. Thus, the case is one in which it appears that a defendant was improperly targeted, his rights were violated to acquire information against him, he was effectively compelled to accept a plea agreement, and then he was prevented from withdrawing it.

1. Documented Retaliation Pattern

This case presents clear documentary evidence of retaliatory prosecution in violation of the First and Fifth Amendments. TIGTA Report 76-2102-0018-I establishes the timeline and participants that demonstrate retaliation against petitioner for filing EEOC complaints.

The timeline establishing retaliation is undisputed. On May 21, 2021, petitioner filed EEOC complaints against Territory Manager Ross Sickler and Department Manager Timothy Marshall. Sickler

had been promoted to Territory Manager in March 2020 and had been onsite at the Memphis campus since October 2020, less than four months when he initiated the investigation. On January 14, 2021 (notably, before the EEOC hearing), Sickler contacted TIGTA and initiated Investigation 76-2102-0018-I, alleging petitioner had committed time theft.

A $5,048.75 administrative matter was escalated to federal felony charges carrying up to 20 years imprisonment. Time theft allegations of this magnitude are typically handled through administrative discipline—reprimands, suspensions, or termination. The decision to refer this matter for federal prosecution, transforming it into charges carrying decades of imprisonment, demonstrates the vindictive nature of the prosecution.

The investigation included defamatory allegations irrelevant to any legitimate inquiry. Sickler alleged petitioner was "having an affair with a non-employee" and suggested this explained his alleged absences. These character assassination attempts served no legitimate investigative purpose but were designed to prejudice investigators against the petitioner.

2. Fourth Amendment Financial Privacy Violation

The investigation violated petitioner's Fourth Amendment rights and the Right to Financial Privacy Act by unlawfully accessing his private financial records without warrant, subpoena, or consent.

TIGTA exceeded the scope of its investigation. What began as a time-theft investigation somehow obtained detailed information about petitioner's SBA loan applications, bank account numbers, and business financial records. The TIGTA report states it "identified between April 2020 through August 2020, SAULSBERRY applied for multiple Small Business Administration (SBA) Economic Injury Disaster Loan (EIDL)" applications and provides detailed financial information.

No legal authority existed for accessing these records. The Right to Financial Privacy Act, 12 U.S.C. § 3401 *et seq.*, requires government agencies to obtain customer authorization, administrative subpoena, search warrant, or judicial subpoena before accessing financial records. A time-theft investigation does not provide authority to access SBA loan records or bank account information.

The financial information was used as the basis for criminal charges. The unlawfully obtained SBA records became the foundation for the wire fraud and money laundering charges. This represents classic "fruit of the poisonous tree" evidence obtained through constitutional violation that should be suppressed.

Petitioner had legitimate business activities. The TIGTA report confirms petitioner had IRS-approved outside employment authorization since August 2015 for his "Real Estate Development & Acquisition Company," with approval updated as recently as March 1, 2020. His loan applications were

prepared with CPA-reviewed tax documents, and the SBA has never stated petitioner did anything wrong.

3. COVID Defense Never Explored

Petitioner disclosed to defense counsel that he "had COVID" and "wasn't thinking clearly" during the loan application period. This went directly to the intent element of the charged offenses if petitioner's memory was compromised due to COVID-19, he could not have formed the requisite criminal intent for wire fraud or money laundering.

Rather than investigating this potentially exculpatory defense, Scholl dismissed it and pressured petitioner toward a guilty plea. This represents both ineffective assistance of counsel and a missed opportunity to establish the petitioner's innocence.

F. CUMULATIVE CONSTITUTIONAL VIOLATIONS

This case does not present a single constitutional error that might be deemed harmless. Rather, it involves a cascade of compounding violations that systematically denied petitioner the constitutional protections required for guilty pleas.

While this Court has not formally adopted a cumulative error doctrine for direct appeals, it has recognized that "the combined effect of multiple errors may warrant reversal even where individual errors, standing alone, would not." *Taylor v.*

Kentucky, 436 U.S. 478, 487 n.15 (1978). This principle applies with force in the guilty plea context because guilty pleas involve "waiver of constitutional rights" requiring "special concern for fairness and accuracy." *Frye*, 566 U.S. at 145.

In this case, six distinct constitutional violations compounded. These relate to both the plea and the underlying prosecution.

First, the "suboptimal" plea colloquy: Judge's own characterization, repeated attempts to stop proceedings, petitioner's two "not guilty" statements.

Ineffective and coercive counsel: Threats about elderly mother, "stop fucking around," adverse examination of own client, conceding defeat in open court.

Brady violation: Withheld DOJ Investigation Report that petitioner learned about only after entering guilty plea. *See Brady v. Maryland*, 373 U.S. 83 (1963).

Fourth Amendment violation: Unlawful access to SBA loan records and bank account information without warrant or consent.

Retaliatory prosecution: TIGTA Report documents Sickler's role in escalating administrative matters to federal felony after EEOC complaints.

Maintained innocence throughout: Documented emails to counsel, COVID defense disclosed but

ignored, consistent assertion of innocence for over a year.

In other words, no single error caused the injustice suffered by Petitioner. It was a cascade of factors, including multiple constitutional violations, that placed Petitioner before a district court judge wavering about whether to enter a guilty plea to crimes he continuously and unequivocally maintained he did not commit.

Any one of the constitutional and procedural violations present here was independently outcome-determinative. Had the Rule 11 colloquy satisfied the requirements of *Boykin v. Alabama*, 395 U.S. 238 (1969), and *McCarthy v. United States*, 394 U.S. 459 (1969), petitioner would not have entered a guilty plea. Had counsel provided the constitutionally required level of competence, petitioner would have exercised his right to trial. Had the suppressed Brady material been disclosed as required, petitioner would have maintained his not-guilty plea. Had federal agents not unlawfully accessed petitioner's financial records, the government would have lacked the foundation to pursue federal charges. And had the retaliatory conduct underlying this prosecution been addressed, the charges would likely have been dismissed outright.

But all these violations occurred together. The cumulative effect was to coerce an innocent person into pleading guilty to crimes he did not commit, then deny him any remedy.

ISSUES OF NATIONAL IMPORTANCE

These violations reflect systemic problems affecting the 95% of federal cases resolved by guilty pleas. If "suboptimal" plea colloquies are deemed acceptable, last-minute counsel pressure is unremedied, Brady violations in the plea context lack adequate remedies, and retaliatory prosecutions proceed unchecked, constitutional protections become meaningless for most federal defendants.

Only this Court can provide the guidance necessary to ensure that constitutional protections for guilty pleas remain meaningful safeguards against wrongful conviction.

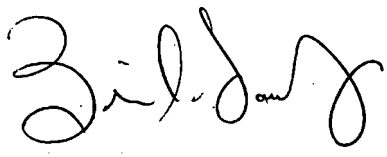
CONCLUSION

For the foregoing reasons, this Court should grant the petition for a writ of certiorari, reverse the judgment of the Sixth Circuit, and remand with instructions to permit petitioner to withdraw his guilty plea, or simply reverse his conviction. In the alternative, the Court should vacate the judgment below and remand for further proceedings consistent with this Court's precedent, including proper consideration of the constitutional violations affecting the plea, the unlawful acquisition of financial records, the suppression of exculpatory material, and the documented retaliatory conduct that tainted the prosecution from its inception.

Given the cumulative constitutional violations that permeated the proceedings, the conviction cannot stand. Only this Court's intervention can restore the protections guaranteed by Rule 11,

Boykin, McCarthy, and the First, Fourth, Fifth, and Sixth Amendments. Moreover, this Court's guidance will serve to correct concerning developments in the precedent of the Sixth Circuit that serve to undermine those protections in many cases throughout that Circuit and, thereby, harmonize the law across Circuits to uniformly provide appropriate constitutional protection to criminal defendants.

Respectfully submitted,



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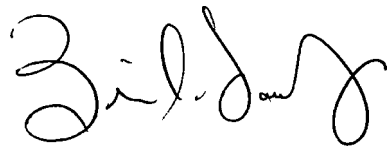
Dated: December 29, 2025

CERTIFICATE OF COMPLIANCE

This petition complies with the word limit of Supreme Court Rule 33.1(g) because it contains significantly less than 9,000 words, excluding the parts exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 29, 2025.



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