

No. 25-6874 ORIGINAL

Supreme Court, U.S.  
FILED  
DEC - 8 2025  
OFFICE OF THE CLERK

\_\_\_\_\_  
IN THE  
SUPREME COURT OF THE UNITED STATES

BRANDON STRICKER — PETITIONER  
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

NINTH CIRCUIT COURT OF APPEALS ALASKA  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

BRANDON STRICKER  
(Your Name)

FCI LA TUNA, PO 3000  
(Address)

ANTHONY, NM 88021  
(City, State, Zip Code)

N/A  
(Phone Number)

## QUESTIONS PRESENTED

Whether, under Rule 11 of the Federal Rules of Criminal Procedure and the Due Process Clause of the Fifth Amendment, a district court is required to conduct a more searching inquiry into a defendant's understanding of how his admitted conduct satisfies the essential elements of the offense when the defendant denies a substantial portion of the government's offer of proof (including the essential element) during the plea colloquy, or whether the court may instead rely on counsels' summary assertions that the remaining admitted conduct is sufficient to support the plea.

## LIST OF PARTIES

- All parties appear in the caption of the case on the cover page.
- All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

## RELATED CASES

CR 20-46 BLG-DLC  
No. 24-5955

## TABLE OF AUTHORITIES

### Cases

Bolivar Irizarry v. United States, 508 F.2d 960(2d Cir. 1975)	6,9
Godwin v. United States, 687 F.2d 585 (2d Cir. 1982)	5,6
McCarthy v. United States, 394 U.S. 459 (1969)	7,8
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United States v. Jerry Ted Brown, 25 F.3d 307 (6 <sup>th</sup> Cir. 1994)	6
United States v. Mastrapa, 509 F.3d 652 (4 <sup>th</sup> Cir. 2007)	9
United States v. Monzon, 429 F.3d 1268 (9 <sup>th</sup> Cir. 2005)	4,5,8
United States v. Valensia, 299 F.3d 1068 (9 <sup>th</sup> Cir. 2002)	9

### Statutes

18 U.S.C. 2252

Passim 18 U.S.C. 2252(a)(2) 1,3,4

28 U.S.C. 1254(1) 1

Rules Fed. R. Crim. P. 11

Passim Fed. R. Cri. P. 11(b)(3) 2,5,7,8,9

Constitutional Provisions U.S. Const. amend. V (Due Process Clause) 1,7

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IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix B to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix \_\_\_\_\_ to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

## JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was AUG 15, 2025.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: NOV 7<sup>TH</sup>, 2025, and a copy of the order denying rehearing appears at Appendix B.

An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was \_\_\_\_\_.  
A copy of that decision appears at Appendix \_\_\_\_\_.

A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A.

~~The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).~~

## **JURISDICTION**

The judgment of the court of appeals was entered on 11-7-25. This petition is filed within 90 days of that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

The Fifth Amendment to the United States Constitution provides in relevant part: "No person shall be deprived of life, liberty, or property, without due process of law."

18 U.S.C. 2252 provides in relevant part: (a) Any person who (2) knowingly receives, or distributes, any child pornography that has been mailed, or has been shipped or transported in interstate or foreign commerce shall be punished as provided in subsection (b) of this section.

## STATEMENT OF THE CASE

This case involves a fundamental defect in the establishment of a factual basis for a guilty plea under 18 U.S.C. 2252(a)(2). Petitioner was charged with knowingly receiving child pornography. During the plea colloquy, the government provided an offer of proof asserting that Petitioner knowingly received a digital file containing child pornography via interstate commerce. However, Petitioner explicitly disputed the government's characterization of the "knowledge" element. While Petitioner admitted to the physical act of receiving a digital file, he clarified that he did not know the file contained child pornography at the time of receipt. Petitioner stated that he only discovered the nature of the material after he opened the file.

This distinction is of paramount legal importance. Under 18 U.S.C. 2252(a)(2), the "knowingly" requirement modifies the act of receipt, requiring that a defendant possess knowledge of the character of the material at the time the receipt occurs. Petitioner's admission established only "after-acquired knowledge," which fundamentally fails to satisfy the statutory element of "knowingly receiving" contraband.

Despite Petitioner's explicit denial of contemporaneous knowledge during the Rule 11 colloquy, the District Court failed to conduct any further inquiry. The court did not ask follow-up questions to determine how Petitioner's admitted conduct discovering the nature of the file only after opening it could legally satisfy the "knowingly received" element of the offense. Instead, the District Court relied on the summary assertions of Counsel that a factual basis existed.

Petitioner subsequently sought to challenge the validity of the plea, arguing that he did not understand how his admitted conduct constituted the crime charged. The United

States Court of Appeals for the Ninth Circuit affirmed the conviction, following a line of precedent that permits a cursory factual basis inquiry even when a defendant's admissions contradict the essential elements of the crime. In doing so, the Ninth Circuit looked beyond the deficient plea colloquy, relying on information not previously disclosed or verified prior to the sentencing phase to retroactively justify the plea. This petition follows.

## **REASONS FOR GRANTING THE PETITION**

### **I. THERE IS A SIGNIFICANT CIRCUIT SPLIT REGARDING THE DEPTH OF INQUIRY REQUIRED UNDER RULE 11(B)(3) WHEN FACTUAL ELEMENTS ARE DISPUTED.**

This Court should grant certiorari to resolve a persistent conflict among the Courts of Appeals regarding the judicial duty imposed by Rule 11(b)(3) when a defendant denies a critical element of the offense. The circuits are sharply divided on whether a judge must conduct a “searching inquiry” when a defendant admits to an act but denies the requisite mens rea at the time that act occurred.

In the Second Circuit, a district court cannot rely on summary assertions when an essential element is factually disputed. In *Godwin v. United States*, 687 F.2d 585 (2<sup>nd</sup> Cir. 1982), the court held that when a defendant asserts a version of events that contradicts an element of the offense such as intent or knowledge the record must contain circumstances that warrant a conclusion that the defendant’s version is “unworthy of belief.” The Second Circuit requires a deeper inquiry to ensure the defendant actually understands the nature of the charges in light of his denials. See also *United States v. Culbertson*, 670 F.3d 183 (2<sup>nd</sup> Cir. 2012).

Furthermore, other circuits have explicitly held that “knowingly” in 18 U.S.C 2252 applies to the nature of the material at the moment of the prohibited act. The Sixth Circuit in *United States v. Jerry Ted Brown*, 25 F.3d 307 (6<sup>th</sup> Cir. 1994), and the Tenth Circuit in *United States v. Fabiano*, 169 F.3d 1299 (10<sup>th</sup> Cir. 1999), have emphasized that “after-acquired knowledge” is sufficient to support a conviction for knowing receipt. Specifically, the Tenth Circuit has noted that instructions (and by extension, plea bases) must not permit a finding of guilt if a defendant merely acquired files without contemporaneous knowledge of their content.

By contrast, the Ninth Circuit has permitted a cursory approach that ignores these distinctions. In this case, despite Petitioner's explicit denial of contemporaneous knowledge admitting only to post-receipt discovery the court accepted the plea without inquiring into how this admission satisfied the statute. This creates a disparity where a defendant's due process rights during a plea vary significantly depending on the circuit, particularly concerning the notoriously fact-sensitive "knowledge" element of child pornography offenses.

## **THE NINTH IRCUIT'S APPROACH UNDERMINES THE CONSTITUTIONAL REQUIREMENT THAT A PLEA BE KNOWING AND VOLUNTARY.**

The Ninth Circuit's decision threatens the core constitutional protections articulated by this Court in *McCarthy v. United States*, 394 U.S. 459 (1969). A plea cannot be truly voluntary unless the defendant possesses an "understanding of the law in relation to the facts." *Id.* At 466.

When a defendant charged under 18 U.S.C. 2252(a)(2) admits to receiving a file but denies knowing its contents until after opening it, there is a fundamental mismatch between the admitted facts and the legal elements of "knowing receipt." If the District Court does not inquire further, it fails to ensure that the defendant understands that his admitted conduct may not actually constitute the crime charged.

Knowledge at the time of receipt is the "critical determination" for a conviction under 2252. By allowing district courts to bypass a searching inquiry in the face of such a specific factual denial, the Ninth Circuit have reduced Rule 11(v)(3) to a meaningless procedural checkbox. This Court should intervene to clarify that the Due Process Clause and Rule 11 require a substantive inquiry into the contemporaneous nature of a defendant's knowledge when that knowledge is explicitly challenged during the plea colloquy.

**THE CIRCUITS ARE DIVIDED ON WHETHER A REVIEWING COURT MAY BOLSTER A DEFICIENT PLEA COLLOQUY USING INFORMATION OBTAINED AT SENTENCING.**

Certiorari is also warranted to resolve a conflict regarding the scope of the record a court may consider when evaluating a Rule 11(b)(3) challenge. The Ninth Circuit allows reviewing courts to consider the “entire record,” including information from the Pre-Sentence Report (PSR) or testimony provided during the sentencing hearing, to retroactively establish a factual basis that was missing or contradicted at the time of the plea. See, e.g., *United States v. Monzon*, 429 F.3d 1268 (9<sup>th</sup> Cir. 2005).

In Petitioner’s case, the Ninth Circuit relied on subsequent developments at sentencing to “cure” the District Court’s failure to address Petitioner’s denial of knowledge during the plea colloquy. This approach effectively allows the government to bolster deficient colloquy with facts that were not admitted by the defendant and not present in discovery at the time he waived his constitutional rights.

Other circuits, however, adhere to a stricter interpretation of Rule 11(b)(3), limiting the inquiry to the record as it existed at the time the plea was accepted. These courts reason that the purpose of the factual basis requirement is to ensure the defendant’s understanding before the court accepts the plea. For example, the Second Circuit has held that the record must demonstrate the defendant’s understanding of the charge at the time the plea is entered. *Bolivar Irizarry v. United States*, 508 F.2d 960 (2<sup>nd</sup> Cir. 1975). Similarly, the Fourth Circuit has emphasized that Rule 11(b)(3) command the court to determine a factual basis before entering judgment, to ensure that what the defendant admits to is factually sufficient to constitute the crime. *United States v. Mastapa*, 509 F.3d 652, 660 (4<sup>th</sup> Cir. 2007).

Allowing a court to rely on “after-acquired” facts from the sentencing phase such as statements in a PSR or undisclosed discovery the defendant may not have even seen at the

time of the plea undermines the “personal interchange” required by Rule 11. It allows the government to secure a plea upon a deficient record and then “fill in the blanks” later. This Court should resolve this split to ensure that Rule 11(b)(3) is applied uniformly to protect the integrity of the plea process at the moment the defendant’s rights are waived.

**CONCLUSION**

The petition for a writ of certiorari should be granted.

Brandon Stricker      Petitioner Pro Se

1-21-26              Date



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