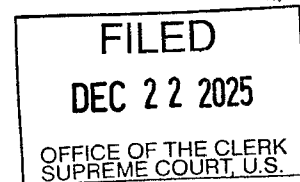


25-7098

No. 23-12697

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



KEVIN JEAN-GILLES,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

Kevin Jean-Gilles, Pro Se

Reg. No. 96881-509

FCI Coleman Low

FEDERAL CORRECTIONAL INSTITUTION

P.O. BOX 1031

COLEMAN, FL 33521

Petitioner

2/11/2026

QUESTIONS PRESENTED

1. Whether the Government's deviation from the agreed \$65,000 restitution figure in a binding plea agreement—by recommending and securing a \$125,000 restitution order based solely on unverified “broker estimates”—violated the promise of good faith and fair dealing required under

Santobello v. New York, 404 U.S. 257 (1971), and *United States v. Benchimol*, 471 U.S. 453 (1985).

2. Whether the Eleventh Circuit erred in holding that any breach of the plea agreement did not affect Petitioner's substantial rights where the record shows the district court relied on the Government's misrepresentation in determining restitution under the Mandatory Victims Restitution Act, 18 U.S.C. § 3663A.

3. Whether the Eleventh Circuit's decision conflicts with other circuits' rulings by declining to apply the clarified “average participant” standard set forth in Amendment 821, Part B, to U.S.S.G. §3B1.2, where Petitioner played a lesser role than the leader but received a nearly identical sentence.

PARTIES TO THE PROCEEDING

Petitioner is Kevin Jean-Gilles, who was the defendant in the district court and the appellant in the court of appeals.

Respondent is the United States of America, which was the plaintiff in the district court and the appellee in the court of appeals.

There are no other parties to the proceeding.

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****Cases****

Santobello v. New York, 404 U.S. 257 (1971)

United States v. Benchimol, 471 U.S. 453 (1985)

Puckett v. United States, 556 U.S. 129 (2009)

United States v. Boatner, 966 F.2d 1575 (11th Cir. 1992)

United States v. Griffin, 765 F.3d 1254 (10th

Cir. 2014)

****Statutes and Rules****

18 U.S.C. § 3663A

18 U.S.C. § 3664E

U.S.S.G. §3B1.2 (Amendment 821, Part B)

Fed. R. Crim. P. 11

28 U.S.C. § 1291

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eleventh Circuit is unpublished but available at *United States v. Jean-Gilles*, No. 23-12697 (11th Cir. July __, 2025). The opinion affirmed the district court's judgment and sentence. A copy of the opinion is reproduced in the Appendix at A1.

The judgment of the United States District Court for the Middle District of Florida, Orlando Division, was entered on August 3, 2023, in *United States v. Jean-Gilles*, No. 6:22-cr-00188-RBD. The district court's sentencing transcript and judgment are reproduced in the Appendix at A3–A10.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 5-22-2025.

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: Oct 3rd 2025, 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. § 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).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Constitution, Amendment V (Due Process Clause)

No person shall be ... deprived of life, liberty, or property, without due process of law.

U.S. Constitution, Amendment XIV (Due Process Clause)

... nor shall any State deprive any person of life, liberty, or property, without due process of law.

18 U.S.C. § 3664(e)

Any dispute as to the proper amount or type of restitution shall be resolved by the court by the preponderance of the evidence. The burden of demonstrating the amount of the loss sustained by a victim as a result of the offense shall be on the attorney for the Government.

21 U.S.C. § 853(q)

Cleanup of clandestine laboratory sites. The court, when sentencing a defendant convicted of an offense under this subchapter involving the manufacture of a controlled substance, shall order the defendant to pay the United States all costs of environmental cleanup and, where applicable, costs of property damage or personal injury resulting from the offense.

U.S. Sentencing Guidelines § 3B1.2 (Mitigating Role)

Based on the defendant's role in the offense, decrease the offense level as follows:

- (a) If the defendant was a minimal participant in any criminal activity, decrease by 4 levels.
- (b) If the defendant was a minor participant in any criminal activity, decrease by 2 levels.

In cases falling between (a) and (b), decrease by 3 levels.

(Amendment 821 clarifies that the mitigating-role comparison must be made to the average participant.)

Relevant Plea Agreement Provisions

Provision #4: The Government reserves its right and obligation to report to the Court and the United States Probation Office all information concerning the background, character, and conduct of the defendant, but also has an obligation to correct any inaccuracies before both the Court and Probation.

Provision #10: The defendant acknowledges that he is entering into this agreement and pleading guilty freely and voluntarily without reliance upon any discussions between the attorney for the Government and the defendant, and without promise of benefit of any kind other than the concessions contained herein.

Provision #12: This plea agreement constitutes the entire agreement between the Government and the defendant with respect to the guilty plea, and no other promises, agreements, or representations exist or have been made to the defendant or the defendant's attorney with regard to such guilty plea.

Restitution Clause:

The defendant agrees that the restitution in this case is \$65,000, due to Linda Periquito, the owner of 204 East Minnehaha Avenue, Clermont, Florida, for damages associated with the use of the premises to manufacture fentanyl pills, as authorized under 21 U.S.C. § 853(q) and U.S.S.G. § 2D1.1, comment note 18(A).

STATEMENT OF THE CASE

Petitioner Kevin Jean-Gilles was charged in the United States District Court for the Middle District of Florida, Orlando Division, with conspiracy to distribute controlled substances and related offenses. On November 29, 2022, Petitioner entered a guilty plea pursuant to a written plea agreement filed as Document 128. Under the terms of that agreement, the Government expressly stated that “the restitution in this case is \$65,000 due to Linda Periquito for damages associated with use of premises.” (Plea Agreement ¶ Restitution Clause.) Provision #12 of the plea agreement provided that the agreement constituted the entire understanding between the parties, and that “no other promises, agreements, or representations exist.” Provision #10 confirmed that Petitioner entered the plea freely and voluntarily, “without reliance upon any discussions between the attorney for the Government and the Defendant and without promise of benefit of any kind, other than the concessions contained herein.” Provision #4 obligated the Government to provide accurate factual information and to correct any inaccuracies before both the Court and the United States Probation Office.

Following the plea, the Probation Office prepared a Presentence Investigation Report (“PSR”) which stated that “no restitution amount has been reached.” The Government did not correct this inaccuracy, despite its obligation under Provision #4 of the plea agreement. Two months later, in January 2023, the Government introduced, for the first time, “broker estimates” purporting to value remodeling costs totaling \$153,888. These estimates were not disclosed or agreed to during plea negotiations and were unsupported by invoices, receipts, or proof of payment. The only verified losses—rent and utility bills—were fully encompassed within the \$65,000 figure stated in the plea agreement.

The final PSR, completed in July 2023, repeated the statement that “no restitution amount had been reached,” even though a written plea agreement executed eight months earlier had fixed restitution at \$65,000. At sentencing on August 3, 2023, the prosecutor represented to the Court that “all parties have agreed to \$125,000 restitution.” (Sentencing Transcript, p. 43.) This statement was inaccurate and unsupported by the record. The district court, relying on the Government’s misrepresentation and the unverified “broker estimates,” imposed restitution in the amount of \$125,000. The Court further sentenced Petitioner to 235 months’ imprisonment.

Petitioner appealed to the United States Court of Appeals for the Eleventh Circuit, Case No. 23-12697, arguing that the Government breached the plea agreement by deviating from the agreed \$65,000 restitution figure and by failing to correct the PSR’s inaccuracies. Petitioner further

argued that the restitution order violated the evidentiary requirements of the Mandatory Victims Restitution Act, 18 U.S.C. § 3664(e), and that the district court failed to apply Amendment 821 to U.S.S.G. § 3B1.2, which clarifies the standard for mitigating-role adjustments.

The Eleventh Circuit affirmed, holding that even if a breach occurred, it did not affect Petitioner's substantial rights because the district court "was free to impose restitution beyond the recommended amount." The panel also declined to apply Amendment 821, finding no reversible error. Petitioner filed a timely petition for rehearing and rehearing en banc, which was denied.

Petitioner now seeks review of the Eleventh Circuit's judgment under Rule 13 of the Rules of the Supreme Court of the United States, asserting that the Government's breach of the plea agreement and the imposition of unverified restitution violated due process, the Mandatory Victims Restitution Act, and this Court's precedents in *Santobello v. New York*, 404 U.S. 257 (1971), *United States v. Benchimol*, 471 U.S. 453 (1985), and *United States v. Puckett*, 556 U.S. 129 (2009).

REASONS FOR GRANTING THE WRIT

This case presents important questions concerning the Government's duty to honor the express terms of a plea agreement, the scope of restitution under the Mandatory Victims Restitution Act ("MVRA"), and the uniform application of the mitigating-role standard clarified by Amendment 821 to the Sentencing Guidelines.

Petitioner Kevin Jean-Gilles pleaded guilty under a written plea agreement dated November 29, 2022. That agreement expressly stated that "the restitution in this case is \$65,000 due to Linda Periquito for damages associated with use of premises." It further provided that "this plea agreement constitutes the entire agreement between the government and the defendant with respect to the guilty plea, and no other promises, agreements, or representations exist." (Plea Agreement ¶ 12). Provision #10 confirmed that the defendant entered into the plea "freely and voluntarily without reliance upon any discussions between the attorney for the government and the defendant and without promise of benefit of any kind, other than the concessions contained herein.

Provision #4 stated that the Government "reserves its right and obligation to report to the Court and the United States Probation Office all information concerning the background, character, and conduct of the defendant," but also that it "has an obligation to correct any inaccuracies before both the Court and Probation."

The agreement further incorporated the statutory restitution basis under 21 U.S.C. § 853(q):

- "Cleanup of clandestine laboratory sites established at 21 U.S.C. § 853(q). In implementing section 853(q), U.S.S.G. § 2D1.1, comment note 18(A), directs a court to consider, for restitution purposes, 'any costs of environmental cleanup and harm to individuals or property... in cases involving the manufacture of amphetamine or methamphetamine.' The defendant agrees that the restitution in this case is \$65,000, due to Linda Periquito, the owner of 204 East Minnehaha Avenue, Clermont, Florida, for damages associated with the use of the premises to manufacture fentanyl pills."

This clause formed part of the written plea agreement filed with the district court. It fixed restitution at \$65,000 and identified the statutory basis, making the government's later \$125,000 recommendation a material deviation from the agreement. The deviation also introduced an unsupported figure unrelated to the cleanup costs covered by § 853(q), contradicting both the plea's express terms and its governing legal framework.

The PSR itself stated that "no restitution amount has been reached," even though a written plea agreement executed in November 2022 expressly fixed restitution at \$65,000. The probation office failed to correct this inaccuracy, and the Government remained silent. When the first PSR was prepared in January 2023—two months after the plea—the Government introduced, for the

first time, “broker estimates” purporting to value remodeling costs, even though no such estimates were disclosed or agreed to at the time of the plea. Those estimates were later submitted to probation and claimed that the victim sought \$153,888 in restitution. However, the estimates were not supported by verified invoices, receipts, or proof of payment and therefore failed to satisfy the evidentiary requirements of the MVRA. The only substantiated losses were for rent and utility costs, which were fully encompassed within the \$65,000 restitution figure agreed upon in the plea. By the time of the final PSR in July 2023, the report still incorrectly stated that “no restitution amount had been reached,” eight months after the plea agreement. At sentencing, the Government compounded the error when, on page 43 of the transcript, it falsely asserted that “all parties have agreed to \$125,000 restitution.” This misrepresentation—made without any verified documentation and contrary to the written agreement—directly induced the court to impose an inflated restitution order in violation of both the plea agreement and the Mandatory Victims Restitution Act.

The Eleventh Circuit affirmed, holding that even if a breach occurred, it did not affect Petitioner’s substantial rights because the district court “was free to impose restitution beyond the recommended amount.” That ruling conflicts with *Santobello v. New York*, 404 U.S. 257 (1971), which held that when a plea rests on any significant promise by the Government, such promise must be fulfilled. The Government’s deviation here went to a core inducement of the plea—the fixed restitution cap—and deprived Petitioner of the benefit of his bargain.

In *United States v. Benchimol*, 471 U.S. 453 (1985), this Court held that the Government must not merely refrain from opposing its own recommendations, but must also convey them with sincerity and force. The Government here did the opposite—it advocated for a higher amount than agreed, signaling breach by omission and affirmative misrepresentation.

In *United States v. Puckett*, 556 U.S. 129 (2009), this Court reiterated that a breach of a plea agreement implicates due process and affects the fairness and integrity of judicial proceedings. The Government’s conduct here falls squarely within that holding. Even if reviewed under plain error, the breach affected Petitioner’s substantial rights and the integrity of the process.

The district court’s error was further magnified by its failure to apply the evidentiary standards of the Mandatory Victims Restitution Act. Section 3664e requires that “any dispute as to the proper amount or type of restitution shall be resolved by the court by the preponderance of the evidence,” with the burden of proof on the Government. Here, the victim’s documentation for loss of rent, electricity, and water bills was presented and fully covered under the \$65,000 restitution figure. The additional \$60,000 was derived from unverified “broker estimates” for remodeling that was never confirmed to have occurred. This information was recited in the PSR but unsupported by sworn testimony or exhibits showing actual payment. The court’s reliance on this unverified figure contravenes § 3664’s core requirement of verified loss proof, transforming restitution into an arbitrary penalty.

The Eleventh Circuit's decision also conflicts with other circuits that have required resentencing where the Government breaches a plea agreement. See, e.g., *United States v. Cachucha*, 484 F.3d 1266 (10th Cir. 2007); *United States v. Lawlor*, 168 F.3d 633 (2d Cir. 1999); *United States v. Mosley*, 505 F.3d 804 (8th Cir. 2007). Those courts recognize that when a defendant pleads guilty in reliance on a governmental promise, fairness demands specific performance or withdrawal of the plea.

This case also raises an additional issue concerning the Sentencing Commission's Amendment 821, Part B, clarifying that the proper inquiry under §3B1.2 is whether the defendant is "substantially less culpable than the average participant." Petitioner did not receive any aggravating role enhancement and has no disqualifying criminal history. The record shows that he played a limited role, assisting only with logistical functions—securing boxes and receiving machine parts under an alias—while co-defendant Patrick Silfrain directed operations and reaped the primary profit. Despite this disparity, Jean-Gilles received 235 months—the top of his guideline range—while Silfrain, the leader, received 262 months at the low end.

Petitioner's Limited Role

The record confirms Petitioner was an average participant:

Handled logistics and minor distribution.

Used aliases to receive parts and binder for Firmapress.

Did not assemble, operate, or control pill presses.

Did not order machinery, set prices, instruct others, or mail drugs.

Did not recruit or supervise participants.

Less culpable than the de facto leader (Silfrain), but more involved than the minor participant co-defendant (Choisil).

Wiretaps and PSR/plea agreement records show Silfrain alone discussed assembly and maintenance, and there is no evidence Petitioner manufactured or operated presses.

Impact of the 2-Level Role Reduction

Base offense level: 35

Criminal history category: II

Original guideline range: 188–235 months

2-level mitigating-role reduction (§ 3B1.2(b)) → offense level 33 → guideline range 151–188 months

Properly argued, this adjustment would have lowered Petitioner's guideline range to 151–188 months, aligning with the 180-month recommendation counsel requested. Failure to raise this issue resulted in 235 months, establishing prejudice under *Strickland v. Washington*, 466 U.S. 668 (1984).

Defendant	Role Finding	Sentence (Months)	Guideline Range	% of Leader's Sentence
Silfrain	Leader	262	262–327	100%
Jean-Gilles	Avg. Role	235	188–235	90%
Choisil	Minor Role	78	78–97	30%

Petitioner's role was between the two extremes more involved than the minor participant but substantially less culpable than the leader. With the 2-level mitigating-role adjustment, Petitioner's guideline range would have been 151–188 months, closer to the 180-month recommendation counsel requested and far lower than the leader's 262 months.

The disparity is amplified because the minor participant received 78 months due to a minor-role reduction, while Petitioner, who played a limited logistical role and lacked authority or control, received 235 months, nearly 90% of the leader's sentence. This outcome violates 18 U.S.C. § 3553(a)(6) and demonstrates a clear need for resentencing.

Supporting Precedent

Courts in the Eleventh Circuit have recognized reductions for average participants performing limited logistical roles:

U.S. v. Diaz, 11th Cir. 2024: Approved reductions for defendants performing logistical duties without leadership authority.

U.S. v. Hamad: Bars reliance on unsupported claims to deny mitigating-role reductions.

These cases confirm that mid-tier participants like Petitioner are entitled to consideration under Amendment 821 and § 3B1.2(b).

Both co-defendants received low-end sentences, while Petitioner received the maximum of his range—47 months higher than consistent application of the guidelines would produce. This imbalance exemplifies the inequity Amendment 821 seeks to correct.

CONCLUSION

For the foregoing reasons, Petitioner respectfully submits that the Eleventh Circuit's decision conflicts with binding Supreme Court precedent, including *Santobello v. New York*, *Benchimol*, and *Puckett*, and that the Government's breach of the plea agreement and failure to adhere to the Mandatory Victims Restitution Act caused a miscarriage of justice.

Further, the district court's disregard for the evidentiary standards of restitution and the panel's refusal to apply Amendment 821 to mitigate Petitioner's role resulted in a sentencing disparity inconsistent with both the Sentencing Guidelines and congressional intent.

Accordingly, Petitioner respectfully requests that this Court grant the petition for a writ of certiorari to review the judgment of the Eleventh Circuit, vacate the improper restitution and sentence, and provide guidance on the enforcement of plea agreements, restitution verification under the MVRA, and the proper application of mitigating-role adjustments under the Sentencing Guidelines.