No. _____

IN THE SUPREME COURT OF THE UNITED STATES

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EDDY REYES,

Petitioner,

- v -

UNITED STATES OF AMERICA,

Respondent.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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QUESTIONS PRESENTED

I. Whether an explicit breach of a Rule 11(c)(1)(C) plea agreement can be excused or "cured" by surrounding advocacy or contextual "bookending," in conflict with *Santobello v. New York*, 404 U.S. 257 (1971), and the approaches of the Second, Third, Fifth, Sixth, and Eighth Circuits?

II. Whether, in a Rule 11(c)(1)(C) case, the government satisfies its obligation to present a "united front" for the agreed cap when it affirmatively states to the court that it cannot oppose a higher sentence outside the agreement, thereby undermining the accept or reject structure of Rule 11(c)(1)(C)?

III. Whether a court of appeals applying plain error review under *Puckett v. United States*, 556 U.S. 129 (2009), may deny relief for an explicit plea breach by pointing to aggravating facts and hypothesizing the same sentence would have been imposed, in conflict with *Santobello's* holding that the remedy does not turn on whether the sentencing judge would have imposed the same term absent the breach?

LIST OF PARTIES

The parties to the proceeding are:

Eddy Reyes, Petitioner

United States of America, Respondent

LIST OF DIRECTLY RELATED PROCEEDINGS

1. United States District Court for the Central District of California, *United States v. Eddy Reyes,* 21cr00075-JLS. The district court entered the judgment on November 15, 2024. *See* Appendix A.

2. United States Court of Appeals for the Ninth Circuit, *United States v. Eddy Reyes*, No. 24-7053, Memorandum Decision. *See* Appendix B.

3. United States Court of Appeals for the Ninth Circuit, *United States v. Eddy Reyes*, No. 24-7053, Order denying petition for panel rehearing and hearing en banc. *See* Appendix C.

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Petitioner, Eddy Reyes, respectfully petitions for a writ of certiorari to review the memorandum decision of the United States Court of Appeals for the Ninth Circuit issued on December 8, 2025.

OPINION BELOW

In an unpublished memorandum decision, the United States Court of Appeals for the Ninth Circuit affirmed the sentence imposed by the district court. *See* Appendix B. On January 12, 2026, the Ninth Circuit entered an Order denying petitioner's petition for rehearing and hearing en banc. *See* Appendix C.

JURISDICTION

The Court of Appeals issued a memorandum decision on December 8, 2025. On December 18, 2025, petitioner filed a petition for panel rehearing and hearing en banc, which the Court denied on January 12, 2026. This petition is being filed within the 90-day time limit for certiorari petitions. The Court has jurisdiction under 28 U.S.C. §1254(1).

INVOLVED FEDERAL LAW

Fed. R. Crim. Pro. 11(c)(1)(C)

(c) Plea Agreement Procedure.
(1) In General. An attorney for the government and the defendant's attorney, or the defendant when proceeding pro se, may discuss and reach a plea agreement. The court must not participate in these discussions. If the defendant pleads guilty or nolo contendere to either a charged offense or a lesser or related offense, the plea agreement may specify that an attorney for the government will:

(A) not bring, or will move to dismiss, other charges;

(B) recommend, or agree not to oppose the defendant's request, that a particular sentence or sentencing range is appropriate or that a particular provision of the Sentencing Guidelines, or policy statement, or sentencing factor does or does not apply (such a recommendation or request does not bind the court); or

(C) agree that a specific sentence or sentencing range is the appropriate disposition of the case, or that a particular provision of the Sentencing Guidelines, or policy statement, or sentencing factor does or does not apply (such a recommendation or request binds the court once the court accepts the plea agreement).

Fed. R. Crim. Pro. 52(b)

> (b) Plain Error. A plain error that affects substantial rights may be considered even though it was not brought to the court's attention.

STATEMENT OF THE CASE

On April 28, 2021, the government charged petitioner in a one count indictment alleging a violation of 18 U.S.C. § 1201(a)(1), Kidnapping Resulting in Death. [ER-112.][1] On April 8, 2024, petitioner and the government entered into a binding plea agreement pursuant to Fed. R. Crim. P. 11(c)(1)(C). [ER-97.] Petitioner agreed to enter a plea of guilty to the one count indictment. In exchange, the government agreed to:

> Abide by all agreements regarding sentencing contained in this agreement and affirmatively recommend to the Court that it impose sentence in accordance with paragraph 15 of this agreement.

[ER-99.]

Specifically, the government and petitioner agreed that the base offense level was 43 pursuant to U.S.S.G. § 2A1.1. [CR-81; ER-105.] The parties also agreed:

> The government agrees not to seek a sentence greater than 30 years. Defendant agrees not to seek a sentence less than 25 years. If prior to sentencing defendant provides information leading to the recovery of the remains of Claudia S., so that they can be returned to her parents in El Salvador, the government will lower its recommendation to 25

[1] "ER" refers to the Excerpts of Record filed below with the Ninth Circuit Court of Appeals.

years.

> At sentencing, should the Court determine that a sentence higher than 30 years is appropriate, defendant can withdraw his plea and proceed to trial.

[ER-105.]

On April 19, 2024, petitioner entered a plea of guilty pursuant to the plea agreement. [ER-92.] The court accepted the plea of guilty but deferred its decision whether to accept the plea agreement until review of the presentence report. [ER-94.] The Presentence Report agreed with the parties proposed Guidelines calculation. Probation also recommended a three level adjustment for acceptance of responsibility. [PSR 7-8.] Petitioner did not have any prior criminal or arrest history. [PSR 8.] The Guidelines range based on a total offense level of 40 and a criminal history category I was 292 months to 365 months. [PSR 17.] However, the statutory minimum term was life imprisonment or death, and probation recommended a sentence of life imprisonment. [PSR 17.] Probation did not identify any factors that would warrant a departure or variance from the applicable guidelines range. [PSR 20.]

Both parties filed sentencing positions and requested the court impose a sentence of 30 years. [ER-41, 56.] Neither party filed objections to the PSR. The court held the sentencing hearing on November 15, 2024. The district court began the sentencing hearing by adopting the factual findings in the PSR

and then calculating the Guidelines. [ER-12-13.] The court agreed with the Guidelines within the PSR and found a total offense level of 40 and a criminal history category of I. [ER-13.] The court found that based on the statutory mandatory minimum the Guidelines range for custody was life imprisonment. [ER-13.]

Next, the court considered and granted the government's request to depart below the statutory mandatory minimum pursuant to 18 U.S.C. § 3553(e). [ER-13-14.] Petitioner addressed the court and apologized to the family of C.S. [ER-15-17.] The court inquired as to whether the government wished to present anything. The government explained the basis for the plea agreement and then stated:

> I know the family who are going to speak to you want life and I'm in no position to argue against that.
>
> I'm not breaching the plea agreement, I believe you should give 30 years, but I just wanted the Court to understand why, from my point of view, we got to where we are. Thank you.

[ER-18.]

Next, the mother of C.S. addressed the court. [ER-19.] She expressed the pain and uncertainty of not knowing what happened to her daughter and wanting her daughter's body returned to her. [ER-20.] She wanted the court to impose a sentence of life. [ER-20.] The father of C.S. spoke next and detailed the pain this had brought to his family. [ER-21-22.] He also requested the court impose a life sentence. [ER-22.] A close friend of C.S. also spoke to the court. [ER-23-24.]

The court indicated it had several questions for counsel. First, the court inquired as to why it should give a sentence of "merely 30 years for this crime?" [ER-24-25.] Counsel for petitioner explained that there were many unknowns in this case and the proffer from petitioner provided answers to those questions. [ER-25.] The court responded that what the family really wants is the body back and petitioner never provided that and the family believes he is such a liar that they cannot trust that he doesn't know where her body is located. [ER-25.]

Counsel explained that it was another individual, not petitioner who buried the body. [ER-26.] Petitioner was not present at the time. [ER-26.] Petitioner, along with the FBI, later attempted to locate the body, but unfortunately wasn't able. [ER-26.] The court then inquired of the prosecutor:

> there is a large gap between necessarily the Court's granting of the motion to depart from a life sentence, the statutory mandatory minimum and 30 years.
>
> Is there any particular reason other than what that is what you could agree to with the defendant as to why – I mean, if you want to say I'm standing on my plea agreement, that is fine.
> Is there any particular reason why 30 years is the appropriate sentence here, because it seems low to the Court regardless of the 11(c)(1)(C) agreement.

[ER-26-27.]

The prosecutor explained that he arrived at the number based on the value of the confession and that sentences of 30 to 35 years were not uncommon in plea agreements for cases involving murder. [ER-27.] The prosecutor noted he was

bound by the plea agreement to recommend 30 years. But then stated, "I'm not saying you have to, it's your call." [ER-27-28.]

The Court stated the reasons for its sentence and informed the parties that while it would not be imposing the mandatory minimum, it would not be accepting the terms of the binding plea agreement. [ER-28-29.] The court noted that it would give petitioner the opportunity to withdraw his plea, but first it would state the sentence it intended to impose and the reasons. [ER-29.] The court detailed specifics of the offense and also considered petitioner's background and noted that nothing but a life sentence was warranted. [ER-31-32.] The court explained it granted the government's motion to depart from the mandatory minimum sentence because it provided a bit of closure to C.S.'s family. [ER-32] However, the court commented that the "crime was heinous and counsel do not hear me say very often in cases I preside over, but it was the product of pure evil." [ER-31.] The court then found a sentence of 40 years was reasonable and sufficient, but not greater than necessary to comply with section 3553(a). [ER-32.] The court then provided petitioner the opportunity to withdraw his plea, which he declined to do and proceeded to sentencing. [ER-32.] The court imposed a sentence of 40 years custody, five years supervised release, no fine, and a special assessment of $100. [ER-3, 34-35.]

On November 20, 2024, petitioner filed a notice of appeal. [ER-115.] On appeal, petitioner argued that the government explicitly breached the plea agreement by telling the court it was "in no position to argue against" a life sentence, despite the plea agreement's term that the government affirmatively recommend a sentence of no greater than 30 years. On December 8, 2025, the Ninth Circuit affirmed the district court. (App. A.) On January 12, 2026, the Ninth Circuit Court of Appeals denied petitioner's petition for panel rehearing and rehearing en banc.

REASONS TO GRANT THE WRIT

THE NINTH CIRCUIT'S DECISION CONFLICTS WITH THIS COURT'S HOLDING IN *SANTOBELLO* AND SETTLED LAW ON EXPLICIT BREACHES OF PLEA AGREEMENTS.

Plea agreements are contracts, and "the government is held to the literal terms of the agreement." *United States v. Myers*, 32 F.3d 411, 413 (9th Cir. 1994) (per curiam). In *Santobello v. New York*, this Court held that when a guilty plea "rests in any significant degree on a promise or agreement of the prosecutor," that promise "must be fulfilled," and that neither inadvertence nor a judge's assertion that he was "uninfluenced" by the breach excuses it. 404 U.S. 257, 262–63 (1971).

Here, the government entered a Rule 11(c)(1)(C) agreement promising to "affirmatively recommend" a sentence not exceeding 30 years and not to "seek a

sentence greater than 30 years." [ER-105.] At sentencing, however, the prosecutor told the court: "I know the family who are going to speak to you want life and I'm in no position to argue against that," immediately before the family asked for a life sentence and the court imposed 40 years. [ER-18.] That statement affirmatively communicated that a life sentence, far above the government's obligations under the binding plea agreement, was an appropriate outcome, and thus was an explicit breach at the moment it was made. *See United States v. Alcala-Sanchez*, 666 F.3d 571, 573, 575–77 (9th Cir. 2012) (government explicitly breached by recommending a higher range than agreed).

The Ninth Circuit nevertheless held there was no breach because, "when assessed in the proper context," the prosecutor's statement was "bookended" by arguments for 30 years and did "not reflect a failure to maintain a 'united front.'" *United States v. Reyes*, 2025 WL 3515808 at *1-2 (9th Cir. Dec. 8, 2025). That reasoning conflicts with *Santobello* and the Ninth Circuit's own decisions, which treat an explicit inconsistent recommendation as complete and uncured by later advocacy or explanation. *Santobello* rejected reliance on the judge's claim that he was uninfluenced by the improper recommendation and remanded for either specific performance or plea withdrawal, emphasizing the "interests of justice" and "the duties of the prosecution in relation to promises made in the negotiation of pleas." 404 U.S. at 262–63. Likewise, in *Alcala-Sanchez* the court vacated the

sentence even though the prosecutor apologized, corrected the recommendation, and the district court declared there was no breach, because once the government has recommended a harsher sentence, "one really cannot calculate" the impact of the breach and any attempted subsequent correction of the breach is irrelevant. 666 F.3d at 575–77.

Other circuits apply inconsistent approaches to whether contextual factors or a prosecutor's subsequent advocacy can cure an explicit breach of a plea agreement, including in the Rule 11(c)(1)(C) context. Generally, the circuits can be divided into two approaches: (1) cure is possible if it is immediate, unequivocal, and fully restores the bargained for posture; and (2) cure is often impossible for explicit breaches because once the government has advocated contrary to the deal, the defendant has irretrievably lost the benefit of a "united front," and the sentencing judge cannot "unhear" the government's real position.

For example, in *United States v. Cruz,* 95 F.4th 106 (3d. Cir. 2024), the Third Circuit held the prosecution can cure some breaches and adopted a two-step framework. First, determine whether cure is needed or possible, and second, assess whether the attempted cure sufficed. The standard under *Cruz* requires that the government must "promptly and unequivocally retract its erroneous position" and still "give the defendant the benefit of his bargain." *Cruz*, 95 F.4th at 112. Under that standard, merely changing to a "no position" stance is not an

adequate cure, because neutrality does not restore the promised advocacy and does not unequivocally retract the earlier endorsement of the higher enhancement. *Id.* at 109.

In *United States v. Amico*, 416 F.3d 163 (2d. Cir. 2005), the Second Circuit did not provide a blanket rule that retractions can always cure a breach, but it found cure adequate "upon careful examination of all the circumstances," emphasizing the "mild, brief, and unassertive" nature of the breach and the "rapid retraction." *Amico*, 416 F.3d at 165. *Amico* therefore represents a different approach than the Third Circuit; here an explicit breach may be cured if it is quickly corrected and unlikely to have materially undermined the bargain as understood by the parties and the court.

The Eighth Circuit's approach falls in the middle. In *United States v. Brown*, 5 F.4th 913 (8th Cir. 2021), the court stated it had no controlling precedent allowing cure, and even assuming cure could exist, it emphasized that other circuits require an unequivocal retraction.[2] The court characterized the government's conduct as a "far cry" from that. *Brown*, 5 F.4th at 916. *Brown* also highlights that a prosecutor's telling the district court to "stick to the plea" while

[2]The Fifth and Sixth Circuits hold that a breach can be cured if a prosecutor offers an unequivocal retraction and then advocates consistently with the plea agreement. See *United States v. Purser*, 747 F.3d 284 (5th Cir. 2014); *United States v. Ligon,* 937 F.3d 714 (6th Cir. 2019).

simultaneously maintaining the PSR's higher calculation is not a cure; it reads as begrudging lip service rather than genuine retraction. *Id*. at 916.

Other circuits have extensive case law on implicit and explicit breaches but have not articulated a "cure" doctrine as the Second, Third, Fifth, Sixth Circuits, and Eighth Circuits. Rather, the opinions focus instead on whether a breach occurred and the remedy (resentencing or plea withdrawal), without expressly deciding whether an explicit breach could be cured by context or later advocacy.

By treating an explicit, facially inconsistent recommendation as a contextual, intent based question and excusing it because of surrounding "bookending," the decision below effectively collapses the explicit/implicit breach distinction recognized in *Heredia* and *Whitney* and dilutes *Santobello's* strict compliance rule. See *United States v. Heredia*, 768 F.3d 1220, 1231–35 (9th Cir. 2014) (government breaches when it "purports to make the bargained for recommendation while winking at the district court"); *United States v. Whitney*, 673 F.3d 965, 971–72 (9th Cir. 2012) (strict enforcement; prejudice presumed where government's advocacy undercuts the agreed recommendation). Moreover, this Court's review is needed to ensure uniformity of law as to whether a prosecutor who affirmatively signals the propriety of a harsher sentence can later cure the explicit breach of the agreement through context and subsequent advocacy.

THIS CASE PRESENTS AND IMPORTANT AND RECURRING FEDERAL QUESTION IN RULE 11(c)(1)(C) CASES AS TO WHETHER THE GOVERNMENT MAY TELL THE COURT IT IS "IN NO POSITION TO ARGUE AGAINST" A SENTENCE OUTSIDE THE AGREED CAP AND STILL BE DEEMED TO HAVE HONORED ITS OBLIGATIONS UNDER THE PLEA AGREEMENT.

This case presents an important and recurring federal question that the lower courts have answered inconsistently as to whether the government fulfills its obligations under a plea agreement when it presents a statement inconsistent with the terms of the agreement. When the government agrees to recommend a specific sentence, especially under a Rule 11(c)(1)(C) agreement, "the benefit to the defendant is that it presents a 'united front' to the district court." *United States v. Camarillo-Tello*, 236 F.3d 1024, 1028 (9th Cir. 2001). That benefit is lost when the government fails to oppose, or overtly accommodates, a harsher sentence at the critical moment it is urged. *Id.*; *Alcala-Sanchez*, 666 F.3d at 576 (once the government "forcefully argued for a sentence other than the stipulated one," the defendant was denied the "united front" he bargained for).

A Rule 11(c)(1)(C) agreement is categorically different from a Rule 11(c)(1)(B) recommendation. Under a (B) agreement, the government recommends a sentence, the court is free to disagree, and the defendant may not withdraw his plea if the court imposes more. Under a (c)(1)(C) agreement, the parties agree to a specific disposition that binds the court upon acceptance. The

defendant who enters an 11(c)(1)(C) agreement surrenders his trial rights not simply for a recommendation, but rather a committed government position the court must accept or reject in full. When the government hedges that position, announcing it "cannot argue against" a sentence above the agreed cap, it destroys the bargained for structural feature of the 11(c)(1)(C) agreement; the district court's forced choice between acceptance and rejection. Instead, here the government handed the court exactly what Rule 11(c)(1)(C) was designed to prevent; discretion to impose something in between.

In this case, the timing of the breach matters critically and was ignored below. The prosecutor made his "in no position to argue against" statement immediately before the victim's family addressed the court to request life imprisonment. This sequencing meant the court heard in rapid succession: (1) the govenrment disclaiming opposition to a life sentence; (2) the victim's family urging life; and (3) defense counsel standing alone requesting 30 years. The "united front" doctrine is designed precisely to prevent this dynamic. *Camarillo-Tello*, 236 F.3d at 1028. The prosecutor's later iteration of "30 years" came after the family had already spoken, by which point the court had received the message that the government would not stand in the way. No subsequent "bookending" could unring that bell.

The Ninth Circuit, however, held that the government "maintain[ed] a united front" because it also reiterated the 30 year recommendation and explained its reasons for the plea. *Reyes*, 2025 WL 3515808 at *2. That analysis misapprehends the doctrine. The "united front" is not a matter of tone or of the prosecutor's subjective intent; it is the objective fact that both parties are asking for the same sentence and that the government is not undercutting that request by endorsing a harsher alternative. *Camarillo-Tello*, 236 F.3d at 1028 (what the defendant "wants and is entitled to is the added persuasiveness of the government's support regardless of outcome"). Once the government told the court it could not argue against life imprisonment, the "united front" was gone, and later "bookending" could not restore it. *Alcala-Sanchez*, 666 F.3d at 577; *Heredia*, 768 F.3d at 1235.

The distortion is further heightened by the Rule 11(c)(1)(C) posture. The panel's failure even to mention Rule 11(c)(1)(C), and its approval of government comments conceding the legitimacy of a higher sentence, effectively treats a binding plea as if it were a non-binding recommendation, contrary to the structure of Rule 11 and the expectations of defendants who enter such agreements. This case raises an important and recurring question: in binding plea cases, may the government tell the court it is "in no position to argue against" a sentence outside the agreed cap and still be deemed to have honored its obligations? The Ninth

Circuit's affirmative answer conflicts with its own "united front" cases and threatens uniform application of Rule 11(c)(1)(C) nationwide.

THE NINTH CIRCUIT MISAPPLIED PLAIN ERROR TO AN EXPLICIT PLEA BREACH.

The decision below also presents an important and recurring question about the proper application of plain error review to an explicit breach of a Rule 11(c)(1)(C) plea agreement. The Ninth Circuit acknowledged that review was for plain error, but then effectively diluted this Court's strict rule in *Santobello* by treating an undisputedly inconsistent recommendation as a contextual, intent based question, excusing it because the prosecutor elsewhere endorsed the agreed 30 year cap. Under *Santobello* and the Ninth Circuit's own precedents, once the government tells the court it is "in no position to argue against" a harsher sentence than the agreement allows, the breach is complete, prejudice is presumed, and any claimed "cure" is highly suspect.

First, the Ninth Circuit's approach conflicts with settled law on what constitutes plain error in this setting. This Court has emphasized that the integrity of the process and the honor of the government are themselves substantial interests, and that neither the judge's claimed lack of reliance nor the government's later advocacy can erase the effect of a broken sentencing promise. Treating an explicit breach as harmless so long as the prosecutor "bookends" it with nominal adherence to the recommendation guts that principle, particularly

where, as here, the statement came immediately before the victim's family requested life and the court imposed a sentence above the agreed cap.

Second, the Ninth Circuit's framing of the inquiry as whether the government "maintain[ed] a united front" in context is irreconcilable with decisions holding that explicit, facially inconsistent advocacy is itself plain error once it occurs. Under those decisions, the relevant question on plain error review is not whether the prosecutor later said the right words, but whether the government ever affirmatively urged or endorsed a harsher sentence than it promised, because "one cannot really calculate" the effect of such a breach and any attempted subsequent correction of the breach is irrelevant. By collapsing explicit and implicit breaches into a single, intent based inquiry and then finding no plain error on the theory that the government's overall presentation favored 30 years, the decision below rewrites this Court's standard and invites further erosion of defendants' reliance on Rule 11(c)(1)(C) agreements.

Here, the Ninth Circuit concluded there was no "error" at all, but its reasoning shows that, in substance, it required petitioner to show the 40 year sentence would necessarily have been lower absent the breach, relying on the district court's view that a life sentence was otherwise warranted. That approach conflicts with how *Santobello* and the Ninth Circuit itself treat breaches of sentencing promises. *Santobello* made clear that the remedy does not turn on

whether the sentencing judge would have imposed the same term anyway; the concern is the integrity of the process and the defendant's right to the benefit of his bargain. 404 U.S. at 262–63. *Whitney* similarly explained that the integrity of the criminal justice system depends upon the government's strict compliance with the terms of the plea agreements, and that where the government's advocacy has undercut the agreed recommendation, there is a "reasonable probability" of prejudice even if a lower sentence is not guaranteed. 673 F.3d at 972–74.

This Court in *Puckett v. United States*, 556 U.S. 129 (2009) contemplated that in many plea breach cases the standard remedial principles will lead to vacatur and resentencing, including before a different judge, and expressly relied on *Santobello*'s remedies as compatible with Rule 52(b). 556 U.S. at 141–43. In contrast, the Ninth Circuit's decision effectively insulates explicit breaches from correction whenever an appellate court can point to strong aggravating facts and hypothesize that the same sentence would have been imposed. That treatment erodes the systemic protection *Santobello* provides and diminishes the incentive for prosecutors to honor their sentencing commitments.

THE QUESTIONS PRESENTED ARE EXCEPTIONALLY IMPORTANT.

An exceptionally large number of federal convictions are obtained through guilty pleas. A substantial portion of these cases involve negotiated sentencing provisions. If prosecutors may disclaim opposition to sentences outside the

agreed cap and courts of appeals may excuse such disclaimers as contextual, defendants in high exposure cases, precisely those who most need the assurance of a binding government commitment, will be unable to rely on the government's word. This Court's clarification is essential not only for petitioner, but to ensure that the plea bargaining system retains the integrity on which it depends. This Court should grant certiorari to clarify that an explicit inconsistent sentencing recommendation in a Rule 11(c)(1)(C) case is a breach that cannot be excused by intent or later explanation, and to provide guidance on how *Puckett's* plain error framework applies to such violations of plea agreements.

CONCLUSION

For the foregoing reasons, petitioner respectfully requests that this Court vacate and remand for specific performance or the opportunity for plea withdrawal before a different judge.

Dated: March 31, 2026

Respectfully submitted,
s/Marisa L. D. Conroy
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