

No. _____

IN THE
Supreme Court of the United States

PATRICK DWAYNE ADAMS,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

When a criminal defendant is not liable as a principal, can that defendant enter a knowing and voluntary plea of guilty to aiding and abetting a charged offense without first being informed that, to be convicted as an aider and abettor, the Government must prove that the defendant (i) had the requisite intent to further the entire and specific crime charged; and (ii) took an affirmative act to further at least one element of the charged offense?

LIST OF PARTIES BELOW

The parties to the proceedings below were Petitioner Patrick Dwayne Adams and Respondent United States of America.

Petitioner was the appellant in the court below; Respondent United States was the appellee in the court below.

LIST OF DIRECTLY RELATED PROCEEDINGS

The following proceedings are directly related to the case in this Court:

1. United States Court of Appeals for the Fifth Circuit: *United States v. Patrick Dwayne Adams*, Case No. 25-50063 (5th Cir. March 19, 2026) (not reported). App,2a.
2. United States District Court for the Western District of Texas: *United States v. Patrick Dwayne Adams*, Case No. 4:24-cr-00088-DC-3 (W.D. Tex.) – Final Judgment entered on January 30, 2025). App.19a.

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PETITION FOR A WRIT OF CERTIORARI

Patrick Dwayne Adams respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit affirming Petitioner's conviction on his plea of guilty to the charge of aiding and abetting others to commit the offense of possession with intent to distribute 100 grams or more of marijuana in violation of 21 U.S.C. § 841(a)(1) and 18 U.S.C. § 2.

CITATION OF REPORTS OF ORDERS AND OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit is not reported. App.2a.

The United States District Court for the Western District of Texas assigned case number 4:24-cr-00088-DC-3 to Petitioner's case. The District Court's opinions and orders are unreported. There are three orders of the District Court that are relevant:

- (i) The Magistrate Judge's Report and Recommendation that the District Court accept Petitioner's plea of guilty to Count Two of the Indictment charging him with violating §§ 841(a)(1) and (b)(1)(B), and 18 U.S.C. § 2. App.13a-14a.
- (ii) The District Court's adoption of the Magistrate Judge's Report and Recommendation, accepting Petitioner's plea of guilty and adjudicating Petitioner guilty of Count Two of the Indictment. App.16a-17a.

- (iii) The District Court's Final Judgment entered on January 30, 2025 adjudicating Petitioner guilty of the offense charged in Count II and sentencing him to 71 months in prison to be followed by a 5-year term of supervised release. App.19a-24a.

STATEMENT OF JURISDICTION

The judgment of the United States Court of Appeals for the Fifth Circuit was entered on March 19, 2026. App.2a. Petitioner filed a timely application with Justice Alito seeking to extend his time to file a Petition for a Writ of Certiorari. Justice Alito granted that application and extended Petitioner's time to file this Petition for a Writ of Certiorari to and including September 6, 2026.

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

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED IN THE CASE

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.

18 U.S.C. § 2:

- (a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.
- (b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

21 U.S.C. § 841(a)(1):

- (a) Unlawful acts

Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally—

- (1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance.

Fed.R.Crim.P. 11(b)(1)(G):

- (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:...

- (G) **the nature** of each charge to which the defendant is pleading. [emphasis added].

Fed. R. Crim. P. 11(b)(3):

- (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. [emphasis added].

STATEMENT OF THE CASE

Petitioner Adams pleaded guilty to Count Two of an Indictment charging him with possession with intent to distribute 100 grams or more of a mixture or substance containing a detectable amount of marijuana, and aiding and abetting others to commit that offense in violation of 21 U.S.C. § 841(a)(1) and 18 U.S.C. § 2. App.16a; App.50a.¹ On plain error review, the Fifth Circuit affirmed Petitioner's conviction solely on the basis that the record established that Petitioner had aided and abetted others in their commission of the charged offense. App.2a.²

Petitioner submits that (I) the plea colloquy at his rearraignment was insufficient to inform him of the nature of the charge of aiding and abetting, as set out in Count Two of the Indictment, (II) that such failure qualifies as plain error in violation of the Fifth Amendment's Due Process Clause and Rule 11(b)(1)(G) of the Federal Rules of Criminal Procedure; and (III) because the record establishes that, but for the error, there is a reasonable probability that Petitioner would have declined to plead guilty and proceeded to trial, the Fifth Circuit should have vacated the District Court's judgment and remanded Petitioner's case for trial.

¹ Count Two of the Indictment also mentioned 21 U.S.C. § 846 [App.50a]; however, the prosecutor acknowledged that the reference to § 846 was an error and moved to strike it. The District Judge granted that motion.

² The Fifth Circuit had jurisdiction to entertain Petitioner's direct appeal pursuant to 28 U.S.C. § 1291.

The Facts

The seven-page Factual Basis signed by Petitioner to support his plea of guilty purports to describe what the Government could prove at trial. App.5a. What is striking about the document is how little it says about Petitioner's involvement in the charged offense. As described below, the greater part of Petitioner's Factual Basis focuses on the actions of his co-defendants, and fails to establish the two essential prerequisites necessary to convict Petitioner on a theory of accomplice liability: (1) that Petitioner had the requisite intent to see the specific and entire crime charged in Count Two of the Indictment through to fruition; and (ii) that Petitioner took an affirmative step in furtherance of at least one element of that offense.

Here are the facts gleaned from Petitioner's Factual Basis and from the Pre-Sentence Report:³

Eric Franklin agreed with Andrew Luong to drive Luong from Hobbs, New Mexico to Presidio, Texas in Franklin's Cadillac Escalade.⁴ App.7a-8a; Supp. App.54a-56a. Franklin first told authorities that the purpose of the trip was to "drop off Luong in Presidio, and then return to Hobbs." App.6a-7a. Later on, Franklin

³ As Petitioner lodged no objection to the plea colloquy, review in the Fifth Circuit was for plain error. Accordingly, the Fifth Circuit was free to find support for Petitioner's plea in other parts of the record, including the presentence report. *United States v. Vonn*, 535 U.S. 55, 122 S. Ct. 1043 (2002).

⁴ When Franklin was asked why Luong had requested that Franklin drive him to Presidio, Franklin explained that he – Franklin – was "the only person Luong knew who owned a vehicle." App.8a.

admitted that the actual purpose of the trip was to take Luong to Presidio, where the latter would pick up a Chevy Silverado truck and its attached horse trailer and drive it “to a family member in Odessa, Texas.” App.4; Supp.App.55a, ¶ 8. Luong was to be paid \$3,000 for doing the job, and he agreed to split that amount with Franklin if the latter would drive him to Presidio in his Cadillac Escalade.⁵ Supp.App.55a, ¶¶ 9.

Franklin and Luong knew that the horse trailer in question had been outfitted to conceal several bundles of marijuana. They were being paid to pick up the Silverado in Presidio, with the horse trailer containing the marijuana in tow, and drive it to Odessa, Texas. Franklin’s role was apparently to drive Luong from Hobbs to Presidio, to then follow the Silverado driven by Luong to Odessa, and, finally, to return Luong to Hobbs after the Silverado and the horse trailer had been dropped off in Odessa.

Both Luong and Franklin exchanged text messages about “the job”; Franklin even complained to Luong “about being paid an insufficient amount of money around the time of the drug smuggling attempt.” App.9a. Significantly, Petitioner Adams was not a party to any of those text messages, and there is no evidence that

⁵ Franklin initially told authorities that he was to be paid “\$350 in gas money” for making the trip. Franklin’s text messages indicated that he was to be paid as much as \$6,000 for making the trip. When Franklin was confronted with text messages in which he bragged to an unidentified third party that he was going to make \$3,000 for six hours of work, Franklin admitted the truth. App.8a-9a.

Petitioner knew what Luong and Franklin had planned.

Franklin and Luong did not “frequently socialize” together, and Franklin told authorities that he did not trust Luong. App.8a. Accordingly, Franklin asked Petitioner to accompany Franklin and Luong on the trip to Presidio and back “as a means of security.” App.8a.⁶ Although Luong and Franklin were going to split at least \$3,000, Franklin told Petitioner that he would pay him only \$300 for riding along on the trip. App.8a. There is nothing in the Factual Basis (or anywhere else in the record) to indicate that Adams was ever made aware that the purpose of the trip was to deliver a horse trailer containing marijuana to a location in Odessa, Texas; nor is there any indication in the record that Petitioner was ever aware of the amounts Franklin and Luong were to be paid for making the trip.

The only text messages mentioned in the Factual Basis that relate to the marijuana transaction were between Luong and Franklin. App.8a. All the record shows is that Petitioner agreed to ride along from Hobbs to Presidio in Franklin’s Escalade because his long-time friend, Franklin, was uncomfortable making a long

⁶ The Presentence Report does not mention anything about Petitioner Adams’ providing “security.” Supp. App. 54a-56a. If Franklin said “security” what he meant by that is clarified by the PSR. Franklin was not asking Petitioner Adams to provide security for a drug transaction. He was asking Petitioner to ride along because Franklin and Petitioner were childhood friends, and Petitioner Adams knew “Luong much better than Franklin” because “the mother of [Adams’] child was friends with the mother of Luong’s child.” Supp.App.55a-56a, ¶¶ 9-10. There is no indication in any part of the record that Petitioner or any of his co-defendants possessed firearms or other forms of weaponry. Further, no narcotics were found in the Escalade. Supp.App.55a, ¶ 6.

trip alone in the company of Luong, a person whom Franklin did not know very well, and was willing to pay Petitioner either \$100 or \$300 for making the trip. App.8a; Supp. App. 55a, ¶ 8.⁷

On March 19, 2024, Franklin drove his Cadillac Escalade from Hobbs, New Mexico to Presidio, Texas, with Luong and Petitioner Adams as passengers. Upon arriving in Presidio, Luong left the Escalade and began driving the Chevy Silverado with the horse trailer in tow. App.6a-9a. Significantly, at one point “Luong asked Adams to drive the pickup truck” [i.e. the Silverado], but Adams declined to do so because he did not have a driver’s license and because he suspected that “something else was in the trailer aside from horses.” Supp. App.55a, ¶ 8.

After leaving Presidio, the Escalade being driven by Franklin and the Chevy Silverado being driven by Luong commenced traveling in tandem, eventually heading “north on Highway 118 towards Alpine, Tx.” App.7a. As the vehicles approached a Border Patrol checkpoint on Highway 118, Luong pulled the Silverado over near a dirt road. Franklin then pulled the Escalade up next to the Silverado and had a conversation with Luong. App.7a; App.56a, ¶ 11. As the dirt road was often used to evade the checkpoint, Border Patrol agents stopped both vehicles and inspected them at the checkpoint. App.7a. A Border Patrol K-9 conducted a “free

⁷ The Factual Basis says that Franklin stated that he agreed to pay Petitioner \$300 [App.8a]; the PSR states that Franklin said that he agreed to pay Petitioner \$100 [Supp. App.52a, ¶ 8].

air sniff” of the vehicles. The canine alerted to “both vehicles and the trailer.”⁸ App.7a. A search of the horse trailer uncovered “38 bundles...in a concealed non-factory compartment” of the trailer. The bundles were “field tested and weighed, resulting in a positive hit for approximately 419 kilograms of marijuana.” App.7a.

Authorities arrested all three individuals – Petitioner Adams, Luong and Franklin. Following his arrest, Petitioner agreed to speak to law enforcement. He told authorities that he did not know the reason Luong needed a ride to Presidio, and that he slept “most of the drive” during the trip from Hobbs to Presidio. App.8a-9a; Supp.App.56a, ¶ 10.⁹ The Government claimed that Petitioner’s phone contained “messages and calls on his device proving he was in communication with Luong during the travel time from Hobbs to Presidio.” App.9a.

First, the existence of those “messages and calls” is doubtful. Luong and Adams were riding in the same car – Franklin’s Escalade – on the trip from Hobbs to Presidio. Why would they be texting and calling each other during that trip? Second, if the substance of the alleged text messages had anything to do with Petitioner’s being involved in the drug transaction alleged in Count Two of the

⁸ Significantly, the canine alerted only on the driver side of the Escalade; it did not alert on the passenger side, where Adams was seated. Supp.App.52a, ¶ 6.

⁹ The PSR and the Factual Basis conflict on this issue. The PSR states that Petitioner told law enforcement that he slept “most of the drive” from Hobbs to Presidio. Supp. App.56a, ¶ 10. The Factual Basis states that Petitioner told authorities he slept the “entire trip.” App.8a.

Indictment, you would expect either the Factual Basis or the PSR to describe what was conveyed in those messages. Yet, neither document does that. All the Factual Basis states is that the text messages and calls between Luong and Petitioner establish that Petitioner was awake at least some of the time during the trip from Hobbs to Presidio.¹⁰ App.9a. As for the PSR, it makes no claim at all that there were text messages or calls between Petitioner and Luong during the ride from Hobbs to Presidio.¹¹

In any event, as explained below, even if we assume these text messages exist, they are irrelevant to Petitioner’s aiding and abetting conviction unless they show that Petitioner was somehow encouraging the commission of the charged offense. Merely proving that Petitioner was awake and texting with Luong proves nothing. Were they texting about the marijuana or some other topic (where to have lunch, the party they attended last week, etc.). The record gives no clue.

At the very end of the Factual Basis, Adams admits, in conclusory fashion, and without factual support,

that he knowingly and intentionally possessed [a] controlled substance

¹⁰ As described below, the fact that Petitioner was awake during the trip, or even overheard the other two discussing their intended crime, is completely irrelevant to the aiding and abetting charge. Further, since Petitioner only told law enforcement authorities was that he was asleep “most of the drive”, those messages aren’t even relevant to contradict Petitioner’s statement. Supp. App.53a, ¶ 10.

¹¹ In fact, the PSR reveals that Adams told authorities that they arrived in Presidio at approximately 5 A.M. Supp.App.53a, ¶ 10. That bolsters Adams’ assertion that he slept “during most of the drive” from Hobbs to Presidio. *Id.*

with the intent to distribute controlled substances [sic] to another person.¹² App.9a.¹³

The Sentencing Hearings:

The District Judge conducted three sentencing hearings in this case.

At the first sentencing hearing, Petitioner informed the Court that he wished to withdraw his plea. App. 33a. The District Judge ordered Petitioner’s trial counsel to file a motion to withdraw Petitioner’s plea, and expressly directed counsel to address the factors required by the Fifth Circuit’s decision in *United States v. Carr*, 740 F.2d 339, 343-44 (5th Cir. 1984). App.34a. Counsel responded by filing a barebones request to withdraw the plea; the motion failed to mention or address even a single *Carr* factor. Predictably, the District Court denied the motion, and scheduled a second sentencing hearing.

At the second hearing, Petitioner told the District Judge that “I was just riding with a friend. I didn’t know nothing about this.” App.41a. Petitioner told the District Judge that he only agreed to plead guilty because he had been told that he would be

¹² Simply agreeing to a legal conclusion, without *facts* to back it up, is insufficient to support a plea of guilty to the charged offense. *United States v. Jones*, 969 F.3d 192, 196 (5th Cir. 2020); Fed. R. Crim. P. 11(b)(3).

¹³ Note that Adams never admitted in his Factual Basis that he knowingly and intentionally possessed with intent to distribute the specific controlled substance charged in the Indictment: Marijuana. He did, however, stipulate that the weight of the marijuana found in the horse trailer was 399 kilograms. App.9a.

sentenced within a range of 36 to 47 months. App.41a.¹⁴ The Judge then re-set the hearing for a third session.

At the third sentencing hearing, the District Judge questioned whether Petitioner was entitled to credit for acceptance of responsibility:

... What I have concerns with is acceptance of responsibility. In fact, he even told me that I was just riding – I just caught a ride with a friend. That's all I did. App.44a.

The District Judge then posed the following question to counsel for Petitioner:

THE COURT: So, Mr. Herman, does your client still dispute that he's guilty of this crime?

(Pause in the proceedings.)

MR. HERMAN: No, Judge. He doesn't dispute that he was in the vehicle.

THE COURT: Okay. Well, he's in the vehicle, but that's... again, what he told me I just caught a ride with a friend. Next thing I know – the reason it got to me is because he entered a guilty plea. Right? I mean –

MR. HERMAN: Yeah.

THE COURT: -- catching a ride with a friend, your presence alone isn't enough to make you guilty.

MR. HERMAN: I believe from the beginning, he knew what was going on. App 44a-45a.

The foregoing exchange demonstrates two things. First, even though the District Court indicated to Petitioner that it was considering denying him credit for

¹⁴ The probation officer who prepared the PSR originally concluded that Petitioner was a career offender, which, of course, substantially increased Petitioner's exposure under the Guidelines. That surprised everyone, including the prosecution. By the time of the last sentencing hearing, a change in the law brought to the Court's attention by the prosecutor persuaded the District Judge that Petitioner did not qualify as a career offender. Notably, Petitioner continued to insist that he was innocent even after the District Judge had determined that he was not a career offender.

acceptance of responsibility, Petitioner remained insistent – and continued to tell his lawyer – that he rode in the Escalade, but did not join in the criminal activity and did nothing to advance it.

Second, it shows that Petitioner was not only represented by trial counsel that did not believe him, but also that trial counsel was focused on the wrong issue. Whether Petitioner was present and knew what Franklin and Luong were up to is irrelevant. Aiding and abetting requires active participation by the defendant – an affirmative act taken with the intent to facilitate the specific and entire crime charged. Given counsel’s focus on what Petitioner knew, it seems possible or even probable that Petitioner was advised to plead guilty merely because he was found in the Escalade, and not because there was evidence that he intentionally joined the effort to carry out the charged offense and took a step in furtherance of the crime’s completion.

Petitioner never wavered from the position that he was not involved in the charged offense. He adhered to that position even though he was aware that he was about to be sentenced by a Judge who found his position exasperating:

THE DEFENDANT: ...I apologize if you feel like I was lying to you, but I do accept my wrong. You know what I’m saying? I was in the car with my friends, and we did ride out there, and I’m in some trouble.

THE COURT: You’re still minimizing, aren’t you? I mean you just can’t help it. It’s not within your being, your fiber, to say I did this, I was involved in it. I helped plan it, or I got involved later if they planned it. You can’t go into any of that. You’ve got to say, look. I

did – I did catch a ride with them, and I was there with them.

THE DEFENDANT: They planned this. I just – I got in the car with them. And before I knew it, I was in trouble. That's what—I'm being honest. App. 49a.

The Theories Of Liability:

Nothing in the record supports the conclusion at Petitioner ever had actual or constructive possession of the marijuana:

Actual possession exists when a person has direct physical control over a thing. See Black's Law Dictionary 1047 (5th ed. 1979) (hereinafter Black's); 2A O'Malley § 39.12, at 55. Constructive possession is established when a person, though lacking such physical custody, still has the power and intent to exercise control over the object.

Henderson v. United States, 575 U.S. 622, 35 S.Ct. 1780, 1784 (2015).

There are no facts or admissions establishing that Petitioner himself (i) had an ownership interest in either the Chevy Silverado or the horse trailer attached to the Silverado; (ii) ever attempted to drive the Silverado (in fact, as explained above, declined to do so); (iii) ever even once physically touched the Silverado, the marijuana or the horse trailer in which the marijuana was secreted; (iv) purchased the marijuana or attempted to sell or otherwise distribute any of it; or (v) participated in loading the marijuana into the horse trailer or concealing it inside the trailer. Further, although at some point Petitioner came to suspect that the horse trailer contained contraband or a controlled substance of some sort, nothing in the record indicates that Petitioner knew that the controlled substance was, in fact, marijuana.

In the absence of any record facts to support the conclusion that Petitioner at any point had direct physical control over the marijuana, Petitioner could not have pleaded guilty to the charge in Count Two on a theory of actual possession.

Likewise, the facts are insufficient to support the conclusion that Petitioner had constructive possession of the marijuana. The Factual Basis signed by Petitioner establishes only that the transaction that formed the basis of the charge in Count Two of the Indictment was worked out between Franklin and Luong. There is no indication in either the Factual Basis or in the PSR that Petitioner Adams was ever more than a passenger in the Escalade who was riding along at the request of his friend Franklin in exchange for, at most, \$300. Moreover, as the record is clear that Petitioner refused to drive the Silverado, it is clear that he never intended to exert control over the marijuana hidden in the horse trailer.

18 U.S.C. § 2 provides that one who aids and abets another's commission of a federal offense is punishable as a principal. That is the sole theory on which Petitioner's conviction was upheld. App.2a. The two essential requirements the Government must prove to secure a conviction on a theory of aiding and abetting are that the defendant (i) committed an affirmative act in furtherance of at least one element of the charged offense; and (ii) acted with the intent to facilitate the specific and entire crime charged. *Rosemond v. United States*, 572 US 65, 134 S.Ct. 1240 (2014). Without proof that the defendant intended to "bring about a particular

unlawful act” – the one charged in the Indictment – the defendant cannot be held criminally responsible on a theory of aiding and abetting. *United States v. Hansen*, 599 U.S. 762, 143 S. Ct. 1932, 1940 (2023).

Notably, it is not enough that the defendant was aware that others were engaged in committing a criminal offense, or that the defendant was present with (or in close proximity to) those others while the latter were engaged in committing their offense. *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 US 280, 292, 145 S.Ct. 1556, 1560 (2025) [“[A]iding and abetting usually requires misfeasance rather than nonfeasance.”]. To support a guilty plea to a charge of aiding and abetting, the record must contain facts establishing the defendant’s “conscious ... and culpable participation in another's wrongdoing.” *Twitter, Inc. v. Taamneh*, 598 U. S. 471, 143 S. Ct. 1206 (2023).

Thus, a defendant does not become criminally responsible as an aider and abettor merely by riding in a vehicle that is occupied by others who are engaged in drug trafficking. *United States v. Pena*, 983 F.2d 71 (6th Cir.1993) (fact that passenger in vehicle suspected something illegal was afoot held insufficient to support conviction for aiding and abetting); *United States v. Sanchez-Mata*, 925 F.2d 1166, 1169 (9th Cir.1991) (in drug trafficking case, court holds that mere “ presence as a passenger in the car cannot support an aiding and abetting theory”); see *United States v. Jones*, 44 F. 3d 860, 869 (10th Cir. 1995) (citing *Pena* with approval);

Winslow v. Brown, 125 Wis.2d 327, 371 N.W.2d 417 (Wisc. Ct. App. 1985) (“passively accompanying a driver on an unlawful trip does not raise an inference of a willingness to assist.”); *see also*, *United States v. Gordon*, 700 F.2d 215, 217 (5th Cir. 1983) (reversing defendant's conviction for possession of marihuana with intent to distribute where the defendant was present in the vehicle with the drugs, but no other evidence connected him to drugs); *United States v. Ferg*, 504 F.2d 914, 917 (5th Cir. 1974). Even if the defendant is a passenger in a vehicle where a controlled substance is present, and is aware of that fact, there must be more before a defendant can be convicted of violating 21 U.S.C. § 841(a) on a theory of aiding and abetting. *United States v. Tran*, 568 F.3d 1156, 1167 (9th Cir. 2009).

In this case, Petitioner went along for the ride at the request of his friend. There is no evidence that he did anything that would qualify as “aiding and abetting” the offense charged in Count Two of the Indictment.

The Plea Colloquy Was Insufficient to Satisfy Fed. R. Crim. P. 11(b)(1)(G) and The Fifth Amendment’s Due Process Clause:

Rule 11(b)(1)(G) of the Federal Rules of Criminal Procedure requires a district court to ensure that a criminal defendant who intends to plead guilty understands “the nature of each charge to which” he is pleading guilty. For purposes of the case *sub judice*, that means that Petitioner needed to understand not simply the barebones allegations in the Indictment, but also what the law requires to convict

a defendant under a theory of aiding and abetting.¹⁵

Here, the charge set out in Count Two of the Indictment was read in open court at Petitioner's arraignment. App.27a. Although the text of that charge contains the phrase "aiding and abetting", Petitioner never received any explanation of what "aiding and abetting" actually means. All Petitioner had was a simple, unadorned reference to the phrase "aiding and abetting" in a case in which the facts did not support Petitioner's conviction as a principal, and where the Government's case against Petitioner rested solely on its ability to prove that he aided and abetted the offense charged in Count Two of the Indictment. Moreover, though Petitioner's counsel represented to the Magistrate Judge that he was "confident" Petitioner had an understanding of the charge, the record belies that claim. *Infra*, pp. 19-21.

Petitioner was never informed that merely being in the company of those involved in committing a crime, without more, is insufficient to hold him liable as an accomplice under 18 U.S.C. § 2. He was never told that his mere presence or proximity to those committing a crime, and even his foreknowledge that a crime was about to be committed by others, are insufficient to support criminal responsibility

¹⁵ Fed.R.Crim.P. 11(b)(3) is an important counterpart to Rule 11(b)(1)(G). It provides that, "[b]efore entering judgment on a guilty plea, the court must determine that there is a factual basis for the plea." As the Fifth Circuit's opinion acknowledges, Petitioner's conviction rests solely on the fact that he purportedly "aided and abetted" the substantive offense in violation of 18 U.S.C. § 2. App.2a. As explained above, Petitioner does not believe that either the Factual Basis or the PSR demonstrate that he is liable for the offense charged in Count Two of the Indictment on a theory of aiding and abetting.

as an aider and abettor. And, more specifically, he was never informed that the Government was required to prove that he (i) took an affirmative step to advance at least one element of “the specific and entire crime charged”; and (ii) did so with the intent to facilitate the commission of that offense. *Rosemond v. United States*, 572 U.S. 65, 134 S.Ct. 1240, 1248-1249 (2014).

REASONS FOR GRANTING THE WRIT

A.

THIS CASE IS AN APPROPRIATE VEHICLE FOR THE COURT TO CLARIFY THE CIRCUMSTANCES UNDER WHICH A DEFENDANT WHO COULD NOT HAVE BEEN CONVICTED AS A PRINCIPAL MUST RECEIVE AN EXPLANATION OF “AIDING AND ABETTING” BEFORE ENTERING A PLEA OF GUILTY PREDICATED SOLELY ON THAT THEORY

No criminal defendant can enter a valid plea of guilty without first being informed of the true “nature” of the charge to which he is pleading guilty:

Stumpf's guilty plea would indeed be invalid if he had not been aware of the nature of the charges against him... A guilty plea operates as a waiver of important rights, and is valid only if done voluntarily, knowingly, and intelligently, "with sufficient awareness of the relevant circumstances and likely consequences." *Brady v. United States*, 397 U. S. 742, 748 (1970). Where a defendant pleads guilty to a crime without having been informed of the crime's elements, this standard is not met and the plea is invalid. *Henderson v. Morgan*, 426 U. S. 637 (1976).

Bradshaw v. Stumpf, 545 U.S. 175, 182-183, 125 S. Ct. 2398 (2005). Compliance with this requirement is mandated by the Due Process Clause of the Fifth Amendment and, in the federal system, that compliance is implemented through

Fed.R.Crim.P. 11(b)(1)(G). That Rule requires that the District Court, before accepting a plea of guilty, personally address the defendant and “inform the defendant of, and determine that the defendant understands... the nature of each charge to which the defendant is pleading.” Here, there is no doubt that the only information Petitioner received was a simple reading, without further explanation, of the charge set out in Count Two of the Indictment. App.27a; App.30a.

Of course, *Bradshaw* establishes that compliance with the Constitution and Rule 11(b)(1)(G) is not formulaic; accordingly,

“the constitutional prerequisites of a valid plea may be satisfied where the record accurately reflects that the nature of the charge and the elements of the crime were explained to the defendant by his own, competent counsel.”

Bradshaw, 545 U.S. at 183. As mentioned above, counsel for Petitioner confirmed at Petitioner’s rearraignment that he was “confident” that Petitioner understood the nature of the charge to which he was pleading guilty. App.28a. But the record undermines that representation.

As set forth above, Petitioner’s counsel apparently believed that the primary determinant of Petitioner’s liability as an aider and abettor was whether Petitioner was aware that Franklin and Luong were engaged in criminal activity. App.45a (“I believe from the beginning he knew what was going on.”). As described above, that is fundamentally incorrect. A defendant is not liable as an aider or abettor simply because he is aware that others (including those with whom he is in close proximity)

are engaged in criminal activity. Further, counsel's argument during the course of the first sentencing hearing illustrates why Petitioner was likely not guilty of aiding and abetting the charged offense:

He definitely was the minor role. **He was no part in it.** He never touched any of the vehicles or touched the marijuana. He was just there to basically -- to help his friend, who he'd known for many, many years since childhood and had convinced him to go along with him. **They were just taking a trip to the border, supposedly.** And Mr. Adams got into that. **Had nothing to do with it. Had no ability to control what was going on.** And he had just moved back -- he hadn't even moved to Hobbs, New Mexico. He's living in Lubbock. He's got a relationship there with a child and a stepchild. And he had gone back to Hobbs, New Mexico simply to pick up an old car to take it back to Lubbock, where he was living. And his friend got ahold of him and drug him into this deal.

App.33a [emphasis added]. If counsel believed “[h]e was no part in it”, “[h]ad nothing to do with it” and “[h]ad no ability to control what was going on”, then why have Petitioner enter a plea of guilty to aiding and abetting the charged offense? This is not a *Bradshaw*-type scenario where the Court can infer that Petitioner entered a knowing and voluntary plea based on counsel's assurance that Petitioner understood the nature of the charge to which he was pleading guilty because the record casts doubt on whether counsel himself understood the nature of aiding and abetting liability. When Petitioner entered his plea, he apparently believed that he could be held criminally responsible simply because he was along for the ride in Franklin's Escalade. App.46a (“I was in a car with my friends, and we did ride out there, and I'm in some trouble.”; “I just – I got in the car with them. And before I

knew it, I was in this trouble.”). Given counsel’s foregoing comments, that also appears to be what Petitioner’s counsel believed.

This case raises an important question: To comply with the Due Process Clause of the Fifth Amendment and Fed.R.Crim.P. 11(b)(1)(G) in a case where aiding and abetting is the sole basis on which the defendant can be convicted of the charged offense, is it enough for the record to reflect that the words “aiding and abetting” were uttered during the plea colloquy without any explanation of what those words actually mean? In a simple case, where the admitted facts show that the defendant participated as a principal or unequivocally admitted taking an affirmative step with the intent to further the charged offense, a simple reading of the charge set out in the Indictment, followed by the defendant’s acknowledgement that he understands the charge, is likely sufficient to satisfy the constitutional minimum. *Henderson v. Morgan*, 426 U.S. 637, 649, n. 2, 96 S.Ct. 2253 (1976) (White, J., concurring). This, however, is not that simple case.¹⁶ To enter a valid

¹⁶ Neither the Factual Basis nor the PSR support the conclusion that the Petitioner intended to help bring about the specific and entire crime charged in Count Two of the Indictment by committing an affirmative act in furtherance of that offense. Moreover, Petitioner was telling his lawyer and the District Judge that, while he acknowledged being a passenger in the Escalade, he was not involved in the criminal offense the other two were committing. The PSR, which was adopted by the District Judge in its entirety [App.38a-39a], describes the fact that Petitioner refused to drive the Silverado when Luong requested that he do so because he suspected that there was “something else” in the horse trailer. Supp. App.52a, ¶ 8. Thus, Petitioner went beyond passive non-participation in the offense, which itself would be enough to defeat the aiding and abetting charge, and actively refused to facilitate its commission. Under the circumstances here, it is possible that someone in Petitioner’s position, especially if not accurately advised, might have concluded that he was criminally responsible for the offense simply because he rode in a vehicle with the other two.

plea predicated on aiding and abetting, Petitioner needed to understand what those words actually mean.

The Circuits have taken varying approaches to what a defendant must be told about aiding and abetting prior to entering a plea of guilty. Some have properly required that the defendant receive an explanation of what the phrase “aiding and abetting” actually means. *United States v. Perdue*, 110 F.4th 662 (4th Cir. 2024) (Court holds that the district court failed to explain the intent element necessary to sustain guilty plea on theory of aiding and abetting, but affirms the conviction on plain error review because defendant failed to show a reasonable probability that, “properly informed”, he would not have pled guilty); *United States v. Clark*, Case No. 19-1625 (2d Cir. 2020) (finding colloquy deficient where court failed to apprise defendant of “the basic elements of aiding-and-abetting liability under 18 U.S.C. § 2”, but affirming conviction on plain error review because defendant failed to show a reasonable probability that he would not have pled guilty); *United States v. Figueroa-Ocasio*, 805 F.3d 360, 370–372 (1st Cir. 2015) (plain error required vacatur of plea where, *inter alia*, “neither the Government nor the district court offered any explanation of the distinction between principal and aider and abettor liability.”); *United States v. Lowery*, 60 F.3d 1199, 1205 (6th Cir. 1995) (vacating

plea and remanding where “nothing in the record shows that Pelfrey understood how the concept of "aiding and abetting" liability could encompass his conduct in Count 3.” [Applying the predecessor to Fed.R.Crim.P. 11(b)(1)(G)]; *see also, Nash v. Israel*, 707 F.2d 298 (7th Cir. 1983) (court finds explanation of aiding and abetting deficient where defendant expressed confusion regarding intent element).

Others Circuits are less demanding. The Eleventh Circuit, for example, does not require any discussion of the requirements of aiding and abetting where the record reflects that the offense is a simple one, the defendant has sufficient education to comprehend the nature of the charge, the defendant acknowledges his involvement in facts that support the plea, the record shows the defendant reviewed the indictment with counsel and the indictment was read in open court. *United States v. DePace*, 120 F.3d 233 (11th Cir. 1997) [applying predecessor of Rule 11(b)(1)(G)]; *see also, United States v. Camacho*, 233 F. 3d 1308 (11th Cir. 2020) (upholding conviction notwithstanding fact that record contained no discussion of requirements of aiding and abetting; noting, *inter alia*, that the aiding and abetting theory is not an essential element of the underlying offense, and that defendant’s factual basis supported his conviction).

In a post-*Lowery* case, the Sixth Circuit held that the defendant need not be advised of the requirements to convict on a theory of aiding and abetting because aiding and abetting is just a theory of liability, and Rule 11(b)(1)(G) requires only a

description of the substantive elements of the offense to which the defendant is pleading guilty:

Because aiding and abetting is "a theory of liability 'embodied in every federal indictment, whether specifically charged or not,' and not a distinct substantive crime," *United States v. McGee*, 529 F.3d 691, 695 (6th Cir. 2008) (quoting *United States v. Floyd*, 46 F. App'x 835, 836 (6th Cir. 2002)), the district court was not required to advise Williams about accomplice liability to satisfy Rule 11(b)(1)(G).

United States v. Williams, 941 F.3d 234, 237 (6th Cir. 2019).

Petitioner respectfully submits that the Sixth Circuit's above-quoted statement is incorrect. A criminal defendant, unaware of the specific requirements embodied in the phrase "aiding and abetting", does not have a true appreciation of the "nature of the charge" unless the record reflects that the Court or defense counsel properly explained to the defendant what the government must prove to convict on that theory. Where, as in this case, Petitioner is not liable as a principal, and the record supporting his criminal responsibility on a theory of aiding and abetting is inadequate, at best, the Petitioner could not have entered a valid plea without a more detailed explanation of what "aiding and abetting" actually means.

Finally, Petitioner notes that this is not a case where his failure to receive accurate information about aiding and abetting during the Rule 11 colloquy can be dismissed as plain error under the standard set out by this Court in *United States v. Dominguez Benitez*, 542 U.S. 74, 124 S. Ct. 2333 (2004). Had Petitioner been "properly informed" of the requirements of aiding and abetting (as the Fourth Circuit

put it in *Perdue, supra*), there is more than a “reasonable probability” that he would have opted to proceed to trial. This conclusion is supported by several parts of the record.

First, Petitioner attempted to withdraw his plea, albeit unsuccessfully. App.33a-34a. Second, Petitioner never admitted anything more than that he was a passenger in the Escalade. Third, at Petitioner’s third sentencing hearing the Government had an agent testify as to the substance of Petitioner’s recorded conversations with his girlfriend and family members. Here is what the Agent said:

Q. And even on his jail calls, did he make some admissions, like he **should have known** that this was a drug trafficking ordeal?

A. Yes. Multiple times with talking with, I believe, his girlfriend and his family, he did state that **he should have known** at this time, this place, he should have known at this circumstance. It was a lot of discussion about, I guess, his reflection, looking back. **He should have put the pieces together in his mind, I guess, of what was happening.**¹⁷

If Petitioner “should have known”, but failed to “put the pieces together”, that supports Petitioner’s consistent position that he was unaware of what the other two were up to, and did not, himself, do anything in furtherance of the crime alleged in Count Two of the Indictment.

Fourth, while Franklin and Luong were going to split at least \$3,000,

¹⁷ This exchange is in the record on appeal at ROA.219-219. It is memorialized in the transcript of the third sentencing hearing that occurred on January 24, 2025.

Petitioner was to be paid, at most, \$300. App.8a; Supp. App. 55a, ¶ 8. Why would the alleged third actor in a drug trafficking offense agree to be paid substantially less than the other two for taking the same risk? Fifth, the canine alerted to the driver's side of the Escalade, where Franklin was seated, and rear hatch of the Escalade, but did not alert to the passenger side where Petitioner was seated, suggesting that Franklin had been physically involved with the marijuana while Petitioner had not been near it. Supp. App. 55a, ¶ 6.

Had Petitioner Adams been informed that the Government was required to prove (i) that Petitioner had the intention to facilitate Franklin and Luong in the specific and entire crime charged; and (ii) that Petitioner took an affirmative act in furtherance of the offense charged in Count Two, the record here supports the conclusion that there is a “reasonable probability” that he would not have entered his plea of guilty, but, instead, would have proceeded to trial. *United States v. Dominguez Benitez*, 542 U.S. at 83, n. 9 (“The reasonable-probability standard is not the same as, and should not be confused with, a requirement that a defendant prove by a preponderance of the evidence that but for error things would have been different.”).

This case provides a clean vehicle for the Court to provide guidance to lower courts on when and under what circumstances a criminal defendant is entitled to receive an explanation of what the phrase “aiding and abetting” actually means prior

to entering his plea of guilty. It also allows the Court to consider whether, in a case like Petitioner's, the failure to give a more complete explanation amounts to plain error.

B.

THE IMPACT ON THE CRIMINAL JUSTICE SYSTEM

The American public, and the federal judiciary in particular, have an interest in ensuring that the federal judicial system is fairly administered in compliance with the Constitution and the Federal Rules of Criminal Procedure. This case provides the Court with an opportunity to correct an error below that has profound consequences for federal criminal cases throughout the nation.

As Justice Gorsuch recently noted,

perhaps 95 percent of convictions now come by way of plea bargains. See R. Barkow, *Justice Abandoned* 74–75 (2025). These days, plea bargaining is not just “some adjunct to the criminal justice system; it *is* the criminal justice system.” R. Scott & W. Stuntz, *Plea Bargaining as Contract*, 101 *Yale L. J.* 1909, 1912 (1992).

Hunter v. United States, 608 U.S. ___, 146 S.Ct. 1702 (2026) (Gorsuch, J., concurring). A prosecutor can bring to bear formidable tools to pressure a defendant to plead guilty and forego a jury trial¹⁸; that enhances the risk that an innocent person

¹⁸ Loss of acceptance of responsibility points is always a concern, but there are more aggressive actions prosecutors use to force a plea. The threat to add charges carrying significantly greater exposure to additional prison time via a superseding indictment, for example, exerts significant pressure on a defendant to plead guilty even if the defendant is aware that he is factually innocent of the charged offense or has a viable affirmative defense.

will plead guilty if compliance with the Constitution and Rule 11 falls short. This case is a prime example. Neither the colloquy at Petitioner's change of plea hearing nor trial counsel's explanations were sufficient to prevent Petitioner from unwittingly pleading guilty to a crime he denied committing, and certainly did not commit as a principal.

Accordingly, the Court should take this case to ensure that the legal requirements embodied in the Due Process Clause of the Fifth Amendment to the Constitution and Rule 11(b)(1)(G) of the Federal Rules of Criminal Procedure – requirements designed to protect against the possibility that an innocent person is convicted of a criminal offense – are complied with.

CONCLUSION

For all the foregoing reasons, Petitioner Patrick Dwayne Adams respectfully requests that the Court grant the foregoing Petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted,

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