

No. \_\_\_\_\_

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SUPREME COURT OF THE UNITED STATES

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UNITED STATES OF AMERICA

*Respondent*

*vs*

SETH D. HOOVER

*Petitioner*

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

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**PETITION FOR WRIT OF CERTIORARI**

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## **I. QUESTION PRESENTED FOR REVIEW**

Federal Rule of Criminal Procedure 11(c)(1) provides that a district court “must not participate in [plea] discussions.” In the present case, the district court involved itself in the parties plea discussions and prematurely stated that it would withhold any reduction to the sentence for acceptance of responsibility prior to a plea agreement having been reached. The Sixth Circuit held that the district court violated Rule 11, but ultimately held that the violation was harmless because Petitioner could not establish that a plea would have resulted in a lower sentence. Is a district court's violation of Federal Rule of Criminal Procedure 11, which causes a defendant to reject a plea and proceed to trial, a harmless error?

## II. LIST OF ALL PARTIES AND RELATED PROCEEDINGS

### a. List of Parties to the Proceedings

Seth D. Hoover, *petitioner*

- and -

United States of America, *respondent*

### b. List of Related Proceedings

*United States v. Seth D. Hoover*, No. 1:22-cr-00135-JRA, United States District Court for the Northern District of Ohio. Judgment entered November 26, 2024.

*United States v. Hoover*, Case No. 24-4029, 179 F.4th 454 (6<sup>th</sup> Cir. 2026) United States Court of Appeals for the Sixth Circuit. Judgment entered June 24, 2026.

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## **V. CITATIONS OF THE OPINIONS BELOW**

The decision finding the district court's Rule 11 violation was harmless is Sixth Circuit Case No. 24-4029, reported as *United States v. Hoover*, 179 F.4th 454 (6<sup>th</sup> 2026). The Sixth Circuit designated the opinion as recommended for publication.

## **VI. STATEMENT IN SUPPORT OF JURISDICTION**

The United States District Court for the Northern District of Ohio had jurisdiction under 18 U.S.C. § 3231. The Sixth Circuit had jurisdiction under 28 U.S.C. § 1291 and 18 U.S.C. § 3742(a). The Sixth Circuit entered judgment on June 24, 2026. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1) as petitioner has timely filed this petition for a writ of certiorari within ninety days of the judgment.

## **VII. CONSTITUTIONAL AND RULE PROVISIONS INVOLVED**

### **1. Federal Rule of Criminal Procedure 11(c)(1)**

“The attorney for the government and the attorney for the defendant may discuss and reach a plea agreement. The court must not participate in these discussions.”

### **2. Federal Rule of Criminal Procedure 11(h)**

“A variance from the requirements of this rule is harmless error if it does not affect substantial rights.”

## VIII. STATEMENT OF THE CASE

**A. The district court violated Fed.R.CrimP. 11 by expressly and repeatedly prohibiting acceptance-of-responsibility credit while plea negotiations remained possible.**

Petitioner was charged in the Northern District of Ohio with possessing fentanyl with intent to distribute, possessing a firearm in furtherance of drug trafficking, and being a felon in possession of a firearm. *United States v. Hoover*, 179 F.4th 454 , 460 (6<sup>th</sup> Cir. 2026). Petitioner initially indicated that he wished to plead guilty. At the beginning of the scheduled change-of-plea hearing, however, defense counsel advised the court that Petitioner had discharged him due to counsel's refusal to file a motion to suppress. *Id.* The district court responded by stating on the record:

And we will make sure—Chris [the courtroom deputy], make sure we note that we did have a plea hearing. The defendant—and so when it comes time to

think about—if, if we get to that point, that we make sure I'm advised there's no acceptance of responsibility here. And so it's clear that we do not—I just want to make sure I make a note so I don't forget since we were led to believe there would be a plea. There's not going to be a plea. That's fine, too.

*Id.*, quoting R. 52, Hearing Tr., PageID 204.

New counsel was appointed and, at the end of the status conference with new counsel, the district court reiterated: “I'm not accepting any last-minute pleas, no acceptance of responsibility, none of those things. Be prepared for trial, period.” *Id.* quoting R. 151, Pretrial Tr., PageID 1805.

About a month later, a grand jury returned a superseding indictment which added a count of felon in possession of a firearm. *Id.* During a subsequent pretrial hearing, the court and new counsel discussed whether Hoover was ready to proceed to trial. At the hearing, the court stated:

So the defendant has already rejected a plea, so counsel, I'll just tell you now, if there is going to be any further plea negotiations, there will not be acceptance of responsibility.

I think he may be a career offender. You are his second counsel. That's certainly fine. But don't—I would just caution both sides, don't negotiate any plea that might contemplate any acceptance at all based upon the timing and the issues in the case because I will not award it.

*Id.* quoting R. 134, Hearing Tr., PageID 1110.

Prior to the suppression hearing, Mr. Hoover's second attorney withdrew and a third attorney was appointed. *Id.* at 461. The court denied Mr. Hoover's motion to suppress, after which Mr. Hoover's counsel moved for a telephone conference, asking the court "to discuss issues related to [his] potential plea." *Id.* quoting R. 56, Mot., PageID 235. The court denied this motion as well, stating that it was "not permitted to involve itself in plea negotiations." *Id.* quoting R. 59, Order, PageID 248. Hoover next requested a final

pretrial hearing. The court denied that motion too. Undeterred, Hoover's third attorney filed a motion asking for clarification of the court's prior statements regarding acceptance of responsibility:

Counsel for Mr. Hoover was not counsel at the time and was not present at the Hearing. Counsel has reviewed a copy of the transcripts, but upon review, it is unclear whether the Court made that finding of not accepting responsibility points because Mr. Hoover was not pleading at that time or whether the Court would not be willing to accept responsibility points at any later date, if Mr. Hoover chose to plead. Further, Defendant has expressed a willingness to plead and has negotiated a resolution with the Government. The only concern is Counsel for the Defendant is not able to advise Defendant of the position that the Court will take on acceptance of responsibility. Both the Government and the Defendant believe that he has fully accepted responsibility and will continue to do so during his [Presentence] Investigation Interview and thereafter. Defendant is unable to plead without understanding the Court's previous entry and whether the Court is still inclined to allow or grant him acceptance of responsibility.

*Id.* quoting R. 64, Mot., PageID 307. The court did not rule on that motion. *Id.*

**B. Petitioner expressly told the district court that its statements caused him to proceed to trial.**

Prior to trial, the government offered for the record a proposed plea agreement that Hoover had previously rejected. Hoover indicated that although he admitted responsibility, he would not accept the proposed agreement. Under that plea agreement, Hoover would have pled guilty as charged, and the government would have recommended a three-level reduction for acceptance of responsibility. *Id.*

After the jury had been selected, defense counsel explained to the court that Hoover had instructed him “not to provide a defense for him or to question the [witnesses] or to acknowledge or to dispute any of the facts of the case.” *Id.* quoting R. 147,

Trial Tr., PageID 1581. Instead, Hoover would proceed with trial to “preserve all of his appellate issues.” *Id.* Among several other issues unrelated to this petition, counsel included “the issue of the denial of the three points for acceptance of responsibility” before he became counsel of record. *Id.*, quoting R. 147 at PageID 1582. Counsel also stated, “[W]hat Mr. Hoover believes is that some of the statements that this court has made in the past with the denial of the three points, with the way that the court has indicated that the sentencing might go, that, in fact, he's not permitted to plea and he's been denied that right to plead, he would ask this court to recuse yourself at this point in time.” *Id.*

The district court responded, claiming it had never refused to accept a guilty plea and that “until a plea has been rendered or tendered, then acceptance of responsibility is a premature issue for the court to

address.” *Id* quoting R. 147 at PageID 1585. Defense counsel provided the following brief response:

Judge, I would just point out that when you look at the docket on this case, you'll recall back in August of 2022, I was not the attorney of record. It's clear, and we've also requested those transcripts where the court says under no circumstances will I accept responsibility points under this case.

Mr. Hoover after that period of time felt that the court would never accept a plea and would not give him the three points for acceptance, and that's the reasons why he believes he's required to go to trial today.

*Hoover* at 462, quoting R. 147 at PageID 1586.

Hoover then personally addressed the court:

I have not contested my acceptance or guilt since the beginning of this.

The only reason I haven't taken a guilty plea is because you told me last August that you would reject any guilty pleas. I would get no acceptance of responsibility. You told the stenographer to put it on my court docket. You made it very clear that I could not plead guilty and I could not take a reasonable plea

bargain on that date, and ever since then, that's been my view.

That's the reason I am in here. We asked for a continuance. We asked for another pretrial. We asked for a teleconference in an attempt to plead. My attorney filed a motion for clarification, because I expressed to him my feelings about what was said last year on the record, and it was never ruled on, and here we are at trial.

*Id.* quoting R. 147 at PageID 1590.

The court thereafter entered a written order denying Hoover's previously filed motion for clarification. *Id.*

Thus, unlike a case in which a defendant merely speculates after conviction that judicial participation affected his plea decision, Petitioner contemporaneously identified the court's statements as the reason he proceeded to trial. A jury ultimately convicted Petitioner on all three counts. *Id.* The district court ultimately imposed a total sentence of 420 months' imprisonment. *Id.*

**C. The Sixth Circuit held that the district court violated Rule 11(c)(1).**

The Sixth Circuit found no question that the district court's statements through the pretrial proceedings violated Fed.R.CrimP. 11:

The district court violated Rule 11(c)(1) when it stated clearly on the record that it would not give Hoover an acceptance-of-responsibility reduction in any plea bargain the parties negotiated. "[W]hen a district court expresses its preference for or against certain plea-bargaining terms in an unfinalized or hypothetical plea agreement, the court impermissibly participates in plea negotiations in violation of Rule 11." *Id.* at 592. Here, the district court went a step further and took an acceptance-of-responsibility adjustment off the table entirely. And it did so while recognizing that the parties might still be engaging in plea negotiations. These statements violated Rule 11(c)(1). *See id.* at 594.

*Hoover* at 464.

The court therefore resolved the first part of the case in Petitioner's favor: the district judge violated the categorical prohibition contained in Rule 11(c)(1).

**D. The Sixth Circuit nevertheless found the violation harmless.**

The Sixth Circuit then turned to prejudice. It recognized that Rule 11 violations are subject to harmless-error review under Rule 11(h). *Hoover* at 464, citing Fed. R. Crim. P. 11(h); *United States v. Davila*, 569 U.S. 597, 610, 133 S.Ct. 2139 (2013). Because Petitioner had proceeded to trial rather than pleading guilty, the court concluded that he had to establish “actual prejudice.” *Id.* at 465. The court analogized the situation to the ineffective-assistance-of-counsel plea-bargaining cases, particularly *Lafler v. Cooper*, 566 U.S. 156, 132 S.Ct. 1376, 182 L.Ed.2d 398 (2012). The Sixth Circuit analogized:

[i]n a Rule 11(c) case, the plea process breaks down due to the court's errors; in a *Lafler* case, the errors are counsel's. But in each case, the errors cause the defendant to reject a plea deal, and “[h]aving to stand trial, not choosing to waive it, is the prejudice alleged.” *Id.* at 163-64, 132 S.Ct. 1376.

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Courts should ask whether, but for the error, "there is a reasonable probability that the plea offer would have been presented to the court (*i.e.*, that the defendant would have accepted the plea and the prosecution would not have withdrawn it in light of intervening circumstances), that the court would have accepted its terms, and that the conviction or sentence, or both, under the offer's terms would have been less severe than under the judgment and sentence that in fact were imposed.

*Hoover* at 465. The court ultimately concluded that Petitioner could not establish prejudice because the Government had not offered to dismiss any charges and the only identified benefit was the Government's recommendation for acceptance-of-responsibility credit. The Sixth Circuit found that the Rule 11 violation caused Hoover not to plead and proceed to trial. *Id.*

However, the Sixth Circuit found the error to be harmless because, at sentencing, the district court

initially awarded Mr. Hoover a reduction for acceptance of responsibility; the trial court withdrew the reduction due to Mr. Hoover's drug activity during pre-trial detention and subsequent denial of that activity. *Id.* at 466.

This holding overlooks the key issues herein. By the time this matter reached sentencing, the district court's damage had already been done. Mr. Hoover had been told repeatedly that the district court would not be accepting a plea. Then, the district court awarded the acceptance of responsibility reduction after its repeated admonitions to Mr. Hoover and his counsel that no such reduction would be contemplated. Trust in the court's impartiality and ability to abide by the Rules of Criminal Procedure was completely eroded. Mr. Hoover was not in a place where he was comfortable accepting responsibility for his pre-trial detention conduct. This resulted in

revocation of the acceptance of responsibility reduction and imposition of a 420 month sentence. Whereas, had the district court not impermissibly involved itself in the Rule 11 negotiations, Mr. Hoover would have entered a plea following the denial of his motion to suppress and accepted responsibility for the underlying offenses, as well as his conduct during pretrial detention.

## **IX. REASONS FOR GRANTING THE WRIT**

**A. The Sixth Circuit's decision presents an important question concerning the scope and remedy of Rule 11(c)(1)'s categorical prohibition on judicial participation in plea negotiations.**

Rule 11(c)(1) contains unusually direct language: a district court “must not participate” in plea discussions. This Court has repeatedly recognized the importance of that prohibition. In *United States v. Davila*, this Court explained that Rule 11's prohibition protects the integrity of the plea-

bargaining process and that judicial participation is inherently problematic because of the extraordinary influence a judge possesses over the parties. 569 U.S. 597, 133 S.Ct. 2139 (2013).

The Sixth Circuit itself has described Rule 11's prohibition as “absolute” and has held that the prohibition is to be stringently enforced. See *In re United States*, 32 F.4th 584, 592–94 (6th Cir. 2022). The court reiterated that principle in Petitioner's case and expressly found that the district court violated Rule 11(c)(1). Yet the decision below substantially diminishes the practical force of that protection.

Under the Sixth Circuit's approach, a district judge may tell a defendant and the parties that a particular plea term will not be accepted, thereby influencing the defendant's decision whether to plead guilty. If the defendant consequently proceeds to trial, the resulting Rule 11 violation may nevertheless be

deemed harmless based on events that occur after the defendant has been forced into the trial process. That approach creates a fundamental problem.

The purpose of Rule 11(c)(1) is to prevent the judge from becoming an actor in the bargaining process in the first place. Once the judge has improperly influenced the defendant's decision, courts should not readily treat the consequences of that intervention as though the defendant made an entirely independent decision to proceed to trial. The issue is particularly important because plea bargaining is the dominant means by which federal criminal cases are resolved. A rule governing judicial participation in that process affects the fairness and integrity of the federal criminal justice system far beyond Petitioner's case.

**B. The Sixth Circuit's prejudice analysis permits the Government to rely upon consequences produced after the Rule 11 violation to defeat the defendant's claim of prejudice.**

The Sixth Circuit's application of the harmless error doctrine in this context creates a dangerous precedent, because the district court's error was clearly not harmless. The district court's involvement in the plea process tainted the proceedings and caused Mr. Hoover to go to trial rather than plead as he had wanted to following the ruling on his suppression motion. Although the trial court could have granted any one of the numerous requests by Mr. Hoover's counsel for a status to undue its previous Rule 11 violations, the court instead refused to address its Rule 11 violation and kept Mr. Hoover in the dark. While the district court prefaced its eventual denial of the acceptance of responsibility reduction on Mr. Hoover's pre-trial conduct, the damage at this point

had been done. The district court played games with the plea process placing Mr. Hoover in a position where he had no faith nor trust in the district court judge. The actions of the district court were not harmless; they undermine confidence in federal judiciary and caused actual prejudice to Mr. Hoover.

**C. IV. The Sixth Circuit's approach risks creating a perverse incentive and undermining the prophylactic purpose of Rule 11.**

A district judge possesses unique authority over a criminal defendant. A statement from the judge concerning plea agreements is inherently coercive on both parties. That is precisely why Rule 11(c)(1) prohibits judicial participation. The consequence of the decision below is that a defendant may have no effective remedy when such judicial intervention causes him to proceed to trial, so long as the Government can later identify circumstances that

might have affected sentencing had the defendant pleaded guilty. While Mr. Hoover accepts his burden to show that a violation of Rule 11 was not harmless error, the record in this case made clear the harm he suffered. The Sixth Circuit's emphasis on the later sentencings creates an exception that swallows the rule, making Rule 11's protection largely illusory.

**D. The decision below warrants review because it implicates this Court's plea-bargaining precedents while presenting a distinct Rule 11 question.**

This Court has recognized that plea bargaining is a critical component of the criminal justice system. In *Lafler v. Cooper*, 566 U.S. 156 (2012), the Court explained that when a defendant rejects a plea offer because of constitutionally deficient representation and proceeds to trial, the injury can consist of “having to stand trial, not choosing to waive it.” The Sixth Circuit relied upon *Lafler* by analogy. It reasoned that

the same general prejudice inquiry should apply where the breakdown in the plea process results from judicial interference rather than ineffective assistance of counsel.

The *Lafler* analogy raises an important question that this Court has not squarely resolved. The constitutional violation in *Lafler* is attributable to defense counsel. Rule 11(c)(1), by contrast, imposes a direct and categorical restriction upon the district court judge precisely because the judge's authority makes judicial participation uniquely coercive. The appropriate harmless-error inquiry therefore deserves independent consideration. At minimum, the Court should clarify that when a defendant proceeds to trial after an established Rule 11(c)(1) violation, the proceedings before that judge have been tainted and a new judge must be assigned.

## **X. CONCLUSION**

For the foregoing reasons, Mr. Hoover respectfully requests this court issue a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit.

DATED this 22nd day of September, 2026.

Respectfully submitted,



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