

No.

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IN THE SUPREME COURT OF THE UNITED STATES

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RICHARDSON BIEN AIME,

*Petitioner,*

v.

UNITED STATES OF AMERICA,

*Respondent.*

---

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

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**APPENDIX**

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# APPENDIX A

AF Approval TLK for SCN

Chief Approval 

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

UNITED STATES OF AMERICA

v.

CASE NO. 2:23-cr-134-TPB-NPM

RICHARDSON BIEN AIME

**PLEA AGREEMENT**

Pursuant to Fed. R. Crim. P. 11(c), the United States of America, by Roger B. Handberg, United States Attorney for the Middle District of Florida, and the defendant, Richardson Bien Aime, and the attorney for the defendant, Dameka Davis, mutually agree as follows:

**A. Particularized Terms**

**1. Count(s) Pleading To**

The defendant shall enter a plea of guilty to Counts Four and Five of the Indictment. Count Four charges the defendant with possession with intent to distribute a controlled substance (50 grams or more of a mixture and substance containing a detectable amount of methamphetamine), in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(B). Count Five charges the defendant with possession of a firearm by a convicted felon, in violation of 18 U.S.C. §§ 922(g)(1) and 924(e).

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2. Minimum and Maximum Penalties

Count Four is punishable by a mandatory minimum term of imprisonment of five years up to forty years, a fine of up to \$5,000,000, a term of supervised release of at least four years, and a special assessment of \$100.

Count Five is punishable by a mandatory minimum term of imprisonment of fifteen years up to live in prison, a fine of up to \$250,000, and term of supervised release of up to five years, and a special assessment of \$100.

With respect to certain offenses, the Court shall order the defendant to make restitution to any victim of the offense(s), and with respect to other offenses, the Court may order the defendant to make restitution to any victim of the offense(s), or to the community, as set forth below.

3. Elements of the Offense(s)

The defendant acknowledges understanding the nature and elements of the offense(s) with which defendant has been charged and to which defendant is pleading guilty. The elements of Count Four are:

First: the defendant knowingly possessed a controlled substance:

Second: the defendant intended to distribute the controlled substance; and

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Third: the controlled substance was 50 grams or more of a mixture and substance containing a detectable amount of methamphetamine.

The elements of Count Five are:

First: The defendant knowingly possessed a firearm in or affecting interstate or foreign commerce; and

Second: At the time the defendant possessed the firearm, he had been convicted of a crime punishable by a term of imprisonment of more than one year, and knew of the conviction; and

Third: At the time the defendant possessed the firearm, he had been sustained three or more convictions by any court for a violent felony or a serious drug offense, or both, committed on occasions different from one another.

4. Counts Dismissed

At the time of sentencing, the remaining count(s) against the defendant, Counts One, Two, and Three, will be dismissed pursuant to Fed. R. Crim. P. 11(c)(1)(A).

5. No Further Charges

If the Court accepts this plea agreement, the United States Attorney's Office for the Middle District of Florida agrees not to charge defendant with committing any other federal criminal offenses known to the United States Attorney's Office at the time of the execution of this agreement, related to the conduct giving rise to this plea agreement.

6. Acceptance of Responsibility - Three Levels

At the time of sentencing, and in the event that no adverse information is received suggesting such a recommendation to be unwarranted, the United States will recommend to the Court that the defendant receive a two-level downward adjustment for acceptance of responsibility, pursuant to USSG § 3E1.1(a). The defendant understands that this recommendation or request is not binding on the Court, and if not accepted by the Court, the defendant will not be allowed to withdraw from the plea.

Further, at the time of sentencing, if the defendant's offense level prior to operation of subsection (a) is level 16 or greater, and if the defendant complies with the provisions of USSG § 3E1.1(b) and all terms of this Plea Agreement, including but not limited to, the timely submission of the financial affidavit referenced in Paragraph B.5., the United States agrees to file a motion pursuant to USSG § 3E1.1(b) for a downward adjustment of one additional

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level. The defendant understands that the determination as to whether the defendant has qualified for a downward adjustment of a third level for acceptance of responsibility rests solely with the United States Attorney for the Middle District of Florida, and the defendant agrees that the defendant cannot and will not challenge that determination, whether by appeal, collateral attack, or otherwise.

7. Low End

At the time of sentencing, and in the event that no adverse information is received suggesting such a recommendation to be unwarranted, the United States will recommend to the Court that the defendant receive a sentence at the low end of the applicable guideline range, as calculated by the Court. The defendant understands that this recommendation or request is not binding on the Court, and if not accepted by the Court, the defendant will not be allowed to withdraw from the plea.

8. Cooperation - Substantial Assistance to be Considered

Defendant agrees to cooperate fully with the United States in the investigation and prosecution of other persons, and to testify, subject to a prosecution for perjury or making a false statement, fully and truthfully before any federal court proceeding or federal grand jury in connection with the charges in this case and other matters, such cooperation to further include a full

and complete disclosure of all relevant information, including production of any and all books, papers, documents, and other objects in defendant's possession or control, and to be reasonably available for interviews which the United States may require. If the cooperation is completed prior to sentencing, the government agrees to consider whether such cooperation qualifies as "substantial assistance" in accordance with the policy of the United States Attorney for the Middle District of Florida, warranting the filing of a motion at the time of sentencing recommending (1) a downward departure from the applicable guideline range pursuant to USSG §5K1.1, or (2) the imposition of a sentence below a statutory minimum, if any, pursuant to 18 U.S.C. § 3553(e), or (3) both. If the cooperation is completed subsequent to sentencing, the government agrees to consider whether such cooperation qualifies as "substantial assistance" in accordance with the policy of the United States Attorney for the Middle District of Florida, warranting the filing of a motion for a reduction of sentence within one year of the imposition of sentence pursuant to Fed. R. Crim. P. 35(b). In any case, the defendant understands that the determination as to whether "substantial assistance" has been provided or what type of motion related thereto will be filed, if any, rests solely with the United States Attorney for the Middle District of Florida, and the defendant

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agrees that defendant cannot and will not challenge that determination, whether by appeal, collateral attack, or otherwise.

9. Use of Information - Section 1B1.8

Pursuant to USSG §1B1.8(a), the United States agrees that no self-incriminating information which the defendant may provide during the course of defendant's cooperation and pursuant to this agreement shall be used in determining the applicable sentencing guideline range, subject to the restrictions and limitations set forth in USSG §1B1.8(b).

10. Cooperation - Responsibilities of Parties

a. The government will make known to the Court and other relevant authorities the nature and extent of defendant's cooperation and any other mitigating circumstances indicative of the defendant's rehabilitative intent by assuming the fundamental civic duty of reporting crime. However, the defendant understands that the government can make no representation that the Court will impose a lesser sentence solely on account of, or in consideration of, such cooperation.

b. It is understood that should the defendant knowingly provide incomplete or untruthful testimony, statements, or information pursuant to this agreement, or should the defendant falsely implicate or incriminate any person, or should the defendant fail to voluntarily and

unreservedly disclose and provide full, complete, truthful, and honest knowledge, information, and cooperation regarding any of the matters noted herein, the following conditions shall apply:

(1) The defendant may be prosecuted for any perjury or false declarations, if any, committed while testifying pursuant to this agreement, or for obstruction of justice.

(2) The United States may prosecute the defendant for the charges which are to be dismissed pursuant to this agreement, if any, and may either seek reinstatement of or refile such charges and prosecute the defendant thereon in the event such charges have been dismissed pursuant to this agreement. With regard to such charges, if any, which have been dismissed, the defendant, being fully aware of the nature of all such charges now pending in the instant case, and being further aware of defendant's rights, as to all felony charges pending in such cases (those offenses punishable by imprisonment for a term of over one year), to not be held to answer to said felony charges unless on a presentment or indictment of a grand jury, and further being aware that all such felony charges in the instant case have heretofore properly been returned by the indictment of a grand jury, does hereby agree to reinstatement of such charges by recision of any order dismissing them or, alternatively, does hereby waive, in open court, prosecution by indictment and consents that the United

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States may proceed by information instead of by indictment with regard to any felony charges which may be dismissed in the instant case, pursuant to this plea agreement, and the defendant further agrees to waive the statute of limitations and any speedy trial claims on such charges.

(3) The United States may prosecute the defendant for any offenses set forth herein, if any, the prosecution of which in accordance with this agreement, the United States agrees to forego, and the defendant agrees to waive the statute of limitations and any speedy trial claims as to any such offenses.

(4) The government may use against the defendant the defendant's own admissions and statements and the information and books, papers, documents, and objects that the defendant has furnished in the course of the defendant's cooperation with the government.

(5) The defendant will not be permitted to withdraw the guilty pleas to those counts to which defendant hereby agrees to plead in the instant case but, in that event, defendant will be entitled to the sentencing limitations, if any, set forth in this plea agreement, with regard to those counts to which the defendant has pled; or in the alternative, at the option of the United States, the United States may move the Court to declare this entire plea agreement null and void.

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11. Forfeiture of Assets

The defendant agrees to forfeit to the United States immediately and voluntarily any and all assets and property, or portions thereof, subject to forfeiture, pursuant to 21 U.S.C. § 853, 18 U.S.C. § 924(d), and 28 U.S.C. § 2461(c), whether in the possession or control of the United States, the defendant or defendant's nominees.

The assets to be forfeited specifically include, but are not limited to, the following: Anderson Manufacturing AM-15 rifle and a Smith & Wesson 9mm pistol, which were involved in the offense to which the defendant is pleading guilty.

The defendant agrees and consents to the forfeiture of these assets pursuant to any federal criminal, civil judicial or administrative forfeiture action. The defendant also agrees to waive all constitutional, statutory and procedural challenges (including direct appeal, habeas corpus, or any other means) to any forfeiture carried out in accordance with this Plea Agreement on any grounds, including that the forfeiture described herein constitutes an excessive fine, was not properly noticed in the charging instrument, addressed by the Court at the time of the guilty plea, announced at sentencing, or incorporated into the judgment.

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The defendant admits and agrees that the conduct described in the Factual Basis below provides a sufficient factual and statutory basis for the forfeiture of the property sought by the government. Pursuant to Rule 32.2(b)(4), the defendant agrees that the preliminary order of forfeiture will satisfy the notice requirement and will be final as to the defendant at the time it is entered. In the event the forfeiture is omitted from the judgment, the defendant agrees that the forfeiture order may be incorporated into the written judgment at any time pursuant to Rule 36.

The defendant agrees to take all steps necessary to identify and locate all property subject to forfeiture and to transfer custody of such property to the United States before the defendant's sentencing. The defendant agrees to be interviewed by the government, prior to and after sentencing, regarding such assets and their connection to criminal conduct. The defendant further agrees to be polygraphed on the issue of assets, if it is deemed necessary by the United States. The defendant agrees that Federal Rule of Criminal Procedure 11 and USSG § 1B1.8 will not protect from forfeiture assets disclosed by the defendant as part of the defendant's cooperation.

The defendant agrees to take all steps necessary to assist the government in obtaining clear title to the forfeitable assets before the defendant's sentencing. In addition to providing full and complete information

Defendant's Initials EB

about forfeitable assets, these steps include, but are not limited to, the surrender of title, the signing of a consent decree of forfeiture, and signing of any other documents necessary to effectuate such transfers. To that end, the defendant agrees to make a full and complete disclosure of all assets over which defendant exercises control directly or indirectly, including all assets held by nominees, to execute any documents requested by the United States to obtain from any other parties by lawful means any records of assets owned by the defendant, and to consent to the release of the defendant's tax returns for the previous five years. The defendant agrees to be interviewed by the government, prior to and after sentencing, regarding such assets and their connection to criminal conduct.

The defendant agrees that the United States is not limited to forfeiture of the property specifically identified for forfeiture in this Plea Agreement. If the United States determines that property of the defendant identified for forfeiture cannot be located upon the exercise of due diligence; has been transferred or sold to, or deposited with, a third party; has been placed beyond the jurisdiction of the Court; has been substantially diminished in value; or has been commingled with other property which cannot be divided without difficulty; then the United States shall, at its option, be entitled to forfeiture of any other property (substitute assets) of the defendant up to the value of any property described above. The Defendant expressly consents to the forfeiture

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of any substitute assets sought by the Government. The defendant agrees that forfeiture of substitute assets as authorized herein shall not be deemed an alteration of the defendant's sentence.

Forfeiture of the defendant's assets shall not be treated as satisfaction of any fine, restitution, cost of imprisonment, or any other penalty the Court may impose upon the defendant in addition to forfeiture.

The defendant agrees that, in the event the Court determines that the defendant has breached this section of the Plea Agreement, the defendant may be found ineligible for a reduction in the Guidelines calculation for acceptance of responsibility and substantial assistance, and may be eligible for an obstruction of justice enhancement.

The defendant agrees that the forfeiture provisions of this plea agreement are intended to, and will, survive the defendant, notwithstanding the abatement of any underlying criminal conviction after the execution of this agreement. The forfeitability of any particular property pursuant to this agreement shall be determined as if the defendant had survived, and that determination shall be binding upon defendant's heirs, successors and assigns until the agreed forfeiture, including satisfaction of any preliminary order of forfeiture for proceeds.

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12. Abandonment of Property

The United States of America and defendant hereby agree that any firearm and/or ammunition as defined in 18 U.S.C. § 921, seized from defendant and currently in the custody and/or control of the Federal Bureau of Investigation, were properly seized and are subject to forfeiture to the government according to 18 U.S.C. § 924(d) and/or that the firearms and ammunition constitute evidence, contraband, or fruits of the crime to which he/she has pled guilty. Additionally, the defendant agrees that approximately \$6,220 seized from his residence by law enforcement in or about November 2023 (the currency), constitutes proceeds of the illegal distribution of drugs and, as such, is subject to forfeiture pursuant to 21 U.S.C. §§ 853 and 881. As such, the defendant hereby relinquishes all claim, title and interest he has in the firearms, ammunition, and currency to the United States of America and agrees to the administrative forfeiture or destruction of the firearms and ammunition by the Federal Bureau of Investigation and further waives any right to receive notice of any administrative forfeiture proceeding involving the firearms, ammunition and/or the currency.

As part of the plea agreement in this case, the defendant hereby voluntarily abandons all right and claim to the Anderson Manufacturing AM-

Defendant's Initials RB

15 rifle and a Smith & Wesson 9mm pistol, which defendant illegally possessed, and \$6,220 in United States Currency, which represent drug proceeds.

**B. Standard Terms and Conditions**

1. Restitution, Special Assessment and Fine

The defendant understands and agrees that the Court, in addition to or in lieu of any other penalty, shall order the defendant to make restitution to any victim of the offense(s), pursuant to 18 U.S.C. § 3663A, for all offenses described in 18 U.S.C. § 3663A(c)(1); and the Court may order the defendant to make restitution to any victim of the offense(s), pursuant to 18 U.S.C. § 3663, including restitution as to all counts charged, whether or not the defendant enters a plea of guilty to such counts, and whether or not such counts are dismissed pursuant to this agreement. The defendant further understands that compliance with any restitution payment plan imposed by the Court in no way precludes the United States from simultaneously pursuing other statutory remedies for collecting restitution (28 U.S.C. § 3003(b)(2)), including, but not limited to, garnishment and execution, pursuant to the Mandatory Victims Restitution Act, in order to ensure that the defendant's restitution obligation is satisfied.

On each count to which a plea of guilty is entered, the Court shall impose a special assessment pursuant to 18 U.S.C. § 3013. The special assessment is due on the date of sentencing.

The defendant understands that this agreement imposes no limitation as to fine.

2. Supervised Release

The defendant understands that the offense(s) to which the defendant is pleading provide(s) for imposition of a term of supervised release upon release from imprisonment, and that, if the defendant should violate the conditions of release, the defendant would be subject to a further term of imprisonment.

3. Immigration Consequences of Pleading Guilty

The defendant has been advised and understands that, upon conviction, a defendant who is not a United States citizen may be removed from the United States, denied citizenship, and denied admission to the United States in the future.

4. Sentencing Information

The United States reserves its right and obligation to report to the Court and the United States Probation Office all information concerning the background, character, and conduct of the defendant, to provide relevant

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factual information, including the totality of the defendant's criminal activities, if any, not limited to the count(s) to which defendant pleads, to respond to comments made by the defendant or defendant's counsel, and to correct any misstatements or inaccuracies. The United States further reserves its right to make any recommendations it deems appropriate regarding the disposition of this case, subject to any limitations set forth herein, if any.

5. Financial Disclosures

Pursuant to 18 U.S.C. § 3664(d)(3) and Fed. R. Crim. P. 32(d)(2)(A)(ii), the defendant agrees to complete and submit to the United States Attorney's Office within 30 days of execution of this agreement an affidavit reflecting the defendant's financial condition. The defendant promises that his financial statement and disclosures will be complete, accurate and truthful and will include all assets in which he has any interest or over which the defendant exercises control, directly or indirectly, including those held by a spouse, dependent, nominee or other third party. The defendant further agrees to execute any documents requested by the United States needed to obtain from any third parties any records of assets owned by the defendant, directly or through a nominee, and, by the execution of this Plea Agreement, consents to the release of the defendant's tax returns for the previous five years. The defendant similarly agrees and authorizes the United States Attorney's Office to

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provide to, and obtain from, the United States Probation Office, the financial affidavit, any of the defendant's federal, state, and local tax returns, bank records and any other financial information concerning the defendant, for the purpose of making any recommendations to the Court and for collecting any assessments, fines, restitution, or forfeiture ordered by the Court. The defendant expressly authorizes the United States Attorney's Office to obtain current credit reports in order to evaluate the defendant's ability to satisfy any financial obligation imposed by the Court.

6. Sentencing Recommendations

It is understood by the parties that the Court is neither a party to nor bound by this agreement. The Court may accept or reject the agreement, or defer a decision until it has had an opportunity to consider the presentence report prepared by the United States Probation Office. The defendant understands and acknowledges that, although the parties are permitted to make recommendations and present arguments to the Court, the sentence will be determined solely by the Court, with the assistance of the United States Probation Office. Defendant further understands and acknowledges that any discussions between defendant or defendant's attorney and the attorney or other agents for the government regarding any recommendations by the government are not binding on the Court and that, should any recommendations be rejected,

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defendant will not be permitted to withdraw defendant's plea pursuant to this plea agreement. The government expressly reserves the right to support and defend any decision that the Court may make with regard to the defendant's sentence, whether or not such decision is consistent with the government's recommendations contained herein.

7. Defendant's Waiver of Right to Appeal the Sentence

The defendant agrees that this Court has jurisdiction and authority to impose any sentence up to the statutory maximum and expressly waives the right to appeal defendant's sentence on any ground, including the ground that the Court erred in determining the applicable guidelines range pursuant to the United States Sentencing Guidelines, except (a) the ground that the sentence exceeds the defendant's applicable guidelines range as determined by the Court pursuant to the United States Sentencing Guidelines; (b) the ground that the sentence exceeds the statutory maximum penalty; or (c) the ground that the sentence violates the Eighth Amendment to the Constitution; provided, however, that if the government exercises its right to appeal the sentence imposed, as authorized by 18 U.S.C. § 3742(b), then the defendant is released from his waiver and may appeal the sentence as authorized by 18 U.S.C. § 3742(a).

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8. Middle District of Florida Agreement

It is further understood that this agreement is limited to the Office of the United States Attorney for the Middle District of Florida and cannot bind other federal, state, or local prosecuting authorities, although this office will bring defendant's cooperation, if any, to the attention of other prosecuting officers or others, if requested.

9. Filing of Agreement

This agreement shall be presented to the Court, in open court or in camera, in whole or in part, upon a showing of good cause, and filed in this cause, at the time of defendant's entry of a plea of guilty pursuant hereto.

10. Voluntariness

The defendant acknowledges that defendant is entering into this agreement and is pleading guilty freely and voluntarily without reliance upon any discussions between the attorney for the government and the defendant and defendant's attorney and without promise of benefit of any kind (other than the concessions contained herein), and without threats, force, intimidation, or coercion of any kind. The defendant further acknowledges defendant's understanding of the nature of the offense or offenses to which defendant is pleading guilty and the elements thereof, including the penalties provided by law, and defendant's complete satisfaction with the representation and advice

received from defendant's undersigned counsel (if any). The defendant also understands that defendant has the right to plead not guilty or to persist in that plea if it has already been made, and that defendant has the right to be tried by a jury with the assistance of counsel, the right to confront and cross-examine the witnesses against defendant, the right against compulsory self-incrimination, and the right to compulsory process for the attendance of witnesses to testify in defendant's defense; but, by pleading guilty, defendant waives or gives up those rights and there will be no trial. The defendant further understands that if defendant pleads guilty, the Court may ask defendant questions about the offense or offenses to which defendant pleaded, and if defendant answers those questions under oath, on the record, and in the presence of counsel (if any), defendant's answers may later be used against defendant in a prosecution for perjury or false statement. The defendant also understands that defendant will be adjudicated guilty of the offenses to which defendant has pleaded and, if any of such offenses are felonies, may thereby be deprived of certain rights, such as the right to vote, to hold public office, to serve on a jury, or to have possession of firearms.

11. Factual Basis

Defendant is pleading guilty because defendant is in fact guilty. The defendant certifies that defendant does hereby admit that the facts set forth

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below are true, and were this case to go to trial, the United States would be able to prove those specific facts and others beyond a reasonable doubt.

### FACTS

On November 2, 2023, the Federal Bureau of Investigation (FBI) executed a search warrant at Richardson Bien Aime's residence within the Middle District of Florida. The FBI had obtained probable cause to search the residence based, in part, upon purchasing controlled substances from Bien Aime at the residence on three occasions as charged in Counts One, Two, and Three of the Indictment.

Within the master bedroom of the residence, the FBI observed and seized an Anderson Manufacturing AM-15 rifle and a Smith & Wesson 9mm pistol. In the vanity of the master bathroom, the FBI seized multiple clear plastic baggies (approximately one ounce each) of a clear, crystalline substance. Subsequent testing conducted by the Drug Enforcement Administration confirmed that the substance was approximately 219.1 grams of pure methamphetamine hydrochloride. Bien Aime intended to distribute the methamphetamine to others and he possessed the two firearms to protect himself and his drug business.

Law enforcement also recovered a plastic bag containing drug proceeds of various denominations totaling \$6,220 hanging on the door of the master bedroom.

The FBI arrested Bien Aime at his place of work on that same date as the execution of the search warrant. Upon his arrest, Bien Aime stated any drugs within the premises belonged to him. Bien Aime also admitted that he had an AR-15 style rifle and a 9mm handgun in the residence and that his DNA would be found on them.

A specialist with the Bureau of Alcohol, Tobacco, Firearms, and Explosives examined the firearms and determined that both met the federal definition of a firearm. The specialist further determined that the AM-15 rifle was manufactured in Kentucky and the Smith and Wesson pistol was manufactured in Connecticut, thus traveling in, and affecting, interstate commerce before coming into Bien Aime's possession.

At the time of his arrest in this case Bien Aime was aware that he was a convicted felon. Bien Aime had been convicted of the following felonies, three or more of which are serious drug offenses committed on occasions different from one another:

- a. Manslaughter, on or about January 26, 2012;

- b. Possession of Cocaine with Intent to Deliver, committed on or about January 27, 2011, judgment entered on or about January 3, 2012;
- c. Possession of Cocaine, judgment entered on or about January 3, 2012;
- d. Possession of Cocaine, judgment entered on or about January 3, 2012;
- e. Sale of Cocaine, committed on or about February 3, 2010, judgment entered on or about January 3, 2012;
- f. Sale of Heroin, committed on or about April 1, 2015, judgment entered on or about December 14, 2015;
- g. Possession of a Controlled Substance w/o Prescription, judgment entered on or about December 14, 2015;
- h. Possession of Cocaine, judgment entered on or about January 5, 2016;
- i. Possession of a Controlled Substance w/o Prescription, judgment entered on or about January 5, 2016;
- j. Possession of Heroin, judgment entered on or about November 1, 2018; and
- k. Possession of Cocaine, judgment entered on or about November 1, 2018.

12. Entire Agreement

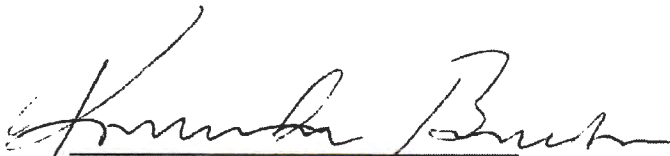
This plea agreement constitutes the entire agreement between the government and the defendant with respect to the aforementioned guilty plea and no other promises, agreements, or representations exist or have been made to the defendant or defendant's attorney with regard to such guilty plea.

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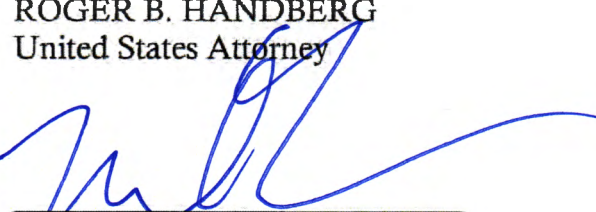
13. Certification

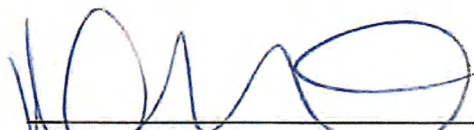
The defendant and defendant's counsel certify that this plea agreement has been read in its entirety by (or has been read to) the defendant and that defendant fully understands its terms.

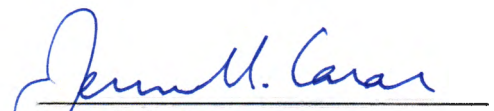
DATED this 15<sup>th</sup> day of March 2024.

  
Richardson Bien Aime  
Defendant

ROGER B. HANDBERG  
United States Attorney

  
Michael V. Leeman  
Assistant United States Attorney

  
Dameka Davis  
Attorney for Defendant

  
Jesus M. Casas  
Assistant United States Attorney  
Chief, Fort Myers Division

Defendant's Initials RB

# APPENDIX B

1 UNITED STATES DISTRICT COURT

2 MIDDLE DISTRICT OF FLORIDA

3 - - - - - X 2:23-CR-134  
4 UNITED STATES OF AMERICA  
Plaintiff  
5 Vs. Fort Myers, Florida  
6 RICHARDSON BIEN AIME,  
Defendant June 11, 2024  
- - - - - X

7 TRANSCRIPT OF PLEA HEARING  
8 BEFORE THE HONORABLE NICHOLAS P. MIZELL  
9 UNITED STATES MAGISTRATE JUDGE

10 U.S. ATTORNEY'S OFFICE.  
11 BY: MICHAEL V. LEEMAN, ESQ.  
Room 3-137  
2110 First Street  
Fort Myers, Florida 33901  
12 Appearing for the Plaintiff

13 DAVIS LEGAL CENTER  
14 BY: DAMEKA LACHELLE DAVIS, ESQ.  
2719 Hollywood Boulevard, A-1187  
Hollywood, Florida 33021  
15 Appearing for the Defendant

16  
17  
18  
19  
20  
21  
22 COURT REPORTER: Brandi A. Wilkins  
23 scalisba@gmail.com  
Fort Myers Federal Building  
24 2110 First Street  
Fort Myers, Florida 33901  
25

1           THE CLERK:   Calling case 2:23-CR-134, United  
2       States of America versus Richardson Bien Aime.

3           MR. LEEMAN:   Good morning.   Michael Leeman  
4       on behalf of the United States.

5           THE COURT:   Morning.

6           MS. DAVIS:   Good morning.   This is Attorney  
7       Davis here on behalf of the defendant Richardson Bien  
8       Aime who is seated to my left present and before this  
9       Court currently in custody.   Good morning, everyone.

10          THE COURT:   All right.   Good morning.   Well,  
11       before we get underway, I just wanted to get an update  
12       on the status.   I understand we had a hearing like  
13       this a couple months ago before Judge Rice, and you  
14       were here with Judge Barber.   You know, I just want to  
15       touch base and make sure we're all on the same page  
16       about everything and we're going forward with this  
17       plea colloquy on this plea agreement.   So everything  
18       is in order?

19          MS. DAVIS:   Yes, Your Honor.   Good morning,  
20       Judge.   Thank you so much for allowing us an  
21       opportunity to kind of make sure the record is clear.

22          Judge, we had a prior change of plea hearing  
23       that was scheduled.   We did essentially stop that  
24       hearing.   My client wanted me to look into some  
25       documents, some Giglio documents, to which I did do.

1 I also went to the Government's office and  
2 reviewed some non Giglio documented and reported  
3 everything to my client. We then subsequently had a  
4 hearing because he -- the defense filed a motion to  
5 withdraw.

6 And Judge Barber did conduct a hearing on  
7 that, and he did deny our motion to withdraw. I  
8 answered all of Mr. Bien Aime's questions and he has  
9 confirmed with me as of last -- as of earlier this  
10 week that he intends to move forward with the change  
11 of plea hearing this morning.

12 THE COURT: All right. And probably  
13 understands we have a standard script we go through  
14 and he's probably heard half of it already so you've  
15 already kind of walked through all of that as well and  
16 there will be no surprises.

17 MS. DAVIS: Yes, Your Honor.

18 THE COURT: All right. Very good, very  
19 good. Well, we'll go ahead and get underway. I do  
20 have the consent to proceed before me and a waiver of  
21 the objection period for the report that we'll issue  
22 after today's proceedings. So with all of that, we'll  
23 go ahead and proceed. So let's see. Am I saying this  
24 right? Mr. Bien Aime?

25 THE DEFENDANT: Yes, sir.

1           THE COURT: Okay. And again, probably  
2     you've already heard a lot of these questions already  
3     from Judge Rice, but I'm going to kind of run through  
4     the whole thing as well from end to end, and  
5     essentially, we're here to do three things.

6           Obviously, we're going to discuss your plea  
7     agreement, and essentially, I'm here to make sure  
8     you're fully competent and capable of making an  
9     informed plea, that you are aware of the nature of the  
10    charges and consequences of pleading guilty and that  
11    any plea of guilty is made knowingly voluntarily and  
12    supported by facts to satisfy the elements to the  
13    charged offense to which you're pleading guilty.

14          So along those lines, I'll need to ask you  
15    several questions under oath. I'll ask for Wendy to  
16    place you under oath.

17          THE CLERK: Please stand and raise your  
18    right hand.

19          R I C H A R D S O N   B I E N   A I M E, after  
20    having been duly called and sworn, testified as  
21    follows:

22          THE CLERK: Thank you. You may be seated.

23          THE COURT: Ms. Davis, can you make sure  
24    that microphone is a little closer to the defendant to  
25    make sure --

1 MS. DAVIS: Yes, sir.

2 THE COURT: -- we can pick him up well.  
3 Okay. Thank you. All right. Mr. Bien Aime, you  
4 understand you are now under oath, and if you answer  
5 any of my questions falsely, you could be prosecuted  
6 in another action for perjury or false statement?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Would you please state your full  
9 name?

10 THE DEFENDANT: Richardson Bien Aime.

11 THE COURT: I'm sorry?

12 THE DEFENDANT: Richardson Bien Aime.

13 THE COURT: And again, this is all being  
14 recorded, so we need to make sure we have a clear  
15 recording.

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Where were you born?

18 THE DEFENDANT: Miami, Florida.

19 THE COURT: How old are you?

20 THE DEFENDANT: I'm 34.

21 THE COURT: And how far did you go in  
22 school?

23 THE DEFENDANT: 12th grade.

24 THE COURT: Have you been treated recently  
25 for any mental illness or drug addiction?

1 THE DEFENDANT: No mental illness, but I  
2 took a drug course and (inaudible) course.

3 THE COURT: A drug course?

4 THE DEFENDANT: Yeah.

5 THE COURT: That was to --

6 THE DEFENDANT: (Inaudible)

7 THE COURT: Okay. All right. Kind of a  
8 substance abuse treatment type thing?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: All right, but right now, you  
11 are not taking any prescription medications?

12 THE DEFENDANT: No, sir.

13 THE COURT: You are not under the influence  
14 of any controlled substance?

15 THE DEFENDANT: No, sir.

16 THE COURT: You are clear headed and  
17 understanding everything you're doing today?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: All right. Not under the  
20 influence of anything that might impair your ability  
21 to understand what we're talking about?

22 THE DEFENDANT: No, sir.

23 THE COURT: All right. Very good. You've  
24 received a copy of the indictment and discussed the  
25 charges and the case in general with your lawyer?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And you are fully satisfied of  
3 the advice and counsel given to you in this matter by  
4 your lawyer?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Okay. I understand the plea  
7 agreement -- or your plea is being made pursuant to a  
8 plea agreement, and let's make sure we're all looking  
9 at the same thing.

10 I have a 25 page plea agreement dated March  
11 15, 2024, and looks like it has your signature on the  
12 last page. So are we -- is that your signature? Are  
13 we all looking at the same agreement?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Okay. And it looks like you  
16 initialled all the pages leading up to that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Okay. All right. Very good.  
19 And I take it you -- you had the chance to read this  
20 agreement and discuss it with your lawyer before you  
21 signed it?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And you understand the terms of  
24 your plea agreement?

25 THE DEFENDANT: Yes, sir.

1           THE COURT: Has anyone given you any  
2 promises or assurances of any kind that are not in the  
3 plea agreement that you should sign it and plead  
4 guilty?

5           THE DEFENDANT: No, sir.

6           THE COURT: Anyone threaten you or force you  
7 in any way to sign this plea agreement and plead  
8 guilty today?

9           THE DEFENDANT: No, sir.

10          THE COURT: Are you pleading guilty of your  
11 own free will because you are in fact guilty?

12          THE DEFENDANT: Yes, sir.

13          THE COURT: Very well. I will advise that  
14 given the nature of the plea agreement for whatever  
15 reason the District Judge decides not to accept it  
16 you'll be given an opportunity to withdraw your plea.

17          THE DEFENDANT: Yes, sir.

18          THE COURT: All right. The plea agreement  
19 contemplates a plea of guilty to Counts 4 and 5 of the  
20 five count indictment, and we'll talk about potential  
21 penalties. So I mean, as you have discussed in your  
22 plea agreement, Count 4 is the possession with intent  
23 to distribute a controlled substance, looks like 50  
24 grams or more of methamphetamine. Count 5 is the  
25 possession of it appears to be -- it is set out in

1 here two firearms by a previously convicted felon.

2 So Count 4 is punishable by a mandatory term  
3 of imprisonment of 5 years up to 40 years up to \$5  
4 million, a term of supervised release of at least four  
5 years and a special assessment of \$100, and Count 5 is  
6 punishable by a mandatory minimum term of imprisonment  
7 of 15 years up to life, fine of \$250,000, a term of  
8 supervised release of up to five years, special  
9 assessment of \$100.

10 If you violate the terms of your supervised  
11 release, it might follow a term of incarceration. You  
12 could be given initial time in prison, and as set out  
13 in your plea agreement, there could also be -- you  
14 have also agreed to abandon or certain forfeiture of  
15 firearms and some currency. You also do owe  
16 restitution to the victims. So do you understand all  
17 of these potential consequences of pleading guilty?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: All right. You also understand  
20 that these -- these two counts are felony offenses,  
21 and an adjudication of you're guilty of these felonies  
22 will deprive you of some civil rights like the right  
23 to vote, serve on a jury, possess a firearm, that kind  
24 of thing?

25 THE DEFENDANT: Yes, sir.

1           THE COURT: Let's talk for a moment about  
2 how a guilty plea means there will be no trial. You  
3 do have a right to maintain a not guilty plea and  
4 proceed to a jury trial in this matter. You will be  
5 presumed innocent. The Government would have to prove  
6 your guilty beyond a reasonable doubt.

7           You would continue to have the assist of  
8 your lawyer at trial and every other stage of the  
9 proceeding. You would have the opportunity to  
10 question the Government's witnesses, challenge any  
11 evidence they might offer and also have the  
12 opportunity to offer your own evidence and even compel  
13 the attendance of witnesses to your defense.

14           Do you understand all of these trial rights  
15 I just talked about?

16           THE DEFENDANT: Yes, sir.

17           THE COURT: Do you also understand that if  
18 you were to go to trial and decide not to testify,  
19 your silence could not be used against you?

20           THE DEFENDANT: Yes, sir.

21           THE COURT: And do you understand that if  
22 the Court accepts the plea of guilty from you there  
23 will be no trial and you'll have given up all of these  
24 trial rights that we just talked about?

25           THE DEFENDANT: Yes, sir.

1           THE COURT: Let's talk for a moment about  
2     sentencing. Ultimately, your sentence will be  
3     determined by a combination of the advisory sentencing  
4     guidelines, and possible departures from those  
5     guidelines are all set out in the statute. Have you  
6     talked to your attorney about how sentencing  
7     guidelines might apply in your case?

8           THE DEFENDANT: Yes, sir.

9           THE COURT: Do you understand your sentence  
10    could be greater or lesser than the guideline  
11    sentence?

12          THE DEFENDANT: Yes, sir.

13          THE COURT: Do you understand your sentence  
14    could be different from any estimate your attorney  
15    might have given you?

16          THE DEFENDANT: Yes, sir.

17          THE COURT: You also understand that your  
18    plea agreement has a waiver of your right to appeal  
19    your sentence other than those four exceptions?

20          THE DEFENDANT: Um.

21          THE COURT: In your plea agreement, you  
22    waive your right to appeal the sentence other than  
23    there's four exceptions set out there?

24          THE DEFENDANT: Yes, sir.

25          THE COURT: Okay. All right. Let's turn to

1 the factual basis for the contemplated plea. So  
2 again, your plea agreement contemplates the plea of  
3 guilty to Counts 4 and 5. There's a factual basis set  
4 out Pages 22 through 24.

5 You certify in your plea agreement that all  
6 these facts are true. Just want to make sure, now you  
7 are under oath, do you continue to certify all the  
8 facts set out from Pages 22 to 24 are true? Do you  
9 agree with them beyond a reasonable doubt at trial?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Okay. And all of this is being  
12 offered to satisfy any elements that are set out on  
13 pages two and three, the elements of the two offenses  
14 Counts 4 and 5. So again, just to make sure just to  
15 (inaudible) a little bit, this all has to do with the  
16 indictment, the events on November 2, 2023.

17 Do you understand that by entering a plea of  
18 guilty you are admitting that on November 2 of 2023 in  
19 the Village of Florida that you possessed 50 grams or  
20 more of methamphetamine?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And you intended to distribute  
23 that methamphetamine to others?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: All right. And also on that

1 same date you possessed the -- looks like an AM15  
2 rifle by Anderson Manufacturing and a Smith and Wesson  
3 9 millimeter pistol?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And on that date -- well, prior  
6 to that date, you had been convicted of a felony?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And you knew that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: All right. All right. Mr.  
11 Leeman, do we need to inquire about the factual basis  
12 of the agreement?

13 MR. LEEMAN: Just one moment, Your Honor.  
14 Given that he's charged as an armed career criminal,  
15 it is an element of the offense that must be admitted  
16 that three of his prior felony convictions for violent  
17 felonies or drug offenses were committed on occasions  
18 different from one another.

19 THE COURT: Okay. So the -- I see the list  
20 of offenses on page three of the indictment again, so  
21 we need the defendant to acknowledge that three or  
22 more of these happened on -- are different occurrences  
23 on different dates?

24 MR. LEEMAN: Yes, Your Honor.

25 THE COURT: Or any of these ones that we

1       need to talk about?

2               MR. LEEMAN: Well, yes, I -- the  
3       manslaughter conviction occurred on January 26, 2012.  
4       The sale of cocaine offense listed in Paragraph E was  
5       committed on February 3, 2010. A judgment was entered  
6       on it on January 3, 2012.

7               Paragraph F, the sale of heroin was  
8       committed on April 1, 2015. Judgment entered on or  
9       about December 14, 2015. And then I'm sorry. I  
10      skipped over Paragraph B, possession of cocaine with  
11      an intent to deliver was committed on or about January  
12      27, 2011, and a judgment entered on January 3, 2012.

13              THE COURT: Okay. Very well, so Mr. Bien  
14      Aime, I need you to as part of this process admit that  
15      these four offenses I just talked about with the U.S.  
16      Attorney, these are all separate occurrences.

17              MS. DAVIS: Your Honor, if I may just have  
18      one moment, please?

19              THE COURT: Sure.

20              MS. DAVIS: Thanks, Your Honor.

21              THE COURT: Yes. Thank you.

22              (There was a discussion off the record.)

23              MS. DAVIS: Thank you, Your Honor. I had an  
24      opportunity to go over it with Mr. Bien Aime.

25              THE COURT: Okay. Very well. Mr. Leeman,

1       that's essentially what we need the defendant also in  
2       regards to this?

3               MR. LEEMAN: That's right, Your Honor.

4               THE COURT: Okay. So Mr. Bien Aime, do you  
5       need me to ask the question again?

6               THE DEFENDANT: Yes, Your Honor.

7               THE COURT: Do you still remember it?

8               THE DEFENDANT: Um.

9               THE COURT: I'll go ahead and ask it again.  
10      All right. So we were talking about these four  
11      offenses, the manslaughter committed on or about  
12      January 26 of 2012, possession of cocaine with intent  
13      to deliver committed on or about January 27, 2011,  
14      sale of cocaine committed on or about February 3 of  
15      2010, and sale of heroin committed on or about April  
16      1, 2015, and do you admit these are all separate  
17      occurrences?

18              THE DEFENDANT: Yes, Your Honor. They are  
19      all separate occurrences.

20              THE COURT: All right. Very well. Mr.  
21      Leeman, anything else?

22              MR. LEEMAN: No, Your Honor.

23              THE COURT: All right. Very good. With all  
24      of that, I believe we have an adequate factual basis,  
25      both what's stated in the plea agreement and the

1       answers under oath by the defendant each independently  
2       provide that.

3               So Mr. Bien Aime, how do you plead to Count  
4       4 of the indictment, that's the possession with the  
5       intent to distribute 50 grams or more of  
6       methamphetamine, guilty or not guilty?

7               THE DEFENDANT: I plead guilty.

8               THE COURT: And Count 5 of the indictment,  
9       the possession of a firearm by a previously convicted  
10      felon, guilty or not guilty?

11              THE DEFENDANT: I plead guilty.

12              THE COURT: Okay. I will recommend the  
13      District Judge accept your plea. A report is going to  
14      be put together by the probation office to help the  
15      District Judge arrive at a sentence. You are going to  
16      be asked to supply information for that report.

17              You can have your attorney with you during  
18      that process if you would like. You'll have an  
19      opportunity to review that before and note any  
20      objections you might have, and then you and your  
21      counsel will sign and you can speak on your behalf at  
22      your sentencing hearing and that will soon be sent by  
23      a separate notice. Anything else we need to talk  
24      about today before we go?

25              MR. LEEMAN: No, Your Honor.

1 THE COURT: From the defense?

2 MS. DAVIS: Nothing from the defense, Your  
3 Honor.

4 THE COURT: Okay. Very well. All right.  
5 We'll be in recess. Thank you.

6 (Proceeding concluded at 11:20 a.m.)  
7

8 **CERTIFICATE OF COURT REPORTER**

9 I certify that this is a true and accurate  
10 record of proceedings in the United States Magistrate  
11 Court for the Middle District of Florida before the  
12 Honorable Nicholas P. Mizell on June 11, 2024.  
13

14 S/ Brandi A. Wilkins

15 Brandi A. Wilkins

16 Official Court Reporter  
17  
18  
19  
20  
21  
22  
23  
24  
25

# APPENDIX C

NOT FOR PUBLICATION

In the  
United States Court of Appeals  
For the Eleventh Circuit

---

No. 25-13556  
Non-Argument Calendar

---

UNITED STATES OF AMERICA,

*Plaintiff-Appellee,*

*versus*

RICHARDSON BIEN AIME,

*Defendant-Appellant.*

---

Appeal from the United States District Court  
for the Middle District of Florida  
D.C. Docket No. 2:23-cr-00134-TPB-NPM-1

---

Before JILL PRYOR, BRANCH, and ANDERSON, Circuit Judges.

PER CURIAM:

Richardson Bien Aime appeals his conviction for possession with intent to distribute 50 grams or more of methamphetamine and possession of a firearm as a convicted felon. He argues that

the district court erred by failing to sua sponte inquire into a potential conflict of interest during his plea hearing where his trial counsel represented him in accepting an appeal waiver that precluded him from raising a claim of ineffective assistance of counsel on direct appeal and in a 28 U.S.C. § 2255 proceeding.

Questions involving conflicts of interest are mixed determinations of fact and law and are reviewed de novo. *United States v. Novaton*, 271 F.3d 968, 1010 n.10 (11th Cir. 2001).

“In criminal cases, an attorney’s conflict of interest may deprive a defendant of his Sixth Amendment right to assistance of counsel.” *United States v. Jones*, 52 F.3d 924, 925 (11th Cir. 1995). If no objection is raised at trial, a defendant can establish a violation of the Sixth Amendment by showing that “an actual conflict of interest adversely affected his lawyer’s performance.” *Novaton*, 271 F.3d at 1010 (quoting *Cuyler v. Sullivan*, 446 U.S. 335, 348 (1980); see also *Mickens v. Taylor*, 535 U.S. 162, 164, 174 75 (2002) (providing that, if the trial court did not inquire into a potential conflict of interest about which it knew or reasonably should have known, a defendant must show that the conflict of interest actually affected his counsel’s performance). The mere possibility of a conflict of interest is “insufficient to impugn a criminal conviction.” *Cuyler*, 446 U.S. at 350.

To prove that an “actual conflict” affected the defendant’s lawyer’s performance, the defendant “must make a factual showing of inconsistent interests or point to specific instances in the record to suggest an actual impairment of his or her interests.” *Novaton*,

271 F.3d at 1010-11 (quotation marks omitted). To demonstrate an adverse effect, the defendant must show: (1) the existence of a plausible, alternative defense strategy or tactic that might have been pursued; (2) that the alternative strategy or tactic was reasonable under the facts; and (3) a link between the actual conflict and the decision to forgo the alternative strategy or tactic. *Id.* at 1011.

Automatic reversal of a sentence is limited only to circumstances where defense counsel is forced to represent codefendants over a timely objection. *Dallas v. Warden*, 964 F.3d 1285, 1303 (11th Cir. 2020) (citing *Mickens*, 535 U.S. at 168). In the absence of joint representation of codefendants, where a trial court fails to adequately investigate any other type of conflict of interest that it knows or reasonably should know about, “reversal is only warranted if the petitioner shows an actual conflict that negatively affected his attorney’s performance.” *Dallas*, 964 F.3d. at 1303 04.

“We will not generally consider claims of ineffective assistance of counsel raised on direct appeal where the district court did not entertain the claim nor develop a factual record.” *United States v. Bender*, 290 F.3d 1279, 1284 (11th Cir. 2002).

Bien Aime has not shown that an actual conflict of interest existed because he did not object to the conflict below, it is not clear that the appeal waiver bars a claim of ineffective assistance of counsel, and he fails to show that an actual conflict adversely affected his sentencing counsel’s representation. Bien Aime did not raise an objection to the waiver at his plea or sentencing hearing, so to show a violation of his right to independent counsel he must show that

there was an actual conflict with adversely affected his counsel's representation. *Novaton*, 271 F.3d at 1010.

It is unclear from the record, nor does the government contend, that Bien Aime's appeal waiver bars a claim of ineffective assistance of counsel. Bien Aime's appeal waiver does not mention collateral challenges or ineffective assistance of counsel. Bien Aime initially claimed that he could not raise the ineffective assistance of counsel claim on either direct appeal or in a § 2255 motion, but he raised that exact claim in his § 2255 motion, which was granted, allowing him to file this direct appeal. Bien Aime only established that there is a possibility the appeal waiver would bar his ineffective assistance of counsel claim on direct appeal, which is not sufficient to establish an actual conflict. *See Cuyler*, 446 U.S. at 350. Bien Aime also fails to show that his trial counsel had an inconsistent interest because he does not point to any instance in the record, besides the appeal waiver, that suggests his counsel's interests were impaired. *See Novaton*, 271 F.3d at 1010-11.

Even if Bien Aime were able to show a conflict, he fails to show that the potential conflict adversely affected his counsel's performance because he does not point to the existence of a plausible, alternative defense strategy that might have been pursued, beyond not to taking the plea deal which, as discussed, has not been shown to actually preclude him from raising the ineffective assistance of counsel claim. *See Novaton*, 271 F.3d at 1011.

25-13556

Opinion of the Court

5

The automatic reversal standard is also inapplicable here because Bien Aime does not complain that his trial counsel was representing a codefendant. *See Dallas*, 964 F.3d at 1303. Bien Aime's contention that *Dallas* does not apply is incorrect: *Dallas* is the controlling precedent in this Circuit regarding automatic reversal and does not require such reversal here based on the alleged conflict of interest. *Dallas*, 964 F.3d at 1303-04. Moreover, *Dallas* simply applied the Supreme Court's test from *Cuyler*, 446 U.S. at 349-50, which required a showing that an actual conflict of interest adversely affected defense counsel's performance.

Because Bien Aime has not shown that an actual conflict existed, and even if he did, he failed to show that the potential conflict adversely affected his counsel's performance,<sup>1</sup> the district court did not err by failing to sua sponte inquire into and dispose of the potential conflict of interest.

AFFIRMED.

---

<sup>1</sup> Although Bien Aime argues that there was a plausible alternative defense strategy—i.e. recommending against the signing the appeal waiver—he fails to demonstrate that such strategy was reasonable under the facts, as required by *Novaton*, 271 F.3d at 1011. And, in any event, the waiver did not actually preclude him from raising the ineffective assistance of counsel claim.

# APPENDIX D

IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE  
ELEVENTH CIRCUIT  
ATLANTA, GEORGIA

---

APPEAL NO: 25-13556-DD

---

UNITED STATES OF AMERICA  
Plaintiff/Appellee

Versus

RICHARDSON BIEN AIME  
Defendant/Appellant

---

APPEAL FROM THE  
UNITED STATES DISTRICT COURT  
FOR THE  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS, FLORIDA

2:23-cr-00134-TPB-NPM-1

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PETITION FOR PANEL REHEARING

---

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APPEAL NO: 25-13556-DD

*United States of America v. Richardson Bien Aime*

**CERTIFICATE OF INTERESTED PERSONS**  
**AND CORPORATE DISCLOSURE STATEMENT**

Pursuant to 11<sup>th</sup> Cir. R. 26-1, I hereby certify that the persons listed below are interested in the outcome of this case:

1. Barber, Thomas, United States District Judge;
2. Bien Aime, Richardson, Appellant;
3. Chase, Dane K., Esq., Appellate counsel for Appellant;
4. Hall, Alec Fitzgerald, Federal Defender;
5. Handberg, Roger B., United States Attorney;
6. Lachelle Davis, Dameka, Trial counsel for Appellant;
7. Leeman, Michael V., Assistant United States Attorney;
8. Mizell, Nicholas P., United States Magistrate Judge;
9. Muench, James A., Assistant United States Attorney;
10. Rosenthal, Russel K., Trial counsel for Appellant;

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## **ARGUMENT AND CITATION OF AUTHORITY**

### **I. THE DISTRICT COURT REVERSIBLY ERRED BY FAILING TO INQUIRE INTO AN APPARENT CONFLICT OF INTEREST BETWEEN MR. BIEN AIME AND HIS COUNSEL.**

In this Court’s September 3, 2026 Opinion, it asserts “[i]t is unclear from the record, nor does the government contend, that Bien Aime’s appeal waiver bars a claim of ineffective assistance of counsel.” *United States v. Bien Aime*, No. 25-13556, 2026 WL 2606886, at \*1 (11th Cir. Sept. 3, 2026). If it is unclear whether the waiver bars a claim of ineffective assistance of counsel, then Judge Prior was wrong when she took part in the dismissal of the appeal in *United States v. Pannullo*, 709 F. App’x 683 (11th Cir. 2018) because the defendant’s appellate waiver precluded him from raising a claim of ineffective assistance of counsel on direct appeal. So too was Judge Anderson when he did the same in *United States v. Payan*, 760 F. App’x 889 (11th Cir. 2019). It would seem then that those appeals would require reinstatement, but as Judges Prior and Anderson have previously concluded, it is not at all unclear whether the waiver does so, as *Williams v. United States*, 396 F.3d 1340 (11th Cir. 2005), clearly precludes a defendant who signed an appellate waiver from raising a claim of ineffective assistance of sentencing counsel on direct appeal. *See, Pannullo*, 709 F. App’x at 683–84 (citing, *Williams*, 396 F.3d at 1342 for the proposition that a “defendant cannot avoid

application of an appeal waiver by recasting a sentencing challenge as an ineffective-assistance-of-counsel claim”); *Payan*, 760 F. App'x at 892 (“We have held that a defendant waived his ineffective-assistance-of-counsel-claim regarding counsel's performance during sentencing because ‘a contrary result would permit a defendant to circumvent the term of the sentence-appeal waiver simply by recasting a challenge to his sentence as a claim of ineffective assistance, thus rendering the waiver meaningless.’”)(quoting, *Williams*, 396 F.3d at 1342)(citations omitted).

This Court also points out that Mr. Bien Aime filed a successful § 2255 motion, which it ostensibly concludes is evidence the waiver does not preclude Mr. Bien Aime from raising a claim of ineffective assistance of sentencing counsel. However, Mr. Bien Aime’s argument is that the waiver precludes him from raising a claim of ineffective assistance of counsel concerning his sentencing representation. See, (Initial Brief, at PDF 18). The order granting Mr. Bien Aime’s § 2255 motion concerned only a claim that counsel failed to file a notice of appeal and therefore performed ineffectively after sentencing. (D-107). The order in no way addresses a claim regarding counsel’s *sentencing representation*, see, *Id.*, and, in any event, the district court’s order would not somehow abrogate the holding in *Williams*.

At present, it appears that the sole factor determining whether an

appellate waiver precludes a defendant from raising a claim of ineffective assistance of counsel on direct appeal is simply which interpretation leads to a tidy dismissal or affirmance of the defendant's case. Although the evisceration of the rights of the criminally accused has been going on for decades, surely we have not reached a point where, like a chameleon, the law changes its colors based upon which side of the question the criminally accused is on. To maintain uniformity in this Court's decisions, it's imperative that rehearing be granted, and a revised opinion be entered recognizing that Mr. Bien Aime has, in fact, shown that his appellate waiver bars him from raising a claim of ineffective assistance of counsel on direct appeal. *See, Pannullo*, 709 F. App'x 683; *Payan*, 760 F. App'x 889. However, Mr. Bien Aime also recognizes that *Pannullo* and *Payan*, like the instant Opinion, were unpublished and nonbinding, and, as such, this Court remains free to repudiate them as it has apparently chosen to do. Accordingly, along with the instant Petition, Mr. Bien Aime is filing a Motion to Publish the Opinion in this case, as it is crucial that the matter be settled once and for all to maintain uniformity in this Court's decisions on this issue, and to provide guidance for future litigants.

This Court next asserts "Bien Aime also fails to show that his trial counsel had an inconsistent interest because he does not point to any instance

in the record, besides the appeal waiver, that suggests his counsel's interests were impaired.” *Bien Aime*, No. 25-13556, 2026 WL 2606886, at \*2. However, only one inconsistent interest is required to be shown, and unless this Court is taking the position that *Pannullo* and *Payan* were wrongly decided, and is also receding from *Williams*, the appellate waiver created the only inconsistent interest Mr. Bien Aime was required to show. *See, Cuyler v. Sullivan*, 446 U.S. 335, 348, 100 S.Ct. 1708, 1718, 64 L.Ed.2d 333 (1980).

This Court next asserts “[e]ven if *Bien Aime* were able to show a conflict, he fails to show that the potential conflict adversely affected his counsel's performance because he does not point to the existence of a plausible, alternative defense strategy that might have been pursued, beyond not to taking the plea deal which, as discussed, has not been shown to actually preclude him from raising the ineffective assistance of counsel claim.” *Bien Aime*, No. 25-13556, 2026 WL 2606886, at \*2. However, as explained, *supra*, unless *Pannullo* and *Payan* were wrongly decided, and this Court is receding from *Williams*, Mr. Bien Aime has, in fact, shown a plausible alternative defense strategy that might have been pursued absent the conflict.

This Court goes on to assert, in a footnote, that Mr. Bien Aime has not shown that the alternative strategy was reasonable. *United States v. Bien Aime*, No. 25-13556, 2026 WL 2606886, FN. 1, at \*2 (11th Cir. Sept. 3, 2026).

However, not even the government has disputed doing so would have been reasonable, nor could it, as it is in and of itself unreasonable to say that a criminal defendant could not reasonably choose to refuse to waive the protections afforded to him by the Sixth Amendment, which is precisely the proposition this Court's opinion currently stands for. Clearly Mr. Bien Aime had a vested interest in his counsel performing effectively during sentencing, and thus he could have reasonably refused to enter into a plea agreement which called for him to waive the ability to challenge the adequacy of his sentencing representation. Accordingly, unless this Court is finding that the Sixth Amendment right to the effective assistance of counsel is so meaningless that a defendant could not reasonably refuse to waive it, Mr. Bien Aime has, in fact, shown a reasonable alternative strategy which might have been pursued absent the conflict.

Consequently, this Court should vacate its September 3, 2026 Opinion, and enter a revised Opinion reversing Mr. Bien Aime's Plea, Judgment, and Sentence, and remanding his case for a new change of plea hearing, where the plea agreement between the parties is only accepted if both a proper conflict inquiry and waiver are made. *Freund v. Butterworth*, 165 F.3d 839 (11th Cir. 1999); *In re Sealed Case*, 901 F.3d 397 (D.C. Cir. 2018); Florida Bar Ethics Opinion 12-1 (2012).

## **CONCLUSION**

Based upon the argument and citation to authority set forth above and in Mr. Bien Aime's Initial and Reply Briefs, this Court should vacate its September 3, 2026 Opinion, and enter a revised Opinion reversing Mr. Bien Aime's Plea, Judgment, and Sentence, and remanding his case for a new change of plea hearing, where the plea agreement between the parties is only accepted if both a proper conflict inquiry and waiver are made.

Respectfully submitted,

By: /s/ Dane K. Chase

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**CERTIFICATE OF COMPLIANCE**

I HEREBY CERTIFY that this Brief complies with the type-volume limitation set forth in FRAP 32(a)(7)(B). This Brief contains 1,722 words.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY on September 17, 2026, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will then send notice of electronic filing to counsel of record.

By: /s/ Dane K. Chase  
Dane K. Chase, Esquire  
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# APPENDIX E

UNITED STATES OF AMERICA  
Appellee

v.

RICHARDSON BIEN AIME  
Appellant

Circuit Court Case No.: 25-13556-D

COMES NOW, the Appellant, RICHARDSON BIEN AIME, by and through undersigned counsel, and hereby files this his Motion to Publish under 11th Cir. R. 36-3, and states as follows:

- 1

whether an appellate waiver precludes a defendant from raising a claim of ineffective assistance of sentencing counsel on direct appeal in accordance with *Pannullo* and *Payan*, or has no preclusive effect on such claims, as this Court’s current opinion indicates.

3. A published Opinion is necessary to provide guidance to future litigants, as either an appellate waiver precludes the raising of such claims on direct appeal, in which case defense counsel advising a defendant to accept such a waiver has a clear conflict of interest entitling the defendant to relief, or it does not, thus entitling the defendant to raise such claims on appeal notwithstanding his appellate waiver. Whatever this Court’s answer is, it is important that there be one, it is manifestly unfair to continue to require the defense to play whack-a-mole where heads the government wins and tails the defense loses on this issue. *See, Herrera v. United States*, No. 25-2428, 2026 WL 2363220, at \*1 (7th Cir. Aug. 14, 2026) (“The doctrine of stare decisis ‘promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process.’” (quoting, *Joy v. Penn-Harris-Madison Sch. Corp.*, 212 F.3d 1052, 1065 (7th Cir. 2000) (quoting *Payne v. Tennessee*, 501 U.S. 808, 827, 111 S.Ct. 2597, 115 L.Ed.2d 720 (1991))).
4. Consequently, this Court should Publish the Opinion in this matter, whatever the final opinion may be. *See, Id.*

**CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE**  
**STATEMENT**

Pursuant to Rule 26.1 of the Federal Rules Appellate Procedure and Rules 26.1-1 through 26.1-3 of the Eleventh Circuit Rules, Appellant hereby lists the following individuals who may have an interest in this appeal:

1. Barber, Thomas, United States District Judge;
2. Bien Aime, Richardson, Appellant;
3. Chase, Dane K., Esq., Appellate counsel for Appellant;
4. Hall, Alec Fitzgerald; Federal Defender
5. Handberg, Roger B., United States Attorney;
6. Lachelle Davis, Dameka, Trial counsel for Appellant;
7. Leeman, Michael V., Assistant United States Attorney;
8. Mizell, Nicholas P., United States Magistrate Judge;
9. Muench, James A., Assistant United States Attorney;
10. Rosenthal, Russel K., Trial counsel for Appellant;

Respectfully submitted,

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CJA Counsel for Appellant

**CERTIFICATE OF COMPLIANCE**

I HEREBY CERTIFY that this Brief complies with the type-volume limitation set forth in FRAP 27(d)(2)(A). This Motion contains 704 words.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY on September 17, 2026, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will then send notice of electronic filing to counsel of record.

By: /s/ Dane K. Chase  
Dane K. Chase, Esquire  
Florida Bar No. 0076448

In the  
United States Court of Appeals  
For the Eleventh Circuit

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No. 25-13556

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UNITED STATES OF AMERICA,

*Plaintiff-Appellee,*

*versus*

RICHARDSON BIEN AIME,

*Defendant-Appellant.*

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Appeal from the United States District Court  
for the Middle District of Florida  
D.C. Docket No. 2:23-cr-00134-TPB-NPM-1

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Before JILL PRYOR, BRANCH, and ANDERSON, Circuit Judges.

PER CURIAM:

The Petition for Panel Rehearing filed by Richardson Bien Aime is DENIED.<sup>1</sup>

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<sup>1</sup> Appellant's motion to publish the panel opinion is DENIED.