No. 15-___

IN THE

Supreme Court of the United States

DESMOND FARMER,

Petitioner,

v.

UNITED STATES,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The Federal Magistrates Act, 28 U.S.C. § 631 *et seq*., limits the tasks that magistrate judges may perform in criminal cases. Among other things, it authorizes them to "hear and determine" non-dispositive pretrial matters, to issue reports and recommendations regarding dispositive motions, and, with the defendant's consent, to try misdemeanor cases and to enter a sentence on a class A misdemeanor. *See id*. § 636(a)(3), 636(a)(5), 636(b); 18 U.S.C. § 3401(b). The Act also contains a catchall provision that authorizes magistrates to perform only "such additional duties as are not inconsistent with the Constitution and laws of the United States." 28 U.S.C. § 636(b)(3).

The question presented, which has divided the circuits, is whether the "additional duties" clause authorizes a magistrate to accept a felony guilty plea with the defendant's consent.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Desmond Farmer respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

The Fourth Circuit's opinion (Pet.App.1a–4a) is unpublished but reported at 599 F. App'x 525 (4th Cir. 2015). The district court's judgment (Pet.App.5a–16a) is unpublished and unreported. The magistrate judge's oral decision to accept Petitioner's guilty plea (Pet.App.17a–33a) is unpublished and unreported.

JURISDICTION

The Fourth Circuit entered judgment on April 27, 2015. Pet.App.1a. On May 31, 2015, the Chief Justice extended the time to file this petition to and including August 10, 2015. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article III, section 1 of the U.S. Constitution provides:

> The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services, a compensation, which

> shall not be diminished during their continuance in office.

The Federal Magistrates Act provides in most relevant part:

> A magistrate judge may be assigned such additional duties as are not inconsistent with the Constitution and laws of the United States.

28 U.S.C. § 636(b)(3). Other relevant portions of the Federal Magistrates Act are reproduced in the Appendix. Pet.App.34a–38a.

STATEMENT

1. The Federal Magistrates Act is designed to "relieve the district courts of certain subordinate duties that often distract [them] from more important matters." *Peretz v. United States*, 501 U.S. 923, 934 (1991). In keeping with the vital role that Article III district court judges play in the judicial system, Congress carefully structured the Act to avoid "improperly delegat[ing]" their core duties to magistrates, *Mathews v. Weber*, 423 U.S. 261, 269 (1976), "in the interests of policy as well as constitutional constraints," *Gomez v. United States*, 490 U.S. 858, 872 (1989).

Thus, the Act specifies the particular kinds of criminal proceedings that magistrates may conduct. A magistrate may, for example, conduct trials for petty offenses; enter a sentence for a petty offense; "hear and determine" pretrial motions (except certain "dispositive" motions such as ones "to dismiss or quash an indictment or information made by the defendant" or "to suppress evidence in a criminal

case"); and conduct hearings and make recommendations regarding dispositive motions that it cannot finally decide. *See* 28 U.S.C. § 636(a)–(b); 18 U.S.C. § 3401(b); *Gomez*, 490 U.S. at 868.[1] With the parties' consent, a magistrate may, for example, "enter a sentence for a class A misdemeanor" or "conduct trials under [18 U.S.C. § 3401]," 28 U.S.C. § 636(a)(3), (5) which sets forth procedures governing misdemeanor trials.

Beyond these specifically enumerated grants of authority, the Act also contains a catchall provision: "A magistrate judge may be assigned such additional duties as are not inconsistent with the Constitution and laws of the United States." 28 U.S.C. § 636(b)(3). As this Court has emphasized, "[t]he general, nonspecific terms of this paragraph, preceded by text that sets out permissible duties in more precise terms, constitute a residual or general category that must not be interpreted in terms so expansive that the paragraph overshadows all that goes before." *Gonzalez v. United States*, 553 U.S. 242, 245 (2008). In other words, because the "statute creates an office to which it assigns specific duties, those duties outline the attributes of the office. Any additional duties performed pursuant to a general

[1] Where a magistrate has authority to "hear and determine" a matter, the district court may reconsider the magistrate's decision where it "has been shown that the magistrate judge's order is clearly erroneous or contrary to law." 28 U.S.C. § 636(b)(1)(A). For dispositive motions—cases in which the magistrate merely makes a report and recommendation—the district court "shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." *Id.* § 636(b)(C).

authorization in the statute reasonably should bear some relation to the specified duties." *Gomez*, 490 U.S. at 864. To determine whether a designated task qualifies as a permissible "additional dut[y]" under the statute, courts ask whether it is "comparable in responsibility and importance" to an enumerated duty. *Peretz*, 501 U.S. at 933.

This case centers on whether the "additional duties" clause authorizes magistrates to accept a felony guilty plea with the defendant's consent.

2. According to the government's proffer at Farmer's plea colloquy, law enforcement officials began contacting Farmer about the distribution of PCP in October 2009. Pet.App.30a–31a. In June 2012, one of those allegedly involved in the distribution scheme turned state's evidence and made a series of controlled purchases from Farmer until February 2013. Pet.App.31a. At that point, Farmer was arrested and charged with a number of federal drug-related counts, including conspiracy to possess with intent to distribute at least 100 grams of PCP in January 2009. C.A.App.10.

Pursuant to the Eastern District of North Carolina's Local Criminal Rule 5.2(b), Farmer's arraignment, along with the arraignment of an unknown number of other defendants, was referred to Magistrate Judge James E. Gates. Pet.App.19a–20a, 24a. The magistrate began Farmer's portion of the proceedings by confirming that Farmer consented to proceed before a magistrate judge, both orally in open court and through a form filed that day. Pet.App.19a–20a.

The magistrate then conducted Farmer's plea proceeding. Because Farmer's plea agreement called for him to plead guilty on Count 1 (the conspiracy charge) while the rest of the counts were dismissed, the court reviewed it "in detail," Pet.App.22a–23a, describing the minimum and maximum possible penalties on that charge.[2] He then referred back to an earlier portion of the proceedings (not found in the record below) at which he explained defendant's right to a jury trial and other trial rights. Pet.App.24a. Farmer stated that he understood those rights and that he would be waiving them if he pleaded guilty. Pet.App.24a–25a. The district court then discussed the sentencing process with Farmer and reviewed the details of Farmer's plea agreement. Pet.App.25a–28a. Farmer then pleaded guilty to the conspiracy charge, Pet.App.30a, and, after hearing the government's factual proffer, the magistrate "accept[ed] [his] guilty plea … and enter[ed] a judgment of guilty on [his] plea," Pet.App.32a. Farmer was sentenced to 168 months, Pet.App.7a, and timely appealed, C.A.App.70.

3. On appeal, Farmer argued that the magistrate judge lacked authority to accept his guilty plea, as *United States v. Harden*, 758 F.3d 886

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[2] In describing those penalties, the magistrate stated that "[t]he law provides for a term of imprisonment of not more than five years, no more than 40 years" for that offense. Pet.App.22a. As phrased, this suggested that the offense lacked a statutory minimum term and contained conflicting maxima, one of five years and the other of forty. Farmer's plea agreement indicated the correct minimum term of five years and a maximum term of forty years, C.A.App.40, but the correct minimum was not mentioned during Farmer's plea proceeding.

(7th Cir. 2014), had recently held. The Fourth Circuit disagreed.[3] It recognized that *Harden* was "central to [Farmer's] argument," but noted that Farmer also acknowledged the Fourth Circuit's "contrary precedent"— *United States v. Benton*, 523 F.3d 424 (4th Cir. 2008)—which held that "'magistrate judges possess authority to bind defendants to their plea ….'" Pet.App.3a (quoting *Benton*, 523 F.3d at 429). "Regardless of the Seventh Circuit's contrary decision in *Harden*, [the court was] bound by *Benton*" and therefore affirmed. Pet.App.3a.

REASONS FOR GRANTING THE WRIT

This Court's review is warranted because this case turns entirely on a purely legal question that is the subject of a well-recognized circuit split: the Seventh Circuit has held, and the Ninth Circuit suggested, that magistrates may accept felony guilty pleas, while the Fourth, Tenth, and Eleventh Circuits have squarely held the opposite.

Moreover, as the considerable litigation over the issue since *Harden* illustrates, the question dividing the lower courts is important. The Magistrates Act reflects Congress's efforts to distinguish those tasks

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[3] Farmer's plea agreement waived his right to appeal his conviction or sentence in certain circumstances. C.A.App.37. However, the government never moved to dismiss Farmer's appeal as barred by the waiver, a prerequisite for enforcement. *See United States v. Blick*, 408 F.3d 162, 168 (4th Cir. 2005); *see also, e.g.*, *United States v. Chambers*, 503 F. App'x 239, 239 (4th Cir. 2013) ("[T]his court declines to enforce appellate waiver provisions sua sponte."). Thus, as explained above, the Fourth Circuit rejected Farmer's claims on the merits.

properly delegated to magistrates from those best suited for resolution by the district court. It is inherently important for this Court to enforce Congress's carefully chosen scheme, particularly given the central role that guilty pleas now play in our criminal justice system. Additionally, because a defendant's ability to withdraw a plea turns critically on whether a proper court has accepted it, whether magistrates may do so has significant implications for criminal defendants' rights.

Furthermore, this case is also a good vehicle through which to decide the question presented. Petitioner presented only this claim to the Fourth Circuit, and the Fourth Circuit squarely rejected it. Although Petitioner did not challenge the magistrate's authority before the district court, this Court has often reviewed Magistrates Act cases in this posture, and for good reason: the proper division of authority between magistrates and district judges implicates *Congress*'s choices as much as the litigants', and this Court might otherwise be unable to review questions about a magistrate's authority to act with consent.

Finally, the decision below is wrong. The Magistrates Act carefully delineates tasks that magistrates may perform. In doing so, it indicates that they generally may not resolve dispositive questions in felony cases such as whether to accept a guilty plea, but instead may only prepare reports and recommendations on such questions. Moreover, this Court has recognized that the Act does not authorize magistrates to preside over a felony trial, and accepting a felony guilty plea is equally if not more important than that forbidden task. At the least, the

significant constitutional questions raised by allowing a magistrate to accept a felony guilty plea counsel in favor of a narrower interpretation of the "additional duties" clause.

I. THE CIRCUITS ARE SPLIT OVER WHETHER A MAGISTRATE MAY ACCEPT A FELONY GUILTY PLEA WITH THE DEFENDANT'S CONSENT.

As the decision below recognized (Pet.App.2a–3a), the circuit courts are explicitly divided on whether magistrates may accept a defendant's felony guilty plea with the defendant's consent. In the Seventh Circuit (and likely in the Ninth), magistrates cannot do so, but in the Fourth, Tenth, and Eleventh, they can. Only this Court can resolve the conflict.

A. The Seventh Circuit Has Held, And The Ninth Circuit Has Suggested, That Magistrates May Not Accept Felony Guilty Pleas.

1. As the court below recognized, the Seventh Circuit in *Harden* faced facts indistinguishable from those present here and yet reached the opposite result.

Pursuant to a local rule, Harden consented to plead guilty before a magistrate judge, who accepted the plea and sent the case along to the district judge for sentencing. Harden did not question the magistrate judge's authority before the district court, but did so before the Seventh Circuit.

The Seventh Circuit reversed Harden's guilty plea. It explained that, under *Peretz*, whether a task not listed in the statute qualifies as a "permissible

additional duty" that a magistrate may perform turns on whether the task is "comparable" to the enumerated duties in terms of "responsibility and importance." 758 F.3d at 888 (internal quotation marks omitted). Under that standard, accepting a guilty plea does not qualify because it is simply too important. As the "long, searching colloquy" required by Federal Rule of Criminal Procedure 11(b) demonstrates, a defendant who pleads guilty waives one of his most crucial rights—the right to a trial—and often waives other essential rights, such as the right to appellate and post-conviction review. *Id.*; *see id.* at 888–89. Because so much hangs in the balance, the court must ensure that the defendant is competent, is acting voluntarily, comprehends the charges against him, understands the rights he relinquishes by pleading guilty, and knows the terms of any plea agreement. *Id.* at 888. As Judge Tinder—himself a district judge for twenty years—put it: "Any district judge who has been on the bench more than a few years will have experienced plea colloquies in which the answers were not all yes. The questions are not hard to ask, but their answers are weighted with importance." *Id.* at 889.

The Seventh Circuit also explained that accepting a guilty plea "final[ly] and consequential[ly] shift[s]" the defendant's status in a way that differs from the *voir dire* proceedings authorized by *Peretz*. *Id.* *Voir dire*, of course, is followed by a trial; while it shapes how that trial will play out, it does not by itself resolve the case. Once the court has accepted the plea, however, "the prosecution is at the same stage as if a jury had just returned a verdict of guilty." *Id.* Given that finality,

accepting a guilty plea "is quite similar in importance to the conducting of a felony trial," a proceeding it is "quite clear" a magistrate judge may not conduct "even with the consent of the parties." *Id.* at 889 (citing *Gomez*, 490 U.S. at 872 ("[T]he carefully defined grant of authority to conduct trials of civil matters and of minor criminal cases should be construed as an implicit withholding of the authority to preside at a felony trial.")).

The Seventh Circuit acknowledged that its "reasoning place[d it] in conflict with several of [its] sister circuits." *Id.* at 891; *see also id.* at 891 n.1 (noting that because the decision "create[d] a split among circuits," the panel circulated it to the full court but "[n]one voted to hear [it] *en banc*"). It explained, however, that those courts have placed too much emphasis on *Peretz*'s statement that Congress intended to give courts "'significant leeway to experiment with possible improvements in the efficiency of the judicial process'" and on concerns about caseloads. *Id.* at 891 (quoting *Peretz*, 501 U.S. at 932). "[T]he [Supreme] Court has never suggested that magistrate judges, with the parties' consent, may perform every duty of an Article III judge, regardless of the duty's importance," and "the prevalence of guilty pleas does not render them less important, or the protections waived through them any less fundamental." *Id.* Because "[a] felony guilty plea is equal in importance to a felony trial leading to a verdict of guilty," the district court "cannot delegate this vital task" "without explicit authorization from Congress." *Id.*

2. The Ninth Circuit has suggested that it would agree with the Seventh Circuit's position.

In *United States v. Reyna-Tapia*, 328 F.3d 1114 (9th Cir. 2003) (en banc), Reyna-Tapia consented to have his plea colloquy—but not the actual acceptance of his plea—performed by a magistrate judge. The magistrate then recommended that the district court accept the plea. The court accepted the report and recommendation without any objection, and Reyna-Tapia unsuccessfully moved to withdraw his plea. On appeal, Reyna-Tapia challenged the magistrate's authority to conduct his plea colloquy.

The Ninth Circuit rejected his argument, but in doing so suggested that only district judges, not magistrates, may actually accept guilty pleas. The court began by reasoning that the tasks involved in overseeing a plea colloquy adequately resemble those at stake in the enumerated duties of holding a suppression hearing or making a probable cause determination to qualify under the "additional duties" clause. *See id.* at 1120. It found "further support[]" for this conclusion by pointing to the "three levels of procedural safeguards inhering within existing practice," one of which was defendants' "*absolute right* to withdraw guilty pleas taken by magistrate judges at any time before they are accepted by the district court." *Id.* at 1121 (emphasis added).

This protection, key to the Ninth Circuit's decision, exists only if magistrates cannot accept pleas. Under Federal Rule of Criminal Procedure 11(d)(1), defendants may withdraw a plea "for any reason or no reason" "before the court accepts [it]." Under Federal Rule of Criminal Procedure 11(d)(2), however, they may only withdraw for a "fair and just reason" after the court accepts it. Thus, given the

role that the defendant's "absolute right" to withdraw played in *Reyna-Tapia*'s reasoning, the Ninth Circuit would likely side with the Seventh and hold that magistrates may supervise plea colloquies but not finally accept the resulting pleas themselves.

B. The Fourth, Tenth, And Eleventh Circuits Allow Magistrates To Accept Felony Pleas.

By contrast, three other circuits have explicitly held—in opinions as fully reasoned as *Harden*—that magistrates may accept guilty pleas with the defendant's consent.

1. The Fourth Circuit authorized magistrates to accept guilty pleas in *United States v. Benton*, 523 F.3d 424 (4th Cir. 2008); *see also* Pet.App.3a (relying on *Benton* to resolve this case).

There, the defendant consented to have a magistrate judge perform his plea hearing and accept a guilty plea "that cannot later be withdrawn." *Id.* at 426. Benton later tried to withdraw nonetheless, but the district court denied his motion because he had not established a "fair and just" reason for withdrawing. *Id.* at 427. On appeal, Benton argued that he should have been able to withdraw his plea at will because no proper court had yet accepted it; in his view, the magistrate lacked statutory and constitutional authority to do so. *See id.* at 427.

The Fourth Circuit rejected Benton's argument and refused to vacate his plea. It acknowledged that whether a duty counts as an "additional dut[y]" under § 636(b)(3) turns on whether it is comparable in "responsibility and importance" to duties

enumerated in the Act, *id.* at 430, but it took a markedly different view of the importance and consequences of the plea acceptance process than *Harden* later did. Per *Benton*, for example, the plea colloquy does not demonstrate the importance of the act of pleading guilty. Rather, it is merely "an ordinary garden variety type of ministerial function" in which the magistrate administers a "standard" "catechism … dictated in large measure" by Rule 11. *Id.* at 431 (internal quotation marks omitted). And per *Benton*, actually accepting the plea is not a particularly significant or difficult act either. Rather, it is merely the "natural culmination of a plea colloquy" and "involves none of the complexity and requires far less discretion than that necessary to perform many tasks unquestionably within the magistrate judge's authority, such as conducting felony *voir dire* and presiding over entire civil and misdemeanor trials." *Id.* at 431–32.

Finally, *Benton* also worried about the possibility that defendants might withdraw pleas willy nilly if magistrates could not accept them. "[M]aking Rule 11 hearings non-binding" in this way might "encourage defendants to use magistrate-led colloquies as go-throughs in order to gauge whether they may later experience 'buyer's remorse.'" *Id.* at 432–33. In other words, where *Reyna-Tapia* saw the defendant's ability to withdraw before the district court accepted the plea as a crucial "safeguard[]," 328 F.3d at 1121, *Benton* saw it only as an opportunity for sandbagging, *see* 523 F.3d at 433 n.2 (noting that *Reyna-Tapia* "offer[ed] support" for the defendant's view but refusing to "follow" it).

2. The Eleventh Circuit, through similar reasoning, has also authorized magistrate judges to accept guilty pleas.

In *United States v. Woodard*, 387 F.3d 1329, 1330 (11th Cir. 2004) (per curiam), the magistrate, with the defendant's consent, "adjudge[d] [him] guilty of" the charged offense. On appeal, the Eleventh Circuit rejected his argument that "the enumerated duties in the [Magistrates Act] pale in comparison with [the] gravity and importance of accepting a guilty plea and adjudicating an individual guilty of a felony." *Id.* at 1332 (internal quotation marks omitted). Like *Benton* (but unlike *Harden*), the court saw the colloquy process itself as a "highly structured event" that is "less complex" than overseeing a civil or misdemeanor trial and similar to conducting a suppression hearing. *Id.* at 1332 (internal quotation marks omitted). And like *Benton* (but unlike *Harden* or *Reyna-Tapia*), the court refused to distinguish between preparing a report and recommendation and accepting a plea. Though the "decisions reveal[ed] a lack of uniformity in the language used by magistrates," "the critical factor … was that a district court, as a matter of law, retained the ability to review the Rule 11 hearing if requested." *Id.* at 1334 (emphasis omitted).

3. The Tenth Circuit has also joined the Fourth Circuit's side of the split.

In *United States v. Ciapponi*, 77 F.3d 1247 (10th Cir. 2002), the defendant pleaded guilty before a magistrate and on appeal argued that "the magistrate judge lacked jurisdiction to accept [his] guilty plea." *Id.* at 1249. Relying primarily on precedent establishing a magistrate's authority to

conduct a plea *colloquy*—in other words, overlooking the very distinction *Harden* drew and *Reyna-Tapia* suggested—the court held that the "additional duties" clause authorizes a magistrate to "accept[] … a guilty plea in a felony case … with the defendant's consent." *Id.* at 1251. The Tenth Circuit has since repeated and relied on *Ciapponi*'s holding. *See, e.g.*, *United States v. Salas-Garcia*, 698 F.3d 1242, 1253 (10th Cir. 2012) (noting that "[m]agistrate judges have the authority to conduct plea hearings and accept guilty pleas" and rejecting the defendant's argument that he had authority to withdraw his plea as of right because the magistrate judge had unconditionally accepted that plea); *United States v. Montano*, 472 F.3d 1202, 1204 (10th Cir. 2007) ("A magistrate judge has jurisdiction to conduct a plea hearing and subsequently accept a defendant's plea where the defendant consents.").

II. THIS CASE IS AN APPROPRIATE VEHICLE IN WHICH TO RESOLVE THIS IMPORTANT QUESTION.

Whether magistrates may accept felony guilty pleas is a regularly recurring question that implicates important concerns—both (1) Congress's effort to separate a district court's core duties from those that may be passed off to a magistrate, and (2) a criminal defendant's right to withdraw a guilty plea. Although Petitioner did not challenge the magistrate's authority in the district court, this Court has regularly granted review in such circumstances to ensure both that Congress's scheme is respected and that it may resolve questions about consent that it otherwise would be unable to decide.

A. Whether Magistrates May Accept Felony Guilty Pleas Is An Inherently Important Question With Significant Practical Consequences.

1. The Federal Magistrates Act reflects Congress's careful effort to demarcate "magistrates' adjudicatory jurisdiction … in the interests of policy as well as constitutional constraints …." *Gomez*, 490 U.S. at 872. That is, through the Magistrates Act, Congress attempted to separate the "subordinate duties" over which magistrates may preside, *Peretz*, 501 U.S. at 934, from those that "require[] the exercise of delicate judgment and as a matter of sound congressional policy" ought to be handled by district courts, *Gomez*, 490 U.S. at 867 (internal quotation marks omitted).

This Court should enforce the line that Congress drew between what Article I magistrates *may* do and what Article III judges *must* do. As this Court has recognized, it has a duty "to correct … violations of a statutory provision that embodies a strong policy concerning the proper administration of judicial business." *Nguyen v. United States*, 539 U.S. 69, 78 (2003) (internal quotation marks omitted). That task is particularly important under the "additional duties" clause of the Magistrates Act, which the Court has repeatedly warned should not be expanded in such a way as to "overshadow[]" all the careful limitations that "go[] before [it]." *Gonzalez*, 553 U.S. at 245; *see also Gomez*, 490 U.S. at 864. Whether the Act authorizes magistrates to accept felony guilty pleas is thus inherently important.

2. That question is even more important given the centrality of guilty pleas to our contemporary

criminal justice system. "[C]riminal justice today is for the most part a system of pleas, not a system of trials." *Lafler v. Cooper*, 132 S. Ct. 1376, 1388 (2012); *see also Missouri v. Frye*, 132 S. Ct. 1399, 1407 (2012) ("[Plea bargaining] is not some adjunct to the criminal justice system; it *is* the criminal justice system." (internal quotation marks omitted)). In 2014, for example, 78,712 defendants were convicted and sentenced in federal court. All but 1,888—that is, 97.6% of them—pleaded guilty rather than face trial. U.S. Courts, JUDICIAL BUSINESS, tbl. D-4 (2014).

Thanks to aggressive use of the "additional duties" provision, that parallel criminal justice system is increasingly administered in the first instance by magistrates, not Article III judges. In 2014, magistrates conducted 182,230 criminal matters that were classified as within their "additional duties" authority, a figure almost twice as high as the number of matters within their criminal trial jurisdiction (106,654) and about half as high as the number of felony preliminary proceedings (346,318). *See* U.S. COURTS, JUDICIAL BUSINESS, tbl. S-17 (2014). Nearly 30,000 guilty plea proceedings—almost half of the nearly 80,000 pleas entered—were conducted by magistrates. *See id.*[4]

Whether that outsize role in the criminal justice system comports with the Magistrates Act's precisely

[4] These statistics do not appear to distinguish between cases in which magistrates actually accepted the pleas and those in which a magistrate instead supervised the plea colloquy and made a report and recommendation to the district court about accepting the plea.

crafted scheme—not to mention Article III's essential limits—is an important question. A felony guilty plea carries with it enormous consequences, including significant jail time, the threat of deportation, disenfranchisement and the loss of other civil rights, and immeasurable social stigma. *See, e.g.*, *Yates v. United States*, 135 S. Ct. 1074, 1081 (2015) (plurality op.); *Padilla v. Kentucky*, 559 U.S. 356, 364–66 (2010). The system's pervasive incentives to plead guilty as quickly as possible—including the prosecutor's significant information advantage and almost unilateral control over the defendant's sentence through charging and Guidelines-related decisions—have already led some innocent defendants to plead guilty and some judges to question whether the system as a whole is just. *See* Univ. of Mich. Law School, Nat'l Registry of Exonerations, http://bit.ly/1VZ3VtQ (last visited Aug. 7, 2015); Jed S. Rakoff, *Why Innocent People Plead Guilty*, N.Y. REV. OF BOOKS (Nov. 20, 2014). In the already-questionable world of near-universal plea bargaining, it is important for the Court to mark the lines between what Congress authorized magistrates to do and what it reserved for actual Article III judges.

3. The recurring nature of this issue further underscores its importance. *Harden* was decided in July 2014. *See* 758 F.3d at 886. Since then, two circuit courts—the Fourth Circuit and the First Circuit in *United States v. Dávila-Ruiz*, No. 14-1187, __ F.3d __, 2015 WL 3853094 (1st Cir. June 23, 2015)—have already confronted arguments premised on *Harden*. *See* Pet.App.3a; *Dávila-Ruiz*, 2015 WL 3853094, at *3–*4 (noting that "the courts of appeals

are divided" on the issue but reserving it because the magistrate did not actually accept the defendant's plea). District courts have also faced a host of *Harden*-related claims and have noted the split of authority regarding them. *See Finley v. United States*, No. 3:13cv-565, 2015 WL 4066895, at *9 (M.D. Ala. June 30, 2015); *Morton v. Maiorana*, No. 2:13-cv-2548, 2014 WL 5796749, at *1 (W.D. La. Nov. 5, 2014). Indeed, in the fifteen months that *Harden* has been on the books, district courts have already issued *seventeen* opinions addressing claims based (or supposedly based) on it.[5]

4. Finally, whether magistrates may accept felony pleas also significantly impacts a defendant's right to withdraw a plea. As mentioned above, *before* a court accepts the plea, the defendant may withdraw it "for any reason or no reason." Fed. R.

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[5] *See Moore v. Cross*, 2015 WL 4638342 (S.D. Ill. Aug. 4, 2015); *Gordon v. United States*, 2015 WL 3528318 (C.D. Ill. June 4, 2015); *Shields v. United States*, 2015 WL 2398535 (S.D. Ill. May 18, 2015); *Jackson v. United States*, 2015 WL 2175763 (W.D. Wash. May 7, 2015); *Williams v. United States*, 2015 WL 1100735 (N.D. W. Va. Mar. 11, 2015); *United States v. Hinson*, 2015 WL 400985 (E.D. Mich. Jan. 28, 2015); *Akins v. United States*, 2015 WL 376733 (C.D. Ill. Jan. 28, 2015); *Purham v. United States*, 2015 WL 113398 (C.D. Ill. Jan. 6, 2015); *Adams v. United States*, 2014 WL 6845806 (C.D. Ill. Dec. 4, 2014); *United States v. Marshall*, 2014 WL 6807064 (C.D. Ill. Dec. 2, 2014); *Patterson v. United States*, 2014 WL 6769620 (W.D.N.C. Dec. 1, 2014); *Cunningham v. Cross*, 2014 WL 6755960 (S.D. Ill. Dec. 1, 2014); *Brooks v. Cross*, 2014 WL 5705119 (S.D. Ill. Nov. 5, 2014); *United States v. Burgard*, 2014 WL 5293222 (S.D. Ill. Oct. 16, 2014); *Mitchell v. United States*, 2014 WL 4961582 (C.D. Ill. Oct. 3, 2014); *Finley*, 2015 WL 4066895, at *9; *Morton*, 2014 WL 5796749, at *1.

Crim. P. 11(d)(1). In light of this rule, courts have held that defendants may unconditionally withdraw not-yet-accepted pleas even where a magistrate had already overseen the colloquy, issued a report and recommendation, and the district court received no timely objection. *See Dávila-Ruiz*, 2015 WL 3853094, at *3–*4 (vacating in such circumstances because "Rule 11(d)(1) is clear as a bell: it renders a district court powerless to deny a plea-withdrawal motion when the motion is made before the plea has been accepted"); *United States v. Arami*, 536 F.3d 479, 483 (5th Cir. 2008) (reversing in such circumstances because "Rule 11(d)(1) is an absolute rule: a defendant has an absolute right to withdraw his or her guilty plea before the court accepts it"); *cf. United States v. Mendez-Santana*, 645 F.3d 822, 826–27 (6th Cir. 2011) (noting that the 2002 amendment to Rule 11 "vitiated" old cases requiring a reason any time a plea was withdrawn before sentencing by granting defendants "an absolute right to withdraw an unaccepted guilty plea").

After the plea is accepted, though, the defendant must show a "fair and just reason" to withdraw. Fed. R. Crim. P. 11(d)(2)(B); *see, e.g.*, *Benton*, 523 F.3d at 428–33 (rejecting defendant's argument that he need not show a reason because the magistrate had authority to accept his plea and had done so). And if the district court denies such a request, its decision is reviewed only for abuse of discretion. *See, e.g.*, *United States v. Symington*, 781 F.3d 1308, 1312 (11th Cir. 2015); *United States v. Fard*, 775 F.3d 939, 943 (7th Cir. 2015); *United States v. Kerr*, 752 F.3d 206, 223–24 (2d Cir. 2014); *United States v. Briggs*, 623 F.3d 724, 727 (9th Cir. 2013).

Given these rules, whether a magistrate can herself accept a plea or is instead limited to making a report and recommendation has significant consequences for the defendant's rights. In *Dávila-Ruiz*, for instance, the defendant moved to withdraw his plea after learning that the government had decided to drop its charges against one of his co-defendants—the one who had decided to proceed to trial. *See* 2015 WL 3853094, at *1–*2. Because the magistrate had only recommended accepting the plea and the district court had not yet acted on that recommendation, Dávila-Ruiz was able to do so. *See id.* at *4. And in *Mendez-Santana*, the defendant moved to withdraw his guilty plea after his lawyer realized the defendant had a plausible statute-of-limitations defense to the charges against him. *See* 645 F.3d at 825. Again, because the district court had "'h[e]ld off'" on accepting the plea, Mendez-Santana was able to withdraw it without providing a reason (or proving to an appellate court that the district court abused its discretion in rejecting that reason). *Id.* at 825, 827.

As these cases demonstrate, *Reyna-Tapia* was right: the ability to withdraw a plea before the *district court* accepts it is a "procedural safeguard[]" that allows defendants to exercise their rights under Rule 11 and to "correct any perceived deficiencies resulting from Rule 11 proceedings over which magistrates have presided." 328 F.3d at 1121; *see also Dávila-Ruiz*, 2015 WL 3853094, at *4 (the defendant's ability to withdraw before the district court accepts the magistrate's recommendation is a "safeguard[]" that is "separate and distinct" from the defendant's right to object to the magistrate's report).

B. This Case Is An Appropriate Vehicle For Resolving The Question Presented.

Farmer squarely challenged the magistrate's authority in the Fourth Circuit, and the Fourth Circuit squarely rejected that challenge on the merits. *See* Pet.App.2a–3a. Farmer did not, however, challenge the magistrate's authority before the district court.

This Court has recognized that, in cases involving a court's authority to act with the litigants' consent, it is appropriate to depart from the ordinary strictures of the waiver, forfeiture, and plain error doctrines. In *Nguyen*, for example, the Court granted review and vacated even though the petitioners did not object to the presence of a non-Article III judge on their circuit court panel until they petitioned for certiorari, and even though they had not shown any harm from the non-Article III judge's presence. Because the decision below involved a "violation[] of a statutory provision that embodie[d] a strong policy concerning the proper administration of judicial business," the Court agreed to address it without "assess[ing] the merits of petitioners' convictions or whether the fairness, integrity, or public reputation of the proceedings were impaired by the [panel's] composition." 539 U.S. at 80–81 (internal quotation marks omitted).

Cases under the Magistrates Act are no different. Several of this Court's precedents addressing a magistrate's authority arise from circumstances similar to those present here. In *Peretz*, for instance, the defendant "raised no objection" to the magistrate's supervision of *voir dire* at the subsequent trial, instead unsuccessfully raising this

issue for the first time on appeal. 501 U.S. at 925. In light of "[t]he conflict among the Circuits" on the issue, however, this Court granted certiorari and resolved the dispute. *Id.* at 927. *Gonzalez* followed the same pattern. On appeal to the Fifth Circuit, the defendant argued "for the first time" that he had to consent *personally* to the magistrate's supervision of *voir dire*, not merely through counsel. 553 U.S. at 244. Nonetheless, the Court, again acknowledging that "[t]he Courts of Appeals differ[ed] on th[at] issue," granted certiorari and decided the case. *Id.* at 244; *see id.* at 244–45.

The Court's demonstrated willingness to grant review—and to conduct that review outside the strictures of the plain error doctrine—makes sense in these unusual circumstances. As Justice Thomas explained in *Gonzalez*, *Nguyen* proves that "[n]ot all uncontested errors … are subject to the plain-error rule." 553 U.S. at 270 (Thomas, J., dissenting). And as he further explained, its reasoning applies equally well to cases involving the Magistrates Act. "Just as 'Congress' decision to preserve the Article III character of the courts of appeals [was] more than a trivial concern' in [*Nguyen*], so too Congress' decision to preserve the Article III character of felony trials"—or, in Farmer's case, the Article III character of felony plea acceptance—"'embodie[d] weighty congressional policy concerning the proper organization of the federal courts.'" *Gonzalez*, 553 U.S. at 271 (Thomas, J., dissenting) (quoting *Nguyen*, 539 U.S. at 79).

Moreover, as Justice Scalia has explained, it would be difficult or impossible for this Court to review important questions about a magistrate's

authority to act with consent if the defendant's failure to raise the claim in the district court were dispositive. "By definition," claims about a magistrate's authority to act with consent "can only be advanced by a litigant who will, if ordinary rules are applied, be deemed to have forfeited them" because "[a] defendant who objects will not be assigned to the magistrate at all." 501 U.S. at 954–55 (Scalia, J., dissenting). Thus, "[e]ven when an error is not 'plain,' [the] Court has in extraordinary circumstances exercised discretion to consider claims forfeited below." *Id.* at 954 (Scalia, J., dissenting) (citing *Glidden Co. v. Zdanok*, 370 U.S. 530, 535–36 (1962) (opinion of Harlan, J.); *Grosso v. United States*, 390 U.S. 62, 71–72 (1968); *Hormel v. Helvering*, 312 U.S. 552, 556–60 (1941)).[6]

Indeed, it would be particularly ironic to deny Farmer review simply because he did not question the magistrate's authority in the district court. His fundamental claim is that he should have been treated like the defendant in *Harden*, and Harden received relief even though he failed to object to the magistrate judge's participation until he reached the Seventh Circuit. "Although Harden ha[d] not shown that he suffered prejudice from the role the magistrate judge played in [his] case," the Seventh Circuit reversed because "the statute simply does not authorize a magistrate judge to accept a felony plea."

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[6] Because the Court found against the defendants on statutory grounds in both *Peretz* and *Gonzalez*, it did not address whether the defendants could prevail despite failing to raise the issue before the district court.

758 F.3d at 891. This Court should grant review and give Farmer the same opportunity.

III. MAGISTRATES MAY NOT ACCEPT FELONY GUILTY PLEAS.

The "additional duties" clause cannot be construed to authorize magistrates to accept felony pleas. The Act carefully distinguishes between non-dispositive felony matters that magistrates may resolve and dispositive ones for which they may only issue a report and recommendation. Accepting a plea more closely resembles the latter. Moreover, the Act clearly prohibits magistrates from presiding over felony trials (even with the defendant's consent), and as *Harden* explained, accepting a felony plea is so analogous to a felony trial that it does not qualify as a permissible "additional duty." Finally, the constitutional concerns triggered by authorizing a magistrate to accept a felony guilty plea—again, the close analogue of presiding over a felony trial—counsel in favor of this narrower reading.

A. The Text and Structure of the Magistrates Act Demonstrate That Magistrates May Not Conduct The Important Task Of Accepting Felony Guilty Pleas.

This Court has repeatedly cautioned that the Magistrate Act's "additional duties" clause cannot be read so broadly as to "overshadow[] all that goes before," in particular the Act's careful distinctions between tasks that magistrates may conduct and tasks that they may not. *Gonzales*, 553 U.S. at 245; *see also, e.g.*, *Gomez*, 490 U.S. at 871–72 (rejecting a

"literal reading" of the clause because it would authorize magistrates to perform tasks implicitly denied to them through Congress's enumeration of specific duties).

"All that goes before" demonstrates here that magistrates are not authorized to accept felony pleas. The Act lays out with some precision the kinds of felony "pretrial matters" that magistrates may resolve. It authorizes them to "hear and determine" any such matter (subject to review for "clear[] error[]") *except* "a motion … to dismiss or quash an indictment or information made by the defendant" or "to suppress evidence." 28 U.S.C. § 636(b)(1)(A). For those "dispositive" motions, *Gomez*, 490 U.S. at 868, the magistrate must submit a report and recommendation "for … disposition[] by a judge of the court," 28 U.S.C. § 636(b)(1)(B). The judge must then "make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." *Id.* § 636(b)(1)(C).[7] It is odd to think that Congress obliquely authorized magistrates to "hear and determine" the most "dispositive" "pretrial matter" of all—a felony guilty plea—through the backdoor of the "additional duties" clause, while explicitly requiring them to issue reports and

[7] Federal Rule of Criminal Procedure 59 mirrors these divisions. *See* Fed. R. Crim. P. 59(a) (authorizing referral of "[n]ondispositive [m]atters" for "an oral or written order" subject to appellate-style review by the district court); Fed. R. Crim. P. 59(b) (allowing referral of "[d]ispositive [m]atters" for reports and recommendations subject to fully de novo review on objection).

recommendations for far less consequential decisions (such as denying a motion to dismiss) and explicitly specifying a de novo standard of review for those decisions. *See Gomez*, 490 U.S. at 873–74.[8]

In addition to conflicting with the Act's specific handling of other dispositive pretrial matters, accepting a felony plea is not a duty "comparable in responsibility and importance" to those spelled out in the Act. *Peretz*, 501 U.S. at 933. Taking such a step is hardly the kind of "subordinate dut[y]" that Congress sought to transfer away from district courts

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[8] In *Peretz*, the Court did not refer to these differential review provisions in its statutory analysis. *See* 501 U.S. at 932–36. It did, however, reason that the absence of review provisions related to *voir dire* or other "additional duties" conducted pursuant to section 636(b)(3) did not "alter the result of the constitutional analysis" because a court could conduct de novo review of *voir dire* proceedings upon request. *Id.* at 939. As the dissents explained, the majority overlooked the relevance of these provisions on the statutory question of whether Congress authorized magistrates to conduct *voir dire* in the first place. *See id.* at 944–45 (Marshall, J., dissenting); *id.* at 955 (Scalia, J., dissenting) (stating that on the "merits of the statutory claim" he was "in general agreement with Justice Marshall"); *see also Gonzalez*, 553 U.S. at 260–68 (Thomas, J., dissenting) (explaining that *Peretz* required an "amazing display of interpretive gymnastics" and should be overruled (internal quotation marks omitted)).

Petitioner agrees with those who think *Peretz* was wrongly decided as a statutory matter and believes that it should be overruled. The Court, however, need not agree for him to prevail. Rather, it could simply refuse to extend *Peretz*'s dubious statutory reasoning to the distinct context of felony pleas or, as *Harden* did, determine that felony pleas are too important to fall within even *Peretz*'s understanding of the "additional duties" clause.

so they would not be "distract[ed]" from other, "more important matters." *Id.* at 934. Unlike someone who loses a suppression motion (if the district court ultimately agrees with the magistrate's recommendation), someone whose felony case proceeds to trial after *voir dire*, or someone who may have to pay damages if she loses her civil case, "[a] defendant who enters such a plea simultaneously waives several constitutional rights, including his privilege against compulsory self-incrimination, his right to a trial by jury, and his right to confront his accusers." *McCarthy v. United States*, 394 U.S. 459, 466 (1969). A guilty plea is thus "more than an admission of past conduct; it is the defendant's consent that judgment of conviction may be entered without a trial." *Brady v. United States*, 397 U.S. 742, 748 (1970). Accepting the surrender of these rights—and the train of direct and collateral consequences that follow from it—is an extremely important decision, as Rule 11's detailed colloquy procedures illustrate. *Cf. Libretti v. United States*, 516 U.S. 29, 49–50 (1995) (noting that Rule 11 is designed to ensure the defendant's waiver is knowing and voluntary).

As *Harden* also explained, given the importance of these rights and the consequences of pleading guilty, accepting a felony guilty plea is more akin to presiding over a felony trial than it is to any of the enumerated tasks mentioned in the Act. *See* 758 F.3d at 889–90. By accepting the plea, the magistrate puts the defendant in a similar place to the one he would have occupied had a jury found him guilty, bringing about a "final and consequential shift" in his status. *Id.* at 889. Indeed, in some ways

accepting a plea is *more* serious than conducting a trial, as the defendant is convicted without a trial that tests the prosecution's evidence or demonstrates the defendant's counsel's competence. But of course, the Magistrates Act does not authorize magistrates to conduct felony trials even with the defendant's consent. As *Gomez* put it, "the carefully defined grant of authority to conduct trials of civil matters and of minor criminal cases should be construed as an implicit withholding of the authority to preside at a felony trial," even though a "literal reading" of the "additional duties" clause would "permit magistrates to conduct" such a trial. 490 U.S. at 871–72.

The circuits that have reached the opposite conclusion have generally relied on the supposed similarity between accepting a guilty plea and the duties enumerated in the statute, as well as on their dim view of plea proceedings. *See Benton*, 523 F.3d at 431–32 (reasoning that accepting a plea "involves none of the complexity and requires far less discretion" than conducting felony *voir dire* or supervising a civil trial because an allocution is a "largely ministerial function" and a "catechism"); *Woodard*, 387 F.3d at 1332–33 (reasoning that a plea colloquy is a "highly structured event" that involves questions "remarkably similar" to those involved in making a recommendation on a suppression motion).

These arguments fail. As explained above, the similarity between plea proceedings and suppression hearings actually cuts *in favor* of the Seventh Circuit's position; that the Act explicitly allows magistrates to make *recommendations* subject to de novo review for analogous suppression decisions suggests that magistrates cannot *resolve* plea

colloquies by accepting a plea.[9] Moreover, these courts' heavy reliance on the Act's civil trial provision proves too much; many civil trials are more complicated than felony trials, yet this Court has already indicated that magistrates may not supervise them. Finally, these courts seem to view plea proceedings as a mechanistic ritual in which a robotic official ticks off legal mumbo-jumbo to a marginally aware defendant before checking the "guilty" box. That view cannot be squared with the essential constitutional rights at stake or with the significant consequences that flow from a guilty plea.

B. Allowing Magistrates To Accept Felony Guilty Pleas Raises Serious Constitutional Questions.

Petitioner's reading of the Magistrates Act would also avoid difficult constitutional questions. The avoidance canon "is a tool for choosing between competing plausible interpretations of a statutory text, resting on the reasonable presumption that Congress did not intend the alternative which raises serious constitutional doubts." *Clark v. Martinez*, 543 U.S. 371, 381 (2005). Because the canon "is not a method of adjudicating constitutional questions by other means," *Clark*, 543 U.S. at 381, the question is not whether the interpretation at issue would *in fact* violate the Constitution, but rather whether it

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[9] For similar reasons, *Benton*'s claim that accepting the plea is merely the "natural culmination of a plea colloquy," 523 F.3d at 431, undercuts itself. Denying a suppression motion is the "natural culmination" of a suppression hearing, but the Act still instructs magistrates to make reports and recommendations instead.

"presents a significant risk" of doing so, *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490, 502 (1979).

Authorizing magistrates to accept felony pleas would present such a risk. *Gomez* noted "abiding concerns regarding the constitutionality of delegating felony trial duties to magistrates," "even with defendant's waiver of rights." 490 U.S. at 863 & n.9. Those concerns were justified. Adjudicating someone guilty of a federal felony offense is a core part of an Article III judge's responsibilities, an essential individual and structural protection. *Cf. United States ex rel. Toth v. Quarles*, 350 U.S. 11, 17 (1955) (former military personnel may not be prosecuted before military tribunals because those tribunals do not have "the same kind of qualifications that the Constitution has deemed essential to fair trials of civilians in federal courts," including life tenure and salary protection).

Accordingly, this Court has stressed the limited, carefully supervised role that magistrates play when it has addressed Article III challenges to their actions. *See United States v. Raddatz*, 447 U.S. 667, 681–82 (1980) (reserving judgment on whether Congress could authorize a magistrate to "render[] a final decision on a suppression motion" because the Act only authorized magistrates to make recommendations subject to de novo review); *Peretz*, 501 U.S. at 938 (requiring the handling of the matter to "invariably remain[] completely in control" of the district court (internal quotation marks omitted)). When a magistrate finally accepts a plea, that control is weakened or removed entirely; the magistrate enters a judgment of guilty and thereby

brings about a "final and consequential shift" in the defendant's status. 758 F.3d at 889.

To be sure, this Court recently held that consent, combined with supervision by Article III courts, generally removes individual and structural concerns about non-Article III adjudication in bankruptcy context, s*ee Wellness Int'l Network, Ltd. v. Sharif*, 135 S. Ct. 1932 (2015), and *Peretz* rejected a constitutional challenge to a magistrate's ability to oversee *voir dire* because the district court could correct any error*, see* 501 U.S. at 936–39. Those cases, however, must have limits. It is one thing to say that bankruptcy judges may, upon the parties' consent, resolve "a narrow class of common law claims as an incident to" their "primary, and unchallenged, adjudicative function," *Sharif*, 135 S. Ct. at 1945, or that magistrates may supervise a *voir dire* proceeding subject to de novo review (and, of course, the actual trial), *Peretz*, 501 U.S. at 938–39. As *Gomez* indicates, however, it is another thing altogether to say that magistrates may conduct an entire felony trial—or its near-equivalent, accept a felony plea—simply because the parties agree and an Article III judge might someday be able to review the proceedings, but only after the defendant's rights (such as his Rule 11 rights) have been irrevocably altered.

The Magistrates Act need not be construed to raise these complicated questions. It does not list accepting pleas as one of a magistrate's duties; rather, the question is whether accepting pleas is sufficiently similar to the enumerated tasks to fall within the "additional duties" clause. Because nothing in the statute *compels* the Court to

understand this catchall provision to cover accepting felony pleas, it should not do so, thereby eliminating any constitutional concerns raised by a broader reading of the Magistrates Act. *See Gomez*, 490 U.S. at 864, 871–74 (holding that unconsented felony *voir dire* does not fall within the "additional duties" clause in part because of constitutional concerns).

CONCLUSION

The petition for a writ of certiorari should be granted.

AUGUST 2015

Respectfully submitted,

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APPENDIX

APPENDIX A

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 14-4450

UNITED STATES OF AMERICA,
Plaintiff – Appellee,

v.

DESMOND FARMER, a/k/a Slick,
Defendant – Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. James C. Dever, III, Chief District Judge. (5:13-cr-00144-D-1)

Submitted: April 14, 2015 Decided: April 27, 2015

Before KEENAN, WYNN, and DIAZ, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Matthew M. Robinson, ROBINSON & BRANDT, PSC, Covington, Kentucky, for Appellant. Thomas G.

Walker, United States Attorney, Jennifer P. May-Parker, Phillip A. Rubin, Assistant United States Attorneys, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Desmond Farmer entered into a written plea agreement with the Government, pursuant to which he agreed to plead guilty to conspiracy to distribute and to possess with intent to distribute 100 grams or more of phencyclidine (PCP), in violation of 21 U.S.C. §§ 841(a)(1), 846 (2012). At his Fed. R. Crim. P. 11 hearing, which was conducted by a magistrate judge, Farmer was placed under oath and advised of his right to have a district judge conduct the hearing. Farmer informed the court that he understood this right, had consulted with counsel about it, and expressly consented to the magistrate judge conducting the hearing. The magistrate judge found that Farmer's consent was knowing and voluntary. Neither party expressed any concern as to Farmer's competence or ability to understand the proceedings.

At sentencing, Farmer did not contest the magistrate judge's authority to accept his guilty plea. Farmer was subsequently sentenced to a 168-month term of imprisonment and a 4-year term of supervised release. This appeal timely followed.

The lone issue Farmer raises on appeal is that the magistrate judge exceeded the authority vested in him under the Federal Magistrates Act in accepting Farmer's guilty plea. Central to Farmer's argument is *United States v. Harden*, 758 F.3d 886, 891 (7th Cir.

2014), in which the Seventh Circuit held "that the magistrate judge's acceptance of [defendant's] guilty plea violated the Federal Magistrates Act[.]" Farmer acknowledges our contrary precedent, *see United States v. Benton*, 523 F.3d 424, 432 (4th Cir. 2008) (explaining that "a magistrate judge's acceptance of a plea, with the consent of the parties, does not appear to present any constitutional problems, either generally or in this case"), but nonetheless suggests that the reasoning set forth in *Harden* should be followed because it is more closely aligned with the Supreme Court's decision in *Peretz v. United States*, 501 U.S. 923, 931-33 (1991).

But, as Farmer acknowledges, this court has held that "magistrate judges possess the authority to bind defendants to their plea for the purposes of Rule 11, so long as district judges retain the authority to review the magistrate judge's actions *de novo*." *Benton*, 523 F.3d at 429. Regardless of the Seventh Circuit's contrary decision in *Harden*, we are bound by *Benton*. *United States v. Collins*, 415 F.3d 304, 311 (4th Cir. 2005) ("A decision of a panel of this court becomes the law of the circuit and is binding on other panels unless it is overruled by a subsequent en banc opinion of this court or a superseding contrary decision of the Supreme Court." (internal quotation marks omitted)); *see United States v. Ross*, __ F. App'x __, 2015 WL 1062755 (4th Cir. Mar. 12, 2015) (unpublished) (rejecting same argument advanced by Farmer, for same reason). Accordingly, we reject Farmer's challenge to the magistrate judge's authority to accept his guilty plea and affirm the criminal judgment. We dispense with oral argument because the facts and legal contentions are

adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

APPENDIX B

UNITED STATES DISTRICT COURT

Eastern District of North Carolina

UNITED STATES OF AMERICA

v.

DESMOND FARMER

JUDGMENT IN A CRIMINAL CASE

Case Number: 5:13-CR-144-1-D

USM Number: 57405-056

Curtis High
Defendant's Attorney

THE DEFENDANT:

☑ pleaded guilty to count(s) 1 of the indictment

☐ pleaded nolo contendere to count(s) which was accepted by the court.

☐ was found guilty on count(s) after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	**Nature of Offense**	**Offense Ended**	**Count**
21 U.S.C. § 846 and	Conspiracy to Distribute and	5/15/2013	1

21 U.S.C. § 841 (b)(1)(B)	Possess With Intent to Distribute 100 Grams or More of a Mixture or Substance Containing a Detectable Amount of Phencyclidine (PCP)

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☑ Count(s) 2 through 13 ☐ is ☑ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

Sentencing Location: Raleigh, North Carolina	5/22/2014 Date of Imposition of Judgment
	/s/ James C. Dever III Signature of Judge
	James C. Dever III, Chief U.S. District Judge
	Name and Title of Judge
	5/22/2014 Date

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

Count 1 - 168 months

The court orders that the defendant provide support for all dependents while incarcerated.

☑ The court makes the following recommendations to the Bureau of Prisons:

The court recommends that the defendant receive intensive substance abuse treatment and vocational and educational training opportunities. The court recommends that he serve his term in FCI Butner, North Carolina.

☑ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before p.m. on _____.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____ a _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of:

Count 1 - 4 years

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse.

☑ The defendant shall not possess a firearm, destructive device, or any other dangerous weapon. (Check, if applicable.)

☑ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1. The defendant shall not leave the judicial district or other specified geographic area without the permission of the court or probation officer.
2. The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five (5) days of each month.
3. The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
4. The defendant shall support the defendant's dependents and meet other family responsibilities.
5. The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
6. The defendant shall notify the probation officer at least ten (10) days prior to any change of residence or employment.
7. The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use distribute, or administer any controlled substance, or any paraphernalia related to any controlled substance, except as prescribed by a physician.

8. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered, or other places specified by the court.
9. The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
10. The defendant shall permit a probation officer to visit the defendant at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
11. The defendant shall notify the probation officer within seventy-two (72) hours of being arrested or questioned by a law enforcement officer.
12. The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
13. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall provide the probation office with access to any requested financial information.

The defendant shall not incur new credit charges or open additional lines of credit without the approval of the probation office.

The defendant shall participate as directed in a program approved by the probation office for the treatment of narcotic addiction, drug dependency, or alcohol dependency which will include urinalysis testing or other drug detection measures and may require residence or participation in a residential treatment facility.

The defendant shall consent to a warrantless search by a United States probation officer or, at the request of the probation officer, any other law enforcement officer, of the defendant's person and premises, including any vehicle, to determine compliance with the conditions of this judgment.

The defendant shall cooperate in the collection of DNA as directed by the probation officer.

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

TOTALS	**Assessment**	**Fine**	**Restitution**
	$ 100.00	$	$

☐ The determination of restitution is deferred until ___. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	**Total Loss**[1]	**Restitution Ordered**	**Priority or Percentage**
TOTALS _____	$0.00		$0.00

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

---

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

A ☐ Lump sum payment of $_____ due immediately, balance due

☐ not later than _____, or

☐ in accordance ☐C, ☐ D, ☐ E, or ☐ F below; or

B ☐ Payment to begin immediately (may be combined with ☐C, ☐D, or ☐ F below); or

C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $_____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $_____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the

payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☑ Special instructions regarding the payment of criminal monetary penalties:

The special assessment in the amount of $100.00 shall be due in full immediately.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution

interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

APPENDIX C

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO.: 5:13-CR-00144-1-D

UNITED STATES OF AMERICA,	
v.	
DESMOND FARMER,	September 4, 2013 Raleigh, North Carolina
DEFENDANT	

TRANSCRIPT OF RULE 11 HEARING BEFORE
THE HONORABLE JAMES E. GATES
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Government:	JENNIFER WELLS, ASSISTANT UNITED STATES ATTORNEY UNITED STATES ATTORNEY'S OFFICE 310 NEW BERN

	AVENUE, SUITE 800 RALEIGH, NORTH CAROLINA 27601
For the Defendant:	SUSAN MORRICE THOMPSON, ASSISTANT FEDERAL PUBLIC DEFENDER FEDERAL PUBLIC DEFENDER'S OFFICE 150 FAYETTEVILLE STREET, SUITE 450 RALEIGH, NORTH CAROLINA 27601
Court Reporter:	KIMBERLY H. NOLAN, CCR, CVR-M (919) 491-6888

Proceedings recorded by Stenomask, transcript produced from dictation and live recording.

* * *

[Page 16]

relating to it, and the Court will now consider each case on the calendar individually.

It is my intention, absent counsel bringing to my awareness at this time any difficulties with scheduling, to proceed through the calendar -- to proceed through these cases as set out in the calendar.

[BREAK IN PROCEEDINGS]

RULE 11 HEARING (10:08 A.M.)

THE COURT: Let's take up the case of *United States versus Desmond Farmer*. Madam Clerk, would you please swear the defendant?

(WHEREUPON, **DESMOND FARMER**, DEFENDANT, WAS SWORN)

THE COURT: Now, Mr. Farmer, sir, do you understand that having been sworn your answers to my questions are subject to the penalties of perjury or making a false statement if you do not answer truthfully?

MR. FARMER: Yes, sir.

THE COURT: Sir, do you understand that you have the right to have a United States district judge conduct this proceeding?

MR. FARMER: Yes, sir.

THE COURT: And have you conferred with your lawyer about your right to proceed before a district judge?

MR. FARMER: Yes, sir.

THE COURT: And recognizing your right to proceed before a district judge, do you expressly consent to proceed before me as a magistrate judge?

MR. FARMER: Yes, sir.

THE COURT: Now, your lawyer has passed up a form entitled "Consent to Proceed before a United States Magistrate Judge." Sir, did you sign this form after reviewing it with your lawyer?

MR. FARMER: Yes, sir.

THE COURT: And do you understand this form?

MR. FARMER: Yes, sir.

THE COURT: Now, this form indicates that you do consent to proceed before me as a magistrate judge. Do you understand that?

MR. FARMER: Yes, sir.

THE COURT: And do you in fact so consent?

MR. FARMER: Yes, sir.

THE COURT: Very well. I find that Mr. Farmer's consent to magistrate judge jurisdiction is knowingly and voluntarily provided, and I will accept that consent on behalf of the Court.

Sir, I do need to ask you a brief series of questions to satisfy myself that you are competent in the eyes of the law to plead today. My first question, sir, is how old are you?

MR. FARMER: Twenty-five (25).

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

MR. FARMER: Tenth.

THE COURT: Very well. Sir, are you currently or have you recently been under the care of a physician, psychologist, psychiatrist or other health care provider?

MR. FARMER: No, sir.

THE COURT: Have you ever been hospitalized or treated for any type of addiction?

MR. FARMER: No, sir.

THE COURT: Have you taken any drugs, medicine or pills or drunk any alcoholic beverages in the past 24 hours?

MR. FARMER: No, sir.

THE COURT: Ms. Thompson, do you believe that your client is competent to plead today?

MS. THOMPSON: Yes, sir, Your Honor.

THE COURT: Very well. Ms. Wells, do you believe that the defendant is competent as well?

MS. WELLS: Yes, sir, Your Honor.

THE COURT: Very well. Thank you. Let the record reflect that based on prior questions to the defendant and his counsel, the Court's observation of the defendant and the answers from counsel and defendant, the Court finds that the defendant is competent to plead today.

Now, with respect to the -- well, my understanding is the defendant intends to plead guilty to Count 1 of the indictment. Is that correct?

MS. THOMPSON: That is correct, Your Honor.

THE COURT: With respect to that count, Ms. Wells, is there a crime victim within the meaning of the law? I don't believe so, but --

MS. WELLS: There is not, Your Honor.

THE COURT: Okay, very well. Now, Mr. Farmer, I am going to inform you of the nature of the charges against you and advise you of the maximum penalties and any mandatory minimum penalty applicable to the charge to which you are pleading guilty, and I'll be happy to review those as well with respect to any of the other charges against you if you would like me to.

Since you have indicated an intention to plead guilty, the Court is going to ask you some additional questions to be sure that your guilty plea derives from your own free will and has a factual basis and to

determine whether the Court, in its discretion, should accept your guilty plea.

Now, sir, as I'm sure you know, you're charged on a 13-count indictment. That means there are 13 separate crimes charged against you. There's also a forfeiture notice included with the indictment.

It's my understanding that you've indicated an intention to plead guilty to Count 1, so I am going to review that count with you in detail.

Count 1 charges a drug conspiracy, and specifically that beginning in or about January of 2009, the exact date being unknown to the grand jury, and continuing up to and including the date of the indictment -- and the indictment was filed on May 5 of this year, 2013 -- in this district and elsewhere, you did knowingly and intentionally combined, conspired, confederated and agreed with others, known and unknown to the grand jury, to knowingly and intentionally distribute and possess with the intent to distribute 100 grams or more of a mixture or substance containing a detectable amount of PCP, that is, phencyclidine, a Schedule II controlled substance, in violation of Title 21 of the United States Code, Section 841(A)(1). This conspiracy would be in violation of Title 21 of the United States Code, Section 846.

Sir, do you understand that charge against you?

MR. FARMER: Yes, sir.

THE COURT: Now, let me review the penalties -- the maximum penalties associated with that charge. The law provides for a term of imprisonment of not more than five years, no more than 40 years; a fine not to exceed $5 million; at least four years of

supervised release up to lifetime supervised release; upon revocation of supervised release, not more than three years of imprisonment; a $100 special assessment; and restitution. Do you understand those penalties, sir?

MR. FARMER: Yes, sir.

THE COURT: Let me also advise you that as a result of this offense, you may be required to forfeit to the United States any and all property constituting or derived from any proceeds that you obtained directly or indirectly as a result of the offense, any and all property used or intended to be used in any way to commit or to facilitate the commission of the offense, as well as any property, real or personal, involving such offense, and any property traceable to such property.

If any of the forfeitable property cannot be obtained as a result of any act or omission on your part, the government can seek substitute property up to the value of the forfeitable property.

Sir, do you understand the right of the government to seek forfeiture against you as I've just described?

MR. FARMER: Yes, sir.

THE COURT: Now, as I indicated, sir, Count 1 is just one of 13 counts against you. Would you like me to review these other counts with you?

MR. FARMER: No, sir.

THE COURT: Do either counsel wish to have me review these additional counts with the defendant? Ms. Thompson?

MS. THOMPSON: No, sir, I do not.

THE COURT: Ms. Wells?

MS. WELLS: No, sir, Your Honor.

THE COURT: Okay. Very well. Sir, do you understand the penalties authorized by law as to Count 1, the count to which you've indicated an intention to plead guilty?

MR. FARMER: Yes, sir.

THE COURT: Do you understand that if the Court accepts your guilty plea, you will not be placed on parole because parole has been abolished in the Federal court system?

MR. FARMER: Yes, sir.

THE COURT: Now, Mr. Farmer, while I did not review these other counts against you, am I correct that you do understand these other charges against you in Counts 2 through 13?

MR. FARMER: Yes, sir.

THE COURT: Sir, do you understand all of the possible consequences of pleading guilty that I have discussed here today?

MR. FARMER: Yes, sir.

THE COURT: Now, you were in the courtroom today and heard and understood when I explained your rights to a jury trial and your other trial rights under the constitutional laws of the United States with regard to the charges pending against you, is that correct?

MR. FARMER: Yes, sir.

THE COURT: Now, if you plead guilty and the Court accepts your guilty plea, you will waive, or give up, those trial rights. Do you understand that?

MR. FARMER: Yes, sir.

THE COURT: Have you discussed with your lawyer the charge in Count 1 of the indictment to which you intend to plead guilty?

MR. FARMER: Yes, sir.

THE COURT: And do you understand that charge?

MR. FARMER: Yes, sir.

THE COURT: Now, in order for you to be found guilty of Counts 1, the government would have to prove at trial, by competent evidence and beyond a reasonable doubt, that you in fact did what the grand jury charged you with doing in that count.

Do you understand that?

MR. FARMER: Yes, sir.

THE COURT: Sir, have you spoken with your lawyer about sentencing?

MR. FARMER: Yes, sir.

THE COURT: The Court advises you that in determining your sentence, the Court must calculate the applicable advisory guideline range, consider that range, consider possible departures or variances under the guidelines, and consider other sentencing factors under Title 18 of the United States Code, Section 3553.

Do you understand that?

MR. FARMER: Yes, sir.

THE COURT: The Court also advises you that your attorney's calculation of your anticipated sentence is only an estimate, that the estimate is not binding on the Court, and that the Court will determine your actual sentence on the day of your sentencing hearing.

Do you understand that?

MR. FARMER: Yes, sir.

THE COURT: The Court also advises you that any estimate by your lawyer, or anyone else, as to whether the Court will grant or deny a departure or variance motion, or as to what the advisory guideline range is, is not binding on the Court. Do you understand that?

MR. FARMER: Yes, sir.

THE COURT: Has anyone threatened you, or anyone else, or forced you in any way to plead guilty?

MR. FARMER: No, sir.

THE COURT: Now, is it correct, sir, that you have entered into a plea agreement between yourself, your counsel and counsel for the government in this case?

MR. FARMER: Yes, sir.

THE COURT: I note for the record the Court has received and reviewed this plea agreement, and it's entitled "Memorandum of Plea Agreement." It's seven pages in length. Now, sir, on page 7, on that last page, there is a typed signature block, "Desmond Farmer, Defendant," and there's a signature on the line above that.

Is that in fact your signature, sir?

MR. FARMER: Yes, sir.

THE COURT: Now, Ms. Thompson, is that your signature under Mr. Farmer's?

MS. THOMPSON: Yes, sir.

THE COURT: Very well. Ms. Wells, is that your signature off to the right, ma'am?

MS. WELLS: It is, Your Honor.

THE COURT: Very well. Mr. Farmer, did you read and discuss the entire plea agreement with your lawyer before you signed it?

MR. FARMER: Yes, sir.

THE COURT: Does this written plea agreement constitute in its entirety the whole agreement that you have with the government in your case?

MR. FARMER: Yes, sir.

THE COURT: Do you understand each term in the plea agreement?

MR. FARMER: Yes, sir.

THE COURT: Are you aware, sir, that this plea agreement contains an appeal waiver provision?

MR. FARMER: Yes, sir.

THE COURT: And do you understand the appeal rights you are waiving?

MR. FARMER: Yes, sir.

THE COURT: Sir, I'm going to review this provision with you. It appears in paragraph 2C of the memorandum of plea agreement, and it reads as follows: that you agree to waive, knowingly and expressly, all rights conferred by 18 U.S.C. Section 3742 to appeal whatever sentence is imposed, including any issues that relate to the establishment of the advisory guideline range, reserving only the right to appeal from a sentence in excess of the applicable advisory guideline range that is established at sentencing, and further, to waive all rights to contest the conviction or sentence in a post-conviction proceeding, including one pursuant to 28 U.S.C. Section 2255, excepting an appeal or motion based upon grounds of ineffective assistance of

counsel or prosecutorial misconduct not known to you, the defendant, at the time of your guilty plea. The foregoing appeal waiver does not constitute or trigger a waiver by the United States of any of its rights to appeal provided by law.

Sir, do you understand that appeal waiver provision?

MR. FARMER: Yes, sir.

THE COURT: Did you agree to it?

MR. FARMER: Yes, sir.

THE COURT: Mr. Farmer, has anybody made any promise that induced you, that is, made you decide, to plead guilty other than promises contained in this plea agreement?

MR. FARMER: No, sir.

THE COURT: With regard to sentencing, sir, do you understand that if you plead guilty and the Court accepts the guilty plea, the Court would have the authority to sentence you to the statutory maximum sentence permitted by law on each count to which you plead guilty?

MR. FARMER: Yes, sir.

THE COURT: Do you understand that if the Court imposed such a maximum sentence, you are not going to be entitled to withdraw your guilty plea?

MR. FARMER: Yes, sir.

THE COURT: Has anyone made any promise to you as to what your sentence will be?

MR. FARMER: No, sir.

THE COURT: Sir, do you understand that the offense charged against you in Count 1 is a felony offense?

MR. FARMER: Yes, sir.

THE COURT: Do you understand the maximum penalty authorized by law for that offense?

MR. FARMER: Yes, sir.

THE COURT: Do you understand that pleading guilty to this felony offense may deprive you of valuable civil rights?

MR. FARMER: Yes, sir.

THE COURT: Do you also understand that if the Court accepts your plea of guilty, you will not later be able to withdraw your guilty plea?

MR. FARMER: Yes, sir.

THE COURT: Mr. Farmer, do you understand that right now as you stand before the Court you still have the right to plead not guilty to any offense charged against you and to persist in that plea?

MR. FARMER: Yes, sir.

THE COURT: Do you also understand that if you plead not guilty, you would then have the right to a trial by jury and all of the other trial rights I have previously explained?

MR. FARMER: Yes, sir.

THE COURT: Do you also understand that if you enter a plea of guilty and the Court accepts that plea, there will be no trial and you will have waived, or given up, the right to a trial, as well as the other trial rights that I have explained?

MR. FARMER: Yes, sir.

THE COURT: Sir, have you answered all of my questions truthfully today?

MR. FARMER: Yes, sir.

THE COURT: Sir, with respect to Count 1 of the indictment, which charges a conspiracy to distribute and possess with the intent to distribute 100 grams or more of a mixture or substance containing a detectable amount of phencyclidine, known as PCP, how do you plead, sir?

MR. FARMER: Guilty.

THE COURT: And did you in fact commit the offense charged in Count 1?

MR. FARMER: Yes, sir.

THE COURT: Then you are in fact guilty as charged of that offense?

MR. FARMER: Yes, sir.

THE COURT: Very well, sir. You may be seated. Ms. Wells, if I could now call upon you to make a presentation concerning the facts the government is prepared to prove at trial so that the Court might determine whether there exists an independent factual basis for the defendant's guilty plea.

MS. WELLS: Thank you, Your Honor. May it please the Court. Your Honor, beginning in 2009, officers with the Wilson Police Department here in the Eastern District of North Carolina began to have fairly regular contact with the defendant in this case, Mr. Farmer, concerning his distribution of phencyclidine, or PCP, in the Wilson area, that being the date.

Official law enforcement contact began with him on or about October 4th of 2009, and that continued

until late 2011. Beginning in June of 2012, officers developed a cooperating defendant who was able to make a series of controlled purchases from Mr. Farmer of PCP, and those controlled purchases continued from 2012 until February 8th of 2013, and those are reflected in some of the substantive counts that are set out in the indictment.

After they finished making the controlled purchases, they had two other incidents in March and April of 2013 when Mr. Farmer sold phencyclidine, or PCP, and an indictment was sought. He was arrested on federal charges on or about June 6th, 2013.

He gave an unprotected statement at the time, admitting to his involvement in the sale of PCP. He admitted purchasing over a thousand -- or selling over a thousand grams of PCP in the Wilson area between 2009 and his arrest in 2013.

Additionally, Your Honor, officers during the course of the investigation interviewed six federal cooperating defendants who had dealt with Mr. Farmer during two thousand -- between 2009 and 2013, and they stated between them they had purchased approximately 686 grams of PCP from Mr. Farmer during that time.

Your Honor, those are some of the facts the government would rely upon at trial in this case.

THE COURT: Very well. Can I ask you to rise again, Mr. Farmer?

Based on the government's summary and your acknowledgment that you are in fact guilty as charged in Count 1, and because you know your right to a trial and what the maximum possible

punishment is, and because you are voluntarily pleading guilty, I will accept your guilty plea to Count 1 and enter a judgment of guilty on your plea.

Let the record reflect that the Court is satisfied and finds as fact that the plea was freely and voluntarily entered by the defendant and that at the time the plea was entered, the defendant was fully competent and had a full and complete understanding of the nature of the charges and the maximum penalties provided by law.

The plea is supported by an independent basis in fact containing each essential element of the offense.

The defendant's plea accepted, and he is adjudged guilty on Count 1. The clerk is directed to enter a plea of not guilty with respect to the remaining counts, that is, Counts 2 through 13. The Court does anticipate dismissing those counts at sentencing in this case.

This matter is set for sentencing at the December 2nd of 2013 term of court beginning at 9:00 here in Raleigh.

Immediately following the hearing, Ms. Thompson, if you could please contact the probation office and make arrangements for the defendant's interview as soon as possible. Mr. Farmer, your counsel, of course, can be present during that interview.

As I mentioned earlier, a written presentence report will be prepared by the probation office to assist the Court in your sentencing.

You and your counsel will have the opportunity to read that report and submit timely objections before the sentencing hearing. You and your counsel will also have an opportunity to speak at the sentencing

hearing, as will, of course, counsel for the government.

Ms. Thompson, am I correct there's no motion for a change in Mr. Farmer's custody status?

MS. THOMPSON: That is correct.

THE COURT: Thank you, ma'am. Is there anything further at this time on behalf of Mr. Farmer?

MS. THOMPSON: No, sir, Your Honor.

THE COURT: Thank you, ma'am. Ms. Wells, anything further in this case on behalf of the government?

MS. WELLS: No, sir, Your Honor.

THE COURT: Thank you. Very well. I remand Mr. Farmer to the custody of the United States Marshal.

(WHEREUPON, THESE PROCEEDINGS CONCLUDED AT 10:28 A.M.)

I CERTIFY THAT THE FOREGOING IS A TRUE AND ACCURATE TRANSCRIPT OF SAID PROCEEDINGS.

/s/ KIMBERLY H. NOLAN 11/6/14
KIMBERLY H. NOLAN, CCR, CVR-M DATE

APPENDIX D

28 U.S.C.A. § 636

§ 636. JURISDICTION, POWERS, AND TEMPORARY ASSIGNMENT

EFFECTIVE: DECEMBER 1, 2009

(a) Each United States magistrate judge serving under this chapter shall have within the district in which sessions are held by the court that appointed the magistrate judge, at other places where that court may function, and elsewhere as authorized by law—

(1) all powers and duties conferred or imposed upon United States commissioners by law or by the Rules of Criminal Procedure for the United States District Courts;

(2) the power to administer oaths and affirmations, issue orders pursuant to section 3142 of title 18 concerning release or detention of persons pending trial, and take acknowledgements, affidavits, and depositions;

(3) the power to conduct trials under section 3401, title 18, United States Code, in conformity with and subject to the limitations of that section;

(4) the power to enter a sentence for a petty offense; and

(5) the power to enter a sentence for a class A misdemeanor in a case in which the parties have consented.

(b)

(1) Notwithstanding any provision of law to the contrary—

(A) a judge may designate a magistrate judge to hear and determine any pretrial matter pending before the court, except a motion for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or quash an indictment or information made by the defendant, to suppress evidence in a criminal case, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action. A judge of the court may reconsider any pretrial matter under this subparagraph (A) where it has been shown that the magistrate judge's order is clearly erroneous or contrary to law.

(B) a judge may also designate a magistrate judge to conduct hearings, including evidentiary hearings, and to submit to a judge of the court proposed findings of fact and recommendations for the disposition, by a judge of the court, of any motion excepted in subparagraph (A), of applications for posttrial relief made by individuals convicted of criminal offenses and of prisoner petitions challenging conditions of confinement.

(C) the magistrate judge shall file his proposed findings and recommendations under subparagraph (B) with the court and a copy shall forthwith be mailed to all parties.

Within fourteen days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions.

(2) A judge may designate a magistrate judge to serve as a special master pursuant to the applicable provisions of this title and the Federal Rules of Civil Procedure for the United States district courts. A judge may designate a magistrate judge to serve as a special master in any civil case, upon consent of the parties, without regard to the provisions of rule 53(b) of the Federal Rules of Civil Procedure for the United States district courts.

(3) A magistrate judge may be assigned such additional duties as are not inconsistent with the Constitution and laws of the United States.

(4) Each district court shall establish rules pursuant to which the magistrate judges shall discharge their duties.

(c) Notwithstanding any provision of law to the contrary—

(1) Upon the consent of the parties, a full-time United States magistrate judge or a part-time United States magistrate judge who serves as a full-time judicial officer may conduct any or all

proceedings in a jury or nonjury civil matter and order the entry of judgment in the case, when specially designated to exercise such jurisdiction by the district court or courts he serves. Upon the consent of the parties, pursuant to their specific written request, any other part-time magistrate judge may exercise such jurisdiction, if such magistrate judge meets the bar membership requirements set forth in section 631(b)(1) and the chief judge of the district court certifies that a full-time magistrate judge is not reasonably available in accordance with guidelines established by the judicial council of the circuit. When there is more than one judge of a district court, designation under this paragraph shall be by the concurrence of a majority of all the judges of such district court, and when there is no such concurrence, then by the chief judge.

(2) If a magistrate judge is designated to exercise civil jurisdiction under paragraph (1) of this subsection, the clerk of court shall, at the time the action is filed, notify the parties of the availability of a magistrate judge to exercise such jurisdiction. The decision of the parties shall be communicated to the clerk of court. Thereafter, either the district court judge or the magistrate judge may again advise the parties of the availability of the magistrate judge, but in so doing, shall also advise the parties that they are free to withhold consent without adverse substantive consequences. Rules of court for the reference of civil matters to magistrate judges shall include procedures to protect the voluntariness of the parties' consent.

(3) Upon entry of judgment in any case referred under paragraph (1) of this subsection, an aggrieved party may appeal directly to the appropriate United States court of appeals from the judgment of the magistrate judge in the same manner as an appeal from any other judgment of a district court. The consent of the parties allows a magistrate judge designated to exercise civil jurisdiction under paragraph (1) of this subsection to direct the entry of a judgment of the district court in accordance with the Federal Rules of Civil Procedure. Nothing in this paragraph shall be construed as a limitation of any party's right to seek review by the Supreme Court of the United States.

(4) The court may, for good cause shown on its own motion, or under extraordinary circumstances shown by any party, vacate a reference of a civil matter to a magistrate judge under this subsection.

(5) The magistrate judge shall, subject to guidelines of the Judicial Conference, determine whether the record taken pursuant to this section shall be taken by electronic sound recording, by a court reporter, or by other means.

* * *