No. 24A486

IN THE

Supreme Court of the United States

JEREMY YOUNG HUTCHINSON,
Petitioner,

v.

THE UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

David Leavitt
1068 Landings Loop
Tallahassee, FL 32311
(801) 574-3130
david@leavittfirm.com

Walter A. Romney
Counsel of Record
Clyde Snow and Sessions
One Utah Center
22nd Floor
201 South Main Street
Salt Lake City, Utah
84111
T & F: (801) 322-2516
war@clydesnow.com

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QUESTIONS PRESENTED

1. Does the plain language of Federal Rule of Criminal Procedure 11(c)(1)(B) require that the government either to join in the defendant's sentencing request or to not oppose the defendant's request when plea bargains are entered into pursuant to FRCRP 11(c)(1)(B)?

2. May parties to a plea agreement contract for plea bargain provisions that violates FRCRP 11(c)(1)(B)?

PARTIES TO THE PROCEEDINGS

Petitioner (appellant/defendant in the court of appeals) is Jeremy Young Hutchinson.

Respondent (appellee/plaintiff in the court of appeals) is the United States of America.

RELATED PROCEEDINGS

U.S. v. Hutchinson, No. 19-03048-03-CR-S-BCW, U.S. District Court for the Western District of Missouri, Southern Division. Judgment entered April 25, 2023.

U.S. v. Hutchinson, No: 23-2247, U.S. Court of Appeals for the Eighth Circuit. Judgment entered August 22nd, 2024.

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TABLE OF AUTHORITIES

Cases

Statutes and Rules

Jeremy Young Hutchinson respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit.

OPINIONS BELOW

The opinion of the Eighth Circuit Court of Appeals was issued in an unpublished decision and is included in the appendix to this petition.

JURISDICTION

The Eighth Circuit Court of Appeals entered judgment on August 22, 2024. This Court has jurisdiction under 28 USC 1254(1).

STATUTES AND RULES INVOLVED

18 USC App., Rule 11 Federal Rules of Criminal Procedure is set forth in the appendix.

INTRODUCTION

This petition asks this Court to recognize and enforce the plain language of a federal rule of criminal procedure. Since nearly every federal criminal case in the country resolves through a plea bargain pursuant to FRCrP 11(c)(1), the misapplication of 11(c)(1)(B) inappropriately eliminates an important check on prosecutorial power, thus affecting thousands of federal criminal defendants, in every federal district court of America.

FRCrP 11(c)(1) is arguably the most influential federal rule of criminal procedure since every plea bargain entered in the United States does so through the enabling authority of it. The general rule set forth in Rule 11(c)(1) authorizes plea bargains generally. Subsections (A), (B), and (C) deal with specific *quid pro quo* that the government may give to induce a plea bargain. For example, rule 11(c)(1)(A) allows prosecutors to reduce or eliminate charges as the *quid pro* quo for an inducement for a defendant's guilty plea.

Rule 11(c)(1)(B) allows the government to induce a defendant's plea by agreeing to join in the defendant's sentencing recommendation, or alternatively, to not oppose such recommendation. Parties may utilize subsection (B) in two specific scenarios. First, when the government and the defendant agree on a sentencing recommendation, but the government is unwilling to ask the court to bind itself to the plea bargain.

Second, when the parties cannot agree on a sentencing recommendation, but the government is willing to not oppose the defense recommendation as *quid pro quo* for the defendant's plea. Logically, since the government does not need to affirmatively support the defense recommendation, the defendant cannot rely on a binding commitment from the court. Rule 11(c)(1)(B) allows the defendant his or her own chance to persuade the judge regarding his or her sentencing recommendation without government opposition.

Rule 11(c)(1)(C) occurs when the government and the defendant specifically agree to a sentencing recommendation and, therefore, join in a sentencing recommendation. In *this* instance, the court is bound by the agreement, if it accepts it.

The lower court held in this case that "a plea agreement under Rule 11(c)(1)(B) . . . may specify that the government will recommend its own position regarding particular determinations at sentencing." Appendix C at 7a. We believe that the Eighth Circuit's ruling misinterprets the plain language of FRCRP 11(c)(1)(B), and that allowing provisions of a plea bargain to violate federal law sets an incredibly harmful practice since every plea bargained case in the federal system is governed by the provisions of Rule 11(c)(1).

The Petitioner desires that this Court accept his petition and provide definitive meaning to the plain language of FRCRP 11(c)(1)(B).

STATEMENT OF THE CASE

The government first prosecuted Petitioner in the Eastern District of Arkansas. When he refused to plead guilty, the government filed new charges in the Western District of Arkansas. When Petitioner refused to plead guilty in that case, the government prosecuted the Petitioner in the case that forms the basis of this Petition for a *writ of certiorari*. After being indicted in three federal districts, he entered into a global plea bargain that required pleas in separate districts. This case stems from the plea

agreement in the second case—the Western District of Missouri.

The plea agreement in that case is the focus case of this *writ*. The agreement invokes Federal Criminal Procedure Rule 11(c)(1)(B) as the foundational basis for the plea agreement. See App. G at 40a. We argue that the plain language of FRCRP 11(c)(1)(B) gives the government the option of joining in the defendant's sentencing recommendation or not opposing it. The parties also agreed that the government could argue for its own sentencing recommendation at sentencing, effectively contradicting the plain language provisions of 11(c)(1)(B). See Appendix G at 68a and 70a.

The government neither joined in the defense recommendation nor did it take a stance of non-opposition. Instead, it argued for its own sentencing recommendation. See Appendix D at 15a. Petitioner's counsel argued for a twelve-month sentence, to run concurrently with the Petitioner's forty-six month sentence from the first case in the global plea bargain. See Appendix at 25a. The government, on the other hand, argued for a fifty-one-month prison sentence and that it run consecutively to the forty-six months given in the first sentence of the global plea bargain.

The court sentenced the Petitioner to fifty months, to run consecutively to the first case of the global settlement. That the lower court did not adopt the defense recommendation is not the basis of this petition. Rather, as stated above, this petition bases its argument on the assertion that the parties' lawyers (the defense attorney and prosecutor), had

neither the authority nor the latitude to enter into a plea bargain that violates the plain language of federal law, and that doing so runs afoul of case law from this Court as violative of sound public policy.

REASONS FOR GRANTING THE PETITION

I. Whether FRCrP confers a duty on federal prosecutors to adopt the defendant's sentencing recommendation or not oppose such recommendation is a question of national importance.

This Court has recognized "that criminal justice today is for the most part a system of pleas, not a system of trials. Ninety-seven percent of federal convictions and ninety-four percent of state convictions are the result of guilty pleas." *Lafler v. Cooper*, 566 U.S. 156, 170 (2012).

Consequently, FRCrP 11(c)(1), plays a foundational role in at least ninety-seven percent of federal convictions. Sound public policy demands that every defendant be able to rely on what each part of Rule 11(c)(1) means. The parties to federal criminal litigation need to enjoy the consistency that comes through a uniform interpretation of the rule according to its plain language.

Nearly all circuit court opinions dealing with FRCrP (11(c)(1)(B) have dealt with the differences between a Rule 11(c)(1)(C) agreement and Rule 11(c)(1) (B) agreement. The difference between the two was articulated in *U.S. v. Gillen*, 449 F.3d 898, 902 (8th Cir. 2006): "The main difference between [the

Type B agreement and the Type C agreement] is that under Rule 11[(c)(1)(C), the Government promises to `agree,' which binds the district court at sentencing, and under Rule 11 [(c)(1)](B), the Government promises to `recommend,' which does not bind the district court at sentencing."

Significantly, while the circuit courts have distinguished a type (B) agreement from a type (C) agreement, none have clearly defined what the language of Rule 11(c)(1)(B) actually means. Instead, the circuit courts have chosen to simply quote the rule, without opining on the nature of the government's commitment which the rule imposes. See *United States v. Díaz-Bermúdez*, 778 F.3d 309 (1st Cir. 2015),*United States v. Lopez*, 385 F.3d 245 (2d Cir 2004), *United States v. Lewis*, 633 F.3d 262(4th Cir. 2011), *United States v. Pizzolato*, 655 F.3d 403 (5th Cir. 2011), *United States v. Hargrove*, No. 22-4083 (6th Cir. 2024), *United States v. Cole*, 569 F.3d 774 (7th Cir. 2009), *United States v. Gillen*, 449 F.3d 898 (8th Cir. 2006), *United States v. Rosales-Gonzales*, 801 F.3d 1177 (9th Cir. 2015).

Dicta from the Ninth circuit refers to the advisory committee dealing with Rule 11(c)(1). In *United States v. Torres-Giles*, 80 F.4th 934 (9th Cir. 2023), the Ninth Circuit stated: "*see also* Fed. R. Crim. P. 11 advisory committee's note to 1979 amendment (providing that a Type B agreement is 'clearly of a different order' than the Type A or C agreement as a Type B plea is an 'agreement to recommend' that 'is discharged when the prosecutor performs as he agreed to do')." But dicta from one

circuit court of appeals in no way offers the type of unambiguous certainty such a rule should embody.

The 8th Circuit's ruling in this case is the first discussion, that we can find, whether Rule 11(c)(1)(B) confers a duty on prosecutors to either join in the defense recommendation or not oppose the recommendation. Its opinion misses the mark. Disturbingly, the Sixth Circuit Court of Appeals reached a similar conclusion to the Eighth Circuit's opinion in December, 2024—approximately three months after the Eighth Circuit opinion. In *U.S. v. Chapman* the Sixth Circuit recently held: "A plea agreement under Rule 11(c)(1)(B) does not categorically bar the Government from opposing the defendant's sentencing arguments. Rather, it permits the Government to enter into an agreement in which it promises to either "recommend" or "agree not to oppose" a "particular sentence." *United States v. Chapman*, 2024 U.S. App. LEXIS 30972 (6th Cir. 2024).

Both the Eighth Circuit's ruling in this case and the Sixth Circuit's ruling in *Chapman* represent a re-telling of the Rule 11(c)(1)(B) story that can neither be squared nor justified by the plain language of the rule. Each, however, does demonstrate a dangerous trend that demand this Court's correction.

The nature of a plea bargain is such that each side is giving up something. The defendant gives up his/her right to the presumption of innocence and agrees to not force the government to satisfy the burden that it holds of proving the defendant's guilt beyond a reasonable doubt.

What does the government give up in a plea bargain? What it can give up in exchange for the defendant's guilty plea is enumerated in Rule 11(c)(1), subsections (A), (B), and (C).

Subsection (A) allows the government to promise that it will either not bring additional charges or that it will dismiss charges already brought.

Subsections (B) and (C) deal with the government's power to induce a defendant's plea by promising how it will respond on sentencing issues.

Subsection (C) is the holy grail for plea certainty because Subsection (C) not only binds both the court and the government.

Subsection (B) only binds the government. That is the purpose of 11(c)(1)(B). Courts give tremendous weight to government recommendations. If the government joins in a defense recommendation, that goes a long way toward persuading the court to accept the recommendation. The government remaining silent—neither having a recommendation nor joining with the defense—obviously is less preferable for the defendant. But subsection (B) gives the government the power to choose one of the two alternatives—joining in or not opposing a recommendation.

Subsections (A), (B), and (C) exist logically together embedded within Rule 11(c)(1) because they are each intended to provide certainty. Such

certainty in the process is an inducement to the defendant to enter into a plea agreement.

Beyond the logic and the placement of subsection (B) between subsections (A) and (C), the plain language of the rule is clear and unambiguous.

The lower court's analysis reasoned that Rule 11(c)(1)(B) does not require the government join in or not oppose Defendant's recommendation because it is written in the disjunctive. 11(c)(1)(B) is written in the disjunctive, to be sure. But not in the fashion that the Eighth Circuit asserts.

Rule 11(c)(1)(B) actually contains two disjunctive, or alternative possibilities, not one. The first states: that the government will "recommend, or agree not to oppose the defendant's request, that a particular sentence or sentencing range is appropriate. . . ."

The second disjunctive of subsection (B) is that the government will "recommend, or agree not to oppose *the defendant's* request, that a particular . . . provision of the Sentencing Guidelines, or policy statement, or sentencing factor does or does not apply." (Removing the first disjunctive for purposes of demonstrating the second disjunctive.)

The Rule does not provide a disjunctive possibility that the government may jointly recommend/not oppose OR provide its own recommendation, despite the government's attempt to force such language into it.

Such attempt, if allowed to succeed, would thwart the plain language of the rule and would completely obliterate the certainty that subsection (B) is intended to provide within plea agreements in every district in the country.

It bears noting that nothing in Rule 11(c)(1) compels the government to enter into either a subsection (A), (B), or (C) agreement. Rule 11(c)(1) makes clear that the parties may enter into a plea agreement that is *not* governed by one these subsections. Rule 11(c)(1) states: "(1) *In General.* An attorney for the government and the defendant's attorney, or the defendant when proceeding pro se, may discuss and reach a plea agreement. . . . If the defendant pleads guilty or nolo contendere to either a charged offense or a lesser or related offense, the plea agreement **may** specify that an attorney for the government will…" enter into an agreement governed by subsections (A), (B), or (C). (Rule 11(c) emphasis added). The Rule's use of the word "may" indicates that Rule 11 does not require the government into a plea agreement governed by (A), (B), or (C). If the government doesn't wish to be bound by the plain language of subsection (B), all it needs to do is not make the agreement subject to subsection (B).

II. This Court prohibits the enforcement of contractual provisions which violate federal law.

Under the assumption that this Court agrees with the plain language of Rule 11(c)(1)(B), then the plea agreement provisions which contradict the rule should be voided. Contractual provisions which

violate either law or public policy are voidable and unenforceable. That tenet is well settled in American jurisprudence. This Court declared that the court may not enforce a contract "that is contrary to public policy."*W.R. Grace & Co. v. Local Union 759, International Union of Rubber, Cork, Linoleum and Plastic Workers of America,* 461 U.S. 757, 766 (1983).

This Court has also made clear that a plea agreement is a contract. *Santobello v. New York,* 404 U.S. 257 (1971). Allowing parties to a plea bargain to exempt themselves from the plain language of Rule 11(c)(1)(B) would undermine the very stability and certainty that Rule 11(c)(1)(B) seeks to provide. If the plain language of Rule 11(c)(1)(B) requires government prosecutors to adopt the defense recommendation or not oppose that recommendation, then parties the plea bargain cannot be allowed to circumvent that. If they do not wish to be bound by the rule, then they may enter into a plea bargain pursuant to Rule 11(c)(1) rather than 11(c)(1)(B).

CONCLUSION

The plain language of Rule 11(c)(1)(B) allows government prosecutors to provide important *quid pro quo* to the defendants as an inducement to plead guilty. Removing the *quid pro quo* from the rule and allowing government lawyers to either adopt a defense recommendation or provide their own is a question of national significance. We respectfully request this Court to accept our petition so that the question may be fully vetted.

Respectfully submitted,

Walter A. Romney
Counsel of Record
Clyde Snow and Sessions
One Utah Center, 22nd Floor
201 South Main Street
Salt Lake City, Utah 84111
T & F: (801) 322-2516
war@clydesnow.com

David Leavitt
1068 Landings Loop
Tallahassee, FL 32311
(801) 574-3130
david@leavittfirm.com