No. 16-424

In the Supreme Court of the United States

RODNEY CLASS, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether petitioner is entitled to challenge the constitutionality of his statute of conviction on appeal, notwithstanding his voluntary and knowing entry of an unconditional guilty plea in which he did not seek to preserve any right to pursue such a challenge.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-5a) is not published in the Federal Reporter. The district court's oral order denying petitioner's motion to dismiss the indictment (Pet. App. 6a-9a) is unreported. The district court's opinion and order deferring in part and denying in part petitioner's motion to dismiss the indictment (Pet. App. 10a-16a) is reported at 38 F. Supp. 3d 19.

JURISDICTION

The judgment of the court of appeals was entered on July 5, 2016. The petition for a writ of certiorari was filed on September 30, 2016. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a guilty plea in the United States District Court for the District of Columbia, petitioner was

convicted on one count of unlawfully carrying and having readily accessible a firearm on Capitol grounds, in violation of 40 U.S.C. 5104(e)(1). C.A. App. 165. He was sentenced to 24 days of imprisonment, to be followed by 12 months of supervised release. *Id.* at 166-167. The court of appeals affirmed. Pet. App. 1a-5a.

1. On May 30, 2013, petitioner parked his car "in the 200 block of Maryland Avenue, S.W., Washington, D.C., which is part of the Capitol Grounds." C.A. App. 162. An agent of the United States Capitol Police observed that the car lacked authorization to park in the area. *Ibid.* Upon further inspection, the agent observed what she believed to be a large blade and a gun holster in the car. *Ibid.*

When petitioner returned to his car, he admitted that he had weapons in it. C.A. App. 162. After the agent obtained a search warrant, the police found, *inter alia*, a 9mm Ruger firearm loaded with eight rounds, including one round in the chamber; several loaded magazines containing 35 additional 9mm rounds; a box of 50 additional 9mm rounds; a .44 caliber Taurus firearm loaded with seven rounds, including one round in the chamber; an additional 90 rounds of .44 caliber ammunition; a .44 caliber Henry firearm loaded with 11 rounds, including one round in the chamber; and an additional 55 rounds of .44 caliber ammunition. *Id.* at 162-163.

2. A grand jury indicted petitioner on one count of unlawfully carrying or having readily accessible a firearm on Capitol Grounds, in violation of 40 U.S.C. 5104(e)(1); and one count of carrying a pistol in public, in violation of D.C. Code § 22-4504(a) (2012). Indictment 1-2. The latter charge was ultimately dismissed after the United States District Court for the District

of Columbia, in another case, held D.C. Code § 22-4504(a) to be unconstitutional. C.A. App. 122-123, 141; C.A. Supp. App. 134; see *Palmer* v. *District of Columbia*, 59 F. Supp. 3d 173 (D.D.C. 2014).

Petitioner, who eventually decided to waive his right to counsel, filed a number of pro se motions seeking, *inter alia*, dismissal of his case. Pet. App. 11a-16a. The district court denied most of his motions, but ordered a substantive response from the government "to the extent [petitioner] challenges his prosecution under the Second Amendment." *Id.* at 16a; see C.A. App. 70-100. At a subsequent motions hearing, the court "generously" construed petitioner's bare "assertions" that the D.C. city ordinance "'is unconstitutional'" as a Second Amendment challenge to the remaining count of carrying a firearm on Capitol Grounds, in violation of 40 U.S.C. 5104(e)(1). Pet. App. 9a; see *id.* at 7a. The court rejected that challenge, observing that this Court's decision in *District of Columbia* v. *Heller*, 554 U.S. 570 (2008), which had held a different D.C. gun law to be unconstitutional, had been "careful in emphasizing that nothing in [that] opinion should be taken to cast doubt on longstanding laws forbidding the carrying of firearms in sensitive places such as schools and government buildings" and had "stressed that such laws are presumptively lawful, regulatory measures." Pet. App. 8a.

3. Petitioner subsequently entered an unconditional guilty plea, pursuant to a plea agreement, to the Section 5104(e)(1) count. Pet. App. 2a; C.A. App. 152-161. The plea agreement included a "Waivers" section, in which petitioner was informed that his guilty plea constituted an "agree[ment] to waive certain

rights afforded by the Constitution of the United States and/or by statute or rule." C.A. App. 156. The section describing the various "Trial Rights" that petitioner was waiving included "the right to appeal [a] conviction" had he been "found guilty after a trial." *Id.* at 156-157. The section describing petitioner's waiver of "Appeal Rights" included a specific "waive[r]" of "the right to appeal the sentence in this case * * * except to the extent" that the district court imposed a sentence "above the statutory maximum or guidelines range" that the court determined to be applicable. *Id.* at 157.

The district court, at petitioner's plea hearing, "conducted a full inquiry pursuant to Federal Rule of Criminal Procedure 11." Pet. App. 2a. During that colloquy, petitioner acknowledged that he understood he was "generally giving up [his] rights to appeal." *Ibid.*; see *id.* at 3a. The court then explained the "exceptions" to that general waiver rule, informing petitioner that he could "appeal a conviction after a guilty plea if [he] believe[d] that [his] guilty plea was somehow unlawful or involuntary or if there is some other fundamental defect in the[] guilty-plea proceedings" and that he could appeal his sentence if he "th[ought] the sentence is illegal." *Id.* at 3a. Petitioner acknowledged that he understood the court's explanation. *Ibid.*

The district court accepted the plea, finding that petitioner "was competent and capable of making a decision, that he understood the nature and consequences of what he was doing, that he entered his plea knowingly and voluntarily and of his own free will, and that there was a factual basis for his entering a plea of guilty." C.A. Supp. App. 135. The court sentenced petitioner to 24 days of imprisonment, to be followed

by 12 months of supervised release. C.A. App. 166-167.

4. Petitioner appealed his conviction and filed a pro se opening brief, in which he appeared to raise, *inter alia*, a Second Amendment challenge to the D.C. ordinance that had formed the basis for a charge in the original indictment that had later been dismissed. See Pet. C.A. Br. 12-13, 23-26. A court-appointed amicus curiae filed a brief, whose arguments petitioner adopted, see Pet. 9 n.4, contending that the federal statute under which petitioner had been convicted "violates the Second Amendment, as applied to a law-abiding adult citizen's right to keep legally-owned firearms in his vehicle parked in an unsecured, publicly-accessible parking lot" and was "unconstitutionally vague" because it is "exceedingly difficult for someone to determine that the Maryland Avenue parking lot is part of the Capitol Grounds" and no proof of scienter is required. Amicus C.A. Br. 1, 51; see *id.* at 15-56.

The court of appeals affirmed in an unpublished per curiam opinion. Pet. App. 1a-5a. The court perceived petitioner to be "assert[ing] three grounds of constitutional error and a further claim of statutory error," but found "[n]one of them" to be "properly before" the court on appeal. *Id.* at 3a. The court observed that "[a]lthough the Federal Rules of Criminal Procedure provide for conditional pleas wherein a pleading defendant may 'reserve in writing the right to have an appellate court review an adverse determination of a specified pretrial motion,'" *id.* at 3a-4a (brackets omitted) (quoting Fed. R. Crim. P. 11(a)(2)), petitioner's "plea in the present case contains no such reservation." *id.* at 4a. The court cited "well-established law that 'unconditional guilty pleas that

are knowing and intelligent waive the pleading defendant's claims of error on appeal, even constitutional claims.'" *Id.* at 3a (brackets and ellipsis omitted) (quoting *United States* v. *Delgado-Garcia*, 374 F.3d 1337, 1341 (D.C. Cir. 2004)), cert. denied, 544 U.S. 950 (2005). And it determined that neither of the "two recognized exceptions to this rule"—namely, "'the defendant's claimed right not to be haled into court at all,' and a claim 'that the court below lacked subject-matter jurisdiction over the case'"—"applies here." *Id.* at 4a (quoting *Delgado-Garcia*, 374 F.3d at 1341).

ARGUMENT

Petitioner contends (Pet. 12-31) that, notwithstanding his unconditional guilty plea, he was entitled to challenge the constitutionality of his statute of conviction on appeal. The court of appeals' unpublished disposition is correct; this case would be a poor vehicle for reviewing the question presented; and no further review is warranted. This Court recently denied a petition for a writ of certiorari presenting similar issues, see *Parrilla-Fuentes* v. *United States*, No. 16-5055 (Nov. 14, 2016), and should do the same here.[1]

1. Petitioner's unconditional guilty plea bars him from challenging the constitutionality of his statute of conviction on appeal. "By entering a plea of guilty, the accused is not simply stating that he did the discrete acts described in the indictment; he is admitting guilt of a substantive crime." *United States* v. *Broce*, 488 U.S. 563, 570 (1989). Accordingly, "[w]hen a criminal defendant has solemnly admitted in open court

[1] The petitions in *Carrasquillo-Peñaloza* v. *United States*, No. 16-6076 (filed Sept. 19, 2016), and *Muhlenberg* v. *United States*, No. 16-6135 (filed Sept. 20, 2016), present similar questions.

that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea." *Tollett* v. *Henderson*, 411 U.S. 258, 267 (1973). Even apart from any view of the guilty plea as a "waiver" of constitutional claims, *Menna* v. *New York*, 423 U.S. 61, 62 n.2 (1975) (per curiam), the defendant's admissions preclude any argument inconsistent with the premise that he violated the substantive criminal law as described in the indictment. See *Broce*, 488 U.S. at 570-571; *Brady* v. *United States*, 397 U.S. 742, 748 (1970) ("[T]he plea is more than an admission of past conduct; it is the defendant's consent that judgment of conviction may be entered without a trial.").

The Federal Rules of Criminal Procedure additionally make clear that, in the federal system, "traditional, unqualified pleas *do* constitute a waiver of nonjurisdictional defects." Fed. R. Crim. P. 11 advisory committee's note (1983) (emphasis added). Under Rule 11(a)(2), a defendant may, with the consent of the court and the government, "enter a conditional plea of guilty or nolo contendere, reserving in writing the right to have an appellate court review an adverse determination of a specified pretrial motion." Fed. R. Crim. P. 11(a)(2). That Rule was added, in part, to "aid in clarifying" that an unconditional plea would be treated as waiving nonjurisdictional arguments. Fed. R. Crim. P. 11 advisory committee's note (1983). In accordance with that principle, petitioner's plea colloquy here included his acknowledgement that an unconditional guilty plea meant "generally giving up [his] rights to appeal," except for claims that the "guilty plea was somehow unlawful or involuntary,"

that the "guilty-plea proceedings" exhibited "some other fundamental defect," or that "the sentence [was] illegal." Pet. App. 2a-3a.

2. Petitioner does not dispute that both the statutory right to appeal, and constitutional claims more generally, are subject to waiver. See, *e.g.*, *United States* v. *Mezzanatto*, 513 U.S. 196, 200-201 (1995) (defendant may waive "many of the most fundamental protections afforded by the Constitution"). Nor does he dispute that an unconditional guilty plea in most circumstances bars a defendant from challenging his conviction or sentence on direct appeal. He contends (Pet. 26-31), however, that the bar should not apply to a constitutional challenge to the statute of conviction. In his view, the success of such a challenge would imply a right "to prevent a trial from taking place at all," Pet. 28, and this case should therefore be controlled by two decisions—*Blackledge* v. *Perry*, 417 U.S. 21 (1974), and *Menna* v. *New York*, *supra*—in which this Court permitted a defendant who unconditionally pleaded guilty to challenge the prosecution's authority to "hal[e] [the] defendant into court." *Menna*, 423 U.S. at 62 & n.2; see *Blackledge*, 417 U.S. at 30-31.

Petitioner's argument is misconceived. "In *Blackledge* and *Menna*, * * * the very act of haling the defendants into court completed the constitutional violation." *United States* v. *Miranda*, 780 F.3d 1185, 1190 (D.C. Cir. 2015). *Blackledge* involved a claim of vindictive prosecution based on increased charges, the premise of which was that "[t]he very initiation of the proceedings against [the defendant] in the Superior Court * * * operated to deny him due process of law." 417 U.S. at 30-31. Similarly, *Menna* involved a double-jeopardy claim, the premise of which was that

the State was "precluded by the United States Constitution from haling [the] defendant into court on [the] charge." 423 U.S. at 62. "Neither *Blackledge* nor *Menna* involved claims that a criminal statute violated the Constitution," and such a claim does not "fit into *Blackledge* and *Menna*'s exception for claims involving 'the very power of the State to bring the defendant into court.'" *United States* v. *De Vaughn*, 694 F.3d 1141, 1154 (10th Cir. 2012) (quoting *Blackledge*, 417 U.S. at 30), cert. denied, 133 S. Ct. 2383 (2013). This Court has recognized that a district court is "authorized to render judgment on the indictment" even when the charges in the indictment are legally defective. *United States* v. *Williams*, 341 U.S. 58, 66 (1951); see *id.* at 61.

This Court has, in particular, made clear that the constitutionality of the statute under which a defendant is charged and convicted is not a question of subject-matter jurisdiction. Subject-matter jurisdiction relates to the court's "power to decide a justiciable controversy," *Williams*, 341 U.S. at 66 (citation omitted), not Congress's power to enact a statute. As this Court has explained, "[e]ven the unconstitutionality of the statute under which the proceeding is brought does not oust a court of jurisdiction." *Ibid.* "Though the trial court or an appellate court may conclude that the statute is wholly unconstitutional, * * * it has proceeded with jurisdiction." *Id.* at 68-69; see *Chicot Cnty. Drainage Dist.* v. *Baxter State Bank*, 308 U.S. 371, 373-378 (1940) (according res judicata effect to decision notwithstanding that statute under which court acted was subsequently found unconstitutional).

Petitioner's citation (Pet. 28-29) of *Haynes* v. *United States*, 390 U.S. 85 (1968), is misplaced. In *Haynes*, a

defendant had raised in district court, before pleading guilty, an as-applied constitutional challenge to the statute under which he had been charged, and the Court permitted the renewal of that challenge on appeal. See *id.* at 86-87 & n.2. The government did not challenge that procedure, however, and the Court did not analyze it beyond citing a court of appeals decision. *Haynes*, moreover, predates the enactment of Rule 11(a)(2), which provides explicit procedures for conditional appeals and clarifies that "traditional, unqualified pleas do constitute a waiver of nonjurisdictional defects." Fed. R. Crim. P. 11 advisory committee's note (1983). The drafters of that Rule recognized that this Court had held that "certain kinds of constitutional objections may be raised after a plea of guilty" under "the Menna-Blackledge doctrine" and stated that the conditional plea procedures did not affect or apply to that doctrine. *Ibid.* (amendment "should not be interpreted as either broadening or narrowing the Menna-Blackledge doctrine"). But they also made clear that merely raising an objection—even a constitutional one outside the scope of *Menna* and *Blackledge*—does not preserve the right to raise it on appeal following a guilty plea unless the prescribed procedures for a conditional plea are observed. See Fed. R. Crim. P. 11(a)(2).[2]

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[2] Petitioner's passing citation (Pet. 29) of *Halbert* v. *Michigan*, 545 U.S. 605, 621-622 (2005), is also misplaced. That case concerned a right to counsel in appellate proceedings and did not address the question presented here. See *id.* at 609-610. The quotation in the petition, moreover, is not a "holding" (Pet. 29) of this Court, but instead a restatement of a passage from a dissenting opinion by a state-court judge discussing state convictions. See *Halbert*, 545 U.S. at 621-622 (quoting *People* v. *Bulger*, 614 N.W.2d

3. The court of appeals' conclusion (Pet. App. 3a-4a) that constitutional challenges to the statute of conviction may not be raised on appeal following an unconditional guilty plea accords with the decisions of other circuits. See *United States* v. *Díaz-Doncel*, 811 F.3d 517, 518 (1st Cir. 2016) ("[A] constitutional challenge to Congress's 'jurisdiction' to pass [a statute] pursuant to its Article I powers is not a challenge to a district court's subject matter jurisdiction over a criminal case brought under [that statute]."); *De Vaughn*, 694 F.3d at 1153 ("A claim that a criminal statute is unconstitutional does not implicate a court's subject matter jurisdiction.").

Some circuits have at least in certain circumstances permitted a federal criminal defendant to raise a constitutional challenge to a criminal statute underlying the charges to which he has pleaded guilty, based on the view that the constitutional argument is "jurisdictional." See, *e.g.*, *United States* v. *Saac*, 632 F.3d 1203, 1208 (11th Cir.) (facial challenge), cert. denied, 132 S. Ct. 139 (2011); *United States* v. *Seay*, 620 F.3d 919, 922 (8th Cir. 2010) (facial challenge), cert. denied, 562 U.S. 1191 (2011); *United States* v. *Whited*, 311 F.3d 259, 262-264 (3d Cir. 2002) (as-applied challenge), cert. denied, 538 U.S. 1065 (2003); *United States* v. *Rodia*, 194 F.3d 465, 469 (3d Cir. 1999) (facial challenge), cert. denied, 529 U.S. 1131 (2000); *United States* v. *Bishop*, 66 F.3d 569, 572 n.1 (3d Cir.) (facial challenge), cert. denied, 516 U.S. 1032 (1995) and 516 U.S. 1066 (1996); *United States* v. *Skinner*, 25 F.3d 1314, 1317 (6th Cir. 1994) (facial challenge); *United States* v. *Sandsness*, 988 F.2d 970, 971 (9th Cir. 1993)

103, 133-134 (Mich.), cert. denied, 531 U.S. 994 (2000) (Cavanaugh, J., dissenting)).

(citing *United States* v. *Broncheau*, 597 F.2d 1260, 1262 n.1 (9th Cir.) (stating that guilty plea "does not bar appeal of claims that the applicable statute is unconstitutional") (facial and as-applied challenges), cert. denied, 444 U.S. 859 (1979)); see also *United States* v. *Bell*, 70 F.3d 495, 497 (7th Cir. 1995) (permitting facial challenge "in the circumstances of this case").[3] None of those decisions, however, has reconciled the view that the constitutionality of the statute of conviction is "jurisdictional" with the contrary authority from this Court, see p. 9, *supra*.

The Seventh Circuit has stated that it uses the term "jurisdictional" in this context not in reference to subject-matter jurisdiction, but as shorthand for any issue "that stands in the way of conviction—even when factual guilt is validly established—and prevents a court from entering any judgment in the case, including an acquittal." *United States* v. *Phillips*, 645 F.3d

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[3] Petitioner's citation of unpublished circuit decisions—particularly ones in which the issue was not disputed, see *United States* v. *Aranda*, 612 Fed. Appx. 177, 178 n.1 (4th Cir. 2015)—does not demonstrate any established circuit practice that would bind future circuit panels. Petitioner also fails to show such a practice by citing (Pet. 18) *United States* v. *Knowles*, 29 F.3d 947 (5th Cir. 1994). That decision, which permitted a constitutional challenge to a statute of conviction following an unconditional guilty plea, is at odds with a later decision from the same circuit, *United States* v. *Sealed Appellant*, 526 F.3d 241 (5th Cir.), cert. denied, 555 U.S. 1009 (2008), which found a constitutional challenge to be waived by an unconditional guilty plea on the ground that the challenge was nonjurisdictional. Compare *Sealed Appellant*, 526 F.3d at 243, with *Knowles*, 29 F.3d at 952. Although the Fifth Circuit follows the earlier panel decision in the event of a conflict, *GlobeRanger Corp.* v. *Software AG USA, Inc.*, 836 F.3d 477, 497 (2016), the intracircuit conflict demonstrates that the issue is not fully settled in that court.

859, 862 (2011). The view that any such issue is appealable following an unconditional guilty plea, however, overreads *Blackledge* and *Menna*. See pp. 8-9, *supra*. Similarly, the Eleventh Circuit (in dictum) has attempted to justify permitting constitutional challenges on appeal by reference solely to this Court's decision in *Haynes*. See *United States* v. *Palacios-Casquete*, 55 F.3d 557, 561 (1995), cert. denied, 516 U.S. 1120 (1996). *Haynes*, however, cannot bear that much weight in this context. See pp. 9-10, *supra*. And neither the Seventh nor the Eleventh Circuit decisions discussed or accounted for Rule 11(a)(2).

Any approach that automatically permits review of a constitutional challenge to a statute of conviction notwithstanding an unconditional guilty plea is in tension with the fact that "virtually all circuits * * * have addressed constitutional challenges to criminal statutes and have either refused to address them because the defendants had neglected to raise them below, or decided to reach them only upon determining that the lower court's failure to address them constituted 'plain error,'" *United States* v. *Baucum*, 80 F.3d 539, 541 (D.C. Cir. 1996) (per curiam). See *id.* at 541 n.2 (citing cases). The disposition of such constitutional claims on waiver or plain-error grounds is not consistent with the view that such challenges raise questions of "the courts' statutory or constitutional *power* to adjudicate the case," which courts would be obligated to consider and required to review de novo. *Steel Co.* v. *Citizens for a Better Env't*, 523 U.S. 83, 89 (1998); see *id.* at 93-102. That internal inconsistency in some circuits' practices should be addressed in the first instance by the courts of appeals themselves.

See *Wisniewski* v. *United States*, 353 U.S. 901, 902 (1957) (per curiam).

4. In any event, the unpublished decision below would provide a poor vehicle for considering the question presented. First, petitioner is particularly ill-situated to contend that his guilty plea did not constitute a waiver of his constitutional claims. His pre-plea motions indicate that he was aware of the possibility of bringing such claims. See p. 3, *supra*. Yet he pleaded guilty notwithstanding the district court's warning that by doing so, he would generally be forgoing any appellate challenges to the conviction not directly tied to the plea itself, see Pet. App. 2a-3a. Although he indicated that he understood that warning, see *ibid.*, petitioner made no attempt to enter a conditional plea.[4]

Second, it is far from clear that petitioner is correct in suggesting (Pet. 25) that this case would provide the Court with the opportunity to address the question presented in the context of both as-applied and facial constitutional claims. Petitioner supports the assertion that both types of arguments were raised in the court of appeals by citing the amicus brief, whose arguments he adopted. See Pet. 25 n.8. That brief raised an as-applied Second Amendment claim, see Amicus C.A. Br. 1 (stating issue as whether petition-

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[4] Petitioner objects (Pet. 25) that Rule 11(a)(2) requires the government's consent to a conditional plea. But that requirement exists to "ensure that conditional pleas will be allowed only when the decision of the court of appeals will dispose of the case either by allowing the plea to stand or by such action as compelling dismissal of the indictment or suppressing essential evidence," something the government "is in a unique position to determine." Fed. R. Crim. P. 11 advisory committee's note (1983).

er's conviction "violates the Second Amendment, as applied"), and a vagueness argument focused primarily on whether the statute gave adequate notice that the *particular* parking lot used by petitioner was part of the Capitol Grounds, see *id.* at 50-56. Although the government's own brief apparently treated the vagueness argument as facial, Gov't C.A. Br. 26 n.14, it is not readily apparent that it should in fact be classified as such, or that the court of appeals itself viewed it that way. The court's unpublished decision in this case relied on precedent that (like its other published precedent) addresses only whether a defendant is barred from raising an as-applied constitutional challenge on appeal following an unconditional guilty plea. See *United States* v. *Delgado-Garcia*, 374 F.3d 1337, 1343 (D.C. Cir. 2004) (cited at Pet. 3a-4a), cert. denied, 544 U.S. 950 (2005); see also *Miranda*, 780 F.3d at 1189.

Third, petitioner's constitutional challenges to the ban on firearms on the Capitol Grounds are insubstantial. With respect to his Second Amendment claim, this Court explained in *District of Columbia* v. *Heller*, 554 U.S. 570 (2008), that "the right secured by the Second Amendment is not unlimited" and that "longstanding prohibitions on * * * the carrying of firearms in sensitive places such as schools and government buildings" are "presumptively lawful." *Id.* at 626, 627 n.26; see *McDonald* v. *City of Chi.*, 561 U.S. 742, 786 (2010) (same). Accordingly, courts of appeals have consistently rejected Second Amendment challenges like petitioner's. See, *e.g.*, *Bonidy* v. *United States Postal Serv.*, 790 F.3d 1121, 1125-1127 (10th Cir. 2015) (rejecting Second Amendment challenge to prohibition on firearms in parking lot adjacent to post

office), cert. denied, 136 S. Ct. 1486 (2016); *United States* v. *Masciandaro*, 638 F.3d 458, 460, 473-474 (4th Cir.), (rejecting Second Amendment challenge to conviction for possessing a firearm in a national-park parking lot), cert. denied, 132 S. Ct. 756 (2011).

With respect to petitioner's vagueness claim, he faces a particularly high hurdle, because he forfeited the claim by failing to raise it in district court. See Gov't C.A. Br. 29-31. He thus could prevail on appeal only if he satisfies the stringent requirements of plain-error review, see Fed. R. Crim. P. 52(b), including that any error was both "obvious" and "seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings," *United States* v. *Marcus*, 560 U.S. 258, 262 (2010) (citation and internal quotation marks omitted). Petitioner cannot show any obvious error—or, indeed, any error at all—in his conviction, when the term "Capitol Grounds" is clearly defined by statute to include "all grounds" bounded by certain streets, 40 U.S.C. 5102(c)(1)(C), thereby "provid[ing] a person of ordinary intelligence fair notice" of what is covered, *United States* v. *Williams*, 553 U.S. 285, 304 (2008). Nor can he show any fundamental unfairness in his conviction, when the parking lot in question is clearly marked as for permit-holders only and was chosen by petitioner specifically because it gave him ready access to congressional buildings. See Gov't C.A. Br. 5. Review of petitioner's procedural claim is unwarranted in a case in which his underlying merits arguments so clearly lack merit.

5. Not only is review unwarranted here because petitioner's underlying claims lack merit, but review is unwarranted to address any systemic concerns in

federal criminal justice.[5] The only cases that could even potentially be affected would be those in which a defendant has not expressly preserved his ability to raise a constitutional claim on appeal by entering a conditional plea under Rule 11(a)(2). Many of those, however, will involve written plea agreements with explicit appeal waivers that would independently bar a challenge to the statute of conviction on appeal, regardless of how the question presented in this case is resolved. See, *e.g.*, Br. in Opp. at 5-7, *Parrilla-Fuentes*, *supra* (No. 16-5055); Br. in Opp. at 5-8, *Muhlenberg* v. *United States*, No. 16-6135 (filed Sept. 20, 2016); compare *Menna*, 423 U.S. at 61-62 (double-jeopardy claim may be raised on appeal following unconditional guilty plea), with *Ricketts* v. *Adamson*, 483 U.S. 1, 8-10 (1987) (double-jeopardy claim may be expressly waived in plea agreement).

Of the remaining cases, it is highly unlikely that many defendants would ultimately benefit from the ability to challenge their statutes of conviction on direct review. In only one of the circuit decisions cited by petitioner (Pet. 17-23) as allowing a constitutional challenge to the statute of conviction on appeal following an unconditional guilty plea—*United States* v. *Knowles*, 29 F.3d 947 (5th Cir. 1994)—did the court of appeals actually reverse the conviction based on that challenge. And the court in that case noted that the recent circuit precedent on which it relied to find a

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[5] Petitioner does not claim that this Court's intervention to resolve the question presented would necessarily govern state practice. Although both *Menna* and *Blackledge* arose from state convictions, neither decision purported to displace the usual state prerogative to adopt rules to govern the proper presentation and preservation of federal claims following a guilty plea.

constitutional infirmity in the statute, *United States* v. *Lopez*, 2 F.3d 1342 (5th Cir. 1993), aff'd, 514 U.S. 549 (1995), would have justified relief (as a substantive rule) even on collateral postconviction review, see *Knowles*, 29 F.3d at 951. A defendant who seeks the benefit of a substantive ruling establishing that the statute of conviction is unconstitutional could accordingly seek relief under 28 U.S.C. 2255. The same is true of any defendant whose decision to plead was the product of counsel's erroneous failure to identify a substantial constitutional claim. See *Hill* v. *Lockhart*, 474 U.S. 52 (1985). The question whether a defendant who pleaded guilty unconditionally may himself raise a constitutional challenge to the statute of conviction through the particular mechanism of a direct appeal is accordingly of limited practical importance.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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