

**TOO MUCH OF A STRETCH: WHY ACCEPTANCE OF  
FELONY GUILTY PLEAS BY FEDERAL MAGISTRATES  
DEFIES THE INTENT OF CONGRESS AND ERODES  
THE RIGHTS OF THE ACCUSED REGARDLESS OF  
CONSENT**

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ABSTRACT

*In 1968, Congress passed the Federal Magistrates Act, creating what would eventually be named the Office of United States Magistrate. This came in response to persistent calls for improvements in the operating efficiency of the federal courts. Through a series of statutory amendments and court decisions, the duties performed by magistrates since the Act's passage have gradually expanded. In particular, courts, including the United States Supreme Court, have granted additional powers to magistrates through permissive interpretations of the statute's "additional duties" clause. Despite statutory language and legislative history placing significant restrictions on the duties that magistrates can perform in felony cases, courts have given approval to magistrates handling certain tasks, e.g. voir dire, in felony matters. This Note addresses the duty of acceptance of felony guilty pleas and examines whether the majority trend in the circuit courts of allowing magistrates to perform such a duty should be permitted under the Federal Magistrates Act. In examining the origins of the magistrate position, the Act's legislative history, the statutory language, Supreme Court precedent, and a recent decision by the Seventh Circuit, this Note argues that acceptance of felony guilty pleas by magistrates is not authorized under the Federal Magistrates Act and undermines the fundamental protections afforded to criminal defendants.*

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“How can we do all of this? We just do it. It’s not necessary that we find authority in black and white before we give something to the magistrate. . . . Sure we might get shot down once in awhile by an appellate court. So what?”<sup>1</sup>

Hon. Robert C. Belloni,  
Chief Judge of the District of Oregon, 1971–1976

#### INTRODUCTION

Lumping a felony defendant’s waiver of important rights in a category along with administrative and procedural actions of reduced importance is alarming. This is exactly what the overwhelming majority of circuit courts have done by ruling that federal magistrates have the power to accept guilty pleas in felony cases. “Farming out” a critical responsibility of the district judge to the magistrate is an abuse of the Federal Magistrates Act. Such a practice threatens to create precedent for judges to further abandon other obligations to the accused that ought to be performed carefully by these constitutional officers who have been appointed for life to do so.

Due to the importance and responsibility inherent in accepting a felony guilty plea and the finality of such an action, allowing federal magistrates to accept felony guilty pleas, even with the defendant’s consent, should be discontinued since it violates the Federal Magistrates Act and undermines the fundamental protections afforded to criminal defendants. The role played by magistrates in the federal judicial system is vital and magistrates should be credited for major improvements in efficiency. However, the rights and protections

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1. Hearing on S. 1283 Before the Subcomm. on Improvements in Judicial Machinery of the Senate Judiciary, 94th Cong., 1st Sess., 39–40 (1975).

guaranteed to the accused must triumph over the desire for expediency.<sup>2</sup>

Part I begins by discussing the origins of the federal magistrate system to provide context regarding the perceived need for magistrates, the intended goals of this system, and the problems created by expanding the magistrates' power beyond its scope. The modern United States Magistrate system will also be discussed with an analysis of the Federal Magistrates Act and the amendments since its passage in 1968.

Part II.A argues that the legislative history and development of the Federal Magistrates Act (hereinafter "FMA") indicate no intention by Congress to include the acceptance of felony guilty pleas as an authorized duty of magistrate judges under the statute. Next, Part II.B establishes that accepting a felony guilty plea is not a "pre-trial matter" that a magistrate is permitted to perform under section 636(b)(1)(A) of the FMA. Part II.C argues that the practice does not qualify as an "additional duty" under section 636(b)(3) of the statute because Supreme Court precedent shows that such an action is not comparable in importance and responsibility to any of the duties enumerated in the FMA. Next, Part II.D discusses how the finality of a felony guilty plea acceptance disqualifies a magistrate judge from performing such a duty under the FMA because it is equivalent to a guilty verdict at trial. Part II.E of this Note argues that the heightened responsibility necessary to administer the required colloquy as part of felony guilty plea acceptance serves as a further obstacle to performing this task by a magistrate under the Act. Finally, Part II.F discusses recommendations to improve efficiency within the federal court system that do not rely on an expanded role for magistrates in felony cases.

## I. BACKGROUND

### *A. Origins and Development of the Federal Magistrate Position*

The evolution of the Office of United States Magistrate can be traced to the 18th century, and the position itself has changed substantially since Congress officially created it in 1968. What began as a collection of individuals with the power to take bail developed in-

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2. This Note does not address whether acceptance of felony guilty pleas by a magistrate is constitutional; this question has been addressed in other scholarship. Rather, this Note focuses on whether the practice is permissible under the Federal Magistrates Act.

to an office of ever-growing stature and responsibilities, culminating with the passage of the Federal Magistrates Act and its subsequent amendments.<sup>3</sup> Congress viewed the role of magistrates as central to improving the overall efficiency of the federal judicial system.<sup>4</sup> However, the zeal with which the magistrate position was expanded was also tempered by concerns about overextending its responsibility, particularly in criminal cases.<sup>5</sup>

### 1. *The original federal courts*

The original structure of the federal courts was the result of a compromise.<sup>6</sup> On one side were those who advocated for a powerful national government, and on the other were those who placed a premium on state sovereignty.<sup>7</sup> Through the passage of the Judiciary Act of 1789, federal circuit and district courts were established and given the authority to try federal criminal cases while matters of arrest and bail were left to be handled under state law by state judicial officers.<sup>8</sup>

The circuit courts as established in 1789 bear practically no resemblance to the federal circuit courts that exist today.<sup>9</sup> The original circuit courts were trial courts comprised of multiple judges and had “general jurisdiction over all significant federal civil and criminal cases.”<sup>10</sup> The jurisdiction of federal district courts was originally confined to “admiralty cases, seizures and forfeitures, and federal crimes carrying a penalty up to six months or thirty lashes.”<sup>11</sup> The initial three circuit courts were actually comprised of two Supreme Court justices along with a district court judge.<sup>12</sup> Thus, the Supreme Court justices actually did “ride circuit,” presiding over both civil

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3. *Magistrate Judgeships*, Federal Judicial Center, [http://www.fjc.gov/history/home.nsf/page/judges\\_magistrate.html](http://www.fjc.gov/history/home.nsf/page/judges_magistrate.html) (last visited Sep. 7, 2016).

4. Peter G. McCabe, *A Brief History of the Federal Magistrate Judges Program*, THE FEDERAL LAWYER, May/June 2014, at 45, 49–50, [http://www.fedbar.org/Resources\\_1/Federal-Lawyer-Magazine/2014/MayJune/Features/A-Brief-History-of-the-Federal-Magistrate-Judges-Program.aspx](http://www.fedbar.org/Resources_1/Federal-Lawyer-Magazine/2014/MayJune/Features/A-Brief-History-of-the-Federal-Magistrate-Judges-Program.aspx).

5. See *Peretz v. United States*, 501 U.S. 923, 932 (1991); *United States v. Harden*, 758 F.3d 886, 889 (7th Cir. 2014).

6. Leslie G. Foschio, *A History of the Development of the Office of United States Commissioner and Magistrate Judge System*, 1999 FED. CTS. L. REV. 4, P2 (1999).

7. *Id.*

8. *Id.*

9. *Id.* at P3.

10. *Id.*

11. *Id.*

12. *Id.*

and criminal cases until 1869.<sup>13</sup> Later, with the establishment of additional circuits and the appointment of more circuit judges, the need for Supreme Court justices to serve as judges at the trial level was greatly alleviated.<sup>14</sup> Ultimately in 1911, the original federal circuit courts were abolished and their former jurisdiction was assumed by the district courts.<sup>15</sup>

## 2. *Development of the commissioner system*

Shortly after the Judiciary Act of 1789 was signed into law, it became clear that administration of the federal criminal process could not be left under the complete control of state judicial officers.<sup>16</sup> Incidents such as the Whiskey Rebellion of 1791, which was the result of opposition to an excise tax on liquor, brought to light the inherent problem of relying on state officials to administer federal law.<sup>17</sup> In 1793, Congress responded by passing legislation granting federal circuit courts the power to “appoint one or more discreet persons learned in the law to take bail in federal criminal cases.”<sup>18</sup> Congress was careful to explicitly limit the role of these “discreet persons” to taking “acknowledgments of bail and related affidavits” on fee schedules dictated by the laws of each state.<sup>19</sup> Eventually, in 1817, Congress voted to give these persons the title of commissioners of the circuit court while expanding their powers by allowing them to take depositions in civil cases.<sup>20</sup>

As the North-South divide became more inflamed throughout the 1800s, backlash against federal laws, such as the fugitive slave statutes, became increasingly flagrant.<sup>21</sup> This growing divide only exacerbated the dysfunction caused by the reliance on state officials for the functioning of federal courts.<sup>22</sup> In an effort to address this problem, in 1842, Congress passed legislation granting commissioners of

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13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.* at P4.

17. *Id.*; Michael Hoover, *The Whiskey Rebellion*, ALCOHOL AND TOBACCO TAX AND TRADE BUREAU (Aug. 21, 2014), [https://www.ttb.gov/public\\_info/whisky\\_rebellion.shtml](https://www.ttb.gov/public_info/whisky_rebellion.shtml).

18. Foschio, *supra* note 6, at P4; THE JUDICIAL BRANCH OF FEDERAL GOVERNMENT, 114 (Charles L. Zelden ed., 2007); *accord Court Officers and Staff*, FEDERAL JUDICIAL CENTER, [http://www.fjc.gov/history/home.nsf/page/admin\\_03\\_02.html](http://www.fjc.gov/history/home.nsf/page/admin_03_02.html) (last visited Sep. 7, 2016).

19. Foschio, *supra* note 6, at P5; THE JUDICIAL BRANCH OF FEDERAL GOVERNMENT, *supra* note 18; *accord Court Officers and Staff*, *supra* note 18.

20. *See supra* note 19.

21. Foschio, *supra* note 6, at P6.

22. *See id.*

the circuit court the power to “exercise general criminal process in federal cases by issuing arrest warrants and holding persons for trial.”<sup>23</sup> Despite Congress’ efforts, the movement against federal judicial control and laws such as the Fugitive Slave Act of 1850 continued to grow.<sup>24</sup>

Congress further expanded the jurisdiction and responsibilities of the commissioners throughout the nineteenth century in an effort to keep pace with changes in American society and the nation’s economy.<sup>25</sup> Among other grants, Congress granted commissioners the power “to issue process to enforce the 1866 Civil Rights Act, to conduct extradition hearings, . . . to enforce internal revenue laws,” and even “to issue search warrants in connection with specific federal crimes, such as counterfeiting and customs law violations.”<sup>26</sup> Congress’ continued expansion of the powers granted to commissioners was accompanied by criticism from various circles.<sup>27</sup> In two separate reports issued by Congress itself, in 1891 and 1894, the legislative body responsible for creating the powerful commissioner system concluded that, since commissioners were compensated according to the fees they generated, the system was susceptible to abuse since “many commissioners were prone to issue complaints and hold preliminary hearings at the slightest, real, imagined or contrived, violation of federal law.”<sup>28</sup>

In 1896, in response to allegations of abuses of power by commissioners, Congress enacted a series of reforms to the system.<sup>29</sup> Chief among them was new legislation that established a mandatory uniform fee structure to be used by all commissioners.<sup>30</sup> Additionally, commissioners were prohibited from holding any other federal, civil, or military offices.<sup>31</sup> Congress also changed the title of the position from commissioner of the circuit court to United States Commissioner.<sup>32</sup> The restyled commissioners were appointed to serve four-year terms and could be removed from office at any time by the

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23. *Id.*

24. *Id.* at P6-P7; THE JUDICIAL BRANCH OF FEDERAL GOVERNMENT, *supra* note 14; *Court Officers and Staff*, *supra* note 18.

25. *See supra* note 19.

26. Foschio, *supra* note 6, at P8.

27. *Court Officers and Staff*, *supra* note 18.

28. *Id.* at P10; *see also* THE JUDICIAL BRANCH OF FEDERAL GOVERNMENT, *supra* note 18; *Court Officers and Staff*, *supra* note 18.

29. Foschio, *supra* note 6, at P13.

30. *Id.*

31. *Id.*

32. *Id.*

district court.<sup>33</sup> Interestingly, these reforms set out no minimum requirements for the position of United States Commissioner,<sup>34</sup> which led to frequent criticism that many commissioners were not trained in the law.<sup>35</sup>

### 3. *Creation and evolution of the office of United States Magistrate*

#### a. The Federal Magistrates Act of 1968

On October 17, 1968, after over 25 years of studies and hearings conducted by Congress, the Federal Magistrates Act of 1968 (FMA) was signed into law.<sup>36</sup> With the law's enactment, the Office of United States Commissioner was abolished and replaced by the Office of United States Magistrate.<sup>37</sup> Magistrates were given all of the powers held previously by commissioners as well as the authority to perform additional duties never performed by commissioners under the former system.<sup>38</sup> These additional responsibilities included "assisting district judges in the conduct of pretrial and discovery proceedings, review of habeas corpus petitions and acting as special masters."<sup>39</sup> Importantly, the FMA of 1968 contained language granting magistrates the power to perform any "additional duties that are not inconsistent with the Constitution, and laws of the United States."<sup>40</sup> Also unlike their predecessor commissioners, magistrates were required to be members of the bar.<sup>41</sup> By July of 1971, less than three years after the enactment of the FMA, all of the district courts had discontinued the old United States Commissioner system and replaced it with the new system of magistrates.<sup>42</sup> Under current law, full-time magistrates are appointed to serve eight-year terms by the judges of a given district court.<sup>43</sup> District court judges may remove a

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33. *Id.*

34. *Id.*

35. *Id.* at P16; *see also* THE JUDICIAL BRANCH OF FEDERAL GOVERNMENT, *supra* note 18, at 114; *Court Officers and Staff*, *supra* note 18.

36. Foschio, *supra* note 6, at P20.

37. ROBERT A. CARP ET AL., JUDICIAL PROCESS IN AMERICA 44 (8th ed. 2011); THE JUDICIAL BRANCH OF FEDERAL GOVERNMENT, *supra* note 18; Foschio, *supra* note 3, at P20; *Magistrate Judgeships*, *supra* note 3.

38. Foschio, *supra* note 6, at P20.

39. *Id.*; *accord* LARRY W. YACKLE, FEDERAL COURTS 94 (3d ed. 2009).

40. 28 U.S.C. § 636(b)(C)(3) (2012); *see Magistrate Judgeships*, *supra* note 3.

41. THE JUDICIAL BRANCH OF FEDERAL GOVERNMENT, *supra* note 18, at 115; Foschio, *supra* note 6, at P21; *Court Officers and Staff*, *supra* note 18.

42. Foschio, *supra* note 6, at P20.

43. 28 U.S.C. § 631(a), (e) (2012).

magistrate for “incompetency, misconduct, neglect of duty, or physical or mental disability.”<sup>44</sup>

#### b. The 1976 amendments to the Federal Magistrates Act

In 1976, Congress passed a series of amendments to the Federal Magistrates Act “in order to clarify and further define the additional duties which may be assigned to a United States Magistrate . . . .”<sup>45</sup> These amendments came on the heels of *Wingo v. Wedding*, in which the Supreme Court held that magistrates were not authorized under the FMA of 1968 to conduct evidentiary hearings in habeas corpus cases.<sup>46</sup> Under the changes to the FMA enacted in 1976, Congress permitted district court judges to refer various case-dispositive pre-trial matters to magistrates, including motions to dismiss, for summary judgment, and for injunctive relief.<sup>47</sup> Additionally, these amendments allowed district court judges to authorize magistrates “to conduct evidentiary hearings as necessary, and to report and recommend a ruling to the district judge subject to a de novo review.”<sup>48</sup> The 1976 amendments were intended, in part, to overturn *Wingo*, which Congress determined was too restrictive in its interpretation of the powers of magistrates under the FMA.<sup>49</sup>

#### c. The Federal Magistrates Act of 1979

With the passage of the Federal Magistrates Act of 1979, Congress again expanded the role played by magistrates in the judicial system by essentially codifying new powers that some district courts had already been delegating to magistrates under the 1968 FMA’s “additional duties” clause.<sup>50</sup> Before the bill’s passage, a House of Representatives Committee reported, “the magistrate system now plays an integral and important role in the Federal judicial system.”<sup>51</sup> The 1979 Act granted magistrates the power to conduct *civil* trials, both with a jury and without, as long as the parties gave their consent.<sup>52</sup> Importantly, the FMA of 1979 also explicitly authorized magistrates,

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44. § 631(i).

45. H.R. REP. NO. 94-1609, at 2 (1976).

46. 418 U.S. 461 472-73 (1974).

47. Foschio, *supra* note 6, at P23.

48. *Id.*

49. H.R. REP. NO. 94-1609, at 5 (1976); S. REP. NO. 94-625, at 3-4 (1976).

50. *Gomez v. United States*, 490 U.S. 858, 869-70 (1989); *CARP ET AL.*, *supra* note 37, at 44; Foschio, *supra* note 6, at P20, P24.

51. H.R. REP. NO. 96-287, at 5 (1979).

52. 28 U.S.C. § 636(c)(1).

for the first time, to handle *all misdemeanors*, as opposed to just minor offenses.<sup>53</sup> This included the power to actually conduct jury trials for misdemeanor cases as long as the defendant consented.<sup>54</sup> Eleven years after the enactment of the FMA of 1979, upon a 1988 recommendation by the Magistrates Committee of the Judicial Conference, Congress changed the title of the position from United States Magistrate to United States Magistrate Judge as part of the Civil Justice Reform Act of 1990.<sup>55</sup>

d. The impact of United States Magistrates on the current federal judicial system

Given the sheer volume of cases filed in federal district courts, magistrates have become, in many districts, practically indispensable to the judges they serve. During the twelve-month period ending on June 30, 2015, there were a total of 374,791 cases filed in district courts.<sup>56</sup> In an effort to improve efficiency, magistrates regularly handle scheduling, discovery, settlement conferences, administer civil jury and bench trials with the consent of the parties,<sup>57</sup> and “report and recommend on dispositive motions over a broad range of civil and criminal matters, ranging from social security benefit cases . . . to requests for injunctive relief.”<sup>58</sup> In fact, during the twelve-month period ending on September 30, 2014, magistrate judges disposed of a total of 1,102,396 matters that came before them.<sup>59</sup> In 1995, the Judicial Conference of the United States declared magistrate judges to be “indispensable resources who are readily available to supplement the work of life-tenured district judges in meeting workload demands.”<sup>60</sup> Over twenty years later, the Conference’s observation is still entirely accurate.

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53. Foschio, *supra* note 6, at P24.

54. 18 U.S.C. § 3401(a)-(b) (2012); *see also* 28 U.S.C. § 636(a)(3).

55. Foschio, *supra* note 6, at P24; *see also* CARP ET AL., *supra* note 37, at 44. (explaining that the Civil Justice Reform Act was enacted as Title I of the Judicial Improvements Act of 1990).

56. Admin. Office of the U.S. Courts, Federal Court Management Statistics (2015).

57. CARP ET AL., *supra* note 37, at 44; Foschio, *supra* note 6, at P27.

58. Foschio, *supra* note 6, at P27; *accord*. THE JUDICIAL BRANCH OF FEDERAL GOVERNMENT, *supra* note 18, at 115.

59. U.S. DISTRICT COURTS. TABLE S-17, U.S. MAGISTRATE JUDGES JUDICIAL BUSINESS, 1 (Sept. 30, 2014).

60. JUDICIAL CONFERENCE OF THE U.S., LONG RANGE PLAN FOR THE FEDERAL COURTS, 101-02 (1995); *accord* YACKLE, *supra* note 39, at 45.

### B. *The Role of Magistrates in Criminal Cases*

Since the passage of the Federal Magistrates Act of 1968, the amendments of 1976, and the FMA of 1979, the role of magistrates in criminal cases has developed extensively. Tasks performed by magistrates in the criminal context include but are not limited to: issuing search and arrest warrants, arraigning defendants, conducting preliminary and evidentiary hearings, and taking pleas and imposing sentences in class A misdemeanor and petty offense cases.<sup>61</sup> The law also allows magistrates to conduct trials of individuals who stand accused of those same low-level crimes as long as the defendant consents.<sup>62</sup>

In a typical federal criminal case, after a suspect is arrested and processed by law enforcement, the next significant step for the individual is to appear before a judicial officer that in many cases is a magistrate.<sup>63</sup> This appearance should occur “without unnecessary delay.”<sup>64</sup> Next, the magistrate must decide whether to release the individual on bail and, if so, determine what amount of bail must be posted.<sup>65</sup> After that, in class A misdemeanor and petty offense cases, the magistrate may ask the defendant to plead either guilty or not guilty.<sup>66</sup> Should the accused decide to plead not guilty, a date for trial will then be scheduled.<sup>67</sup> However, in felony cases where the defendant pleads not guilty, the magistrate must then decide whether a preliminary hearing should be held.<sup>68</sup> If the magistrate makes the determination that a preliminary hearing should take place, the prosecution adjourns the matter and the case transitions to the next phase of the criminal justice process.<sup>69</sup>

### C. *The Current Circuit Split Regarding Whether Magistrates Can Accept Guilty Pleas in Felony Cases*

While the Supreme Court has offered opinions on whether other actions performed by magistrates are authorized under the Federal Magistrates Act, the Court has yet to address the question of wheth-

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61. U.S. DISTRICT COURTS. TABLE S-17, U.S. MAGISTRATE JUDGES JUDICIAL BUSINESS, 1-2 (Sept. 30, 2014).

62. THE JUDICIAL BRANCH OF FEDERAL GOVERNMENT, *supra* note 18, at 115.

63. CARP ET AL., *supra* note 37, at 222.

64. *Id.*

65. *Id.* at 223.

66. *Id.* at 224.

67. *Id.*

68. *Id.*

69. *Id.*

er magistrates can accept guilty pleas in felony cases. Multiple circuit courts have made determinations on the issue, with all but one, the Seventh Circuit, deciding the practice is permitted under the FMA. Several of these decisions will be examined chronologically in this section in order to illustrate how circuits have decided whether or not magistrates can perform this task.

### 1. *United States v. Ciapponi* – Tenth Circuit (1996)

In *United States v. Ciapponi*, the defendant was arrested at a border patrol checkpoint in Southern New Mexico.<sup>70</sup> At that time, he was found to be in possession of approximately ten kilograms of marijuana.<sup>71</sup> The defendant was subsequently indicted by a grand jury and charged with one count of possession with intent to distribute less than 50 kilograms of marijuana.<sup>72</sup>

The defendant's court-appointed attorney negotiated a plea agreement on his behalf.<sup>73</sup> The district court judge designated a magistrate to accept the defendant's guilty plea.<sup>74</sup> The magistrate informed the defendant that he had a right to enter his plea before a district judge, but the defendant signed a Consent to Proceed form, waiving his right to do so.<sup>75</sup> The magistrate judge then accepted the defendant's guilty plea and the court sentenced him to thirty-three months in prison, three years' probation, and a fine.<sup>76</sup> Ultimately, the defendant appealed to the Tenth Circuit.<sup>77</sup> One of the two arguments made by the defendant on appeal was that the magistrate's acceptance of his guilty plea violated the Federal Magistrates Act.<sup>78</sup>

The Tenth Circuit affirmed the defendant's conviction, determining that the magistrate's acceptance of his guilty plea did not violate the FMA because plea acceptance was permitted under the "additional duties" clause contained in 28 U.S.C. § 636(b)(3).<sup>79</sup> In its opinion, the court relied heavily on *Peretz v. United States*, where the Supreme Court stated, "Congress intended magistrates to play an in-

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70. 77 F.3d 1247, 1249 (10th Cir. 1996).

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.* at 1249-51.

tegral and important role in the federal judicial system.”<sup>80</sup> Additionally, the *Ciapponi* court pointed to the Second Circuit, which, in *United States v. Williams*<sup>81</sup> also held that the acceptance of a guilty plea by a magistrate qualifies as an “additional duty” allowed under the Act.<sup>82</sup> Echoing the *Williams* court, the Tenth Circuit in *Ciapponi* reasoned that “in enacting the ‘additional duties’ clause, Congress intended to aid overburdened district courts with their caseloads by significantly expanding the duties which may be delegated to a magistrate judge to permit greater use of magistrate judges as judicial officers.”<sup>83</sup>

## 2. *United States v. Woodard* — Eleventh Circuit (2004)

In *United States v. Woodard*, the defendant was indicted and charged with one count of felony possession of a firearm.<sup>84</sup> He signed a plea agreement and the magistrate, designated by the district judge, held a change of plea hearing as well as a colloquy under Federal Rule of Criminal Procedure 11.<sup>85</sup> During the change of plea hearing, the magistrate informed the defendant that he had the right to have his plea heard before a district judge instead of a magistrate.<sup>86</sup> Once the defendant gave his consent, the magistrate judge accepted his guilty plea.<sup>87</sup> After being sentenced by the district judge, the defendant appealed.<sup>88</sup>

In a case of first impression before the Eleventh Circuit, one of the arguments made by the defendant on appeal was that the magistrate had no authority under the FMA to accept his guilty plea.<sup>89</sup> In holding that magistrates do have the authority to accept guilty pleas in felony cases, the Eleventh Circuit, like the *Ciapponi* court, held that the action was permissible under the “additional duties” clause of § 636(b)(3).<sup>90</sup>

The defendant in *Woodard* argued that the specifically enumerated powers granted to magistrates under the FMA “pale[d] in compari-

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80. *Id.* at 1250 (quoting *Peretz v. United States*, 501 U.S. 923, 928 (1991)).

81. 23 F.3d 629, 632–35 (2d Cir. 1994).

82. *Ciapponi*, 77 F.3d. at 1251 (citing *Williams*, 23 F.3d at 632–35).

83. *Id.* at 1250.

84. 387 F.3d 1329, 1330 (11th Cir. 2004).

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.* at 1330–31.

89. *Id.* at 1331.

90. *Id.* at 1333; 28 U.S.C. § 636(b)(3).

son with [the] gravity and importance of accepting a guilty plea . . . .”<sup>91</sup> The court rejected this argument, pointing to the Ninth Circuit’s decision in *United States v. Reyna-Tapia*<sup>92</sup> that described conducting a plea colloquy as “a highly structured event that follows a familiar script and is governed by the specific terms of Rule 11.”<sup>93</sup> The *Woodard* court went further, siding with the Second Circuit in *Williams* by declaring that accepting pleas in felony cases is actually “less complex” compared to several of the expressly authorized duties under the FMA.<sup>94</sup>

The *Woodard* court also placed substantial emphasis on the fact that the defendant had consented to giving his plea to a magistrate as an important factor in determining that the plea acceptance qualified as an additional duty under the FMA.<sup>95</sup> In providing this reasoning, the court relied on the Supreme Court’s opinion in *Peretz*, which held that a magistrate judge could, with the defendant’s consent, conduct *voir dire* in a felony case under the “additional duties” clause of the FMA.<sup>96</sup> Thus, the *Woodard* court declared, “the Supreme Court’s interpretation of section 636(b)(3) establishes the presence or absence of consent as the crucial factor in determining what duties the section encompasses.”<sup>97</sup>

### 3. *United States v. Benton* — Fourth Circuit (2008)

The Fourth Circuit in *United States v. Benton* also addressed the issue of magistrates accepting guilty pleas in felony cases.<sup>98</sup> There, as part of a sting investigation, law enforcement officials made multiple purchases of cocaine from the defendant.<sup>99</sup> The defendant was subsequently arrested, indicted, and charged with nine counts of possession with conspiracy and intent to distribute cocaine base.<sup>100</sup> Less than two weeks after being charged, the defendant made his first court appearance before a magistrate judge.<sup>101</sup> At that appearance, the magistrate explained to the defendant the charges facing

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91. *Id.* at 1332.

92. 348 F.3d 1114, 1120 (9th Cir. 2003).

93. *Woodard*, 387 F.3d at 1332 (citing *Reyna-Tapia*, 348 F.3d at 1120).

94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.* (quoting *United States v. Maragh*, 174 F.3d 1202, 1204 (11th Cir. 1999)).

98. 523 F.3d 424, 426 (4th Cir. 2008).

99. *Id.* at 426.

100. *Id.*

101. *See id.*

him and also set forth the lengths of potential sentences that could result from a conviction.<sup>102</sup>

Two months after his appearance before the magistrate judge, the defendant reached a plea agreement with the government.<sup>103</sup> As part of the agreement, the defendant consented to allowing a “duly-qualified federal Magistrate Judge” to conduct his “[plea] hearing required by Fed. R. Crim. P. 11.”<sup>104</sup> Approximately one week after reaching his plea agreement, the defendant appeared before a magistrate for the hearing.<sup>105</sup> After the defendant again provided his consent, the magistrate accepted the defendant’s guilty plea and he was later sentenced.<sup>106</sup> Citing several reasons ranging from ineffective counsel to unconscionability regarding the plea agreement, the defendant later made multiple unsuccessful attempts to withdraw his guilty plea.<sup>107</sup>

The first of the three claims on which the defendant appealed was that the district court erred by not allowing him to withdraw his guilty plea.<sup>108</sup> As part of its reasoning for rejecting all of the defendant’s claims and affirming his conviction, the court decided that the acceptance of defendant’s plea by a magistrate was authorized under the FMA as an “additional duty.”<sup>109</sup> Like the Eleventh and Fourth Circuits did previously, the *Benton* court relied heavily on the Supreme Court’s *Peretz* decision, which held that “acceptance of a plea is a duty that does not exceed the responsibility and importance of the more complex tasks a magistrate is explicitly authorized to perform” and “the parties have consented to the procedure . . .”<sup>110</sup> Pushing further, the Fourth Circuit declared that “just as a practical matter, allowing magistrate judges to accept pleas for the purposes of Rule 11 preserves judicial resources—the very goal underlying the creation of the office of magistrate judge—and prevents litigants from exploiting bifurcated plea procedures.”<sup>111</sup>

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102. *Id.*

103. *See id.*

104. *Id.*

105. *See id.*

106. *See id.* at 426–27.

107. *See id.* at 427.

108. *Id.*

109. *See id.* at 433.

110. *Id.*

111. *Id.*

#### 4. *United States v. Harden* – Seventh Circuit (2014)

In 2014, the Seventh Circuit became the first federal appeals court to declare that acceptance of a guilty plea by a magistrate in a felony case violates the Federal Magistrates Act.<sup>112</sup> In *United States v. Harden*, the defendant pled guilty to possession with the intent to distribute at least 5 kilograms of cocaine.<sup>113</sup> Upon receiving the defendant's consent, the district judge appointed a magistrate to administer a plea colloquy.<sup>114</sup> The defendant signed a "Notice Regarding Entry of Plea of Guilty" to provide his consent for a magistrate to accept his guilty plea.<sup>115</sup> Following the colloquy, the magistrate accepted defendant's guilty plea and the district court judge later sentenced him.<sup>116</sup> The defendant subsequently appealed, claiming "the magistrate judge's acceptance of a felony guilty plea, instead of preparing a report and recommendation to the district court, was a violation of the Federal Magistrates Act."<sup>117</sup>

In reversing the defendant's conviction, the Seventh Circuit declared that acceptance of a felony guilty plea by a magistrate, even with the defendant's consent, did *not* qualify as an "additional duty" permitted under the FMA.<sup>118</sup> Interestingly, like its fellow circuits who had come to opposite conclusions, the *Harden* court also based its reasoning in part on the Supreme Court's decision in *Peretz*.<sup>119</sup> The court referred to *Peretz* in stating that, "[t]he Supreme Court has explained that whether a duty not listed in the statute qualifies as a permissible additional duty depends on whether the duty is 'comparable' to those that are actually listed in the Act" and that the "basis for comparison is 'responsibility and importance' . . ."<sup>120</sup> Determining that the acceptance of a guilty plea was not comparable in "responsibility and importance" to any of the duties enumerated in the FMA, the *Harden* court concluded that [t]he task of accepting a guilty plea is too important to be considered a mere 'additional duty' permitted under § 636(b)(3); it is more important than the supervision of a civil or misdemeanor trial, or presiding over *voir dire*. Be-

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112. *United States v. Harden*, 758 F.3d 886, 889 (7th Cir. 2014).

113. *Id.* at 887.

114. *Id.*

115. *Id.*

116. *Id.*

117. *Id.* Defendant also claimed on appeal that the magistrate judge's acceptance of his guilty plea was in violation of Rule 59 of the Federal Rules of Criminal Procedure and the United States Constitution. *Id.*

118. *Id.* at 888.

119. *See id.*

120. *Id.* (quoting *Peretz v. United States*, 501 U.S. 923, 931–33 (1991)).

cause of this importance, the additional duties clause cannot be stretched to reach acceptance of felony guilty pleas, even with a defendant's consent.<sup>121</sup>

## II. ANALYSIS

After several rounds of amendments since its passage almost fifty years ago, the Federal Magistrates Act presently defines three types of duties that magistrate judges can perform.<sup>122</sup> First, magistrates may perform certain enumerated tasks without the consent of the parties, such as “enter a sentence for a *petty offense* or hear and determine certain *pretrial* matters pending before the court.”<sup>123</sup> Second, the FMA lists other duties that magistrates can perform only with the consent of the litigants, such as “presiding over *misdemeanor* trials.”<sup>124</sup> Third, the FMA authorizes magistrates to perform “additional duties as are not inconsistent with the Constitution, and laws of the United States.”<sup>125</sup> Acceptance by a magistrate of a felony guilty plea, with or without the consent of the defendant, is an action that falls outside any of the three categories of duties Congress prescribed in the Federal Magistrates Act.

### *A. Congress Considered Acceptance of a Felony Guilty Plea to be a “Traditional Adjudicatory Duty” to be Performed by the District Judge and Not Delegated to a Magistrate*

The FMA received broad bipartisan support when the Ninetieth Congress passed it in 1968.<sup>126</sup> This was due in large part to the fact that lawmakers on both sides of the aisle saw the creation of the magistrate system not as a drastic reform of the judicial system, but rather an “attempt at designing a flexible, beneficial, innovation for assisting in the administration and efficiency of the federal courts.”<sup>127</sup> The legislative history underlying the FMA and its amendments show that Congress did not intend to grant magis-

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121. *Id.*

122. *Id.*

123. *Id.* (emphasis added) (citing 28 U.S.C. §§ 636(a)(4), (b)(1)(A) (2012)).

124. *Id.* (emphasis added) (citing 28 U.S.C. § 636(a)(3) (2012); 18 U.S.C. § 3401(b) (2012)).

125. *Id.* (citing 28 U.S.C. § 636(b)(3) (2012)).

126. See JUSTIN CROWE, BUILDING THE JUDICIARY: LAW, COURTS, AND THE POLITICS OF INSTITUTIONAL DEVELOPMENT 242 (2012).

127. Christopher E. Smith, *Assessing the Consequences of Judicial Innovation: U.S. Magistrates' Trials and Related Tribulations*, 23 WAKE FOREST L. REV. 455, 455 (1988).

trates powers not enumerated in the statute that bore the level of finality and importance that accompanies actions, such as acceptance of a felony guilty plea.

Numerous Congressional Committee Reports contain charts listing the duties that magistrates should be allowed to perform under the FMA, and none of them include acceptance of guilty pleas in felony cases.<sup>128</sup> In one Committee Report, even while praising the expanded role of magistrates under the FMA, Congress was careful to note that matters of finality were still reserved for the district judge, stating “[i]f district judges are willing to experiment with the assignment of magistrates of other functions in aid of the *business* of the courts, there will be increased time available to *judges for the careful and unhurried performance of their vital and traditional adjudicatory duties . . .*”<sup>129</sup> The Supreme Court placed significant emphasis on the intent of Congress in its decision to overrule the Second Circuit in *Gomez v. United States*,<sup>130</sup> referring to the legislative history of the FMA, “with its repeated statements that magistrates should handle subsidiary matters.”<sup>131</sup> The terms of the FMA made it clear that “final decision-making authority remained at all times with a federal [district court] judge.”<sup>132</sup>

The canon of statutory interpretation employed by the Supreme Court in *Gomez v. United States*, a leading case defining the parameters of magistrate power under the FMA, further bolsters the need to respect the legislative intent of Congress, particularly when determining whether an action qualifies as an additional duty under the statute.<sup>133</sup> There, the Court applied to the FMA the doctrine of *expressio unius est exclusio alterius*, or “to express or imply one thing implies the exclusion of the other.”<sup>134</sup> As the Court held in *Gomez*, “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.”<sup>135</sup> As will be argued in Part II.D of this note, since the power to accept a

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128. See, e.g., H.R. REP. NO. 96-287, at 4-5; S. REP. NO. 96-74, at 2-3; H.R. REP. 94-1609, at 7; S. REP. 94-625, at 5.

129. H.R. REP. NO. 94-1609, at 12 (1976) (emphasis added).

130. 490 U.S. 858, 872 (1989).

131. *Id.*

132. Brendan Linehan Shannon, *The Federal Magistrates Act: A New Article III Analysis for a New Breed of Judicial Officer*, 33 WM. & MARY L. REV. 253, 253 (1991).

133. *United States v. Harden*, 758 F.3d 886, 889 (7th Cir. 2014) (citing *Gomez*, 490 U.S. at 872).

134. BLACK'S LAW DICTIONARY (10th ed. 2014) (defining “*expressio unius est exclusio alterius*”).

135. *Gomez*, 490 U.S. at 872 (emphasis added).

felony guilty plea is no less important than the power to preside at a felony trial, the omission of such a duty from the statute likewise serves to forbid its performance by a magistrate.<sup>136</sup> Expanding the power of magistrates to include acceptance of felony guilty pleas is exactly the type of radical change that Congress, through its restrictive drafting of the FMA, did not intend to authorize.

*B. Acceptance of a Felony Guilty Plea is Not a “Pretrial Matter” That a Magistrate is Permitted to Preside over Under § 636(b)(1)(A) of the Federal Magistrates Act*

The Federal Magistrates Act authorizes district judges to designate a magistrate “to hear and determine any *pretrial* matter pending before the court.”<sup>137</sup> The entry of a guilty plea in a felony case, given its finality, bears little resemblance to a typical “pretrial matter.” In fact, the legislative history of the FMA clearly shows that it was not Congress’ intent to allow the practice to be performed by a magistrate under the guise of being categorized as a pretrial matter. In a House of Representatives Committee Report, a table listed the criminal pretrial matters that magistrates should be allowed to preside over under the FMA.<sup>138</sup> The list was limited to arrest warrants, search warrants, bail hearings, preliminary examinations, removal hearings, post-indictment arraignments, pretrial conferences, and pretrial motions.<sup>139</sup> Such legislative history shows that Congress intended the FMA to “deal with duties which are largely fact gathering and ministerial in nature, i.e. pretrial suppression hearings and 28 U.S.C. § 2254 evidentiary hearings.”<sup>140</sup>

Nonetheless, even if one might consider acceptance of a felony guilty plea to be a pretrial matter, the FMA makes clear that while magistrates are allowed to handle pretrial matters, section 636(b)(1)(A) of the law contains deliberate exceptions for matters which are in any way dispositive in nature. The eight exceptions listed include barring magistrates from presiding over “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

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136. *Harden*, 758 F.3d at 889.

137. 28 U.S.C. § 636(b)(1)(A) (2012) (emphasis added).

138. H.R. REP. NO. 94-1609, at 7 (1976).

139. *Id.*

140. Amicus Curiae Brief of the National Association of Criminal Defense Lawyers for Petitioners, at 5, *Gomez v. United States*, 490 U.S. 858 (1989) (Nos. 88-5014, 88-5158).

claim upon which relief can be granted, and to involuntarily dismiss an action.”<sup>141</sup> Thus, the specific exceptions provided in this section of the FMA are evidence of the intent of Congress to avoid the delegation of matters bearing finality to magistrates in general.

*C. Acceptance of a Felony Guilty Plea Does Not Qualify as an “Additional Duty” Under Section 636(b)(3) of the FMA Because it is Not Comparable in Responsibility and Importance to the Duties Enumerated in the Statute*

Since acceptance of a felony guilty plea is not one of the enumerated tasks that Congress authorized magistrates to perform under the FMA, it must then be determined if this act qualifies as an “additional duty” under the law.<sup>142</sup> While the Supreme Court has not addressed this specific question, an analysis of its decisions on whether other actions performed by magistrates, such as presiding over *voir dire*, may be considered “additional duties” under the FMA yields a decision-making framework that weighs heavily against allowing magistrates to accept guilty pleas in felony cases, even with the consent of the defendant. Specifically, the Court’s decisions in *Gomez v. United States*<sup>143</sup> and *Peretz v. United States*<sup>144</sup> provide such guidance and will be examined here.

In *Gomez v. United States*, two defendants were charged with a variety of felonies including racketeering and conspiracy in connection with cocaine distribution.<sup>145</sup> Despite timely made objections by defense counsel, *voir dire* and jury selection for the case was delegated to a magistrate by the district judge.<sup>146</sup> After a jury trial, both defendants were found guilty.<sup>147</sup> The defendants appealed, arguing that the magistrate had no authority to perform the duties of *voir dire* and jury selection in their case.<sup>148</sup> The court of appeals rejected their argument, holding that “Congress intended the additional duties clause to be construed broadly enough to include jury selection by magistrates.”<sup>149</sup> The Supreme Court granted certiorari to deter-

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141. 28 U.S.C. § 636(b)(1)(A); see *United States v. Trice*, 864 F.2d 1421, 1427 (8th Cir. 1988).

142. *United States v. Harden*, 758 F.3d 886, 888 (7th Cir. 2014).

143. *Gomez v. United States*, 490 U.S. 858 (1989).

144. *Peretz v. United States*, 501 U.S. 923 (1991).

145. *Gomez*, 490 U.S. at 860.

146. *Id.*

147. *Id.* at 861.

148. *Id.*

149. *Id.*

mine whether presiding over jury selection in a felony case is an “additional duty” that a magistrate may perform under the FMA.<sup>150</sup>

In reversing the court of appeals’ decision in *Gomez*, the Supreme Court provided a framework to determine whether a given action qualifies as an “additional duty” under the FMA,<sup>151</sup> stating that “[w]hen a statute creates an office to which it assigns specific duties, those duties outline the attributes of the office.”<sup>152</sup> The Court went further, declaring that “[a]ny additional duties performed pursuant to a general authorization in the statute reasonably should bear some relation to the specified duties.”<sup>153</sup> Given the guidelines the Supreme Court established in *Gomez*, a detailed review of the enumerated powers granted to magistrates in the FMA shows that accepting felony guilty pleas is not sufficiently related to the enumerated duties to qualify as an allowable “additional duty.”

In *Peretz v. United States*, the Supreme Court provided further instruction to determine whether an act may be considered an “additional duty.”<sup>154</sup> There, the defendant was charged with importing heroin.<sup>155</sup> During a pretrial conference, the district court judge asked the defendant’s counsel if he had “any objection to picking the jury before a magistrate?”<sup>156</sup> Defendant’s counsel replied that there was no objection.<sup>157</sup> Later, right before jury selection was set to begin, the magistrate herself asked for, and received, the defendant’s consent to commence with the process.<sup>158</sup> The magistrate then initiated and completed *voir dire*, and at no point did the defendant request that the district court review any related rulings handed down by the magistrate.<sup>159</sup> The defendant was subsequently convicted in a jury trial presided over by a district judge, and even in that court, he never objected to the magistrate’s performance of *voir dire*.<sup>160</sup> Ultimately, however, the defendant appealed his conviction claiming that assigning a magistrate to perform jury selection was an error based on the Supreme Court’s ruling in *Gomez*.<sup>161</sup> The Second Circuit

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150. *Id.* at 862.

151. *Id.* at 864–76.

152. *Id.* at 864.

153. *Id.*

154. *See* *United States v. Harden*, 758 F.3d 886, 888 (7th Cir. 2014) (citing *Peretz v. United States*, 501 U.S. 923, 931–33 (1991)).

155. *Peretz*, 501 U.S. at 925.

156. *Id.*

157. *See id.*

158. *Id.*

159. *Id.*

160. *Id.*

161. *Id.*

rejected the defendant's argument for reversal, and the Supreme Court granted certiorari.<sup>162</sup>

In determining whether the Federal Magistrates Act permits a magistrate to conduct *voir dire* in a felony trial if the defendant consents, the Supreme Court in *Peretz* built on and clarified the framework it first provided in *Gomez* to determine when any action not enumerated in the FMA can be considered an allowable "additional duty" under the law.<sup>163</sup> While the Court in *Peretz* ultimately upheld the Second Circuit's ruling, the decision-making factors it provided are nonetheless applicable to assessing the legality of the practice at issue here.<sup>164</sup> Specifically, the Court emphasized that in order for an action to qualify as an "additional duty" under the FMA, it must be "comparable in responsibility and importance" to the enumerated duties the statute grants to magistrates.<sup>165</sup> Acceptance of a guilty plea in a felony case is both more important and entails more responsibility than any of the enumerated duties in the FMA.<sup>166</sup> Therefore, such an action should not be permitted as an additional duty under the statute.

The Supreme Court has been unequivocal in emphasizing the importance of a defendant's right to plead guilty and the level of responsibility that such a decision places on the judiciary.<sup>167</sup> The Court forcefully articulated these basic tenets in a 1969 case, *Brady v. United States*, where the defendant was charged with kidnapping under 18 U.S.C. § 1201(a).<sup>168</sup> Under the statute, the defendant—if found guilty—faced a maximum sentence of death if recommended by the jury.<sup>169</sup> The defendant first plead not guilty, but when he was informed that his co-defendant would enter a guilty plea and could potentially testify against him, the defendant changed his plea to guilty.<sup>170</sup> Upon accepting his guilty plea, the defendant received a reduced sentence of 30 years in prison.<sup>171</sup> Later, he sought relief from the Court under 28 U.S.C. § 2255, arguing that his guilty plea was not voluntary "because § 1201(a) operated to coerce his plea, . . . his counsel exerted impermissible pressure upon him, . . . his plea

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162. *Id.* at 925-27.

163. *Id.* at 932; see *Gomez v. United States*, 490 U.S. 858, 863-65 (1989).

164. *Peretz*, 501 U.S. at 940.

165. See *id.* at 933.

166. See *United States v. Harden*, 758 F.3d 886, 888-89 (7th Cir. 2014).

167. See generally *Brady v. United States*, 397 U.S. 742 (1970).

168. *Id.* at 743.

169. *Id.*

170. *Id.*

171. *Id.* at 743-44.

was induced by representations with respect to reduction of sentence and clemency[,]" and the judge failed to comply with Rule 11 of the Federal Rules of Civil Procedure.<sup>172</sup> After the district court denied him relief, the defendant appealed to the Tenth Circuit Court of Appeals, which upheld his guilty plea as voluntary and rejected his claim.<sup>173</sup> The Supreme Court granted certiorari to consider whether the defendant's plea was voluntarily and knowingly made.<sup>174</sup>

While it affirmed the decision of the Tenth Circuit, the Court stressed the importance of a defendant's right to plead guilty and the vigilance and respect with which the judiciary must accept it.<sup>175</sup> The *Brady* Court declared, "[t]hat a guilty plea is a *grave and solemn* act to be accepted only with *care and discernment* has long been recognized."<sup>176</sup> The Court continued to stress the importance of the plea acceptance process, stating that "the 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—a waiver of his right to trial before a jury or a judge."<sup>177</sup> The reverence the Court displayed in explaining plea acceptance forecloses such an action from being considered an additional duty comparable in responsibility and importance to those duties enumerated in the FMA, particularly in felony cases.<sup>178</sup>

Since *Brady*, the Supreme Court has consistently emphasized the elevated importance and responsibility associated with accepting a felony guilty plea. A guilty plea is "a waiver of important constitutional rights designed to protect the fairness of a trial."<sup>179</sup> Unlike the administrative and fact-finding duties that the FMA enumerates regarding felony cases, as the Court in *Boykin v. Alabama* noted, "[s]everal federal constitutional rights are involved in a waiver that takes place when a plea of guilty is entered in a state criminal trial."<sup>180</sup> Those same crucial rights are surrendered by the accused who pleads guilty to a federal offense and such an abdication must therefore not be classified as a part of a simple administrative process.

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172. *Id.* at 744; FED. R. CIV. P. 11.

173. *Id.* at 745.

174. *Id.*

175. *See id.* at 757–58.

176. *Id.* at 748 (emphasis added).

177. *Id.* (emphasis added).

178. *Id.* at 757–58.

179. *Johnson v. Ohio*, 419 U.S. 924, 925 (1974) (Douglas, J., dissenting) (citing *Boykin v. Alabama*, 395 U.S. 238, 243 (1969)).

180. 395 U.S. 238, 243 (1969).

*D. Acceptance of a Felony Guilty Plea by a Magistrate is  
Not Authorized Under the FMA Because the Finality of  
an Accepted Guilty Plea is Equivalent to that of a  
Guilty Verdict at Trial*

The finality associated with the acceptance of a guilty plea cloaks such a task with a level of importance and responsibility incomparable to any of the enumerated duties in the FMA, thereby disqualifying it from being considered an additional duty under the statute. As the Supreme Court articulated in *Kercheval v. United States*, “[a] plea of guilty differs in purpose or effect from a mere admission or an extra-judicial confession . . .”<sup>181</sup> By pleading guilty, not only is a defendant giving his consent “that judgment of conviction may be entered without a trial,”<sup>182</sup> but often he is waiving his appellate and habeas corpus rights as well.<sup>183</sup> As the *Harden* court explained, “[i]n such cases, accepting a guilty plea is *even more final than a guilty verdict*.”<sup>184</sup> Ultimately, a guilty plea is “more than a confession which admits that the accused did various acts; *it is itself a conviction*.”<sup>185</sup> Just like a jury verdict, “it is conclusive. More is not required . . .”<sup>186</sup> None of the enumerated duties for which magistrates are given authority under the FMA entail such a high degree of finality. It is likely for this reason that Congress carefully restricted the role of magistrates in felony cases as opposed to misdemeanor cases.

Once a judge accepts a defendant’s guilty plea, the prosecution is “at the same stage as if a jury had just returned a verdict of guilty after a trial.”<sup>187</sup> The circuits that have ruled acceptance of felony guilty pleas is an additional duty that can be performed by magistrates under the FMA have justified their holdings by pointing to the Supreme Court’s ruling in *Peretz*: conducting *voir dire* in felony cases, where the parties consent, qualifies as an additional duty under the statute.<sup>188</sup> However, as the *Harden* court explained, a proper application of the comparability test the Court laid out in *Peretz* shows that conducting *voir dire* and accepting a felony guilty plea are not

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181. 274 U.S. 220, 223 (1927).

182. *United States v. Harden*, 758 F.3d 886, 888 (7th Cir. 2014) (quoting *Brady v. United States*, 397 U.S. 742, 748 (1970)).

183. *Id.* at 888.

184. *Id.* (emphasis added).

185. *Boykin*, 395 U.S. at 242 (emphasis added).

186. *Kercheval*, 274 U.S. at 223.

187. *Harden*, 758 F.3d at 889.

188. *Peretz v. United States*, 501 U.S. 923, 933 (1991).

equivalent in responsibility and importance.<sup>189</sup> The *Harden* court points out that, “[u]nlike the preliminary nature of *voir dire*—which is an important, but preliminary, juncture that will be followed by numerous other substantive opportunities to contest the government’s evidence, case, and conduct before any determination of guilt—the acceptance of a guilty plea is dispositive.”<sup>190</sup> When a judge accepts a guilty plea from the accused, the judge causes a “final and consequential shift in the defendant’s status.”<sup>191</sup> Because of this permanent impact, a felony guilty plea acceptance is highly similar—if not equivalent—in importance and responsibility to conducting a felony trial.<sup>192</sup> Thus, since the FMA clearly prohibits magistrates from conducting trials in felony cases, even with the defendant’s consent, felony guilty plea acceptance fails the Supreme Court’s test for what can be considered an additional duty under the FMA given the corresponding high importance and responsibility of such an action.<sup>193</sup>

*E. The Level of Responsibility Inherent in Colloquy  
Administration Bars Acceptance of a Felony Guilty Plea from  
Qualifying as an Additional Duty Under the FMA*

Rule 11 of the Federal Rules of Criminal Procedure dictates the duties that a judge must perform before accepting a guilty plea.<sup>194</sup> As the Supreme Court declared in *Brady*, “[c]entral to the plea and the foundation for entering a judgment against the defendant is the defendant’s admission in open court that he committed the acts charged in the indictment . . .”<sup>195</sup> The Court has repeatedly stressed that judges are required to be “careful that a plea of guilty shall not be accepted unless” it is determined that the defendant possesses an “understanding of the charges against him and the possible consequences of his plea.”<sup>196</sup> Additionally, when deciding whether to accept a guilty plea, judges are required to make a “reliable determi-

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189. 758 F.3d at 888–89.

190. *Id.* at 889 (emphasis added).

191. *Id.* (emphasis added).

192. *Id.*

193. *Id.*

194. FED. R. CRIM. P. 11.

195. 397 U.S. 742, 748 (1970).

196. *Id.* at 748 n.6; *Kercheval v. United States*, 274 U.S. 220, 223 (1927); *see generally* *McCarthy v. United States*, 394 U.S. 459 (1969) (reversing the petitioner a new plea because there was no inquiry to whether the petitioner understood the charges against him).

nation on the voluntariness issue which satisfies the constitutional rights of the defendant."<sup>197</sup>

Under Federal Rule of Criminal Procedure 11(b), in order to determine whether to accept a guilty plea, a judge is "required to conduct a long, searching colloquy . . . to ensure that the defendant's waivers of his important rights are 'voluntary, . . . knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences.'"<sup>198</sup> The *Harden* court provided the following examples of some of the determinations a judge must make when deciding whether or not to accept a guilty plea:

- whether the defendant is competent;
- whether the defendant is making a voluntary choice to plead guilty;
- whether the defendant understands the charges and penalties he faces;
- whether the defendant understands the many constitutional rights he relinquishes;
- whether the defendant understands the terms of any plea agreement;
- and whether there is a legal and factual basis for the guilty plea, and thus good reason to believe the defendant actually committed a charged crime.<sup>199</sup>

While the questions themselves are not difficult ones, the answers given to them are "*weighted with importance*" as part of a judge's determination of whether or not a defendant has validly waived his rights.<sup>200</sup> A judge can only accept a guilty plea if the defendant answers those questions affirmatively, and as the *Harden* court points out, "[a]ny 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."<sup>201</sup> Thus, the required colloquy itself, as a component of guilty plea acceptance, further shows that this duty bears far more responsibility and importance than a standard fact-finding task. The contrast is especially apparent when considering the consequences of such an action in a felony case versus the powers granted to magistrates under the FMA for misdemeanor matters.

#### *F. Solutions for Improved Efficiency Are Not Dependent on*

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197. *Boykin*, 395 U.S. at 242 (quoting *Jackson v. Denno*, 378 U.S. 368, 387 (1964)).

198. *Harden*, 758 F.3d at 888-89 (quoting *Brady*, 397 U.S. at 748).

199. *Id.*

200. *Id.* at 889 (emphasis added).

201. *Id.*

*Increasing the Level of Responsibility Held by Magistrates in  
Felony Cases*

The federal court system must fundamentally reassess its approach toward improving efficiency. In addition to better allocation of court resources and personnel, court administrators must place greater emphasis on harnessing rapid advancements in technology. The need for continued improvements is real and will require a substantial commitment on the part of all stakeholders involved, but the solution is not for district judges to outsource fundamental responsibilities to magistrates, particularly in felony cases. Additionally, it should be noted that the vast majority of cases in federal courts are civil, with most criminal charges filed in state courts.<sup>202</sup> Thus, implementing reforms in the handling of civil cases would go a long way toward lightening the burden on district court judges without the need to further outsource judicial responsibilities to magistrates in criminal cases, particularly in felony matters.

#### CONCLUSION

In *Harden*, the Seventh Circuit forcefully articulated the importance of a guilty plea in a felony case.<sup>203</sup> As the court explained, “[t]he task of accepting a guilty plea is a task too important to be considered a mere ‘additional duty’ permitted under § 636(b)(3): it is more important than the supervision of a civil or misdemeanor trial, or presiding over *voir dire*.”<sup>204</sup> Acceptance of a guilty plea in a felony case is much more than a simple procedural step or administrative action. It is a critical and at times complex process where the accused asserts his or her constitutional right to a guilty plea, while at the same time attempting to waive other fundamental protections.<sup>205</sup> It is the responsibility of a judge to make a careful decision regarding whether to accept the defendant’s plea, while ensuring the tenets of this nation’s system of justice are respected and maintained.<sup>206</sup>

This Note is not intended to marginalize the value of magistrates in the administration of justice. The instrumental role played by magistrates in improving the overall administrative efficiency of the federal courts cannot be questioned. Performance by magistrates of the duties enumerated in the FMA in civil and misdemeanor cases

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202. See Admin. Office of U.S. Courts, *supra* note 56.

203. 758 F.3d at 888.

204. *Id.*

205. *Id.*

206. *Id.* at 888–89.

has gone a long way to achieve the goals Congress intended through its passage of the Act and its amendments. What Congress did not intend, however, was an expansion of those duties to include actions in felony cases as vital as the acceptance of a guilty plea. The level of responsibility required for such an important task has been clearly articulated by the Supreme Court, thereby excluding it from consideration as an additional duty under the FMA. While improvement in the efficiency of the judicial system was a clearly intended goal of Congress as demonstrated through its passage of the FMA and its amendments, a basis for allowing magistrates to accept guilty pleas in felony cases simply cannot be found in the statute. While the Supreme Court in *Peretz* recognized that the FMA gives district judges the power to “experiment” in its use of magistrates in order to enhance efficiency within the courts, the Court also set clear limits to ensure that powers not enumerated in the statute are comparable in responsibility and importance to those listed in order for such powers to be extended to magistrates.<sup>207</sup> Given the fundamental protections surrendered by the accused when pleading guilty, acceptance of such a plea in a felony case, even with the defendant’s consent, does not meet the Court’s clearly stated threshold.

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207. *Peretz v. United States*, 501 U.S. 923, 932 (1991).