

No. 17-417

IN THE
Supreme Court of the United States

DYLAN BLOOM,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Writ of Certiorari to the
United States Court of Appeals
for the Ames Circuit

JOINT APPENDIX

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SUPREME COURT OF THE UNITED STATES

ORDER LIST

Certiorari Granted

September 8, 2017

17-417 Bloom v. United States

The petition for a writ of certiorari is granted on the following two questions:

1. Whether this Court should overrule *Rostker v. Goldberg*, 453 U.S. 57 (1981), and hold that petitioner's conviction for willfully failing to register with the Selective Service System, in violation of 50 U.S.C. §§ 3802 and 3811, must be vacated because the registration system constitutes unconstitutional gender discrimination.
2. Whether petitioner is entitled to withdraw his felony guilty plea as a matter of right because the magistrate judge was not authorized to accept it.

**IN THE UNITED STATES COURT OF APPEALS
FOR THE AMES CIRCUIT**

DYLAN BLOOM

v.

UNITED STATES OF AMERICA

Docket No. 17-1611

Before Gillette, Marsh, and Swan, Circuit Judges.

SWAN, J.:

The Military Selective Service Act (MSSA or Act) requires all male U.S. citizens between the ages of 18 and 25 to register with the Selective Service System. 50 U.S.C. § 3802(a). Failing to register is a federal felony punishable by not more than five years of imprisonment. 50 U.S.C. § 3811(a). The government charged defendant Dylan Bloom with willfully failing to register, and Bloom moved to dismiss the indictment on grounds that the registration requirement violates the Fifth Amendment’s guarantee of equal protection. After the district court denied the motion to dismiss, Bloom entered a conditional plea of guilty that reserved his constitutional challenge to the Act.

With Bloom’s consent, a magistrate judge conducted Bloom’s plea colloquy and accepted his guilty plea. Several weeks later, before sentencing had occurred, Bloom filed a motion with the district court to withdraw his guilty plea under Federal Rule of Criminal Procedure 11(d)(1), which specifies that “[a] defendant may withdraw a plea of guilty . . . before the court accepts the plea, for any reason or no reason.” Bloom argued that the magistrate judge lacked the power to accept his felony guilty plea, such that he was entitled to withdraw it for no reason. The district court rejected that argument and denied the motion to withdraw.

Bloom raises two issues on appeal. First, he argues that his conviction must be reversed because the Selective Service registration requirement violates the Fifth Amendment's equal protection guarantee.¹ Second, he argues that he should be permitted to withdraw his guilty plea because the magistrate judge lacked authority to accept the plea. We hold that Bloom cannot succeed on either claim, and we therefore affirm.

I.

The facts relevant to this appeal are undisputed. Bloom is a male U.S. citizen who was born on June 10, 1989. The MSSA accordingly required Bloom to register for the Selective Service system within 30 days of his 18th birthday on June 10, 2007. See 50 U.S.C. § 3802(a). Bloom did not register at that time or at any time before his 26th birthday on June 10, 2015.

Beginning when he turned 18, and every year thereafter until he turned 26, Bloom sent a letter to the Selective Service System around his birthday stating that he had not registered for Selective Service and that he did not intend to do so. In August 2015, shortly after he turned 26, Bloom contacted the FBI's field office in Ames City, Ames, and stated that he wanted to confess to a felony. In an interview with an FBI agent, Bloom stated that he had willfully failed to register with the Selective Service System and he wanted to make sure the federal government had his correct address so that he could be arrested. Later that year, Bloom repeatedly posted about his refusal to register for the draft and his confession to the FBI on social media sites. In those postings, Bloom stated that the registration requirement is "silly" and that the criminal penalties that attach to a failure to register are a "joke." In December 2015, the FBI was

¹ We note that Bloom's prosecution for willfully failing to register with the Selective Service System appears to be the first such prosecution since 1986. See Kristy N. Kamarck, *The Selective Service System and Draft Registration: Issues for Congress*, Congressional Research Service, at 18 (April 11, 2016). Bloom has not raised a claim of selective prosecution or otherwise contended that the statute cannot be enforced on any basis other than his claim of unlawful gender discrimination. We accordingly confine our analysis to that equal protection argument.

contacted by the mother of a teenage boy on a swimming team that Bloom coached. The woman stated that Bloom was encouraging the young men on the team to ignore the Selective Service registration requirement when they turned 18.

Bloom was subsequently indicted on one count of violating the MSSA by willfully refusing registration. Bloom moved to dismiss the indictment, claiming that the registration requirement is unconstitutional because it impermissibly distinguishes on the basis of gender in violation of the Fifth Amendment. The district court denied the motion, holding that Bloom's argument was foreclosed by the Supreme Court's decision in *Rostker v. Goldberg*, 453 U.S. 57 (1981).

Bloom thereafter decided to conditionally plead guilty, reserving his right to appeal the denial of his constitutional challenge. Bloom and the prosecutor signed a "Notice Regarding Entry of Guilty Plea" that consented to a magistrate judge accepting the guilty plea in accordance with Local Rule 52.1(b)(2) of the United States District Court for the District of Ames. That local rule provides that "[w]ith the consent of the parties, a Magistrate Judge is authorized to . . . accept guilty pleas in felony cases, order presentence investigation reports, and file reports and recommendations with the District Court."

On October 6, 2016, a magistrate judge conducted the plea colloquy required by Federal Rule of Criminal Procedure 11. Prior to the colloquy, the magistrate judge confirmed that the parties consented to her taking the guilty plea. The magistrate judge then conducted the colloquy and concluded the proceedings by accepting Bloom's plea of guilty.

Several weeks later, Bloom moved to withdraw his plea. At a subsequent hearing on the motion to withdraw, Bloom's counsel indicated that Bloom had "gotten cold feet" and "decided he wanted to take his chances with a jury that he didn't think would convict him no matter the

evidence.” Bloom argued that he was entitled to withdraw his plea pursuant to Federal Rule of Criminal Procedure 11(d)(1), which states that a defendant may withdraw a plea “for any reason or no reason” so long as withdrawal occurs “before the court accepts the plea.” Fed. R. Crim. P. 11(d)(1). Bloom contended that the magistrate judge’s acceptance of the plea was invalid because it contravened the Federal Magistrates Act (specifically, 28 U.S.C. § 636), Rule 59 of the Federal Rules of Criminal Procedure, and the U.S. Constitution. The district court rejected those arguments and denied the motion to withdraw the plea. The district court thereafter sentenced Bloom to 60 days of imprisonment, to be followed by two years of supervised release.

This appeal followed.

II.

We first consider Bloom’s argument that his conviction must be set aside because the MSSA violates the Fifth Amendment in requiring the registration of only males, and not females, for the Selective Service. As the district court noted, the Supreme Court rejected a Fifth Amendment challenge to the MSSA in *Rostker v. Goldberg*, 453 U.S. 57 (1981). The *Goldberg* Court emphasized that Congress is entitled to substantial deference when it exercises its “authority over national defense and military affairs.” *Id.* at 64. And the Court further noted that “Congress did not act ‘unthinkingly’” in excluding women from the registration requirement, but rather gave that issue “extensive[] consider[ation] . . . in hearings, floor debate, and in committee.” *Id.* at 72. “The purpose of registration,” the Court explained, “was to prepare for a draft of *combat troops*,” but “[w]omen as a group, . . . unlike men as a group, [we]re not eligible for combat” at the time that *Goldberg* was decided. *Id.* at 76. The Court accordingly concluded that “[m]en and women, because of the combat restrictions on women, are simply not similarly situated for purposes of a draft or registration for a draft.” *Id.* at 78. The Court therefore held

that “Congress acted well within its constitutional authority when it authorized the registration of men, and not women, under the [MSSA].” *Id.* at 83.

Bloom contends that *Goldberg*’s rationale in upholding the MSSA against a claim of unconstitutional gender discrimination is no longer valid in light of changes to the military and to equal protection law. Bloom emphasizes that “recent DOD policy changes . . . have opened all military occupational specialties” to women, “including ground combat positions.” Kristy N. Kamarck, *The Selective Service System and Draft Registration: Issues for Congress*, Congressional Research Service, at 26 (April 11, 2016). And Bloom argues that the deference the *Goldberg* Court afforded to Congress is inconsistent with more recent gender discrimination cases.

The government responds that *Goldberg*’s finding that men and women are not similarly situated with respect to the draft remains good law and that deference is owed to Congress’s judgments in the area of military affairs. The government observes that Congress is actively considering the need for the Selective Service System and the registration requirements and should have the freedom to evaluate whether gender distinctions continue to make sense given military needs.

If we were writing on a blank slate, we believe it would be a difficult question whether the MSSA’s registration requirement constitutes unconstitutional gender discrimination. But *Goldberg* makes the resolution of that question easy in this case. As the Supreme Court has repeatedly emphasized, its “decisions remain binding precedent until [the Court] see[s] fit to reconsider them, regardless of whether subsequent cases have raised doubts about their continuing vitality.” *Hohn v. United States*, 524 U.S. 236, 252-253 (1998). Because it is the “Court’s prerogative alone to overrule one of its precedents,” *Bosse v. Oklahoma*, 137 S. Ct. 1, 2

(2016) (internal quotation marks and citation omitted), we have no authority to rule in Bloom’s favor on his equal protection claim. Relief on that claim must come, if at all, from the Supreme Court. We therefore hold that the district court properly denied Bloom’s motion to dismiss the indictment on equal protection grounds.

III.

We next consider Bloom’s argument that he was entitled to withdraw his guilty plea as of right under Federal Rule of Criminal Procedure 11(d)(1), which provides that “[a] defendant may withdraw a plea of guilty . . . before the court accepts the plea, for any reason or no reason.” Bloom did not seek to withdraw his plea until after the magistrate judge had already accepted it, but he contends that the magistrate judge lacked authority to accept the plea under the Federal Magistrates Act, Rule 59, and the Constitution.

The parties dispute the standard of review that governs this claim. The government contends that Bloom’s claim should be reviewed for plain error because he consented to having the magistrate judge accept his plea. *See, e.g., United States v. Benton*, 523 F.3d 424, 429 (4th Cir. 2008) (applying plain-error review when the defendant “did not raise his challenge to the magistrate judge’s authority below”). Bloom notes that he subsequently objected when he sought to withdraw his plea, and he relies on precedent holding that there is in any event a “narrow exception to waiver and forfeiture . . . for the review of judicial authority to act with consent.” *United States v. Harden*, 758 F.3d 886, 890 (7th Cir. 2014). We ultimately conclude that it is appropriate to conduct de novo review of Bloom’s arguments.

On the merits, our sister circuits have split on the question whether magistrate judges have authority to accept guilty pleas in felony cases. At least three courts of appeals have held that magistrate judges may accept felony guilty pleas with the defendant’s consent. *See Benton*,

523 F.3d 424; *United States v. Woodard*, 387 F.3d 1329 (11th Cir. 2004) (per curiam); *United States v. Ciapponi*, 77 F.3d 1247 (10th Cir. 2002). Although that power is not enumerated in the Federal Magistrates Act, those courts have held that it falls within the provision stating that “[a] magistrate judge may be assigned such additional duties as are not inconsistent with the Constitution and laws of the United States.” 28 U.S.C. § 636(b)(3); see *Peretz v. United States*, 501 U.S. 923, 933 (1991) (holding that “the Act’s ‘additional duties’ clause permits a magistrate to supervise jury selection in a felony trial provided the parties consent,” and observing that such supervision of voir dire is “comparable in responsibility and importance” to the enumerated duties assigned to magistrate judges). And those courts have perceived no constitutional problem with permitting a magistrate judge to accept a felony guilty plea so long as the defendant consents. See, e.g., *Benton*, 523 F.3d at 432.

In contrast, the Seventh Circuit has held that “[t]he task of accepting a guilty plea” in a felony case “is a task too important to be considered a mere ‘additional duty’ permitted under § 636(b)(3).” *Harden*, 758 F.3d at 888. “Because of this importance,” the Seventh Circuit concluded that “the additional duties clause cannot be stretched to reach acceptance of felony guilty pleas, even with the defendant’s consent.” *Id.* Similarly, the Ninth Circuit has held that “defendants have an absolute right to withdraw guilty pleas taken by magistrate judges at any time before they are accepted by the district court.” *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003).

Although there are reasonable arguments on both sides, we are persuaded by the reasoning of those courts that have concluded that magistrate judges have authority to accept felony guilty pleas. As the Fourth Circuit observed, “plea acceptance involves none of the complexity and requires far less discretion than that necessary to perform many tasks

unquestionably within a magistrate judge’s authority, such as conducting felony *voir dire* and presiding over entire civil and misdemeanor trials.” *Benton*, 523 F.3d at 432. The power to accept guilty pleas accordingly qualifies as an “additional duty” within the meaning of 28 U.S.C. § 636(b)(3). That remains true even though Rule 59 of the Federal Rules of Criminal Procedure distinguishes between “[d]ispositive” and “[n]ondispositive” matters in setting forth the procedures that should be followed in referring matters to a magistrate judge for a determination or a recommendation. Fed. R. Crim. P. 59(a) and (b). Whatever the meaning of Rule 59, under the Rules Enabling Act, it cannot “abridge, enlarge, or modify any substantive right.” 28 U.S.C. § 2072(b). Finally, we find no constitutional problem in this case—whether considering structural Article III limits or Bloom’s personal right to demand the presence of an Article III judge at critical phases of his trial—in light of Bloom’s consent to have the magistrate judge take his plea and the district court’s supervision of that process.

Because the magistrate judge had authority to accept Bloom’s guilty plea and did so with his consent, Bloom is not entitled to withdraw his plea as of right under Rule 11(d)(1). Bloom has not argued that he can “show a fair and just reason for requesting the withdrawal,” as is necessary to withdraw a plea “after the court accepts” it. Fed. R. Crim. P. 11(d)(2)(B). The district court therefore correctly rejected Bloom’s motion to withdraw.

IV.

For the foregoing reasons, the district court’s judgments denying Bloom’s motion to dismiss the indictment and motion to withdraw his plea are

AFFIRMED.

FILED: APRIL 28, 2017

United States District Court
District of Ames
UNITED STATES OF AMERICA,

v.

Dylan Bloom

No. CR _____

March 25, 2016

U.S. District Court
District of Ames

FILED

March 25, 2016

INDICTMENT

The Grand Jury in and for the District of Ames, sitting at Ames City, charges:

COUNT ONE

Beginning on or about July 10, 2007, and continuing until on or about June 10, 2015, in the District of Ames, defendant DYLAN BLOOM, a male person required to present himself for and submit to registration pursuant to the Military Selective Service Act and rules and regulations duly made thereto, did knowingly and willfully fail, evade, and refuse to present himself for and submit to registration, in violation of Title 50, United States Code, Sections 3802(a) and 3811(a).

A TRUE BILL:

Michael Samuels

FOREPERSON

CYNTHIA PHILLIPS
UNITED STATES ATTORNEY, District of Ames

By: *Cole Devonshire*

Cole Devonshire
Assistant United States Attorney

United States District Court
District of Ames
UNITED STATES OF AMERICA,

v.

Dylan Bloom

No. _____

March 11, 2016

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date of 7/10/2007 to 6/10/2015 in the county of Ames in the State and
District of Ames, the defendant violated 50 U.S.C. § 3802(a) and 3811(a), an
offense described as follows: Willful Failure to Register With The Selective Service System.

This criminal complaint is based on these facts:

Continued on the attached sheet.

Charles McDonald

Complainant's signature

Charles McDonald, Special Agent

Printed name and title

Sworn to before me and signed in my presence.

Date: March 11, 2016

Blake Grayson

Judge's signature

City and State: Ames City, Ames

Blake Grayson, Magistrate Judge

Printed name and title

**United States District Court
District of Ames**

UNITED STATES OF AMERICA

v.

DYLAN BLOOM

No. _____

AFFIDAVIT OF CHARLES MCDONALD

I, Charles McDonald, Special Agent, Federal Bureau of Investigation (FBI), Department of Justice, being duly sworn, do hereby depose and state the following:

The affiant is a Special Agent for the Federal Bureau of Investigation in Ames City, Ames, and has been so employed for approximately 11 years. The affiant's principal duties involve investigations into violations of federal law in the District of Ames. The affiant is providing this affidavit in support of the Government's application for an arrest warrant for Dylan Bloom. Based upon the results of the investigation described herein, the affiant has cause to believe that Bloom committed the following federal offense: willful failure to register with the Selective Service System, in violation of 50 U.S.C. §§ 3802(a) and 3811(a).

On or about August 18, 2015, the affiant interviewed Dylan Bloom after Bloom reached out to the Ames FBI office and stated that he wanted to confess to a federal felony. In that interview, Bloom said that he was a male U.S. citizen who was obligated to register with the Selective Service System. Bloom said that he had made a deliberate decision not to register despite knowing of his obligation to do so. He said that he would not comply with the law because the concept of a draft is "silly in this day and age." Bloom emphasized that he had no moral objection to war and was not a conscientious objector. He said that a draft is "outdated" and something that "no self-respecting millennial would put up with if it ever came to that." Bloom said that he had written letters to the Selective Service System each year on his birthday after he turned 18 stating that he would not register. He said that he had provided his current contact information each year in case the government wanted to charge him criminally, but he was "not too surprised" that he was not charged because "the government knows that the law is unconstitutional since it only applies to men and not women." Bloom said he had posted about this failure to register on social media sites to "call attention to this issue and demand a change in the law." Bloom said that he wanted to turn himself in and provided his contact information to the affiant "so that the FBI could arrest" him.

After interviewing Bloom, the affiant confirmed that Bloom is a male U.S. citizen who was born on June 10, 1989. The affiant checked Bloom's Selective Service records and

confirmed that he had not registered for the Selective Service System. The affiant also obtained copies of the letters Bloom had sent to the Selective Service System stating that he refused to register despite knowing of his obligation to do so. In addition, the affiant viewed Bloom's postings on social media sites and confirmed that Bloom frequently posted comments that criticized the draft and stated that he was flouting the requirement to register with the Selective Service System. Those postings described the registration requirement as "silly" and stated that the criminal penalties are a "joke" because the government never enforces the law.

On or about December 11, 2015, citizen Helen Green contacted the Ames FBI and provided information that Dylan Bloom was counseling her son, Benjamin Green, not to register with the Selective Service System when he turned 18. Ms. Green stated that her son was a member of the Ames City Swim Team Association, a year-round swim league. Bloom was a coach for the league assigned to work with older teenage boys. Ms. Green stated that swimmers assigned to work with Bloom, including her son Benjamin, looked up to Bloom and viewed him as a role model. Ms. Green reported that Bloom had repeatedly discussed his failure to register for the Selective Service with the swimmers on his team, stating that he was proud of his decision because he believes the concept of a draft is "stupid in today's world, where the military has to be volunteer-based to succeed." Ms. Green stated that Bloom had actively encouraged the swimmers he coached, many of whom were approaching their 18th birthdays, to ignore the registration requirement. Bloom told the swimmers that it was unfair that men and not women have to register for the draft. And, according to Ms. Green, Bloom "bragged" that he had informed the Selective Service System for years that he would not register and had offered a confession to the FBI that he had committed a federal felony by failing to register, and nothing was done about it. Ms. Green stated that she was disturbed by Bloom's actions because her son Benjamin had recently stated that he would refuse to register for the draft when he turned 18.

The affiant hereby swears and affirms that the preceding information is true and correct to the best of my knowledge and belief.

Charles McDonald

Charles McDonald
Special Agent
Federal Bureau of Investigation

Sworn and subscribed before me
on this 11th day of March, 2016.

Blake Grayson

U.S. Magistrate Judge
District of Ames

**IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF AMES**

UNITED STATES OF AMERICA,

v.

DYLAN BLOOM

Docket No. CR 16-1888

**MEMORANDUM OF DECISION AND ORDER DENYING
DEFENDANT’S MOTION TO DISMISS THE INDICTMENT**

Defendant Dylan Bloom moves, under Federal Rule of Criminal Procedure 12, to dismiss the Indictment charging him with willfully failing to register for the Selective Service System, in violation of 50 U.S.C. §§ 3802(a) and 3811(a), on the ground that the law impermissibly discriminates on the basis of gender in contravention of the Fifth Amendment’s equal protection guarantee. The Supreme Court rejected an equal protection challenge to the Selective Service registration requirement in *Rostker v. Goldberg*, 453 U.S. 57 (1981). The defendant argues that *Goldberg* is no longer good law, but this Court is bound by *Goldberg* unless and until the Supreme Court overrules it. Accordingly, based on *Goldberg*, the Court **DENIES** the defendant’s motion to dismiss.

Dated: June 3, 2016

Karen L. Black
United States District Court
For the Ames District

**IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF AMES**

UNITED STATES OF AMERICA,

v.

DYLAN BLOOM

Docket No. CR 16-1888

**NOTICE REGARDING ENTRY OF PLEA OF GUILTY
AND CONSENT TO PROCEED BEFORE A MAGISTRATE JUDGE**

In the event the defendant decides at any time before trial to enter a plea of guilty, a U.S. Magistrate Judge is authorized by Local Rule 52.1(b)(2), with the consent of the defendant and the United States of America, to conduct the proceedings required by Federal Rule of Criminal Procedure 11 incident to the plea. If, after conducting such proceedings, the Magistrate Judge accepts the plea of guilty, a presentence investigation and report will be ordered pursuant to Federal Rule of Criminal Procedure 32 and the District Court will determine and impose sentence.

CONSENT

I hereby declare my intention to enter a plea of guilty in the above-captioned case, and I request and consent to a U.S. Magistrate Judge conducting the proceedings required by Federal Rule of Criminal Procedure 11 incident to the plea.

Dylan Bloom
Defendant

August 30, 2016
Date

Allison Daniels
Defendant's Attorney

August 30, 2016
Date

On behalf of the United States of America, I hereby request and consent to a U.S. Magistrate Judge conducting the proceedings required by Federal Rule of Criminal Procedure 11 incident to the above listed Defendant entering a plea of guilty.

UNITED STATES OF AMERICA

By: *Cole Devonshire*

Date: August 30, 2016

**UNITED STATES DISTRICT COURT
DISTRICT OF AMES**

LOCAL RULES

Rule 52.1: Assignment of Matters to Magistrate Judges

(a) Automatic References

The Clerk of Court shall refer the following matters to a Magistrate Judge upon filing:

- (1) all pretrial motions for hearing and determination in accordance with the provisions of Federal Rule of Civil Procedure 72, with the exception of motions for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss, to remand, to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, to involuntarily dismiss an action, motions in limine regarding evidentiary matters, and for extensions of time with regard to matters pending before a District Judge;
- (2) all so-called “prisoner petitions” (*e.g.*, petitions or complaints filed pursuant to 28 U.S.C. §§ 1331, 2241, and 2254 or 42 U.S.C. § 1983), which are filed by inmates during confinement;
- (3) all requests for judicial review of a decision of the Commissioner of Social Security under Section 205(g) of the Social Security Act (42 U.S.C. § 405(g));
- (4) all misdemeanor offenses occurring within the District of Ames which are prosecuted by criminal complaint; and
- (5) all supplemental proceedings to discover assets and aid execution of judgments in civil cases pursuant to Federal Rule of Civil Procedure 69

(b) Authorized References

With the consent of the parties, a Magistrate Judge is authorized to:

- (1) conduct voir dire and select petit juries for the District Court; and
- (2) accept guilty pleas in felony cases, order presentence investigation reports, and file reports and recommendations with the District Court.

(c) Selected References

All other civil or criminal matters will be referred by a District Judge to a Magistrate Judge on a case-by-case basis.

**TRANSCRIPT OF PLEA HEARING
BEFORE MAGISTRATE JUDGE JOSEPHINE MIDDLETON
ON OCTOBER 6, 2016**

THE COURT: The next case is United States v. Bloom, criminal case number 16-1888. Will counsel please note their appearances for the record.

ALLISON DANIELS, Federal Public Defender: Good afternoon, your honor. Allison Daniels here with the defendant, Dylan Bloom.

COLE DEVONSHIRE, Assistant U.S. Attorney: Hello, your honor. Cole Devonshire for the United States.

THE COURT: Okay. And Mr. Bloom, you are here as well. The reason for this hearing this afternoon is that it is the Court's understanding that you wish to enter a guilty plea to the indictment. Is that still your desire?

DYLAN BLOOM, Defendant: Yes, it is.

THE COURT: Okay. Now, I am not the Judge who will sentence you if you plead guilty. I am a Magistrate Judge. I can conduct a guilty plea proceeding with your permission. I have a document signed by you indicating that you agree to let me do that. Is that correct?

BLOOM: Yes, that's right.

THE COURT: So I've confirmed your permission for that. I am going to have you placed under oath and ask you some questions. The first group of questions will make sure you understand what

the proceeding is about. Then I will discuss with you what the government would have to prove as to the count to which you are proposing to plead guilty. We'll talk about the penalties you face and the rights that you lose if you plead guilty. At the end of this, I'm going to ask you what you did to make sure your conduct violates the crime that you're pleading guilty to. Because you'll be under oath, if you are not completely truthful you could be separately prosecuted for perjury or for making a false statement and anything you tell me could be used against you in that prosecution. So if you don't understand something I ask, please let me know and I'll try to be clearer. Your lawyer will be here throughout the proceeding and you may speak with her privately any time. And because we are recording this, I need you to speak out loud to answer my questions instead of nodding or shaking your head. Do you have any questions before I proceed further?

BLOOM: No.

* * *

THE COURT: I find that the facts are sufficient to allow you to plead guilty if you still want to do that. I told you when we started that you did not have to plead guilty. Now we are getting close to the time when I'm going to ask you how you would like to plead. First, though, is there anything you want

to tell me or ask me that bears on your decision to plead guilty that we haven't talked about?

BLOOM: No.

THE COURT: Have you had any problem understanding or hearing anything during the proceedings?

BLOOM: No.

THE COURT: Do you want to talk with your attorney further before I ask you how you'd like to plead?

BLOOM: No.

THE COURT: All right. How then do you plead to the charge in Count 1 of the Indictment?

BLOOM: Guilty.

THE COURT: Are you freely and voluntarily entering this plea of guilty?

BLOOM: Yes.

THE COURT: I find that the plea of guilty is knowingly, intelligently, and voluntarily made. It is not the result of force or threats or promises. I accept your guilty plea to Count 1 in the indictment. I'm fully satisfied that you are competent to enter this plea and the facts support it. You are found guilty at this time. Now, the next step is sentencing. Sentencing is usually 75 days from today because that is how long it takes to do the presentence investigation report. I don't have the sentencing date for you, but your attorney will

tell you when it's scheduled and she'll also explain the presentence process to you. And now, Mr. Bloom, you may have a seat because we are finished with the proceeding.

HEARING ADJOURNED

**TRANSCRIPT OF HEARING ON MOTION TO WITHDRAW PLEA
BEFORE DISTRICT COURT JUDGE KAREN L. BLACK ON NOVEMBER 11, 2016**

THE COURT: We're here today in criminal case 16-1888 for a hearing on the motion to withdraw the guilty plea that was entered in this case last month. I've got the papers on this and I'm ready to hear from counsel. I'll hear first from counsel for the defendant, Allison Daniels. Are you ready Ms. Daniels?

ALLISON DANIELS, Federal Public Defender: Yes, your honor. As we've explained in our motion, Mr. Bloom has an absolute right to withdraw his plea under Rule 11(d)(1) of the Federal Rules of Criminal Procedure. That's the rule that applies before the court accepts the plea and it says the defendant can withdraw, and I'm quoting, "for any reason or no reason."

Now, I recognize that the magistrate judge in this case purported to accept the plea during the colloquy, and we consented to have that colloquy proceed before a magistrate. But it's our position that there's still an absolute right to withdraw because the magistrate didn't have authority under the statute, the Constitution, or the Federal Rules of Criminal Procedure to accept that plea.

And I obviously don't want to just repeat what's in our motion here, but to briefly try to summarize it for your honor. The statutory problem is that the Federal Magistrates Act

doesn't expressly authorize magistrate judges to accept guilty pleas in felony cases. That's 28 U.S.C. § 636. The government says that accepting a felony guilty plea is an additional duty within the meaning of Section 636(b)(3), but the Supreme Court has made clear -- this is the Gonzales case that we cite, the cite is 553 U.S. at page 245 -- that you can't read that additional-duties clause to "overshadow all that goes before" in the Act's enumerated provisions. And if you look at it closely, the Act distinguishes between non-dispositive matters in felony cases that magistrate judges can resolve and dispositive matters for which a magistrate judge can only issue a report and recommendation. Accepting a guilty plea ends the case; it is a dispositive matter. And then our argument based on Rule 59 really just reinforces that point because the criminal rule of procedure also distinguishes between dispositive and non-dispositive matters. Then finally, the constitutional concerns also support our argument. Adjudicating a defendant guilty of a federal felony offense is a core Article III power, and magistrate judges do not have the authority to usurp that power, even with the defendant's consent.

So we respectfully argue that there was simply no valid acceptance of the guilty plea here and for that reason we ask you to grant the motion to withdraw the plea.

THE COURT: Mr. Devonshire, I'll hear from you now.

COLE DEVONSHIRE, Assistant U.S. Attorney: Thank you, your honor. We've cited a number of cases in our opposition to the motion to withdraw that I think really show why the magistrate judge acted well within her authority in accepting the defendant's guilty plea in this case. And because that plea was validly accepted, the defendant can't withdraw it now unless he can satisfy Rule 11(d)(2)(B), which requires that he show a "fair and just reason for requesting the withdrawal." And I don't even understand him to assert that he can satisfy that standard.

Just to begin, I think it's important to emphasize the role that consent plays in this case, because the defendant's consent really weakens his claim. For one thing, it isn't even clear that he can properly challenge the magistrate judge's authority after he consented to allowing the judge to accept his guilty plea. If he didn't want a magistrate to conduct the plea hearing he didn't have to consent to it. But he signed a consent form and he confirmed his consent at the start of the hearing. So that's the first thing.

And then on his statutory argument, we cite cases that persuasively demonstrate why acceptance of a guilty plea qualifies as an additional duty within the meaning of Section 636(b)(3) of the Federal Magistrates Act. The Supreme Court has interpreted that provision by looking at whether a duty is

comparable in responsibility and importance to the specified duties, and we submit that accepting a guilty plea satisfies that test when you look at the other things magistrate judges are authorized to do. And Rule 59 of course can't alter the meaning of the statute and the defendant doesn't identify any court that has relied on Rule 59 to find that magistrate judges cannot accept felony guilty pleas.

We explain that there's no constitutional issue here either because of two things. First, the defendant consented to have a magistrate judge take his plea, and that consent eliminates any personal right he had to have an Article III court accept his guilty plea. And second, this Court still has supervisory authority over the process because it makes the decision to assign the plea hearing to the magistrate and also can review de novo any decision to accept a plea. And of course this Court will make the final adjudication of guilt when it sentences the defendant.

So, for those reasons, we respectfully urge this Court to deny the motion to withdraw.

THE COURT: Ms. Daniels, has the defendant articulated a reason why he wants to withdraw his plea in this case?

DANIELS: Well, your honor, I think he simply got cold feet. And to be honest, I think you know that the government hasn't prosecuted this crime for decades and I think my client decided

that he wanted to take his chances with a jury that he didn't think would convict him no matter the evidence. So he wants to put the government to its proof in this case, which is the first time this statute has been charged since the mid 1980s.

THE COURT: Well, but you're suggesting he's hoping for jury nullification if he's not concerned about the evidence. You're not saying that that would be a fair and just reason for requesting the withdrawal, right? I mean, you're not arguing that if I conclude that the plea has been accepted you can in any event satisfy Rule 11(d)(2)(B)?

DANIELS: No, we're arguing that he doesn't need a reason because the plea was never validly accepted in the first place. So he can withdraw for any reason.

THE COURT: Okay. I've read the papers on this issue and looked at the case law you both cited. And I'm going to deny the motion to withdraw because I find that the magistrate judge did properly accept the guilty plea in this case. The defendant consented to have the magistrate judge accept the plea, and that action qualifies as an additional duty within the meaning of the Federal Magistrates Act. I don't find any significant constitutional question here in light of the defendant's consent and the fact that I still have supervisory authority in this context. And the defendant has not argued that he can satisfy the standard to withdraw his plea under Rule 11(d)(2)(B), which

is the rule that applies where, as here, the plea has been accepted. So for those reasons, the motion is denied and we're going to keep the sentencing on the schedule for just before the holidays, I think it is set for December 12, 2016. Is there anything further?

DEVONSHIRE: No your honor.

DANIELS: No, your honor.

THE COURT: Then we are adjourned.

HEARING ADJOURNED

**IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF AMES**

UNITED STATES OF AMERICA

v.

DYLAN BLOOM

Docket No. CR 16-1888

JUDGMENT IN A CRIMINAL CASE

The defendant entered a conditional plea of guilty on Count One. The defendant is adjudicated guilty of the following:

COUNT & CONVICTION

<u>Count</u>	<u>Title & Section</u>	<u>Nature of Offense</u>
1	50 U.S.C. §§ 3802(a) and 3811(a)	Willful Failure to Register with the Selective Service System

IMPRISONMENT

The defendant is hereby committed to the United States Bureau of Prisons to be imprisoned for a total term of 60 days.

OTHER TERMS

Following incarceration, the defendant is sentenced to 2 years of supervised release.

The defendant is ordered to pay a \$500 fine to the United States.

December 12, 2016
Date of imposition of judgment

Karen L. Black
Signature of Judicial Officer

KAREN L. BLACK
United States District Judge

**IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF AMES**

UNITED STATES OF AMERICA,
Plaintiff-Appellee

v.

DYLAN BLOOM,
Defendant-Appellant.

Docket No. CR 16-1888

NOTICE OF APPEAL

Defendant Dylan Bloom, by and through undersigned counsel, hereby gives notice that he is appealing the judgment entered on December 12, 2016 in the above-captioned matter to the United States Court of Appeals for the Ames Circuit.

Respectfully submitted,

Allison Daniels

Allison Daniels
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5100 S. Ames Blvd
Ames City, Ames 40113

Attorney for Appellant

Dated: December 13, 2016