Efficiency Run Amok: Challenging the Authority of Magistrate Judges to Hear and Accept Felony Guilty Pleas

I. INTRODUCTION

In an ideal world, a trial would never be unreasonably delayed or cut short. Judges would never need to juggle multiple difficult trials or drown in administrative tasks that distract from the fair adjudication of cases, and lawyers and litigants could be reassured that each judgment was arrived at fairly and after proper reflection. Congress created the magistrate system in an attempt to move the federal judiciary closer to this ideal state of affairs.[1] The purpose of this Article I judicial system is to facilitate the resolution of less significant disputes and speed the administration of procedural tasks.[2] When district judges can delegate discovery duties, pretrial matters, or petty disputes to magistrate judges, they should have more time to spend on more serious matters. Practically, this creates greater judicial efficiency by easing the workload for overburdened district courts and enabling the adjudication of a greater number of disputes. However, whether the magistrate system and its administrative benefits always help to achieve an optimally fair legal system remains unclear.

This Note argues that the delegation to magistrate judges of felony-guilty-plea proceedings, though beneficial to district judges, raises concerns of fairness and constitutionality for criminal defendants. Accordingly, a magistrate judge should never accept such a plea. With the consent of litigants, magistrate judges presently have the authority to conduct misdemeanor trials and "any or all proceedings in a jury or non-jury" civil trial.[3] However, although the Federal Magistrates Act is silent on the matter, the Supreme Court has indicated that magistrate judges lack the power to conduct felony trials.[4] This places the authority to accept a felony guilty plea in a disputed area: functionally similar to duties like evidentiary hearings or misdemeanor trials, which magistrate judges commonly perform, but

1. *See, e.g.*, Peretz v. United States, 501 U.S. 923, 928–29 (1991) (explaining that Congress intended magistrate judges to play an "integral and important role" in creating "an efficient federal court system").

2. *Id.* at 933.

3. 28 U.S.C. § 636(a)(3), (c)(1) (2012).

4. Gomez v. United States, 490 U.S. 858, 871–72 (1989) ("[T]he carefully defined grant of authority to conduct trials of civil matters and of minor criminal cases should be construed as an implicit withholding of the authority to preside at a felony trial.").

closer in significance to tasks they are not permitted to undertake, such as a felony trial. Courts have handled this problem in a few different ways, although none have entirely prohibited the delegation of all duties related to plea acceptance.

Part II of this Note describes the history of the federal magistrate system and the types of duties these judicial officers generally perform. The Supreme Court has analyzed the scope of magistrate judge authority on several occasions, offering two distinct approaches to statutory interpretation of the Federal Magistrates Act ("FMA") and its "additional duties" clause. Any determination of whether a district judge may delegate a particular duty to a magistrate judge involves (1) a statutory analysis of the FMA and (2) a constitutional analysis of both the rights of defendants and potential separation-of-powers concerns. This Part describes how courts have grappled with the power to accept felony guilty pleas in this context. Specifically, Section II.C discusses the recent decision by the Seventh Circuit to preclude magistrate judges from formally accepting such pleas, while still allowing them to perform a Rule 11 colloquy[5] and make a recommendation to the district judge.[6]

Part III analyzes the statutory and constitutional validity of magistrate judge administration of felony-guilty-plea proceedings. This Part argues that the delegation of such a duty violates the FMA under either of the Supreme Court's interpretive approaches and raises constitutional concerns that should not be overlooked in the name of efficiency. Section III.C analyzes the ancillary judicial duties that necessarily attach to a plea acceptance, complicating the constitutional implications. These considerations are especially difficult to evaluate because of the imprecise distinction many courts have made between a plea colloquy and a plea acceptance.

Part IV offers a solution to the dilemma that allows magistrate judges to conduct these felony-guilty-plea proceedings without empowering them to accept the pleas with the full authority of a district judge. This scenario would enhance the efficiency of the judiciary without unnecessarily burdening the constitutional rights of defendants or treating them unfairly.

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5. A Rule 11 colloquy is the procedure, drawn from FED. R. CRIM. P. 11, by which a court must assess the factual basis, voluntariness, and knowingness of a criminal defendant's guilty plea. It is sometimes known as a "change of plea" hearing.

6. United States v. Harden, 758 F.3d 886, 891 (7th Cir. 2014).

II. THE HISTORY OF THE FEDERAL MAGISTRATES ACT AND THE MAGISTRATE SYSTEM

Congress created the federal magistrate system to help improve the efficacy of district judges by easing their "overwhelming caseload[s]" and enabling them to spend more time in their adjudicatory capacity.[7] To this end, Congress conferred in magistrate judges the power to dispose of "certain subordinate duties" that are likely to distract district judges from "more important matters."[8] While many of these tasks are enumerated in the Federal Magistrates Act,[9] Congress also included a catchall provision allowing district courts to experiment with assigning magistrate judges any "additional duties . . . not inconsistent with the Constitution and the laws of the United States."[10] This category of tasks is the subject of much litigation, as the leeway it provides courts in the name of efficiency occasionally raises constitutional concerns.[11]

A. The History and Purpose of Federal Magistrate Judges

Congress created the magistrate system in 1968 with the enactment of the FMA.[12] Previously, a similar system had existed for delegating minor legal disputes and "petty offenses" to U.S. Commissioners.[13] But this proved to be problematic, in part because many of the commissioners were not attorneys.[14] Congress, seeing the benefit of relieving district courts of these minor issues, responded by creating the office of magistrate, a salaried position "to be filled in most

7. United States v. Khan, 774 F. Supp. 748, 750 (E.D.N.Y. 1991).

8. *Peretz*, 501 U.S. at 934.

9. 28 U.S.C. § 636 (2012).

10. *Peretz*, 501 U.S. at 941.

11. *See, e.g.*, Gomez v. United States, 490 U.S. 858 (1989). Constitutional issues with the Magistrate System are discussed in Section II.B(2). Briefly stated, magistrate judges are congressionally created Article I judges. They do not have the political independence that is so fundamental to the Article III judiciary. Theoretically, if a magistrate judge were to undertake a task that is inherently "judicial" in nature, it would represent an unconstitutional usurpation of Article III power by Congress.

12. *Gomez*, 490 U.S. at 865.

13. *Id.* at 865–66.

14. *See id.* at 865 (stating that prior to 1968, disputes were settled by commissioners who often were not lawyers); *see also* Ira P. Robbins, *Magistrate Judges, Article III, and the Power to Preside Over Federal Prisoner Section 2255 Proceedings*, FED. CTS. L. REV., May 2002, at 1, 2–3, http://www.fclr.org/articles/html/2002/fedctslrev2.pdf [http://perma.cc/MQ7V-W9C8] (describing the problematic pay structure of the commissioner system, which tied salary to caseload).

instances by attorneys."[15] Unlike the constitutionally created Article III judges—those who preside in the federal district courts, the federal courts of appeals, and the U.S. Supreme Court—magistrate judges are congressionally created Article I judges who serve limited terms and are subject to for-cause removal at the discretion of the local district judge.[16] In addition to the authority that commissioners had prior to 1968, Congress granted magistrate judges a number of new powers.[17] Because their authority comes from Congress rather than the judiciary, magistrate judges do not bear the indicia of political independence that are characteristic of Article III adjudicators. Accordingly, to ensure constitutional protections for litigants, Congress explicitly conditioned magistrate judge authority on a high level of district court "scrutiny and control" and precluded magistrate judges from overseeing any disputes that "required the exercise of delicate judgment"—for instance, bribery or corruption.[18]

Arguably in response to courts' overly narrow construction of magistrate judge power, Congress amended the FMA in 1976 to further expand the authority of these judicial officers.[19] These amendments added a number of enumerated magistrate judge powers, in addition to a general grant of authority that permits district judges to assign magistrate judges "such additional duties as are not inconsistent with the Constitution and the laws of the United States."[20] The legislative history describes Congress's intent in creating this crucial section of the Act: to give district courts leeway to "experiment" in delegating certain duties that would assist Article III judges in the "careful and unhurried performance of their vital and traditional adjudicatory duties."[21] Congress expanded magistrate judges' jurisdiction again in 1979, allowing them to preside over civil and misdemeanor trials upon assignment by the district court.[22] The FMA expressly limits these two new areas of authority to situations where a litigant consents to magistrate judge jurisdiction; for instance, a district judge cannot delegate a civil trial to a magistrate judge if the defendant objects.[23]

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15. *See Gomez*, 490 U.S. at 865 (discussing the contrasts between the new office of the magistrate and the pre-1968 role of United States commissioners).

16. *Id.*

17. *Id.* at 865–66.

18. *Id.* at 866–67.

19. United States v. Ciapponi, 77 F.3d 1247, 1250 (10th Cir. 1996).

20. *Gomez*, 490 U.S. at 867–69.

21. *Id.* at 869 (citing H.R. REP. NO. 94-1609, at 12 (1976)).

22. *Id.* at 869–70.

23. *Id.* at 870–71.

Currently, the FMA expressly gives magistrate judges the power to undertake a number of different duties. The statute places the enumerated tasks in a few categories, scattered throughout 28 U.S.C. § 636(a)–(h). A description of magistrate judges' authority to undertake "pretrial matters" appears primarily under § 636(b), which makes an important distinction between pretrial matters that a magistrate judge may "hear and determine," and those for which a magistrate judge must submit a report and recommendation to the district court.[24] Federal Rule of Civil Procedure 72 labels the latter category "dispositive motions" and the former "nondispositive" because the matters in the first category are "not dispositive of a party's claim or defense."[25] Generally, the "dispositive" category contains motions of the greatest significance to a case, like a motion for summary judgment or a motion for class certification.[26] Given the importance of these case-deciding matters, § 636(b) mandates that the magistrate judge's findings and recommendations, if objected to, must receive de novo review by the district judge prior to acceptance.[27] By contrast, a district judge may only set aside magistrate judge rulings on § 636(b)(1)(A) "nondispositive" matters when they are clearly erroneous.[28] Thus, the statute expressly contemplates that magistrate judges should have full authority to handle matters of lesser significance, but may only assist district judges with more important matters, rather than ruling on these issues themselves.[29] This is consistent with the constitutional principle that Article III adjudicators preside over all issues fundamentally judicial in nature.[30] In addition to these "dispositive" and "nondispositive" pretrial tasks, § 636(b) provides that a magistrate judge "may be assigned such *additional duties* as are not inconsistent

24. 28 U.S.C. § 636(b)(1) (2012).

25. FED. R. CIV. P. 72. *But see* Peter J. Gallagher, *In Search of a Dispositive Answer on Whether Remand is Dispositive*, 5 SETON HALL CIR. REV. 303, 312–13 (2009) (describing the debate over whether the "dispositive" matters in Rule 72 are limited to the eight motions enumerated in the Federal Magistrates Act).

26. § 636(b)(1)(A).

27. § 636(b).

28. § 636(b)(1)(A).

29. *See* United States v. Raddatz, 447 U.S. 667, 673 (1980) (explaining that "the magistrate has no authority to make a final and binding disposition" regarding the "dispositive" motions enumerated in § 636(b)(1)(B)).

30. *See* U.S. CONST. art. III, § 1:

> The judicial power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

with the Constitution and laws of the United States,"[31] a phrase that allows for judicial creativity in delegating a broad range of tasks.

Another category of duties, listed in § 636(c), comprises those that magistrate judges can perform only when the parties consent to their authority. Despite the focus on consent in FMA jurisprudence,[32] the "consent" condition appears in the text of § 636(c), and not alongside the "additional duties" clause and pretrial matters in § 636(b). With consent, a magistrate judge may "conduct any or all proceedings in a jury or nonjury civil matter and order the entry of judgment in the case," as long as the local district judge has specifically designated the magistrate judge to exercise such jurisdiction.[33] In these instances, the district judge does not review the magistrate judge's actions, although the court may "vacate" the original delegation upon "extraordinary circumstances."[34] Instead, review is available directly in the courts of appeals, under the same standard of deference that the appellate court would normally grant the district judge, since the parties' consent has given the magistrate judge full "civil jurisdiction" over the case.[35] Notably, the word "felony" never appears in the FMA, and the Supreme Court has suggested that a magistrate judge may not preside over a felony trial.[36] To assign such a fundamental adjudicatory task to Article I judges could raise constitutional issues.[37] Although defendants may waive their constitutional right to an Article III adjudicator by consenting to magistrate judge authority, any usurpation of inherently judicial power by magistrate judges would constitute a separation-of-powers issue, notwithstanding the defendant's consent.[38] Such structural constitutional protections, which guarantee a politically independent judiciary, cannot be waived by any individual.

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31. § 636(b)(3) (emphasis added).

32. *See* Section II.B(1)(b), *infr*a for a discussion of the Supreme Court's consent analysis.

33. § 636(c)(1).

34. § 636(c).

35. *Id.*; *see also* Roell v. Withrow, 538 U.S. 580, 585 (2003) ("[A] § 636(c)(1) referral gives the magistrate judge full authority over dispositive motions, conduct of trial, and entry of final judgment, all without district court review. [It] is to be treated as a final judgment of the district court.").

36. Gomez v. United States, 490 U.S. 858, 871–72 (1989). The Federal Magistrates Act does not specifically omit felony trials, but the Supreme Court has interpreted the statute's legislative history as indicating a clear intent to preclude such a delegation. *Id.* at 871–72.

37. *See* Commodity Futures Trading Comm'n v. Schor, 478 U.S. 833, 850 (1986) ("[Article III] safeguards the role of the Judicial Branch in our tripartite system by barring congressional attempts 'to transfer jurisdiction [to non-Article III tribunals] for the purpose of emasculating' constitutional courts.") (quoting Nat'l Ins. Co. v. Tidewater Co., 337 U.S. 582, 644 (1949)).

38. *Id.*

B. The Contested Scope of §636(b)(3)'s "Additional Duties" Clause

The Supreme Court has confronted interpretations of the FMA's "additional duties" clause on several occasions, with its most significant decisions coming in two cases that involved the delegation of felony-trial voir dire to magistrate judges: *Gomez v. United States* and *Peretz v. United States*. This clause, which appears in 28 U.S.C. § 636(b)(3), contemplates magistrate judge duties beyond those enumerated in the FMA, stating that magistrate judges may perform "such additional duties as are not inconsistent with the Constitution and laws of the United States."[39] It is a "residual or general category," which the Supreme Court cautioned "must not be interpreted in terms so expansive that the paragraph overshadows all that goes before."[40] Whether a district judge may delegate a particular "additional duty" to a magistrate judge depends on both a statutory and constitutional analysis. Taken together, *Gomez* and *Peretz* form the primary precedent that informs lower courts' decisionmaking regarding federal magistrate judges' duties.

1. Statutory Authority of Magistrate Judges to Undertake "Additional Duties"

a. Gomez v. United States

In its first analysis of the issue, in *Gomez v. United States*, the Supreme Court held that federal magistrate judges do not have the authority to preside over jury selection proceedings in a felony trial.[41] The case originated in the Eastern District of New York, where a district judge had delegated supervision of voir dire in a felony trial to the local magistrate judge, despite defense counsel's objections.[42] After the conclusion of voir dire, the defense objected once again to the district judge, but to no avail.[43] On appeal, a divided Second Circuit affirmed the district court, reasoning that Congress intended the "additional duties" clause to be construed broadly, thus encompassing delegation of the jury-selection process.[44]

However, the Supreme Court reversed, criticizing the Second Circuit's reading of § 636(b)(3) as an overly literal construction that

39. § 636(b).
40. Gonzalez v. United States, 553 U.S. 242, 245 (2008).
41. *Gomez*, 490 U.S. at 875–76.
42. *Id.* at 860.
43. *Id.* at 860–61.
44. *Id.* at 861.

would suggest no statutory limit to the power Congress conferred to magistrate judges in the Federal Magistrates Act.[45] Such an interpretation of the statute would leave the Constitution as the sole constraint on magistrate judge authority.[46] According to the Court, this extreme interpretation could not be correct because it would give magistrate judges the same power as Article III judges, offering no obstacle to a district judge delegating an entire felony trial to a magistrate judge.[47] Instead, "the [FMA's] 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."[48] In other words, the *Gomez* Court read the FMA as precluding district judges from delegating to magistrate judges any felony trial duties at all.[49] Thus, *according to Gomez,* if jury selection is a part of a felony trial, the statute implicitly denies magistrate judges any power to conduct such proceedings. The Court also read the legislative history as contrasting magistrate judges' handling of "subsidiary matters" with district judges' "adjudicatory" function, noting that voir dire is a "critical stage of the criminal proceeding."[50] In this sense, even assuming voir dire is a pretrial matter and not part of a felony trial, it is "more akin to those precisely defined, 'dispositive' matters," for which the Federal Magistrates Act requires magistrate judges to submit a "report and recommendation" subject to de novo review upon a party's request.[51] This reasoning suggested that the statutory analysis of any pretrial "additional duty" assigned to a magistrate judge should require a determination of whether the delegated task falls into one of the two categories specified in § 636(b).[52]

Furthermore, citing the importance of voir dire, the Court rejected the notion that jury selection might be a "nondispositive"

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45. *Id.* at 863.

46. *Id.*

47. *See id.* (expressing concerns about the constitutionality of delegating felony trial duties to magistrate judges).

48. *Id.* at 871–72. Recall that § 636(c) grants magistrate judges the authority to conduct "any or all" civil trial proceedings if the litigants consent. No part of § 636 mentions felony trials at all.

49. *Id.*

50. *Gomez*, 490 U.S. at 872–73.

51. *Id.* at 873–74.

52. *See id.* ("It is incongruous to assume that Congress implicitly required [de novo] review for jury selection, yet failed to even mention that matter in the statute. It is equally incongruous to assume . . . that Congress intended not to require any review—not even the less stringent clearly erroneous standard."); *cf.* Hon. T. Michael Putnam, *The Utilization of Magistrate Judges in the Federal District Courts of Alabama*, 28 CUMB. L. REV. 635, 654 (1998) ("Some matters, however, do not fit neatly under either § 636(b)(1)(A) or (B) because they are not directly case-dispositive yet have a profound impact on the case. A motion to remand a case removed to federal court is the prime example.") (footnote omitted).

matter for which a magistrate judge can enter an order subject to clear error review.[53] Combining these concerns with the noted absence of any reference to jury selection in either the FMA or its legislative history, the Court held that "Congress did not intend the additional duties clause to embrace this function."[54]

b. Peretz v. United States *Changes the Analysis*

Just two years after *Gomez*, the Supreme Court confronted the *Peretz* case, which was similar in many respects but had one key difference: the petitioner in *Peretz* explicitly consented to the magistrate judge's supervision of voir dire.[55] At a pretrial conference, the district judge specifically asked petitioner's counsel if he had any objection to picking the jury before a magistrate judge, to which he replied, "I would love the opportunity."[56] Petitioner's counsel subsequently reaffirmed his consent when asked directly by the magistrate judge and never raised any objection at trial.[57] However, upon appeal, petitioner relied on *Gomez* to argue for the first time that the magistrate judge did not have the authority to preside over jury selection in a felony trial.[58] The Second Circuit disagreed, reasoning that the holding in *Gomez* "applied only to cases in which the magistrate had acted without the defendant's consent."[59] Since the ruling in *Gomez*, a circuit split had emerged on the issue of whether the decision hinged on the litigant's consent to the magistrate judge's supervision of voir dire.[60] The Supreme Court in *Peretz* affirmed the Second Circuit, holding that the ruling in *Gomez* was "narrow" and "carefully limited to the situation in which the parties had not acquiesced at trial to the magistrate's role."[61]

According to the Court, the litigant's consent ensures that the delegation of voir dire in a felony trial complies with the Federal Magistrates Act. Although the Court acknowledged a general reluctance to "construe the additional duties clause to include responsibilities of far greater importance than the specified duties assigned to magistrates," it found that the task of presiding over voir

53. *Gomez*, 490 U.S. at 873–74.
54. *Id.* at 875–76.
55. Peretz v. United States, 501 U.S. 923, 925 (1991).
56. *Id.*
57. *Id.*
58. *Id.*
59. *Id.* at 926.
60. *Id.* at 926–27.
61. *Id.* at 927.

dire in a felony trial is "comparable in responsibility and importance" to the well-established magistrate judge duty of supervising a civil or misdemeanor trial.[62] Rather than reading *Gomez* as categorically precluding magistrate judge administration of all felony trial proceedings, the *Peretz* Court interpreted the earlier case as "focused on the fact that those specified duties that were comparable to jury selection in a felony trial could be performed only with the consent of the litigants."[63] Thus, the Court found that the consent of a defendant expands the scope of the statutory "additional duties" clause to include matters akin to any duty that appears in the FMA. However, the Court never addressed the fact that the "consent" language appears in § 636(c), regarding the delegation of civil trial proceedings, but appears nowhere in the "additional duties" clause or in § 636(b)(1), which enumerates magistrate judges' authority in pretrial matters.

Instead, the Court relied on Congress's intent in passing the FMA, which was to allow experimentation in improving judicial efficiency.[64] Accordingly, the *Peretz* Court shifted the focus of the "additional duties" statutory inquiry from *Gomez*'s more straightforward textual analysis to the issue of consent: while the absence of a litigant's approval limits a magistrate judge to administrative or "subsidiary" matters, consent indicates an endorsement of "continued innovative experimentations," opening up an entire class of more significant duties.[65] If a particular litigant is uncomfortable with participating in the "experiment" by allowing a magistrate judge to supervise a non-subsidiary duty, "he need only decline to consent to the magistrate's supervision."[66] Once a litigant consents, however, the magistrate judge may perform a duty "comparable" to those listed anywhere else in the FMA, limited neither to civil and misdemeanor cases, nor to the "pretrial matters" of § 636(b) where the "additional duties" clause appears.[67] In this way, the *Peretz* Court framed consent as the crucial factor in analyzing any proposed magistrate judge task under the "additional duties" clause of the FMA.

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62. *Id.* at 933.

63. *Id.* at 931.

64. *See id.* at 932 (noting that the generality of the additional duties category illustrates congressional intent to allow for experimentation).

65. *See id.* at 934 (finding that the additional duties clause permits courts to experiment and improve efficiency when the defendant consents).

66. *Id.* at 935.

67. *See id.* at 933 (reasoning that a litigant's consent allows a magistrate judge to supervise not just "subsidiary matters," but also duties "comparable in responsibility and importance" to presiding over a civil or misdemeanor trial).

Interestingly, the *Peretz* Court's focus on consent represents a complete departure from the mode of analysis the Court had previously pursued in *Gomez*.[68] Here, the majority never mentioned the differences between trial and pretrial proceedings or "dispositive" and "nondispositive" matters.[69] Indeed, in his dissent in *Peretz*, Justice Marshall questioned why a party's consent should have any effect on the issue at all.[70] He expressed concern that the majority's application of the consent language in § 636(c) to matters beyond the scope of that section "treat[s] the magistrate's authority in this part of the felony trial as perfectly coextensive with his authority in civil and misdemeanor trials."[71] Not only do the statute's requirements related to civil or misdemeanor trials say nothing about magistrate judge authority over felony trial matters, argued Justice Marshall, but to hold otherwise adopts a "reading of the [FMA] that *Gomez* categorically rejected."[72] Just because Congress created a category of enumerated magistrate judge duties predicated on consent in § 636(c), he said, "does not prove that Congress also authorized magistrates to conduct trial duties not expressly enumerated in the Federal Magistrates Act."[73]

Despite its shift in reasoning, the *Peretz* Court never expressly overruled *Gomez*. As a result, it is unclear what interpretive force the earlier opinion retains. *Gomez* likely remains the proper framework for courts to apply whenever defendants do not consent to a district judge's decision to delegate a particular task to a magistrate judge.[74] But whether *Gomez* has any role in the analysis of duties dissimilar to jury selection is not obvious from the *Peretz* opinion. Similarly, it is uncertain whether litigant consent erases the distinction between "dispositive" and "nondispositive" matters of § 636(b) in every pretrial situation. The Supreme Court has not addressed how far the reasoning of either opinion extends in the magistrate judge context.

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68. *See* Kimberly Anne Huffman, Note, Peretz v. United States: *Magistrates Perform Felony Voir Dire*, 70 N.C. L. REV. 1334, 1351–52 (1992) ("The *Peretz* Court also departed significantly from its unanimous ruling in *Gomez*. . . . [T]he consent issue received sparse treatment throughout the remainder of the *Gomez* opinion.").

69. *See generally Peretz*, 501 U.S. 923 (focusing primarily on consent by the defendant).

70. *Id.* at 941 (Marshall, J., dissenting); *see also* Gonzalez v. United States, 553 U.S. 242, 259 (2008) (Thomas, J., dissenting) (arguing that *Peretz* should be overruled because "the [*Gomez*] Court's interpretation of § 636(b)(3) rested primarily on two inferences drawn from the statutory scheme. . . . Neither of these inferences depended on the presence or absence of the parties' consent.").

71. *Peretz*, 501 U.S. at 943 (Marshall, J., dissenting).

72. *Id.*

73. *Id.* at 948.

74. *See id.* at 927 (noting that the holding in *Gomez* was "narrow" and "carefully limited" to situations in which the parties had not consented to the magistrate judge's role).

2. Constitutional Concerns and "Additional Duties"

Even a magistrate judge duty that is statutorily sound may still implicate individual and structural constitutional rights, which would weigh against delegation from an Article III judge. For example, criminal defendants enjoy the right to have a district court judge preside at all "critical stages" of a felony trial.[75] However, most courts have reasoned that criminal defendants can waive their basic rights, explaining that the "constitutional analysis changes significantly . . . if the defendant does not object."[76] In *Peretz* for instance, the petitioner did not object to the magistrate judge's authority to conduct jury selection—in fact, he actively supported it. In the eyes of the Court, this amounted to a waiver of his constitutional right to have an Article III judge supervise the voir dire process.[77] Even the most basic criminal rights, the Court reasoned, are subject to waiver, including the right to a public trial, the right against unlawful searches and seizures, and the right to a double jeopardy defense.[78]

However, even if individual rights are subject to waiver by defendants, the same is not true of structural separation-of-powers protections. Because federal magistrate judges were created by Congress, they are Article I judges, prohibited from encroaching on the constitutionally granted powers of the Article III judiciary. The Constitution does not permit a magistrate judge, as a member of a political branch, to undertake a power meant for the independent judiciary. Article III judges enjoy constitutional guarantees of lifetime tenure and no decrease in salary, provisions that ensure the "steady, upright, and impartial administration of the laws."[79] These structural safeguards of independence do not extend beyond Article III, and the substantially higher control Congress can exercise over magistrate judges could theoretically be an incentive to thin the ranks of district

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75. United States v Ciapponi, 77 F.3d 1247, 1250 (10th Cir. 1996).

76. *Id.*

77. *Peretz*, 501 U.S. at 937.

78. *Id.* at 936.

79. THE FEDERALIST No. 78 (Alexander Hamilton); *see also* Gonzalez v. United States, 553 U.S. 242, 268–69 (2008) (Thomas, J., dissenting) ("[W]hatever their virtues, magistrate judges are no substitute for Article III judges in the eyes of the Constitution."); *Leading Cases,* 122 HARV. L. REV. 276, 462 (2008):

> The Court's gradual approach focusing on the intricacies of consent sidestepped the concern underlying the constitutionality of the delegation of voir dire to magistrate judges: whether defendants' rights are violated when an Article I judge, who is appointed by the judiciary and who does not enjoy the same protections as Article III judges, rather than an Article III judge, nominated by the President and approved by the Senate, presides over jury selection.

judges and allow Article I judges to take over the system.[80] One court described the risk of Congress usurping judicial power, noting, "The 'slippery slope' scenario here is easy to envision. District courts might begin by delegating small felony trials to magistrate judges . . . . Eventually Congress would notice the trend . . . [and] seek to increase the number of magistrate judges."[81]

Commentators and courts have argued that the Constitution requires the Article III judiciary to retain control over the "essential attributes" of judicial power.[82] Courts that have addressed the potential separation-of-powers problems with the magistrate system have generally reasoned that no issue arises unless the magistrate judge assumes control of decisionmaking.[83] For most courts, the availability of de novo review of magistrate judge decisions is sufficient to ensure that the district judges retain power over the whole process.[84] However, the absence of sufficient opportunity for review by an Article III judge creates problems. In the case of voir dire, for instance, the *Gomez* Court based its decision in part on concerns that a magistrate judge's supervision of voir dire would be effectively impossible to review de novo,[85] given the importance of personally scrutinizing jury candidates.[86] With no way to record the gestures or tone of voice of prospective jurors, a district judge cannot realistically scrutinize the assessments made by the magistrate judge, meaning that any review would be de novo in name alone.[87] Without genuine de novo deference, the Article III judge may not be able to exercise the necessary level of

80. *Ciapponi*, 77 F.3d at 1250.

81. United States v. Dees, 125 F.3d 261, 267 n.6 (5th Cir. 1997).

82. *See* Daniel E. Hinde, Note, *Consensual Sentencing in the Magistrate Court*, 75 TEX. L. REV. 1161, 1169 (1997) ("Congress cannot create an adjudicatory system that prevents an Article III judge from making the final decision on certain issues for which the federal courts have subject matter jurisdiction; Article III judges must retain the essential attributes of judicial power.") (citing Crowell v. Benson, 285 U.S. 22, 51 (1932)).

83. *See, e.g.*, United States v. Raddatz, 447 U.S. 667, 683 (1980) (reasoning that district judge delegation of authority to magistrate judges "does not violate Art. III so long as the ultimate decision is made by the district court").

84. *See* United States v. Osborne, 345 F.3d 281, 283 (4th Cir. 2003) (finding that a district court judge need only review Rule 11 proceedings conducted by a magistrate judge upon the defendant's request).

85. The Federal Magistrates Act precludes magistrate judges from ruling on dispositive matters, requiring instead that they make a recommendation to the district judge, subject to de novo review upon request. 28 U.S.C. § 636(b)(1) (2012).

86. Gomez v. United States, 490 U.S. 858, 874–75 (1989).

87. *Id.*; *see also* United States v. Raddatz, 447 U.S. 667, 703 (1980) (Marshall, J., dissenting) (arguing that when a district judge reviews a magistrate judge's determination of credibility during an evidentiary hearing, "the magistrate's report is no mere 'recommendation,' " but instead, "effectively the final determination").

"scrutiny and control" required by constitutional separation-of-powers principles.

The *Peretz* Court attached little significance to the *Gomez* Court's constitutional concerns about the difficulty of reviewing voir dire, noting that "nothing in the statute *precludes* a district court from providing the review that the Constitution requires."[88] Reasoning that the "entire process takes place under the district court's total control and jurisdiction," the Court found that no structural constitutional problems were implicated.[89] In other words, the authority district judges hold over magistrate judges helps to mitigate the structural risks of assigning judicial tasks to the political branches.[90] The fact that the district judge has authority to appoint and remove magistrate judges, along with the discretion to delegate duties, alleviates any concerns that the practice of assigning voir dire to magistrate judges "emasculate[s] constitutional courts."[91] More recently, the Court reiterated this view in the context of Article I bankruptcy judges, holding that allowing "Article I adjudicators to decide claims submitted to them by consent does not offend the separation of powers so long as the Article III courts retain supervisory authority" and the " 'ultimate decision' whether to invoke [a] magistrate [judge]'s assistance is made by the district court."[92] It is not clear from this reasoning if any magistrate judge action taken under district court supervision could ever constitute a usurpation of Article III power.

C. The Split over Magistrate Judge Authority to Conduct Rule 11 Colloquies

1. Rule 11 Colloquies

Federal Rule of Criminal Procedure 11 describes the procedure for a criminal defendant to enter a plea of guilty, not guilty, or nolo contendere. "Before the court accepts a plea of guilty," the rule reads, "the defendant may be placed under oath, and the court must address the defendant personally in open court."[93] During this time, the judge

88. Peretz v. United States, 501 U.S. 923, 939 (1991) (emphasis added).

89. *Id.* at 937 (quoting *Raddatz*, 447 U.S. at 681).

90. *Id.* (quoting *Raddatz*, 447 U.S. at 681). *But see* Tim A. Baker, *The Expanding Role of Magistrate Judges in the Federal Courts*, 39 VAL. U. L. REV. 661, 676 (2005) ("[L]itigants may wonder whether a district judge nevertheless gives at least some deference to a trusted magistrate judge colleague . . . .").

91. *Peretz*, 501 U.S. at 937.

92. Wellness Int'l Network, Ltd. v. Sharif, 135 S. Ct. 1932, 1944–45 (2015) (quoting *Peretz*, 501 U.S. at 937).

93. FED. R. CRIM. P. 11(b)(1).

must undertake three tasks: (1) advising and questioning the defendant, (2) ensuring that a plea is voluntary, and (3) determining the factual basis for a plea.[94] The "advice and questioning" section involves providing information about sentencing, the nature of the charges, and the rights that the defendant will waive by pleading guilty. To ensure the voluntariness of a guilty plea, the judge must determine that the defendant's decision to plea is "voluntary and did not result from force, threats, or promises." Finally, the judge must determine that there is a "factual basis" for the plea.[95] The process of administering these three steps is commonly known as a "Rule 11 colloquy."[96] By the terms of the rule, the court must take all three of these steps "*[b]efore* accepting a plea of guilty" and "*[b]efore* entering judgment on a guilty plea."[97]

Thus, the language of the rule indicates that a court may administer the three steps of a colloquy without actually entering a final judgment of guilty. Accordingly, most district courts that assign Rule 11 proceedings as an "additional duty" to magistrate judges only delegate the three steps of the colloquy, asking for a "report and recommendation" as to whether the district judge should formally accept the guilty plea (an act that generally takes place at the sentencing hearing). In these cases, the magistrate judge will personally advise and question the defendant and then send a report to the district judge with a recommendation to accept the plea as voluntary, knowingly given, and based in fact. So far, every court that has analyzed this delegation has voiced approval of the process.[98] Some courts have gone even further, allowing district judges to delegate to magistrate judges not only the Rule 11 colloquy but also the plea

94. FED. R. CRIM. P. 11(b)(1)–(3).

95. FED. R. CRIM. P. 11(b)(3).

96. *E.g.*, United States v. Vonn, 535 U.S. 55, 75 (2002).

97. FED. R. CRIM. P. 11(b)(2)–(3) (emphasis added).

98. *See, e.g.*, United States v. Torres, 258 F. 3d 791, 796 (8th Cir. 2001) (concluding that a magistrate judge's administration of a plea colloquy followed by submission of a report and recommendation to the district judge did not violate the defendant's rights). *But see* Honorable Durwood Edwards, *Can a U.S. District Judge Accept a Felony Plea with a Magistrate Judge's Recommendation?*, 46 S. TEX. L. REV. 99, 103–04 (2004) (arguing that asking a magistrate judge to make a "report and recommendation" following a plea colloquy violates Rule 11 because the judge "who personally addressed the defendant in open court[ ] must be the one to accept the plea and enter the finding of guilty"). For further discussion of the report and recommendation process, see *supra* Section II.A. The procedure is drawn from the Federal Magistrates Act, which distinguishes between matters for which magistrate judges may enter a final judgment and those for which magistrate judges may only make a recommendation to the district judge.

acceptance.[99] This means that the magistrate judges both preside over the colloquy and accept, or "enter judgment" of, guilty, subject to de novo review upon a defendant's request to the district judge.

In July 2014, the Seventh Circuit split from its sister circuits in addressing the permissibility of this delegation.[100] In *United States v. Harden*, the court held that the FMA allows magistrate judges to conduct a Rule 11 colloquy in a felony case and create a "report and recommendation," but it does not permit them to accept the guilty plea at the conclusion of the colloquy.[101] In so holding, the court relied on the importance of the rights waived by a defendant's guilty plea, including the right to a trial and, often, the right to appeal.[102] The Seventh Circuit deemed these too significant to allow final disposition of a guilty plea by a magistrate judge, even if the defendant explicitly consents.[103]

2. Courts' Analyses of a Felony Guilty Plea as an "Additional Duty"

When applying Supreme Court precedent to the Rule 11 guilty plea context, courts have continued to focus on consent as the most important factor. Every circuit that has confronted the issue agrees that with a defendant's consent, a magistrate judge may conduct a plea colloquy and make a report of the proceedings for the district judge, along with a recommendation to accept the guilty plea. This process places the acceptance of guilty pleas squarely within the "dispositive" matters in § 636(b)(1)(B) of the Federal Magistrates Act, which limits magistrate judge power to recommending a disposition to the district judge. However, several circuits have allowed magistrate judges to go one step further and actually accept the guilty pleas, implying that the issue is more analogous to the "nondispositive" matters that magistrate judges may "hear and determine" under § 636(b)(1)(A).[104] These courts have reasoned that "the two main issues in a change-of-plea—the voluntariness . . . and the existence of a factual basis—are very similar to issues that magistrate judges routinely deal with."[105] According to this view, the formal step of making a report and recommendation to

99. *See, e.g.*, United States v. Benton, 523 F.3d 424, 431 (4th Cir. 2008) (allowing a magistrate judge to accept a felony guilty plea because "the acceptance of a plea is merely the natural culmination of a plea colloquy").

100. United States v. Harden, 758 F.3d 886, 891 (7th Cir. 2014).

101. *Id.*

102. *Id.* at 887, 891.

103. *Id.* at 891.

104. *See infra* note 119.

105. United States v. Reyna-Tapia, 328 F.3d 1114, 1120 (9th Cir. 2003).

the district judge is unnecessary;[106] the district court's ability to review the matter upon request provides sufficient structural protection for defendants, even if such review is not mandatory.[107]

Courts have also emphasized the docket-clearing benefits that come from assigning felony-guilty-plea colloquies to magistrate judges as emblematic of Congress's purpose in creating the magistrate system. With overwhelming caseloads, judges may be eager to delegate as much as possible, especially when it comes to "time consuming exercise[s]" like performing a Rule 11 hearing.[108] Administering these proceedings often involves interrupting a trial or shortening a trial day in order to accommodate defendants.[109] Furthermore, guilty pleas are incredibly prominent in criminal cases. Indeed, over ninety-seven percent of convictions result from guilty pleas, leading the Supreme Court in 2012 to characterize the criminal justice system as "a system of pleas, not a system of trials."[110] When Congress passed the FMA, it aimed to ease these types of problems and streamline efficiency. If magistrate judges could handle calendar-consuming administrative activities, it would save district judges' time and energy, allowing them to better adjudicate disputes and grapple with difficult substantive matters. Thus, all of the courts that have analyzed magistrate judges' administration of Rule 11 colloquies have agreed that, in terms of efficiency, it is precisely the type of duty that Congress envisioned district judges delegating to magistrate judges.

A prototypical example of a case supporting magistrate judge authority to accept felony guilty pleas is *United States v. Woodard*. In that case, defendant David Lee Woodard was charged with illegal possession of a firearm; he ultimately signed a plea agreement with the government.[111] The magistrate judge, assigned to conduct the Rule 11 colloquy, repeatedly alerted Woodard to his right to have a district judge perform the duty.[112] After clarifying "I am not the District Judge," the

106. *See* United States v. Benton, 523 F.3d 424, 431 (4th Cir. 2008) ("[T]he acceptance of a plea is merely the natural culmination of a plea colloquy.").

107. *See* United States v. Osborne, 345 F.3d 281, 283 (4th Cir. 2003) ("[T]he availability of [de novo] review . . . rather than a required performance thereof . . . safeguard[s] the integrity of the federal judiciary.").

108. *See* United States v. Khan, 774 F. Supp. 748, 749 (E.D.N.Y. 1991) (noting the importance to district judges of delegating Rule 11 proceedings to magistrate judges given the rapid expansion of criminal caseloads).

109. *Id.*

110. Lafler v. Cooper, 132 S. Ct. 1376, 1388 (2012); *see also* Baker, *supra* note 90, at 673 (noting the rapid decrease in the percentage of criminal cases that go to trial from 44.95% in 1980 to 11.76% in 1993).

111. United States v. Woodard, 387 F.3d 1329, 1330 (11th Cir. 2004).

112. *Id.*

magistrate judge informed Woodard, "[Y]ou do not have to consent. You can hold off, and you have the right to have [the district judge] hear your change of plea."[113] Once Woodard reiterated his understanding and consent, the magistrate judge proceeded to conduct the Rule 11 colloquy, and then formally accepted the guilty plea.[114] At the sentencing hearing before the district judge, Woodard voiced no objections to the magistrate judge's involvement in the plea acceptance.[115] However, on appeal, he challenged the magistrate judge's authority to adjudicate him guilty of a felony on both statutory and constitutional grounds.[116]

Citing the *Gomez* and *Peretz* decisions, the Eleventh Circuit concluded that a defendant's consent is the crucial factor in determining whether delegation to a magistrate judge is permissible.[117] The court rejected the argument that a guilty plea is too important a task to assign to a magistrate judge, reasoning that conducting a Rule 11 colloquy "is 'less complex' than several of the duties the FMA expressly authorizes magistrate judges to perform."[118] Furthermore, the court noted that magistrate judges regularly judge the voluntariness of out-of-court statements during pretrial evidentiary hearings, a task that is "remarkably similar" to the assessment of voluntariness required by Rule 11 proceedings.[119] Applying the *Peretz* framework, whereby comparability is the primary test of validity of a magistrate judge duty, the similarities between evidentiary hearings and accepting a guilty plea suggest that magistrate judges already have the skills necessary to perform the latter duty. Thus, because the acceptance of a guilty plea is comparable to the duties enumerated in the FMA, the court concluded that this act is within the authority of a magistrate judge to perform, as long as the defendant consents.

No court that has addressed this issue, including the Seventh Circuit in *Harden*, has found any violation of the structural separation-of-powers protections offered by Article III of the Constitution. For example, in *Woodard,* the court rejected such an argument, citing the control district judges have over magistrate judges as defeating any concerns of Article I officers wielding too much adjudicatory power.[120] Currently, every circuit that has addressed the problem endorses the

113. *Id.*
114. *Id.*
115. *Id.* at 1330–31.
116. *Id.*
117. *Id.* at 1332.
118. *Id.* at 1332–33 (quoting United States v. Williams, 23 F.3d 629, 632–33 (2d Cir. 1994)).
119. *Id.* at 1333.
120. *Id.*

ability of a district judge—with the defendant's consent—to delegate Rule 11 colloquies to a magistrate judge, followed by a report and recommendation. The Tenth, Eleventh, and Fourth Circuits have explicitly authorized magistrate judges to formally accept a guilty plea at the conclusion of the colloquy, an entry of judgment that the district judge reviews de novo if the defendant so requests.[121] The reasoning of several other circuits suggests that they would also characterize final acceptance of a guilty plea as an "additional duty" that district judges may delegate to magistrate judges under 28 U.S.C. § 636(b)(3).[122]

With the *Harden* case in 2014, the Seventh Circuit became the first to split from this view, allowing the delegation of a Rule 11 colloquy with a "report and recommendation," but holding that the FMA prohibits magistrate judges from accepting felony guilty pleas, regardless of the defendant's consent.[123] Indeed, the appellant in *Harden*, indicted on possession with the intent to distribute cocaine, explicitly consented to the magistrate judge's taking of his guilty plea after being informed of the consequences.[124] Specifically, before accepting his plea, the magistrate judge asked Harden, "You understand that by signing this waiver and consent, if I accept your plea today you don't have any right to later come back and complain that your plea wasn't taken by [the district court judge]?"[125] Furthermore, neither Harden nor the prosecutor made any claim that there was a defect in the colloquy procedure or that the magistrate judge's instructions were in any way misleading.[126] Following the colloquy, the magistrate judge accepted the defendant's plea of guilty to the drug charges, and the district judge subsequently approved the plea agreement between Harden and the government.[127] While before the district judge, Harden did not object to the magistrate judge's role in the plea proceedings. However, he ultimately filed an appeal with the Seventh Circuit questioning the validity of the plea acceptance.[128]

On appeal, applying the *Peretz* "comparability" analysis, the Seventh Circuit held that the FMA categorically does not authorize the magistrate judge's acceptance of a felony guilty plea.[129] The court held

121. United States v. Benton, 523 F.3d 424, 431 (4th Cir. 2008); *Woodard*, 387 F.3d at 1332–33 (11th Cir. 2004); United States v. Ciapponi, 77 F.3d 1247, 1250–51 (10th Cir. 1996).

122. *See, e.g.*, United States v. Dees, 125 F.3d 261, 265–66 (5th Cir. 1997).

123. United States v. Harden, 758 F.3d 886, 891 (7th Cir. 2014).

124. *Id.* at 887.

125. *Id.*

126. *Id.*

127. *Id.*

128. *Id.* at 887–88.

129. *Id.* at 891.

that even Harden's consent could not grant magistrate judges the power to perform such an important task, because a felony guilty plea is too significant to be comparable to the duties enumerated in the statute.[130] The ability of the well-qualified magistrate judge to conduct the plea proceedings made no difference in the analysis.[131] Highlighting the appellant's failure to object to the magistrate judge's authority before the district court, the government argued that the magistrate judge's actions had resulted in no prejudice to Harden.[132] However, the Seventh Circuit disagreed, reasoning that "[a]lthough Harden has not shown that he suffered prejudice . . . and although nothing has been suggested to criticize the magistrate judge's performance, the statute simply does not authorize a magistrate judge to accept a felony guilty plea."[133]

Despite the relative ease of a magistrate judge taking such an action, the Seventh Circuit held that the "additional duties" clause of the Federal Magistrates Act does not encompass such an important task as accepting a felony guilty plea.[134] Although other courts addressing this question likened plea colloquies to other common magistrate judge duties from an administrative perspective, the Seventh Circuit asserted that accepting a guilty plea is actually more comparable to conducting a felony trial due to the gravity of the task.[135] Because the acceptance of a guilty plea is a decision that disposes of the entire case, the Seventh Circuit reasoned that it was too significant to group with the types of preliminary matters magistrate judges usually handle, which are subject to review and the later opportunity to "contest the government's evidence, case, and conduct before any determination of guilt."[136] The court went further, noting that in many cases accepting a guilty plea is "even more final" than a guilty verdict, because defendants often waive rights of appeal and habeas corpus as a part of plea agreements.[137] Although felony guilty pleas are incredibly common, clogging up the dockets of federal judges, their prevalence "does not render them less important, or the protections waived through them any less fundamental."[138] Thus, the *Harden* court's decision was based primarily on a comparison of the "importance" of felony guilty pleas with other magistrate judge tasks, a stark contrast to the

130. *Id.*
131. *Id.* at 890.
132. *Id.*
133. *Id.* at 891. The *Harden* court did not reach the question of constitutionality.
134. *Id.* at 889.
135. *Id.* at 891.
136. *Id.* at 889.
137. *Id.* at 888.
138. *Id.* at 891.

"responsibility" comparison that has been prevalent among the other circuits.[139]

The Seventh Circuit offered its approval of the practice of a magistrate judge creating a "report and recommendation" for a district judge to review in determining whether to accept a defendant's plea.[140] Endorsement of the "report and recommendation" procedure aligns the Seventh Circuit with its sister circuits, reflecting the unanimous view on the subject. However, the *Harden* court was the first to explicitly declare the final step of plea acceptance to be beyond the authority of magistrate judges. The Seventh Circuit's decision has already caused a stir throughout the circuits—in the months following the decision, several defendants have already used the case to attempt to withdraw a plea given to a magistrate judge.[141] These subsequent cases have only solidified the split, as other circuits have declined to adopt *Harden* or its reasoning,[142] and lower courts within the Seventh Circuit have refused to extend the holding of *Harden* to plea colloquies as well as acceptances.[143]

III. QUESTIONING THE STATUTORY AND CONSTITUTIONAL BASIS FOR DELEGATING FELONY PLEA PROCEEDINGS TO A MAGISTRATE JUDGE

As the permissibility of accepting a felony guilty plea hinges on a court's determination of the scope of a magistrate judge's "additional duties," both a statutory and constitutional analysis are required.[144] However, the proper method of statutory analysis is not completely clear. The *Gomez* opinion suggests that magistrate judges should not preside over any part of a felony trial, and that any proposed pretrial "additional duty" should fit into one of the categories of dispositive or

139. *See* Peretz v. United States, 501 U.S. 923, 933 (1991) (describing felony voir dire as "comparable in responsibility *and* importance" to duties enumerated in the FMA) (emphasis added).

140. *Harden*, 758 F.3d at 891.

141. *See, e.g.*, United States v. Marshall, NO. 05-30079, 2014 U.S. Dist. LEXIS 166846, at *1–3 (C.D. Ill. Dec. 2, 2014) (analyzing a motion to withdraw a plea given before a magistrate judge for lack of jurisdiction on the basis of the *Harden* decision).

142. *See* Norville v. United States, 10-CR-1046 (VM), 2015 U.S. Dist. LEXIS 117414, at *23 (S.D.N.Y. Aug. 27, 2015) (rejecting an argument based on *Harden* because "the reasoning and final pronouncement of the Seventh Circuit is in direct conflict with established Second Circuit precedent").

143. *See* Shields v. United States, No. 14-0222-DRH, 2015 U.S. Dist. LEXIS 64698, at *29 (S.D. Ill. May 18, 2015) ("Although [defendant] pled guilty at a hearing before Magistrate Judge Proud, Judge Proud issued a Report and Recommendation regarding the guilty plea . . . . The Seventh Circuit did not question this methodology in *Harden*.").

144. *See, e.g.*, United States v. Benton, 523 F.3d 424, 429 (4th Cir. 2008).

nondispositive matters enumerated in 28 U.S.C. § 636(b).[145] By contrast, according to the *Peretz* analysis, whether a magistrate judge task is permissible under the authority of the Federal Magistrates Act depends on whether it is "comparable" to the duties enumerated in the statute.[146] Under either approach, even a task permitted by the statute may still raise constitutional concerns related to individual rights and Article III structural principles.[147]

A. A Critical Look at the Statutory Authority of Magistrate Judges to Accept Felony Guilty Pleas

1. Textual Statutory Analysis

A straightforward textual analysis of the FMA suggests that the administration of a felony guilty plea is beyond the statutory authority of a magistrate judge.[148] In *Gomez*, the Supreme Court engaged in something closer to a textual analysis, reading the FMA's extensive discussion of magistrate judge authority in misdemeanor and civil trials as precluding magistrate judge administration of any felony trial matters.[149] Under this framework, if acceptance of a guilty plea is part of a felony trial, a district judge could never delegate the task to a magistrate judge. Alternatively, when considering the possibility that voir dire may be a pretrial task, the *Gomez* Court attempted to fit it into the "dispositive" and "nondispositive" categories that appear in § 636(b).[150] By the text of the statute, pretrial matters that are dispositive of a case are subject to de novo review, and a magistrate judge can only issue a recommendation on those matters.[151] Meanwhile, magistrate judges may "determine" less important pretrial issues; those orders are only subject to clear error review.[152] Finally, the delegation of entire civil trials upon party consent is subject to no district court review whatsoever; instead, these orders are directly appealable to a U.S. court

145. *See* Gomez v. United States, 490 U.S. 858, 873–74 (1989).

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

147. *See, e.g.*, United States v. Dees, 125 F.3d 261 (5th Cir. 1997).

148. *See id.* (describing the task of accepting a guilty plea as too important to be statutorily permissible under 28 U.S.C. § 636 (b)(3)).

149. *See Gomez*, 490 U.S. at 871–72 ("[T]he carefully defined grant of authority to conduct trials of civil matters and of minor criminal cases should be construed as an implicit withholding of the authority to preside at a felony trial.").

150. *See id*. at 873–74 ("To the limited extent that it fits into either category, we believe jury selection is more akin to those precisely defined, 'dispositive' matters for which subparagraph (B) meticulously sets forth a *de novo* review procedure.").

151. 28 U.S.C. § 636 (b)(1)(B) (2012).

152. § 636 (b)(1)(A).

of appeals.[153] Yet, to the extent that the acceptance of a felony guilty plea is a pretrial matter, it does not fall into any of these three categories. In some circuits, courts allow magistrate judges to "hear and determine" these matters, but subject these determinations to de novo review rather than clear error.[154] Courts take this action to guard against separation-of-powers concerns,[155] but, in doing so, create a hybrid category that appears nowhere in the text of the statute.

Thus, on the basis of the law's text, conditioning acceptance of guilty pleas on the availability of de novo review appears to be statutorily unsound. While the *Gomez* Court more or less followed a textual approach, the *Peretz* Court did not consider the differences among the various categories of duties in the FMA; instead, it focused on litigant consent as a means of expanding magistrate judge duties. Even if *Peretz* is correct in its approach, the reasoning in that case may not extend to matters like guilty plea acceptance, which, unlike voir dire, involve an entry of judgment.[156] If the presence of de novo review is simply meant to ensure that the district judge retains control over the proceedings, then this departure from the textual categories of the statute unnecessarily raises a constitutional concern with the "additional duties" clause.[157] The "constitutional avoidance" canon of construction suggests that courts should interpret the FMA as withholding from magistrate judges any authority that would raise such questions.[158] By contrast, the *Peretz* opinion evades these constitutional concerns by engaging in a consent-focused analysis more divorced from the statute's text. However, this approach arguably leaves courts with "no principled way to decide . . . statutory question[s]" that arise under the FMA.[159]

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153. § 636(c).

154. *See* United States v. Benton, 523 F.3d 424, 431 (4th Cir. 2008) (noting that Rule 11 proceedings administered by a magistrate judge are subject to de novo review upon request).

155. *See id.* ("Emphasizing . . . the litigants' right to seek *de novo* review of the Rule 11 proceedings as a matter of right, [the courts of appeals have] found no Article III violation.").

156. *See* Wellness Int'l Network, Ltd. v. Sharif, 135 S. Ct. 1932, 1958 (2015) (Roberts, C.J., dissenting) ("[*Gomez* and *Peretz*] therefore have little bearing on this case, because none of them involved a constitutional challenge to the entry of final judgment by a non-Article III actor.").

157. *See* Gomez v. United States, 490 U.S. 858, 864 (1989) ("It is our settled policy to avoid an interpretation of a federal statute that engenders constitutional issues if a reasonable alternative interpretation poses no constitutional question.").

158. *See* United States *ex rel.* Att'y Gen. v. Del. & Hudson Co., 213 U.S. 366, 408 (1909) ("[W]here a statute is susceptible of two constructions, by one of which grave and doubtful constitutional questions arise and by the other of which such questions are avoided, [courts'] duty is to adopt the latter.").

159. Gonzalez v. United States, 553 U.S. 242, 261 (2008) (Thomas, J., dissenting).

2. *Peretz* "Comparability" Statutory Analysis

According to the *Peretz* analysis, whether a magistrate judge task is permissible under the Federal Magistrates Act depends on whether it is "comparable" to the duties enumerated in the statute.[160] This "comparability" analysis considers both the consequences and practical dimensions of a felony guilty plea in comparison with other duties specifically assigned to magistrate judges.[161] From the perspective of judicial efficiency, delegating authority to magistrate judges to conduct Rule 11 colloquies clears district court dockets of a "time consuming exercise"[162] that is "less complicated than a number of duties the Magistrates Act specifically authorizes magistrates to perform."[163] In comparing plea proceedings to the "responsibility" involved in other magistrate judge duties, Courts have reasoned that Rule 11 colloquies resemble most other permissible magistrate judge tasks because, in the sense that "the defendant's guilt or innocence is not being contested," the magistrate judge performs more of an administrative than an adjudicatory function.[164] Furthermore, the FMA specifically assigns magistrate judges the ability to handle post-conviction motions, which often require an assessment of the voluntariness of a guilty plea.[165] This statutory delegation suggests that, as a matter of judicial ability, magistrate judges are just as qualified as district judges to supervise a Rule 11 colloquy. There is little reason to believe that a magistrate judge would perform this duty deficiently—assessing the validity of a guilty plea is a task that is both simple in administration and familiar in substantive content.

However, a comparison to the "importance" of established magistrate judge duties suggests that a felony guilty plea has more serious consequences than any other magistrate judge task and may involve the waiver of individual rights that are too important to treat as ministerial, even with a defendant's consent.[166] When a criminal defendant enters a guilty plea, whether before a magistrate judge or a district judge, that person waives many rights guaranteed by the Constitution. For this reason, the *Harden* court argued that a guilty

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

161. *Id.*

162. United States v. Khan, 774 F. Supp. 748, 749 (E.D.N.Y. 1991).

163. United States v. Williams, 23 F.3d 629, 632 (2d Cir. 1994).

164. *Khan*, 774 F. Supp. 748 at 752.

165. *Id.* at 753.

166. *See Harden*, 758 F.3d at 889 (asserting that the consequences of a taking a felony plea are similar in importance to conducting a felony trial, a task that magistrate judges are unable to conduct even with the consent of the parties).

plea is often "even more final than a guilty verdict," because it represents a defendant's "consent that judgment of conviction may be entered *without a trial*."[167] In other words, a decision to plead guilty means that a criminal has given up the constitutional right to a trial by jury, guaranteed by the Sixth Amendment.

Because many guilty pleas involve a plea agreement with the government, a criminal defendant will often relinquish other significant rights as well. Specifically, "defendants often waive their appellate and habeas corpus rights" as a part of such agreements, consequences that are far more conclusive than a usual criminal trial.[168] Although the Supreme Court has held that criminal defendants may waive these individual constitutional protections, the relinquishment of rights still affects the statutory analysis prescribed by *Peretz* because it suggests that accepting a felony guilty plea may be dissimilar from other magistrate judge duties, which generally do not involve the waiver of constitutional rights. Applying the "comparability" test, the *Harden* court decided that the "importance" of these concerns indicated that accepting a guilty plea is not the type of administrative duty envisioned by the Federal Magistrates Act.[169] This reasoning echoes the *Gomez* Court's view that the Constitution should not be the only constraint on magistrate judge authority. Specifically, the *Harden* opinion suggests that even if a defendant's consent erases constitutional concerns, the very fact that the delegation raises such issues demonstrates that the task is beyond the statutory authority of magistrate judges.

Most courts that have addressed magistrate judges' statutory authority to accept guilty pleas have used the *Peretz* approach of determining whether it is "comparable" to the other duties allowed by the FMA. This analysis has not necessarily been limited to those duties actually enumerated in the Act, but has also considered tasks that courts have previously found to be an "additional duty."[170] For instance, several courts have analyzed whether a plea proceeding is a comparable task to the supervision of voir dire, a magistrate judge duty that does not appear in the statute and was widely contested prior to the *Peretz* decision.

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167. *See id.* at 888 (quoting Brady v. United States, 397 U.S. 742, 748 (1970) (emphasis added)).

168. *Id.* at 889.

169. *See id.* at 888–89 (asserting that the "additional duties" clause cannot be stretched to apply to felony guilty pleas because of the important consequences associated with waiving the right to trial).

170. *See, e.g.*, United States v. Dees, 125 F.3d 261, 265 (5th Cir. 1997) (delegating plea proceedings to a magistrate judge on the basis of similarity to a non-enumerated magistrate judge duty approved by the court in a prior case).

B. A Constitutional Analysis of Magistrate Judge Authority to Accept Felony Guilty Pleas

The statutory assessment of additional magistrate judge duties since *Peretz* has frequently involved a common-law approach, mostly divorced from the text of the Federal Magistrates Act. Rather than analyze how a particular duty fits within a provision of the statute, courts have looked more generally at whether a proposed task resembles other accepted magistrate judge duties. Yet even when a duty is statutorily permissible, individual and structural constitutional rights remain a concern.

Given the common-law approach to the "additional duties" clause, there is some measure of risk that, over time, courts will continue to authorize magistrate judge tasks that move closer toward actually presiding over entire felony trials.[171] Indeed, the FMA does not specifically preclude magistrate judges from conducting felony trials, although the Supreme Court has reasoned that Congress intended such a limitation by expressly authorizing magistrate judges to conduct civil and misdemeanor trials.[172] Regardless of the FMA's position with respect to the delegation of felony trials, the Constitution provides an independent bar to magistrate judge jurisdiction over any fundamentally "judicial power."[173] Similarly, if acceptance of a guilty plea is an essential Article III function, then the right of a defendant to have the plea accepted by a district court judge would be structurally protected and impossible to waive.

Historically, judges have at least theoretically expressed reluctance on these structural grounds to delegate felony-guilty-plea acceptance to magistrate judges. In 1991, the Judicial Conference Committee on the Administration of the Magistrate Judges System "expressed a strong view that judicial duties in critical stages of a felony trial, particularly the acceptance of guilty pleas . . . are fundamental elements of the authority of district judges under Article III of the Constitution."[174] A decade earlier, the same group of judges made a

171. *See id.* at 267 (describing constitutional concerns that magistrate judge authority will grow as magistrate judges move closer to presiding over felony trials).

172. *See* Gomez v. United States, 490 U.S. 858, 872 (1989) (asserting that the carefully defined limitations of the statutory language in the Federal Magistrates Act should be interpreted as a withholding of the authority for magistrate judges to preside at felony trials).

173. *See* U.S. CONST. art. III, § 1 ("The judicial power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.").

174. *Dees*, 125 F.3d at 263; *see also* Philip M. Pro & Thomas C. Hnatowski, *Measured Progress: The Evolution and Administration of the Federal Magistrate Judges System*, 44 AM. U. L. REV. 1503, 1525 & n.176 (1995) (noting the view of the 1991 Magistrate Judges Committee that

similar argument in a report to Congress, asserting that it is "preferable" for the same judge who enters judgment and decides the appropriate sentence to also conduct the plea proceeding.[175]

However, some courts have argued that having magistrate judges accept guilty pleas is actually fairer to criminal defendants in certain ways and bolsters the protection of individual rights. Having a magistrate judge preside over a Rule 11 colloquy guarantees that two pairs of eyes will look over a defendant's plea proceedings. This is especially true in districts that require the magistrate judge to file a "report and recommendation," because the district judge will necessarily see a transcript of the plea hearing while making a decision about sentencing. When the district judge presiding over sentencing also conducts the plea colloquy, there is generally no reason to review the plea transcript.[176] By contrast, a district judge will always review a magistrate judge's report before accepting the defendant's plea, providing an "additional layer of scrutiny not otherwise generally available."[177] Supreme Court Justice Blackmun made a similar argument in his concurrence in *United States v. Raddatz*, suggesting that the magistrate system as a whole provides a "second level of procedural protections" that contribute to more accurate judicial decisionmaking.[178]

While most courts have reasoned that separation-of-powers problems do not arise unless the magistrate judge is in control of decisionmaking, the integrity of the district judge's decision to assign a particular task to a magistrate judge is potentially tarnished by the conflict between constitutional protections and an overloaded docket. A promise of lifetime tenure and consistent salary is unlikely to be a factor in this workload-based choice, suggesting that district judges' delegation of tasks may lack the structural-objectivity protections that attach to most judicial decisions.[179]

Furthermore, the fact that appellate courts have not required mandatory review of magistrate judge Rule 11 proceedings undermines

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"accepting guilty pleas, conducting sentencing proceedings, and presiding over felony trials" were duties that district judges should not delegate to magistrate judges).

175. Pro & Hnatowski, *supra* note 174, at 1512.

176. *See* United States v. Khan, 774 F. Supp. 748, 755–56 (E.D.N.Y. 1991) ("District judges at sentencing do not normally review the transcripts of the pleas that they take.").

177. *Id.* at 756.

178. United States v. Raddatz, 447 U.S. 667, 685 (1980) (Blackmun, J., concurring).

179. *See* William G. Young, *An Open Letter to U.S. District Judges*, FED. LAW., July 2003, at 30, 33 (describing how district judges would "like to do less" and suggesting that the overloaded judiciary is complicit in Congress's efforts to "strip away rights that were traditionally vindicated in the district courts . . . confident that, as a practical matter, the exercise of these rights will be markedly diminished").

the idea that district judges retain total control over magistrate judge decisionmaking. In *United States v. Osborne*, for instance, the appellant challenged the validity of her plea before the magistrate judge on the grounds that the district judge failed to conduct a de novo review of the proceedings.[180] However, because the appellant never requested review of her plea proceedings, the Fourth Circuit found no error.[181] "[A] district judge need not review such proceedings *de novo* unless defendant requests such review," the court reasoned, because it is "the *availability* of review . . . rather than a required performance thereof, that safeguard[s] the integrity of the federal judiciary."[182] In other words, a judicial district need not guarantee compulsory review of a magistrate judge's actions, as long as such review would be available upon request of the defendant. Additionally, the Supreme Court has reasoned that de novo review under the FMA does not require a district judge to conduct a rehearing on a contested matter.[183] As a practical matter, these factors call into question how much control Article III judges truly exercise over magistrate judge acceptance of felony guilty pleas.[184]

C. Factors Complicating the Statutory and Constitutional Analyses

Although the Supreme Court has reasoned that constitutional separation-of-powers guarantees are not violated as long as Article III judges make the "ultimate decision,"[185] the cases concerning the use of magistrate judges to accept felony guilty pleas demonstrate the challenges of this delineation. One difficulty in identifying the decisionmaker in these cases is the confusing and inconsistent manner in which various courts have dealt with the significant difference between a plea colloquy and a plea acceptance. In *Harden*, the Seventh Circuit offered its support of the "report and recommendation" process—which is akin to the traditional magistrate judge authority over important, "dispositive" pretrial matters—but strongly disagreed that magistrate judges have the authority to accept a guilty plea

180. United States v. Osborne, 345 F.3d 281, 283 (4th Cir. 2003).

181. *Id.* at 284.

182. *Id.* at 289 (emphasis added).

183. *Raddatz*, 447 U.S. at 674 ("It should be clear that on these dispositive motions, the statute calls for a *de novo* determination, not a *de novo* hearing.").

184. *See* Gomez v. United States, 490 U.S. 858, 874 (1989) (reasoning that magistrate judges are precluded from presiding over felony voir dire, in part because of "serious doubts that a district judge could review this function meaningfully").

185. *Raddatz*, 447 U.S. at 683.

following a Rule 11 colloquy.[186] Other courts have been equally explicit in their endorsement of plea acceptance by magistrate judges, such as the Fourth Circuit in *United States v. Benton*, which held that "the acceptance of a plea is merely the natural culmination of a plea colloquy."[187] Meanwhile, the Eastern District of New York pointed out that the district judge will "necessarily review" the work of the magistrate judge during the sentencing hearing, which suggests that there is no reason to require a report instead of an acceptance.[188]

Many other courts' opinions simply make no mention of this important distinction. For instance, although the magistrate judge involved in *United States v. Dees* made a report and recommendation to the district judge, the Fifth Circuit occasionally framed the issue as an analysis of "magistrate judges' *taking* of guilty pleas."[189] The court's language was frequently imprecise, using "the taking of a plea" interchangeably with "conducting plea proceedings."[190] The Eighth Circuit's treatment of the issue is similarly ambiguous in *United States v. Torres*, which analyzed whether magistrate judges have the authority to "conduct plea colloquies" under a section titled "Magistrate Judge's Acceptance of the Plea."[191] This confusing state of affairs was expressly noted by the *Woodard* court, which admitted that "the decisions [of our sister circuits] reveal a lack of uniformity in the language used by magistrate judges."[192]

Although the distinction between colloquy and plea acceptance is subtle, it can potentially lead to significant consequences. The final acceptance of a guilty plea has important ancillary effects on the rest of the criminal process, which courts should consider in their analyses of the permissibility of delegation to a magistrate judge. In contrast to the frequently abstract constitutional and statutory issues, these ancillary concerns often manifest as concrete problems for criminal defendants. For instance, Rule 11(d) of the Federal Rules of Criminal Procedure outlines different standards for how a defendant may withdraw a guilty

186. *See* United States v. Harden, 758 F.3d 886, 891 (7th Cir. 2014) (arguing that guilty pleas are "too important" a task to delegate to magistrate judges).

187. United States v. Benton, 523 F.3d 424, 431 (4th Cir. 2008).

188. *See* United States v. Khan, 774 F. Supp. 748, 755–56 (E.D.N.Y. 1991) (arguing that district judge review of magistrate sentencing "provides both the government and the defendant with an additional layer of scrutiny not otherwise generally available to them").

189. United States v. Dees, 125 F.3d 261, 263 (5th Cir. 1997) (emphasis added).

190. *See id.* at 268 ("We find that plea proceedings conducted by magistrate judges are sufficiently reviewable so as not to threaten Article III's structural guarantees. The taking of a plea by a magistrate judge does not bind the district court to accept that plea.").

191. United States v. Torres, 258 F.3d 791, 794 (8th Cir. 2001).

192. United States v. Woodard, 387 F.3d 1329, 1334 (11th Cir. 2004).

plea, dependent on whether or not the court has "accepted" the plea.[193] Specifically, prior to the court's acceptance, Rule 11 prescribes an extremely liberal standard that allows a defendant to withdraw the plea "for any reason or no reason."[194] By contrast, a court's decision to accept a plea raises the bar, requiring a defendant to "show a fair and just reason for requesting the withdrawal."[195]

There are many reasons a defendant may want to withdraw a guilty plea between a magistrate judge's proceedings and a district judge's formal acceptance. For instance, defendants have claimed that they were entrapped,[196] that their counsel had failed to fully explain the plea,[197] or that they did not completely understand that their plea agreement required mandatory deportation.[198] But when the magistrate judge rather than a district judge conducts the Rule 11 colloquy or accepts the plea, it is unclear whether defendants still have the right to freely withdraw their pleas. In *Benton*, for instance, the appellant had become dissatisfied with his attorney, whom he alleged had "failed to explain the *mens rea* element of his conspiracy charge . . . before he pled [guilty]."[199] The district judge found that this misunderstanding was not a "fair and just reason" for withdrawal.[200] Benton appealed this decision, arguing that he should have been able to withdraw his plea at will prior to its acceptance by the district judge.[201]

On appeal, the Fourth Circuit affirmed the district court, reasoning that "magistrate judges possess the authority to bind defendants to their plea . . . so long as district judges retain the authority to review the . . . actions *de novo*."[202] Concerned with the "practical drawbacks" of any other conclusion, the *Benton* court justified its decision as a safeguard against creating a "dry run or dress rehearsal" system, in which defendants could "use magistrate-led colloquies as go-throughs in order to gauge whether they may later experience 'buyer's remorse.' "[203] Such a regime would not only render

193. *See* United States v. Benton, 523 F.3d 424, 427 (4th Cir. 2008) (explaining the circumstances under which a defendant may withdraw a guilty plea).

194. *Id.* at 428.

195. *Id.*

196. United States v. Williams, 23 F.3d 629, 631 (2d Cir. 1994).

197. United States v. Chaudhry, 52 F. App'x 540, 541 (2d Cir. 2002).

198. United States v. Salas-Garcia, 698 F.3d 1242, 1247 (10th Cir. 2012).

199. *Benton*, 523 F.3d at 427.

200. *Id.*

201. *Id.*

202. *Id.*

203. *Id.* at 432–33.

plea proceedings before magistrate judges "meaningless," but it would also risk completely "remak[ing] plea-taking procedure . . . throughout the United States," forcing district courts to stop delegating plea hearings to magistrate judges altogether.[204] As the Fourth Circuit contended, this would "exacerbate the docket tensions" of district courts, thereby contradicting the original purpose of the FMA.[205]

Besides affecting withdrawal, acceptance of a felony guilty plea also raises questions about magistrate judges' authority to undertake actions such as ordering detention of a defendant. Certain criminal statutes require immediate detention upon a plea of guilty. For instance, in *United States v. McGrann*, the defendant pled guilty to an offense under the Controlled Substances Act that required the presiding judicial officer to order detention.[206] According to the court, the statute left "no room for judicial discretion" as to the detention issue.[207] Based on the reasoning of *Benton* and other related cases, the district judge held that because the defendant had consented to the magistrate judge presiding over the Rule 11 proceedings, he had been "found guilty" upon acceptance of his plea by the magistrate judge.[208] In other words, because magistrate judges within the Fourth Circuit have the same binding authority as a district judge to accept a felony guilty plea, the *McGrann* court concluded that they also have the authority to actually convict defendants of certain felonies.[209]

Once again, the *McGrann* court described its decision as justified by "practical concerns," echoing the *Benton* court's fear of thwarting the purpose of the FMA.[210] Additionally, the court expressed unease at the possibility of "judge shopping" between magistrate judges and district judges, detailing a hypothetical situation in which a defendant would decide not to plead before a district judge "on the chance he may remain free on bond because a magistrate judge is precluded from detaining him."[211] This would allow a defendant to take advantage of the "considerable amount of time" that may elapse between pleading before a magistrate judge and a sentencing hearing before a district judge.[212]

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204. *Id.* at 433.

205. *Id.*

206. United States v. McGrann, 927 F. Supp. 2d 279, 281–82 (E.D. Va. 2013).

207. *Id.*

208. *Id.* at 284.

209. *See id.* (reasoning that magistrate judges should have authority to order immediate detention of defendants for certain felonies, in order to uphold purposes of the Federal Magistrates Act).

210. *Id.* at 285.

211. *Id.*

212. *Id.*

Thus, in an area where a magistrate judge's acceptance of a guilty plea is not fully binding, there would be a risk of "releasing a . . . violent criminal into the community until the district court is able to 'find' the defendant guilty and order his detention."[213]

The existence of ancillary concerns like plea withdrawal and immediate detention forces courts to analyze magistrate judge duties in an unusual way. On the issue of detention, for example, rather than assessing whether the duty was "comparable" to those enumerated in 28 U.S.C. § 636, the *McGrann* court engaged in a test of practicality, determining that allowing magistrate judges to accept felony guilty pleas without giving them authority to detain the criminal would lead to absurd results. While this reasoning promotes efficiency, it is concerning from a legal perspective:[214] the district judge would delegate the detention power not because it is permitted by the FMA, but rather because another duty would be hampered without it. Arguably, the *McGrann* court should have engaged in an independent analysis of the statutory and constitutional validity of delegating detention to a magistrate judge.

Both *Benton* and *McGrann* were decided in a circuit where magistrate judges are explicitly authorized to accept guilty pleas, calling into question the wisdom and legality of this delegation. However, in *United States v. Williams,* the Second Circuit still required the defendant to meet the higher standard for plea withdrawal, despite the fact that the magistrate judge had only made a recommendation and the district judge had not yet accepted the plea.[215] This raises questions about the "ultimate" decisionmaker, as the magistrate judge was able to bind the defendant to a guilty plea solely on the basis of a "report and recommendation."[216] Meanwhile, in the Seventh Circuit, where the *Harden* court drew a line between a colloquy and an acceptance, the status of these ancillary duties is unclear.

Given that delegation to magistrate judges is conditioned on district judges retaining the ultimate control over decisionmaking, it is troubling that some districts treat magistrate judge decisions as final for certain purposes. This is especially true of the *Williams* case, which gave a magistrate judge's "report and recommendation" the full weight

213. *Id.*

214. *See* Gonzalez v. United States, 553 U.S. 242, 265 (2008) (Thomas, J., dissenting) (criticizing *Peretz* for leaving the courts with "no principled way to answer subsequent questions that arise" under the FMA and requiring courts to "wade into a constitutional morass").

215. United States v. Williams, 23 F.3d 629, 634–35 (2d Cir. 1994).

216. *Id.*

of a district court judgment.[217] While assigning a magistrate judge to conduct a plea hearing followed by a recommendation is certainly a more statutorily and constitutionally sound approach than full delegation of acceptance, treating a recommendation as binding disrupts the important difference between "dispositive" and "nondispositive" matters. If magistrate judge orders are fully binding for certain purposes, it is difficult to draw any principled distinction between a Rule 11 colloquy and a guilty plea acceptance when analyzing these tasks under the "additional duties" clause and the Constitution.

Thus, the detention and withdrawal issues highlight how the delegation of plea-acceptance duties does not occur in a vacuum. With the authority to accept pleas comes a host of ancillary implications, including immediate detention and plea withdrawals. Given the potential harms presented by these ancillary duties, the action of accepting a guilty plea cannot be analyzed in isolation but must be assessed in the context of the other duties and powers it affects.

IV. SOLUTION: BALANCING MANAGEABLE DOCKETS WITH PROCEDURAL PROTECTIONS

Ultimately, whether a magistrate judge has the power to conduct a Rule 11 colloquy or accept a felony guilty plea should hinge not just on practical considerations, but also on the consequences to defendants and the constitutional implications. After all, the *Peretz* Court stated that the proper test of a permissible "additional duty" is whether it is "comparable in responsibility *and importance*" to an enumerated duty,[218] which clearly demonstrates that the significance of a task is an equal concern to the ease of administration. Thus, to the extent that consent can authorize magistrate judges to perform tasks not specifically enumerated in the Federal Magistrates Act, it should not empower them to enter a judgment that would be "dispositive" in a felony case.

The significance of a felony guilty plea and its important ancillary effects suggests that courts should treat it differently than civil trials or felony jury selection, even if the actual procedure is less complicated for a magistrate judge to administer than other tasks in the FMA. In *Harden,* the Seventh Circuit attempted to accomplish this by precluding magistrate judges from accepting guilty pleas and

217. *See id.* at 635 (affirming denial of defendant's attempt to freely withdraw his guilty plea, even though the magistrate judge had issued only a "report and recommendation," and no formal acceptance of the plea had yet occurred).

218. Peretz v. United States, 501 U.S. 923, 933 (1991) (emphasis added).

requiring a "report and recommendation" procedure instead.[219] This decision aligns the delegation with the text of the Federal Magistrates Act, which precludes magistrate judges from ruling on the most important pretrial motions. However, it is an insufficient protection for defendants, given cases like *Williams*.[220] There, the defendant was required to present a "fair and just reason" for withdrawing his guilty plea, even though the district judge had not formally accepted the magistrate judge's recommendation.[221] The *Harden* Court's reasoned distinction between plea colloquy and plea acceptance will be effectively meaningless if courts can circumvent the holding by treating a recommendation as a binding judgment. Doing so would mean that *Harden*'s "importance" concerns would apply with equal force in both the colloquy and acceptance contexts. Thus, district courts should preclude magistrate judges both from conducting Rule 11 hearings and also from accepting felony guilty pleas, unless district judges treat magistrate judge findings as non-final for all purposes.

As suggested by the Fourth Circuit, such a stringent rule may result in some district courts preferring not to delegate such tasks to magistrate judges at all.[222] However, such a result is not necessarily undesirable; courts should not take the decision to delegate lightly given that adjudicating plea hearings entails a host of ancillary duties, each with its own potential constitutional concerns.[223] This distinguishes a guilty plea proceeding from other duties assigned to magistrate judges, not because it is procedurally more difficult to administer, but because it burdens more fundamental rights. Thus, the best way to protect defendants' rights while maintaining judicial efficiency is to condition magistrate judges' involvement in Rule 11 proceedings on the non-finality of their decisions. In this scenario, all defendants would be able to withdraw their pleas for any reason prior to formal acceptance by a district judge.

The court in *Benton* expressed concerns that such a regime would lead to a "dress rehearsal" system, in which district judges' dockets would be filled with motions to withdraw guilty pleas given to

219. *See* United States v. Harden, 758 F.3d 886, 891 (7th Cir. 2014) (reasoning that district courts cannot delegate to magistrate judges the duty of accepting guilty pleas).

220. *Williams*, 23 F.3d at 634.

221. *Id.*

222. *See* United States v. McGrann, 927 F. Supp. 2d 279, 285 (E.D. Va. 2013) (reasoning that district courts may not want to delegate decisionmaking duties to magistrate judges who lack final authority).

223. *See, e.g.*, *id.* (allowing magistrate judges to order detention of a defendant prior to district court sentencing).

magistrate judges.[224] In the eyes of the *Benton* court, this would effectively render the delegation of these duties to a magistrate judge completely useless.[225] However, efficiency is not the sole concern of the Federal Magistrates Act, and courts must consider separation-of-powers principles and defendants' rights as well. Moreover, the *Benton* court's view is probably unrealistic, as the vast majority of defendants are likely to maintain a consistent plea throughout the process. It is those defendants who are most vulnerable, having misunderstood their rights or the consequences of their actions, who are most likely to withdraw a guilty plea.[226] Defendants who feel they may have been entrapped, misinformed by their attorneys, or led into an unfair agreement with the government should be afforded the opportunity to change a guilty plea for any reason prior to sentencing. District courts can afford the time to give this fraction of defendants a second chance, even at the risk of a few people exploiting the system. When constitutional rights are implicated, the legal system should err on the side of protecting defendants, especially when the realistic risk of bad-faith exploitation and court delays is probably quite low. This means putting defendants' rights above efficiency in dispositive situations in felony cases.

Furthermore, although the *Harden* court reached the correct result with respect to plea acceptance, it did so using a *Peretz*-style "comparability" analysis that is arguably unworkable for analyzing the entry of judgments in a felony proceeding. As Justice Marshall expressed in his *Peretz* dissent, courts' application of the "consent" language from § 636(c) to felony contexts is not textually sound.[227] However, insofar as voir dire is a preliminary part of a felony trial with a direct analogue in the civil context, the *Peretz* consent analysis may be a reasonable approach. A felony guilty plea, on the other hand, has no equivalent in the civil context and, unlike voir dire, disposes of a case entirely.[228] At least in the context of a case-ending felony matter, treating consent as determinative leads to unnecessary statutory and constitutional questions. Therefore, courts in these situations should return to a *Gomez*-style textual analysis and require that any contemplated magistrate judge duty fit neatly into a category enumerated in the Federal Magistrates Act. If, as with felony guilty pleas, district courts are forced to create new hybrid categories in order

224. United States v. Benton, 523 F.3d 424, 432 (4th Cir. 2008).

225. *Id.*

226. *See supra* notes 196–98.

227. Peretz v. United States, 501 U.S. 923, 943 (1991) (Marshall, J., dissenting).

228. *See* United States v. Harden, 758 F.3d 886, 889 (7th Cir. 2014) (explaining that a guilty plea "results in a final and consequential shift in the defendant's status").

to justify the delegation of a task, those courts should invoke the "constitutional avoidance" canon to deem the duty beyond the bounds of the statute, regardless of a defendant's consent.

Such a textually based grant of authority to magistrate judges, conditioned on non-finality, would be both statutorily and constitutionally consistent. It indicates clearly that guilty plea proceedings belong with the important, "dispositive" matters in § 636(b)(1)(B). From a structural perspective, a "report and recommendation" system is the only way to ensure that district judges have total control over these proceedings. It would require that they either conduct the colloquy themselves or else personally approve one performed by a magistrate judge. This offers the added benefit of clarity: no additional consequences can ever result until a district judge has reviewed and approved the plea proceedings. Armed with this certainty, district judges would know not to delegate any cases to a magistrate judge that would raise finality issues, like a crime that would require immediate detention of the defendant.

Additionally, the non-finality policy would encourage prosecutors to be clearer about the rights they are asking defendants to waive through plea agreements. For example, if the government is concerned that a magistrate judge lacks authority to immediately detain a criminal defendant, it could "negotiate with a defendant to voluntarily consent to revocation of release upon entry of a guilty plea before the [magistrate] judge."[229] This could be a desirable solution for all involved, especially for defendants, who would become more aware of their rights. Meanwhile, prosecutors would achieve their desired results, and district judges would know with greater certainty which plea proceedings to delegate and which to administer themselves.[230] Despite the FMA's goal of efficiency, the *Peretz* analysis can sometimes create a quagmire of uncertainty that relies on a district-by-district, ex post analysis of each proposed "additional duty." In the context of "dispositive" matters in felony cases, such a system is incompatible with constitutional protections. A guarantee of non-finality would remedy the problem and create a practical need for judges and prosecutors to be more forthcoming about consequences, a result that could benefit the most vulnerable criminal defendants.

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229. United States v. Yanni, No. CR-09-1363-PHX-NVW (LOA), 2010 U.S. Dist. LEXIS 100049, at *19 (D. Ariz. Sept. 2, 2010).

230. *See* Roell v. Withrow, 538 U.S. 580, 596 (2003) ("A bright-line rule brings clarity and predictability, and, in light of . . . constitutional implications . . . these values should not be discounted.").

V. CONCLUSION

Despite the relative ease of taking felony guilty pleas compared with the amount of time they consume on district judges' dockets, these tasks should not be delegated to magistrate judges given the significant rights they burden. Not only does a felony guilty plea involve the waiver of important individual rights, but the task also does not appear to fit neatly into the statutory scheme of the Federal Magistrates Act without raising constitutional separation-of-powers issues. Under any interpretive framework, the gravity of the concerns raised by magistrate judge acceptance of a guilty plea in a felony case makes the duty dissimilar to those that appear in the FMA. Thus, a magistrate judge's involvement with the Rule 11 process should be purely administrative. It can greatly benefit the efficiency of district courts when magistrates handle the standardized set of questions involved in a plea colloquy and make a recommendation of their findings. However, if a district judge were to empower the magistrate judge to bind a defendant in any way to a felony guilty plea, that delegation would become both statutorily and constitutionally unsound. Further, it would open the door to a host of ancillary issues, each with its own constitutional implications. In terms of consequences to individual and structural rights, binding a person to a decision of guilt in a felony case is the most significant action the U.S. judiciary can perform. To delegate such power to a magistrate judge undermines the protections afforded by the justice system in the name of efficiency.

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