The FMA and the Constitutional Validity of Magistrate Judges’ Authority to Accept Felony Guilty Pleas

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ABSTRACT

Given the burdens of a growing district court caseload and the fact that over 97% of criminal convictions result in guilty pleas, efficiency has necessitated an expanding role for magistrate judges. Within that expanded role lies a greater need for delegation to magistrate judges to assist in the practice of guilty plea acceptance. The Federal Magistrates Act (FMA) permits magistrate judges to take on additional duties so long as they are “not inconsistent with the Constitution and laws of the United States.” Despite the language of the FMA, the Seventh Circuit has been the first circuit to deny district courts the option to delegate the acceptance of plea agreements to magistrates. Therefore, the key question on which this Comment focuses is whether the FMA permits magistrate judges to personally accept guilty pleas. This Comment answers this question through an analysis of the history of the FMA, the relevant case law, as well as a comparative discussion between the Seventh Circuit and its sister circuits. Ultimately, this Comment proposes that the FMA should be read to permit federal magistrates the power to accept guilty pleas, consistent with the jurisprudence of the several circuits and the Constitution.

INTRODUCTION

The Federal Magistrates Act (FMA) has long been read to give a broader role to federal magistrate judges in the nearly fifty years since its passage. As a result of that expansive interpretation, federal magistrate judges enjoy many of the same powers and duties as their Article III counterparts. The FMA permits magistrate judges to take on additional duties so long as they are “not inconsistent with the Constitution and laws of the United States.” The FMA specifically authorizes magistrate judges

2. Id. § 636; see also Brendan Linehan Shannon, Note, The Federal Magistrates Act: A New Article III Analysis for a New Breed of Judicial Officer, 33 WM. & MARY L. REV. 253, 253 (1991) (“[S]ince Congress passed the Act, congressional amendment of the law and expansive judicial interpretation have resulted in a new breed of judicial officer.”).
to preside over certain matters, including civil and misdemeanor trials.\(^3\)

Beyond the capacity to decide motions, hear evidence, and instruct juries, several federal courts of appeals have concluded that federal magistrates also have the power to accept guilty pleas in felony cases, a task that is arguably comparable to that of a guilty plea colloquy.\(^4\) The United States Court of Appeals for the Seventh Circuit, however, recently held that the Federal Magistrates Act does not permit magistrate judges to accept guilty pleas even when the parties consent.\(^5\) The Seventh Circuit is the first circuit to deny district courts the option to delegate the acceptance of plea agreements to magistrates.\(^6\)

There were over 300,000 cases filed in the federal district courts in 2014, over 70,000 of which were criminal proceedings.\(^7\) The FMA was passed by Congress to ease the rapidly increasing and “overwhelming caseload” burden of many district courts.\(^8\) In 2013, over 97% of criminal convictions in the United States District Courts were the result of guilty pleas.\(^9\) With the overburdening caseload of federal district courts, there is a greater need for delegation to magistrate judges to assist in the practice of guilty plea acceptance.\(^10\) Such delegation is in line with many long recognized duties; magistrate judges are already permitted to preside over many unspecified aspects of a felony criminal proceeding such as jury selection and the plea colloquy.\(^11\) While these duties are not enumerated under the FMA, the United States Supreme Court has held these additional duties to be consistent with Constitution.\(^12\) Accepting a felony guilty plea is comparable to conducting a plea colloquy and involves far less discretion.

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5. United States v. Harden, 758 F.3d 886, 887 (7th Cir. 2014).


10. See Harden, 758 F.3d at 891 (explaining the desire to promote efficiency in the district courts and the prevalence of guilty pleas today).

11. See id.

than presiding over jury selection. The comparability of felony guilty pleas to the permitted duties under the FMA makes accepting felony guilty pleas an additional duty consistent with the Constitution and laws of the United States.

In line with the Supreme Court’s determination that federal magistrates should be permitted additional, unspecified duties, this Comment argues that the FMA should be read to permit federal magistrates to accept guilty pleas in felony cases where the parties consent, thereby absolving any potential constitutional violation. Specifically, the key question on which this Comment focuses is whether the FMA permits magistrate judges to go farther and personally accept guilty pleas and find the defendant guilty—a dispositive step in the criminal process—rather than making a recommendation to the district court judge. In the interest of judicial efficiency, there are means by which federal district courts can ensure that defendants are thoroughly informed and aware of the dispositive action should they consent, which is the primary concern raised by opponents of the extended power.

Part I of this Comment provides background information on the FMA and the relevant precedent of the Supreme Court of the United States. In Part II, this Comment examines the existing case law from the different circuits on this issue to provide the reasoning behind courts’ allowance or disallowance of magistrate judges to accept felony guilty pleas. Part II-A examines the Fourth, Tenth, and Eleventh Circuit determinations that federal magistrates may accept felony guilty pleas, while Part II-B discusses the Seventh Circuit’s recent departure from this reasoning. Finally, Part III weighs the two approaches and concludes that the FMA should be read to permit federal magistrates the power to accept guilty pleas, consistent with the jurisprudence of the several circuits and the Constitution.

I. THE FMA: CONGRESS’ INTENT AND THE SUPREME COURT’S INTERPRETATION

Article III, Section 1 of the U.S. Constitution vests the judicial power in “one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.” The Supreme Court has interpreted this provision to limit Congress’s ability to vest judicial

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14. Id.
authority in non-Article III judges. Accordingly, magistrate judges are not explicitly listed in Article III but instead are statutorily created. The FMA, which was passed by Congress to ease the rapidly increasing and overwhelming caseload burden of many district courts, defines the scope of magistrate judges’ authority.

In many districts, magistrate judges hear guilty pleas and then, as a matter of procedure, make a recommendation to the district court judge, who then decides whether to accept the guilty plea and find the defendant guilty. Ultimately, however, federal magistrate judges can accept felony guilty pleas because the acceptance of a felony guilty plea is a comparable duty to others enumerated under the FMA.

In order to understand the FMA and felony guilty pleas in general, it is essential to understand the plea process as set out in Rule 11 of the Federal Rules of Criminal Procedure. Before a magistrate judge can administer the plea and sentencing under Rule 11, the defendant must consent to the magistrate judge’s jurisdiction, and the district judge must assign the case to the magistrate judge for the taking of the plea. This is because the magistrate judge, unlike the Article III district court judge, is not explicitly vested with the authority to hear these proceedings. Once these steps are completed, the magistrate judge may accept a guilty plea and is bound by Rule 11, which sets out the requirements for any judge—magistrate or district court—in doing so.

A. The Plea Colloquy and Rule 11

Rule 11 requires the following: “[b]efore the court accepts a plea of guilty . . . the court must address the defendant personally in open court.” During this address, the court must inform the defendant of, and determine

19. See United States v. Reyna-Tapia, 328 F.3d 1114, 1118–19 (9th Cir. 2003). Currently, five circuit courts of appeal require a recommendation to be sent to the district court judge after taking a felony plea. Id. (explaining that a magistrate judge’s taking of a guilty plea, with the litigant’s consent, qualifies as an additional duty under the FMA).
24. United States v. Harden, 758 F.3d 886, 888–90 (7th Cir. 2014).
that the defendant understands” the consequences contained in Rule 11.26
This open questioning is commonly called the plea colloquy as it involves a
conversation between the judge and the defendant.27 The open court
requirement is to ensure that the plea agreement is on the record and,
thereby, free from the risk of real or apparent unfairness by the attorneys or
the judge.28

If a magistrate judge takes the felony plea upon consent, that judge is
the only one authorized to enter a finding of guilty under Rule 11.29
Therefore, the magistrate judge who personally addressed the defendant in
open court must be the one to accept the plea and enter the finding of guilt
against the defendant.30 While Rule 11 sets out the requirements for the
magistrate judge in the plea process, the FMA was created to help broaden
the responsibilities of magistrate judges as well as outline the boundaries of
their authority.31

B. The History and Scope of the FMA

The FMA was enacted in 1968 to create a corps of new judicial
officers to “cull from the ever-growing workload of the U.S. district
courts.”32 Congress intended the FMA to permit district courts to increase
the scope of magistrate responsibilities as part of a plan to establish a
system capable of increasing the overall efficiency of the federal
judiciary.33 Congress hoped the FMA would help alleviate the federal
district courts’ backlog of cases.34 Aware that other non-enumerated duties
may arise within the federal district courts, section 636(b) was included to

26. FED. R. CRIM. P. 11(b)(1)(A)–(N) (requiring the court to inform the defendant of his
or her various rights and to ensure the defendant understands such rights).
27. Id.
28. See FED. R. CRIM. P. 11 advisory committee’s note to 1974 amendment.
29. See 28 U.S.C. § 636(a) (2012) (stating that a magistrate judge shall have all powers
and duties conferred or imposed by the Rules of Criminal Procedure).
30. See 28 U.S.C. § 636(c)(1) (explaining that the magistrate judge conducts any or all
proceedings when specifically designated to exercise such jurisdiction by the district court).
favor of granting federal judges significant leeway to experiment with possible
improvements in the efficiency of the judicial process).
33. Federal Magistrates Act: Hearings on S. 945, H.R. 5502, H.R. 8277, H.R. 8520,
H.R. 8932; H.R. 9970, and H.R. 10841 Before Subcomm. No. 4 of the H. Comm. on the
Act specifies [those] . . . areas in which the district courts might be able to benefit from the
magistrate’s services. We did not limit the courts to the areas mentioned.”).
34. Id.
allow the district courts to delegate a variety of functions to magistrate judges.\footnote{136}{Id.}

The FMA defines the scope of the duties of United States magistrate judges.\footnote{35}{Id.} These duties range from entering a sentence for a misdemeanor to determining certain pretrial matters before the court.\footnote{36}{United States v. Harden, 758 F.3d 886, 888 (7th Cir. 2014).} Additionally, magistrate judges are permitted to preside over misdemeanor trials with the parties’ consent.\footnote{37}{28 U.S.C. § 636(a)(4), (b)(1)(A) (2012); see also David A. Bell, The Power to Award Sanctions: Does It Belong in the Hands of Magistrate Judges?, 61 ALB. L. REV. 433, 433 (1997) (“Magistrate judges are often called upon, for example, to rule on discovery and suppression of evidence motions, issue reports and recommendations on dispositive motions, adjudicate petty offenses and misdemeanor cases, and even, with the consent of the parties, preside over the trial of civil actions.”).} Notably, magistrate judges are allowed to undertake duties that are not enumerated in the FMA, so long as the duties are constitutional.\footnote{38}{28 U.S.C. § 636(a)(3); 18 U.S.C. § 3401(b) (2012).} “Constitutional” in this context means those duties that have not been held to be within the sole domain of Article III judges, such as presiding over felony trials.\footnote{39}{28 U.S.C. § 636(b)(3).}

The acceptance of a guilty plea in a felony case is not a described power or duty under the FMA.\footnote{40}{Gomez v. United States, 490 U.S. 858, 872 (1989).} Accordingly, answering the question of the permissibility of magistrates to do so requires an interpretation of the additional duties clause of the statute to determine whether the FMA permits judges to discharge that function, regardless of whether the defendant and the government have provided consent.\footnote{41}{Harden, 758 F.3d at 888.}

\textbf{C. The Additional Duties Clause of the FMA}

Section 636(b)(3) of the FMA, also known as the additional duties clause, authorizes district courts to delegate to magistrate judges “such additional duties as are not inconsistent with the Constitution and laws of the United States.”\footnote{42}{Id.} This broad provision was somewhat clarified by the United States Supreme Court in \textit{Peretz v. United States},\footnote{43}{Peretz v. United States, 501 U.S. 923, 933 (1991).} which held that whether a proceeding is one that may be delegated to a magistrate judge
depends on whether it is “comparable” to the proceedings that the FMA specifically mentions.45

In order to understand what additional duties are comparable to the enumerated duties, it is important to review the Supreme Court’s decisions regarding additional duties under the FMA. In Gomez v. United States,46 the Supreme Court held that those “additional duties” did not encompass the selection of a jury in a felony trial over a defendant’s objection.47 However, two years later, in Peretz, the Court concluded that a magistrate judge may oversee jury selection in a felony case because “a district judge may delegate to a magistrate supervision of entire civil and misdemeanor trials,” and “[t]hese duties are comparable in responsibility and importance to presiding over [voir dire] at a felony trial.”48 Therefore the similarity between criminal voir dire and presiding over civil trials (neither of which involve a finding of guilt in a criminal case) led to a finding that the FMA permitted a magistrate judge to preside over voir dire in a criminal case.

Furthermore, the Supreme Court has held that a magistrate judge is not permitted to conduct a felony trial.49 The Supreme Court came to this conclusion using the statutory canon of expressio unius est exclusio alterius, giving significance to the careful contours of the authority granted to the magistrates in the FMA.50 The Court held that the explicit grant of authority to preside over civil and misdemeanor cases, should be construed as an implicit withholding of authority to preside over a felony trial.51 While the Supreme Court has addressed felony trials, it has yet to decide the issue of magistrate judges’ authority to accept felony guilty pleas. Since the issue has been left to the various circuits, each circuit has used the Supreme Court’s rulings in Peretz and Gomez to justify its reasoning in either permitting or denying magistrate judges the authority to accept felony guilty pleas.

Thus, the district court’s authority to delegate duties to the magistrate judge boils down to comparability.52 If an unlisted duty is comparable to

45. Id. at 931–33.
47. Id. at 872.
49. Gomez, 490 U.S. at 872.
50. Id. (“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.”).
51. Id.
52. See Peretz, 501 U.S. at 933.
those duties listed in the Act, that duty may be performed by the magistrate judge with the parties’ consent.53

D. The Role of Consent

Another important facet is the imposed requirement that the defendant first consent for the magistrate to accept his or her plea since the defendant has the right to appear before an Article III judge.54 Without consent, the analysis of comparability does not come into play because consent acts as a “limitation” on the Act’s grant of otherwise “expanded jurisdiction” to magistrates.55

Though the consent requirement is based on the protection of individuals’ due process rights, even the most basic rights of criminal defendants are subject to waiver.56 “Waiver is the intentional relinquishment or abandonment of a known right . . . .”57 Relevant here, the United States Supreme Court has previously held that litigants may waive their personal right to have an Article III judge preside over a civil trial.58

Even in the context of criminal cases, where life and liberty are at stake, defendants may waive their rights. A guilty plea is the quintessential waiver: a “guilty plea is a waiver of important constitutional rights designed to protect the fairness of a trial.”59 It “is more than an admission of past conduct; it is the defendant’s consent that judgment of conviction may be entered without a trial—a waiver of his right to trial before a jury or judge.”60 However, just as a defendant can consent to an otherwise unreasonable search and seizure, a defendant can also give consent to a magistrate to waive his right to a jury trial.

The Supreme Court addressed waiver in the context of magistrate powers in Peretz.61 As discussed above, the issue in Peretz was whether it

53. Id.
54. See U.S. CONST. art. III, § 1.
55. Peretz, 501 U.S. at 931 (quoting Gomez, 490 U.S. at 870).
56. See, e.g., United States v. Gagnon, 470 U.S. 522, 528 (1985) (holding that absence of objection constitutes waiver of the right to be present at all stages of the criminal trial); Levine v. United States, 362 U.S. 610, 619 (1960) (holding that failure to object to the closing of the courtroom constitutes waiver of the right to a public trial); Segurola v. United States, 275 U.S. 106, 111 (1927) (holding that failure to object constitutes waiver of the Fourth Amendment right against unlawful search and seizure).
57. United States v. Venturella, 585 F.3d 1013, 1018 (7th Cir. 2009).
was proper for a magistrate judge to preside at jury selection. In *Peretz*, the Court said, “[a] defendant has no constitutional right to have an Article III judge preside at jury selection if he has raised no objection to the judge’s absence.”62 The Court noted that “[t]he defendant’s consent significantly changed the constitutional analysis” and found there to be “no Article III problem when a district court judge permits a magistrate to conduct [voir dire] in accordance with the defendant’s consent.”63

Falling on the side of judicial efficiency and delegation, the Supreme Court concluded that when “the defendant is indifferent as to whether a magistrate or a [district] judge should preside, then it makes little sense to deny the district court the opportunity to delegate that function to a magistrate, particularly if such a delegation sensibly advances the court’s interest . . . .”64 Such delegation and efficiency is also served by permitting a defendant to consent to a felony guilty plea acceptance by a magistrate judge. Understanding of the consequences of consent is proved when a defendant neither files any objections with the district court, moves to withdraw his guilty plea, nor objects to the fact that the magistrate judge took his plea before the district judge at sentencing.65 Therefore, the “additional duty” of permitting magistrates to accept felony guilty pleas does not seem to affect the defendant’s substantial rights or impugn fairness of judicial proceedings because the defendant knowingly waived his or her right by consent.66

Ultimately, the precedent has shown that one may waive her fundamental rights.67 While the Fourth Amendment protects citizens from a warrantless search, one may waive that right by simply consenting to the search.68 Similarly, here, a defendant has a right to plead guilty to an Article III judge, but once she consents to the magistrate’s authority she has

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62. *Id.* at 936.
63. *Id.* at 932.
64. *Id.* at 934–35 (quoting Gov’t of V.I. v. Williams, 892 F.2d 305, 311 (3rd Cir. 1989)).
65. *See* United States v. Cooper, 243 F.3d 411, 412 (7th Cir. 2001) (holding that the defendant waived objection to the admission of evidence where counsel withdrew the motion in limine and offered it into evidence at trial); United States v. Richardson, 238 F.3d 831, 841 (7th Cir. 2001) (holding that the defendant waived objection to the sentencing adjustment when the court asked defendant’s lawyer whether he had objected to the adjustment and the lawyer said “No”); United States v. Newman, 148 F.3d 871, 874, 879 (7th Cir. 1998) (holding that the defendant waived arguments by stipulating to facts and by expressly declining to press contentions).
66. United States v. Ciapponi, 77 F.3d 1247, 1251 (10th Cir. 1996).
waived any right previously held. Therefore, once the defendant consents, waiver takes effect and the magistrate may exercise her additional duty of accepting the guilty plea as permitted by the FMA.

II. THE CIRCUIT SPLIT

A. The Fourth, Tenth, and Eleventh Circuits’ Interpretation

In the two and a half decades following the Supreme Court’s decisions in *Peretz* and *Gomez*, several circuits have continued to expand the role of federal magistrates in an attempt to ease the burden on the federal judicial system. The Courts of Appeals for the Fourth, Tenth, and Eleventh Circuits have interpreted the additional duties clause in light of the Supreme Court’s decisions and concluded that federal magistrates may permissibly accept felony guilty pleas with the consent of the defendant.

In *United States v. Benton*, the Fourth Circuit held, whether or not a report and recommendation was filed, a magistrate could accept a felony guilty plea so long as the defendant consented. The Fourth Circuit, like several others, recognized that the guilty-plea colloquy required by the Due Process Clause and Rule 11(b) of the Federal Rules of Criminal Procedure may be delegated to magistrate judges in felony cases. The court viewed the acceptance of a plea as “merely the natural culmination of a plea colloquy.” The court noted that compared to tasks unquestionably within a magistrate’s authority, such as conducting felony voir dire and presiding

71. *Id.* at 431.
72. *Id.*
73. *Id.* (quoting Gov’t of V.I. v. Williams, 892 F.2d 305, 311 (3rd Cir. 1989)). The court said:

Certainly, Benton’s distinction between plea colloquy and plea acceptance does not appear to necessitate different results under *Peretz*. The “comprehensive provisions of Rule 11” not only “carefully explain what a court must inquire about” and “what [a magistrate] should determine before accepting a plea.” Thus the acceptance of a plea is merely the natural culmination of a plea colloquy. Much like a plea colloquy, plea acceptance involves none of the complexity and requires far less discretion than that necessary to perform many tasks unquestionably within a magistrate judge’s authority, such as conducting felony *voir dire* and presiding over entire civil and misdemeanor trials. It is thus difficult to see how a plea acceptance is not comparable in responsibility and importance to a plea colloquy, and therefore an “additional duty” within the Supreme Court’s interpretation of 28 U.S.C. section 636(b)(3).

*Id.* at 431–32.
over entire civil and misdemeanor trials, plea acceptance was much less complicated.\textsuperscript{74}

Other circuits have agreed with the Fourth Circuit’s reasoning. For example, in \textit{United States v. Woodard},\textsuperscript{75} the Eleventh Circuit came to the same conclusion, noting that conducting a plea colloquy and accepting guilty pleas was comparable to the FMA’s enumerated duties. The court in \textit{Woodard} added, “conducting a plea colloquy, while important, is ‘less complex’ than several of the duties the FMA expressly authorized magistrate judges to perform.”\textsuperscript{76} Moreover, no circuit has held that a magistrate judge cannot conduct a plea colloquy.\textsuperscript{77}

Likewise, the Tenth Circuit relied on \textit{Peretz}’s analysis of defendant consent to potential constitutional violations when it considered a magistrate’s acceptance of a plea agreement.\textsuperscript{78} “[W]hen the defendant consents to proceed before a magistrate judge, the constitutional analysis changes significantly because no constitutional right is implicated if the defendant does not object to the absence of an Article III judge.”\textsuperscript{79} The court went on to say that the “[d]efendant’s failure to object or otherwise request review by the district court leaves him in no position to now complain that the magistrate judge’s taking of his guilty plea, a proceeding to which he expressly consented, violated his constitutional rights.”\textsuperscript{80}

In consideration of judicial efficiency, the comparability of additional duties, and Due Process rights through the requirement of consent, the several circuits have, in line with both the purposes of the FMA and the jurisprudence of the Supreme Court, concluded that federal magistrates not only have the power to conduct a plea colloquy but also to accept the subsequent felony guilty plea.

\textbf{B. The Seventh Circuit’s Departure}

Despite the several circuits’ conclusions and their well-founded reasoning, the Seventh Circuit’s recent case has challenged the notion that federal magistrates may accept a felony guilty plea. In \textit{United States v. Woodard},\textsuperscript{75} the Eleventh Circuit came to the same conclusion, noting that conducting a plea colloquy and accepting guilty pleas was comparable to the FMA’s enumerated duties. The court in \textit{Woodard} added, “conducting a plea colloquy, while important, is ‘less complex’ than several of the duties the FMA expressly authorized magistrate judges to perform.”\textsuperscript{76} Moreover, no circuit has held that a magistrate judge cannot conduct a plea colloquy.\textsuperscript{77}

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In consideration of judicial efficiency, the comparability of additional duties, and Due Process rights through the requirement of consent, the several circuits have, in line with both the purposes of the FMA and the jurisprudence of the Supreme Court, concluded that federal magistrates not only have the power to conduct a plea colloquy but also to accept the subsequent felony guilty plea.

\textbf{B. The Seventh Circuit’s Departure}

Despite the several circuits’ conclusions and their well-founded reasoning, the Seventh Circuit’s recent case has challenged the notion that federal magistrates may accept a felony guilty plea. In \textit{United States v. Woodard},\textsuperscript{75} the Eleventh Circuit came to the same conclusion, noting that conducting a plea colloquy and accepting guilty pleas was comparable to the FMA’s enumerated duties. The court in \textit{Woodard} added, “conducting a plea colloquy, while important, is ‘less complex’ than several of the duties the FMA expressly authorized magistrate judges to perform.”\textsuperscript{76} Moreover, no circuit has held that a magistrate judge cannot conduct a plea colloquy.\textsuperscript{77}
In its decision, the Seventh Circuit acknowledged the Supreme Court’s holding in *Peretz*, recognizing the FMA does not permit a magistrate judge to conduct a felony trial. The Seventh Circuit concluded that the acceptance of a felony guilty plea is more like conducting a felony trial than conducting a misdemeanor trial. The court noted, “[t]he task of accepting a guilty plea is a task too important to be considered a mere ‘additional duty’ permitted under § 636(b)(3): it is more important than the supervision of a civil or misdemeanor trial, or presiding over [voir dire].” The court went on to point out that “because of this importance, the additional duties clause cannot be stretched to reach the acceptance of felony guilty pleas, even with a defendant’s consent.”

The Seventh Circuit viewed the district court judge as the ultimate and the only decision-maker, not to be intruded upon by the federal magistrate. However, the Seventh Circuit has long allowed a magistrate to file a report and recommendation to the district court judge. Additionally, the court recognized the widespread practice of magistrate judges conducting a Rule 11(b) colloquy for the purpose of making a report and recommendation as permissible. This common practice allows the magistrate to hear the defendant’s plea and converse with the defendant before ultimately recommending his/her opinion for the district court judge to ultimately decide. However, the court in *Harden* noted that some circuits go beyond this authority and authorize magistrate judges to accept guilty pleas without a report and recommendation. The Seventh Circuit differed on this point and it reasoned that without explicit authorization

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81. *United States v. Harden*, 758 F.3d 886, 891 (7th Cir. 2014).
82. *Id.* at 890.
83. *Id.* at 889.
84. *Id.* at 888.
85. *Id.*
86. *Id.* at 891–92 (“[T]he Court has never suggested that magistrate judges, with the parties’ consent, may perform every duty of an Article III judge, regardless of the duty’s importance.”).
87. *Id.* at 891.
88. See, e.g., *United States v. Reyna-Tapia*, 328 F.3d 1114, 1119–22 (9th Cir. 2003); *United States v. Torres*, 258 F.3d 791, 796 (8th Cir. 2001); *United States v. Dees*, 125 F.3d 261, 263, 265 (5th Cir. 1997); *United States v. Williams*, 23 F.3d 629, 631–34 (2d Cir. 1994).
89. See *Fed. R. Crim. P. 11*.
from Congress, the district court cannot delegate this vital task to magistrate judges.91

In doing so, the Seventh Circuit dispelled any similarity between a plea colloquy and the acceptance of a plea. In Harden, the court asserted that the acceptance of a guilty plea was “dispositive” and required careful consideration of the defendant’s understanding of the rights being relinquished.92 The court noted that once a defendant relinquishes this right it “results in a final and consequential shift in a defendant’s status.”93 Using this reasoning the Seventh Circuit argued that accepting a guilty plea is quite similar in importance to conducting a felony trial, which magistrate judges are not permitted to conduct.94

The Seventh Circuit also took a different stance on the issue of consent in felony guilty plea acceptances, reasoning that accepting a guilty plea is even more final than a guilty verdict.95 Thus, when accepting a guilty plea, “the judge is required to conduct a long searching colloquy, as required by Federal Rule of Criminal Procedure 11(b), to ensure that the defendant’s waivers of his important rights are ‘voluntary[,] . . . knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences.’”96 Therefore, the Seventh Circuit claimed that “[o]nce a defendant’s guilty plea is accepted, the prosecution is at the same stage as if a jury had just returned a verdict of guilty after a trial.”97

Additionally, the Seventh Circuit noted that when a federal official performs an “act of consequence” that Congress has not authorized, reversal may be required even if the parties consented to it.98 The court held that “[t]his narrow exception to waiver and forfeiture is necessary for

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91. Harden, 758 F.3d at 891.
92. Id. at 889.
93. Id.
94. Id.
95. Id.
96. Id. at 888–89 (quoting Brady v. United States, 397 U.S. 742, 748 (1970)).
97. Id. at 889. The court explains:

Unlike the preliminary nature of voir dire—which is an important, but preliminary, juncture that will be followed by numerous other substantive opportunities to contest the government’s evidence, case, and conduct before any determination of guilt—the acceptance of a guilty plea is dispositive. It results in a final and consequential shift in the defendant’s status. For this reason, the acceptance of the guilty plea is quite similar in importance to the conducting of a felony trial. And it is clear that a magistrate judge is not permitted to conduct a felony trial, even with the consent of the parties.

Id.
98. Id. at 890.
the review of judicial authority to act with consent.”

The court explained that without the exception, “district courts would never know whether the [FMA] authorizes them, with the defendant’s consent, to refer [an additional duty] to a [magistrate] judge.”

However, the Seventh Circuit assumed, albeit incorrectly, that Congress has not authorized magistrate judges to accept guilty pleas as part of their “additional duties” in the FMA. The Supreme Court has noted that the FMA evinces a belief that magistrate judges are qualified and competent to handle matters that are delegated to them so long as the parties consent. Therefore, if a defendant perceives any threat of injury from the absence of an Article III judge, he need only decline to consent to the presence of the magistrate judge. However, when the defendant does consent to the magistrate’s role, in terms of voir dire proceedings or a plea colloquy, the magistrate has jurisdiction to perform this additional duty.

Thus, the Seventh Circuit reopened what had appeared to be a closed question: the role of the federal magistrate in an overburdened judicial system and the tension created with individuals’ Due Process rights.

III. RESOLVING THE QUESTION

In light of Congress’ inclusion of section 636(b) indicating the presumption of unenumerated duties, the overall efficiency of the expanded role of federal magistrates, and the consent requirement, the Fourth, Tenth, and Eleventh Circuits’ approach to felony guilty pleas will likely be the enduring one.

The Seventh Circuit’s conservative conclusion was misguided for several reasons. First, it has been long accepted practice within that very circuit for a magistrate to conduct a plea colloquy. This engaged inquiry involves much more discretion and complexity on the part of the magistrate than simply accepting a guilty plea. Second, the plea colloquy essentially leads to the acceptance of a guilty plea. Without the plea colloquy, the judge—whether magistrate or district court—could not accept

99. Id.
100. Id. at 890–91.
101. Id.
103. Id.
104. Id. at 935–36.
105. Harden, 758 F.3d at 891.
107. Id.
the plea because the judge would have no basis on which to accept it.\textsuperscript{108} This shows that the plea colloquy and the plea acceptance are truly inseparable.\textsuperscript{109} Therefore, the acceptance of the guilty plea is very comparable with the plea colloquy, and thereby, permissible as an additional duty under the FMA. Finally, the Seventh Circuit’s rejection of the consent requirement on the basis of the gravity of the waiver ignores the long accepted truth that individuals may waive even their most fundamental rights. For these reasons, the question of the expanding powers of the federal magistrate will likely be resolved in accordance with the views of the Fourth, Tenth, and Eleventh Circuits.

Furthermore, there are practical drawbacks to allowing every defendant to withdraw his or her guilty plea after a magistrate judge accepted it. As the \textit{Benton} court notes, defendants will essentially be asking for a “dry run or dress rehearsal—a procedure in which a defendant can agree to a plea before a magistrate judge, and then withdraw that plea without any complaint that the Rule 11 hearing was deficient in any way.”\textsuperscript{110} This has the potential to render plea agreements before magistrate judges meaningless.\textsuperscript{111} Additionally, it would be a complete waste of judicial resources when the defendant withdraws his plea for no reason.\textsuperscript{112} The proceeding before the magistrate judge would be a nullity and “it may encourage defendants to use magistrate-led colloquies as go-throughs in order to gauge whether they may later experience ‘buyer’s remorse.’”\textsuperscript{113}

Lastly, district courts that currently employ magistrate judges to conduct plea hearings might feel pressure to revisit their plea procedures. This may lead some district courts to stop delegating plea hearings to magistrates; however, this would only exacerbate the docket tensions already felt by district courts. These very tensions are what led to the creation of the office of magistrate judges.\textsuperscript{114} Therefore, allowing magistrate judges to accept pleas for the purposes of Rule 11 preserves judicial resources—the very goal underlying the creation of the office of a

\textsuperscript{108} \textit{See} Fed. R. Crim. P. 11(c), (d), (f) (explaining what a court must inquire about, what it should advise a defendant, and what it should determine before accepting a plea).

\textsuperscript{109} \textit{Benton}, 523 F.3d at 431.

\textsuperscript{110} Id. at 432–33.

\textsuperscript{111} \textit{See} United States v. Hyde, 520 U.S. 670, 677 (1997) (noting that “[w]ere withdrawal automatic in every case” for any reason, “the guilty plea would become a mere gesture, a temporary and meaningless formality reversible at the defendant’s whim”).

\textsuperscript{112} \textit{See Benton}, 523 F.3d at 432–33.

\textsuperscript{113} Id. at 433.

\textsuperscript{114} United States v. Khan, 774 F. Supp. 748, 750 (E.D.N.Y. 1991) (explaining that the FMA was enacted to help reduce the district courts’ overwhelming caseload).
CONCLUSION

Making the district court’s management of cases more efficient has gone beyond a mere desire and become a necessity with the growing caseload of district courts today.\textsuperscript{115} Given the burdens of a growing district court caseload and the fact that over 97% of criminal convictions result in guilty pleas,\textsuperscript{116} efficiency has necessitated an expanding role for magistrate judges. Within that expanded role lies a greater need for delegation to magistrate judges to assist in the practice of guilty plea acceptance.\textsuperscript{117}

Despite that need, the Seventh Circuit’s interpretation of the additional duties clause of the FMA is in conflict with the opinions of the Fourth, Tenth, and Eleventh Circuits. Unlike the Seventh Circuit, the several circuits interpreted the additional duties clause in light of the Supreme Court’s decisions and concluded that federal magistrates may permissibly accept felony guilty pleas with the consent of the defendant. These three circuits have all similarly reasoned that overseeing duties such as the plea colloquy is analogous to accepting a guilty plea in responsibility and importance, and thus, is rightly delegated to a magistrate judge as an “additional duty” when the defendant consents.\textsuperscript{118} Reasoning that “the prevalence of guilty pleas [did] not render them less important”,\textsuperscript{119} the Seventh Circuit acknowledged the importance of judicial efficiency but declined to adopt its sister circuits’ interpretation. Instead the Seventh Circuit drew an analogy between the importance of a felony trial with the gravity of accepting a guilty plea\textsuperscript{120} and concluded that this duty was not within the purview of the additional duties clause of the FMA.

Ultimately, the only valid concern that remains true today is the overburdened caseload of the federal district courts. Guilty pleas help

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\textsuperscript{115} United States v. Harden, 758 F.3d 886, 891 (7th Cir. 2014).


\textsuperscript{117} See Harden, 758 F.3d at 891 (explaining the desire to promote efficiency in the district courts and the prevalence of guilty pleas today).

\textsuperscript{118} See e.g., Benton, 523 F.3d at 432; Woodard, 387 F.3d at 1333; Ciapponi, 77 F.3d at 1250.

\textsuperscript{119} Id. at 891–92.

\textsuperscript{120} Id. at 888–89.
district court judges lighten their caseload and increase the overall efficiency of the court system. Magistrates, in turn, aid these district court judges by taking on duties similar to those of their Article III counterparts. By denying magistrate judges the ability to accept felony guilty pleas, the result will be judicial inefficiency and an inefficient use of magistrate judges during the plea process. In sum, it is clear that the volume of guilty pleas will never decrease. Nevertheless, magistrate judges can help alleviate the overwhelming caseload by accepting guilty pleas, consistent with the purpose of the FMA.

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