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Class v. United States 138 S. Ct. 798 (2018)

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Class v. United States
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I. INTRODUCTION

"Roughly 95% of felony cases in the federal and state courts are resolved by guilty pleas. Therefore, it is critically important that defendants, prosecutors, and judges understand the consequences of these pleas."[1] Although a conviction entered on a plea of guilty cannot ordinarily be reviewed by appellate proceedings except by reason of jurisdictional defects, some jurisdictions extend to criminal defendants the right to appellate review of their convictions based on guilty pleas.[2] Criminal defendants may, in several ways, lose or waive whatever rights to appeal are granted to them.[3] Where, in a negotiated plea agreement, a defendant expressly waives the right to appeal in order to obtain certain concessions from the state, the courts have reached differing results as to the validity of such a waiver.[4]

Although the United States Supreme Court has recognized and endorsed plea bargaining so long as the defendant is not coerced or oppressed by the process, it has been held in some cases that a defendant's waiver of the right to appeal, as part of such a plea agreement, can never be valid because it impermissibly chills the defendant's right to have the proceedings which resulted in a conviction reviewed, and it has also been held that such a waiver was invalid only under the circumstances presented.[5] On the other hand, the validity of such express waivers has been upheld based upon evidence that the negotiated plea was entered voluntarily and knowingly.[6]

In the 2018 Supreme Court case of *Class v. United States*, the validity of waivers within plea agreements was again before the Court, with the main issue being whether a guilty plea, in accordance with a plea bargain and Federal Rule of Criminal Procedure Rule 11, bars a criminal defendant from later appealing their conviction on the ground that the statute of conviction violated the Constitution.[7] *Class* illustrated more than anything else that the

1. Class v. United States, 138 S. Ct. 798, 807 (2018).
2. Kristine Cordier Karnezis, *Validity and Effect of Criminal Defendant's Express Waiver of Right to Appeal as Part of Negotiated Plea Agreement*, 89 A.L.R.3d 864 at 2a (2018) (quoting Am. Jur. 2d, Appeal and Error § 271).
3. *Id.*
4. *Id.*
5. Brady v. United States, 397 U.S. 742 (1970) (where the court concluded that it was not unconstitutional for the state to extend a benefit to a defendant who in turn extends a substantial benefit to the state); *see also* Cordier Karnezis, *supra* note 2.
6. *See* Cordier Karnezis, *supra* note 2.
7. *Class*, 138 S. Ct. at 802-3.

law dealing with plea agreement waivers seems to be straightforward, but at the same time, conflicts with case law and precedent established by the Court.

The Court reaffirmed what has been called the Menna-Blackledge doctrine and its basic teaching that "a plea of guilty to a charge does not waive a claim that—judged on its face—the charge is one which the State may not constitutionally prosecute."[8] The law seems to be straightforward, if the State may not constitutionally prosecute, then a criminal defendant does not waive his right to an appeal. The conflict with plea bargains occurs when the Menna-Blackledge doctrine is compared to the "Brady Trilogy" cases which were discussed in Justice Alito's dissent.[9] The "Brady Trilogy" essentially reiterated the Court's general thinking "when a plea agreement is done voluntarily and understandingly, then even a layman should expect the plea of guilty to be treated as an honest confession of guilt and a waiver of all defenses known and unknown. And such is the law."[10]

The question then is, what is the law dealing with plea agreements and what can a defendant appeal, or what are they entitled to waive? The majority in *Class* held that a guilty plea does not bar a claim on appeal where on the face of the record the court had no power to enter the conviction or impose the sentence because Class was not going to introduce any new information outside of the plea bargain.[11] Therefore, a criminal defendant does not waive his right to appeal an unconstitutional statute that convicted them after pleading guilty when charged under an unconstitutional statute.[12] The dissent diverged and focused on Rule 11 of the Federal Rules of Criminal Procedure and the "Brady Trilogy," essentially claiming that Class waived his right to appeal when he plead guilty.[13]

In light of *Class*, the law dealing with plea bargains remains conflicting and confusing. The Menna-Blackledge doctrine is alive and well.[14] While defendants will view *Class* as a victory for their waiver rights, prosecutors will be left confused and conflicted on what to include in plea bargains.[15] Therefore, the implications of *Class* are yet to be seen upon plea bargains but will likely force prosecutors to add more explicitly waived rights within the plea.[16]

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8. *See* Blackledge v. Perry, 417 U.S. 21 (1974); Menna v. New York, 423 U.S. 61 (1975); *see also* United States v. Broce, 488 U. S. 563 (citing *Menna*, 423 U.S., at 63, n. 2).

9. *See Class*, 138 S. Ct. 798 (2018) (Alito, J., dissenting).

10. *Id.* at 810 (quoting Edwards v. United States, 256 F.2d 707, 709 (D.C. Cir., 1958).

11. *Class*, 138 S. Ct. at 802.

12. *Id.* at 803.

13. *See generally id.* (Alito, J., dissenting).

14. *See Class*, 138 S. Ct. at 804.

15. *See id.* at 816 (Alito, J., dissenting).

16. *See generally* Lee v. United States, CV-16-8138-PCT-JAT (JFM); CR-05-0594-PCT-JAT, 2018 U.S. Dist. LEXIS 113441 at 20 (D. AZ. July 6, 2018) (comparing how *Class* did not have explicit

II. STATEMENT OF FACTUAL AND PROCEDURAL HISTORY

Petitioner Rodney Class was indicted by a federal grand jury for violating 40 U.S.C. § 5104(e)(1).[17] The violation was for possessing firearms in his locked jeep, which was parked in a lot on the grounds of the United States Capitol in Washington, D.C.[18] Thereafter, Class appeared *pro se* and asked the Federal District Court for the District of Columbia to dismiss the indictment because 40 U.S.C. § 5104(e) violated the Second Amendment and his due process because he was denied fair notice that weapons were banned from the parking lot of the Capitol grounds.[19] The District Court denied both claims.[20] Class eventually plead guilty to possession of a firearm on U.S. Capitol grounds in a plea agreement where the Government agreed to drop related charges.[21]

The written plea agreement between Class and the government set forth the terms of his guilty plea including several rights that he expressly agreed to waive and expressly enumerated categories that he could raise on appeal.[22] Additionally, the plea agreement said nothing about the right to raise on direct appeal a claim that the statute of conviction was unconstitutional.[23]

The District Court held a plea hearing to review the terms of the agreement and ensure its validity.[24] After finding that the agreement was sufficient and valid, the District Court accepted Class' guilty plea and he was

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waivers within the plea bargain being discussed and how most constitutional challenges continue to be waived).

17. 40 U.S.C. § 5104(e)(1) (2009). The complete text reads:

> (e) Capitol Grounds and Buildings security.
>
> (1) Firearms, dangerous weapons, explosives, or incendiary devices. An individual or group of individuals-
>
> (A) except as authorized by regulations prescribed by the Capitol Police Board—
>
> (i) may not carry on or have readily accessible to any individual on the Grounds or in any of the Capitol Buildings a firearm, a dangerous weapon, explosives, or an incendiary device;

18. *Class*, 138 S. Ct. at 802.

19. *Id.*

20. *Id.*

21. *Id.*

22. *See Id.* (Rights expressly waived: (1) all defense based upon the statute of limitations; (2) several specified trial rights; (3) the right to appeal a sentence at or below the judicially determined, maximum sentencing guideline range; (4) most collateral attacks on the conviction and sentence; and (5) various rights to request or receive information concerning the investigation and prosecution of his criminal case. Expressly enumerated rights that Class could raise on appeal: (1) newly discovered evidence; (2) ineffective assistance of counsel; and (3) certain statutes providing for sentence reductions).

23. *Class*, 138 S. Ct. at 802.

24. *Id. See also* FED. R. CRIM. P 11(b) and United States v. Ruiz, 536 U.S. 622, 629 (2002) (defendant's guilty plea must be voluntary and related waivers must be made knowingly, intelligently, and with sufficient awareness of the relevant circumstances and consequences).

sentenced.[25] Class appealed his conviction to the Court of Appeals for the District of Columbia Circuit where he repeated his constitutional claims that the statute violated the Second Amendment and the Due Process Clause because it failed to provide fair notice of where firearms were not allowed.[26] The Court of Appeals held that Class could not raise his constitutional claims because he waived them when he plead guilty.[27] The Supreme Court granted a writ of certiorari to determine whether, in pleading guilty, a criminal defendant inherently waived the right to challenge the constitutionality of the statute that convicted them.[28]

III. THE COURT'S DECISION AND RATIONALE

A. The Majority Opinion

Writing for the majority, Justice Breyer, joined by Justices Ginsburg, Sotomayor, Kagan, Gorsuch and Chief Justice Roberts, began by declaring upfront that a guilty plea by itself does not bar a defendant from appealing their conviction later on the ground that the statute of conviction was unconstitutional.[29] Justice Breyer reaffirmed the holding after the recitation of facts and procedural history and declared that Class did not relinquish his right to appeal constitutional determinations by pleading guilty.[30] "[A] defendant's plea of guilty did not . . . waive their previous constitutional claim."[31] Justice Breyer commented that Justice Harlan's opinion in *Haynes v. United States* did not offer a real explanation of what he meant, but added that subsequent decisions by the Court, *Blackledge v. Perry*[32] and *Menna v. New York*,[33] clarified the quote that offered a rationale that applied to the present case.[34]

Citing the above cases of *Blackledge* and *Menna*, Justice Breyer discussed what the Court has labeled as the Menna-Blackledge doctrine.[35] In *Blackledge*, North Carolina indicted and convicted Jimmy Perry on a misdemeanor assault charge.[36] When Perry exercised his right under a North Carolina law for a *de novo* trial in a higher court, the State reindicted him

25. *Class*, 138 S. Ct. at 802. (Class was sentenced to 24 days imprisonment followed by 12 months of supervised release).
26. *Id.* at 802.
27. *Id.* at 803.
28. *Id.*
29. *Class*, 138 S. Ct. at 802.
30. *Id.* at 803.
31. *Id.* (quoting Haynes v. United States, 390 U.S. 85, 87 (1968)).
32. *Blackledge v. Perry*, 417 U.S. 21 (1974).
33. *Menna v. New York*, 423 U.S. 61 (1975).
34. *Class*, 138 S. Ct. at 803.
35. *See id.* at 803-04.
36. *Blackledge*, 417 U.S. at 22.

with a felony for the same conduct.[37] Perry plead guilty and then sought habeas relief asserting that the reindictment was unconstitutional because of vindictive prosecution.[38] The Supreme Court held that a defendant who plead guilty could challenge their conviction on the ground that their right to due process was violated by a vindictive prosecution.[39]

In *Menna*, the defendant served a 30-day jail term for refusing to testify before a grand jury.[40] Later on, the State of New York charged him once again for the same crime.[41] Menna plead guilty but appealed, arguing that the new charge violated the double jeopardy clause of the Constitution.[42] The lower courts held that Menna's constitutional claim had been waived by his guilty plea.[43] The Supreme Court held that a defendant who pleaded guilty could challenge his conviction on double jeopardy grounds.[44]

Therefore, the Menna-Blackledge doctrine has taught that a guilty plea does not bar a claim on appeal where on the face of the record the court had no power to enter the conviction or impose the sentence.[45] Justice Breyer noted that in recent years the Court reaffirmed and refined the doctrine and its scope in *United States v. Broce*.[46] In *Broce*, the defendants plead guilty to two different indictments in a single proceeding which described two separate conspiracies.[47] The two defendants later challenged their convictions on double jeopardy grounds, arguing that they only admitted to one conspiracy.[48] The Court held that because the defendants could not prove their claim by relying on the indictments and the existing record and without contradicting the indictments that their claims were foreclosed by the admissions inherent in their guilty pleas.[49] *Broce* refined Menna-Blackledge by holding a guilty plea does not bar a claim on appeal where the defendant can rely on the record and not contradict the terms of the indictment by bringing facts from outside the record.[50]

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37. *Id.* at 22-3.
38. *Id.* at 23.
39. *See Blackledge*, 471 U.S. at 22-3 (where the defendant was indicted and convicted on a misdemeanor charge, later exercised his right to a *de novo* trail in a higher court, and the State reindicted him for a higher charge of felony for the same conduct).
40. *Menna*, 423 U.S. at 61
41. *Id.*
42. *Id.*
43. *Id.* at 62.
44. *See Menna*, 423 U.S. at 62-63.
45. *Broce*, 488 U.S. at 569.
46. *Class*, 138 S. Ct. at 804.
47. *Broce*, 488 U.S. at 565.
48. *Id.* at 567.
49. *Id.* at 576.
50. *See Broce*, 488 U.S. at 575-76.

Justice Breyer compared Class' claims to those in *Broce*.[51] He noted that Class' constitutional claims did not contradict the terms of the indictment or the written plea agreement, unlike the claims in *Broce*.[52] They were consistent with Class' knowing, voluntary, and intelligent admission that he did what the indictment alleged, and the claims could be resolved without any need to go outside the record.[53] Justice Breyer also noted that Class' claims were not focused upon case-related constitutional defects that occurred prior to the entry of the guilty plea.[54] Justice Breyer summed up his case analysis by stating that the claims at issue in the case did not fall within any of the categories of claims that Class' plea agreement forbade him to raise on appeal, but that the claims challenged the government's power to constitutionally prosecute him.[55] Therefore, Class was able to pursue his constitutional claims on appeal and the Court reversed the Court of Appeals for the District of Columbia Circuit and remanded for further proceedings.[56]

B. Majority Opinion Distinguishing Government's and Dissent's Arguments

Justice Breyer felt the need to address Justice Alito's dissenting opinion and the main arguments that the Government asserted during oral argument.[57] The government put forth three main arguments: first, that by entering a guilty plea, Class inherently relinquished his constitutional claims; second, both the Government and Justice Alito pointed to Rule 11(a)(2) of the Federal Rules of Criminal Procedure, which govern "conditional" guilty pleas, and both asserted that the rule should apply in the case; and third, the Government argued that Class "expressly waived" his right to appeal his constitutional claim.[58]

Addressing the first argument, Justice Breyer pointed out that the Government was correct; a guilty plea does implicitly waive some claims, including some constitutional claims; however, he asserted that he fully explained in his analysis that Class' valid guilty plea did not, by itself, bar direct appeal of his constitutional claims in these circumstances.[59] Justice Breyer listed the rights that a valid guilty plea does waive, and then noted that the rights do not include a waiver of privileges that exist beyond the confines

51. *Class*, 138 S. Ct. at 804.
52. *Id.*
53. *Id.*
54. *See id.* at 804-05. (Comparing *Class* to *Blackledge*).
55. *Class*, 138 S. Ct. at 805.
56. *Id.* at 807.
57. *Id.* at 805.
58. *See id.* at 805-06.
59. *Class*, 138 S. Ct. at 805.

of a trial.[60] In doing so, Justice Breyer asserted that Class' right to appeal his conviction could not in any way be characterized as part of a trial.[61]

Additionally, Justice Breyer went on to list certain things that cannot be appealed by stating a valid guilty plea prevents the defendant from appealing the constitutionality of case-related government conduct that takes place before the plea is entered, and neither can a defendant later appeal that the indicting grand jury was unconstitutionally selected, and that a valid guilty plea relinquishes any claim that would contradict the admission made upon a voluntary plea of guilty.[62] Justice Breyer reaffirmed that none of those claims were at issue in *Class*,[63] but noted Class' constitutional claims at issue were consistent with his admission that he engaged in the conduct alleged, unlike the defendants in *Broce*.[64] Like the defendants in *Blackledge* and *Menna*, Class sought to raise a claim based on the existing record that would extinguish the government's power to constitutionally prosecute him, and he did not attempt to proffer evidence from outside the record.[65]

Next, Justice Breyer addressed the second argument put forth by the Government and the dissent, that Rule 11(a)(2) of the Federal Rules of Criminal Procedure should govern the conditional guilty plea and resolve the issue of the case.[66] The Government and the dissent argued Rule 11(a)(2) meant that a defendant who plead guilty could not challenge their conviction on appeal on forfeitable or waivable grounds that they either failed to present to the district court or failed to reserve in writing.[67] Justice Breyer noted that the dissent pointed to the suggestion that an unconditional guilty plea constituted a waiver of "nonjurisdictional defects," while the Government pointed to the statement that drafters intended the Rule's plea procedure to

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60. *See Class*, 138 S. Ct. at 805 (quoting Ruiz, 536 U.S. at 628-629 ("A valid guilty plea forgoes not only a fair trial, but other constitutional guarantees."); McCarthy v. United States, 394 U.S. 459, 466 (1969) ("[S]imultaneously relinquished rights include the privilege against compulsory self-incrimination, the jury trial, and the right to confront accusers.")).

61. *Class*, 138 S. Ct. at 805 (citing Lafler v. Cooper, 566 U.S. 156, 165 (2012)).

62. *See id.* (citing, Haring v. Prosise, 462 U.S. 306, 321 (1983); Tollett v. Henderson, 411 U.S. 258, 266 (1973); *Broce*, 488 U.S. at 573-74).

63. *Class*, 138 S. Ct. at 805.

64. *See Broce*, 488 U.S. at 565 (defendants denied engaging in the conduct alleged in the indictment).

65. *Class*, 138 S. Ct. at 805-06.

66. *See Class*, 138 S. Ct. at 806, *see also* FED. R. CRIM. P. 11(a)(2) states:

> Conditional Plea. With the consent of the court and the government, a defendant may enter a conditional plea of guilty or nolo contendere, reserving in writing the right to have an appellate court review an adverse determination of a specified pretrial motion. A defendant who prevails on appeal may then withdraw the plea.

67. *Class*, 138 S. Ct. at 806.

conserve prosecutorial and judicial resources to ensure the speedy trial objective and supporting uniformity within the federal system.[68]

The Government added that its interpretation of the Rule was that a defendant must use Rule 11(a)(2) to preserve a Fourth Amendment unlawful search-and-seizure claim; therefore, a defendant must use the Rule to preserve the constitutional claim at issue in *Class*.[69] Justice Breyer commented that the problem with the Government's argument was that the Rule itself did not set forth the procedure for a defendant to preserve a constitutional claim following a guilty plea, and at the same time the drafters acknowledged that the Court has held certain kinds of constitutional objections could be raised after a plea of guilty.[70] Furthermore, Justice Breyer pointed out that the advisory notes specifically refer to the Menna-Blackledge doctrine, and they specify that the Rule should not be interpreted as either broadening or narrowing the doctrine, and that Rule 11(a)(2) has no application to the kinds of constitutional objections that may be raised under the doctrine.[71] Justice Breyer emphasized that the applicability of the Menna-Blackledge doctrine was at issue in the case, and he relied on *Broce* where that case acknowledged *Menna* and *Blackledge* as covering claims that on the face of the record, the court had no power to enter the conviction or impose the sentence.[72] He declared that Rule 11(a)(2) could not resolve the case.[73]

Finally, Justice Breyer addressed the third argument of the Government, that Class expressly waived his right to appeal his constitutional claim.[74] He made a point in his analysis to show that the Government concede that the written plea agreement between Class and the Government did not contain the expressed waiver.[75] Instead, the Government relied on the statement by the district court judge during the plea colloquy that under the written plea agreement, Class gave up his right to appeal his conviction and that he agreed to the statement.[76] Justice Breyer disagreed with that argument by the Government and asserted that the statement by the district court judge was made to ensure that Class understood the terms of any plea agreement provision waiving the right to appeal or to collaterally attack the sentence.[77]

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68. *Id.*
69. *Id.*
70. *Id.*
71. *Class*, 138 S. Ct. at 806.
72. *Id.*
73. *Id*.
74. *Id.*
75. *Class*, 138 S. Ct. at 807.
76. *Id.*
77. *Id. See also* FED. R. CRIM. P. 11(b)(1)(N), which states:

> Advising and Questioning the Defendant. Before the court accepts a plea of guilty or nolo contendere, the defendant may be placed under oath, and the court must address the defendant

Concluding, Justice Breyer held that under the circumstances, Class' agreement neither expressly nor implicitly waived his right to appeal his constitutional claims; therefore, he could pursue his claims on direct appeal.[78]

C. Dissenting Opinion by Justice Alito

Justice Alito, with whom Justices Kennedy and Thomas joined, dissented from the majority's analysis and rationale pertaining to the Court's use of the Menna-Blackledge doctrine.[79] Justice Alito disagreed with how the Court came to its conclusion and proclaimed that the majority provided no clear answer and left the area of law muddled by its decision pertaining to what claims a defendant can raise on appeal after entering a guilty plea.[80] He claimed that the issue before the Court was not complex and all the majority needed to do was answer three simple questions: (1) whether the Federal Constitution precluded waiver; (2) if permitted, whether some other law barred waiver; and (3) if not barred by another law, whether the defendant knowingly and intelligently waived their right to raise the claim on appeal.[81]

Answering the first question, Justice Alito argued that the Constitution does not prohibit the waiver of the rights that Class asserted, and the Court has held that most personal constitutional rights may be waived.[82] Additionally, Justice Alito proclaimed that there is no federal statute or rule that bars waiver.[83] Lastly, the question of whether Class voluntarily and intelligently waived his rights was not within the scope of the question of law on which the Court granted certiorari and the majority did not decide the case on that ground, so Justice Alito did not address it.[84]

Justice Alito turned his attention to the majority's reliance on the Menna-Blackledge doctrine.[85] He asserted that *Blackledge* and *Menna* represented departures from prior decisions and that the Court's precedents were clear, that "when a defendant plead guilty to a crime, he relinquished his right to litigate all challenges to his conviction (except for the claim that his plea was not voluntary and intelligent), and the prosecution could assert this forfeiture to defeat a subsequent appeal."[86] He noted that the theory was easy to

personally in open court. During this address, the court must inform the defendant of, and determine that the defendant understands, the following: (N) the terms of any plea agreement provision waiving the right to appeal or to collaterally attack the sentence.

78. *Class*, 138 S. Ct. at 807.
79. *Id.* at 807 (Alito, J., dissenting).
80. *Id.*
81. *Id.* at 807-08 (citing McMann v. Richardson, 397 U.S. 759, 766 (1970)).
82. *Class*, 138 S. Ct. at 808 (citing Peretz v. United States, 501 U.S. 923, 936-937 (1991)).
83. *Id.*
84. *Id.* at 809.
85. *Id.*
86. *Class*, 138 S. Ct. at 809 (quoting *Tollett*, 411 U.S. at 267).

understand and the Court's view was asserted in *Tollett v. Henderson*,[87] "a guilty plea represents a break in the chain of events which has preceded it in the criminal process."[88]

Furthermore, the defendant's decision to plead guilty ended their right to litigate any defense or constitutional claim they might have pursued at trial or on appeal.[89] Justice Alito further asserted that guilty pleas were understood to include both factual and legal concessions, and that the Court stated in *Tollett* that a defendant who plead guilty was barred from contesting not only facts, but also the constitutional significance of those facts, even if they failed to appraise that significance at the time of their plea.[90]

Justice Alito next declared that when *Tollett* declared that a guilty plea encompassed all legal and factual concessions needed to authorize the conviction, it was just reemphasizing the Court's precedent in the so-called "Brady Trilogy."[91] The Brady Trilogy consists of *Brady v. United States, Parker v. North Carolina,* and *McMann v. Richardson*.[92] The trilogy can be summed up in the holding noted from *Tollett* but can also mean that a plea of guilty is more than a confession which admits that the accused did various acts; it is itself a conviction, and nothing remains but to give judgment and determine punishment.[93] On the strength of that rule, Justice Alito noted that the Court's precedent held defendants who plead guilty forfeited a variety of constitutional claims.[94] That is where the law stood before the decision handed down in *Class*.[95]

Justice Alito concluded that the majority, instead of clarifying the law, actually sowed new confusion by parroting the rule set out in Menna-Blackledge that the only arguments waived by a guilty plea are those that contradict the facts alleged in the charging document, even though that rule

87. *Tollett v. Henderson*, 411 U.S. 258 (1973).

88. *Class*, 138 S. Ct. at 809 (quoting *Tollett*, 411 U.S. at 267).

89. *Id.*

90. *Class*, 138 S. Ct. at 809.

91. *Id.* at 810.

92. *See id.* at 810. *See also* Brady v. United States, 397 U.S. 742, 748 (1970) ("[T]he plea is more that an admission of past conduct; it is the defendant's consent that judgement of conviction be entered"); McMann v. Richardson, 397, U.S. 759, 774 (1970) ("a defendant who pleads guilty assumes the risk of error in either his or his attorney's knowledge of the law and facts"); Parker v. North Carolina, 397 U.S. 790, 797 (1970) (similar to McMann).

93. *Class*, 138 S. Ct. at 810 (quoting Boykin v. Alabama, 395, U.S. 238, 242 (1969)).

94. *See id.* at 810. *See generally Tollett*, 411 U.S. at 266 (holding that a defendant who pleaded could not attack their conviction on the ground that the prosecution violated the Equal Protection Clause by excluding African-Americans from grand juries); *McMann*, 397 U.S. at 768 (holding that a defendant could not argue that the prosecution unlawfully coerced their confession, even if the confession was the only evidence supporting conviction); *Brady*, 397 U.S. at 756-57 (holding that a defendant could not assert that his statute of conviction employed an unconstitutional penalty provision; his consent to be punished under the statute precluded this defense).

95. *Class*, 138 S. Ct. at 814.

is inconsistent with *Tollett* and the Brady Trilogy.[96] Justice Alito alluded that a reading of the decision in *Class* would permit a defendant who pleads guilty to raise an uncertain assortment of claims never before thought to survive a guilty plea.[97] Summing up, he asserted that the governing law in *Class* is Rule 11 of the Federal Rules of Criminal Procedure and under that rule, an unconditional guilty plea waives all nonjurisdictional claims with the possible exception of the Menna-Blackledge doctrine.[98] Justice Alito then concluded that the doctrine is "vacuous, and has no sound foundation, and produces nothing but confusion" and at a minimum, would limit the doctrine to the particular of claims involved in those cases and certainly would not expand its reach.[99]

IV. EVALUATION AND ANALYSIS

A. Introduction

In 1970, the Court explained in *Brady* that guilty pleas serve a number of public policies and that the State may justifiably extend a benefit to a defendant who has extended a benefit to the State.[100] By pleading guilty, a defendant can obtain concessions in his probable penalty, begin the correctional process, and be rid of the burdens of a trial.[101] For the State, avoiding a trial preserves scarce resources so that they can be used in cases dealing with substantial questions.[102] For these reasons, and others, the Court had encouraged fair plea bargaining and a waiver of certain rights.[103]

To comport with due process, the Court required that waivers of constitutional rights in guilty pleas be voluntary, knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences.[104] Rule 11 of the Federal Rules of Criminal Procedure provides additional guidelines.[105] Within the guidelines the trial courts must determine that the defendant understands their guilty plea, waives certain constitutional rights, and that the plea was not a result of force or threat.[106] Even in the absence of express waivers, a guilty plea constitutes an admission of factual guilt that forfeits a defendant's ability to raise many, not all, claims

96. *Id.*
97. *Id.*
98. *Id*. at 816.
99. *Class*, 138 U.S. at 816.
100. Alexandra W. Reimelt, Note, *An Unjust Bargain: Plea Bargains And Waiver Of The Right To Appeal*, 51 B.C. L. REV. 871, 874 (May, 2010) (quoting *Brady*, 397 U.S. at 752-53).
101. *Id.*
102. *Id.*
103. *Id.* at 875.
104. *Brady*, 397 U.S. at 748.
105. *See* FED R. CRIM. P. 11(b)(2).
106. *See id.* at 11(b)(1) (A)-(F) and (b)(2).

on appeal.[107] Consequently, a guilty plea sacrifices the defendant's right to appeal independent constitutional violations that occurred prior to the entry of the guilty plea.[108] Later, the Court clarified the rule when it stated that a guilty plea does not waive all prior constitutional violations.[109] It explained that several violations do survive a guilty plea and can be appealed after the taking of the plea, most notably those mentioned in *Blackledge* and *Menna*.[110]

In *Class*, the Court took up the plea bargain issue again and what could be waived by a defendant and what constitutional rights are left after the guilty plea.[111] *Class* ended up expanding the Menna-Blackledge doctrine, holding that a defendant has the right under the Due Process Clause of the Fourteenth Amendment to contest certain issues on appeal even if the defendant entered an unconditional guilty plea, adding that a guilty plea does not bar a federal criminal defendant from challenging the constitutionality of their statute of conviction on direct appeal.[112] The holding by the Court expanded the Rule 11 exception by adding *Class* to the doctrine. The Menna-Blackledge doctrine is the only recognized exception in Rule 11, and by adding *Class* to the doctrine, the majority of the Court expanded it and diverged further away from the Court's precedent set by the Brady Trilogy and *Tollett*.[113]

B. Discussion

1. Class is part of the Federal Criminal Procedure Rule 11 exception in dealing with the waiver of rights of a defendant within a plea agreement.

At the time *Class* was decided, the general rule of the Supreme Court regarding plea bargains was the Brady Trilogy, which held that a defendant who plead guilty waived a variety of important constitutional claims, and the Menna-Blackledge doctrine dealt only with specific factual issues. Justice Alito asserted in his dissent that *Blackledge* and *Menna* diverged from the Court's prior decisions alluding that they were a narrow exception to the rule.[114] *Class* essentially falls within the category of cases that adhere to the narrow exception of the plea bargain rule that conclude a conviction under an

107. *Tollett*, 411 U.S. at 266-67.
108. *Id*. at 267.
109. *Menna*, 423 U.S. at 63, n.2.
110. *See Blackledge*, 417 U.S. at 28 (right to not be deterred from exercising their right to appeal by having a greater charge tacked on); *Menna*, 423 U.S. at 63 (right to the constitutional claim of double jeopardy).
111. *See Class*, 138 S. Ct. at 803.
112. *Id.* at 805.
113. *Id.* at 809.
114. *Id.* at 809.

unconstitutional statute constitutes a constitutional jurisdictional defect, and that a facial challenge could be raised for the first time on appeal.[115] The difference between jurisdictional and nonjurisdictional defects is beyond the scope of this note, but *Class* still falls within the narrow exception that a defendant who plead guilty has the right to challenge their conviction on appeal based on an argument that the statute was unconstitutional.

In support of the narrow exception to the plea bargain rule, two rationales have been offered: (1) American law prohibits the conviction and punishment of a person convicted under an unconstitutional statute and (2) appellate courts are in as a good position as the lower courts to review a purely legal question.[116] First, an unconstitutional statute affects the foundation of the whole proceeding, and a court can only convict under a constitutional statute.[117] The idea that a defendant could go to jail based on a conviction, or guilty plea, secured under an unconstitutional statute simply because the issue was raised for the first time on appeal is contrary to the entire legal system.[118] Second, it has been argued that the appellate courts are as in a good position as the lower courts to hear the constitutional claims because a trial judge will rarely declare a statute unconstitutional and prosecutors will rarely concede the statute is unconstitutional.[119] The Supreme Court has lent some support to the narrow exception with the Menna-Blackledge doctrine, but it is doubtful that *Class* will move the doctrine into an exception of the general rule, but will remain in the narrow exception.[120]

Class will likely not push the Menna-Blackledge doctrine into a general exception because the case was decided on case-specific factual issues. *Blackledge* and *Menna* were both decided on case specifics and not on a generalized rule. *Blackledge* was based on a vindictive prosecutor changing the indictment to a harsher penalty because Blackledge asserted his right to the trial *de novo*.[121] *Menna* was decided because the defendant twice refused to testify to a grand jury, setting up Double Jeopardy.[122] *Class*, as noted, is based on a claim that the statute in question was unconstitutional and therefore the Government did not have the authority to prosecute him.[123]

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115. Ryan Walters, Comment, *Raise It or Waive It? Addressing the Federal and State Split in Authority on Whether a Conviction Under an Unconstitutional Statute is a Jurisdictional Defect*, 62 BAYLOR L. REV. 909, 935 (2010).

116. *Id.* at 936.

117. *Id*.

118. *Id.* at 937.

119. *See* Walters, *supra* note 115, at 938.

120. *Id.* at 938-39.

121. *See Blackledge*, 417 U.S. at 22-23.

122. *See Menna*, 423 U.S. at 61-62.

123. *See Class*, 138 S. Ct. at 805.

All three cases were decided on factual issues, while Justice Alito's dissent points out that the Court's precedent is based on a rule that lower courts can follow—that rule being when a defendant pleads guilty, they waive certain rights, and some of those rights are the right to appeal certain claims.[124] *Class* does not follow that rule. It allows appeal of a claim that the statute of conviction was unconstitutional—a fact that would be specific to the case and not to a general rule.[125]

Therefore, *Class* may expand the Menna-Blackledge doctrine by adding another specific incident of a right that is not waived with a guilty plea, but essentially it does little to push or emphasize an exception to the general rule, falling into the Menna-Blackledge exception, leaving the Brady Trilogy as the existing rule because it can apply in most cases; that a defendant who plead guilty waived all constitutional rights and defenses.[126] It is an easier and more simplified rule for courts to follow which would leave the impact of *Class* on plea bargaining to a minimal.[127]

2. Effect of Class on Plea Bargains

Since the decision was handed down on February 21, 2018, the impact of *Class* on the judicial and criminal system has been slow. Only a handful of cases have mentioned *Class* and only one has had to directly deal with it.[128] In *Lee v. United States*,[129] the United States District Court for the District of Arizona gave a great analysis of the effect that *Class* has had on the system.[130]

Class turned on deciding when claims based on antecedent constitutional violations are automatically waived by a guilty plea, and when they are not.[131] The court quoted the holding that the Supreme Court concluded when a claim challenges the Government's power to criminalize the defendant's admitted conduct, and thereby call into question the Government's power to constitutionally prosecute him, "a guilty plea does not bar a direct appeal."[132] The court went on and emphasized most constitutional challenges do continue to be waived by an unconditional guilty plea.[133] The issue in *Lee*

124. *See generally id.* at 809 (Alito, J., dissenting) (discussing how prior Court precedent was easy to understand).

125. *See generally id.* at 816 (Alito, J., dissenting) (concluding that *Class* dealt with a specific issue like the cases of *Blackledge* and *Menna* and that he, Justice Alito, would limit the Court's ruling to case specific analysis and not a broad principle).

126. *See generally* Walters, *supra* note 115, at 935-40 (discussing the minority approach to unconditional waivers within a guilty plea).

127. *Class*, 138 S. Ct. at 809 (Alito, J., dissenting)

128. *See infra* notes 132-49 and accompanying text.

129. *Lee v. United States*, 2018 U.S. Dist. LEXIS 113441 (D. AZ. July 6, 2018).

130. *Id.* at 20.

131. *Id.*

132. *Id.* at 20-21.

133. *Lee*, 2018 U.S. Dist. LEXIS 113441 at 21.

was the plea agreement contained an explicit waiver, [134]while in *Class*, the plea agreement did not contain an explicit waiver and the Government conceded that it did not.[135] In contrast, the Government in *Lee* had not explicitly conceded that the defendant's explicit waiver did not extend to the claims he raised in his Motion to Vacate.[136] The court in *Lee* then concluded that nothing in *Class* held that such a waiver could not be made or would be unenforceable.[137]

The court in *Lee* added to its analysis by mentioning that counsel had not been able to identify any circuit court cases that have explicitly applied *Class* to refuse enforcement of an explicit waiver in a plea agreement.[138] The court went on to mention several cases and their application of *Class*. First, *United States v. Bacon*[139] applied *Class* to permit a challenge but found no explicit waivers.[140] Next in *United States v. St. Hubert*,[141] the Eleventh Circuit applied *Class* to permit challenge, but with no explicit waiver identified.[142] The *Lee* court noted that one Ninth Circuit case at least approached the issue presented in *Class* in *United States v. Obak*.[143]

The Ninth Circuit addressed a pleading defendant's venue challenge, concluding that the claim would have been waived by entry of the guilty plea, but the Government waived the defense by failing to raise it.[144] In a footnote, the Ninth Circuit observed that the defendant had, in the plea agreement, explicitly waived various constitutional rights and the right to an appeal or collateral attack, but the defendant failed to raise any of them on appeal.[145] The court in *Obak* concluded that the Supreme Court in *Class* did not change the result.[146] Turning back to the court in *Lee*, they surmised that the Ninth Circuit decision could be read as recognition that *Class* did not affect the enforceability of explicit waivers.[147] Lastly, the *Lee* court found a District Court case that directly addressed the issue in *Class* which held that it did not alter the enforceability of explicit waivers.[148]

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134. *Id.*
135. *Class*, 138 St. C. at 807.
136. *Lee*, 2018 U.S. Dist. LEXIS 113441, at 21.
137. *Id.*
138. *Id.*
139. United States v. Bacon, 884 F.3d 605 (6th Cir. 2018).
140. *See id.*
141. United States v. St. Hubert, 883 F.3d 1319 (11th Cir. 2018).
142. *See id.*
143. *See* United States v. Obak, 884 F.3d 934 (9th Cir. 2018).
144. *Id.* at 937.
145. *Id* at n.1.
146. *Id.*
147. *Lee*, 2018 U.S. Dist. LEXIS 113441, at 22.
148. *See* Khan v. United States, CR No. 12-2901 RB/CG; CV No. 17-0744 RB, 2018 U.S. Dist. LEXIS 92934, at 35 (D.N.M. May 31, 2018).

The court in *Lee* concluded its analysis of the effect that *Class* has had by noting that the Ninth Circuit has had a longstanding enforcement of explicit waivers that extend beyond the claims waived by the guilty plea, and the limited decision in *Class* does not prevent the enforcement of explicit waivers of pre-existing challenges to the conviction, even if based on the unconstitutionality of the statute of conviction.[149] Therefore, the impact of *Class* has not been dramatic.

3. Effect of Class Going Forward

Noting how courts have dealt with *Class* since the decision was handed down, it seems that *Class* has not had a major impact. *Lee* and all the subsequent circuit court decisions have hinted that the only impact *Class* is likely to have is that U.S. Attorneys will push to include expressed waivers in future plea bargains. The circuit courts discussed above have not directly dealt with *Class* but instead have gone to lengths to prove that it did not apply in their situation.[150] The courts shied away from a direct confrontation with *Class* and decided to steer around it.[151] The long-term effect will likely not be seen in the courts but at the plea bargain tables, where prosecutors and defense attorneys bargain away the rights of the defendant. It is in those bargaining rooms and phone calls that *Class*' impact will happen.

The Ninth Circuit, noted above, held the decision in *Class* did not prevent the enforcement of explicit waivers of pre-existing challenges to the conviction, even if based on the unconstitutional statute of conviction.[152] Over 95% of all criminal cases are decided with a plea bargain because the system is back logged, and attorneys have more cases than they can handle.[153] Explicit waivers will become even more important at the bargaining table.[154] The idea of a plea bargain is to provide efficiency and quick resolution to the case for both the defendant and the State.[155] Allowing defendants to appeal convictions after a guilty plea adds increased burdens to the system and does not quickly resolve the case.[156] Therefore, U.S. Attorneys will push harder during the plea bargaining for more explicit waivers, including the waiver of the right to appeal.

149. *Lee*, 2018 U.S. Dist. LEXIS 113441, at 23.

150. *See generally Lee*, 2018 U.S. Dist. LEXIS 113441, at 21-23 (explaining how only the Ninth Circuit decision in *Obak* came close to addressing the holding in *Class*, but no other circuit had been identified as applying *Class*).

151. *Id.*

152. *Lee*, 2018 U.S. Dist. LEXIS 113441, at 23.

153. *See Class*, 138 S. Ct. at 807, *see also* Reimelt, *supra* note 100, at 881.

154. *Class*, 138 S. Ct. at 807.

155. *See* Walters, *supra* note 115, at 934.

156. *Id.*

The defendant may choose to waive certain rights as part of their plea agreement.[157] Any right can be waived, as long as it is knowing and voluntary, unless specifically prohibited by statute.[158] The waiver of the right to appeal has been upheld as a valid provision of a plea agreement.[159] *Class* held that the waiver would not be valid if there was a showing that constitutional due process safeguards were missing.[160] Therefore, the effect of *Class* on plea bargains will likely result in more defendants waiving their right to appeal.

V. CONCLUSION

Plea bargains are a crucial aspect to criminal law. While not mandated, they serve the greater purpose of promoting efficiency and quick resolution. The decision in *Class* has expanded the narrow exception to Rule 11 surrounding plea bargains by adding a new dimension to the Menna-Blackledge doctrine. While *Class* and those decisions of the doctrine dealt with factual issues, the holding from the case will not have a great impact on the lower courts or the plea-bargaining process. The general rule that defendants can waive their rights upon a guilty plea as long as it is knowingly and voluntarily agreed to will continue to be the normal procedure.

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157. 6 CRIMINAL DEFENSE TECHNIQUES § 116.01 (ROBERT M. CIPES et al. eds., Matthew Bender & Co., 2018).
158. *Id*.
159. *See* Reimelt, *supra* note 100, at 875.
160. *See Class*, 138 S. Ct. at 805.