No. 18-5771

IN THE SUPREME COURT OF THE UNITED STATES

JIM WALTER QUALLS, JR., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether, under 28 U.S.C. 636(b)(3), a magistrate judge may, with a criminal defendant's consent, accept a guilty plea to a felony offense.

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OPINION BELOW

The order of the court of appeals (Pet. App. 1-12) is not published in the Federal Reporter but is available at 2018 WL 3414584.

JURISDICTION

The judgment of the court of appeals was entered on July 12, 2018. The petition for a writ of certiorari was filed on August 22, 2018. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a guilty plea in the United States District Court for the District of New Mexico, petitioner was convicted on four counts of production of child pornography, in violation of 18 U.S.C. 2251(a), 2251(e), and 2256. Judgment 1. The district court sentenced him to 200 years of imprisonment, to be followed by supervised release for life. Judgment 2-3. The court of appeals affirmed. Pet. App. 1-12.

1. In 2014, federal agents executed a warrant to search petitioner's residence for evidence relating to child pornography. Compl. 2; Pet. App. 2. After waiving his Miranda rights, petitioner admitted that he had taken nude photographs of his three-year-old daughter, uploaded those photographs to the internet, and corresponded with other individuals by email to trade images of his daughter for images of other children engaged in sexual conduct. Pet. App. 2.

2. A grand jury in the United States District Court for the District of New Mexico returned an indictment charging petitioner with four counts of production of child pornography, in violation of 18 U.S.C. 2251(a), 2251(e), and 2256. Indictment 1-2. Petitioner agreed to plead guilty. Pet. App. 2.

On May 7, 2015, petitioner and his counsel signed a consent form indicating that petitioner "[w]aive[d] * * * [his] right to enter [his] plea before a United States District Judge" and "consent[ed] to entering [his] plea, knowingly and voluntarily,

before a United States Magistrate Judge." D. Ct. Doc. 30, at 1 (emphasis omitted). On the same day, petitioner appeared at a plea hearing before a magistrate judge. Plea Tr. 1-20. At the hearing, the magistrate judge confirmed that petitioner had discussed the consent form with his attorney and that he had voluntarily signed the form. Pet. App. 2-3; see Plea Tr. 2, 8-9. The magistrate judge further confirmed that petitioner understood that he could face up to 50 years of imprisonment on each of the four counts. Pet. App. 3.

Petitioner pleaded guilty to all four counts. Plea Tr. 19. Following an extensive colloquy with petitioner, see id. at 7-9, 10-14, 16, 19, the magistrate judge found that petitioner was competent and capable of entering an informed plea; that he was aware of the nature of the charges against him and the consequences of his plea; and that his plea was knowing and voluntary, see id. at 19-20. The magistrate judge then stated: "I hereby accept your pleas of guilt and I now adjudge you guilty of each of the crimes in your indictment." Id. at 20.

3. Prior to sentencing, petitioner moved to withdraw his guilty plea. Pet. App. 3. Notwithstanding that the magistrate judge had, with his consent, accepted the plea, petitioner argued (as relevant here) that he was entitled to withdraw his plea under Federal Rule of Criminal Procedure 11(d)(1), which provides that a defendant may withdraw his guilty plea "before the court accepts the plea, for any reason or no reason." He contended that the

magistrate judge's acceptance was ineffective because only district judges have the authority to accept guilty pleas. Pet. App. 3. Petitioner also argued, in the alternative, that he had shown a "fair and just reason" to withdraw his plea under Federal Rule of Criminal Procedure 11(d)(2)(B) because he wished to challenge the admissibility of his post-arrest statements. Id. at 3-4.

The district court denied petitioner's motion to withdraw his guilty plea. Sealed Mem. Op. & Order 1. The court explained that, under Tenth Circuit precedent, a magistrate judge may, with the defendant's consent, accept a guilty plea to a felony offense. Id. at 4-5 (citing United States v. Ciapponi, 77 F.3d 1247, 1251-1252 (10th Cir.), cert. denied, 517 U.S. 1215 (1996)). Thus, petitioner was not permitted to withdraw his guilty plea "for any reason or no reason" under Rule 11(d)(1), because petitioner's plea had already been accepted. Id. at 4-5, 8 (citation omitted). The district court also rejected petitioner's argument that he had shown a "fair and just" reason to withdraw his plea under Rule 11(d)(2)(B). Id. at 5-8 (citation omitted).

4. The court of appeals affirmed in an unpublished decision. Pet. App. 1-12. Like the district court, it found that petitioner could not invoke Rule 11(d)(1) to withdraw his plea "for any reason or no reason" because that rule applies only "before the court accepts" the plea, Fed. R. Crim. P. 11(d)(1), and "the record reveals that before [petitioner] moved to * * *

withdraw his plea, the magistrate judge had accepted it," Pet. App. 4-5. The court of appeals also rejected petitioner's argument that the magistrate judge lacked the authority to accept his plea. Id. at 5-7. The court adhered to its previous determination that, "with a defendant's express consent, the broad residuary 'additional duties' clause of the [Federal] Magistrates Act authorizes a magistrate judge to conduct a Rule 11 felony plea proceeding, and such does not violate the defendant's constitutional rights." Id. at 5 (quoting United States v. Salas-Garcia, 698 F.3d 1242, 1253 (10th Cir. 2012)); see 28 U.S.C. 636(b)(3) ("A magistrate judge may be assigned such additional duties as are not inconsistent with the Constitution and laws of the United States."). The court also determined that petitioner had knowingly and voluntarily pleaded guilty and that he had failed to demonstrate any "fair and just reason" under Federal Rule of Criminal Procedure 11(d)(2)(B) that would permit withdrawal of his plea after it was accepted. Pet. App. 7-12.

ARGUMENT

Petitioner contends (Pet. 8-16) that, under the Federal Magistrates Act, 28 U.S.C. 631 et seq., a magistrate judge lacks the authority to accept a felony guilty plea, even with the defendant's express consent. Petitioner's contention lacks merit. Although the Seventh Circuit has accepted that contention, no other court of appeals has done so; three have long rejected it. That shallow and relatively recent conflict does not warrant the Court's

review in this case. Petitioner failed to raise (and the court of appeals did not address) any argument concerning the potential relevance of Federal Rule of Criminal Procedure 59, which specifies which matters may be referred to a magistrate judge, and the overall issue has limited prospective importance in light of the government's 2016 adoption of a new policy regarding plea proceedings before a magistrate judge. The Court has repeatedly and recently denied petitions for writs of certiorari presenting similar questions. See Farmer v. United States, 136 S. Ct. 794 (2016) (No. 15-182); Ross v. United States, 136 S. Ct. 794 (2016) (No. 15-181); Marinov v. United States, 135 S. Ct. 1843 (2015) (No. 14-7909); Benton v. United States, 555 U.S. 998 (2008) (No. 08-5534). It should follow the same course here.[1]

1. The court of appeals correctly determined that a federal magistrate judge may accept a guilty plea to a felony offense when the defendant expressly consents to proceed before the magistrate, as petitioner did here.

a. Magistrate judges are non-Article III judges who are appointed (and removable for cause) by district courts. 28 U.S.C. 631(a) and (i). They are authorized by statute to perform certain enumerated tasks, such as "enter[ing] a sentence for a petty offense," 28 U.S.C. 636(a)(4), or, upon designation of the district court, determining certain pretrial matters (subject to clear-

[1] The pending petition for a writ of certiorari in Chiddo v. United States, No. 18-5945 (filed Sept. 6, 2018), presents a similar question.

error review) and conducting hearings and submitting proposed findings of fact and conclusions of law (subject to de novo review upon objection by the parties), see 28 U.S.C. 636(b)(1)(A) and (B). District courts may also designate magistrate judges to perform other enumerated functions, such as presiding over a civil trial or a misdemeanor trial, with the consent of the parties. 18 U.S.C. 3401(a); 28 U.S.C. 636(a)(3) and (c)(1).

Magistrate judges may also "be assigned such additional duties as are not inconsistent with the Constitution and laws of the United States." 28 U.S.C. 636(b)(3). Provided that the litigants consent, such additional duties may include any duties that are "comparable in responsibility and importance" to the duties specified in the statute, such as supervising "entire civil and misdemeanor trials." Peretz v. United States, 501 U.S. 923, 933 (1991). In Peretz, the Court held that Section 636(b)(3) permits a magistrate judge to supervise felony voir dire with the parties' consent. Id. at 935-936. The Court later reaffirmed Peretz's holding in Gonzalez v. United States, 553 U.S. 242, 246 (2008).[2]

Since Peretz, the courts of appeals have consistently recognized that, under Section 636(b)(3), a magistrate judge may,

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[2] Peretz also determined that "allowing a magistrate judge to supervise jury selection -- with consent -- does not violate Article III." Wellness Int'l Network, Ltd. v. Sharif, 135 S. Ct. 1932, 1943 (2015) (citing Peretz, 501 U.S. at 936). Petitioner does not raise any constitutional challenge to the magistrate judge's acceptance of his plea. See Pet. 7.

with the parties' consent, preside over a felony guilty-plea colloquy under Rule 11 and recommend that the district court accept the plea. See United States v. Harden, 758 F.3d 886, 891 (7th Cir. 2014); United States v. Woodard, 387 F.3d 1329, 1331-1333 (11th Cir. 2004) (per curiam), cert. denied, 543 U.S. 1176 (2005); United States v. Osborne, 345 F.3d 281, 285-288 (4th Cir. 2003); United States v. Reyna-Tapia, 328 F.3d 1114, 1119-1122 (9th Cir.) (en banc), cert. denied, 540 U.S. 900 (2003); United States v. Torres, 258 F.3d 791, 794-796 (8th Cir. 2001); United States v. Dees, 125 F.3d 261, 264-269 (5th Cir. 1997), cert. denied, 522 U.S. 1152 (1998); United States v. Williams, 23 F.3d 629, 632-634 (2d Cir.), cert. denied, 513 U.S. 1045 (1994).

In recognizing that magistrate judges have such authority, courts have observed that presiding over a plea colloquy entails far less discretion than other duties that magistrate judges perform with consent, such as "conduct[ing] entire civil and misdemeanor trials" and supervising felony voir dire proceedings. Woodard, 387 F.3d at 1332-1333; see Osborne, 345 F.3d at 288; Williams, 23 F.3d at 633. Presiding over such colloquies is also "less complex" than many duties that magistrate judges perform even without consent, including making probable-cause determinations in preliminary hearings and conducting evidentiary hearings followed by recommendations for disposition by a district court. Williams, 23 F.3d at 632-633; see Reyna-Tapia, 328 F.3d at 1120; Dees, 125 F.3d at 265-266.

b. Petitioner does not dispute that magistrate judges may, with the parties' consent, preside over plea colloquies in felony cases. Petitioner contends (Pet. 8), however, that Section 636(b)(3) prevents magistrate judges from concluding the plea colloquy by accepting a plea.

Nothing in Section 636(b)(3) imposes such a limitation. Accepting a guilty plea after conducting the colloquy required by Rule 11 is "comparable in responsibility and importance," Peretz, 501 U.S. at 933, to other duties the statute permits magistrate judges to perform with the parties' consent. As the Fourth Circuit has explained, "the acceptance of a plea is merely the natural culmination of a plea colloquy," United States v. Benton, 523 F.3d 424, 431, cert. denied, 555 U.S. 998 (2008), which petitioner does not dispute may be conducted by a magistrate judge. "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." Id. at 432. The plea-acceptance process is comprehensively governed by Rule 11, which explains "what a court must inquire about, what it should advise a defendant and what it should determine before accepting a plea." Woodard, 387 F.3d at 1332 (quoting Williams, 23 F.3d at 632).

Here, for example, before accepting petitioner's plea as petitioner had consented for the magistrate judge to do, the

magistrate judge informed petitioner of precisely the matters required by Rule 11(b). Those matters included that petitioner had a right to plead not guilty and to proceed to a jury trial; that, at trial, he would enjoy the presumption of innocence and would have the right to counsel, the right to confront the witnesses against him, and the right to present a defense; and that petitioner would waive those and other rights by entering a plea of guilty. Plea Tr. 3-4; see also id. at 7-20 (additional colloquy); cf. Fed. R. Crim. P. 11(b)(1) and (2). The colloquy also included an extensive discussion of the sentence he might face. See Pet. App. 3. Petitioner does not identify any defect in the plea colloquy, nor any persuasive reason to view the acceptance of his plea, with his consent, as anything other than "an ordinary garden variety type of ministerial function that magistrate judges commonly perform on a regular basis." Williams, 23 F.3d at 632.

Once his guilty plea was accepted, petitioner was not entitled to withdraw his plea for "any reason or no reason" at all under Federal Rule of Criminal Procedure 11(d)(1), but instead was required to show "a fair and just reason" for withdrawing his plea under Federal Rule of Criminal Procedure 11(d)(2)(B). A contrary rule attaching no legal significance to the magistrate judge's acceptance of the plea would, "in essence, * * * grant defendants a dry run or dress rehearsal," allowing them to "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." Benton, 523 F.3d at 432; cf. United States v. Hyde, 520 U.S. 670, 677 (1997) (stating that allowing a defendant to withdraw his guilty plea for no reason after acceptance "would degrade the otherwise serious act of pleading guilty into something akin to a move in a game of chess").

2. This Court has repeatedly declined to review the question petitioner presents. See p. 6, supra. As petitioner notes (Pet. 12) a conflict -- albeit one that is much shallower than petitioner suggests -- exists in the courts of appeals about whether magistrate judges have the statutory authority to not only conduct a plea colloquy but also then accept the defendant's plea. That limited conflict does not warrant this Court's review.

The Fourth and Tenth Circuits have recognized that magistrate judges have statutory authority to accept a plea with the defendant's consent, as long as the district court retains "ultimate control * * * over the plea process." Benton, 523 F.3d at 433; see Pet. App. 5 (citing United States v. Salas-Garcia, 698 F.3d 1242, 1253 (10th Cir. 2012), and United States v. Ciapponi, 77 F.3d 1247, 1251 (10th Cir.), cert. denied, 517 U.S. 1215 (1996)).[3] The Eleventh Circuit has similarly determined that

[3] Benton determined that the district court necessarily retained such control because "[d]efendants with substantive or procedural concerns about their plea proceedings before a magistrate judge are entitled to de novo review in the district court." 523 F.3d at 432; see ibid. ("While the standard of review is de novo, the substantive rule of decision is whether the

"a magistrate judge has the authority under the 'additional duties' clause of [the Federal Magistrates Act] to conduct Rule 11 proceedings when the defendant consents," although the district court must "retain[] the ability to review the Rule 11 hearing if requested." Woodard, 387 F.3d at 1333-1334.

The Seventh Circuit, however, has concluded that, after presiding over a plea colloquy, a magistrate judge may only submit a recommendation about whether the plea should be accepted. See Harden, 758 F.3d at 888-889, 891. The Fourth Circuit is the only court of appeals that has had occasion to respond to that aspect of Harden, and it has done so only in unpublished decisions. See United States v. Shropshire, 608 Fed. Appx. 143, 144 (2015) (per curiam); United States v. Ross, 602 Fed. Appx. 113, 114 (2015) (per curiam), cert. denied, 136 S. Ct. 794 (2016); United States v. Farmer, 599 Fed. Appx. 525, 526 (2015) (per curiam), cert. denied, 136 S. Ct. 794 (2016).

Petitioner contends (Pet. 11-14) that other circuits agree with the Seventh Circuit that Section 636(b)(3) does not permit magistrate judges to accept felony guilty pleas. But the cases he cites do not support that proposition. In United States v. Dávila-Ruiz, 790 F.3d 249 (2015), the First Circuit found no need to address Harden, because the magistrate judge in Dávila-Ruiz had only made a recommendation that the guilty plea be accepted by the

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defendant has established a 'fair and just' reason to withdraw his plea after the magistrate judge has accepted it.").

district court and the question presented was whether that recommendation in itself constituted an acceptance for purposes of Rule 11. Id. at 250, 252-253. The court of appeals expressly declined to address the question whether a magistrate judge has the statutory authority to accept a guilty plea, explaining that, "even if magistrate judges can, by consent, accept pleas in felony cases, that is not what happened here." Id. at 253. The Fifth Circuit's decision in United States v. Arami, 536 F.3d 479 (2008), likewise addressed the question whether a magistrate judge's recommendation to accept a guilty plea constituted an acceptance of that plea. Id. at 481.

Petitioner asserts (Pet. 11-12) that cases holding that a magistrate judge may make a recommendation about the acceptance of a guilty plea necessarily stand for the proposition that a magistrate judge lacks the statutory authority to accept a felony guilty plea. As noted above, however, the First Circuit disclaimed that logic in Dávila-Ruiz, which expressly reserved the latter issue while deciding the former. See 790 F.3d at 253. The decisions petitioner cites simply recognize a magistrate judge's ability to conduct a plea colloquy and make a report and recommendation about acceptance of the plea; they do not, even by implication, address the question whether a magistrate judge may also accept a felony guilty plea. See Pet. App. 7 (noting that Dávila-Ruiz and Arami "are not factually on point" and that

"neither case suggests magistrates lack the authority to accept guilty pleas").

The disagreement between the Seventh Circuit and other circuits is undeveloped and lacks significant practical consequences. No court has addressed the question presented en banc, and petitioner did not ask the Tenth Circuit to do so here. The issue whether the plea is accepted by the magistrate judge or by the district court (after a report and recommendation) affects when a defendant may withdraw his guilty plea for "any reason or no reason," Fed. R. Crim. P. 11(d)(1), or only for a "fair and just reason," Fed. R. Crim. P. 11(d)(2)(B). But a district court could consider "a defective plea proceeding before the magistrate judge" to be "[a] 'fair and just' reason" for withdrawing the plea. Benton, 523 F.3d at 432. Thus, the only relevant consequence of allowing a magistrate judge to accept a guilty plea is to eliminate the ability of a defendant to unilaterally withdraw the plea after consenting to proceed before the magistrate judge, participating in a proper plea colloquy, and knowingly and intelligently deciding to plead guilty. Holding such a defendant to the expected and anticipated consequences of his voluntary decisions simply ensures that the plea colloquy is not rendered "a temporary and meaningless formality reversible at the defendant's whim." Hyde, 520 U.S. at 677 (citation omitted). And a defendant is always free not to consent to having a magistrate judge accept his guilty plea.

3. In addition, this case would be a poor vehicle to address the shallow division of authority in the courts of appeals because neither petitioner nor the court below (or indeed any court) has addressed the potential relevance of Federal Rule of Criminal Procedure 59.

Rule 59 prescribes the procedures that should be followed in "Matters Before a Magistrate Judge," and it distinguishes between "[d]ispositive" and "[n]ondispositive" matters. Fed. R. Crim. P. 59(a) and (b). If Rule 59 were held applicable to guilty-plea proceedings, it could have controlling effect on the magistrate judge's role. See, e.g., Dávila-Ruiz, 790 F.3d at 250-251 (suggesting that the magistrate judge's recommendation was consistent with Rule 59(b)(2)); United States v. Moore, 502 Fed. Appx. 602, 603-604 (7th Cir. 2013) (noting that acceptance of pleas "may well" be covered by the rule's provision for "dispositive" matters). But none of the courts that have considered whether Section 636(b)(3)'s additional-duties clause permits magistrate judges to accept guilty pleas upon the consent of the parties has yet considered what limitations, if any, Rule 59 may impose. Although a Rule 59 argument was presented in Harden, the court did not address it. See 758 F.3d at 887.

Because Rule 59's procedures may ultimately affect what magistrate judges may do in this context, regardless of what Section 636(b)(3)'s additional-duties clause otherwise allows, the question presented would benefit from further consideration by the

courts of appeals. Petitioner himself did not invoke Rule 59 in the district court or in the court of appeals; the court of appeals did not address the issue; and it is outside the scope of the question petitioner presents in this Court, which is directed only to a magistrate judge's "statutory authority," Pet. 2 (emphasis omitted). No reason exists for this Court to address the question in the first instance. See Cutter v. Wilkinson, 544 U.S. 709, 718 n.7 (2005) ("[W]e are a court of review, not of first view.").

4. Finally, the question presented has limited prospective importance. Since 2016, as a matter of policy, the Department of Justice has instructed prosecutors to request that magistrate judges not accept felony guilty pleas and instead merely make recommendations to the district court. The magistrate judge accepted this plea in 2015 (see pp. 2-3, supra), before that policy took effect. But the question is unlikely to arise with any frequency in the future.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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