No. 18-5945

IN THE SUPREME COURT OF THE UNITED STATES

DAVID CHIDDO, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the acceptance of petitioner's guilty plea to a felony offense by a magistrate judge, which took place with petitioner's consent, was plainly erroneous.

2. Whether the court of appeals correctly rejected petitioner's claim, raised for the first time on appeal, that the magistrate judge failed to ensure an adequate factual basis for his guilty plea.

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-10a) is not published in the Federal Reporter but is available at 2018 WL 2753311.

JURISDICTION

The judgment of the court of appeals was entered on June 8, 2018. The petition for a writ of certiorari was filed on September 6, 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 Southern District of Florida, petitioner was convicted of conspiracy to possess cocaine with the intent to distribute it, in violation of 21 U.S.C. 846. Pet. App. 11a. The district court sentenced petitioner to 151 months of imprisonment, to be followed by three years of supervised release. Id. at 12a-13a. The court of appeals affirmed. Id. at 1a-10a.

1. Petitioner was a member of a drug trafficking organization in Palm Beach County, Florida, that included his co-defendant Marvin Lester. Pet. App. 35a-36a. In May 2012, the Drug Enforcement Administration (DEA) arranged for three confidential informants to make controlled purchases of heroin from Lester. Id. at 36a. Pursuant to a judicially authorized wiretap, federal agents also recorded a series of telephone calls between petitioner and Lester in May and June 2012, during which the two discussed the sale of narcotics. Id. at 36a-37a. In one of the recorded calls, petitioner and Lester discussed an impending drug transaction. Id. at 37a. After the call, agents followed petitioner to a restaurant where they observed him conduct a hand-to-hand transaction with the occupants of a vehicle. Ibid. The agents followed the vehicle and conducted a traffic stop; a search of the car revealed approximately 3.6 grams of cocaine and 14 40-milligram Oxycodone pills. Id. at 38a. One of the occupants

stated that the drugs had been purchased from "D-Money," a known alias for petitioner. Ibid.

2. A grand jury in the United States District Court for the Southern District of Florida charged petitioner with one count of conspiring to possess a controlled substance with the intent to distribute it, in violation of 21 U.S.C. 841(a)(1) and 846; one count of possession of cocaine with the intent to distribute it, in violation of 21 U.S.C. 841(a)(1); and one count of knowingly and intentionally distributing a controlled substance, in violation of 21 U.S.C. 841(a)(1). Superseding Indictment 8-9. Petitioner, assisted by counsel, entered into a written plea agreement in which he agreed to plead guilty to the conspiracy charge; in return, the government agreed to seek dismissal of the remaining counts and to recommend that he receive a reduction in his advisory guidelines range for acceptance of responsibility. Pet. App. 29a-33a. In conjunction with his plea agreement, petitioner executed a "Stipulated Factual Basis" outlining the offense conduct that supported his guilty plea. Id. at 35a-38a.

With petitioner's consent, a magistrate judge conducted his change-of-plea hearing. Pet. App. 17a-28a. The magistrate judge informed petitioner of his right to have a district judge preside at the hearing, and petitioner stated that he understood that right and consented to having the magistrate judge conduct the hearing instead. Id. at 18a. Petitioner's counsel and the government also consented. Id. at 19a. The magistrate judge further

confirmed that petitioner had discussed the stipulated factual basis with his attorney before he had signed it, that petitioner understood it, and that it was true and accurate. Id. at 25a.

Petitioner pleaded guilty to the conspiracy count. Pet. App. 26a. Following an extensive colloquy with petitioner, see id. at 18a-25a, the magistrate judge found that petitioner was "fully competent and capable of entering an informed plea," that petitioner was "aware of the nature of the charges and the consequences of the plea," and that petitioner's plea was "knowing and voluntary" and "supported by an independent basis in fact containing each of the essential elements of the offense," id. at 26a. The magistrate judge then stated: "The plea is accepted and [petitioner] is adjudged guilty." Ibid. The magistrate judge informed petitioner that he was entitled to "appeal" his guilty plea to the district court and that his "failure to file timely objections related to the plea before the District Judge or Court of Appeals will result in a waiver." Ibid.

Petitioner did not file any objections in the district court related to his plea, nor did petitioner move to withdraw his plea. On December 17, 2015, the district court held a sentencing hearing (at which petitioner also did not object to the magistrate judge's acceptance of his plea) and sentenced petitioner to 151 months of imprisonment, to be followed by three years of supervised release. Sent. Tr. 55-56; see Pet. App. 12a-13a.

3. The court of appeals affirmed. Pet. App. 1a-10a.

On appeal, petitioner argued for the first time that the magistrate judge lacked authority to accept his guilty plea and that only the district court could do so. Pet. C.A. Br. 7-8. Applying plain-error review, the court of appeals rejected that argument, principally on the basis of United States v. Woodard, 387 F.3d 1329 (11th Cir. 2004) (per curiam), cert. denied, 543 U.S. 1176 (2005). Pet. App. 2a-8a. In Woodard, the Eleventh Circuit had determined that the additional-duties clause of the Federal Magistrates Act, 28 U.S.C. 636(b)(3), "authorizes a magistrate judge, with the defendant's consent, to conduct Rule 11 proceedings." 387 F.3d at 1331. The court of appeals adhered to that precedent here, noting that petitioner had consented to the magistrate judge's acceptance of his plea and that the magistrate judge had advised petitioner "of his ability to challenge the plea" before the district court, which petitioner did not do. Pet. App. 7a-8a.[1]

Petitioner also argued, again for the first time, that the magistrate judge erred in accepting his guilty plea because "there

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[1] The court of appeals also rejected petitioner's related arguments that the magistrate judge was required to issue a report and recommendation; that the magistrate judge could not accept his plea without a formal order of referral from the district court; and that the magistrate judge erred in advising him about how to lodge objections to the plea. Pet. App. 6a-8a. Although petitioner alludes in passing to those arguments (Pet. 16), they are outside the scope of the first question presented in the petition (Pet. i), which is limited to whether magistrate judges "have authority to accept a felony guilty plea," not the procedures for doing so.

was no factual basis for conspiratorial guilt" and because the magistrate judge failed "to determine that [petitioner] understood the crime of conspiracy." Pet. C.A. Br. 1. The court of appeals declined to entertain that argument because it concluded that petitioner had "invited the alleged errors" by stating under oath at his plea hearing that he had discussed the charges against him with his counsel; that he had read, understood, and discussed with counsel the stipulated factual basis; and that he agreed that the facts stated therein provided a sufficient basis for the entry of his guilty plea. Pet. App. 9a-10a. The court additionally observed that petitioner had failed to object to the factual basis of his conviction at his plea hearing or at sentencing. Id. at 10a. And the court noted that even if petitioner had not relinquished the argument, he "would have to overcome the high hurdle of plain error review because he failed to raise these issues in district court." Id. at 10a n.8.

ARGUMENT

Petitioner contends (Pet. 4-17) that, under the Federal Magistrates Act (FMA), 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 did not preserve this claim in

the district court and cannot demonstrate plain error; in addition, 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.[2]

Petitioner's second question presented also does not warrant review. Petitioner contends (Pet. 17-25) that the court of appeals erred in declining to entertain his argument that the magistrate judge failed to determine that there was a sufficient factual basis for his guilty plea. Petitioner's unconditional guilty plea relinquished his challenge to the sufficiency of the factual basis for his plea, and he cannot demonstrate plain error in the magistrate judge's decision to accept his plea in light of the

[2] The pending petition for a writ of certiorari in Qualls v. United States, No. 18-5771 (filed Aug. 22, 2018), presents a similar question.

facts he admitted. He also identifies no court of appeals that would have granted relief in these circumstances.

1. The court of appeals correctly determined that petitioner failed to show plain error in the acceptance of his felony guilty plea, with his consent, by a magistrate judge.

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-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).

Since Peretz, the courts of appeals have consistently recognized that, under Section 636(b)(3), a magistrate judge may, 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 guilty-plea colloquies in felony cases. Petitioner contends (Pet. 10-11), however, that Section 636(b)(3) prevents magistrate judges from concluding the 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. Pet. App. 24a-25a; cf. Fed. R. Crim. P. 11(b)(1) and (2). The colloquy included an extensive discussion of the sentence petitioner might face. Pet. App. 21a-23a. Petitioner does not identify 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.

Petitioner nevertheless asserts (Pet. 11-12) that the act of accepting a guilty plea is not comparable in importance to the duties enumerated in the FMA because a defendant who enters such a plea waives several constitutional rights, including the right

to trial. Petitioner does not explain why determining that a defendant knowingly and voluntarily waived the right to trial involves greater "responsibility and importance," Peretz, 501 U.S. at 933, than presiding over a civil or misdemeanor trial, see 28 U.S.C. 636(a)(3) and (c)(1). And petitioner does not dispute that a magistrate judge may oversee the Rule 11 colloquy and make a recommendation to the district court to accept a felony guilty plea -- a process that already requires determining that the defendant knowingly and voluntarily waived the same constitutional rights petitioner stresses, see Fed. R. Crim. P. 11(b)(1) and (2).

Petitioner's observation (Pet. 15) that the timing of a guilty plea's acceptance affects a "defendant's right to withdraw a plea" has no bearing on the circumstances of his case. Petitioner correctly notes that, before a plea is accepted, the defendant may withdraw it "for any reason or no reason," Fed. R. Crim. P. 11(d)(1), whereas once a plea is accepted any attempt to withdraw it must be supported by a "fair and just reason," Fed. R. Crim. P. 11(d)(2)(B). But, unlike the defendants in United States v. Dávila-Ruiz, 790 F.3d 249, 251 (1st Cir. 2015), United States v. Arami, 536 F.3d 479, 481 (5th Cir. 2008), and United States v. Mendez-Santana, 645 F.3d 822, 825 (6th Cir. 2011), petitioner never moved to withdraw his guilty plea. And, in any event, the operation of Rule 11(d) does not suggest that a magistrate judge lacks statutory authority to accept a felony guilty plea with a defendant's consent. Attaching no legal significance to the

magistrate judge's acceptance of the plead 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").

Finally, the avoidance canon (Pet. 13-14) has no application here because the court of appeals' interpretation of Section 636(b)(3)'s additional-duties clause does not raise any serious constitutional concerns. Even assuming petitioner had a personal constitutional right to an Article III adjudicator, petitioner waived that right by consenting to having the magistrate judge accept his plea. See Peretz, 501 U.S. at 936 ("The most basic rights of criminal defendants are * * * subject to waiver."). And to the extent that petitioner invokes "structural" concerns (Pet. 13), this Court recently confirmed that "allowing Article I adjudicators to decide claims submitted to them by consent does not offend the separation of powers so long as Article III courts retain supervisory authority over the process." Wellness Int'l Network, Ltd. v. Sharif, 135 S. Ct. 1932, 1944 (2015).

Every court of appeals to have considered the question has concluded that the district court retains ample supervisory

control over the plea process even when a magistrate judge is authorized to accept the defendant's plea with his consent -- principally because, as the court of appeals explained in this case, the district court "retains the ability to review the Rule 11 proceeding if requested by the Defendant." Pet. App. 4a; see Benton, 523 F.3d at 432 ("Defendants with substantive or procedural concerns about their plea proceedings before a magistrate judge are entitled to de novo review in the district court."); accord Woodard, 387 F.3d at 1333-1334; United States v. Ciapponi, 77 F.3d 1247, 1251-1252 (10th Cir.), cert. denied, 517 U.S. 1215 (1996). Indeed, the magistrate judge advised petitioner of his option to seek review by the district court, but petitioner failed to exercise it. Pet. App. 7a-8a & n.6, 26a-27a.

c. This Court has repeatedly declined to review the question petitioner presents. See p. 7, supra. As petitioner notes (Pet. 6-11) 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 United States v. Salas-Garcia, 698 F.3d 1242,

1253 (10th Cir. 2012) (citing Ciapponi, 77 F.3d at 1251). The Eleventh Circuit has similarly determined that "a magistrate judge has the authority under the 'additional duties' clause of FMA 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; see Pet. App. 2a-4a.

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. 8-9) that the decision below also conflicts with the Ninth Circuit's decision in Reyna-Tapia, 328 F.3d 1114, but that decision did not address the question whether Section 636(b)(3)'s additional-duties clause permits a magistrate judge to accept a felony guilty plea with a defendant's consent. In Reyna-Tapia, the magistrate judge had conducted the Rule 11 colloquy and had recommended that the district court accept

the defendant's plea, and the question presented was whether the magistrate judge had the authority to do so. Id. at 1118. The Ninth Circuit "join[ed] every other circuit examining the question in holding that the taking of a guilty plea by a magistrate judge, with the litigants' consent, qualifies as an additional duty under" Section 636(b)(3). Id. at 1119. Although the court of appeals described a defendant's "absolute right to withdraw [his] guilty plea[]" before the district court accepts it as one of several applicable "procedural safeguards," id. at 1121, the court did not address "whether the magistrate judge has the power to accept a plea," Benton, 523 F.3d at 433 n.2 (emphasis added). Moreover, the other "procedural safeguards" on which the Ninth Circuit relied would apply equally when a magistrate judge accepts a plea with the defendant's consent. See Reyna-Tapia, 328 F.3d at 1121 (discussing the defendant's freedom "not to consent" and the availability of "de novo review" by the district court).

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 Eleventh Circuit to do so here. As noted above, 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.

d. In any event, this case would be a poor vehicle to address the shallow division of authority in the courts of appeals.

First, petitioner failed to object in the district court to the magistrate judge's acceptance of his guilty plea, so his claim is subject to review only for plain error. See Fed. R. Crim. P. 52(b); United States v. Olano, 507 U.S. 725, 731-732 (1993). On plain-error review, petitioner has the burden to establish (i) error that (ii) was "clear or obvious, rather than subject to reasonable dispute," (iii) "affected [his] substantial rights, which in the ordinary case means he must demonstrate that it 'affected the outcome of the district court proceedings,'" and

(iv) "'seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings.'" Puckett v. United States, 556 U.S. 129, 135 (2009) (citations omitted); see Rosales-Mireles v. United States, 138 S. Ct. 1897, 1904-1905 (2018); United States v. Dominguez Benitez, 542 U.S. 74, 81-82 (2004). "Meeting all four prongs is difficult, 'as it should be.'" Puckett, 556 U.S. at 135 (quoting Dominguez Benitez, 542 U.S. at 83 n.9).

Petitioner nowhere claims to satisfy that standard, and he could not.[3] Any putative error was not "clear or obvious." Both in-circuit and out-of-circuit precedent supported the magistrate judge's authority to accept petitioner's plea, with his consent. See Henderson v. United States, 568 U.S. 266, 270 (2013) (noting that "error was not plain before" this Court resolved a circuit

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[3] Petitioner's reliance (Pet. 16-17) on Nguyen v. United States, 539 U.S. 69 (2003), is misplaced. The defendant in that case argued that the Ninth Circuit panel which reviewed his conviction included a non-Article III judge, in violation of 28 U.S.C. 292(a). 539 U.S. at 72-73, 81. There, all parties agreed that the statute had been violated, see id. at 77, and the Court reasoned that the panel had exercised "authority Congress ha[d] quite carefully withheld," in contravention of a "'strong policy concerning the proper administration of judicial business,'" id. at 80-81 (citation omitted). The more open-ended language of 28 U.S.C. 636(b)(3) does not present an analogous circumstance. The Court in Nguyen also stressed that its decision not to apply the plain-error standard was driven "fundamentally" by "concern * * * for the validity of the composition of the Court of Appeals," id. at 81 -- a concern again not relevant here. Moreover, the error in Nguyen was an "isolated, one-time mistake," such that reviewing it even absent a contemporaneous objection would be unlikely to give rise to gamesmanship. Id. at 81 n.12 (citation omitted). The same cannot be said here, where petitioner expressly consented to the magistrate judge's acceptance of his plea and never objected to the plea until his appeal, after sentencing.

conflict about the issue); Puckett, 556 U.S. at 135 (noting that, to be plain, error cannot be "subject to reasonable dispute"). Nor does petitioner present any theory for how the consent-based acceptance of his plea by a magistrate judge, rather than a district judge, prejudiced him. And because no dispute exists that a magistrate judge may preside over a plea colloquy and recommend that a guilty plea be accepted, the magistrate judge's acceptance of the plea, subject to review by the district court, would not "seriously affect[] the fairness, integrity or public reputation of judicial proceedings," Olano, 507 U.S. at 736 (citation omitted), even if it were plainly erroneous.

Second, 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, and the court of appeals did not address the issue. 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.").

e. 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 (Pet. App. 17a), before that policy took effect. But the question is unlikely to arise with any frequency in the future.

2. Petitioner also contends (Pet. 17-25) that the court of appeals erred in rejecting his challenge to the sufficiency of the factual basis for his plea. The court's decision was correct and

does not conflict with any decision of this Court. And even had petitioner not relinquished this claim by pleading guilty, he would have been unable to demonstrate any error, let alone plain error. Petitioner identifies no court of appeals that would have granted him relief on this issue, and no further review of it is warranted.

Petitioner repeatedly asserts (Pet. 17, 19, 20-21, 24) that the magistrate judge did not assure himself that petitioner's plea had a factual basis, as required by Federal Rule of Criminal Procedure 11(b)(3). In fact, however, the magistrate judge expressly found that the guilty plea was "supported by an independent basis in fact containing each of the essential elements of the offense." Pet. App. 26a. Petitioner's claim is thus, at bottom, a challenge to the sufficiency of the evidence supporting his conviction. The court of appeals correctly rejected that challenge.

As this Court reconfirmed in Class v. United States, 138 S. Ct. 798 (2018), a defendant who pleads guilty voluntarily "relinquishes any claim that would contradict the 'admissions necessarily made upon entry of a voluntary plea of guilty.'" Id. at 805 (quoting United States v. Broce, 488 U.S. 563, 573-574 (1989)). And a "plea of guilty and the ensuing conviction comprehend all of the factual and legal elements necessary to sustain a binding, final judgment of guilt." Broce, 488 U.S. at 569; see McCarthy v. United States, 394 U.S. 459, 466 (1969) (describing a guilty plea as "an admission of all the elements of

a formal criminal charge"). The decision below is consistent with those principles.[4] Although it described the issue as one of invited error, in substance the court of appeals declined to allow petitioner to attack on appeal the factual and legal admissions he knowingly and voluntarily made (and invited the magistrate judge to accept) in entering an unconditional plea of guilty. Pet. App. 8a-10a. In any event, the court of appeals tied its unpublished decision here to the specific circumstances of petitioner's case, see id. at 9a-10a, and published circuit decisions have allowed for plain-error review (the standard petitioner advocates, see Pet. i, 20) of Rule 11-based challenges to the factual basis for an unconditional guilty plea in other circumstances. See, e.g., United States v. Rodriguez, 751 F.3d 1244, 1251 (11th Cir.), cert. denied, 135 S. Ct. 310 (2014); United States v. Evans, 478 F.3d 1332, 1338 (11th Cir.), cert. denied, 552 U.S. 910 (2007).

Furthermore, even assuming that the court of appeals was required to review his claim for plain error, petitioner fails to show that the result would have been any different. Before the magistrate judge determined that petitioner's plea was "supported by an independent basis in fact containing each of the essential elements of the offense," Pet. App. 26a, the magistrate judge

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[4] There is thus no basis for petitioner's request (Pet. 18, 25) that the Court grant, vacate, and remand in light of Class. Unlike the defendant in Class, see 138 S. Ct. at 803, petitioner does not challenge the constitutionality of the statute of conviction, but instead raises a claim fundamentally at odds with the admissions in his guilty plea.

confirmed petitioner had read, discussed with counsel, and signed the stipulated factual basis, which petitioner acknowledged was true and accurate, id. at 25a. That stipulation set forth petitioner's admission that he was a member of a "drug trafficking organization," id. at 35a, and it detailed three recorded conversations between petitioner and his co-defendant -- another member of the organization, who sold heroin to three confidential DEA informants, id. at 36a.[5] In the recorded conversations, petitioner discussed supplying the co-defendant with narcotics, including a slang term "frequently used" for cocaine. Ibid. In one conversation, petitioner agreed to hold narcotics for the co-defendant ("put his to the side"), rather than selling them during what the stipulation described as petitioner's "other re-ups of customers and/or distributors." Id. at 37a. The stipulation further described how, after the third recorded conversation, law enforcement officers observed petitioner personally sell what proved to be 3.6 grams of cocaine and 14 40-milligram Oxycodone pills. Id. at 37a-38a. Petitioner knowingly and voluntarily admitted those facts and recognized that they "support[ed] a factual basis for the entry of his plea," id. at 38a, as they clearly did.

[5] The stipulation thus describes more than a "simple buyer-seller relationship." Pet. 24 n.2. The co-defendant was himself also a seller, and the two discussed their joint business.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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