No. 19-7991

IN THE SUPREME COURT OF THE UNITED STATES

OSCAR GARCIA, 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 a magistrate judge may, with a defendant's consent, accept a guilty plea to a felony offense.

ADDITIONAL RELATED PROCEEDINGS

United States District Court (D.N.M.):

United States v. Garcia, No. 16-cr-1601 (Apr. 10, 2018)

United States Court of Appeals (10th Cir.):

United States v. Garcia, No. 18-2060 (Sept. 4, 2019)

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A33) is reported at 936 F.3d 1128. The opinion and order of the district court (Pet. App. B1-B9) and the district court's order denying reconsideration (Pet. App. C1-C8) are not published in the Federal Supplement but are available, respectively, at 2017 WL 3701236 and 2017 WL 5186052.

JURISDICTION

The judgment of the court of appeals was entered on September 4, 2019. A petition for rehearing was denied on December 13, 2019 (Pet. App. D1). The petition for a writ of certiorari was filed

on March 11, 2020. 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 of conspiring to distribute 500 grams or more of methamphetamine, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(A) (2012) and 21 U.S.C. 846, and conspiring to launder money, in violation of 18 U.S.C. 1956(a)(1)(A)(i) and (h). Judgment 1-2; Information 1-2. He was sentenced to 180 months of imprisonment, to be followed by five years of supervised release. Judgment 3-4. The court of appeals affirmed. Pet. App. A1-A33.

1. Beginning in 2015, while incarcerated in Oklahoma state prison for two prior drug-trafficking offenses, petitioner used a cellphone smuggled into the prison to orchestrate a drug-trafficking and money-laundering conspiracy. Presentence Investigation Report (PSR) ¶¶ 16-17, 40. Petitioner used the phone to coordinate with his co-conspirators to ensure that one of them would be picked up after traveling to California by bus to obtain two pounds of methamphetamine. PSR ¶ 17. The co-conspirator in fact obtained 826.5 grams of methamphetamine, which were seized by law enforcement. Ibid. Petitioner also used the phone to arrange for proceeds from drug sales to be laundered through the mother of his children before being delivered to Arizona to pay a drug debt. Ibid.

In April 2016, a grand jury in the District of New Mexico returned an indictment charging petitioner with conspiring to distribute 500 grams or more of methamphetamine, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(A) (2012) and 21 U.S.C. 846; distributing 500 grams or more of methamphetamine, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(A) (2012); and conspiring to launder money, in violation of 18 U.S.C. 1956(a)(1)(A)(i) and (h). Indictment 1-8.

2. On October 7, 2016, petitioner entered into a written plea agreement with the government, in which he agreed to plead guilty by information to one count of conspiring to possess 500 grams or more of methamphetamine with intent to distribute, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(A) (2012) and 21 U.S.C. 846, and one count of conspiring to launder money, in violation of 18 U.S.C. 1956(a)(1)(A)(i) and (h). Pet. App. A2-A3; see D. Ct. Doc. 107, at 2 (Oct. 7, 2016); Information 1-2. The parties agreed, under Federal Rule of Criminal Procedure 11(c)(1)(C), to recommend that petitioner be sentenced to 180 months of imprisonment. Pet. App. A2-A3; D. Ct. Doc. 107, at 5.

On the same day, petitioner appeared before a magistrate judge for a change-of-plea hearing under Rule 11. Pet. App. B1. Before the hearing, petitioner and his counsel signed a consent form in which petitioner acknowledged that he had been "informed of * * * [his] right to plead or go to trial, judgment and sentencing before a United States District Judge." D. Ct. Doc. 106, at 1 (Oct. 7,

2016). Petitioner further acknowledged that he had chosen to "[w]aive (give up) [his] right to enter [his] plea before a United States District Judge" and had instead "consent[ed] to entering [his] plea, knowingly and voluntarily, before" a magistrate judge. Ibid. (emphasis omitted). The presiding magistrate judge also signed the form. See ibid.

At the hearing, the magistrate judge informed petitioner that he had "the right to have a District Judge accept [his] guilty plea" and that the hearing could be rescheduled before a district judge if petitioner wished. Plea Hr'g Tr. 2. The magistrate judge also asked petitioner whether he had read and discussed the consent form with his attorney, whether petitioner's attorney had "answer[ed] all [his] questions to [his] satisfaction," and whether petitioner had signed the form "freely and voluntarily." Id. at 6-7. After petitioner answered "[y]es" to each of those inquiries, the magistrate judge found that petitioner had "knowingly and voluntarily waived his right to proceed before a District Judge * * * with a full understanding of the meaning and effect" of that waiver. Ibid.

Following an extensive colloquy with petitioner, see Plea Hr'g Tr. 5-9, 12-15, the magistrate judge also 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 15-16. The magistrate judge then stated:

"I therefore, accept your plea and now adjudge you guilty." Id. at 16. The magistrate judge deferred acceptance of the Rule 11(c)(1)(C) plea agreement to the district judge. Ibid.

3. On July 12, 2017 -- nine months after the Rule 11 hearing, but before sentencing -- petitioner moved to withdraw his guilty plea. D. Ct. Doc. 129, at 1-9. Under Rule 11, a defendant may withdraw a guilty plea, "before the court accepts the plea, for any reason or no reason." Fed. R. Crim. P. 11(d)(1). But "after the court accepts the plea," the defendant may withdraw a guilty plea only if "the court rejects a plea agreement under 11(c)(5)" or if "the defendant can show a fair and just reason for requesting the withdrawal." Fed. R. Crim. P. 11(d)(2)(A) and (B).

Here, petitioner contended that he was entitled to withdraw his guilty plea "for any reason or no reason" under Rule 11(d)(1) because the district judge had not yet accepted the plea. D. Ct. Doc. 129, at 1 (citation omitted); see id. at 1-2. Although petitioner had consented to the magistrate judge's acceptance of his plea, he asserted that magistrate judges lack authority to accept felony guilty pleas under the Federal Magistrates Act, 28 U.S.C. 631 et seq., interpreted in light of Article III of the Constitution. Alternatively, petitioner contended that he had shown a "fair and just reason" that would support withdrawal of his guilty plea under Rule 11(d)(2)(B). D. Ct. Doc. 129, at 7.

The district court denied petitioner's motion. Pet. App. B1-B9. The court explained that the Federal Magistrates Act gives

magistrate judges "explicit statutory authority to perform a myriad of civil and criminal functions as well as additional residuary power to preside over court proceedings with the consent of the parties," id. at B4, citing 28 U.S.C. 636(b)(3), which authorizes assignment to magistrate judges "such additional duties as are not inconsistent with the Constitution and laws of the United States."

The district court further explained that "the Tenth Circuit has held explicitly that 'magistrate judges have the authority to conduct plea hearings and accept guilty pleas'" with the defendant's consent under the additional-duties clause of the Federal Magistrates Act. Pet. App. B5 (quoting United States v. Salas-Garcia, 698 F.3d 1242, 1253 (10th Cir. 2012)) (brackets omitted); see also United States v. Ciapponi, 77 F.3d 1247, 1251-1252 (10th Cir.), cert. denied, 517 U.S. 1215 (1996). The court therefore determined that petitioner was not entitled to withdraw his plea "for any reason or no reason" under Rule 11(d)(1), because petitioner's plea had already been accepted purposes of Rule 11. Pet. App. B5. The court also determined that petitioner had failed to show any "fair and just reason" to withdraw his plea under Rule 11(d)(2)(B). Id. at B9; see id. at B6-B9.

The government had opposed petitioner's request to withdraw his guilty plea. See D. Ct. Doc. 133, at 1-8 (July 26, 2017). After the district court denied petitioner's request, however, the government moved for reconsideration and asked the court to permit

petitioner to withdraw his plea under Rule 11(d)(1). D. Ct. Doc. 135, at 1-3 (Aug. 23, 2017). The motion asserted that the decision whether to accept a guilty plea is a "dispositive matter" as to which Federal Rule of Criminal Procedure 59(b) -- a provision that petitioner had not relied on in his motion to withdraw the plea -- allows a magistrate judge only to issue a report and recommendation. Id. at 1; see Fed. R. Crim. P. 59(b)(1) (providing that a district judge may refer to a magistrate judge "any matter that may dispose of a charge or defense," and that the magistrate judge "must enter on the record a recommendation for disposing of the matter").[1]

The district court declined to reconsider. Pet. App. C1-C8. The court stated that a motion for reconsideration was "not an appropriate avenue" to raise a new argument premised on Rule 59. Id. at C4. The court also determined that Rule 59, which was adopted in 2005, did not abrogate the Tenth Circuit's precedent establishing that a magistrate judge may accept a felony guilty plea with the defendant's consent. Id. at C6. The court observed that Rule 59 does not itself classify the acceptance of a guilty plea as a dispositive matter and that, when drafting the rule, the

[1] The motion for reconsideration attributed this position to "Department of Justice guidance." D. Ct. Doc. 135, at 2. As a matter of policy, the Department has instructed prosecutors not to oppose a defendant's request to withdraw a guilty plea taken by a magistrate judge if a district judge has not yet accepted the plea. But the motion's suggestion that Rule 59 compels that policy was mistaken and did not accurately reflect the Department's guidance (then or now). See pp. 28-29, infra.

Rules Advisory Committee had declined to adopt a version that would have done so. Id. at C6-C7.

The district court ultimately accepted the plea agreement and sentenced petitioner to the agreed-upon 180-month term of imprisonment, to be followed by five years of supervised release. Judgment 3-4; see Sentencing Tr. 16.

4. The court of appeals affirmed. Pet. App. A1-A33. The court unanimously determined that its prior decision in United States v. Ciapponi, supra, -- which recognized that "federal magistrate judges have the authority" under the additional-duties clause of the Federal Magistrates Act "to accept felony guilty pleas" with the defendant's consent -- was controlling. Pet. App. A21; see id. at A19-A20 ("This court concluded that 'neither the Magistrates Act nor Article III requires that a referral be conditioned on subsequent review by the district judge, so long as a defendant's right to demand an Article III judge is preserved.'") (quoting Ciapponi, 77 F.3d at 1251-1252). The court explained that the adoption of Rule 59 in 2006 had not abrogated its precedent on this issue, observing that it had "reaffirmed the reasoning of Ciapponi more recently," id. at A20, and that "the Rules Committee [had] declined to specify that felony guilty pleas are dispositive matters, leaving this determination up to the courts," id. at A23; see also id. at A24 ("[N]othing in the language of Rule 59 indicates that magistrate judges cannot accept felony guilty pleas when the parties consent.").

Perceiving some circuit disagreement on the scope of magistrate judges' authority in this area, a majority of the panel stated that, in the absence of Ciapponi, it would have concluded that "the acceptance of a felony guilty plea is in fact a dispositive matter" under Rule 59 and that, "by accepting a guilty plea for purposes of Rule 11, a magistrate judge is exercising the judicial power of the United States in violation of Article III." Pet. App. A26, A28; see id. at A28-A31. Judge Bacharach concurred, joining the majority opinion in full except for its discussion of the view it would have taken in the absence of Ciapponi, which he observed to be "unnecessar[y]." Id. at A33.

The court of appeals denied petitioner's request for rehearing and rehearing en banc. Pet. App. D1.

ARGUMENT

Petitioner contends (Pet. 21-37) that Federal Rule of Criminal Procedure 59, the Federal Magistrates Act, and Article III of the Constitution preclude a magistrate judge from accepting a felony guilty plea, even with the defendant's consent. In his panel briefing in the court of appeals, however, petitioner argued only that Rule 59 precluded the magistrate judge from accepting his guilty plea with his consent. The court of appeals correctly rejected that contention, and its resolution of the Rule 59 issue does not conflict with any decision of this Court or of any other court of appeals. Petitioner's remaining contentions likewise lack merit. No court of appeals has held that the Constitution

prohibits Congress from authorizing magistrate judges to accept felony guilty pleas with the defendant's consent. And although the Seventh Circuit has held that the Federal Magistrates Act does not provide magistrate judges with such authority, no other court of appeals has agreed. Three courts of appeals have long rejected that view. That shallow conflict does not warrant the Court's review, particularly in this case. Finally, the question presented has limited prospective importance in light of the government's 2016 adoption of a new policy regarding plea proceedings before magistrate judges. The Court has recently and repeatedly denied petitions for writs of certiorari presenting similar questions. See Chiddo v. United States, 139 S. Ct. 793 (2019) (No. 18-5945); Qualls v. United States, 139 S. Ct. 792 (2019) (No. 18-5771); 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, 575 U.S. 965 (2015) (No. 14-7909); Benton v. United States, 555 U.S. 998 (2008) (No. 08-5534). It should follow the same course here.

1. Magistrate judges are non-Article III judges who are appointed (and removable for cause) by district judges. 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 a district judge, 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 judges 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 voir dire in a felony criminal trial 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).

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). In particular, the Court held that Article III of the Constitution does not bar Congress from granting district judges "the discretionary power to delegate certain functions to competent and impartial assistants,

while ensuring that the judges retain complete supervisory control over the assistants' activities." Peretz, 501 U.S. at 938-939 (quoting United States v. Raddatz, 447 U.S. 667, 686 (1980) (Blackmun, J., concurring)). The Court concluded that, because the ultimate decision to empanel the jury remains in the hands of the district judge, the right to have a district judge preside over jury selection does not fall within any category of "structural protections" that litigants cannot waive. Id. at 937-938. The Court further explained that "to the extent 'de novo review is required to satisfy Article III concerns, it need not be exercised unless requested by the parties.'" Peretz, 501 U.S. at 939 (citation omitted).

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 judge 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 judge. Williams, 23 F.3d at 632-633; see Reyna-Tapia, 328 F.3d at 1120; Dees, 125 F.3d at 265-266.

2. Petitioner does not dispute that magistrate judges may, with the parties' consent, preside over plea colloquies in felony cases. Petitioner contends (Pet. 29-30), however, that after conducting a plea colloquy, the magistrate judge may only issue a report and recommendation to the district judge, who must conduct a de novo review of the proceedings. Nothing in Rule 59, the Federal Magistrates Act, or Article III imposes such a limitation.

a. In his panel briefing in the court of appeals, petitioner relied exclusively on Rule 59 as the basis for his asserted entitlement to withdraw his guilty plea for any reason nine months

after a magistrate judge -- with petitioner's consent -- accepted the plea. See Pet. C.A. Br. 1 (describing the sole issue presented in the appeal as whether acceptance of a felony guilty plea "is a dispositive matter pursuant to Rule 59") (emphasis omitted); see also id. at 8-14. Petitioner's reliance on Rule 59 was misplaced. Like other Federal Rules of Criminal Procedure, the default provisions of Rule 59 are presumptively waivable, and petitioner waived them here by consenting to the acceptance of his plea by a magistrate judge.

Rule 59(a) provides that a district judge may "refer to a magistrate judge for determination any matter that does not dispose of a charge or defense." Fed. R. Crim. P. 59(a). Rule 59(b) provides that a district judge "may refer to a magistrate judge for recommendation a defendant's motion to dismiss or quash an indictment or information, a motion to suppress evidence, or any matter that may dispose of a charge or defense." Fed. R. Crim. P. 59(b)(1). The rule specifies different standards of review for those two categories of proceedings. For proceedings under Rule 59(a), if a party timely objects to the magistrate judge's determination, the district judge must review the party's objections and set aside any part of the magistrate judge's order that is "contrary to law or clearly erroneous." Fed. R. Crim. P. 59(a). For proceedings under Rule 59(b), if a party timely objects to the magistrate judge's recommendation, the district judge "must consider de novo any objection." Fed. R. Crim. P. 59(b)(3). In

either case, parties generally have only 14 days to object, and "[f]ailure to object in accordance with [Rule 59] waives a party's right to review." Fed. R. Crim. P. 59(a) and (b)(2).

Petitioner contends (Pet. 30) that the acceptance of a guilty plea with the defendant's consent is necessarily subject to the recommendation procedures in Rule 59(b). Although petitioner contends that acceptance of a plea necessarily "dispose[s] of a charge or defense," Fed. R. Crim. P. 59(b)(1), it is far from clear that is so when the district court has yet to enter a sentence, see 18 U.S.C. 3553, or, in many cases (like this one), even to accept the plea agreement on which the guilty plea depends, see Fed. R. Crim. P. 11(c)(3) and (4). And the history of Rule 59 makes clear that it was not intended to settle that question. In drafting the Rule, the Rules Advisory Committee considered but ultimately declined to endorse a proposed version that would have "include[d] felony guilty pleas as dispositive matters requiring a report and recommendation by the magistrate judge." Pet. App. A17; see id. at A17-A18, C6-C7. The Committee instead determined to leave "to the case law" the task of categorizing particular matters as subject to Rule 59(a) or (b). Fed. R. Crim. P. 59 Advisory Committee Note (2005 Adoption).

In any event, this Court has recognized that the provisions of the Federal Rules of Criminal Procedure are "presumptively waivable." United States v. Mezzanatto, 513 U.S. 196, 201 (1995). Petitioner identifies nothing in Rule 59 itself to suggest any

intent to "preclude waiver." Ibid.; see Pet. App. A24 (noting that "defendants' 'most basic rights' can be waived by consent," and reasoning that "[i]t must therefore be the case that certain matters, even dispositive matters, can be handled by a magistrate judge with the defendant's consent") (quoting Peretz, 501 U.S. at 936). Accordingly, the parties presumptively may agree to waive the provisions of Rule 59 -- for example, by consenting to the determination of a particular matter by a magistrate judge, whether or not the matter would otherwise fall under Rule 59(b) in the absence of consent. And that is effectively what petitioner did here when he "knowingly and voluntarily" consented to the acceptance of his guilty plea by a magistrate judge. Plea Hr'g Tr. 7; see D. Ct. Doc. 106, at 1.

Petitioner's contrary reading of Rule 59 -- to preclude even proceedings based on consent or waiver -- would implausibly construe the Rule as a severe limitation on magistrate-judge proceedings that Article III and the Federal Magistrates Act would otherwise permit.[2] For example, as explained above, a magistrate judge may preside over a misdemeanor trial with the defendant's consent. 18 U.S.C. 3401(b); 28 U.S.C. 636(a)(3); see Peretz, 501 U.S. at 931. To the extent that a plea qualifies as a "matter

[2] The panel majority stated in dicta that Rule 59(b)(1) should be read to limit a magistrate judge to issuing a recommendation on whether to accept a felony guilty plea even "when the parties consent to appear[] before a magistrate judge." Pet. App. A26. But the majority identified nothing in Rule 59 itself that would compel that result, relying instead on mistaken constitutional concerns. See id. at A26-A31; pp. 20-22, infra.

that may dispose of a charge or defense," Fed. R. Crim. P. 59(b)(1), it follows a fortiori that a trial would as well. Yet magistrate judges are not limited to merely recommending a disposition when they preside over misdemeanor trials. See 18 U.S.C. 3401(a) (providing that magistrate judges, with the parties' consent, "shall have jurisdiction to try persons accused of, and sentence persons convicted of, misdemeanors").

Petitioner's apparent view that Rule 59 is controlling irrespective of consent or waiver is also incompatible with the duties that magistrate judges may perform under the Federal Magistrates Act with the parties' consent. See 28 U.S.C. 636(a)(5), (b)(2), (c)(1)-(3), (e)(3)-(4), and (e)(6)(A). For example, with the parties' consent, a magistrate judge may preside over jury selection in a felony trial, Peretz, 501 U.S. at 936-939; closing arguments, United States v. Gamba, 541 F.3d 895, 902 (9th Cir. 2008); and jury deliberations, United States v. Mendez-Lopez, 338 F.3d 1153, 1157-1158 (10th Cir. 2003). No court has suggested that Rule 59 governs the rulings a magistrate judge makes when presiding over such proceedings, which cannot realistically be repeatedly paused for 14 days to permit the parties to file objections with the district judge on any number of rulings with which a party disagrees.

b. Petitioner's argument (Pet. 36-37) that the Federal Magistrates Act forecloses magistrate judges from accepting guilty pleas is likewise misplaced. The additional-duties clause of the

Act, 28 U.S.C. 636(b)(3), permits magistrate judges to accept felony guilty pleas with the parties' consent because doing so is "comparable in responsibility and importance," Peretz, 501 U.S. at 933, to other duties the Act 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 explained to petitioner all of the information required by Rule 11(b). That information 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 entering a guilty plea would waive those and other rights. Plea Hr'g Tr. 2-8; see also id. at 8-9, 12-16 (additional colloquy); cf. Fed. R. Crim. P. 11(b)(1) and (2). And after the magistrate judge accepted petitioner's guilty plea, the district judge conducted a thorough review of the plea colloquy in response to petitioner's motion to withdraw his plea, finding no errors. Pet. App. B6-B9. Indeed, petitioner has never identified any defect in the plea colloquy, nor any sound 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. 32-34) that the act of accepting a guilty plea is not comparable in importance to the duties enumerated in the Federal Magistrates Act 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 judge to accept a felony guilty plea -- a process that already requires assessing whether the defendant knowingly and voluntarily

waived the same constitutional rights petitioner stresses, see Fed. R. Crim. P. 11(b)(1) and (2).

Petitioner's position would also "degrade the otherwise serious act of pleading guilty." United States v. Hyde, 520 U.S. 670, 677 (1997). After a defendant "has sworn in open court that he actually committed the crimes, after he has stated that he is pleading guilty because he is guilty, after the court has found a factual basis for the plea, and after the court has explicitly announced that it accepts the plea," he should not be able to later "withdraw his guilty plea simply on a lark." Id. at 676.

c. Finally, Article III does not forbid Congress from authorizing magistrate judges to accept felony guilty pleas with the parties' consent. Even assuming that petitioner had a personal constitutional right to an Article III adjudicator, petitioner waived that right by consenting to have the magistrate judge accept his plea. See Peretz, 501 U.S. at 936 ("The most basic rights of criminal defendants are * * * subject to waiver."). To the extent that petitioner invokes "structural" constitutional concerns (Pet. 21-32), 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, 135 S. Ct. at 1944.

While recognizing that principle, the majority below stated in dicta that, but for prior Tenth Circuit precedent, it would

have concluded that the "the 'judicial power of the United States' cannot be given away by a litigant." Pet. App. A29-A30. But the panel majority failed to consider the degree to which a magistrate judge who accepts a felony guilty plea, with the defendant's consent, remains subject to the supervision of a district judge, even without the report-and-recommendation procedures of Rule 59(b). The district judge always retains authority to review the plea colloquy to determine whether the defendant knowingly and voluntarily admitted guilt and waived his trial rights. And in cases like this one, in which the plea is pursuant to a plea agreement that requires district-judge approval, the district judge may reject the agreement, thereby giving the defendant an automatic opportunity to withdraw if he wishes.

Specifically, a district judge can, at any time before imposing sentence, allow a defendant to withdraw a guilty plea for a "fair and just reason," Fed. R. Crim. P. 11(d)(2)(B), which "would obviously include a defective plea proceeding before the magistrate judge," Benton, 523 F.3d at 432; see, e.g., United States v. Jim, 786 F.3d 802, 807-808 (10th Cir. 2015) (district judge permitted defendant to withdraw guilty plea accepted by magistrate judge where "magistrate judge had not specifically informed [defendant], as required by Fed. R. Crim. P. 11(b)(1)(C) and (F), that, by pleading guilty, he was waiving his right to a trial"). Thus, as the court of appeals observed in United States v. Ciapponi, 77 F.3d 1247 (10th Cir.), cert. denied, 517 U.S. 1215

(1996), "a defendant's right to demand an Article III judge by providing for review of a plea proceeding, as a matter of right," is preserved by the ability to move, at any time, to withdraw a guilty plea for a fair and just reason. Id. at 1252.[3] In addition, if a district judge rejects a plea agreement entered under Rule 11(c)(1)(A) or (c)(1)(C), it must provide "the defendant an opportunity to withdraw the plea." Fed. R. Crim. P. 11(c)(5)(B).

In this case, the district judge not only retained supervisory authority over petitioner's guilty plea, but also in fact exercised that authority at petitioner's request. When petitioner moved to withdraw his guilty plea nine months after it was accepted, the district judge examined the plea colloquy (and petitioner's plea agreement) and found that the record contained a sufficient factual basis for the guilty plea, see Pet. App. B6; that petitioner knowingly and voluntarily waived his rights, id. at B7; and that petitioner was afforded effective assistance of counsel, id. at B8-B9. The district judge also reviewed and accepted the stipulated-sentence plea agreement that the parties reached under Rule 11(c)(1)(C), which provided the basis for the plea. See Sentencing Tr. 16. Only after making those determinations did the district judge sentence petitioner and enter final judgment.

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[3] At the time that Ciapponi was decided, the withdrawal of a guilty plea was governed by Federal Rule of Criminal Procedure 32(e), which allowed withdrawal before sentencing only for a "fair and just reason." Fed. R. Crim. P. 32(e) (1994).

3. This Court has repeatedly declined to review questions concerning a magistrate judge's authority to accept a felony guilty plea with the defendant's consent. See p. 10, supra. As petitioner notes (Pet. 11), a conflict -- albeit one that is much shallower than petitioner suggests -- exists in the courts of appeals about whether magistrate judges have statutory authority to not only conduct a plea colloquy but also then accept the defendant's plea. No court of appeals, however, has held that either Rule 59 or the Constitution precludes a magistrate judge from accepting a guilty plea, and the limited conflict in the circuits regarding the Federal Magistrates Act does not warrant this Court's review.

a. Like the court of appeals below, the Fourth Circuit has recognized that the Federal Magistrates Act and the Constitution permit a magistrate judge to accept a felony guilty plea with the defendant's consent, as long as the district judge retains "ultimate control * * * over the plea process." Benton, 523 F.3d at 433. The Eleventh Circuit has similarly determined that "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 judge must "retain[] the ability to review the Rule 11 hearing if requested." Woodard, 387 F.3d at 1333-1334 (emphasis omitted). Neither the Fourth Circuit nor the Eleventh Circuit has addressed the relevance of Rule 59 in this context.

The Seventh Circuit, in contrast, has concluded that the Federal Magistrates Act does not permit a magistrate judge to accept a guilty plea and that a magistrate judge who presides over a plea colloquy may only submit a recommendation about whether the plea should be accepted. See Harden, 758 F.3d at 888-889, 891. The Seventh Circuit, however, expressly declined to address whether a magistrate judge's acceptance of a guilty plea "violates the structural guarantees of Article III." Id. at 891. And while the defendant in Harden invoked Rule 59, see id. at 897, the Seventh Circuit did not discuss the Rule in its decision.

Petitioner errs in asserting (Pet. 13-14) that the decision below also conflicts with decisions of the Second, Fifth, Eighth and Ninth Circuits, which he reads to "require de novo review of magistrates['] actions in accepting a felony guilty plea, either automatically or upon objection of the defendant, to not run afoul of the Constitution." To begin with, none of the decisions on which petitioner relies has held that the Constitution requires "automatic[]" (Pet. 14) de novo review by a district judge. This Court was explicit in Peretz that "to the extent 'de novo review is required to satisfy Article III concerns, it need not be exercised unless requested by the parties,'" 501 U.S. at 939 (citation omitted), and the decisions cited by petitioner do not hold otherwise. Indeed, petitioner himself recognizes that both the Fifth and Ninth Circuits have required de novo review only "if [an] objection is made" to the magistrate judge's action. See

Pet. 14-15 (citing Dees, 125 F.3d at 268 (5th Cir.); Reyna-Tapia, 328 F.3d at 1121 (9th Cir.)). Likewise, in the decisions that petitioner identifies from the Second and Eighth Circuits, the courts of appeals found no constitutional violation where the district judges had appropriately reviewed the pleas following the defendants' objections, without holding that de novo review would be required even if not requested by the defendant. See Williams, 23 F.3d at 634 (2d Cir.) (no constitutional violation because, after defendant moved to withdraw his guilty plea, district judge reviewed the plea allocution and found that it was "clear and unmistakable" that defendant had admitted his guilt); Torres, 258 F.3d at 796 (8th Cir.) (no constitutional violation where the district judge reviewed de novo the magistrate judge's recommendation).

To the extent that some circuits would require that a district judge conduct de novo review of a magistrate-judge accepted guilty plea upon request, such a requirement would correspond to the district-judge review contemplated in Ciapponi and Salas-Garcia, the Tenth Circuit precedents to which the panel adhered in this case. See Pet. App. A2, A19-A24. As Ciapponi explained, the defendant's opportunity to file a motion to withdraw his guilty plea for a fair and just reason preserves the "defendant's right to demand an Article III judge by providing for review of [the] plea proceeding, as a matter of right," at any time before sentencing. 77 F.3d at 1252; see also Benton, 523 F.3d at 432

(noting that "[w]hile the standard of review is de novo, the substantive rule of decision is whether the defendant has established a 'fair and just' reason to withdraw his plea after the magistrate judge has accepted it"). Petitioner requested and received that review here. See Pet. App. B6-B9.

Finally, petitioner asserts (Pet. 36-37), as did the panel below (Pet. App. A21-A22), that the decision below conflicts with decisions of the First and Fifth Circuits that have permitted a defendant to withdraw a guilty plea before acceptance by a district judge. But neither the First Circuit in United States v. Dávila-Ruiz, 790 F.3d 249 (2015), nor the Fifth Circuit in United States v. Arami, 536 F.3d 479 (2008), had occasion to determine whether a defendant can withdraw a guilty plea after acceptance by a magistrate judge. In both cases, the magistrate judge had merely made a recommendation that the guilty plea be accepted by the district judge. Thus, the question presented in those cases was only whether the magistrate judge's recommendation itself constituted acceptance of the plea by "the court" for purposes of Rule 11(d)(1) -- not whether a recommendation was the only available option. Dávila-Ruiz, 790 F.3d at 250, 252-253; Arami, 536 F.3d at 481.

b. The disagreement between the Seventh Circuit and other courts on the narrow question of whether the Federal Magistrates Act permits a magistrate judge to accept a guilty plea is undeveloped and lacks significant practical consequences. No

court has addressed the question presented en banc, and the Tenth Circuit declined to do so here. Pet. App. D1. And because a defendant can obtain de novo review of plea proceedings at any time before sentencing by seeking to withdraw the plea for a fair or just reason under Rule 11(d)(2)(B), 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 his 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.

4. In any event, this case would be an unsuitable vehicle in which to address the question petitioner seeks to present.

First, petitioner relied exclusively on Rule 59 in his panel briefing in the court of appeals (see pp. 13-14, supra), and the government accordingly focused on those arguments in its response brief. Although the panel majority addressed other considerations under Article III and the Federal Magistrates Act in dicta, it did so without the benefit of significant briefing. The statutory and

constitutional questions would be better addressed, if at all, in a case in which those issues were fully considered below.

Second, petitioner relinquished any Rule 59 objection to the magistrate judge's acceptance of his guilty plea by failing to raise a timely objection. Rule 59 generally affords the parties only 14 days to object to a magistrate judge's determination under Rule 59(a) or recommendation under Rule 59(b). See Fed. R. Crim. P. 59(a) and (b)(2). And the rule states that "[f]ailure to object in accordance with [Rule 59] waives a party's right to review." Ibid. Petitioner never filed any formal objections under Rule 59, and he did not move to withdraw his guilty plea until nine months after the magistrate judge had accepted it. See p. 5, supra; cf. United States v. Garcia-Sandobal, 703 F.3d 1278, 1282-1283 (11th Cir. 2013) (finding waiver where defendant failed to timely object to recommendation).

Third, 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 make recommendations to district judges instead of accepting guilty pleas. The Department has also instructed prosecutors in every district not to oppose a defendant's motion to withdraw a guilty plea for any reason under Rule 11(d)(1) before the plea is accepted by a district judge. The policy was relatively new when this case occurred in district court and was not entirely faithfully applied here. See pp. 6-7 & n.1, supra.

The District of New Mexico also continues to assign magistrate judges to accept felony guilty pleas with the defendant's consent, consistent with the course of proceedings here. But the government's practice in cases there involving magistrate-accepted plea agreements is to include waivers of any right to withdraw a guilty plea for any reason or no reason under Rule 11. The government's policy and practices thus significantly diminish the frequency with which the question presented might arise in the future.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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