No. 20-5775

IN THE SUPREME COURT OF THE UNITED STATES

NATALIE ANGELES, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals correctly determined, on plain-error review, that the district court did not coerce petitioner into withdrawing objections to the Probation Office's presentence report by expressing a tentative view that her objections lacked merit and that a guidelines adjustment for acceptance of responsibility was unwarranted.

ADDITIONAL RELATED PROCEEDINGS

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

United States v. Angeles, No. 19-cr-14 (Aug. 16, 2019)

United States Court of Appeals (5th Cir.):

United States v. Angeles, No. 19-10937 (Aug. 24, 2020)

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A6) is reported at 971 F.3d 535.

JURISDICTION

The judgment of the court of appeals was entered on August 24, 2020. The petition for a writ of certiorari was filed on September 16, 2020.

STATEMENT

Following a guilty plea in the United States District Court for the Northern District of Texas, petitioner was convicted of conspiring to possess with intent to distribute 50 grams or more

of methamphetamine, in violation of 21 U.S.C. 841(a)(1) and 846, and 21 U.S.C. 841(b)(1)(B) (2012). Pet. App. B1. She was sentenced to 280 months of imprisonment, to be followed by five years of supervised release. Id. at B1-B2. The court of appeals affirmed. Id. at A1-A6.

1. Between 2016 and 2018, petitioner coordinated the delivery of methamphetamine she received from suppliers in Mexico to distributors in California, Georgia, and Texas. C.A. ROA 50. She did so by partnering with others to deploy couriers who would pick up large quantities of liquid methamphetamine from her home in Long Beach, California and transport the drugs to the appropriate distributors. Presentence Investigation Report (PSR) ¶ 5.

For example, in late February 2016, petitioner's brother recruited a courier to transport liquid methamphetamine from petitioner's home to Atlanta, Georgia. PSR ¶ 6. Petitioner then provided the courier with the keys to a vehicle and $300 for expenses along the trip. Ibid. During a traffic stop, Arkansas state officers searched the courier's vehicle and found four jugs containing 21.9 kilograms of liquid methamphetamine, as well as the equivalent of 7.5 kilograms of pure methamphetamine in crystallized form. PSR ¶¶ 6-7.

A few weeks later, petitioner's brother arranged for a second courier to again retrieve liquid methamphetamine from petitioner's home, this time with directions to transport it to Fort Worth,

Texas. PSR ¶ 8. Upon delivering the drugs, the courier received $47,000 from the purchaser. Ibid. When investigators later executed a search warrant at the delivery address in Fort Worth, they found 22.43 liters of liquid methamphetamine, equivalent to approximately 12.6 kilograms of pure methamphetamine, in various containers. PSR ¶ 9. The containers matched those used by petitioner and her brother. Ibid.

In September 2016, federal investigators conducted a controlled delivery using a confidential informant. PSR ¶ 10. The informant, who had previously served as a courier for petitioner, picked up four jugs of liquid methamphetamine from petitioner's home. Ibid. The FBI then seized the jugs and provided samples to Drug Enforcement Agency chemists, who were able to determine that the jugs' content was equivalent to approximately 15.2 kilograms of pure methamphetamine. Ibid.

2. A federal grand jury charged petitioner with conspiring to possess with intent to distribute 50 grams or more of methamphetamine between January 2016 and June 2018. C.A. ROA 7. Petitioner pleaded guilty without a plea agreement. Id. at 47. In the Factual Resume accompanying her guilty plea, petitioner stipulated that, "[f]rom 2016 through June 2018," she "coordinated the delivery of methamphetamine in liquid form from suppliers in Mexico to various distributors in California, Fort Worth, Texas, [and] Atlanta, Georgia." Id. at 50. She also stipulated that,

"[i]n this manner," she "conspired with others to possess with intent to distribute more than 50 grams of methamphetamine." Ibid.

a. The Probation Office prepared a presentence report in which he calculated a total offense level of 41 and a criminal history category of I, which would produce an advisory guidelines range of 324 to 405 months of imprisonment. PSR ¶¶ 30, 36, 76. The presentence report's guidelines calculation included a base offense of level of 38, which reflected the volume of methamphetamine for which petitioner was accountable, Sentencing Guidelines § 2D1.1(a)(5) and (c)(1); a two-level enhancement because petitioner's offense involved the importation of methamphetamine, id. § 2D1.1(b)(5); a two-level enhancement because petitioner maintained a premises for distributing a controlled substance, id. § 2D1.1(b)(12); a two-level enhancement because petitioner recruited and supervised drug couriers, id. § 3B1.1(c); and a three-level downward adjustment for accepting responsibility, id. § 3E1.1(a) and (b). See PSR ¶¶ 20-22, 24, 28-29.

Petitioner raised numerous objections to the presentence report. As relevant here, she objected to the inclusion of any drug amount beyond that which was seized as a result of the September 2016 controlled delivery. C.A. ROA 264-266. She further objected to the three two-level enhancements recommended in the presentence report, id. at 267-268, and to the absence of a downward adjustment for her allegedly minor role in the conspiracy,

id. at 268-269. In asserting those objections, petitioner contested nearly every substantive paragraph in the report, including paragraphs that tracked her own admissions. Id. at 264-270. For example, she objected to the application of the two-level enhancement for an offense involving the importation of methamphetamine, even though she had stipulated in her guilty plea's Factual Resume that she had coordinated the delivery of liquid methamphetamine from Mexico. Compare C.A. ROA 50, with id. at 267.

In response, the government submitted investigative reports and other evidence demonstrating petitioner's role in the offense and her responsibility for the relevant conduct set forth in the presentence report. C.A. ROA 176-236. The government also maintained that petitioner was frivolously denying relevant conduct and therefore should not receive a downward adjustment for acceptance of responsibility. Id. at 173. Petitioner responded by further pressing her objections. Id. at 272-275.

In an addendum to the presentence report, the Probation Office rejected petitioner's objections and determined that she was frivolously denying relevant conduct. C.A. ROA 238-242. As a result, the Probation Office recommended that petitioner not be afforded the downward adjustment for accepting responsibility that the presentence report had previously proposed. Id. at 241. Petitioner then withdrew her objection to the importation enhancement, but submitted supplemental objections regarding drug

quantity. Id. at 276-280. In response to those supplemental objections, the Probation Office made a minor reduction to the amount of methamphetamine attributed to petitioner, which did not alter petitioner's offense level under the Guidelines. C.A ROA 245-247.

The day before petitioner's sentencing hearing, the district court informed the parties that:

> After having considered the presentence report pertaining to [petitioner], and the other sentencing items, the court tentatively has concluded that the objections made by [petitioner] to the presentence report are without merit. Also, the court tentatively has concluded that [petitioner] should not receive any reduction in her offense level based on acceptance of responsibility. * * * The parties should take such tentative conclusions into account in making decisions as to the presentations to be made at the sentencing hearing.

C.A. ROA 66-67.

b. At the sentencing hearing, the district court first observed that petitioner had made "a number of objections" to the presentence report and that the court's order had expressed the "tentative conclusion" that the objections were "without merit." C.A. ROA 128-129. The court then noted that petitioner had abandoned or withdrawn one of her objections and asked whether she still wished to pursue the others. Id. at 129. Petitioner's counsel, remarking that she did not "want [her] client punished for [her attorney's] advocacy," initially stated that she would pursue petitioner's objection to the drug-premises enhancement but would otherwise "go on [the court's] ruling from the other day."

Ibid. The court reiterated that its presentencing order reflected merely "tentative" conclusions and urged counsel to specify which objections petitioner intended to pursue. Id. at 130. After consulting with petitioner, defense counsel stated that petitioner would withdraw all objections to the presentence report. Ibid.

The district court then turned to "another point" it had made in the prehearing order, regarding the court's "tentative conclusion" that petitioner should not receive a reduction in her offense level for acceptance of responsibility. C.A. ROA 131. The court emphasized that it had not yet reached a "final decision" on the matter and urged petitioner to present any relevant evidence on the issue. Ibid. Petitioner argued that she had accepted responsibility, requested not to be "penalized for zealous representation," and observed that she had withdrawn all objections to the presentence report. Id. at 131-132. The court repeated that it had "misgivings" about petitioner's showing that she had "clearly demonstrate[d] acceptance of responsibility," as required by Sentencing Guidelines § 3E1.1. C.A. ROA 132. The court explained that, while petitioner had withdrawn her objections, "that doesn't change the fact that [the objections] were made and that they were frivolous denials of relevant conduct and false denials of relevant conduct." Ibid. After petitioner insisted that she had "never denied what her behaviors were with regard" to the core offense conduct, the court decided that it

would not "deny her acceptance of responsibility." Id. at 134-135.

The district court accordingly applied a two-level reduction for acceptance of responsibility and computed an advisory Guidelines range of 324 to 405 months of imprisonment. C.A. ROA 135. The court then imposed a below-guidelines sentence of 280 months of imprisonment, to be followed by five years of supervised release. Id. at 145.

3. The court of appeals affirmed, rejecting petitioner's claim that the district court "effectively coerc[ed]" her into withdrawing her objections to the presentence report. Pet. App. A4-A6. The court of appeals observed that petitioner's coercion claim was subject to plain-error review because petitioner had not raised it in the district court. Id. at A4. And in this case, the court of appeals discerned "no error, much less the 'clear or obvious' mistake necessary to overcome plain-error review." Id. at A6 (citation omitted).

The court of appeals explained that the "spectre of judicial coercion[] may arise where the court tells the defendant that he must withdraw the objection or lose the possibility of gaining a reduction for acceptance of responsibility," but the court "s[aw] no such strong-arming" on the facts of this case. Pet. App. A4-A5 (brackets, citation, and internal quotation marks omitted). "Rather," the district court had "treated withdrawal separately from acceptance" in the sentencing hearing, first allowing

petitioner to persist with her objections "if she wished," and then turning to the analysis of "acceptance of responsibility." Id. at A5. The court of appeals further observed that, while the district court acknowledged petitioner's withdrawal of her objections in considering her acceptance of responsibility, the court appropriately analyzed whether petitioner's initial decision to press the objections showed that she had "frivolously contested or falsely denied relevant conduct." Ibid. (citing Sentencing Guidelines § 3E1.1(a), comment. (n.1(A)) ("appropriate considerations include" whether the defendant "falsely denies, or frivolously contests, relevant conduct that the court determines to be true.")) (brackets omitted).

The court of appeals also rejected petitioner's contention that the district court erred by "conveying before the [sentencing] hearing its 'tentative conclusion' that her objections were 'without merit.'" Pet. App. A5. The court of appeals explained that "[i]t would be absurd for a detrimental legal ruling on an objection to be construed as the court's coercing a defendant to withdraw that objection." Ibid. (quoting United States v. Medina, 432 Fed. Appx. 349, 352 (5th Cir. 2011)). "To the contrary," the court continued, "it is appropriate for a district court to 'express concern that a defendant is frivolously denying relevant conduct and explain [that] this could be a reason to deny an acceptance reduction.'" Id. at 5-6 (quoting United States v. Schenck, 697 Fed. Appx. 422, 423 (5th Cir. 2017) (per curiam),

cert. denied, 138 S. Ct. 1308 (2018), and citing United States v. Trevino, 829 F.3d 668, 675 (8th Cir. 2016)). And the court of appeals determined that because "[h]ere, the district court did no more than that," the district court "did not cross the line into coercing [petitioner] to withdraw her objections." Id. at A6.

Finally, the court of appeals made clear that its decision did not "address the situation where a district court allegedly coerces a defendant into withdrawing potentially meritorious objections to a [presentence report]." Pet. App. A6 n.3. Among other things, the court observed that petitioner neither "argue[d] that her objections to the [report] had any merit" nor "contradict[ed] her probation officer's assessment that her objections amounted to 'falsely denying and frivolously contesting relevant conduct.'" Ibid. (alteration omitted).

ARGUMENT

Petitioner renews her challenge to her below-guidelines sentence and contends (Pet. 11-17) that the district court "overreached its judicial authority" by improperly linking a potential downward adjustment for accepting responsibility under Sentencing Guidelines § 3E1.1 to petitioner's withdrawal of her objections to the presentence report. Pet. 17. The court of appeals correctly rejected petitioner's claim, and petitioner does not identify any conflict between that factbound decision and a decision of this Court or another court of appeals. In any event, the court of appeals appropriately applied plain-error review to

petitioner's unpreserved challenge, and the plain-error posture makes this case a particularly poor vehicle in which to consider the coercion issue.

1. To receive a two-level reduction for acceptance of responsibility under the Sentencing Guidelines, a defendant must "clearly demonstrate[] acceptance of responsibility for his offense." Sentencing Guidelines § 3E1.1(a). Entering a guilty plea does not automatically entitle a defendant to an acceptance of responsibility adjustment. Id. § 3E1.1, comment. (n.3). Instead, in determining whether a defendant qualifies for the reduction, a district court may consider, among other things, whether the defendant "truthfully admitt[ed] the conduct comprising the offense(s) of conviction, and" did "not falsely deny[] any additional relevant conduct." Id. § 3E1.1, comment. (n.1(A)). The commentary explains that "[a] defendant may remain silent in respect to relevant conduct beyond the offense of conviction without affecting his ability to obtain a reduction." Ibid. But "[a] defendant who falsely denies, or frivolously contests, relevant conduct that the court determines to be true has acted in a manner inconsistent with acceptance of responsibility." Ibid.

As the court of appeals correctly determined, the district court applied the appropriate acceptance-of-responsibility analysis to petitioner's case; the district court did not use the possibility of a reduction under Section 3E1.1(a) to coerce

petitioner into withdrawing her objections to the presentence report. Pet. App. A1-A6. Indeed, at the sentencing hearing, the court "treated withdrawal separately from acceptance." Pet. App. A5. It discussed the potential sentencing reduction "[o]nly after" petitioner had decided which objections she wished to continue to press. Ibid.; see C.A. ROA 128-131. And, when the district court turned to its analysis of acceptance of responsibility, it made clear that petitioner's withdrawal of her objections was not dispositive as to the applicability of Section 3E1.1(a), observing that withdrawing the objections "d[id not] change the fact that they were made and that they were frivolous denials of relevant conduct and false denials of relevant conduct." C.A. ROA at 132. The court then asked whether further evidence supported petitioner's acceptance of responsibility, id. at 133-134, and ultimately granted the reduction after hearing further argument from defense counsel on that issue, id. at 135.

The court of appeals also correctly rejected the contention that the district court improperly coerced petitioner by issuing a prehearing order stating its "tentative conclusions" that petitioner's objections were without merit, and that petitioner should not receive an acceptance-of-responsibility reduction. C.A. ROA 66. The prehearing order nowhere states that petitioner should withdraw her objections or that doing so might alter the court's tentative conclusion regarding the acceptance-of-responsibility reduction. Nor is that an obvious implication of

the court's order, which is most naturally read as an effort to inform the parties of the court's preliminary views to allow them to shape their hearing presentations accordingly.

Moreover, even if petitioner is correct that the district court's order was intended to warn petitioner against pursuing her objections to the presentence report, petitioner has not challenged the court's determination that her objections lacked any merit. See Pet. App. A6 n.3. The Eighth Circuit has explained that "accurately warn[ing] [a defendant] of the consequence of pursuing frivolous guidelines objections" neither "'threaten[s]'" nor "improperly coerce[s]" the defendant "into withdrawing his objections to the [presentence report]." United States v. Trevino, 829 F.3d 668, 675 (2016). "To the contrary, it is appropriate for a district court to 'express concern that a defendant is frivolously denying relevant conduct and explain this could be a reason to deny an acceptance reduction.'" Pet. App. A6 (quoting United States v. Schenck, 697 Fed. Appx. 422, 423 (5th Cir. 2017) (per curiam), cert. denied, 138 S. Ct. 1308 (2018)); see also United States v. Medina, 432 Fed. Appx. 349, 352 (5th Cir. 2011) ("[I]t would be absurd for a detrimental legal ruling on an objection to be construed as the court's coercing a defendant to withdraw that objection.").

2. Petitioner fails to identify any disagreement in the circuits regarding when a judge's statements regarding the acceptance-of-responsibility reduction might be deemed coercive.

As the court of appeals correctly observed, none of the decisions cited by petitioner involves Sentencing Guidelines § 3E1.1, a defendant's objections to a presentence report, or statements by a sentencing court comparable to those at issue here. See Pet. App. A6 n.4.

Instead, petitioner generally cites (Pet. 11-17) decisions where a district court was alleged to have threatened a higher sentence if the defendant rejected a plea and was later found guilty after trial -- a practice that is prohibited by Federal Rule of Criminal Procedure 11. See Fed. R. Crim. P. 11 (c)(1) ("The court must not participate in the[] [plea] discussions."); Pet. App. A6 n.4; Longval v. Meachum, 693 F.2d 236, 237 (1st Cir. 1982) (finding judicial coercion where a trial court stated that it "might be disposed to impose a substantial prison sentence" if defendant did not plead guilty), cert. denied, 460 U.S. 1098 (1983); United States ex. rel. McGrath v. LaVallee, 319 F.2d 308, 309 (2d Cir. 1963) (reversing an order denying habeas relief and remanding for an evidentiary hearing to determine whether the trial judge had threatened a criminal defendant that, among other things, he would "never see the sunshine again" if he was convicted at trial); United States v. Rodriguez, 197 F.3d 156, 159 (5th Cir. 1999) (finding a Rule 11 violation where the trial judge "indicated a belief that if [defendant] opted for a trial, he likely would be found guilty" and "that a sentencing enhancement filed by the government could not be withdrawn"); see also Boykin v. Alabama,

395 U.S. 238, 242 (1969) (discussing the standard for determining the voluntariness of guilty pleas); United States v. Pena, 720 F.3d 561, 571, 573 (5th Cir. 2013) (finding that a district court "participated in [the defendant's] plea negotiations in violation of Rule 11" by "stating that [the defendant] should resolve [a related civil matter] before the court would accept his guilty plea").

Decisions reflecting a prohibition on judicial interference in plea bargaining do not support petitioner's assertion that the district court coerced her to give up her objections to the presentencing report through its statements regarding her eligibility for the acceptance-of-responsibility sentencing reduction. And petitioner identifies no decision of any court of appeals that would find error in these circumstances. Nor is it apparent that, if any court were to find error, it would deem such error prejudicial. See Fed. R. Crim. P. 52. Petitioner received an acceptance-of-responsibility adjustment and a below-Guidelines sentence, Pet. App. B1; that outcome was clearly not affected by the withdrawal of Guidelines objections whose lack of merit is undisputed, see id. at 6 n.3.

3. In any event, this case would constitute a poor vehicle to review the coercion issue because petitioner failed to raise it in the district court, and the court of appeals therefore reviewed her coercion claim only for plain error. Pet. App. A4. The same standard of review would apply before this Court, and given the

absence of any precedent supporting petitioner's claim, see pp. 13-15, supra, she cannot demonstrate that any error was "plain" -- i.e., "clear" or "obvious," United States v. Olano, 507 U.S. 725, 734 (1993) -- let alone prejudicial.

Petitioner appears to dispute the application of the plain error standard, contending (Pet. 10-11) that she has raised a "structural error" that requires "automatic reversal." But, as the court of appeals correctly observed, the only two cases she cites for this proposition involve cases where a court applied plain error review to an unpreserved allegation of a sentencing error. Pet. App. A4 n.1 (explaining that neither United States v. Mudekunye, 646 F.3d 281 (5th Cir. 2011) (per curiam), nor United States v. Gonzalez-Terrazas, 529 F.3d 293 (5th Cir. 2008), support petitioner's argument). And this Court has not only repeatedly applied the plain-error standard to forfeited claims that a district court erred at sentencing, see, e.g., Rosales-Mireles v. United States, 138 S. Ct. 1897 (2018); Molina-Martinez v. United States, 136 S. Ct. 1338 (2016), but also to claims of impermissible judicial coercion to plead guilty, United States v. Davila, 569 U.S. 597 (2013). Petitioner offers no reason why a different standard should apply here.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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