No. 22-6680

IN THE SUPREME COURT OF THE UNITED STATES

MICHAEL STAPLETON, 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

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QUESTIONS PRESENTED

1. Whether the court of appeals erred in denying petitioner's motions to appoint substitute appellate counsel or to represent himself in his direct criminal appeal.

2. Whether the court of appeals erred in rejecting petitioner's challenge to the specificity of the allegations in the indictment.

3. Whether the court of appeals erred in rejecting petitioner's double-jeopardy challenges to his convictions.

4. Whether the district court violated Apprendi v. New Jersey, 530 U.S. 466 (2000), by calculating petitioner's advisory Sentencing Guidelines range based in part on facts found by the court at sentencing.

RELATED PROCEEDINGS

United States District Court (S.D. Fla.):

United States v. Stapleton, No. 14-cr-80151 (July 12, 2019)

United States v. Stapleton, No. 13-cr-80201 (Feb. 21, 2019)

United States Court of Appeals (11th Cir.):

United States v. Stapleton, No. 19-12708 (July 12, 2022)

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OPINION BELOW

The opinion of the court of appeals (Pet. App. B1-B22) is reported at 39 F.4th 1320.[1]

JURISDICTION

The judgment of the court of appeals was entered on July 12, 2022. A petition for rehearing was denied on December 1, 2022 (Pet. App. C1). The petition for a writ of certiorari was filed

[1] The pro se petition for a writ of certiorari refers (Pet. 4a) to the opinion of the court of appeals as Appendix B, and to the court's order denying rehearing as Appendix C. This brief follows that convention.

on January 3, 2023. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Southern District of Florida, petitioner was convicted on two counts of conspiring to encourage or induce unlawful immigration, in violation of 8 U.S.C. 1324(a)(1)(A)(iv) and (v)(I); 22 counts of encouraging or inducing unlawful immigration, in violation of 8 U.S.C. 1324(a)(1)(A)(iv); 22 counts of bringing or attempting to bring a noncitizen into the United States for commercial advantage or financial gain, in violation of 8 U.S.C. 1324(a)(2)(B)(ii); and one count of aiding and assisting a noncitizen who had been convicted of an aggravated felony to enter the United States, in violation of 8 U.S.C. 1327.[2] Judgment 1. The district court sentenced petitioner to 262 months of imprisonment, to be followed by two years of supervised release. Judgment 2-3. The court of appeals affirmed. Pet. App. B1-B22.

1. Over the course of at least 12 boat trips from the Bahamas, petitioner and his co-conspirators smuggled or attempted to smuggle more than 100 noncitizens into the United States. Presentence Investigation Report (PSR) ¶ 14. A network of "recruiters" sought out noncitizens who would pay to enter the United States; petitioner would then arrange for the recruited

[2] This brief uses the term "noncitizen" as equivalent to the statutory term "alien." See Barton v. Barr, 140 S. Ct. 1442, 1446 n.2 (2020) (quoting 8 U.S.C. 1101(a)(3)).

noncitizens to stay in "stash" houses in the Bahamas while awaiting transport, hire boat crews to bring them to the United States, and supply boats for the smuggling trips. PSR ¶¶ 40-41, 45; Gov't C.A. Br. 7. The government's evidence at trial focused on two particular trips. See Gov't C.A. Br. 2-11.

The first trip occurred in December 2012. On the evening of December 9, law enforcement officers were dispatched to investigate a boat with no legible registration numbers that had been pulled onto the beach in Jupiter, Florida. PSR ¶ 34. The officers searched the area and found a group of noncitizens who had been brought to the United States on the boat. PSR ¶¶ 34-36. Officers also found the boat's captain and co-captain, who were caught trying to leave the area by car. PSR ¶¶ 35, 37. The co-captain of the boat, Ray Abdul Pritchard, later told authorities that petitioner had hired him in the Bahamas to pilot the boat to the United States and then return it to the Bahamas for further smuggling runs. PSR ¶¶ 39, 43-44. Petitioner had already paid Pritchard thousands of dollars and had promised him thousands more upon return of the boat. PSR ¶ 43. Petitioner had also given Pritchard instructions for avoiding U.S. authorities and had directed him to land the boat at a particular inlet near Jupiter. PSR ¶ 41. One of the boat's passengers was a Jamaican national who had previously been removed from the United States after having been convicted of an aggravated felony. PSR ¶ 37.

The second trip occurred nine months later, in October 2013. On October 10, law enforcement officers responded to reports of a boat dropping people off in the ocean near North Palm Beach, Florida. PSR ¶ 83. Officers located and detained 11 noncitizens who had been dropped off by the boat, which they captured (with its captain) several hours later off the coast of Palm Beach, heading back towards the Bahamas. PSR ¶¶ 83-84. The captain of the boat admitted to smuggling the noncitizens into the United States. PSR ¶¶ 84, 87. The captain told authorities that petitioner had hired him in the Bahamas and had paid him to pilot the boat, which petitioner had provided. Ibid. Two of the female noncitizens who had been on the boat reported that petitioner had sexually assaulted them while they were being held in a stash house in the Bahamas before making the boat trip to the United States. PSR ¶ 90.

2. In 2014, a grand jury in the Southern District of Florida returned an indictment charging petitioner with two counts of conspiring to encourage or induce unlawful immigration, in violation of 8 U.S.C. 1324(a)(1)(A)(iv) and (v)(I); 22 counts of encouraging and inducing unlawful immigration, in violation of 8 U.S.C. 1324(a)(1)(A)(iv); 22 counts of bringing or attempting to bring an alien into the United States for commercial advantage or financial gain, in violation of 8 U.S.C. 1324(a)(2)(B)(ii); and one count of aiding and assisting a noncitizen convicted of an aggravated felony to enter the United States, in violation of

8 U.S.C. 1327. Indictment 1-5. The conspiracy charges were based on the December 2012 trip (Count 1) and the October 2013 trip (Count 2). Indictment 1-2.

Petitioner was not in the United States at the time of the indictment. Pet. App. B3. The government sought to negotiate his extradition from the Bahamas or Jamaica, but those efforts proved to be unavailing. Ibid. In 2018, petitioner traveled from the Bahamas to Germany, where he was arrested on an "Interpol 'red notice'" and extradited to the United States. Id. at B7 (citation omitted).

Before trial, petitioner moved to dismiss the indictment on several grounds, including claims that the delay between his indictment and trial violated his Sixth Amendment right to a speedy trial; that the indictment was insufficiently specific because it did not name his alleged co-conspirators or any accomplices; and that the two conspiracy counts were duplicative of each other. Pet. App. B3-B4. The district court denied petitioner's motions, and the case proceeded to trial. Id. at B4. Petitioner represented himself at the trial with the assistance of stand-by counsel. See Gov't C.A. Br. 2. The jury found petitioner guilty on all counts. Pet. App. B4.

At sentencing, the district court applied a four-level enhancement under Sentencing Guidelines § 2L1.1(b)(7)(8) after finding that petitioner's offense conduct had resulted in serious bodily injury to one of the noncitizens whom petitioner had

sexually assaulted. Pet. App. B4; see Gov't C.A. Br. 26-27; PSR ¶ 116. The court also applied a two-level enhancement under Section 2L1.1(b)(5)(C) after finding that petitioner had carried a firearm in connection with his offenses. Pet. App. B4. Both findings were based on testimony at sentencing, which the court found to be credible. Id. at B4-B5. The court imposed a below-guidelines sentence of 262 months of imprisonment, to be followed by two years of supervised release. Id. at B5; see Judgment 2-3.

3. Petitioner's court-appointed counsel filed a notice of appeal on his behalf. D. Ct. Doc. 261 (July 13, 2019). Petitioner then filed a pro se letter that the court of appeals construed as a motion seeking the appointment of new counsel for purposes of an appeal, which the court denied. C.A. Order 1 (Feb. 10, 2020). After petitioner's appointed counsel submitted a brief pursuant to Anders v. California, 386 U.S. 738 (1967), the court ordered counsel to file a new brief addressing four issues identified by the court itself. C.A. Order 1-2 (Oct. 9, 2020). The court also denied petitioner's motion to represent himself in the appeal. C.A. Order 1 (June 11, 2021). Petitioner, however, continued to file pro se letters, which the court declined to consider. See 11th Cir. R. 25-1 ("When a party is represented by counsel, the clerk may not accept filings from the party.").

After further (counseled) briefing and argument, the court of appeals affirmed. Pet. App. B1-B22. Among other things, the court rejected petitioner's argument that his two conspiracy convictions

were duplicative of each other in violation of double-jeopardy principles. Id. at B8-B10. The court explained that the two conspiracies occurred at different times and involved different co-conspirators, different boats, different stash houses, different noncitizens, and different landing spots in the United States. Id. at B9. The court also rejected petitioner's double-jeopardy challenge to three of his convictions that all pertained to the same noncitizen, explaining that each count was based on a separate statutory provision, that the elements required to prove each count were nonoverlapping, and that the offenses were therefore not the same under the test set forth in Blockburger v. United States, 284 U.S. 299 (1932). Pet. App. B10.

The court of appeals also rejected petitioner's challenges to the specificity of the indictment, which asserted that the indictment was required to name his alleged co-conspirators and people whom he had aided and abetted. Pet. App. B13-B14. The court explained that a conspiracy charge need not identify co-conspirators by name. Id. at B13. The court also found that, notwithstanding references in the indictment to 18 U.S.C. 2, the indictment as a whole made clear that petitioner "wasn't charged with 'aiding and abetting' the immigrant-smuggling offenses," but was instead charged with "personally committ[ing]" those offenses. Id. at B14; see id. at B13-B14.

The court of appeals additionally determined that "the district court didn't err in imposing sentencing enhancements

based on [petitioner's] sexual assault of migrants and his possession of a firearm in relation to his offenses." Pet. App. B20. In particular, the court of appeals explained that the district court's finding of sexual assault "wasn't clearly erroneous" and that the district court had been "entitled to find [the victim] credible." Ibid.

The court of appeals granted petitioner permission to file a pro se petition for rehearing en banc, which the court denied. Pet. App. C1; see C.A. Order (Sept. 9, 2022).

ARGUMENT

The decision below is correct and does not conflict with any decision of this Court or another court of appeals. The pro se petition for a writ of certiorari does not identify any issue warranting further review. But given that many of petitioner's convictions are based on 8 U.S.C. 1324(a)(1)(A)(iv), and that he is proceeding pro se, the government does not object to the Court holding the petition pending the Court's decision about the facial validity of Section 1324(a)(1)(A)(iv) in United States v. Hansen, No. 22-179 (argued Mar. 27, 2023), and then disposing of the petition as appropriate in light of that decision.

1. Petitioner's arguments for granting plenary review lack merit. Petitioner principally contends (Pet. 6, 10) that the decision below conflicts with the Fifth Circuit's decision in United States v. Garcia-Paulin, 627 F.3d 127 (2010), and the Ninth Circuit's decision in United States v. Singh, 532 F.3d 1053 (2008).

Those cases addressed the circumstances in which a defendant may be held liable for aiding and abetting another person's violation of Section 1324(a)(1). See Garcia-Paulin, 627 F.3d at 131-133; Singh, 532 F.3d at 1059.

The court of appeals correctly recognized, however, that Garcia-Paulin and Singh "are inapposite." Pet. App. B14 n.7. As it explained, petitioner was not charged and convicted on an accomplice-liability theory. See Pet. App. B13-B14.[3] Although the indictment cited 18 U.S.C. 2, the specific allegations for each of the substantive smuggling offenses made clear that petitioner "was charged with the substantive offenses because he personally committed them, not because he aided and abetted their commission." Pet. App. B14. That was also the theory on which petitioner was convicted at trial. See Gov't C.A. Br. 3-11.

The remaining questions listed in the petition (Pet. 2a) also do not provide any sound basis for further review. The court of appeals did not "leav[e] a timely filed motion to discharge counsel unresolved." Ibid. (Question 2). The court denied petitioner's motions to appoint substitute appellate counsel or to proceed pro se, after which it declined to consider his additional pro se filings while he was represented by counsel. See p. 6, supra; cf.

[3] As the government's brief in Hansen explains, the offense set forth in Section 1324(a)(1)(a)(iv) is itself in the nature of facilitation or solicitation of unlawful immigration activity. See Gov't Br. at 20-28, Hansen, supra (No. 22-179). But petitioner's contention here is that he was improperly convicted of aiding and abetting someone else's criminal violation of Section 1324(a)(1)(A)(iv) itself. See Pet. 6, 10.

Martinez v. Court of Appeal, 528 U.S. 152, 163 (2000) (declining to "recognize a constitutional right to self-representation on direct appeal from a criminal conviction"). Petitioner identifies no error in those decisions.

The court of appeals also did not fail to address any issue raised in a petition for rehearing. See Pet. 2a (Questions 3 and 4). The court granted leave for petitioner to file a pro se rehearing petition and denied that petition. Pet. App. C1.

To the extent that petitioner renews his prior double-jeopardy arguments, cf. Pet. 2a (Question 5), the court of appeals correctly rejected those arguments, Pet. App. B8-B13, and its fact-bound application of well-settled law does not warrant this Court's review. See Sup. Ct. R. 10. Petitioner also appears to raise (Pet. 7-8) a new double-jeopardy theory, premised on an indictment in a different case. Petitioner forfeited that claim by failing to raise it below, see Fed. R. Crim. P. 52(b), and the claim is also unfounded. Before the indictment in this case, the government charged petitioner with smuggling offenses arising from a different boat landing. See Indictment at 1-4, United States v. Stapleton, No. 13-cr-80201 (S.D. Fla. Oct. 17, 2013). But that earlier indictment never proceeded to trial and was ultimately dismissed at the government's request. See 13-cr-8021 D. Ct. Order (Feb. 21, 2019). Jeopardy therefore never attached in the other case, which in any event concerned different criminal conduct. See Martinez v. Illinois, 572 U.S. 833, 840 (2014) (per curiam).

Finally, petitioner errs in contending (Pet. 9) -- also apparently for the first time -- that the district court violated Apprendi v. New Jersey, 530 U.S. 466 (2000), when it found at sentencing that petitioner sexually assaulted one of the noncitizens whom he arranged to smuggle to the United States. That contention is both forfeited and meritless. As this Court made clear in its post-Apprendi decision in United States v. Booker, 543 U.S. 220 (2005), a judge may rely on judicial findings of fact to calculate the defendant's guidelines range under the federal Sentencing Guidelines, which are now advisory rather than binding. See id. at 233, 245. And the district court properly applied a four-level guidelines enhancement based on its sexual-assault finding, which the court of appeals affirmed. Pet. App. B20-B21.

2. Although plenary review is unwarranted, the government believes that it would be appropriate to hold the petition pending the Court's decision in Hansen and then to dispose of it as appropriate in light of that decision. In Hansen, this Court is addressing "[w]hether the federal criminal prohibition against encouraging or inducing unlawful immigration for commercial advantage or private financial gain, in violation of 8 U.S.C. 1324(a)(1)(A)(iv) and (B)(i), is facially unconstitutional on First Amendment overbreadth grounds." Gov't Br. at I, Hansen, supra (No. 22-179). Although petitioner has not yet raised a First Amendment claim, he is proceeding pro se, and a decision in Hansen facially invalidating Section 1324(a)(1)(A)(iv) would

invalidate many of his convictions, see p. 2, supra, which would then provide a basis for him to seek collateral relief. The more expedient and appropriate course would therefore be to hold the current petition and allow any relief that may ultimately be warranted to be entered on direct review.

CONCLUSION

The petition for a writ of certiorari should be held pending the Court's decision in United States v. Hansen, No. 22-179 (argued Mar. 27, 2023), and then be disposed of as appropriate in light of that decision.

Respectfully submitted.

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APRIL 2023