IN THE

SUPREME COURT OF THE UNITED STATES

No. _____

OCTOBER TERM, 2023

RUIXUE SHI,

Petitioner,

- vs -

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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QUESTION PRESENTED FOR REVIEW

Whether Petitioner's guilty plea was involuntary because she decided to plead guilty based upon her attorney's advice that it was in her interest to do so because he did not have sufficient time to prepare for trial?

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Petitioner respectfully prays that a *writ of certiorari* issue to review the judgment of the United States Court of Appeals for the Ninth Circuit entered on January 16, 2024.

JURISDICTION AND CITATION OF OPINION BELOW

On January 16, 2024, the Ninth Circuit affirmed Petitioner's conviction in an unpublished Memorandum opinion, attached as Exhibit "A" to this petition. This Court has jurisdiction to review the Ninth Circuit's decision pursuant to 28 U.S.C. § 1254.

CONSTITUTIONAL PROVISIONS AT ISSUE

> No person . . . shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law . . . .

U.S. Const. amend. V.

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

U.S. Const. amend. VI.

INTRODUCTION

Petitioner asks the Court to grant review in this case to decide an important guilty plea voluntariness issue which warrants resolution by the Court. Defendant pled guilty in this case just over three weeks after the district court denied a stipulation to continue the trial date in which her defense counsel outlined in detail why the defense could not be ready by the scheduled trial date. During her guilty plea, the district court never raised this lack of preparation issue or specifically confirmed with Petitioner that she was not pleading guilty because of her attorney's stated inability to be ready by the confirmed trial date.

In a letter to the district court in support of her subsequent pre-sentence motion to withdraw her guilty plea, Petitioner alleged that she only pled guilty because her attorney advised her it was in her interest to do so because they could not be prepared for trial. The district court denied this motion, relying on Petitioner's statements in her plea agreement and during her guilty plea that she had enough time to review, discuss, and consider the plea agreement, that no one had threatened or forced her in any way to enter into this agreement, and that she was satisfied with the representation provided by her attorney. Also noting these admissions, the Ninth Circuit affirmed, finding that these statements contradicted Petitioner's claims in her motion to withdraw her guilty plea, and concluding that Petitioner's counsel had not

pressured her to plead guilty.

In this petition, Petitioner first will point out, with a straightforward examination of the record, that her statements connected to her guilty plea did not conflict with her claim that she pled guilty because her lawyer was unprepared for trial. For this reason, the question presented in this petition is squarely raised. Next, Petitioner will ask the Court to decide whether her guilty plea which she entered because her counsel was unprepared for trial "represent[ed] a voluntary and intelligent choice among the alternative courses of action open to[her]," North Carolina v. Alford, 400 U.S. 25, 31 (1970), or an involuntary "waiver of several constitutional [trial] rights." Boykin v. Alabama, 395 U.S. 238, 243 (1969).

STATEMENT OF FACTS AND CASE

In August 2020, Petitioner was charged by indictment in the U.S. District Court for the Central District of California with wire fraud, aggravated identity theft, money laundering, and aiding and abetting. [ER 3-11].[1] The indictment resulted from an investigation into Petitioner's attempt to develop a luxury condominium and hotel complex in Coachella, California. [ER 3]. To finance this project, Petitioner solicited funds from Chinese investors, advising them they would be purchasing a

[1] "ER" denotes Petitioner's excerpts of record filed with the Ninth Circuit Court of Appeals. "CR" denotes the district court clerk's record.

condominium with their investment. [ER 19]. The FBI investigated this project after receiving complaints from some investors, and it found what it believed to be improper personal use of investors' money by Petitioner, and solicitation of investments based upon false statements.

A. District Court Proceedings

Petitioner was arraigned on the indictment before a magistrate judge in August 2020, and trial was set for October 2020. [CR 45]. Two weeks later, Petitioner's retained counsel moved to withdraw from the case, and the Los Angeles Federal Public Defender's Office was appointed to represent Petitioner. [CR 54-55]. In early October, the parties filed a stipulation requesting to continue the trial date to October 2021 due to the COVID-19 measures which were in place at that time. [CR 60]. The district court granted the request but continued trial only to August 2021. [CR 61].

In May 2021, the parties filed a second stipulation to continue the trial date, this time asking the district court to continue the trial date to May 2022. [CR 62]. In this stipulation, defense counsel stated that he could not be prepared for trial by the scheduled date because of his trial schedule which included five upcoming trials, and also due to COVID-19 travel restrictions. [CR 62 at 3]. Additionally, defense counsel stated that he had been unable to meet with Petitioner in person. Id.

at 3-4. The district court granted the request, but continued the trial only to November 30, 2021. [CR 63].

On September 28, 2021, approximately two months before the trial date, the parties filed a third stipulation to continue the trial date, this time asking for a new date six months later. [ER 110-19]. The stipulation provided multiple reasons why defense counsel was making this additional continuance request, including: (1) the government had produced more than 20,000 pages of discovery to the defense, including reports of investigation, complaints, photographs, bank records, and other documents from third parties, many of which were in Chinese; (2) defense counsel had eight trials set between September 2021 and April 2022; (3) defense counsel had personal reasons requiring the continuance in order to be prepared for trial (as set forth separately in an *in camera*, sealed filing); (4) defense counsel still had been unable to meet with Petitioner in person for a majority of the representation, and communication with Petitioner in other ways had been of limited use in terms of preparing for trial because of a protective order which precluded Petitioner from retaining her own copy of the discovery; and (5) COVID-19 travel restrictions had interfered with counsel's ability to investigate the case, and preparation for this case "may require defense counsel and an investigator to travel to China to interview witnesses, conduct and complete additional legal research including for potential

pretrial motions, review the discovery and potential evidence in the case, and prepare for trial in the event that a pretrial resolution does not occur." [ER 112-13]. For all of these reasons, "[d]efense counsel represents that failure to grant the continuance would deny him reasonable time necessary for effective preparation, taking into account the exercise of due diligence." Id. at 4.

In an order filed five days later, the district court denied this continuance request. [CR 90]. Two and one-half weeks later, defense counsel filed a signed plea agreement with the district court, and a week later, and approximately five weeks prior to the confirmed trial date, Petitioner pled guilty. [CR 101, 103]. Pursuant to the plea agreement, Petitioner pled to the wire fraud charge, and the government agreed to dismiss the remaining counts at the time of sentencing. [ER 68-86].

The Federal Defender's office subsequently declared a conflict and a CJA attorney was assigned to the case. After multiple continuances of sentencing, sentencing was set for November 21, 2022. Six days before sentencing, counsel for Petitioner filed a motion to withdraw her guilty plea. [ER 105-09]. It was a thirteen line motion, with a hand-written letter from Petitioner attached:

> You Honorable Judge Klausner:
>
> I am writing this letter to request withdraw of my guilty of plea with reasons as below

1. Factual basis in the plea agreement is not what I did and is not true. I have never ever has any intention to defraud any investor, the project is real, all the work for the project is real, all the expenses on the project is real;

2. I was rushed to this plea agreement on 10/21/2021 one week within my trial continuance get [] denied. I have no time to consider thoroughly about this plea. The reason I decided to plea is simply because I was persuaded that due to lack of time, there is no way we can prepare enough for trial. To plea guilty is to the best of my interest;

3. I was a Chinese citizen. I moved to Los Angeles at the end of 2017. I was totally ignorant of legal procedure [] in the United States. I didn't know what I plea to while I plea guilty. Now with new council's help, I was enlightened more. However, I also know better that what I plead to is not what I thought I plead to;

4. I relied 100% with the [] guidance of the two public defenders who [] was working in my case while I plea guilty. I contested right away that some of the sentences in the plea agreement is not true. I have no intention to defraud investors; I have never made any presentation and false statement to investors while knowing it was not true. However, I was informed by my council that by pleading guilty, I have to admit with intention to defraud investors. The two council have also explained to me that I plea guilty to level 28, [] if loss amount could be proven lower, I can get lower sentence based on level 28 on the guideline which is less than 68 months. I was never informed that prosecutor can request higher level than 28.

There are also evidence can prove my efforts in saving this project [] and is not in this plea agreement.

Thus, I request to withdraw this plea of guity of plea. It

> will be much appreciated if you Honor could approve my request!!
>
> Thanks!
>
> Shi 11/15/2022

[ER 108-09].

The government argued that Petitioner's motion should be denied because she was not believable, her claims in the letter were contrary to the record, and she failed to present a fair and just reason to withdraw her plea. [ER 87-104]. At sentencing, the district court first considered Petitioner's motion to withdraw her plea:

> THE COURT: Thank you, Counsel. This is the time set for sentencing. The Court has read and considered multiple documents. And before we get to sentencing, there is a motion that has been submitted by the defendant to withdraw her plea.
>
> The Court has read and considered for that motion, the moving papers, the letter that was included with the plaintiff's motion – or the defendant's motion, and the Government's opposition.
>
> Does Counsel wish to be heard further on that?
>
> MR. ROSEN: Nothing on behalf of Ms. Shi.
>
> MR. SCHWAB: Nothing on behalf of the government. I would ask that the Court make a factual finding on the issue.

THE COURT: In this particular matter, the Court has read and considered all the documents I had mentioned before. Basically, the defendant's letter indicated [four] reasons why she thought that the plea should be set aside.

One being that it was not a factual basis because she didn't do these offenses. Yet in the plea agreement, upon questioning of the Court, she listened to and read the plea agreement as far as the factual basis, and she admitted everything in the factual basis, including the fact that she was guilty of this offense.

The second reason was that she was rushed to trial on it, The arrest was made June 19th of 2020. The plea agreement wasn't until October 20th of 2021, so she had about 16 months to prepare for trial. The Court will find that she was not rushed to trial.

The third one is that she is a Chinese citizen and she was ignorant of the plea procedure, but the record also reflects that she had a qualified interpreter with her at the time, who translated everything for her.

And number four was that she relied on what the public defenders told her, and she was never informed that the prosecution can request a higher level than 28. The plea agreement that she signed indicates that she – that there was no agreements as far as sentencing, that anybody could as for any sentence they wanted to. So that grounds would not be appropriate either.

I should read into the record one other thing, and that is that in the plea agreement, that the defendant signed here, she indicated, "The plea agreement was read to me in Mandarin, the language I understand best. I've had enough time to review and consider this agreement. I have

carefully thoughtfully discussed every part of it with my attorney. I understand the terms of the agreement, and I voluntarily agree to those terms. I have discussed evidence with my attorneys, and my attorneys have advised me of my rights, possible pretrial motions, the right to file these motions, possible defenses that might be asserted, either prior to trial or at trial, of the sentencing factors set forth in Title 18 of United States Code Section 3553(a), of relevant sentencing guideline provisions, and of all the consequences entering into this agreement."

She goes on to say, "No promises, inducements, or representations of any kind have been made to me, other than those contained in this plea agreement. No one has threatened or forced me in any way to enter into this plea agreement. I am satisfied with the representation of my attorneys."

And it will be noted for the record that she had two attorneys from the Public Defenders Office representing her.

"And I am pleading guilty because I am guilty of the charge in which – excuse me – in which and not for any other – "

I misstated that.

"I wish to take full advantage of the promises forthwith in this agreement, and not for any other reason."

I misstated that.

"I wish to take full advantage of the promises forthwith in this agreement and not for any other reason."

The Court will make a finding that the defendant freely and

> voluntarily entered into the plea knowingly and intelligently. And I'm going to deny the motion to set aside the plea.

[ER 29-32].

Later in the hearing, and in response to Petitioner's allocution where she again maintained her innocence, the district court stated:

> THE COURT: In this particular matter, it's very tough to give anything you say any credibility at all. You went overboard saying, "I'm guilty, I know I'm guilty.
>
> I even asked you at the time of the plea, "Do you understand these facts? Do you admit these facts? And you said, "Yes." In your declaration here, you say now that there's promises made to you by a prior district [sic] attorney. In your declaration, you say, "No promises, inducements, or representations of any kind have been made to me other than those contained in this plea agreement."
>
> And so the Court is going to go by what you said in your declaration in the plea agreement . . .

[ER 40-41].

The district court imposed the statutory maximum sentence of 240 months in custody.

B. Direct Appeal

On direct appeal, Petitioner argued that the district court abused its discretion in denying her motion to withdraw her guilty plea. Among other claims,

Petitioner argued that her plea was involuntary because, as she stated to the district court in her letter in support of the motion, she decided to plead guilty because her counsel persuaded her that due to lack of time, there was no way they could prepare enough for trial, and pleading guilty was in her interest. [ER 108].

The Ninth Circuit declined to find that Petitioner's plea was involuntary because "her attorneys pressured [her] into pleading guilty because they could not prepare for trial." [Ex. "A" at 4]. The panel found:

> Shi certified in her plea agreement that "I have had enough time to review and consider this agreement, and I have carefully and thoroughly discussed every part of it with my attorney." One of Shi's attorney's had been on the case for over a year. She further certified that "[n]o one has threatened or forced me in any way to enter into this agreement," and that she was "satisfied with the representation of [her] attorney in this matter." At the change of plea hearing, Shi stated that she was "[v]ery satisfied" with her attorney's advice. These statements explicitly contradict what Shi states in her November 15, 2021, letter, which was the only evidence offered in support of her motion to withdraw her plea. Shi has not shown that her attorneys improperly pressured her to plead guilty.

[Ex. "A" at 4].

ARGUMENT

Because a guilty plea "constitutes a waiver of several constitutional rights," Boykin, 395 U.S. at 243, "guilty pleas must be knowing and voluntary to be valid." Puckett v. United States, 556 U.S. 129, 136 (2009). "A defendant who enters such a plea simultaneously waives several constitutional rights, including his privilege against compulsory self-incrimination, his right to trial by jury, and his right to confront his accusers." McCarthy v. United States, 394 U.S. 459, 466 (1969). "If a defendant's guilty plea is not equally voluntary and knowing, it has been obtained in violation of due process and is therefore void." Id.

"The standard was and remains whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." Alford, 400 U.S. at 31. "Ignorance, incomprehension, coercion, terror, inducements, subtle or blatant threats might be a perfect cover-up of unconstitutionality." Boykin, 395 U.S. at 242-43. "We cannot presume a waiver of these three important federal [trial] rights from a silent record." Boykin, 395 U.S. at 243.

A. Petitioner's Claim That Her Attorney Persuaded Her To Plead Guilty Because They Would Not Be Ready For Trial Is Not In Conflict With Her Statements In Connection With Her Guilty Plea

Three and one-half weeks prior to her guilty plea, Petitioner's counsel

stated that he could not be prepared for trial unless the trial date was continued. In the stipulation to continue the trial date by six months, Petitioner's counsel listed various reasons why "he will not have the time that he believes is necessary to prepare to try this case on the current trial date." [ER 113]. These reasons included counsel's inability to meet with Petitioner in person due to COVID-19 restrictions, the potential need to travel to China to interview witnesses, and the need to review the voluminous case discovery. [ER 112-13]. Based upon these reasons, defense counsel "represent[ed] that failure to grant the continuance would deny him reasonable time necessary for effective preparation, taking into account the exercise of due diligence." [ER 113].

At Petitioner's subsequent guilty plea, the district court never brought up this preparedness issue. The district court conducted a standard Fed. R. Crim. Pro. 11 colloquy, which included confirming that Petitioner had "gone over [the plea agreement] with her attorney," and that "nobody had made any promises to you or threats or assurances to get you to plead guilty." [ER 64]. Additionally, the plea agreement which Petitioner had signed confirmed that "no other promises, inducements, or representations of any kind have been made to [her] other than those contained in this agreement," and "no one has threatened or forced [her] in any way to enter into this agreement." [ER 85]. Petitioner's counsel certified in the plea

agreement that "my client's decision to enter into this agreement is informed and voluntary." [ER 86].

As to addressing that the plea was voluntary, the district court went no further than referring to this boilerplate language in the plea agreement and its standard questioning in the plea colloquy. It never addressed the obvious issue that after the case had been going on for more than 16 months, Petitioner was pleading guilty just over three weeks after the district court had denied the stipulation to continue the trial date wherein her counsel admitted that he could not be prepared for trial. Because a court "cannot presume a waiver of these [] important federal [trial] rights from a silent record," Boykin, 395 U.S. at 243, the Ninth Circuit's decision rests solely on the statements Petitioner made in connection with her plea.

Petitioner acknowledges that a defendant's "[s]olemn declarations in open court carry a strong presumption of verity." Blackledge v. Allison, 431 U.S. 63, 74 (1977). But this is not a case where, following Petitioner's guilty plea, she has "subsequent[ly] present[ed] conclusory allegations unsupported by specifics," or "contentions that in the face of the record are wholly incredible." Blackledge, 431 U.S. at 74 (rejecting such allegations in context of habeas filing). To the contrary, Petitioner's voluntariness claim is directly supported by the detailed filing from her attorney that said that they could not be ready for trial unless a lengthy continuance

was granted. Following the district court's denial of the continuance request, we can assume that defense counsel talked to Petitioner about the effect of the denial on the nature and quality of her defense, as well as her chances at trial. Given this record, Petitioner's claim that her attorneys advised her that it would be in her interest to plead guilty at that point is consistent with the overall proceedings and an entirely reasonable assertion.

Equally important, this claim is not in conflict with Petitioner's other statements from her plea. As to her statement that she was not being "forced" to plead guilty, Petitioner said this because she was not being "forced" to do anything at that point. As she set forth in her letter, her attorney persuaded her that because they could not be ready for trial, it was in her interest to plead guilty. [ER 108]. Petitioner's counsel did not "force" her to plead guilty, as she could have elected to proceed to trial. But instead of doing so with an unprepared attorney, she relied on her attorney's advice that a plea was the best course of action for her, and so she signed the plea agreement and pled guilty.

As to Petitioner agreeing that she had sufficient time to review and consider the plea agreement, and had carefully and thoroughly discussed every part of it with her attorney, nothing about this admission conflicts with her claim that she pled guilty based on counsel's lack of preparedness. All this admission says is that

Petitioner thoroughly discussed the plea agreement with her lawyer, and she had enough time to do it. With regard to Petitioner saying that she was satisfied with the representation provided by her counsel, this also does not contradict her claim. It was the district court which created this trial preparation issue by denying the continuance request, and Petitioner claimed that her counsel then advised her what was in her best interest in light of that ruling. Given the case's status at the time of her guilty plea, and in light of the COVID-19 restrictions which had played such a significant part in counsel's inability to prepare the case for trial, Petitioner had no reason to blame counsel for her predicament.

In sum, because the district court never asked Petitioner the question which this record demanded–whether she was pleading guilty because her attorney could not be ready for trial–the credibility of her record-supported claim must be determined by comparing it to the admissions she made in her plea agreement and in the Rule 11 colloquy. As set forth above, Petitioner's allegation as to why she pled guilty is not contradicted by any of these other admissions she made as part of her plea proceedings. For this reason, the Ninth Circuit's finding that Petitioner's claim failed because her plea statements "contradict what Shi states in her November 15, 2021, letter," [Ex. "A" at 4], is belied by the record, and the Court therefore must examine whether this basis for her plea rendered it involuntary.

B. A Guilty Plea Entered Because Defense Counsel Is Unprepared For Trial Is Involuntary

The Court has never addressed whether a guilty plea is involuntary if it is entered because defense counsel is unprepared for trial; however, several circuits courts have weighed in on this issue. In United States v. Moore, 599 F.2d 310, 313 (9th Cir. 1979), the Ninth Circuit squarely stated that a "plea entered because counsel is unprepared for trial is involuntary." While the panel in that case denied relief because defense counsel's statements after his request for a 30-day continuance was denied "contradict Moore's assertion that her attorney was unprepared," id. the Ninth Circuit is the only circuit to address directly that a plea that is entered because counsel is unprepared is involuntary.

Moore cited to the Fifth Circuit's decision in Colson v. Smith, 438 F.2d 1075 (5th Cir. 1971), in support of its statement of law. Moore, 599 F.2d at 313. In Colton, that court considered that, among other deficiencies in counsel's representation, counsel "appeared in court on the day the case was called completely unprepared to go to trial." Id. at 1080. In United States v. Reed, 859 F.3d 468, 472-73 (7th Cir. 2017), the Seventh Circuit analyzed and rejected a lack of preparedness claim on its merits. That court opined that such a reason could demonstrate the involuntariness of a plea, but declined to find so there because, among other reasons,

defendant failed to show that his lawyer actually was unprepared for trial. In United States v. Weeks, 653 F.3d 1188, 1205-06 (10th Cir. 2011), the Tenth Circuit found that defendant's habeas petition alleged facts entitling him to an evidentiary hearing when it alleged, in part, that counsel's lack of preparation "pushed him" to enter a guilty plea.

In the related context of a defendant waiving the right to the assistance of counsel, circuits have found that a Faretta v. California, 422 U.S. 806, 814-15 (1975), waiver is voluntary only if the trial court ensured that the defendant was not deciding whether to appear pro se because counsel was not ready for trial. See, e.g., United States v. Silkwood, 893 F.2d 245, 248 (10th Cir. 1989) (for waiver of counsel to be voluntary, "the trial court must inquire into the reasons for the defendant's dissatisfaction with his counsel to ensure that the defendant is not exercising a choice between incompetent or unprepared counsel and appearing *pro se.*"); James v. Brigano, 470 F.3d 636, 644 (6th Cir. 2006) (choice between unprepared counsel and self-representation is no choice at all); Gilbert v. Lockhart, 930 F.2d 1356, 1360 (8th Cir. 1991) (defendant offered the "Hobson's choice" of proceeding to trial with unprepared counsel or no counsel at all); Pazden v. Maurer, 424 F.3d 303, 317 (3d Cir. 2005) (with record "replete with statements and submissions by Pazden's attorney explaining that she was unprepared to proceed to trial," "decision to proceed

pro se was not an exercise of free will, rather it was the result of him 'bowing to the inevitable.'").

While, at the time Petitioner appeared in the district court to plead guilty, she was making a "choice among the alternative courses of action open to [her]," Alford, 400 U.S. at 31, she was faced with a Hobson's choice. She could proceed to trial with, as her attorney clearly outlined, a defense and defense attorney that were not going to be ready, or she could waive her trial rights and plead guilty. It is "beyond dispute that a guilty plea must be both knowing and voluntary," Parke v. Raley, 506 U.S. 20, 29 (1992), and a defendant who pleads guilty because she is otherwise facing a trial with an unprepared lawyer is not making a voluntary choice to do so. Just as a choice between unprepared counsel and self-representation is no choice at all, see James, 470 F.3d at 644, a choice between going to trial with unprepared counsel and pleading guilty is not a free and fair choice. The Court should hold that a guilty plea entered because counsel is unprepared for trial is involuntary, conclude that Petitioner plea guilty for this reason, and reverse the Ninth Circuit's decision.

CONCLUSION

For the above reasons, Petitioner respectfully requests that the Court grant the instant petition to review the decision of the Ninth Circuit Court of Appeals.

Respectfully submitted,

Dated: February 16, 2024

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