No. 24-5076

IN THE SUPREME COURT OF THE UNITED STATES

CHI MENG YANG, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

1. Whether petitioner was convicted under 18 U.S.C. 666(a)(2) based on a bribery theory.

2. Whether the court of appeals correctly determined that the district court's preclusion of petitioner's proposed public authority defense was not a valid basis for vacating petitioner's conviction for conspiring to commit bribery in violation 18 U.S.C. 371 and 666.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-7) is not published in the Federal Reporter but is available at 2024 WL 1574351. The opinion and order of the district court is not published in the Federal Supplement but is available at 2022 WL 2193100.

JURISDICTION

The judgment of the court of appeals was entered on April 11, 2024. The petition for a writ of certiorari was filed on July 9, 2024. 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 Eastern District of California, petitioner was convicted of conspiring to commit bribery, in violation of 18 U.S.C. 371; bribing a public official, in violation of 18 U.S.C. 666(a)(2); and manufacturing marijuana, in violation of 21 U.S.C. 841(a)(1). Judgment 1. The district court sentenced petitioner to 71 months of imprisonment, to be followed by four years of supervised release. Judgment 2-3. The court of appeals affirmed. Pet. App. 1-7.

1. In May 2017, petitioner met with the sheriff of Siskiyou County, California. C.A. Supp. E.R. 37-39; C.A. E.R. 250-251. During the meeting, petitioner explained that he was interested in cultivating and distributing marijuana, and he intimated that he hoped to keep his marijuana safe from county law enforcement action. C.A. E.R. 209-213. Petitioner asked for the sheriff's support with those efforts and offered a $1 million donation to the sheriff's charitable foundation in exchange for the requested help. C.A. Supp. E.R. 43-44.

The sheriff contacted the Federal Bureau of Investigation (FBI) and arranged another meeting with petitioner. C.A. Supp. E.R. 28-35, 49-50. The FBI recorded a meeting between petitioner and the sheriff, during which petitioner explained that he was trying to obtain a commercial cannabis permit to run dispensaries

in Missouri, which he planned to supply with cannabis he was growing in California. Id. at 52-53. Petitioner then repeated his previous request for the sheriff's "support" and offered to pay the sheriff $1 million once he received the profits from his Missouri efforts. Id. at 49-51. Petitioner indicated that the money could go to the Sheriff's Office, or it could go directly to the sheriff "privately." Id. at 52-53.

The recording also captured petitioner explaining that he wanted protection from the County's marijuana enforcement operations for ten properties that belonged to his family members. C.A. Supp. E.R. 54-56. Petitioner suggested to the sheriff that if his deputies discovered marijuana on those properties, they should "[l]et [the family members] walk." Id. at 56. In exchange for such consideration, petitioner offered to pay the sheriff $5000 per property, with an additional $5000 per property in donations to the sheriff's reelection campaign. Id. at 54-56.

Petitioner brought his sister to a subsequent meeting with the sheriff to confirm for the family members the terms of the arrangement. C.A. Supp. E.R. 58. Petitioner and his sister confirmed the offer was $10,000 for each property (a $5000 payment and a $5000 campaign contribution), but they now wanted protection for only five parcels. Id. at 58-61. At a later meeting, petitioner arrived at the sheriff's office and dropped a white envelope on the table containing a partial payment of $5000,

representing $1,000 for each of the five parcels to be protected. Ibid. Petitioner also placed another $1000 in cash on the table as "extra" and gave the sheriff a handwritten list of the reference numbers for the parcels covered by the protection scheme. Id. at 149-150, 161. Petitioner later added three properties to the arrangement, providing an initial $1000 cash payment for each property, an updated list of parcel numbers, and a $500 bonus. Id. at 73-78, 152.

In August 2017, FBI agents arrested petitioner and executed search warrants on the eight properties for which petitioner had sought protection. C.A. Supp. E.R. 158. In total, officers found approximately 1200 marijuana plants. Id. at 161-165; C.A. E.R. 197-198.

2. A grand jury in the Eastern District of California returned a superseding indictment charging petitioner with conspiring to commit bribery, in violation of 18 U.S.C. 371; bribing a public official, in violation of 18 U.S.C. 666(a)(2); conspiring to manufacture marijuana, in violation of 21 U.S.C. 841(a)(1) and 846; and manufacturing marijuana, in violation of 21 U.S.C. 841(a)(1). Superseding Indictment 1-8.

Before trial, the government moved in limine to preclude petitioner from presenting a "'public authority'" defense. D. Ct. Doc. 285, at 5-7 (Feb. 18, 2022) (motion in limine). The Ninth Circuit has described a "public authority defense" as an

affirmative defense in which a defendant "seeks exoneration based on the fact that he reasonably relied on the authority of a government official to engage him in covert activity" to assist law enforcement, United States v. Burrows, 36 F.3d 875, 881 (1994); see Fed. R. Crim. P. 12.3 (procedural requirements for "public authority defense" described as "defense of actual or believed exercise of public authority on behalf of a law enforcement agency or federal intelligence agency at the time of the offense").

In the hearing on the government's motion, petitioner stated that "public authority could apply to the limited issue, not the whole case, but to [the] limited issue of whether [petitioner] was -- when he brings the list of parcel numbers, whether that act was -- was in furtherance of a law enforcement request." C.A. E.R. 23. The court stated that it would "listen to the evidence" and that "we'll come back if you actually think there's a public authority defense based on the evidence. I'll give you a chance to argue it. Right now, I grant the motion in limine without prejudice." Id. at 24.

At trial, petitioner testified that the protection scheme was the sheriff's idea, and that the sheriff had told petitioner to provide him with parcel numbers and make an offer at their next meeting. C.A. E.R. 594-596. The government is not aware of any effort by petitioner to return to the public authority issue after presenting this testimony.

With respect to the bribery counts, the district court instructed the jury that 18 U.S.C. 666(a)(2) "makes it a crime for anyone to corruptly * * * offer or agree to give anything of value to any person with intent to influence or reward an agent of a state or local government * * * in connection with any business transaction or series of transactions of such government or agency involving anything of value of $5,000 or more." C.A. E.R. 696. The court instructed the jury that to find petitioner guilty of bribery, it must find that petitioner "corruptly gave, offered, or agreed to give money to [the sheriff] with the intent to influence [the sheriff] in connection with any business, transaction, or series of transactions of Siskiyou County." Id. at 696-697.

The jury found petitioner not guilty on the marijuana conspiracy count but convicted him on all other counts. Judgment 1.

3. The court of appeals affirmed. Pet. App. 1-7. Among other things, the court rejected petitioner's argument that his conviction for conspiring to commit bribery should be vacated because the district court erroneously precluded his public authority defense. Id. at 4-6. The court of appeals stated that a public authority defense to federal charges is "[t]ypically" available only where the defendant relies on the advice of federal officials or agents, and observed that this case involved no claim of federal authorization. Id. at 5. It then observed that

petitioner asserted a public authority defense with respect to only one of the overt acts in furtherance of the bribery conspiracy alleged in the indictment -- providing the sheriff with the list of parcel numbers -- and that "even if" petitioner were correct that the public authority defense could "negate specific overt acts[,] * * * any error was harmless." Id. at 5-6

The court of appeals emphasized that, notwithstanding the denial of his limited assertion of a public authority defense, petitioner "was still able to present evidence at trial suggesting that he only performed certain overt actions at the [s]herrif's behest." Pet. App. 6. And the court found that "even if" the overt act of sharing the parcel numbers "were negated" by the public authority defense, "there were numerous other overt acts the jury could have relied upon to sustain a conspiracy conviction." Ibid. The court therefore determined that preclusion of the public authority defense [was] not a valid basis for vacating [petitioner's] conspiracy to commit bribery." Id. at 6.

ARGUMENT

Petitioner contends (Pet. 10-14) that the Court should grant the petition for a writ of certiorari, vacate the judgment of the court of appeals, and remand for further consideration in light of this Court's decision in Snyder v. United States, 144 S. Ct. 1947 (2024). That course of action is unwarranted because petitioner was convicted under 18 U.S.C. 666(a)(2) on a bribery theory, not

the gratuity theory rejected by the Court in Snyder. Petitioner further contends (Pet. 14-15) that the district court improperly precluded him from presenting a public authority defense at trial. The court of appeals correctly rejected that argument, and its factbound decision does not conflict with any decision of this Court or another court of appeals. Further review is unwarranted.

1. As relevant here, 18 U.S.C. 666 prohibits corrupt payments to agents of federally funded entities made to "influence or reward" those agents in connection with government business. 18 U.S.C. 666(a)(2). In Snyder, supra, this Court held that Section 666 reaches "bribes" -- that is, "payments made or agreed to before an official act in order to influence the official with respect to that future official act" -- but not "gratuities" paid "after an official act as a token of appreciation." 144 S. Ct. 1951-1952.

Petitioner did not preserve any argument in the court of appeals that his bribery convictions were invalid because they were based on a gratuity theory, see Pet. App. 1-6, and the petition's argument to that effect is refuted by the record. As an evidentiary matter, petitioner offered the sheriff straightforward, agreed-to-in-advance bribes: petitioner agreed to pay, and did pay, the sheriff thousands of dollars with the intent that the sheriff would in return protect petitioner's marijuana-growing operation from county law enforcement. See p.

3-4, supra. Accordingly, the United States did not pursue a gratuity theory at trial, and the jury instructions did not permit the jury to find petitioner guilty under a gratuity theory. Cf. Griffin v. United States, 502 U.S. 46, 59 (1991) (noting that the chance that a "jury convicted on a ground that was not supported by adequate evidence when there existed alternative grounds for which the evidence was sufficient" is "remote") (citation omitted).

Instead, the district court instructed the jury that to find petitioner guilty of bribery, it had to find that petitioner "corruptly gave, offered, or agreed to give money to [the sheriff] with the intent to influence [the sheriff] in connection with any business, transaction, or series of transactions of Siskiyou County." C.A. E.R. 696-697. That instruction did not include the "influenced or rewarded" language upon which the United States relied in Snyder to support its position that Section 666(a)(1)(B) covers gratuities, see 144 S. Ct. at 1958-1959. Although that term did appear in the overall description of the offense, C.A. E.R. 696, the operative language regarding what the jury needed to find did not allow for conviction based on an after-the-fact gratuity -- a theory that the evidence would not even have supported. Accordingly, Snyder provides no basis for further review of petitioner's bribery convictions.

2. Petitioner further contends (Pet. 14-15) that the district court improperly precluded him from presenting a public authority defense at trial. That factbound issue does not warrant review by this Court.

The courts of appeals have generally construed a public authority defense to require "a defendant to show that he was engaged by a government official to participate in a covert activity." United States v. Parker, 267 F.3d 839, 843 (8th Cir. 2001), cert. denied, 535 U.S. 1011 (2002); see United States v. Apperson, 441 F.3d 1162, 1204 (10th Cir. 2006); see also Fed. R. Crim. P. 12.3. Consistent with other courts of appeals, the decision below noted that a public authority defense to a federal charge "typically" requires that the defendant act on the advice or authority of a federal officer, because only a federal officer could possibly authorize a violation of federal law. Pet. App. 5; see, e.g., United States v. Fulcher, 250 F.3d 244, 254 (4th Cir.) ("[W]e adopt the unanimous view of our sister circuits that the defense of public authority requires reasonable reliance upon the actual authority of a government official to engage him in a covert activity."), cert. denied, 534 U.S. 939 (2001).

Petitioner identifies no conflict with another court of appeals or a decision of this Court on that issue. And his view (Pet. 14-15) that a state officer could immunize a person from federal bribery charges by inviting him to covertly enter into a

bribery scheme would undermine Section 666, which criminalizes bribery of "State, local, or Indian tribal" officials. 18 U.S.C. 666(a)(1). That statute specifically prohibits certain state officials, which may include state law-enforcement officers like the sheriff here, from "solicit[ing]" or "agree[ing}" to a bribe. 18 U.S.C. 666(a)(1)(B). A local sheriff cannot immunize the bribe payor from a plain violation of federal law simply by purporting to authorize the bribe.

In any event, review by this Court of petitioner's claim is unwarranted because, as the court of appeals recognized, any error in precluding a public authority defense was harmless. Pet. App. 6. Petitioner sought to invoke the defense to negate a single overt act in furtherance of the bribery conspiracy -- the act of bringing a list of parcel numbers for marijuana grow sights to the sheriff. Ibid.; see C.A. E.R. 24 (petitioner explaining to district court that he sought to invoke the public authority defense to show that that the sheriff had requested the parcel numbers and petitioner "reasonably believed that he was being asked to provide that information for the sheriff's purposes, not his own"). As the court of appeals explained, "even if the overt act of [petitioner] bringing the parcel numbers to the Sheriff were negated, there were numerous other overt acts the jury could have relied upon to sustain a conspiracy conviction," Pet. App. 6 -- including petitioner's recorded offer to pay thousands of dollars

in donations and campaign contributions in exchange for the sheriff's protection for his marijuana growing operations, see pp. 3-4, supra.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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OCTOBER 2024