No. 21-6319

IN THE SUPREME COURT OF THE UNITED STATES

ERIC MARTINEZ, 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 the district court could permissibly grant a conditional discharge as would be allowed under New Mexico law in a prosecution pursuant to the Indian Major Crimes Act, 18 U.S.C. 1153(b), in federal district court.

ADDITIONAL RELATED PROCEEDINGS

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

United States v. Martinez, No. 19-cr-565 (Aug. 31, 2020)

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

United States v. Martinez, No. 20-2126 (June 14, 2021)

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 2a-9a) is published at 1 F.4th 788.

JURISDICTION

The judgment of the court of appeals was entered on June 14, 2021. The petition for a writ of certiorari was filed on November 12, 2021. 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

residential burglary in Indian country, in violation of 18 U.S.C. 1153 and N.M. Stat. Ann. 30-16-3 (Supp. 2015). Judgment 1. He was sentenced to 27 months of imprisonment, to be followed by one year of supervised release. Judgment 2-3. The court of appeals affirmed. Pet. App. 2a-9a.

1. In February 2016, petitioner and two accomplices burglarized a residence located within the Navajo Nation's boundaries in McKinley County, New Mexico. Pet. App. 3a; Presentence Investigation Report (PSR) ¶ 6. Petitioner used a hammer to break a hole in the front door to enter the home. Pet. App. 3a. Petitioner and his accomplices stole items, valued at over $60,000, including electronics, jewelry, and ceremonial shawls and robes. Ibid.; PSR ¶ 6. Some items were later recovered, but the victims' net loss was approximately $37,000. PSR ¶ 13; Addendum to PSR 2.

A federal grand jury charged petitioner, who is a member of the Navajo Nation, with one count of residential burglary in Indian country, in violation of the Indian Major Crimes Act (IMCA), 18 U.S.C. 1153, and N.M. Stat. 30-16-3 (Supp. 2015). Indictment 1. The IMCA provides federal criminal jurisdiction over certain "major" crimes, including "burglary," that are committed by Indians in "Indian country." 18 U.S.C. 1153(a); see 18 U.S.C. 1151 (defining "Indian country" to include, inter alia, "all land within the limits of any Indian reservation under the jurisdiction of the United States Government"). As relevant here, Section

1153(b) provides that "[a]ny offense referred to in subsection (a) of this section that is not defined and punished by Federal law in force within the exclusive jurisdiction of the United States shall be defined and punished in accordance with the laws of the State in which such offense was committed as are in force at the time of such offense." 18 U.S.C. 1153(b). Because burglary is not defined and punished by federal law, petitioner was charged with a burglary offense assimilated from the New Mexico criminal code, N.M. Stat. Ann. 30-16-3. See Indictment 1.

2. Petitioner pleaded guilty without a plea agreement. Judgment 1; see PSR ¶ 3. In preparation for sentencing, the Probation Office determined that petitioner's advisory Guidelines range was 27 to 33 months of imprisonment. PSR ¶ 64.

Petitioner requested that the district court impose a conditional discharge, "a sentence possible had his case been adjudicated in New Mexico state court." Pet. App. 3a; see Sent. Tr. 22-31. In a prosecution in a New Mexico state court, "[w]hen a person who has not been previously convicted of a felony offense is found guilty of a crime for which a deferred or suspended sentence is authorized, the court may, without entering an adjudication of guilt, enter a conditional discharge order and place the person on probation" on certain terms and conditions. N.M. Stat. Ann. 31-20-13(A) (Supp. 2015). "A defendant who receives [a] conditional discharge under New Mexico law," therefore, "is 'neither 'adjudicated guilty' nor 'convicted.'"

United States v. Saiz, 797 F.3d 853, 855 (10th Cir. 2015) (citations omitted), cert. denied, 577 U.S. 1220 (2016); see N.M. Stat. Ann. 30-31-28(C) (Supp. 2015). If the defendant successfully completes probation, the charges are ultimately dismissed. Saiz, 797 F.3d at 856. But "[i]f the person violates any of the conditions of probation, the court may enter an adjudication of guilt and proceed as otherwise provided by law." N.M. Stat. Ann. 31-20-13(B) (Supp. 2015).

The district court rejected petitioner's request, explaining that a conditional discharge was not available under federal law because it was not consistent with "Federal Sentencing Policy." Sent. Tr. 44. The court moreover alternatively determined that, even if a conditional discharge were a permissible option, it would not be "an appropriate sentence in this case." Ibid.; id. at 44-45 ("So even if I felt like I could impose a sentence of conditional discharge, it is not a sentence that I feel like this case calls for."). The court adopted the PSR's factual findings and Guidelines calculations, and sentenced petitioner to 27 months of imprisonment, to be followed by one year of supervised release. Id. at 50-51.

3. The court of appeals affirmed. Pet. App. 2a-9a. The court observed that, under the IMCA, an "assimilated offense becomes a federal offense punishable under federal law." Id. at 5a. The court stated that, for purposes of sentencing, "[i]ncorporation of state law is limited to the maximum and minimum

penalties for the offense and does not extend to 'state "sentencing schemes."'" Ibid. (quoting United States v. Jones, 921 F.3d 932, 937-938 (10th Cir. 2019)). And it explained that a conditional discharge, as might be available in New Mexico state court, was not an available sentencing option under the IMCA because it conflicts with federal law. Id. at 6a-7a.

The court of appeals observed that since the 1990 amendment to the Sentencing Reform Act of 1984, 18 U.S.C. 3551(a) has specifically provided that "the federal sentencing framework applies to convictions under" the IMCA and the Assimilative Crimes Act, 18 U.S.C. 13 (ACA).* Pet. App. 6a; see 18 U.S.C. 3551(a) ("[A] defendant who has been found guilty of an offense described in any Federal statute, including [the ACA and IMCA] * * * shall be sentenced in accordance with the provisions of this chapter."). Under that federal framework, the court explained, petitioner "could have been sentenced to probation, a fine, or imprisonment" -- the sentencing options specifically provided in Section 3551(b). Pet. App. 7a. "But the district court could not

* The ACA provides that anyone "guilty of any act or omission which, although not made punishable by any enactment of Congress, would be punishable if committed or omitted within the jurisdiction of the State" in which a federal enclave is situated "shall be guilty of a like offense and subject to a like punishment." 18 U.S.C. 13(a); see Lewis v. United States, 523 U.S. 155, 158 (1998) (explaining that the ACA "assimilates into federal law, and thereby makes applicable on federal enclaves such as Army bases, certain criminal laws of the State in which the enclave is located").

assimilate a state provision permitting a conditional discharge," which is not an available option under federal law. Ibid.

The court of appeals analogized to its prior decision in United States v. Wood, 386 F.3d 961, 962 (10th Cir. 2004), cert. denied, 544 U.S. 913 (2005), in which it "explained that a federal court cannot apply a state sentence suspension provision to depart from a state mandatory minimum sentence because 'the [federal] Guidelines deny a district court the discretion to suspend a term of imprisonment,'" and "federal courts * * * do not assimilate state sentencing schemes that conflict with the Guidelines." Pet. App. 6a-7a (quoting Wood, 386 F.3d at 963). And the court also rejected petitioner's reliance on the Ninth Circuit's decisions in United States v. Bosser, 866 F.2d 315 (1989), and United States v. Sylve, 135 F.3d 680 (1998), which he asserted were supportive of his approach. See Pet. App. 6a. The court explained that "Bosser was decided in 1989, one year before the Sentencing Reform Act was amended to specify that the federal sentencing framework applies to convictions" under the IMCA and the ACA. Ibid.

The government maintained, in the alternative, that even if the district court erred in determining that a conditional discharge was unavailable, any error would have been harmless because the district court expressly stated that it would not have imposed a conditional discharge if it had authority to do so. Pet. App. 4a. Because the court of appeals determined that the district

court had not erred, it declined to reach the government's harmlessness argument. Ibid.

ARGUMENT

Petitioner renews his contention (Pet. 2-15) that the district court could have imposed a conditional discharge under the IMCA. The court of appeals correctly rejected that contention. Although petitioner asserts (Pet. 10-14) that the decision below conflicts with two decisions from the Ninth Circuit, any narrow disagreement does not warrant this Court's review. In any event, this case would not be a suitable vehicle for addressing the question presented, because the district court explicitly found that it would not grant petitioner a conditional discharge even if it were an available option. The petition for a writ of certiorari should be denied.

1. The court of appeals correctly determined that a conditional discharge was not an available penalty in this case because it is incompatible with federal sentencing law. Pet. App. 2a-9a.

a. "Criminal jurisdiction over offenses committed in 'Indian country' 'is governed by a complex patchwork of federal, state, and tribal law.'" Negonsott v. Samuels, 507 U.S. 99, 102 (1993) (citations omitted). As relevant here, the IMCA provides federal criminal jurisdiction over certain "major" offenses, including "burglary," committed by an Indian defendant within Indian country. 18 U.S.C. 1153(a). The statute further states

that if a listed offense, like burglary, is "not defined and punished by Federal law," it shall be "defined and punished in accordance with the laws of the State in which such offense was committed." 18 U.S.C. 1153(b).

In 18 U.S.C. 3551(a), the Sentencing Reform Act provides that, "[e]xcept as otherwise specifically provided, a defendant who has been found guilty of an offense described in any Federal statute, including" the IMCA and ACA, "shall be sentenced in accordance with the provisions of this chapter." Ibid. Section 3551(b) then specifies that "[a]n individual found guilty of an offense shall be sentenced, in accordance with the provisions of section 3553, to" a term of probation, a fine, or a term of imprisonment. And Section 3553(b), in turn, directs the imposition of a criminal sentence that takes account of the federal Sentencing Guidelines.

Taking those statutes together, courts have explained that "[i]n sentencing a defendant for an assimilated offense, a federal court may not impose a sentence that falls outside the range of minimum and maximum punishments authorized for the offense under state law." Pet. App. 5a (citation omitted); see, e.g., United States v. Norquay, 905 F.2d 1157, 1161 (8th Cir. 1990). At the same time, courts have recognized that, within the statutory range established by state law, the sentence for an assimilated offense should "be calculated according to the Federal Sentencing Guidelines." Norquay, 905 F.2d at 1161; see, e.g., United States v. Wood, 386 F.3d 961, 962-963 (10th Cir. 2004), cert. denied, 544

U.S. 913 (2005); United States v. Male Juvenile, 280 F.3d 1008, 1024 (9th Cir. 2002). Those decisions ensure that the defendant is "punished in accordance with the laws of the State in which such offense was committed," 18 U.S.C. 1153(b), while also "giv[ing] effect to [Congress's] goal of promoting uniform sentencing within the federal system," Norquay, 905 F.2d at 1162 (discussing the Sentencing Act of 1984); see generally United States v. Jones, 921 F.3d 932, 933-939 (10th Cir. 2019) (discussing the "interplay" between these provisions).

Some courts of appeals have further stated that incorporation of state law under the IMCA "is limited to the maximum and minimum penalties and does not extend to 'state sentencing schemes,'" Pet. App. 5a (quoting Jones, 921 F.3d at 937), particularly where incorporating additional aspects of a state scheme would conflict with or disrupt the administration of federal law. For example, in Norquay, the Eighth Circuit rejected a claim that "Minnesota's law on good time credits and consecutive versus concurrent sentences" applied to a defendant convicted under the IMCA. 905 F.2d at 1162-1163. The court explained that "incorporation of state law in the [IMCA] does not mean that federal courts must follow 'every last nuance of the sentence that would be imposed in state court.'" Id. at 1162 (citation omitted). And the court found that incorporating state-law principles regarding good time credits and consecutive sentences would "be disruptive to the federal prison system." Id. at 1163.

The court of appeals in this case correctly recognized that a conditional discharge, while available to certain defendants in New Mexico state court, is not available to a defendant convicted under the IMCA in federal district court. Pet. App. 4a-7a. Under Section 3551(a), a district court is empowered to impose a sentence only upon "a defendant who has been found guilty of an offense." 18 U.S.C. 3551(a); see 18 U.S.C. 3551 (b) (similar). It is not authorized to "allow[] a defendant to serve a term of probation, without an adjudication of guilt," as petitioner requests. Pet. 1. As the court of appeals observed, pursuant to the Sentencing Reform Act, petitioner "could have been sentenced to probation, a fine, or imprisonment," but not to a conditional discharge. Pet. App. 7a (citing 18 U.S.C. 3551(b)). And because federal law does not authorize a conditional discharge, the court of appeals correctly determined that it was not available to the district court when sentencing petitioner. Ibid.

b. Petitioner's contrary arguments lack merit. Petitioner suggests that a conditional discharge must be available in federal court to ensure that his crime is punished "only in the way and to the extent that it would have been punishable if the territory embraced by the reservation remained subject to the jurisdiction of the state." Pet. 10 (quoting United States v. Holley, 444 F. Supp. 1361, 1368 (D. Md. 1977)); see Pet. 8-9 (similar). But petitioner does not attempt to square his argument with the text of Section 3551. Nor does petitioner explain how federal courts

could feasibly implement his proposed rule, which would require federal courts to accommodate a variety of different dispositions, under different state laws, that are not otherwise available in the federal system. See Gov't C.A. Br. 12-15 (explaining that "federal law lacks mechanisms to implement a conditional discharge like New Mexico's"); cf. Norquay, 905 F.2d at 1162-1163 (declining to follow state law where it would create "two classes of prisoners serving in the federal prisons") (citation omitted).

2. Petitioner contends (Pet. 10-14) that review is warranted on the theory that the decision in this case conflicts with two Ninth Circuit decisions issued more than two decades ago, United States v. Sylve, 135 F.3d 680 (1998); and United States v. Bosser, 866 F.2d 315 (1989). But any tension between those decisions and the decision below does not warrant this Court's review.

As an initial matter, Bosser and Sylve involve the ACA, not the IMCA. Although the ACA and the IMCA are similarly worded, see p. 5 n.*, supra -- and courts have relied on decisions addressing one statute in interpreting the other, see, e.g., Pet. App. 5a n.1 -- they are distinct statutes with distinct statutory language. Compare 18 U.S.C. 13(a) ("subject to a like punishment") with 18 U.S.C. 1153(b) ("punished in accordance with the laws of the State in which such offense was committed"). In addition, neither Bosser nor Sylve involved New Mexico's conditional discharge law. Rather, Bosser took the view that an ACA defendant could be sentenced

pursuant to Hawaii's deferred acceptance rule, 866 F.2d at 316-318, while Sylve took the view that an ACA defendant could be sentenced under Washington's deferred prosecution program, 135 F.3d at 680, 681-684.

In any event, "Bosser was decided in 1989, one year before the Sentencing Reform Act was amended to specify that the federal sentencing framework applies to convictions under the ACA and the IMCA." Pet. App. 6a (citing 18 U.S.C. 3551(a)). Bosser thus emphasized that, at the time, "[n]othing in the Federal Rules or other federal laws suggests that a federal court may not impose a probation-like penalty without also creating a criminal record." 866 F.2d at 317-318; see id. at 318 (relying on the "absence of conflict with any Federal Rule or other federal law pertaining to the treatment of guilty pleas"). That is not true today. Section 3551(a) now provides that defendants who have "been found guilty of an offense described in any Federal statute, including [the ACA and IMCA] * * * shall be sentenced in accordance with the provisions" of Chapter 227. 18 U.S.C. 3551(a). Those provisions include Section 3551(b), which states that such individuals "shall be sentenced" to probation, a fine, or a term of imprisonment -- without any option for a conditional discharge. 18 U.S.C. 3551(b).

While Sylve was decided after the 1990 amendment to Section 3551, it did not address the text of that provision. And the Ninth Circuit has recognized that the 1990 amendment to Section 3551(a) abrogates its closely related, prior determination that state

sentencing guidelines control a sentence under the IMCA. United States v. Pluff, 253 F.3d 490, 493 (2001) (determining that United States v. Bear, 932 F.2d 1279 (9th Cir. 1990), lacks "precedential value in cases involving crimes committed after the amendment"). It is far from clear, therefore, that the Ninth Circuit would adhere to its 33-year-old decision, Bosser, or its 24-year-old decision, Sylve, if the issue -- which the Ninth Circuit has not addressed in decades -- were to arise again in the future.

3. Even if the question presented otherwise warranted this Court's review, this case would not be a suitable vehicle for addressing it. The district court expressly found that even if it had the authority to sentence petitioner to a conditional discharge, it would not have done so in this case. See, e.g., Sent. Tr. 44-45 ("So even if I felt like I could impose a sentence of conditional discharge, it is not a sentence that I feel this case calls for."); see also Pet. App. 4a (declining to reach the government's harmless-error argument). Because petitioner would not be entitled to relief even if he prevailed on the question presented, further review is unwarranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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