

No. 10-9333

IN THE SUPREME COURT OF THE UNITED STATES

WEI QIN SUN, 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

Whether petitioner's convictions for offenses committed within the Commonwealth of the Northern Mariana Islands should be overturned because the district judge for the District Court of the Northern Mariana Islands does not enjoy Article III's protections of life tenure and guaranteed salary.

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OPINION BELOW

The opinion of the court of appeals (Pet. App. A1-A4) is not published in the Federal Reporter but is reprinted in 399 Fed. Appx. 319.

JURISDICTION

The judgment of the court of appeals was entered on October 14, 2010. A petition for rehearing was denied on November 23, 2010. The petition for a writ of certiorari was filed on February 22, 2011. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the District Court for the District of the Northern Mariana Islands, petitioner was convicted of conspiracy to induce a person to travel in foreign commerce to engage in prostitution, in violation of 18 U.S.C. 371; inducing a person to travel in foreign commerce to engage in prostitution, in violation of 18 U.S.C. 2422(a); and transporting a person in foreign commerce in the execution of a fraudulent scheme, in violation of 18 U.S.C. 2314. Pet. App. A2; Gov't C.A. Br. 3. Petitioner was sentenced to 41 months of imprisonment, to be followed by three years of supervised release. Gov't C.A. Br. 3. The court of appeals affirmed. Pet. App. A1-A4.

1. Petitioner, a citizen of China, operated a karaoke bar on the island of Saipan in the Commonwealth of the Northern Mariana Islands (CNMI). Pet. App. A1. Petitioner employed prostitutes at the bar. Ibid.

In 2006, petitioner traveled to China to recruit her friend, Xiu Lan Lin, to work as a prostitute in petitioner's bar. Pet. App. A1-A2; Gov't C.A. Br. 4. Petitioner promised Lin a well-paying job working as a waitress. Pet. App. A2; Gov't C.A. Br. 5. Petitioner told Lin that for a fee of 40,000 Renminbi (approximately \$5200), petitioner would arrange for Lin to enter Saipan and work at petitioner's bar. Gov't C.A. Br. 5. Lin paid petitioner the money. Pet. App. A2. Petitioner arranged for a

business associate to sponsor Lin's employment as a commercial cleaner at the associate's company, and they prepared false affidavits for the Department of Labor indicating that Lin would work in that capacity. Gov't C.A. Br. 5-7.

When Lin arrived in Saipan, petitioner told her that she was expected to work as a prostitute. Pet. App. A2. Lin refused. Ibid. Lin asked petitioner for a return ticket to China, but petitioner responded that Lin would need to earn money for a ticket by having sex with customers. Gov't C.A. Br. 9. Lin eventually contacted the FBI and clandestinely recorded conversations with petitioner. Pet. App. A2; Gov't C.A. Br. 10-11.

2. A grand jury indicted petitioner on charges of (1) conspiring to induce a person to travel in foreign commerce to engage in prostitution, in violation of 18 U.S.C. 371; (2) inducing a person to travel in foreign commerce to engage in prostitution, in violation of 18 U.S.C. 2422(a); and (3) transporting a person in foreign commerce in the execution of a fraudulent scheme, in violation of 18 U.S.C. 2314. Pet. App. A2; Gov't C.A. Br. 2-3. A jury found petitioner guilty on all counts. Gov't C.A. Br. 3. The district court sentenced petitioner to 41 months of imprisonment. Ibid.

3. The court of appeals affirmed in an unpublished opinion. Pet. App. A1-A4. On appeal, petitioner argued for the first time that the District Court for the Northern Mariana Islands lacked

jurisdiction to adjudicate her case because the judge lacked the life tenure and irreducible compensation guaranteed under Article III of the Constitution. The court of appeals rejected that argument, explaining that "Congress may create courts pursuant to its Article IV power" over territories "belonging to the United States * * * and in so doing, Congress is not bound by the strictures of Article III." Id. at A2 (internal citations and quotation marks omitted). The court of appeals accordingly concluded that because "the District Court for the Northern Mariana Islands is an Article IV court," ibid. (citing Nguyen v. United States, 539 U.S. 69, 72-73 (2003)), "the district court had jurisdiction to hear this case." Ibid.

ARGUMENT

Petitioner renews her contention (Pet. 5-32) that her conviction should be overturned because the District Court for the Northern Mariana Islands is "unconstitutionally established and constituted," in violation of Article III of the Constitution. Pet. 5. The court of appeals correctly rejected that argument, and its decision does not conflict with any decision of this Court or of any other court of appeals. Further review is not warranted.

1. The court of appeals correctly held that the adjudication of cases arising within the CNMI is not subject to the requirements of Article III. Because the CNMI is a territory of the United States, Congress created the Northern Mariana Islands district

court not pursuant to its Article I power to create inferior Article III courts, but pursuant to its plenary power under Article IV "to * * * make all needful Rules and Regulations respecting" federally administered territories. See U.S. Const. Art. IV, § 3; 48 U.S.C. 1821(a). This Court and the courts of appeals have accordingly recognized that the district court of the CNMI is "not an Article III court but an Article IV territorial court with subject-matter jurisdiction substantially similar to the jurisdiction of the District Court of Guam." Nguyen v. United States, 539 U.S. 69, 72-73 (2003); Territory of Guam v. Olsen, 431 U.S. 195, 196 n.1 (1977) (noting that the District Court of Guam was created under Article IV); Gioda v. Saipan Stevedoring Co., 855 F.2d 625, 628 (9th Cir. 1988) (explaining that the CNMI's judicial system "w[as] to be patterned on the existing territorial courts of Guam"); Armstrong v. Northern Mariana Islands, 576 F.3d 950, 952 (9th Cir. 2009) (identifying the District Court for the Northern Mariana Islands as "a court established under Article IV"), cert. denied, 130 S. Ct. 3500 (2010).

This Court has made clear that "in the territories cases and controversies falling within the enumeration of Article III may be heard and decided in courts constituted without regard to the limitations of that article," including courts "having judges of limited tenure." Glidden Co. v. Zdanok, 370 U.S. 530, 545 (1962) (plurality opinion); see also McAllister v. United States, 141 U.S.

174, 187 (1891) ("no such guaranties are provided by [Article III] in respect to judges of courts created by or under the authority of Congress for a Territory of the United States"). Indeed, rulings confirming the inapplicability of Article III to the adjudication of territorial cases date back to the earliest days of this Court, and the Court has consistently applied them for 160 years. See, e.g., Northern Pipeline Constr. Co. v. Marathon Pipe Line Co., 458 U.S. 50, 64-65 (1982) (noting territorial exception to Article III); Crowell v. Benson, 285 U.S. 22, 50 (1932); Downes v. Bidwell, 182 U.S. 244, 270 (1901); McAllister, 141 U.S. at 179-184 (citing additional cases); Benner v. Porter, 50 U.S. (9 How.) 235, 242 (1850); American Ins. Co. v. Canter, 26 U.S. (1 Pet.) 511, 546 (1828) (Marshall, C.J.). "Only 'fundamental' constitutional rights are guaranteed to inhabitants of [the unincorporated] territories," and the right to adjudication by a judge with life tenure and guaranteed salary has not been identified as a right applicable to territories. United States v. Verdugo-Urquidez, 494 U.S. 259, 268-269 (1990); Downes, 182 U.S. at 282-283 (discussing applicable rights).

The reason for Article III's inapplicability is that, when establishing a court system for the Territories, Congress acts in a capacity similar to that of a state government creating a state court system. Palmore v. United States, 411 U.S. 389, 403 (1973). Congress may "legislate for the [territories] in a manner with

respect to subjects that would exceed its powers, or at least would be very unusual, in the context of national legislation enacted under other powers delegated to it under Art. I, § 8." Id. at 398. Accordingly, the Constitution does not require that the territorial court comply with the strictures of Article III. See, e.g., id. at 402-403 & n.11 (citing additional cases). That is true even if the tribunal decides questions of federal law. Id. at 402 (noting that Congress has traditionally left enforcement of certain federal criminal laws to state courts lacking Article III protections); see also Testa v. Katt, 330 U.S. 386, 392 (1947). "Territorial courts, therefore, have regularly tried criminal cases arising under the general laws of Congress." Palmore, 411 U.S. at 403. As with the state court system, this Court remains available to review questions of federal law decided by courts within the territorial system. That is the most protection territorial residents can claim under Article III, and that protection was afforded here. Indeed, petitioner's appeal was adjudicated by a panel of Article III judges. Cf. Olsen, 431 U.S. at 203-204 (denying Guam litigants access to "any Art. III tribunal" on appeal "of local-court decisions might present constitutional questions"). Petitioner's conviction is therefore valid.¹

¹ Although petitioner styles her claim (Pet. 5, 7) as a challenge to the district court's subject-matter jurisdiction, an Article III challenge is distinct from a subject-matter jurisdiction challenge. See Stern v. Marshall, No. 10-179 (June 23, 2011), slip op. 2 (holding that, although a bankruptcy court

2. Petitioner contends (Pet. 8-17) that the District Court for the Northern Mariana Islands is not an Article IV territorial court because at the time Congress established the court, the CNMI was a "trust territory" administered by the United States pursuant to a United Nations Trusteeship Agreement. According to petitioner, the CNMI district court therefore should be characterized as an "Article I treaty court." Pet. 13. That contention is incorrect.

In 1947, the United Nations Security Council entered into an agreement with the United States providing that the United States, as trustee, would administer the Trust Territory of the Pacific Islands, which included the Northern Mariana Islands. See Armstrong, 576 F.3d at 952; Pub. L. No. 94-241, 90 Stat. 263. The Northern Mariana Islands entered into separate negotiations with the United States that culminated in the "Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America" (Covenant), pursuant to which the Northern Mariana Islands became a commonwealth under United

had statutory jurisdiction to enter a judgment on a common-law tort counterclaim filed by a bankruptcy petitioner, the court lacked the constitutional authority under Article III to do so). There is no question that, under the relevant statutory provisions, the District Court for the District of the Northern Mariana Islands had subject-matter jurisdiction over crimes under the laws of the United States committed within the CNMI. See 48 U.S.C. 1822(a); 18 U.S.C. 3231. The district court therefore had "statutory * * * power to adjudicate the case." United States v. Cotton, 535 U.S. 625, 630 (2002) (citation omitted).

States sovereignty. The Covenant was approved by Congress in 1976. See Pub. L. No. 94-241, 90 Stat. 263 (48 U.S.C. 1801 note); Armstrong, 576 F.3d at 952. Among other things, the Covenant provides for the establishment of the District Court for the Northern Mariana Islands as a court having the same jurisdiction as United States District Courts; those provisions are codified as amended at 48 U.S.C. 1821 and 1822. Armstrong, 576 F.3d at 952. Thus, regardless of the territorial status of the Northern Mariana Islands before the execution of the Covenant, the district court's jurisdiction was established by the same instrument that established the CNMI as a commonwealth under United States sovereignty. The District Court for the District of the Northern Mariana Islands is therefore properly understood as a court established pursuant to Congress's Article IV power over territories "belonging to the United States" -- not, as petitioner argues, an Article I treaty court. See Nguyen, 539 U.S. at 72-73 (The CNMI's district court is "not an Article III court but an Article IV territorial court."); Armstrong, 576 F.3d at 952 (noting that the Covenant "provides that the [CNMI district court], as a court established under Article IV of the United States Constitution, shall have the same jurisdiction as other United States District Courts").²

² Even if the CNMI did not become a "territory" for purposes of Article IV until the Covenant was fully implemented, and the trusteeship formally terminated, in 1986, see Armstrong, 576 F.3d

For this reason, petitioner's reliance (Pet. 12-15) on cases indicating that Congress governs the Trust Territory of the Pacific Islands pursuant to its treaty powers is misplaced. These decisions involved trust territories that, unlike the CNMI, did not execute an agreement to become an entity under United States sovereignty. See Morgan Guaranty Trust Co. v. Republic of Palau, 924 F.2d 1237, 1239, 1244 (2d Cir. 1991) (stating that the United States' authority to govern Palau (as part of the Trust Territory of the Pacific Islands) rests on the treaty power rather than Article IV because Palau's trusteeship had not been terminated; and distinguishing the CNMI on the ground that the Northern Mariana Islands had entered into the Covenant, permitting it to become a commonwealth under United States sovereignty); Juda v. United States, 6 Cl. Ct. 441, 456 (1984) (stating that the Marshall Islands were subject to the treaty power during the period in which the Marshall Islands were a trust territory governed by the Trusteeship Agreement with the United Nations).

3. Petitioner further contends (Pet. 17-30) that, even if the CNMI district court is an Article IV court, the court of appeals erred in failing to consider the historical circumstances of the establishment of the district court -- in particular, the apparent

at 952 n.2, there is no question that, at all times relevant to this case, the CNMI was a "territory" and that Congress had authority under Article IV to establish the Northern Mariana Islands district court as an Article IV court.

permanence of the CNMI's status as a commonwealth -- in determining whether Article III permits non-Article III judges to hear criminal cases arising in the CNMI. Petitioner is mistaken.

Petitioner identifies no decision in which a court has questioned the established inapplicability of Article III to cases arising within a territory, regardless of the apparent duration of the territory's status. See, e.g., United States v. Canel, 708 F.2d 894, 897 (1st Cir. 1983) (holding that Article III does not apply in the Virgin Islands, without considering the duration of the Virgin Islands' status), cert. denied, 464 U.S. 852 (1983); United States v. Montanez, 371 F.2d 79, 83-84 (2d Cir.) (upholding criminal conviction entered in the District Court for the District of Puerto Rico), cert. denied, 389 U.S. 884 (1967); Acosta Abreu v. United States, 308 F.2d 248, 248 (1st Cir. 1962) (same), cert. denied, 372 U.S. 918 (1963); cf. Stern v. Marshall, No. 10-179 (June 23, 2011), slip op. 2 (Scalia J., concurring) ("I agree that Article III judges are not required in the context of territorial courts.").

Petitioner's reliance (Pet. 20) on O'Donoghue v. United States, 289 U.S. 516 (1933), which held that the predecessor to the United States District Court for the District of Columbia was established pursuant to Article III, is misplaced. The Court contrasted the relatively transitory nature of territorial governments with the permanence of the District of Columbia and

observed that territorial courts had been held to be "incapable" of receiving Article III judicial power because of their transitory status. See O'Donoghue, 289 U.S. at 536-538. The Court did not suggest, however, that a territory with more lasting status would be subject to Article III. Rather, in holding that the District of Columbia court was established pursuant to Article III, the Court relied on characteristics unique to the District of Columbia. The Court explained that the District of Columbia, unlike territories in "the outlying dominion of the United States," formed "the capital -- the very heart -- of the Union itself," where the federal government is based. Id. at 539 (internal quotation marks omitted). The Court also relied on the District of Columbia's composition from land ceded from Maryland and Virginia, whose former citizens within the ceded lands retained "all the rights, guaranties, and immunities of the Constitution," including the right to have their cases arising under the laws of the United States heard by Article III judges. Id. at 540. That is not true of residents of the territories such as the CNMI. United States v. Verdugo-Urquidez, 494 U.S. at 268-269; Palmore, 411 U.S. at 400.

Petitioner also argues (Pet. 26-30) that CFTC v. Schor, 478 U.S. 833 (1986), Thomas v. Union Carbide Agric. Prods. Co., 473 U.S. 568 (1985), and Boumediene v. Bush, 553 U.S. 723 (2008), require a case-by-case approach to the application of Article III, even with respect to Article IV territorial courts. None of these

cases supports petitioner's argument. In Schor, the Court explained that the structural principles enforced by Article III are the separation of powers and "preventing the encroachment or aggrandizement of one branch at the expense of the other." 478 U.S. at 850 (quoting Buckley v. Valeo, 424 U.S. 1, 122 (1976)). But those aspects of Article III have nothing to do with petitioner's claim. Separation-of-powers principles do not apply within the territories, so petitioner cannot invoke their protections. See Benner, 50 U.S. (9 How.) at 242 (territorial governments are not subject to the Constitution's "complex distribution of the powers of government"). In Thomas, the Court rejected the argument that decisions involving public rights are categorically exempted from Article III. 473 U.S. at 587-588. The Court acknowledged, however, that territorial courts have historically been viewed as an "exception[] to the rule of Article III adjudication," id. at 585, and that Article III "must in proper circumstances give way to accommodate plenary grants of power to Congress to legislate with respect to specialized areas," id. at 590-591 (citing Palmore, 411 U.S. at 407-408). Finally, the Court's decision in Boumediene, holding that district courts have jurisdiction to consider habeas petitions filed by detainees held at Guantanamo Bay, Cuba, 563 U.S. at 732-733, has no bearing on whether residents of the territories have a right to have their cases heard by Article III judges.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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JUNE 2011