No. 19-330

In the Supreme Court of the United States

HARSHAD SHAH, 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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QUESTIONS PRESENTED

1. Whether the court of appeals correctly rejected petitioner's claim of plain error in a government witness's testimony about petitioner's attempt to induce her to accept a bribe, which referenced their shared national origin and native language.

2. Whether the court of appeals correctly found no reversible error in the district court's response to a jury note regarding the types of evidence the jury could consider in determining whether petitioner had a predisposition to commit bribery, where defense counsel had agreed that the district court's proposed response was a correct statement of the law.

ADDITIONAL RELATED PROCEEDINGS

United States District Court (C.D. Cal.):

United States v. *Shah*, No. 10-cr-70 (July 17, 2015)

United States v. *Shah*, No. 10-cr-70 (Nov. 3, 2017)

United States Court of Appeals (9th Cir.):

United States v. *Shah*, No. 17-50383 (Apr. 15, 2019)

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1-9) is not published in the Federal Reporter but is reprinted at 768 Fed. Appx. 637.

JURISDICTION

The judgment of the court of appeals was entered on April 15, 2019. A petition for rehearing was denied on June 11, 2019 (Pet. App. 10). The petition for a writ of certiorari was filed on September 9, 2019. 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 Central District of California, petitioner was convicted of bribing a public official, in violation of 18 U.S.C. 201(b)(1). Judgment 1. The district court sentenced petitioner to 51 months of imprisonment, to be

followed by two years of supervised release. Judgment 1-2. The court of appeals affirmed. Pet. App. 1-9.

1. Petitioner holds a medical degree in psychiatry. Pet. 4. He failed to pay federal taxes in 2006 and 2007, but paid some taxes in 2008. Pet. App. 22-23. In March 2009, the Internal Revenue Service (IRS) began an audit of petitioner's personal tax filings. *Ibid.* A few months later, the IRS expanded the audit into petitioner's tax filings for his medical corporation. *Id.* at 23.

Both the personal and corporate audits were ultimately assigned to IRS Agent Michael Ham. Pet. App. 15. As Agent Ham neared completion of the audits, petitioner began offering him free medical care, free prescriptions, and potential jobs for Agent Ham and his wife at petitioner's medical practice. 10/28/16 Tr. 57-60, 68-70. Agent Ham declined each offer and, believing they were inappropriate, contacted the IRS Inspector General's Office. *Id.* at 39, 57-60, 108. Special Agent Glenn Gomez responded to Agent Ham's call, and they arranged to record a series of telephone calls and meetings between Agent Ham and petitioner. *Id.* at 59, 94-95.

Agent Ham determined that petitioner owed approximately $410,000 in back taxes. 10/28/16 Tr. 40. When Agent Ham informed petitioner of the amount due, petitioner offered Agent Ham money and employment to reduce or eliminate the amount of back taxes owed. See *id.* at 101-116. Ultimately, petitioner gave Agent Ham $30,000 on the understanding that Agent Ham would eliminate his tax debt. *Id.* at 54, 88.

2. A federal grand jury indicted petitioner on one count of bribery of a public official, in violation of 18 U.S.C. 201(b)(1). First Superseding Indictment 1-2.

At trial, the government played several audio and video recordings of interactions between petitioner and

Agent Ham as proof of petitioner's intent to bribe Agent Ham. Order Denying Mot. for Acquittal 2-3. In one recording, petitioner referred to Agent Ham as "brother" and offered him a bribe of $15,000 if Agent Ham would lower the amount of his tax liability. *Id.* at 3. Petitioner later offered to double the amount if Agent Ham would eliminate all of petitioner's tax liability. *Ibid.* In another recording, petitioner gave Agent Ham the $30,000 bribe, and in response to Agent Ham's warnings that what they were doing was illegal, called Agent Ham an expletive. *Id.* at 4. Petitioner also promised to give Agent Ham more money and advised him how to avoid detection from law enforcement. *Ibid.*

Petitioner raised an entrapment defense. Pet. App. 3. "To overcome the defense, the Government needed to prove *either* that [petitioner] was predisposed to commit the crime, *or* that he was not induced" by the government "to do so." *Ibid.* (citing *United States* v. *McClelland*, 72 F.3d 717, 722 (9th Cir. 1995), cert. denied, 517 U.S. 1148 (1996)). The government offered evidence with respect to both issues. *Id.* at 3-4; see Order Denying Mot. for Judgment of Acquittal 4-5. The government's evidence on inducement included, *inter alia*, "[t]he recordings of [petitioner's] own statements that were played for the jury." Order Denying Mot. for Acquittal 5.

With respect to predisposition, the government introduced the testimony of IRS Agent Mytryee Raghaven, who had initially been assigned to handle the audit of petitioner's personal tax filings. 10/25/16 Tr. 125; see Pet. App. 23. On direct examination, Agent Raghaven testified that she had called petitioner about the audit in June 2009. 10/25/16 Tr. 133; see Pet. App. 23. During

that call, petitioner, who is a native of the Gujarat region of India, Pet. 4, asked Agent Raghaven about her last name and whether she was from India. Pet. App. 17. Agent Raghaven replied that she was, and petitioner began speaking to her in Hindi. *Ibid.* Petitioner told Agent Raghaven, "you are also from India, I'm also from India. Both of us are brother and sister. Make this audit go away." *Ibid.* Agent Raghaven testified that, based on her knowledge that "a lot of corruption and bribery goes on" in India, she "assume[d]" that petitioner was "asking [her] to make [the audit] go away and offer[ing her] a bribe" to do so. *Ibid.* In response to petitioner's overture, Agent Raghaven told him, "we are in America. * * * I have to do the audit." *Ibid.* Agent Raghaven further testified that after the call, she informed a supervisor of petitioner's statements, and petitioner's personal audit was reassigned to Agent Ham. 10/25/16 Tr. 128-129, 144-145; see Pet. App. 15.

Petitioner did not object to Agent Raghaven's testimony. Pet. 1, 6-7; see Pet. App. 2. On cross-examination, defense counsel asked Agent Raghaven a series of questions about India, Indian culture, and the official languages within that country. 10/25/16 Tr. 129-133, 135. Defense counsel then asked Agent Raghaven whether she assumed petitioner was offering her a bribe "because he's ethnically from India." *Id.* at 134. Agent Raghaven answered that "[i]n India that's what happens, so that's what I thought that he[was] offering. He is asking me to make the audit go away, so I assume that's what he's offering." *Ibid.* Defense counsel then asked whether Agent Raghaven assumed petitioner was offering her a bribe "because he's Indian, and you had that kind of notion about how things work in India." *Ibid.* Agent Raghaven answered "[y]es." *Ibid.*

The jury was also informed, in response to its own query, that it could take petitioner's interactions with government agents as indirect evidence of predisposition. During deliberations, the jury sent the district court a note asking if it could "consider evidence (tapes, recordings) as an indicator of the predisposition of [petitioner's] character before contact by a government official." Pet. App. 27. The court replied that the jury could consider "evidence (tapes, recordings)" if it "determine[d] [that] the evidence * * * indicate[d] [petitioner's] predisposition before being contacted by government agents." *Id.* at 28. Before giving that reply, the court solicited the parties' input; defense counsel agreed that the district court's proposed response was correct as a matter of law. *Id.* at 4. The jury found petitioner guilty of bribery. Judgment 1.

3. Petitioner moved for a new trial arguing, in part, that the government had elicited improper testimony from Agent Raghaven in an effort to establish that petitioner was predisposed to commit bribery because he was of Indian descent. Order Denying Mot. for New Trial 2. The district court denied the motion. *Id.* at 2-5, 9.

The district court explained that Agent Raghaven's testimony "clearly demonstrated that [petitioner] first raised the issue of ethnicity in their conversation," and that he tried to use their common national origin and his ability to speak Hindi "to influence" her and to obtain "a favor on the audit." Order Denying Mot. for New Trial 3-4. The court also observed that the government "asked a neutral, open-ended question regarding how [Agent] Raghaven interpreted [petitioner's] words," and Agent Raghaven answered based on "her personal

experience and knowledge." *Id.* at 4. The court emphasized that Agent "Raghaven did not say that [petitioner] made a bribe overture simply because he was Indian," but instead "simply said that, based on her own experience and knowledge, she interpreted [petitioner's] statements invoking their shared ethnicity to make the audit go away as a bribe overture." *Id.* at 5.

The district court also observed that "it was [petitioner's] own counsel, not the Government's counsel, who" "highlighted [petitioner's] ethnicity with a lengthy cross-examination" of Agent Raghaven in order to "elicit[] [her] views of corruption in India." Order Denying Mot. for New Trial 4. The court determined that petitioner had "no cause to blame the Government if he now wishes the jury never heard those views." *Ibid.*

The district court added that in any event, evidence of petitioner's "predisposition" to commit bribery "was not the only way that the Government could prove that [he] was not entrapped." Order Denying Mot. for New Trial 5. The court explained that the government also could "prove that [petitioner] was not entrapped by demonstrating that he was not induced by the Government to bribe [Agent] Ham." *Ibid.* And the court found that "[t]he recordings of [petitioner's] statements to [Agent] Ham clearly demonstrated that [he] was not induced by the Government to do so," because it was petitioner, not Agent Ham, "who controlled their relationship, came up with the idea of the bribe, and insisted that [Agent] Ham take it despite [Agent] Ham's repeated warnings of its illegality." *Ibid.*

The district court sentenced petitioner to 51 months of imprisonment, to be followed by two years of supervised release. Judgment 1-2.

4. The court of appeals affirmed. Pet. App. 1-9.

Petitioner argued on appeal that it was "structural error" for the government to have elicited Agent Raghaven's testimony, which petitioner contended was "racist." Pet. App. 2. The court of appeals explained that because petitioner had not objected to Agent Raghaven's testimony in the district court, the admission of her testimony was subject to review only for plain error, and it found no such error. *Ibid.*

The court of appeals explained that "[c]ontrary to [petitioner's] characterization," Agent Raghaven's testimony "was *not* the sort of racist predisposition testimony that the Supreme Court denounced in *Buck v. Davis*, 137 S. Ct. 759, 776-777 (2017)." Pet. App. 2. There, this Court held that a capital defense attorney provided ineffective assistance of counsel by introducing the testimony and expert report of a psychologist who opined that while the defendant was unlikely to commit future acts of violence, the defendant was "statistically more likely to act violently because he is black." 137 S. Ct. at 767; see *id.* at 775-777. The court of appeals explained that "[t]estimony regarding * * * [Agent] Raghaven's interpretation of [petitioner's] statements, using [petitioner's] numerous incongruous references to India as context, is *not* in the same category as testimony that a criminal defendant is predisposed to commit violence because of his race." Pet. App. 2.

The court of appeals also rejected petitioner's argument that "the district court erred by offering a legally deficient answer to the jury's question about what evidence it could consider in evaluating [petitioner's] predisposition to commit bribery." Pet. App. 4. The court of appeals observed that petitioner's counsel had "agreed that the district court's proposed response was 'correct as a matter of law'" and found that petitioner

had "waived his right to challenge the district court's response to the jury note." *Ibid.*

ARGUMENT

Petitioner contends (Pet. 11-16) that the admission of Agent Raghaven's testimony violated his Sixth Amendment right to trial by an impartial jury, and that the district court's response to the jury's question regarding predisposition evidence denied him due process and the right to a fair trial. Those factbound contentions do not warrant further review. The court of appeals correctly rejected petitioner's contentions under the plain-error standard, and its decision does not conflict with any decision of this Court or any other court of appeals. The petition for a writ of certiorari should be denied.

1. a. Because petitioner did not object to Agent Raghaven's testimony in the district court, his challenge to that testimony is reviewed for plain error. See Fed. R. Crim. P. 52(b). On plain-error review, petitioner bears the burden to establish (i) error that (ii) was "clear or obvious," (iii) "affected the defendant's substantial rights," and (iv) "seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings." *Rosales-Mireles* v. *United States*, 138 S. Ct. 1897, 1904-1905 (2018) (citation omitted); see *Puckett* v. *United States*, 556 U.S. 129, 135 (2009). "Meeting all four prongs is difficult, 'as it should be.'" *Puckett*, 556 U.S. at 135 (quoting *United States* v. *Dominguez Benitez*, 542 U.S. 74, 83 n.9 (2004)).

The court of appeals correctly determined that petitioner failed to show that admission of Agent Raghaven's testimony constituted plain error. Pet. App. 2. As noted above, Agent Raghaven testified that she had initially been assigned to petitioner's personal audit, and that

when she called petitioner to discuss the audit, he made what she understood to be a bribe overture. See *id.* at 17; see generally 10/25/16 Tr. 125-145. Specifically, petitioner asked Agent Raghaven about her last name and whether she was from India. Pet. App. 17. When Agent Raghaven replied that she was, petitioner began speaking to her in Hindi, and then said, "you are also from India, I'm also from India. Both of us are brother and sister. Make this audit go away." *Ibid.* Agent Raghaven further testified that, based on her understanding that "a lot of corruption and bribery goes on" in India, she "assume[d]" that petitioner was "asking [her] to make [the audit] go away and offer[ing her] a bribe." *Ibid.*

Contrary to petitioner's assertion (Pet. 12), Agent Raghaven's testimony did not suggest that petitioner's "national origin obviously made him predisposed to bribery." As the district court recognized, Agent Raghaven did not suggest that petitioner was predisposed to commit bribery merely because he was from India, or that all people of Indian descent are predisposed to commit bribery. See Order Denying Mot. for New Trial 5. Rather, Agent Raghaven's testimony demonstrated that once petitioner learned of her national origin, he used their shared background in an attempt to influence her. Pet. App. 17. Based on Agent Raghaven's understanding of "corruption and bribery" in India, she interpreted petitioner's "shocking" statements—including his invocation of their common national origin and native language, his reference to her as his "sister," and his request that she "[m]ake th[e] audit go away"—to show that he specifically was interested in offering her a bribe. 10/25/16 Tr. 126-127. Particularly in the absence of an objection from defense counsel—which

suggests that the testimony did not in context appear the way that petitioner portrays it now—the testimony was not plainly erroneous.

Indeed, the district court twice instructed the jury that it must decide the case based on the evidence, and "must not be influenced by any personal likes or dislikes, opinions, prejudices[,] or sympathy." 10/28/16 Tr. 144; 10/25/16 Tr. 81-82. The "jury is presumed to [have] follow[ed] [those] instructions." *Blueford* v. *Arkansas*, 566 U.S. 599, 606 (2012) (quoting *Weeks* v. *Angelone*, 528 U.S. 225, 234 (2000)). And petitioner could not, in any event, satisfy the third or fourth prongs of plain-error review. As the district court explained, even apart from Agent Raghaven's testimony, "[t]he recordings of [petitioner's] own words provided evidence" that he was predisposed to commit bribery. Order Denying Mot. for Judgment of Acquittal 6; see *id.* at 5-6.

Furthermore, "predisposition was not the only way that the Government could prove that [petitioner] was not entrapped." Order Denying Mot. for New Trial 5. The government also proved that petitioner was "not induced by the Government to bribe" Agent Ham through recordings of petitioner's conversations with Agent Ham, which showed that petitioner "controlled their relationship, came up with the idea of the bribe, and insisted that [Agent] Ham take it despite [his] repeated warnings of its illegality." *Ibid.* The court of appeals determined that these recordings "were dispositive of a lack of inducement by law enforcement." Pet. App. 4 (emphasis omitted). And because the government's evidence was sufficient to defeat petitioner's entrapment defense even without consideration of Agent Raghaven's testimony, any error in the admission of that testimony

did not affect petitioner's substantial rights or the fairness, integrity, or public reputation of judicial proceedings. See *Rosales-Mireles*, 138 S. Ct. at 1904-1905 (explaining that to show that an error "'affected the defendant's substantial rights,'" "the defendant ordinarily must 'show a reasonable probability that, but for the error,' the outcome of the proceeding would have been different") (citation omitted).

b. Petitioner contends (Pet. 11-13) that the admission of Agent Raghaven's testimony was improper in light of this Court's decisions in *Buck* v. *Davis*, 137 S. Ct. 759 (2017), and *Pena-Rodriguez* v. *Colorado*, 137 S. Ct. 855 (2017). That contention lacks merit.

The defendant in *Buck* was convicted of capital murder. 137 S. Ct. at 767. State law provided that the jury could impose a death sentence only if it found that he was likely to commit future acts of violence. *Ibid.* At sentencing, defense counsel introduced a psychologist's expert report and elicited his testimony that while the defendant was unlikely to engage in future violence, "one of the factors pertinent in assessing a person's propensity for violence was his race," and the defendant was "statistically more likely to act violently because he is black." *Ibid.*; see *id.* at 775-777. This Court held that by introducing the expert's report and testimony—which "said, in effect, that the color of Buck's skin made him more deserving of execution"—defense counsel provided ineffective assistance of counsel in violation of the Sixth Amendment. *Id.* at 775.

In *Pena-Rodriguez*, a state jury found the defendant guilty of unlawful sexual conduct and harassment. 137 S. Ct. at 861. Following the jury's discharge, two jurors provided affidavits "with compelling evidence that another juror made clear and explicit statements

indicating that racial animus was a significant motivating factor" in his support for a jury verdict. *Ibid.* Specifically, the affidavits recounted the juror's statement that "he believed the defendant was guilty because, in [his] experience as an ex-law enforcement officer, Mexican men had a bravado that caused them to believe they could do whatever they wanted with women." *Id.* at 862 (citation and internal quotation marks omitted); see *ibid.* (recounting additional statements, including that the juror thought the defendant "did it because he's Mexican and Mexican men take whatever they want," and "nine times out of ten Mexican men were guilty of being aggressive toward women and young girls") (citations omitted). This Court held that the traditional and still-common rule forbidding jurors from testifying as to any statement made during deliberations in a proceeding inquiring into the validity of the verdict must "give way" under the Sixth Amendment "where a juror makes a clear statement that indicates he or she relied on racial stereotypes or animus to convict a criminal defendant." *Id.* at 869. In that circumstance, the trial court must be able "to consider the evidence of the juror's statement and any resulting denial of the jury trial guarantee." *Ibid.*

Contrary to petitioner's assertion (Pet. 11-13), this case has is substantially different from *Buck* and *Pena-Rodriguez*. Most fundamentally, unlike the expert's testimony in *Buck* or the juror's statements in *Pena-Rodriguez*, Agent Raghaven's testimony did not suggest that all or most people of Indian descent are predisposed to commit bribery; instead, it suggested that, based on petitioner's own statements to Agent Raghaven, *he specifically* had demonstrated a predisposition to do

so. In addition, unlike in *Buck*, petitioner does not attack testimony that came from an expert who "b[ore] the court's imprimatur," 137 S. Ct. at 776-777, but instead testimony of a fact witness providing context for how she understood certain statements. And unlike in *Pena-Rodriguez*, petitioner does not question the impartiality of the jury and its "role" as a "'criminal defendant's fundamental "protection of life and liberty against race or color prejudice,"'" 137 S. Ct. at 868 (quoting *McCleskey* v. *Kemp*, 481 U.S. 279, 310 (1987)). Neither *Buck* nor *Pena-Rodriguez* suggests plain error in Agent Raghaven's testimony, or that this case warrants further review.

2. Petitioner next contends (Pet. 14-16) that the district court plainly erred in its written response to the jury's question regarding predisposition evidence. That assertion also does not warrant further review.

During deliberations, the jury asked whether it was "allowed to consider evidence (tapes, recordings) as an indicator of the predisposition of [petitioner's] character before contact by a government official." Pet. App. 27. The district court "put together a proposed answer," and then asked for "comments" from counsel "before * * * respond[ing] to the jurors' question." 10/31/16 Tr. 4. After reviewing the court's proposed response, defense counsel stated that "I believe the Court's response is correct as a matter of law." *Ibid.* The court then responded to the jury note by stating "[y]es, if you determine the evidence (tapes, recordings) indicates the defendant's predisposition before being contacted by government agents." Pet. App. 28.

The court of appeals correctly recognized that petitioner waived any objection to the district court's response because his counsel "agreed that the district

court's proposed response was 'correct as a matter of law.'" Pet. App. 4. Petitioner does not suggest (Pet. 13-16) that the court of appeals' determination of that threshold procedural issue conflicts with any decision of this Court or of another court of appeals. To the contrary, the decision here is consistent with decisions from other circuits. See, *e.g.*, *United States* v. *Maldonado*, 112 Fed. Appx. 768, 770 (2d Cir. 2004); *United States* v. *McNeil*, 77 F.3d 484, 1996 WL 47447, at *1 (7th Cir. 1996) (Tbl.); cf. *United States* v. *Willis*, 523 F.3d 762, 775 (7th Cir. 2008).

In any event, petitioner is incorrect in suggesting that the district court committed plain error. Petitioner contends that the court's response was erroneous because it "failed to also instruct the jury to consider all the other evidence from the months before undercover recordings were generated by government agents"—an omission that, petitioner asserts, "also implicated" the "race-based prejudice" that he contends had been inserted into the case. Pet. 15 (emphasis omitted). But the district court had already instructed the jury that in considering petitioner's guilt or innocence—including his entrapment defense and the government's evidence of predisposition—the jury should consider "all the evidence." 10/28/16 Tr. 153-154. Particularly in light of defense counsel's agreement with the court's proposed response, the court did not plainly err in failing to repeat that statement.

3. Finally, petitioner suggests (Pet. i, 8, 14-16) that Agent Raghaven's testimony and the district court's response to the jury's question constituted structural error and required vacatur of his conviction. Again, however, petitioner does not point to any conflict between the decision below and any decision of this Court or of

another court of appeals. And his argument lacks merit. Even if petitioner were correct that the district court erred, neither purported error would be structural. Furthermore, a classification as structural error would not in itself warrant relief under the plain-error standard.

This Court has recognized that "most constitutional errors can be harmless," *Arizona* v. *Fulminante*, 499 U.S. 279, 306 (1991), and therefore "do[] not automatically require reversal of a conviction," *Weaver* v. *Massachusetts*, 137 S. Ct. 1899, 1907 (2017) (citation omitted). The Court has determined, however, that some errors "should not be deemed harmless beyond a reasonable doubt," and are instead considered "structural" in nature. *Ibid.* The structural error doctrine ensures "certain basic, constitutional guarantees that should define the framework of any criminal trial." *Ibid.*

"[T]he defining feature of a structural error is that it 'affect[s] the framework within which the trial proceeds,' rather than being 'simply an error in the trial process itself.'" *Weaver*, 137 S. Ct. at 1907 (quoting *Fulminante*, 499 U.S. at 310) (second set of brackets in original). Structural errors exist "only in a very limited class of cases," including the denial of counsel; judicial bias; the exclusion of grand jurors of the defendant's race; the denial of self-representation at trial; the denial of a right to a public trial; and the use of erroneous reasonable-doubt instructions. *Johnson* v. *United States*, 520 U.S. 461, 468-489 (1997) (collecting cases). By contrast, "'if the defendant had counsel and was tried by an impartial adjudicator, there is a strong presumption that any other errors that may have occurred' are not 'structural errors.'" *United States* v. *Marcus*, 560 U.S. 258, 265 (2010) (quoting *Rose* v. *Clark*, 478 U.S.

570, 579 (1986)); see *Fulminante*, 499 U.S. at 307, 309 (explaining that "'trial error[s]'" that "occur[] during the presentation of the case to the jury" are not "structural").

Even if erroneous, the admission of Agent Raghaven's testimony and the district court's response to the jury's question do not fall within the limited class of structural errors previously recognized by this Court. *Johnson*, 520 U.S. at 468-469. Nor are they the type of alleged errors that relate to the overall framework of a criminal trial. Rather, they took place during the presentation of the case to the jury, or in response to the jury's question, and thus are amenable to analysis in light of the nature and effect of any impropriety in the context of the entire trial. See, *e.g.*, *Neder* v. *United States*, 527 U.S. 1, 7-8 (1999) (holding that most instructional errors are not structural); *Fulminante*, 499 U.S. at 310 (same for erroneous admission of evidence).

Finally, even if the alleged errors petitioner identifies were "structural," they would not warrant reversal under the plain-error standard. This Court has left open whether structural errors "automatically satisfy the third prong of the plain error test," *Puckett*, 556 U.S. at 140, as petitioner appears to presume that they would. The Court has also repeatedly determined that, in cases involving errors assumed to be structural, relief on plain-error review is improper unless the defendant meets the fourth prong of the test by establishing that the error seriously affected the fairness, integrity, or public reputation of judicial proceedings. *Johnson*, 520 U.S. at 468-470; see *United States* v. *Cotton*, 535 U.S. 625, 632-634 (2002). "[I]n most circumstances, an error that does not affect the jury's verdict" does not satisfy that requirement. *Marcus*, 560 U.S. at 265-266. Petitioner cannot show an effect on the jury's verdict

here. As the lower courts found, "the evidence, viewed in the light most favorable to the prosecution, showed overwhelmingly that [petitioner] was predisposed to commit bribery," Pet. App. 5, and "clearly demonstrated" that the government did not induce him to do so, Order Denying Mot. for New Trial 5; see Pet. App. 4.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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