No. 21-7648

IN THE SUPREME COURT OF THE UNITED STATES

LUIS FERNANDO CEJA, AKA CHAKO, 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 the district court reversibly erred in accepting petitioner's oral waiver of his right to a jury trial, which followed a colloquy in which the court ensured petitioner's awareness that he was relinquishing his right to have 12 people unanimously agree that he was guilty beyond a reasonable doubt, and which the lower courts found to be knowing, intelligent, and voluntary.

ADDITIONAL RELATED PROCEEDINGS

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

United States v. Ceja, No. 18-cr-742 (July 22, 2020)

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

United States v. Ceja, No. 20-50204 (Jan. 26, 2022)

United States v. Paniagua, No. 20-50255 (Aug. 25, 2021) (dismissal of co-defendant's appeal)

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OPINION BELOW

The opinion of the court of appeals (Pet. App. A1-A16) is reported at 23 F.4th 1218.

JURISDICTION

The judgment of the court of appeals was entered on January 26, 2022. A petition for rehearing was denied on March 1, 2022 (Pet. App. A17). The petition for a writ of certiorari was filed on April 14, 2022. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a bench trial in the United States District Court for the Central District of California, petitioner was convicted

of conspiring to distribute methamphetamine, in violation of 21 U.S.C. 846; aiding and abetting the distribution of methamphetamine, in violation of 21 U.S.C. 841(a)(1), 21 U.S.C. 841(b)(1)(A)(viii) (2012), and 18 U.S.C. 2; aiding and abetting the distribution of methamphetamine within 1000 feet of a school, in violation of 21 U.S.C. 841(a)(1) and 860(a), 21 U.S.C. 841(b)(1)(A)(viii) (2012), and 18 U.S.C. 2; and distributing methamphetamine, in violation of 21 U.S.C. 841(a)(1) and 21 U.S.C. 841(b)(1)(B)(viii) (2012). See Pet. C.A. Excerpts of Record (E.R.) 3, 148-149. The district court sentenced petitioner to 240 months of imprisonment, to be followed by five years of supervised release. Id. at 3. The court of appeals affirmed. Pet. App. A1-A16.

1. Petitioner was a methamphetamine distributor in the Los Angeles area. Presentence Investigation Report ¶¶ 13-17. He sold methamphetamine through a co-conspirator, and in October and November 2014, he was captured on audio and video personally selling methamphetamine to an informant on multiple occasions, including once near a middle school. Pet. App. A5.

A grand jury in the Central District of California charged petitioner with conspiring to distribute at least 50 grams of methamphetamine, in violation of 21 U.S.C. 841(a)(1), 21 U.S.C. 846, and 21 U.S.C. 841(b)(1)(A)(viii) (2012); distributing at least 50 grams of methamphetamine, in violation of 21 U.S.C.

841(a)(1), 21 U.S.C. 841(b)(1)(A)(viii) (2012), and 18 U.S.C. 2; distributing methamphetamine on a premises where a minor was present and resided, in violation of 21 U.S.C. 841(a)(1), 21 U.S.C. 860a, and 18 U.S.C. 2; distributing methamphetamine within 1000 feet of a school, in violation of 21 U.S.C. 841(a)(1), 21 U.S.C. 841(b)(1)(A)(viii) (2012), 21 U.S.C. 860(a), and 18 U.S.C. 2; and distributing at least five grams of methamphetamine, in violation of 21 U.S.C. 841(a)(1) and 21 U.S.C. 841(b)(1)(B)(viii) (2012). Pet. C.A. E.R. 148-153, 157-160.

2. In February 2020, the district court held a status conference in petitioner's case. Pet. C.A. E.R. 129-137. Petitioner, a native Spanish-speaker, had the assistance of an interpreter during the hearing. Id. at 131.

During the hearing, petitioner's counsel informed the district court that petitioner "wishe[d] to waive jury trial and have a Court trial." Pet. C.A. E.R. 134. The court asked petitioner, "[I]s that your desire to have a court trial[,] which means the judge would decide innocence or guilt, not a jury?" Ibid. Petitioner answered "Yes." Ibid.

The district court directly explained to petitioner that he had "a right to have a jury make that decision, and [at] a jury trial 12 people would have to agree unanimously beyond a reasonable doubt to find [petitioner] guilty of the offense." Pet. C.A. E.R.

134. The court asked petitioner, "Do you understand that?" Ibid. Petitioner answered "Yes." Ibid.

The district court then directly explained to petitioner that, "until and unless" he was found guilty by a jury, he "ha[s] got a right to be presumed innocent," but that if he had "a Court trial," it would be the judge who would "hear the evidence and make a decision whether or not the government has proved their case beyond a reasonable doubt, not the jury, so that would just be the Court's decision." Pet. C.A. E.R. 134-135. The court asked petitioner, "Is that agreeable with you?" Id. at 135. Petitioner replied "Yes." Ibid. Petitioner's counsel expressly confirmed that he joined petitioner's request for a bench trial. Ibid.

Following that colloquy, the district court informed the parties that it had determined that, "[f]rom the appearances we have had here in court and from his appearance today, [the waiver] seems to be knowing, intelligent, free and voluntary on the part of the defendant as to his jury trial." Pet. C.A. E.R. 135. Petitioner did not ask to submit a written waiver of his right to a jury trial at any point in the proceeding.

3. On the day that petitioner's bench trial was scheduled to begin, the district court confirmed that "both sides have waived jury; is that correct?" Pet. C.A. E.R. 45. Petitioner's counsel responded, "Yes, Your Honor." Ibid. The waiver on record when counsel provided that confirmation was an oral waiver.

Petitioner then proceeded to trial. See Pet. App. A8. Following the trial, petitioner was convicted of conspiring to distribute methamphetamine, in violation of 21 U.S.C. 846; aiding and abetting the distribution of methamphetamine, in violation of 21 U.S.C. 841(a)(1), 21 U.S.C. 841(b)(1)(A)(viii) (2012), and 18 U.S.C. 2; aiding and abetting the distribution of methamphetamine within 1000 feet of a school, in violation of 21 U.S.C. 841(a)(1) and 860(a), 21 U.S.C. 841(b)(1)(A)(viii) (2012), and 18 U.S.C. 2; and distributing methamphetamine, in violation of 21 U.S.C. 841(a)(1) and 21 U.S.C. 841(b)(1)(B)(viii) (2012). Pet. C.A. E.R. 3. On the government's motion, the court dismissed the remaining counts against petitioner. Id. at 5.

The district court sentenced petitioner to 240 months of imprisonment, to be followed by five years of supervised release. Pet. C.A. E.R. 3.

4. The court of appeals affirmed. Pet. App. A1-A16.

With respect to petitioner's jury-trial waiver, the court of appeals acknowledged that Federal Rule of Criminal Procedure 23(a) states that a defendant's jury-trial waiver must be "in writing," Pet. App. A9 (quoting Fed. R. Crim. P. 23(a)(1)), but noted that under its precedent, "an oral waiver may be sufficient in certain cases" where the district court has confirmed that the defendant's waiver is knowing, voluntary, and intelligent, id. at A10 (citing United States v. Shorty, 741 F.3d 961, 966 (9th Cir. 2013)). The

court also noted that, while it had "implored" district courts to ensure that jury-trial waivers are knowing, voluntary, and intelligent by engaging in a "substantial colloquy" that references four particular features of jury trials, ibid. (quoting United States v. Cochran, 770 F.2d 850, 852-853 (9th Cir. 1985)), it had "not mandate[d]" that precise colloquy in all cases, and had instead "required" it only "where a defendant's mental or emotional state is a salient fact putting the court on notice that a defendant's waiver may not be knowing and intelligent," ibid.

Here, the court of appeals found that "the district court's colloquy [with petitioner] was adequate to ensure that [he] knowingly, voluntarily, and intelligently waived his right to a jury trial." Pet. App. A11. The court of appeals observed that, while the district court's colloquy with petitioner had not referenced two of the four jury-trial features that the court of appeals prefers colloquies to include -- namely, "that he could take part in jury selection" and "that the jurors would be members of his community" -- the district court had explained to petitioner that he would be relinquishing the right to have a unanimous 12-person determination of his guilt beyond a reasonable doubt, and "nothing suggested that [petitioner's] waiver might not be knowing and intelligent." Id. at A10. In particular, the court observed that petitioner had the assistance of "a court-certified interpreter," so "his language skills were not a barrier at his

waiver proceeding," and that "there is no evidence that [petitioner] suffers from emotional or cognitive disabilities." Id. at A11.

ARGUMENT

Petitioner contends (Pet. 7-17) that acceptance of his oral waiver of his right to a jury trial -- which followed a colloquy in which the district court ensured his awareness of that he was relinquishing his right to have 12 people unanimously agree that he was guilty beyond a reasonable doubt, and which the lower courts found to be knowing, intelligent, and voluntary -- was reversible error. The court of appeals' decision was correct and does not conflict with the decision of any other court of appeals or any state court of last resort. Moreover, this case presents a poor vehicle for further review, because petitioner forfeited his challenge to the waiver's validity by failing to raise it in the district court, thereby rendering reversal appropriate only if he satisfies the standard for plain-error relief. No further review is warranted.

1. Under the Sixth Amendment, a defendant may waive his right to a jury trial as long as he does so knowingly, intelligently, and voluntarily. See, e.g., Adams v. United States ex rel. McCann, 317 U.S. 269, 275-278 (1942); Patton v. United States, 281 U.S. 276, 312 (1930), abrogated on other grounds by Williams v. Florida, 399 U.S. 1893 (1970). Whether a defendant's

jury-trial waiver was knowing, intelligent, and voluntary is a fact-intensive inquiry that "must depend upon the unique circumstances of each case." Adams, 317 U.S. at 278. Here, both lower courts found that, in the particular circumstances of this case, petitioner's waiver was in fact knowing, intelligent, and voluntary. Pet. App. A10-A11; Pet. C.A. E.R. 135.

When petitioner's counsel informed the district court that petitioner wished to waive a jury trial and proceed with a bench trial, the court asked petitioner, "[I]s that your desire to have a court trial[,] which means the judge would decide innocence or guilt, not a jury?" Pet. C.A. E.R. 134. Petitioner answered "Yes." Ibid. The court then emphasized to petitioner that he had a right to a jury trial, that a jury would consist of 12 people, and that all 12 jurors "would have to agree unanimously beyond a reasonable doubt to find [petitioner] guilty." Ibid. Petitioner confirmed that he understood. Ibid. The court then elaborated that, if petitioner had "a Court trial," it would be the judge who would "hear the evidence and make a decision whether or not the government has proved their case beyond a reasonable doubt, not the jury, so that would just be the Court's decision." Id. at 134-135. Petitioner confirmed that was "agreeable" with him. Id. at 135.

The district court accordingly found that, "[f]rom the appearances we have had here in court and from his appearance

today, [the waiver] seems to be knowing, intelligent, free and voluntary on the part of the defendant as to his jury trial." Pet. C.A. E.R. 135. The court of appeals likewise found that the "colloquy was adequate to ensure that [petitioner] knowingly, voluntarily, and intelligently waived his right to a jury trial." Pet. App. A11. And nothing in the record "suggested that [petitioner's] waiver might not be knowing and intelligent." Id. at A10; id. at A10-A11.

2. Petitioner contends (Pet. 7-9) that his convictions should nevertheless be vacated because the waiver was oral, rather than written. That contention lacks merit, and petitioner does not identify any court of appeals that would accept it.

Federal Rule of Criminal Procedure 23(a) provides that, "[i]f a defendant is entitled to a jury trial, the trial must be by jury unless: (1) the defendant waives a jury trial in writing; (2) the government consents; and (3) the court approves." Rule 23(a)'s requirements are not, however, constitutionally mandated; under the Sixth Amendment, a defendant may waive his right to a jury trial as long as he does so knowingly, intelligently, and voluntarily. See, e.g., United States v. Williams, 559 F.3d 607, 610 (7th Cir. 2009) (recognizing that non-compliance with Rule 23(a) does not automatically render jury-trial waiver invalid under the Sixth Amendment), cert. denied, 558 U.S. 1147 (2010); Cabberiza v. Moore, 217 F.3d 1329, 1333 (11th Cir. 2000)

(recognizing that Rule 23(a) was "merely created as a matter of public policy" and is not an "independent requirement[ ] of the Sixth Amendment"), cert. denied, 531 U.S. 1170 (2001); United States v. Saadya, 750 F.2d 1419, 1420 (9th Cir. 1985).

The court of appeals' statement that "an oral waiver may be sufficient in certain cases," Pet. App. A10, is not a general invitation for courts to "ignore the plain language of Rule 23(a)," contra Pet. 7. Rather, the decision below correctly reflects that noncompliance with Rule 23's written-waiver directive does not invariably warrant vacatur of a constitutionally valid judgment. See Fed. R. Crim. P. 52(a) ("Any error, defect, irregularity, or variance that does not affect substantial rights must be disregarded."); 28 U.S.C. 2111 ("On the hearing of any appeal or writ of certiorari in any case, the court shall give judgment after an examination of the record without regard to errors or defects which do not affect the substantial rights of the parties."). Petitioner does not contend that the absence of a written waiver fits within the "'highly exceptional'" and limited "category of structural errors" for which relief is automatic. Greer v. United States, 141 S. Ct. 2090, 2100 (2021) (citation omitted). Nor does he attempt to argue that he would have chosen to proceed with a jury trial, rather than accept a bench trial, if the district court had asked him to memorialize his waiver in writing. And as petitioner recognizes (Pet. 8) the court of appeals' approach here is not

out-of-step with the decisions of other courts of appeals. See United States v. Robertson, 45 F.3d 1423 (10th Cir.), cert. denied, 515 U.S. 1108 and 516 U.S. 844 (1995).

3. Petitioner also contends (Pet. 10-17) that his jury-trial waiver was invalid because the district court's colloquy did not expressly mention his right to participate in jury selection and that the people on the jury would be members of his community. That contention likewise does not warrant this Court's review.

a. This Court has explained that "the law ordinarily considers a waiver knowing, intelligent, and sufficiently aware if the defendant fully understands the nature of the right and how it would likely apply in general in the circumstances -- even though the defendant may not know the specific detailed consequences of invoking it." United States v. Ruiz, 536 U.S. 622, 629 (2002). Accordingly, even if a defendant lacks a full and complete appreciation of all of the consequences of a waiver, the waiver may still "satisf[y] the constitutional minimum." Patterson v. Illinois, 487 U.S. 285, 294 (1988).

Petitioner's colloquy with the district court demonstrates that he understood "the nature of the right" to a jury trial and "how it would likely apply in general in the circumstances." Ruiz, 536 U.S. at 629. He was clearly informed, and acknowledged that he understood, that he was relinquishing his right to have 12 people unanimously find his guilt beyond a reasonable doubt in

favor of having a single judge make such a finding. Pet. C.A. E.R. 134-135. Petitioner asserts (Pet. 14-17) that the district court's colloquy failed to ensure that his waiver was knowing, intelligent, and voluntary because he was assisted by an interpreter, has an eighth-grade education, and is a "foreign citizen" who was not familiar with the United States' "jury trial tradition." But the lower courts' fact-bound rejection of that individualized assertion, see Pet. App. A10-A11 -- which accords with the district court's determination, drawing on its knowledge of the defendant from all of his appearances before that court that the waiver appeared knowing, intelligent, and voluntary, Pet. C.A. E.R. 135 -- does not warrant this Court's review. See Sup. Ct. R. 10.

In any event, petitioner's assertion lacks merit. The district court described to petitioner the nature of the jury-trial right and contrasted it with the procedure for a bench trial. Pet. C.A. E.R. 134-135. Petitioner, who was represented by counsel, was assisted by "a court-certified interpreter," so "his language skills were not a barrier at his waiver proceeding." Pet. App. A11. Petitioner has never given any indication that he did not understand the consequences of waiving a jury trial. See id. at A10 (finding that "nothing suggested that [petitioner's] waiver might not be knowing and intelligent"). And petitioner has not provided any sound reason to conclude that, had the district court

directly informed him that he could participate in selecting a jury consisting of 12 community members, he would have withdrawn the jury-trial waiver that his counsel supported, Pet. C.A. E.R. 135.

b. Although the court of appeals found that the particular colloquy here satisfied the constitutional minimum, the court does not encourage such colloquies. Instead, it has "implored" district courts encountering defendants who profess a desire to waive jury-trial rights to conduct a colloquy that expressly references the features of jury trials included in the colloquy here -- a 12-member jury, the unanimity requirement, and the court's factfinding role if a jury trial is waived -- as well as that the defendant participates in selecting the jury, which consists of community members. Pet. App. A10 (citation omitted); see id. at A10-A11.

Contrary to petitioner's suggestion (Pet. 10-14), the court of appeals' approach in this case -- urging district judges to conduct more extensive pre-waiver colloquies but declining to hold that particular colloquies are required in all cases, on pain of reversal -- accords with the uniform approach in other circuits. E.g., United States v. Carmenate, 544 F.3d 105, 107-108 (2d Cir.) (per curiam) (recognizing that a "'court is not constitutionally required to conduct an on the record colloquy with a defendant prior to a waiver of the right to a jury trial,'" but

"recommend[ing]" that course) (citation omitted), cert. denied, 555 U.S. 1019 (2008); see also, e.g., United States v. Leja, 448 F.3d 86, 93 (1st Cir. 2006); United States v. Lilly, 536 F.3d 190, 197-198 (3d Cir. 2008); United States v. Igbinosun, 528 F.3d 387, 390-391 (5th Cir.), cert. denied, 555 U.S. 1072 (2008); United States v. Martin, 704 F.2d 267, 274-275 (6th Cir. 1983); Robertson, 45 F.3d at 1432 (10th Cir.). And to the extent that petitioner asserts that court of appeals' approach in this case is inconsistent with its approach in prior cases involving similarly situated defendants, see Pet. 14, any such intra-circuit conflict would not warrant this Court's review. See Wisniewski v. United States, 353 U.S. 901, 902 (1957) (per curiam).

As petitioner notes (Pet. 10), more than 40 years ago, the Seventh Circuit invoked its "supervisory power" to require district courts to explicitly detail certain information to defendants before accepting jury-trial waivers, see United States v. Scott, 583 F.2d 362, 364 (1978) (per curiam), and later reversed one conviction on the ground that a district court had failed to give adequate information, see United States v. Delgado, 635 F.2d 889, 890 (1981). But now that this Court has made clear that automatic reversal is not an appropriate remedy for a violation of a supervisory rule, see, e.g., Bank of Nova Scotia v. United States, 487 U.S. 250 (1988), the Seventh Circuit has recognized that the failure of a district court to engage in the precise colloquy

outlined by Delgado does not automatically undermine the validity of a jury waiver. See United States v. Rodriguez, 888 F.2d 519, 527-528 (1989) (citing Bank of Nova Scotia and United States v. Hasting, 461 U.S. 499, 506 (1983)); see also United States v. Robinson, 8 F.3d 418, 422 (7th Cir. 1993) (recognizing that Rodriguez abrogated Delgado).

The Seventh Circuit's supervisory rule has been further undermined by this Court's repeated and recent admonishment that that "lower courts cannot create prophylactic supervisory rules that circumvent or supplement legal standards set out in decisions of this Court." United States v. Tsarnaev, 142 S. Ct. 1024, 1036 (2022) (citing United States v. Payner, 447 U.S. 727, 733-737 (1980)). This Court has made clear that the standard for a jury-trial waiver is whether the waiver was knowing, intelligent, and voluntary, and that application of that standard "must depend upon the unique circumstances of each case." Adams, 317 U.S. at 278; see Patton, 281 U.S. at 312 (observing that "the duty of the trial court" in ensuring a valid waiver is a matter of "sound and advised discretion").

c. Petitioner likewise identifies no conflict between the decision below and any state court of last resort. In Davis v. State, 809 A.2d 565 (Del. 2002) (cited at Pet. 11), for example, the Delaware Supreme Court found that a "trial judge properly exercised her discretion in accepting [a defendant's] request to

waive his right to a trial by jury," id. at 573, where the colloquy had not advised the defendant that he could take part in jury selection or that the jurors would be members of his community, see id. at 567-568. Davis thus indicates that the Delaware Supreme Court would agree with the court of appeals' decision to uphold petitioner's jury-trial waiver, while apparently sharing petitioner's -- and the court below's -- "prefer[ence]" for a more robust colloquy. Id. at 571; see id. at 571-572; see Pet. App. A10-A11.

Petitioner asserts (Pet. 11) that other state courts of last resort instruct trial courts to "personally address the defendant" before accepting a jury-trial waiver, at least in some circumstances, but none of the cited decisions invariably requires a trial judge to inform the defendant specifically that he could take part in jury selection and that the jurors would be members of his community. See Walker v. State, 578 P.2d 1388, 1389-1390 (Alaska 1978) (requiring the trial court "to inquire whether the waiver is voluntary and knowing"); State v. Gore, 955 A.2d 1, 13-14 (Conn. 2008) (requiring "a brief canvass of the defendant" that "need not be overly detailed or extensive" in cases where the defendant has not signed a written jury-trial waiver); Jackson v. United States, 262 A.2d 106, 109 (D.C. 1970) (declining to "spell[ ] out the precise form of inquiry that should be made of the defendant"); State v. Lidell, 672 N.W.2d 805, 812, 814 (Iowa

2003) (requiring "some in-court colloquy or personal contact between the court and the defendant, to ensure the defendant's waiver is knowing, voluntary, and intelligent," but declining to adopt "a 'checklist' by which all jury-trial waivers must be strictly judged"); Ciummei v. Commonwealth, 392 N.E.2d 1186, 1189-1190 (Mass. 1979) (requiring trial judges to "advise the defendant of his constitutional right to a jury trial" but declining "to create a rigid pattern" for that colloquy); State v. Arthur, 374 S.E.2d 291, 293 (S.C. 1988) (requiring a colloquy that demonstrates that the defendant's jury-trial waiver "was made knowingly and voluntarily").

Petitioner errs in suggesting (Pet. 14-15) that the D.C. Court of Appeals' decision in Lopez v. United States, 615 A.2d 1140 (1992), reflects a practice of mandating more extensive jury-trial-waiver colloquies in cases involving "a foreign non-English-speaking defendant with no American education and a minimal foreign education" that would apply in this case. Pet. 15. The court there found a violation of a D.C. statute and a D.C. rule, neither of which applies here. See Lopez, 615 A.2d at 1146-1147. In addition, the colloquy in Lopez was much more limited than the colloquy in petitioner's case; after talking to defense counsel, the trial court asked the defendant only one direct question ("Is that correct, Miss Lopez?"), and the reviewing court was unable to conclude that the defendant's answer ("Yes")

indicated that she "comprehended the difference between a jury trial and a bench trial, or that she made an express, deliberate, and intelligent waiver of a right which she meaningfully understood." Id. at 1147. And notwithstanding that highly limited colloquy, the D.C. Court of Appeals recognized that the defendant might have "made a knowing and deliberate choice of a non-jury trial," and remanded the case for further proceedings to address that question. Ibid.; see id. at 1148.

Moreover, even if some state court's decision did conflict with the decision below, petitioner's preferred approach would not resolve such a conflict. Petitioner does not appear to contend that his proposed rule regarding jury-waiver colloquies is constitutionally required, and such a contention would be inconsistent with this Court's precedents favoring a circumstance-specific approach. See Adams, 317 U.S. at 278-280; Patton, 281 U.S. at 312. To the extent that petitioner would advocate (Pet. 10-14) for a supervisory rule that would adopt his preferred practices, this Court has consistently disclaimed any such supervisory authority to announce rules of procedure that are binding on state courts. See Dickerson v. United States, 530 U.S. 428, 437 (2000); Mu'Min v. Virginia, 500 U.S. 415, 422 (1991); Smith v. Phillips, 455 U.S. 209, 221 (1982) ("Federal courts hold no supervisory authority over state judicial proceedings and may intervene only to correct wrongs of constitutional dimension.");

Harris v. Rivera, 454 U.S. 339, 344-345 (1981) (per curiam) (recognizing that federal judges "may not require the observance of any special procedures" in state courts "except when necessary to assure compliance with the dictates of the Federal Constitution").

4. In any event, this case would be a poor vehicle for addressing either question presented because petitioner did not raise his claims before the district court, and those claims are therefore reviewable for plain error. See Fed. R. Crim. P. 52(b); United States v. Olano, 507 U.S. 725, 731-732 (1993).* To establish reversible plain error, petitioner must demonstrate (1) an error; (2) that is clear or obvious; (3) that affected substantial rights; and (4) that seriously affected the fairness, integrity, or public reputation of judicial proceedings. Olano, 507 U.S. at 732-736; see, e.g., Puckett v. United States, 556 U.S. 129, 135 (2009).

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* The government did not argue to the court of appeals that plain-error review applied to petitioner's challenge to his jury-trial waiver, see Gov't C.A. Br. 29, and the court reviewed that claim de novo, Pet. App. A9 (citing United States v. Shorty, 741 F.3d 961, 965 (9th Cir. 2013)). But this Court would have discretion to apply plain-error review. See, e.g., United States v. Macias, 789 F.3d 1011, 1017 n.3 (9th Cir. 2015), cert. denied, 577 U.S. 1147 (2016) (observing that "[t]he 'waiver of waiver' doctrine is * * * -- like waiver generally -- a discretionary doctrine"). Plain-error review serves systemic interests in sound judicial administration, including promoting efficiency and accuracy, and protecting against reversal for errors that have little if any likelihood of affecting the outcome. See Puckett v. United States, 556 U.S. 129, 134 (2009).

Petitioner cannot satisfy those requirements. Even if the district court erred, such an error was not plain. And petitioner also has not shown that informing him about two additional features of the jury system would have caused him to decline to enter the jury-trial waiver that his counsel supported (Pet. C.A. E.R. 135), or that accepting his oral waiver without mentioning those jury-trial features seriously affected the fairness, integrity, or public reputation of his proceedings.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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