NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

TRACY ALAN ZORNES,

PETITIONER,

v.

WILLIAM BOLIN, WARDEN,
MINNESOTA CORRECTIONAL FACILITY,
OAK PARK HEIGHTS,

RESPONDENT

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The question presented by this petition is whether the Sixth Amendment's public trial guarantee, within the review apparatus imposed by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), requires a trial court to conduct the four-part test from *Waller v. Georgia* before imposing a partial courtroom closure in a criminal trial.

Some circuit courts of appeals, and some of the States, have fashioned rules, none of which have been sanctioned by a holding of this Court, to allow for certain public trial closures that, because they are deemed "partial" or are otherwise not "total," evade review under *Waller v. Georgia* and *Presley v. Georgia*.

In Petitioner Tracy Zornes's murder trial, the trial court judge removed Zornes's girlfriend from the courtroom during juror *voir dire* without first conducting a *Waller* analysis. In holding that this partial closure did not violate Zornes's Sixth Amendment right to a public trial, the Minnesota Supreme Court held that the removal by the district court of Zornes's girlfriend during *voir dire* was justified because she was a potential witness, and that no *Waller* inquiry was required.

The question presented by this case strikes at the very holdings of this Court in *Waller v. Georgia* and *Presley v. Georgia*. In the former, this Court articulated a four-factor test that "*any closure*…must meet" in order to withstand constitutional scrutiny. 467 U.S. 39 at 47-48 (1984) (emphasis supplied). In the latter, this Court reiterated the point that "*Waller* provided standards for courts to apply before

excluding the public from *any stage* of a criminal trial." 558 U.S. 209 at 213 (2010) (emphasis supplied).

Against this backdrop, the U.S. Court of Appeals for the Eighth Circuit held that the Minnesota Supreme Court's opinion is neither contrary to, nor an unreasonable application of, clearly established federal law because of its view that neither *Waller* nor *Presley* apply to "partial" courtroom closures. This Court has not previously distinguished between "partial" and "total" closures.

PARTIES TO THE PROCEEDINGS

Tracy Alan Zornes was the Appellant in the Eighth Circuit Court of Appeals, and is the Petitioner herein. William Bolin, Warden, MCF – Oak Park Heights, was the Appellee in the Eighth Circuit, and is the Respondent herein.

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PETITION FOR A WRIT OF CERTIORARI

Tracy Alan Zornes petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit in this case.

OPINIONS BELOW

The Eighth Circuit's panel opinion (Pet. App. 1) is published at 37 F.4th 1411 (8th Cir. 2022). The federal district court's opinion (Pet. App. 70) is unpublished. The Minnesota Supreme Court's opinion (Pet. App. 94), from which Petitioner Zornes sought federal habeas relief, is published at 831 N.W.2d 609 (Minn.2013).

JURISDICTION

The Eighth Circuit entered its judgment on June 27, 2022. The Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution provides:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed . . . .

Title 28 U.S.C. § 2254(a) provides:

The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

Title 28 U.S.C. § 2254 (d) provides:

An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

STATEMENT OF THE CASE

This petition stems from a trial court's decision to remove Petitioner Tracy Zornes's girlfriend from the courtroom during the juror *voir dire* portion of his murder trial.

On the third day of jury selection, counsel alerted the trial court that Zornes's girlfriend was in the courtroom. Pet. App. 2, 130-31. Zornes's girlfriend was listed as a witness in the case. *Id.* The court ordered Zornes's girlfriend out of the courtroom, explaining:

> THE COURT: Now under our court rules witnesses are to be sequestered during the trial process. In this case, I have determined that voir dire selection is part of the trial process so I cannot allow any potential witness to be present during a trial process prior to the time that they testify in court so I have to order you out of . . . the courtroom[.]
>
> MS. MCPHERSON: I asked these guys the other day if I could participate in this and --
>
> THE COURT: I understand that. I understand that. And that's an intricate and complex legal issue that, frankly, we haven't researched before, but it's my judgment that the safest thing to do is to order all witnesses sequestered throughout the voir dire process and the trial and so that's what my order will be. So you will have to leave the courtroom.
>
> MS. MCPHERSON: All right.

Pet. App. 131-132. Although Zornes did not object to the court ordering his girlfriend to leave, removing her on the third day of jury selection and another individual on the fourth day effectively cleared the courtroom of all spectators each time. Pet. App. 133.

In his ensuing direct appeal to the Minnesota Supreme Court, Zornes argued that the exclusion of his girlfriend during *voir dire* violated his Sixth Amendment right to a public trial. The Minnesota Supreme Court disagreed. *State v. Zornes*, 831 N.W.2d 609, 618 (Minn. 2013).

The Minnesota Supreme Court briefly noted the United States Supreme Court precedent of *Waller* v. *Georgia,* 467 U.S. 39 (1984), which held that a closure of a courtroom during a pretrial suppression hearing implicates a defendant's Sixth Amendment right to a public trial and that the closure must meet four requirements to be justified. *Id*. The court also briefly noted *Presley* v. *Georgia,* 558 U.S. 209 (2010), which applied the *Waller* test to *voir dire* proceedings. *Id*. But the court did no more than note these precedents; it did not apply them. The one United States Supreme Court case the court did employ was *Perry v. Leeke*, 488 U.S. 272 (1989). Relying on *Perry*, the state supreme court reasoned that trial courts have near-total discretion to sequester witnesses during trial, and that therefore the exclusion of Zornes's girlfriend from *voir dire* did not violate Zornes's right to a public trial. *Zornes*, 831 N.W.2d at 619-20.

Zornes then challenged the reasoning and decision of the Minnesota Supreme Court in his habeas petition in federal district court. Although the magistrate judge recommended that Zornes's petition be denied, the magistrate judge made a number of salient conclusions about the law surrounding the right to a public trial and the state supreme court's decision in Zornes's case:

- she recognized that the state supreme court applied neither the *Waller* test nor the modified *Waller* test that some circuit courts apply to courtroom closures they deem partial;

- she found "that the reading of *Waller* as applying to partial closures is *the better one*," Pet. App. 56 (emphasis added); and

- she concluded that "[u]ntil the Supreme Court weighs in on the question of what standard applies under the Sixth Amendment to partial closures of criminal proceedings, habeas petitioners proceeding under § 2254 cannot establish that a partial closure amounts to a clear violation of their constitutional rights under clearly established federal law within the meaning of § 2254(d)(1)." Pet. App. 57-58. So Zornes's partial-closure claim "falls within a frustrating jurisprudential gap." Pet. App. 58.

The district court adopted the magistrate judge's Report and Recommendation, reasoning along similar lines. Significantly, the district court recognized that Zornes faced the same bind as the magistrate judge did: "Though the expansive reading of *Waller* that Zornes encourages may well be a reasonable interpretation, absent caselaw from the United States Supreme Court directly confronting the issue of partial closure, it is impossible to conclude that the Minnesota Supreme Court's decision conflicts with any holding of the United States Supreme Court. Pet. App. 88. But the judge granted a certificate of appealability on the public-trial issue.

On June 27, 2022, the Eighth Circuit rejected Zornes's appeal and affirmed the decision below by employing similar reasoning: i.e., because the Supreme Court had not—in the Eighth Circuit's view—addressed partial closures, the state supreme court's decision could not be contrary to or an unreasonable application of clearly established federal law. 37 F.4th 1411, 1415-16 (8th Cir. 2022).

REASONS FOR GRANTING THE PETITION

This Court should grant this petition and review the judgment of the court of appeals because its decision is in conflict with this Court's decisions in *Waller* and *Presley* on an important point of federal law. In *Waller*, this Court articulated a four-factor test that "any closure [of a criminal trial] . . . must meet" in order to survive constitutional scrutiny. 467 U.S. 39 at 47-48 (1984). In *Presley*, this Court wrote that "*Waller* provided standards for courts to apply before excluding the public from any stage of a criminal trial." 558 U.S. 209 at 213 (2010). In contravention of these holdings, the court of appeals denied Zornes relief because it construed partial closures as constitutionally distinct from total closures—a distinction that has never been made by this Court, and one that menaces the rights of defendants to publicity in their trials.

I. The Court Should Grant Review to Decide the Question Presented.

A. The Minnesota Supreme Court's Decision is Contrary to, and an Unreasonable Application of, Clearly Established Federal Law.

1. Standard of Review Under the AEDPA.

Under the authority of the AEDPA, a writ of habeas corpus may be granted when a state court's adjudication of a petitioner's claim on the merits:

> (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
>
> (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding.

28 U.S.C. § 2254(d)(1)-(2).

A state court decision is "contrary to" clearly established federal law if it either "arrives at a conclusion opposite that reached by [the Supreme] Court on a question of law" or "decides a case differently than th[e] [Supreme] Court has on a set of materially indistinguishable facts." *Williams v. Taylor*, 529 U.S. 362, 412-13 (2000). A federal court may not issue the writ simply because it "concludes in its independent judgment that the relevant state-court decision applied clearly established federal law erroneously or incorrectly. Rather, that application must also be unreasonable." *Williams*, 529 U.S. at 411.

Satisfying either prong under 28 U.S.C. § 2254(d)(1) is meant to be difficult, because the AEDPA "reflects the view that habeas corpus is a guard against extreme malfunctions in the state criminal justice systems." *Harrington v. Richter*, 562 U.S. 86, 102 (2011). Relief is available only where a state court's ruling on a federal claim "was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fair-minded disagreement." *Id*. at 103.

2. The Sixth Amendment Public Trial Right.

The right to a public trial is guaranteed by the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI. All portions of a jury or bench trial are subject to the public-trial guarantee, including suppression hearings conducted before presenting evidence to the jury and juror *voir dire*. *See Waller*;

Presley, *supra*. Giving access to the public ensures that the accused is "fairly dealt with and not unjustly condemned" and keeps the "triers keenly alive to a sense of their responsibility and to the importance of their functions." *In re Oliver*, 333 U.S. 257, 270 n. 25 (1948) (quoting 1 Thomas M. Cooley, *Constitutional Limitations* 647 (8th ed. 1927)).

Like other of the most basic rights enjoyed by an accused, the right to a public trial did not fall to earth at the signing of our Constitution. "This nation's accepted practice of guaranteeing a public trial to an accused has its roots in our English common law heritage." *Id*. at 266. "The traditional Anglo-American distrust for secret trials has been variously ascribed to the notorious use of this practice by the Spanish Inquisition, to the excesses of the English Court of Star Chamber, and to the French monarchy's abuse of the lettre de cachet." *Id*. at 268-69 (footnotes omitted). All of those institutions "symbolized a menace to liberty". *Id*. at 269. One hundred and twenty years before *Oliver*, Jeremy Bentham observed the evils guarded against by the imperative of public trials:

> [S]uppose the proceedings to be completely secret, and the court, on the occasion, to consist of no more than a single judge, - that judge will be at once indolent and arbitrary: how corrupt soever his inclination may be, it will find no check, at any rate no tolerably efficient check, to oppose it. Without publicity, all other checks are insufficient: in comparison of publicity, all other checks are of small account. Recordation, appeal, whatever other institutions might present themselves in the character of checks, would be found to operate rather as cloaks than checks; as cloaks in reality, as checks only in appearance.

1 Bentham, *Rationale of Judicial Evidence* 524 (1827); *see also Oliver*, 333 U.S. at 271 (quoting same).

But this is not to suggest that the Sixth Amendment right of a criminal defendant to a public trial may not be overcome. Like other rights, the right to a public trial is not absolute. *Globe Newspaper Co. v. Superior Court for Norfolk Cnty*, 457 U.S. 596, 606 (1982). However, circumstances justifying closure "will be rare... and the balance of interests must be struck with special care." *Waller*, 467 U.S. at 45. Indeed, this Court has never upheld the closure of a courtroom during a criminal trial or any part of it.

To satisfy the mandate imposed by the Sixth Amendment, a trial court order directing closure must adhere to the principles outlined in *Press-Enterprise I*, which holds that "the presumption of openness may be overcome only by an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest. *See Waller*, 467 U.S. at 47 (citing *Press Enterprise Co. v. Superior Court of Cal., Riverside Cnty*, 464 U.S. 501 (1984)). And even if the government makes out an interest that would support closure, "the closure must be no broader than necessary to protect that interest, the trial court must consider reasonable alternatives to closing the proceeding, and it must make findings adequate to support the closure." *Id.* at 48.

The precedent from this Court is clear: before closing the courtroom to the public, a trial court must apply the four-part test set out in *Waller*. *Waller*, 467 U.S. at 48. Under this test, a courtroom closure may be justified if (1) "[t]he party seeking to close the hearing ... advance[s] an overriding interest that is likely to be prejudiced"; (2) the closure is "no broader than necessary to protect that interest";

(3) the district court considers "reasonable alternatives to closing the proceeding"; and (4) the district court makes "findings adequate to support the closure." *Id.* The trial court must articulate its findings with specificity and detail supporting the need for closure. *Id.*

State trial courts and appellate courts are bound by the explicit mandates of this Court's decision in *Waller*. *See Presley*, 558 U.S. at 214 ("In upholding exclusion of the public at juror *voir dire* in the instant case, the Supreme Court of Georgia concluded, despite our explicit statements to the contrary, that trial courts need not consider alternatives to closure absent an opposing party's proffer of some alternatives. While the Supreme Court of Georgia concluded this was an open question under this Court's precedents, the statement in *Waller* that 'the trial court must consider reasonable alternatives to closing the proceeding' settles the point.").

At the time of the closure in Zornes's trial, it was clearly established federal law that before closing a courtroom during a defendant's trial, or excluding a member of the public, a trial court must determine that the closure is warranted under the four-factor test set out in *Waller*. *See Presley*, 558 U.S. at 216 ("[E]ven assuming, *arguendo*, that the trial court had an overriding interest in closing *voir dire*, it was still incumbent upon it to consider all reasonable alternatives to closure. It did not, and that is all this Court needs to decide.").

3. The Minnesota Supreme Court's Decision.

In holding that the courtroom closure ordered during Zornes's jury trial did not violate the Sixth Amendment to the United States Constitution, the Minnesota

Supreme Court held that the removal of Zornes' girlfriend from juror *voir dire* was not akin to the exclusion of a spectator in *Presley*, but instead similar to the facts of this Court's decision in *Perry v. Leeke*, 488 U.S. 272 (1989), in which the defendant himself was removed from the trial "in his role as witness." 831 N.W.2d at 620. The Minnesota Supreme Court was of the mind that no *Waller* analysis was required before excluding Zornes' girlfriend because she was a potential witness, and because the ability to sequester witnesses "rests in the sound discretion of the trial court." *Id*. at 618. The Minnesota Supreme Court articulated its reasoning as follows:

> The key difference between *Leeke* and *Presley* is that *Leeke* dealt with the exclusion of a defendant *in his role as witness* and *Presley* dealt with the exclusion *of the public.* Here, when [Zornes' girlfriend] was excluded from the courtroom she was a potential witness, which makes her distinct from the 'public' generally and places her in the class of persons over whom district courts have broad discretion to exclude from the courtroom. As we have previously stated, while discretionary, in practice sequestration [of witnesses] is rarely denied in criminal cases and rarely should be denied.
>
> …
>
> Based on the Supreme Court's holding in *Leeke* and our holding in *Garden,* a district court has substantial discretion to sequester witnesses from the trial process. The Supreme Court held in *Presley* that voir dire is part of the trial process. Applying those holdings to the facts of this case, we conclude that the sequestration of [Zornes' girlfriend] fell within the bounds of the district court's discretion. Therefore, we hold that the district court did not violate Zornes's constitutional right to a public trial when it sequestered [his girlfriend] from voir dire.

Id. at 619-20 (emphases in original; internal citations omitted; brackets supplied).

4. The Eighth Circuit's Decision.

In its opinion in Zornes's case, the court of appeals wrote that "[t]he state supreme court's decision in this case is not contrary to *Waller* or *Presley*[,]" because the closure was a "partial" closure. Pet. App. 5. The court of appeals went on to describe its conclusion as follows:

> This court applies the stringent standard announced in *Waller* to total closures, but conducts a different analysis for partial closures.
>
> The exclusions of Zornes's girlfriend and [another witness] were both partial closures of the jury selection proceedings under this rubric; at no point did the trial court bar all members of the public from the courtroom. The Supreme Court has never addressed a 'partial closure' of jury selection (or any phase of a trial) in which a potential witness is sequestered…. Where no Supreme Court decision has confronted the specific question presented to the state court, the court's decision cannot be contrary to clearly established federal law for the purposes of § 2254(d)(1).

Zornes v. Bolin, 37 F.4th 1411, 1415 (8th Cir. 2022) (internal citations omitted).

In a similar vein, the court of appeals held that the state supreme court's decision was not an unreasonable application of clearly established federal law because the court of appeals had previously held that the "right to a public trial does not prohibit the sequestration of witnesses from the evidentiary portion of a trial." *Id*. at 1416 (citing *United States v. Ricker*, 983 F.3d 987 (8th Cir. 2020); *United States v. Blanche*, 149 F.3d 763 (8th Cir. 1998)). Thus, stated the court of appeals, "[i]n the absence of any decision of the Supreme Court on the subject, we agree with the district court that fair-minded jurists could take the view that the substantial reasons justifying witness sequestration during the evidentiary phase of a trial extend to jury *voir dire*." *Id*.

5. The Reasons this Court Should Grant Review.

In *Waller*, this Court articulated a four-factor test that "*any closure* . . . must meet" in order to withstand constitutional scrutiny. 467 U.S. 47-48 (emphasis supplied). In *Presley*, this Court reiterated the point that "*Waller* provided standards for courts to apply before excluding the public from *any stage* of a criminal trial." 558 U.S. 209 at 213 (2010) (emphasis supplied). Moreover, the four-part *Waller* test implies that less-than-complete closures fall within its ambit. The second prong of the test—that the closure be "no broader than necessary to protect that interest"—necessarily implies less-than-complete closures. Despite these pronouncements and despite the *Waller* test itself suggesting that less-than-complete closures are covered by it, several circuit courts of appeal have fashioned rules that permit trial proceedings that are less than fully public. The Second, Fifth, Eighth, Ninth, Tenth, and Eleventh Circuits have applied a less stringent test than that required by *Waller* in cases where closures were categorized as "partial." *See U.S. v. Osborne*, 68 F.3d 94, 99 n.12 (5th Cir. 1995) (collecting cases); *see also United States v. Barronette*, 46 F.4th ---- (4th Cir. 2022) (recognizing the same). These federal circuit courts have all adopted a rule of law that permits a courtroom closure—deemed "partial"—so long as the closure is justified by a "substantial reason," rather than the "overriding interest" that *Waller* requires. And several states have adopted this distinction in resolving the contours of a defendant's Sixth Amendment right to a public trial. *See e.g. State v. Rolfe*, 851 N.W.2d 897 (S.D. 2014); *State v. Drummond*, 854 N.E.2d 1038 (Ohio 2008); *State v.*

Garcia, 561 N.W.2d 599 (N.D. 1997); *People v. Kline*, 494 N.W.2d 756 (Mich. Ct. App. 1992). On the other hand, several federal circuit courts of appeal and States follow a rule of law that requires a full *Waller* analysis be conducted in cases involving complete *and* partial closures. *See e.g. United States v. DeLuca*, 137 F.3d 24, 33-34 (1st Cir. 1998), cert. denied, 525 U.S. 874 (1998); *People* v. *Jones*, 96 N.Y.2d 213, 219 (2001); *Commonwealth v. Martin,* 39 Mass. App. Ct. 44 (Mass. App. Ct. 1995); *State v. Turrieta*, 308 P.3d 964 (N.M. 2013); *People v. Jones*, 750 N.E.2d 524, 529 (N.Y. 2001) ("We are aware that some courts have recognized that a less demanding standard can be applied to limited closure requests. . . . We disagree. We believe that there is no need to adopt such an articulation of the *Waller* standard since *Waller* already contemplates a balancing of competing interests in closure decisions.").

There is disharmony among federal and state courts with regard to *Waller's* application, namely, whether *Waller* applies to the growing number of closures categorized as "partial," and also to closures increasingly being categorized as "trivial" or "administrative." *See e.g., Smith v. Titus*, 958 F.3d 687 (8th Cir. 2020), cert. denied, 141 S. Ct. 982 (2021). The net effect of this disharmony has, *inter alia*, created irregularities in justice based on geography. A defendant's conviction in State A will be reversed for structural error in the instance of a partial courtroom closure not justified under *Waller*. A defendant's conviction in State B will not be reversed, so long as State B permits a partial courtroom closure justified by a "substantial reason." In still other cases, both total *and* partial courtroom closures

are permitted so long as the closure is deemed "administrative" or "trivial." *See e.g. Smith*, *supra*; *U.S. v. Patton*, 502 F. App'x. 139 (3rd Cir. 2012).

In Zornes's case, the court of appeals followed its own precedent in finding that the closure was only a partial closure. The court of appeals wrote that the "Supreme Court has never addressed a 'partial closure' of jury selection (or any phase of a trial) in which a potential witness is sequestered." *Zornes*, 37 F.4th at 1415. The court of appeals went on to state that "[w]here no Supreme Court decision has confronted the specific question presented to the state court, the court's decision cannot be contrary to clearly established federal law for the purposes of § 2254(d)(1)." *Id*. In so holding, the court of appeals, as in *Smith v. Titus*, "artificially [cabined] *Waller* and *Presley* to their facts." *Smith v. Titus*, 592 U.S. _____ (2021) (Sotomayor, J., dissenting from denial of certiorari). "When an opinion issues [from the Supreme Court], it is not only the result but also those portions of the opinion necessary to that result by which [courts] are bound." *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 67 (1996). In other words, when this "Court announces a legal principle and applies it to a particular factual situation, it is the legal principle itself, not the factual outcome, that becomes clearly established federal law." *Smith*, 592 U.S. _____ (Sotomayor, J., dissenting from denial of certiorari); *see also Yarborogh v. Alvarado*, 541 U.S. 652, 666 (2004) ("the difference between applying a rule and extending it is not always clear," but "[c]ertain principles are fundamental enough that when new factual permutations arise, the necessity to apply the earlier rule will be beyond doubt.").

The holdings from this Court do not permit the type of closure that occurred in Zornes's trial. When there was a misapprehension by the trial court in the State of Georgia in the wake of *Waller*, this Court wasted no time in making evident, through a summary reversal, that the scope of the public trial right's application was well-settled, and extends to "any stage of a criminal trial." *Presley*, 558 U.S. at 213. The closure in Zornes's case took place, like *Presley*, during juror *voir dire*, and also like *Presley*, involved the exclusion of a single person.

The closure occurred at a "stage" of Zornes's trial, and he is entitled to relief for the violation of his clearly-established Sixth Amendment right to openness in the trial proceedings.

The court of appeals' opinion sets a bar of requiring an identical fact pattern before the pertinent legal rule must be applied—a proposition that was rejected in 2254(d)(1) cases by this Court in *Panetti v. Quarterman,* 551 U.S. 930, 953 (2007); *see also White v. Woodall*, 572 U.S. 415, 427 (2014). In *Woodall*, this Court mandated that "state courts must reasonably apply the rules 'squarely established' by this Court's holdings to the facts of each case." 572 U.S. at 427. At the time of Zornes's trial, the fundamental principle and structural protection of open trials, and the tandem principle of *not* conducting trial proceedings out of the purview of public observation, were well-established. The necessity of applying the rule from *Waller* was beyond doubt. The fact that inferior courts have carved out "partial," "trivial," and "administrative" closure exceptions to the imperative of *Waller* only underscores the need for this Court to grant review in this case, and establish

harmony across the federal circuits and the states on this important Sixth Amendment question.

Zornes had a right to a public trial during all phases of his trial. The state trial court abridged that right by removing Zornes's girlfriend from juror *voir dire* without satisfying the demands of *Waller*. The Minnesota Supreme Court refused to find a violation of the Sixth Amendment public trial right, and its holding is contrary to clearly established federal law as determined by this Court. *See Waller* and *Presley*, *supra*. Alternatively, the Minnesota Supreme Court's holding constitutes an unreasonable application of clearly established federal law. *Id*. In failing to reach one or both of these conclusions, the court of appeals rendered a decision that is at plain odds with this Court's precedent. This Court should grant this petition, and provide much needed guidance to the lower courts.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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