No. _____

IN THE SUPREME COURT OF THE UNITED STATES

KELECHI COLLINS UMEH,

PETITIONER,

vs.

UNITED STATES OF AMERICA,

RESPONDENT.

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

PETITION FOR WRIT OF CERTIORARI

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Appointed Under the Criminal Justice Act of 1964

QUESTION PRESENTED FOR REVIEW

Is it structural error for a trial court to enter a conviction against a defendant who did not expressly waive his right to a jury trial?

STATEMENT OF RELATED PROCEEDINGS

The proceedings identified below are directly related to the above-captioned case in this Court.

- *United States v. Kelechi Collins Umeh*, No. 23-cr-10013-WGY-1, U.S. District Court for the District of Massachusetts (Boston). Judgment entered October 26, 2023.
- *United States v. Kelechi Collins Umeh*, No. 23-1938, U.S. Court of Appeals for the First Circuit. Opinion entered April 2, 2025.

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The First Circuit's opinion is reprinted in the Appendix to the Petition.

JURISDICTION

On April 2, 2025, the United States Court of Appeals for the First Circuit entered its decision affirming the petitioner's conviction on one count of conspiracy to commit bank fraud in violation of 18 U.S.C. § 1349. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

United States Constitution, Amendment VI:

> 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, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

INTRODUCTION

In this case, Kelechi Umeh pled guilty to a federal crime—but was not advised of his right to a jury trial on the crime charged and did not expressly waive that right. This Court has held that courts "cannot presume a waiver" of the jury-trial right "from a silent record." *Boykin v. Alabama*, 395 U.S. 238, 243 (1969). But, on direct appeal, the First Circuit presumed waiver from a silent record.

The First Circuit held that the trial court's error in failing to advise Mr. Umeh of his right to a jury trial on the crime charged—which meant conviction was entered absent an express waiver of the jury-trial right—was a mere "procedural shortcoming" subject to plain-error review.

This holding is incompatible with *Boykin*—and it deepens an established and acknowledged split among the federal Courts of Appeal and the high courts of the states and the District of Columbia. Mr. Umeh calls on this Court to resolve this split.

STATEMENT OF THE CASE

1. District Court Proceedings

On July 26, 2022, Mr. Umeh appeared before the magistrate court for his initial appearance on a criminal complaint. JA at 8–18.[1] The magistrate court informed Mr. Umeh that the "purpose of this proceeding is to advise you . . . of some very important rights," and proceeded to confirm Mr. Umeh's understanding of

[1] "JA" refers to the joint appendix filed with Mr. Umeh's opening brief before the First Circuit Court of Appeals. "Add." refers to the addendum filed with that brief. "OB" refers to that opening brief, and "RB" refers to the reply brief.

various rights. JA 10–11. The magistrate court did not mention Mr. Umeh's right to a jury trial.

On January 11, 2023, Mr. Umeh signed a plea agreement under which he agreed to plead guilty to an information charging one count of conspiracy to commit bank fraud in violation of 18 U.S.C. § 1349. JA 20–27. The plea agreement contained no mention of Mr. Umeh's right to a jury trial.

On January 19, 2023, Mr. Umeh appeared before the district court for a joint arraignment and change-of-plea hearing. Add. 1–27. The district court incorrectly informed Mr. Umeh that he had the right to a jury trial on sentencing enhancements (i.e., specific offense characteristics under the Sentencing Guidelines). Add. 9–12. The district court also informed Mr. Umeh of his "right to a fair and an impartial trial before a jury" and stated that "a jury will decide whether the government has proved the case beyond a reasonable doubt," but it was not clear whether this referred to a trial on the sentencing enhancements or the criminal charge. Add. 9–12. Mr. Umeh stated that he understood the rights the court had detailed and that he would give up those rights by pleading guilty. Add. 12–13. Mr. Umeh then pled guilty. Add. 26.

On October 26, 2023, the district court sentenced Mr. Umeh to 40 months' imprisonment. Add. 29–30; App-27–28.

2. Circuit Court Proceedings

Mr. Umeh appealed his conviction, arguing his guilty plea was "constitutionally invalid" because "the district court failed to inform [him] of his right to a jury trial[.]" OB 13. He argued this was structural error. OB 18. His argument

was that, "[w]here the record does not demonstrate that the defendant waived his right to a jury trial, courts cannot presume relinquishment of that right—i.e., reversal is automatic." RB 10 (emphasis in original).

Separately, Mr. Umeh argued that the district court's failure to inform him of his right to a jury trial violated Rule 11(b)(1)(C) of the Federal Rules of Criminal Procedure. OB 25, 28. Mr. Umeh conceded this Rule 11 violation—as distinct from the constitutional violation—would be subject to plain-error review. OB 19, 28.

On April 2, 2025, the First Circuit affirmed Umeh's conviction. App-1–26. The court "assume[d] for the sake of argument" that the district court did not advise Umeh of his right to a jury trial on the crime charged—but held that this "procedural shortcoming" was not structural error. App-11–15. Applying plain-error review, the court found that the third prong required Mr. Umeh to "show that he would have upended his plan to enter a guilty plea at his change-of-plea hearing once the court expressly advised him of his jury-trial right"—and that Mr. Umeh failed to make this showing. App-21–23.

REASONS FOR GRANTING THE PETITION

This case presents an opportunity to resolve an established and acknowledged divide between the courts on an important Sixth Amendment issue.

In affirming Mr. Umeh's conviction, the First Circuit made clear its position that it is not structural error for a district court to accept a guilty plea where the defendant has not been advised of—and therefore has not expressly waived—his right

to a jury trial on the crime charged.

This deepened a split—which both federal and state courts have acknowledged, *see United States v. Williams*, 559 F.3d 607, 614 (7th Cir. 2009); *State v. Bentley*, 317 Kan. 222, 232 (2023)—on the question of whether a conviction may stand where the defendant did not expressly waive his right to a jury trial.

A. The majority of courts demand an express waiver of the jury-trial right.

Of the courts to have considered the issue, a majority consider it structural error for a conviction to rest on a record devoid of the defendant's express waiver of his right to a jury trial.

This is the view of both the Eighth and Ninth Circuits. The Eighth Circuit has held that, where "[t]he record is devoid of any direct testimony from [the defendant] regarding his consent to waive trial by jury," "the error is structural and requires automatic reversal of the defendant's conviction." *Miller v. Dormire*, 310 F.3d 600, 604 (8th Cir. 2002).[2] *See also McGurk v. Steinberg*, 163 F.3d 470, 472 (8th Cir. 1998) ("failure to inform a defendant charged with a serious crime of the right to trial by jury constitutes structural error"). Likewise, the Ninth Circuit has held that "an invalid jury waiver is structural error." *United States v. Laney*, 881 F.3d 1100, 1108 (9th Cir. 2018) (citing *United States v. Shorty*, 741 F.3d 961, 969 (9th Cir. 2013). *See*

[2] *Miller* (and several other cases cited in this petition) concern waivers of the jury-trial right not in the context of a guilty plea but rather in the context of the defendant consenting to a bench trial rather than a jury trial. In both instances, the issue is the same: whether a conviction may stand in the absence of an express waiver of the defendant's right to a jury trial.

also United States v. Duarte-Higareda, 113 F.3d 1000, 1003 (9th Cir. 1997) ("the district court's failure to ensure the adequacy of Duarte's jury waiver affected the basic framework of Duarte's trial and we cannot determine whether this effect was harmless").[3]

Several state high courts, as well as the District of Columbia Court of Appeals, have likewise found it is structural error to circumscribe the right to a jury trial absent express waiver. *Fortune v. United States*, 59 A.3d 949, 957 (D.C. 2013) ("the failure to make the prescribed determination of waiver [of the right to a jury trial] is a structural error"); *People v. Saffold*, 465 Mich. 268, 273 (2001) ("a plea of guilty must be set aside where the record of the plea proceedings shows that the defendant was not advised of . . . the right to trial by jury"); *State v. Bentley*, 317 Kan. at 230, 232 ("[i]f a court bypasses a jury without an effective waiver, the court unconstitutionally denies the right to a jury trial," resulting in "structural error"); *Doughty v. State*, 470 N.E.2d 69, 70 (Ind. 1984) (automatic reversal of conviction where record does not reflect a "direct and not merely implied" waiver of the right to

[3] The Third, Fifth, and Sixth Circuits have suggested they would side with the Eighth and Ninth Circuits but have not held so explicitly. The Third Circuit has "le[ft] for another day whether a total failure to inform a defendant of his right to a jury trial could give rise to a claim of structural error," but cited the Eighth Circuit's *McGurk* decision, which (as noted above) held that the failure to advise a defendant of his right to a jury trial constitutes structural error. *Vickers v. Superintendent Graterford Sci*, 858 F.3d 841, 855 (3d Cir. 2017). The Fifth Circuit has held that it was structural error to circumscribe the right to a jury trial absent "express" waiver—but did so in an unpublished decision. *United States v. Perez*, 356 Fed. Appx. 770, 771–73 (5th Cir. 2009) (per curiam) (not designated for publication). And the Sixth Circuit has noted in dicta that the "jury waiver issue is arguably not subject to harmless error analysis," meaning it would be structural error. *Spytma v. Howes*, 313 F.3d 363, 372 (6th Cir. 2002).

a jury trial); *Balbosa v. State*, 275 Ga. 574, 575 (2002) ("harmless error analysis cannot be applied to a jury trial waiver . . . because the abridgement of the right to a jury trial is a 'structural error'"); *People v. Collins*, 26 Cal. 4th 297, 311 (2001) ("the court's failure to obtain a waiver of the right to trial by jury is reversible per se"); *Commonwealth v. Pavao*, 423 Mass. 798, 804 (1996) ("To allow harmless error analysis of [the absence of a waiver of the right to a jury trial] is inconsistent with the right to a jury trial altogether."); *State v. Vasquez*, 163 Idaho 557, 563 (2018) ("the failure to obtain a defendant's personal waiver of the right to a jury trial is a structural defect"); *State v. Martinez*, 956 N.W.2d 772, 782 (N.D. 2021) (denial of right to a jury trial implicates structural error).

B. The First Circuit's decision places it in the minority of courts permitting conviction in the absence of an express waiver of the jury-trial right.

Prior to the First Circuit's decision in this case, the Seventh Circuit was the only federal Court of Appeal to have upheld a conviction in the absence of a valid waiver of the jury-trial right. In *United States v. Williams*, 559 F.3d 607 (7th Cir. 2009), the Seventh Circuit noted that both the Eighth and Ninth Circuits "refer to errors involving jury waivers as structural" and granted that an invalid waiver of the jury-trial right "certainly affects the framework of a case"—but held that such error is not structural because "one can determine whether the defendant adequately understood his right to a jury" and, "if the defendant lacked such an understanding, one can assess the likelihood that he would have stood on his right to a jury had he

been properly admonished of his right." *Id.* at 614.

The First Circuit has now joined the Seventh Circuit, as it described the district court's failure to advise Mr. Umeh of his jury-trial right as a mere "procedural shortcoming" and subjected Mr. Umeh's claim—that it was error for the district court to have presumed relinquishment of his right to a jury trial absent an express waiver—to plain-error review. App-15, 17.

C. The First Circuit's decision is wrong.

The First Circuit was wrong to join the Seventh Circuit in permitting conviction where the defendant has not expressly waived his right to a jury trial.

The Sixth Amendment right to a jury trial is "fundamental to the American scheme of justice," *Duncan v. Louisiana*, 391 U.S. 145, 149, 157–58 (1968), and reflects "a profound judgment about the way in which law should be enforced and justice administered," *Sullivan v. Louisiana*, 508 U.S. 275, 281 (1993). The jury-trial right was "designed to guard against a spirit of oppression and tyranny on the part of rulers," *Neder v. United States*, 527 U.S. 1, 19 (1999), and provides the accused with "an inestimable safeguard against the corrupt or overzealous prosecutor and against the compliant, biased, or eccentric judge," *Duncan*, 391 U.S. at 156. This Court has stressed that the "right of the accused to a trial by a constitutional jury [must] be jealously preserved." *Singer v. United States*, 380 U.S. 24, 34 (1965).

This is not to say that defendants cannot waive their right to a jury trial. Defendants routinely do so by pleading guilty (and, less often, by consenting to a bench trial). The question presented in this case is whether a conviction may stand

in the absence of an express waiver of the jury-trial right.

This Court has answered that question, explicitly holding that courts "cannot presume a waiver" of the jury-trial right "from a silent record." *Boykin v. Alabama*, 395 U.S. 238, 243 (1969). *See also Patton v. United States*, 281 U.S. 276, 312 (1930) (waiver of the jury-trial right requires the defendant's "express" consent); *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938) ("courts indulge every reasonable presumption against waiver of fundamental constitutional rights and . . . do not presume acquiescence in the loss of fundamental rights") (citations and internal quotation marks omitted).

And this Court has held that a deprivation of the jury-trial right, which carries "consequences that are necessarily unquantifiable and indeterminate, unquestionably qualifies as 'structural error.'" *Sullivan*, 508 U.S. at 281–82. That is, violations of the right to a jury trial are "so intrinsically harmful as to require automatic reversal . . . without regard to their effect on the outcome." *Neder v. United States*, 527 U.S. 1, 7 (1999).

This prohibition on presuming waiver of the jury-trial right from a silent record is particularly important today, given the scarcity of jury trials. The most recent statistics from the federal judiciary show that only 1.8 percent of federal criminal defendants exercise their right to a jury trial.[4] With a vanishing minority of

[4] *See* Federal Judicial Caseload Statistics, Criminal Defendants Disposed of, by Type of Disposition and Offense, During the 12-Month Period Ending March 31, 2025, Table D-4, U.S. Courts (2025) (reflecting that, of 77,158 total defendants, 1,421 had a jury trial, with 149 acquittals and 1,272 convictions).

defendants exercising their right to a jury trial, there is a particular need for courts to ensure that a criminal defendant is aware of that right and is affirmatively choosing to waive it. The holdings of the First and Seventh Circuit would go the opposite direction and permit convictions in the absence of any such waiver. This is far from the "jealous preserv[ation]" of the jury-trial right that this Court has demanded. *Singer*, 380 U.S. at 34.

The First and Seventh Circuits' decisions rest on the idea that appellate courts can determine whether a defendant—who did not expressly waive his jury-trial right—must have understood he had that right and therefore must have understood he was giving up that right by pleading guilty. (And they place the burden on the defendant to "show that he would have upended his plans to enter a guilty plea at his change-of-plea hearing once the court expressly advised him of his jury-trial right[.]" App-21.) But this is not how this Court treats violations of fundamental constitutional rights. For example, this Court held that the Fifth Amendment privilege against self-incrimination "is so fundamental to our system of constitutional rule and the expedient of giving an adequate warning as to the availability of the privilege so simple, we will not pause to inquire in individual cases whether the defendant was aware of his rights without a warning being given"—because "[a]ssessments of the knowledge the defendant possessed . . . can never be more than speculation," while "a warning is a clearcut fact." *Miranda v. Arizona*, 384 U.S. 436, 468–69 (1966). There is no reason to afford less protection to the jury-trial right.

CONCLUSION

The right to a jury trial is fundamental to our system of justice, and waiver of that right cannot be presumed from a silent record. Because the First Circuit's decision contravenes this core constitutional principle and deepens a divide between the courts, Mr. Umeh respectfully asks the Court to issue a writ of certiorari.

Date: July 23, 2025

Respectfully Submitted,

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