No. _____

In The
Supreme Court of the United States

BYRON DAVID SMITH,

Petitioner,

v.

JEFF TITUS, 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) applies (1) to all phases of a defendant's criminal trial; or (2) only to pretrial suppression hearings and juror *voir dire*.

PARTIES TO THE PROCEEDINGS

Byron David Smith was the Appellant in the Eighth Circuit Court of Appeals, and is the Petitioner herein. Jeff Titus, Warden, MCF – Oak Park Heights, was the Appellee in the Eighth Circuit, and is the Respondent herein.

RELATED CASES

1. *State v. Smith*, No. 49-CR-12-1882, Morrison County District Court, Judgment entered April 29, 2014
2. *State v. Smith*, Nos. A14-0941; A15-0300, Minnesota Supreme Court, Judgment entered May 3, 2016
3. *Smith v. Smith*, No. 17-cv-673, U.S. District Court for the District of Minnesota, Judgment entered August 6, 2018
4. *Smith v. Titus*, No. 18-2915, U.S. Court of Appeals for the Eighth Circuit, Judgment entered May 5, 2020, rehearing and rehearing *en banc* denied on June 8, 2020

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PETITION FOR A WRIT OF CERTIORARI

Byron David Smith 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 958 F.3d 687 (8th Cir. 2020). The federal district court's opinion (Pet. App. 39) is unpublished. The Minnesota Supreme Court's opinion (Pet. App. 74), from which Petitioner sought federal habeas relief, is published at 876 N.W.2d 310 (Minn.2016).

JURISDICTION

The Eighth Circuit entered its judgment on May 5, 2020. On June 8, 2020, a rehearing and rehearing *en banc* were denied by the Eighth Circuit. 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

On Thanksgiving Day, November 22, 2012, Nicholas Brady and Haile Kifer forcibly entered Petitioner Byron Smith's home in Little Falls, Minnesota by breaking a main-level bedroom window and climbing

inside. Pet. App. 77-79. Both Mr. Brady and Ms. Kifer were subsequently shot and killed by Petitioner as they descended the basement stairs in the course of their burglary. Id.

Prior to the events involving the shootings in his home, Petitioner was the victim of a series of burglaries. Pet. App. 76. During a burglary on October 27, 2012, valuable items were taken, including a shotgun and rifle. Id. Petitioner notified the police, who investigated the burglary. Id. The person responsible for the October 27, 2012 burglary kicked in the basement door, and thereby left a shoe print on the door's panel. Id. Worried that a burglar would return, Petitioner began to carry a gun in his house. Pet. App. 77.

On November 22, 2012, Petitioner was in his basement at home, and armed. Pet. App. 77. At 12:33 p.m., Mr. Brady approached Petitioner's house, looked into the windows, and tried the doorknobs. Pet. App. 78. Mr. Brady then broke through a window on Petitioner's main-floor bedroom and entered the home. As Mr. Brady descended the basement stairs, Petitioner shot and killed him. Id. Approximately eight minutes later, Ms. Kifer entered the home through the same broken window. Pet. App. 79. Petitioner shot Ms. Kifer as she descended the basement steps. Id. Ms. Kifer fell down the steps, and Petitioner continued to shoot her. Id.

The State of Minnesota charged Petitioner with committing two counts of second-degree murder. Pet. App. 86. Later, Petitioner was indicted by a Morrison County grand jury on two counts of first-degree

premeditated murder. Id. The charges were merged into a single prosecution. Before trial, Petitioner noticed the trial court and prosecutor that he intended to call two witnesses – Cody Kasper and Jesse Kriesel – to testify at trial about previous burglaries at his home, and to testify that firearms had been stolen from his home in those burglaries. Pet. App. 101. Petitioner had evidence supporting the fact that Mr. Kasper and Mr. Kriesel participated in the prior burglaries along with Mr. Brady. Id.

Petitioner's matter came on for a jury trial in the trial court on April 14, 2014. Juror *voir dire* commenced on that date and ended on April 16, 2014. On April 21, 2014, Petitioner's jury trial continued. Prior to opening statements, the deputy court administrator called the case. Pet. App. 101. The trial court, *sua sponte*, then ordered the clearing and complete closure of the courtroom. Id. The courtroom was closed to all except the attorneys, Petitioner, and court staff. Id. After closing the courtroom, the trial court said: "We have just cleared the courtroom just for a quick moment from the spectator gallery." Id. In response to the closure, Petitioner's counsel objected. Id.

The trial court proceeded to discuss the "pretrial ruling of the court" and advised the parties that the court had ruled to exclude some of the evidence of Mr. Brady's prior bad acts. Id. As part of the ruling, the trial court explained that defense counsel could not disclose the names of Mr. Kasper, Mr. Kriesel, or Mr. Brady as being involved in the burglaries prior to November 22, 2012. Id. The court stated that the evidence

was inadmissible because Petitioner did not know the identity of those who broke into his home before Thanksgiving. Pet. App. 101-102. The trial court then explained its reasoning for the closure:

> All right. And for that reason – that was the reason that the court is not allowing the press in for this ruling, because otherwise it could be printed, and indeed, while the jurors hopefully will follow the admonition not to read or hear anything in the press and TV and such in the meantime while this case is pending, certainly media would publish and print the substance of the court's pretrial ruling, and then of course it runs the risk of getting to the jury if for some reason they don't adhere to their oath.

Pet. App. 102.

Immediately following the closure, the trial court filed a written order. Id. The order held that evidence or prior bad acts of Mr. Brady and Ms. Kifer were inadmissible. The order went on to state as follows:

> [I]nsofar as the [evidence that Smith was the victim of prior burglaries occurring before the shooting, that forcible entry was made, and that weapons were taken that were not recovered at the time of the shooting] may be received through the testimony of Deputy Luberts or other law enforcement agents, there will be no need to seek its admission through more prejudicial means (*i.e.*, through the testimony of Brady's mother or of a perpetrator of the prior break-ins).

Pet. App. 102-103 (bracketed text by the Minnesota Supreme Court).

The mid-trial order did not name Mr. Kasper or Mr. Kriesel – "the alleged co-perpetrators of the prior burglaries." Pet. App. 103. Shortly after the trial court filed the above order, the jury entered the courtroom to be sworn and to hear opening statements. Id. The defense was foreclosed from calling either Mr. Kasper or Mr. Kriesel at trial to testify about the prior burglaries at Petitioner's home. On April 29, 2014, the jury convicted Petitioner of first-degree murder.

Petitioner appealed his convictions to the Minnesota Supreme Court. Petitioner raised, *inter alia*, a Sixth Amendment claim that his right to a public trial had been violated when the district court cleared the courtroom of all spectators and press, and held closed proceedings following juror *voir dire* and before opening statements to the jury.

On review, the Minnesota Supreme Court rejected Petitioner's Sixth Amendment challenge, holding – under a body of state court-developed case law – that the closure in Petitioner's trial was "administrative" in nature, and therefore not subject to the public trial guarantee. Pet. App. 108-109. While the Minnesota Supreme Court correctly recognized *Waller v. Georgia*, 467 U.S. 39 (1984) as the correct governing legal principle relevant to a courtroom closure under the Sixth Amendment, the court failed to apply *Waller* to Petitioner's case.

Pursuant to the Antiterrorism and AEDPA, Petitioner filed a petition for a writ of habeas corpus in the United States District Court for the District of Minnesota on March 3, 2017. Petitioner argued that the Minnesota Supreme Court's holding was contrary to clearly established federal law, or alternatively, constituted an unreasonable application of clearly established federal law.

In denying Petitioner's habeas petition, the district court stated that the Minnesota Supreme Court came "extremely close to applying a rule contrary to clearly established federal law." Pet. App. 62. Nevertheless, the district court declined to grant the writ, ultimately holding that "the holdings of *Waller* and *Presley* do not categorically foreclose the Minnesota Supreme Court's rule." Pet. App. 63.

Although denying habeas relief, the district court did issue a certificate of appealability. In so doing, the district court stated as follows:

> As the Court's Opinion makes clear, Smith has made a substantial showing that his constitutional right to a public trial was denied. He has also shown that reasonable jurists would find the issues raised in his habeas petition debatable, that some other court could resolve the issues differently, and that the issues deserve further proceedings.

Pet. App. 70.

Petitioner appealed the denial of his petition for a writ of habeas corpus to the United States Court of

Appeals for the Eighth Circuit on August 29, 2018. On May 5, 2020, the Eighth Circuit filed its panel decision affirming the judgment of the district court. Pet. App. 1. Petitioner thereafter filed a petition for a rehearing *en banc*, which was denied by the Eighth Circuit on June 8, 2020.

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. at 47-48. 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. at 213. In contravention of these holdings, the court of appeals denied Petitioner relief because it construed the clearly established federal law of the Sixth Amendment's public trial right as extending only to the specific proceedings at issue in *Waller* and *Presely*, viz. a suppression hearing and juror *voir dire*.

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

A. The Court of Appeals' Decision is in Conflict with this Court's Decisions in *Waller* and *Presley*.

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 fairminded 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 prior to the presentation of 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*, Mr. 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 Petitioner's trial, it was clearly established federal law that before closing a courtroom during a defendant's trial, 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 Petitioner's jury trial did not violate the Sixth Amendment to the United States Constitution, the Minnesota Supreme Court held that the "nonpublic proceeding was administrative in nature and did not constitute a closure implicating Smith's Sixth Amendment right to a public trial." *State v. Smith*, 876 N.W.2d 310, 330 (Minn.2016). In casting the proceedings as "administrative," the Minnesota Supreme Court cited to Minnesota state case law that explains that "[i]t is the type of proceeding, not the location of the proceeding, that is determinative [of the question of whether the Sixth Amendment right to a public trial is implicated]." *Id*. at 329 (citing *State v. Everson*, 749 N.W.2d 340, 352 (Minn.2008)); *State v. Hicks*, 837 N.W.2d 51, 60-61 (Minn.App.2013). Therefore, the Minnesota Supreme Court did not engage in a *Waller* analysis because it concluded that no true closure occurred. *Id*. at 329-30.

As further support for the conclusion that a Sixth Amendment violation did not occur, the Minnesota Supreme Court found persuasive the fact that, following the closure, the trial court filed a public order containing some mention of the prior burglaries at Petitioner's residence. *Smith*, 876 N.W.2d at 328. The order did not contain the names of Jessie Kriesel and Cody Kasper, the co-perpetrators of the prior burglaries. Nonetheless, the Minnesota Supreme Court found that "[t]he essence of the nonpublic proceeding was the court

explaining the parameters of its April 21 written decision." However, the *nonpublic* proceedings contained specific mention of Jesse Kriesel and Cody Kasper, and the trial court's substantive evidentiary rulings supporting their exclusion as witnesses. Thus, even if members of the public and press had obtained a copy of the order, there is no reason to believe that readers of the order would have *any* knowledge of the subject matter contained in the nonpublic proceedings.

Petitioner was on trial for the premeditated murders of two burglars who entered his home through a broken window. His home had been burglarized previously. No spectator or press agent, and no member of Petitioner's family, were present to witness the trial court's oral ruling excluding from his trial two witnesses who would have testified to their involvement in the prior burglaries. The prior burglaries directly motivated Petitioner's state of mind on the day of the shootings. Hardly can the closure in this case be deemed "administrative" or "trivial."

4. The Eighth Circuit's Decision.

The decision from the court of appeals is in direct conflict with this Court's precedent. In its opinion, the court of appeals wrote that "[t]he Minnesota Supreme Court's decision is not contrary to either *Waller* or *Presley*," because "[n]either decision addressed whether what the Minnesota court described as 'administrative' proceedings – that is, 'routine evidentiary rulings and matters traditionally addressed during

private bench conferences or conferences in chambers' – implicate the Sixth Amendment right to a public trial." Pet. App. 8. The court of appeals went on to describe its conclusion as follows:

> Smith highlights a statement in *Presley* that '*Waller* provided standards for courts to apply before excluding the public from *any stage* of a criminal trial.' He argues that the Minnesota court's decision is contrary to *Waller*, because the nonpublic proceeding at issue here occurred at a 'stage' of his trial, and the trial court did not apply the *Waller* standards. But 'clearly established Federal law' under AEDPA refers to the holdings of the Supreme Court, not *dicta*, and the holdings of *Waller* and *Presley* were limited to suppression hearings and jury selection proceedings, respectively. Neither decision addressed whether a defendant enjoys a Sixth Amendment right to public 'administrative' proceedings of the type involved in this case.

Pet. App. 9-10.

Taken to its logical imperative, the court of appeals concluded that the only clearly established contours of the Sixth Amendment's public trial clause are those concerning pretrial suppression hearings and juror *voir dire* proceedings. Under this framework, a criminal defendant complaining of a courtroom closure during witness testimony would have only *dicta* upon which to build his complaint. Courts would be as incapable of granting habeas relief to an individual who suffered significant and unjustified trial closures

outside the confines of a suppression hearing or juror *voir dire*. This is the inexorable consequence that necessarily stems from a decision that construes the holdings of this Court in *Waller* and *Presley* without regard for the strong pronouncements on the public trial guarantee made by this Court in those cases and before, and the historical pedigree attendant upon the public trial right.

In concluding that the Minnesota Supreme Court did not unreasonably apply *Waller* and *Presley* in Petitioner's case, the court of appeals articulated that "[n]either *Waller's* bench trial analogy nor the historical pedigree of openness cited in *Presley* applies to a trial judge's articulation of an evidentiary ruling." Pet. App. 10. In support of this conclusion, the court of appeals cited to the Fifth Circuit's decision in *United States v. Norris*, 780 F.2d 1207 (5th Cir. 1986) – a case that predated *Presley* by 24 years, and which appears to be in direct conflict with other Fifth Circuit precedent. *See Rovinsky v. McKaskle*, 722 F.2d 197, 198-99 (5th Cir. 1984) (holding that the defendant's right to a public trial was violated where the trial court held a hearing in chambers on the prosecutor's motion to restrict cross-examination of prosecution witnesses, and specifically writing that "the right to a public trial forbids state courts to conduct hearings in camera on matters arising in the course of a criminal trial. . . ."). The closure in Petitioner's trial violated the Sixth Amendment for the same reasons articulated by the Fifth Circuit in *Rovinsky*. Here, the disputed issues arose during the course of trial. Any necessity that the

issues be "heard outside the jury's presence did not require that they be heard behind closed doors." *Rovinsky*, 722 F.2d at 201.

The holdings from this Court do not permit the type of closure that occurred in Petitioner's case. 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 Petitioner's case took place after juror *voir dire* and before opening statements. The packed courtroom was cleared of all spectators and media from around the state. The closure occurred at a "stage" of Petitioner'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 described 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.

In *Yarborogh v. Alvarado*, this Court stated that "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." 541 U.S. 652, 666 (2004). At the time of Petitioner'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.

Holding to the contrary, the court of appeals wrote that "[i]t is an open question whether a defendant's right to a public trial encompasses the sort of nonpublic proceeding at issue here." Pet. App. 10. This conclusion would make it seem as though this Court needs to take an additional step to extend the protections of the Sixth Amendment to the type of closure that occurred in Petitioner's case. But this Court already took that step, most recently in *Presley*. That the closure in *Presley* involved juror *voir dire* proceedings does not mean that the pertinent legal rule – the right to openness at all stages of trial – is applicable only to juror *voir dire* proceedings. The Minnesota Supreme Court had a duty, one at which it failed, to apply the squarely established rule from *Presley* to the facts of Petitioner's case.

Under the rule imposed by the court of appeals, no habeas petitioner in the Eighth Circuit complaining of a trial closure will be entitled to relief under Section 2254(d)(1) unless the closure involved a pretrial suppression hearing or juror *voir dire*. If the holdings from *Waller* and *Presley* are limited to those types of

proceedings, then this conclusion is inescapable. A federal district court may someday write, similar to the court of appeals, that "[n]either [*Waller* nor *Presley*] addressed whether a defendant enjoys a Sixth Amendment right to public closing arguments." While the standard set by the AEDPA is "difficult to meet," *Metrish v. Lancaster*, 569 U.S. 351, 358 (2013), the standard should not, as here, swallow the Sixth Amendment rule.

Petitioner had a right to a public trial during all phases of his trial. The state trial court abridged that right by clearing the courtroom of all spectators and press agents, and holding closed proceedings on highly contested evidentiary issues germane to the central issue of Petitioner's guilt. The trial court's closure was implemented without any consideration of the four factors laid down by this Court in *Waller*. The Minnesota Supreme Court refused to find a violation of the Sixth Amendment public trial right by construing the proceedings as "administrative" in nature, and therefore beyond the reach of the public trial guarantee. The Minnesota Supreme Court's 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.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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