No. 24-5191

IN THE SUPREME COURT OF THE UNITED STATES

QUENTIN VENENO, JR., PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

ELIZABETH B. PRELOGAR
Solicitor General
Counsel of Record

NICOLE M. ARGENTIERI
Principal Deputy Assistant
Attorney General

KATHERINE TWOMEY ALLEN
Attorney

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTIONS PRESENTED

1. Whether the court of appeals correctly applied the plain-error standard of review to reject petitioner's contention that his right to a public trial was violated when, during the height of the COVID-19 pandemic, the district court closed its courtroom to the public for social-distancing reasons while providing a livestream of petitioner's trial online.

2. Whether this Court's decision in United States v. Kagama, 118 U.S. 375 (1886), which upheld Congress's power to criminalize conduct by an Indian against another Indian in Indian country, should be overruled.

RELATED PROCEEDINGS

United States District Court (D.N.M.):

United States v. Veneno, No. 18-cr-3984 (Aug. 19, 2021)

United States Court of Appeals (10th Cir.):

United States v. Veneno, No. 21-2101 (Mar. 7, 2024)

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OPINIONS BELOW

The revised opinion of the court of appeals (Pet. App. 1a-30a) is reported at 107 F.4th 1103. An earlier, superseded version of the opinion (Pet. App. 31a-60a) is reported at 80 F.4th 1180.

JURISDICTION

The judgment of the court of appeals was entered on March 7, 2024. On May 24, 2024, Justice Gorsuch extended the time within which to file a petition for a writ of certiorari to and including July 5, 2024. On June 26, 2024, Justice Gorsuch further extended the time to and including July 26, 2024, and the petition was filed

on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the District of New Mexico, petitioner was convicted of domestic assault by a habitual offender in Indian country, in violation of 18 U.S.C. 117(a)(1) and 1153; domestic assault by a habitual offender resulting in substantial bodily injury in Indian country, in violation of 18 U.S.C. 117(a)(1) and 1153; and assault resulting in serious bodily injury in Indian country, in violation of 18 U.S.C. 113(a)(6) and 1153. Judgment 1-2. He was sentenced to 115 months of imprisonment, to be followed by three years of supervised release. Judgment 3-4. The court of appeals affirmed. Pet. App. 1a-30a.

1. In 2018, petitioner assaulted his then-girlfriend S.H., with whom he lived, on three separate occasions, ultimately resulting in S.H. being admitted to the hospital for five days with a collapsed lung and nine broken ribs. Pet. App. 2a-3a; see Gov't C.A. Br. 2-4. Both petitioner and S.H. were enrolled members of a federally recognized Indian tribe, the Jicarilla Apache Nation, and the assaults occurred on the tribe's reservation in New Mexico. Pet. App. 2a.

The first assault was on August 22, 2018, when petitioner saw S.H. using her phone and accused her of talking to other men. Pet. App. 2a; Gov't C.A. Br. 2. Petitioner knocked the phone out of

her hand and hit her several times with a closed fist. Pet. App. 2a. S.H. escaped by jumping out of the kitchen window and running to a neighbor's house. Id. at 2a-3a. The neighbor called the tribal police. Gov't C.A. Br. 2. When a tribal police officer responded, he observed that S.H. had blood on her face and other injuries, and that petitioner's hand was bloody. Id. at 2-3. Petitioner claimed to have punched a wall. Id. at 3.

S.H. later went back to petitioner, and petitioner assaulted her a second time on October 28, 2018, when he again "became jealous" and "kicked [S.H.]'s upper body and arm several times." Pet. App. 3a; see Gov't C.A. Br. 3. S.H. again escaped, this time "hid[ing] for a few hours in the hills behind her house." Pet. App. 3a. When she returned home, petitioner accused her of being out with another man. Ibid. After S.H. took petitioner to show him where she had been hiding, he asked, "[s]hould I just kill you now?" Ibid.

The third assault occurred five days later, on November 2, 2018. Gov't C.A. Br. 3. S.H. was sitting in bed looking at her phone, and petitioner again accused her of talking with other men. Ibid. Petitioner "hit the phone out of her hand, * * * grabbed her by the hair, threw her on the floor, and kicked her." Pet. App. 3a. Petitioner then "dragged her outside the bedroom, down a hallway and out the kitchen door," before continuing to "kick her" and "slam[] her head into the cement outside." Ibid. Afterward, petitioner refused to allow S.H. to seek medical care

or to treat herself with ibuprofen. Ibid.; see Gov't C.A. Br. 4. Two days later, S.H. remained in extreme pain. While petitioner was absent, S.H. called a tribal health care provider, who took her to an urgent care center and called the police. Gov't C.A. Br. 4. S.H. was transported from the urgent care center to a hospital, where she stayed for five days for treatment of her collapsed lung and broken ribs. Ibid.

2. The Indian Major Crimes Act, 18 U.S.C. 1153, makes it a federal crime for "[a]ny Indian" to commit certain specified offenses "against the person or property of another Indian or other person * * * within the Indian country." 18 U.S.C. 1153(a); see United States v. Bryant, 579 U.S. 140, 147 (2016). A federal grand jury in the District of New Mexico charged petitioner with one count of domestic assault by a habitual offender in Indian country, in violation of 18 U.S.C. 117(a)(1) and 1153; one count of domestic assault by a habitual offender resulting in substantial bodily injury in Indian country, in violation of 18 U.S.C. 117(a)(1) and 1153; and one count of assault resulting in serious bodily injury in Indian country, in violation of 18 U.S.C. 113(a)(6) and 1153. Superseding Indictment 1-2.

The case proceeded to trial in September 2020. Gov't C.A. Br. 6. Petitioner's case was the first trial held in the District of New Mexico during the COVID-19 pandemic. Pet. App. 5a. The District had "developed a 'Plan for Resumption of Jury Trials in DNM During the Pandemic,' which detailed the procedures that the

district court judges were to employ." Ibid. The plan contemplated that, because only 20 to 25 potential jurors could fit in a courtroom while maintaining social distancing, jury selection would occur in morning and afternoon "waves," and members of the venire would be "socially distanced in the courtroom (3 seats apart) using the jury box and all gallery rows." 1 ROA 400-401. The plan further contemplated that during trial, jurors would remain seated six in the gallery, and witnesses would testify from the jury box. Id. at 402. The plan also noted that "[m]embers of the general public and media can attend the trial through the Court's existing * * * audio feed from the Court's website" and that "[v]ideo streaming is being explored." Id. at 405.

Here, the district court also explained to the parties at a pretrial conference that it had "spent months coming up with a detailed protocol about how the trial is going to be handled in order to make sure that all the parties, all of the witnesses, all of the jurors, everyone involved, is safe." 3 ROA 98. The court encouraged the parties to go and view the courtroom that had been "set up specifically according to the protocol," including with the placement of the jurors in socially distanced seating where the public gallery would previously have been. Id. at 98-99; see 1 ROA 392-397 (photographs). The court also confirmed, consistent with the district-wide plan, that it would call morning and afternoon waves of prospective jurors for venire. 3 ROA 99. And before jury selection began, the courtroom deputy sent the parties

an internet link to the audio feed on the court's website, which would allow members of the public to listen to the proceedings. Pet. App. 6a.

"The first morning of trial, the district court began selecting a jury with the first wave of prospective jurors." Pet. App. 6a. After releasing the morning panel for lunch, the court inquired whether the parties had "anything else that we need to take up." 4 ROA 133; see id. at 130-132. The government stated that it had "some concerns about the constitutionality of only providing audio versus video," and it asked the court to put on the record its reasons for limiting public access to the courtroom during the pandemic and, in particular, to make clear whether the courtroom lacked "video capability." Id. at 133. Defense counsel then stated that he had incorrectly assumed there to be an "audio/video feed," and that the defense objected to the lack of video. Id. at 134. The court stated that it did not believe the courtroom had "the capability of a video feed," but that it would "make a record when we come back this afternoon." Ibid.

The jury-selection proceedings resumed that afternoon after a two-hour recess. 4 ROA 134. At the outset, defense counsel reiterated his objection to providing "only audio." Id. at 135. The district court observed that "[w]e had discussed this several times prior to trial," without any party objecting. Id. at 136; see id. at 137 ("[N]o motion was filed prior to trial beginning, and no objections were made by the defense prior to beginning trial

this morning."). But the court also explained that a "video feed" had been set up during the recess, so that "[w]e will have audio and video from here on out." Id. at 136.

As the government had requested, the district court also "ma[d]e some findings on the record" regarding the need for and extent of the limits on public access to the courtroom. 4 ROA 137. The court observed that the courtroom had not been totally closed to the public even during the morning session of jury selection because an audio feed of those proceedings had been publicly available on the court's website, and the combined audio/video feed would be used going forward. Id. at 137. The court explained that such a "partial restriction" on public access was "necessitated by the COVID-19 pandemic"; that "social distancing is not possible if the public were allowed in the gallery," because that space was necessary for the jury itself; and that "there is no reasonable" other place "to put the public" given the configuration of the courtroom. Id. at 138.

In the alternative, the district court determined that even if the situation were viewed as involving complete closure, a complete closure for reasons of public health was permissible under the factors set forth in Waller v. Georgia, 467 U.S. 39 (1984), which the court discussed at length, see 4 ROA 139-142. Among other things, the court found that "reasonable alternatives have been put in place, as the proceeding is available to the public through audio and video." Id. at 142. Petitioner did not suggest

any other alternatives and did not object to the court's findings under Waller. Pet. App. 8a.

Jury selection resumed. Pet. App. 8a. At the end of that process, the court asked if either party "any objections to the way that the jury has been selected today," and the parties both stated that they did not. 4 ROA 203-204; see Pet. App. 8a.

The jury found petitioner guilty on all counts. Judgment 1-2. The district court sentenced him to 115 months of imprisonment, to be followed by three years of supervised release. Judgment 3-4.

3. The court of appeals affirmed. Pet. App. 1a-30a.[1]

a. Petitioner contended, among other things, that he was entitled to "automatic reversal of his conviction" on the theory that the district court had committed structural error by closing the courtroom to the public before making the findings required by Waller or, alternatively, because the court's Waller findings were inadequate insofar as the court had purportedly failed to consider the alternative of "reserving four or five * * * seats" in the courtroom for members of the public. Pet. C.A. Br. 28-30. Petitioner further contended that, at a minimum, conducting the first morning of jury selection with only an audio feed for the

[1] The panel issued an initial opinion on September 12, 2023. Pet. App. 31a-60a. On March 7, 2024, the panel granted in part petitioner's motion for panel rehearing, withdrew the prior opinion, and replaced it with the revised version cited here. See id. at 71a-72a. The panel's revised opinion made "only non-substantive changes to the [initial] opinion." Id. at 71a.

public required reversal. Id. at 30-31. The court of appeals rejected each of those contentions.

With respect to petitioner's argument that the district court should have analyzed the Waller factors on the record before the morning courtroom closure, the court of appeals reasoned that "Waller mandates that the district court" make certain findings before closing the courtroom "'over the objections of the accused.'" Pet. App. 11a (quoting Waller, 467 U.S. at 47). And it observed that here, petitioner raised a public-trial objection only "after voir dire proceedings began," and the district court "addressed the Waller factors as soon as [he] objected." Ibid.

With respect to petitioner's argument that the district court, in its explicit Waller findings between the morning and afternoon sessions, had "fail[ed] to consider less restrictive alternatives as Waller requires," the court of appeals determined that petitioner had not preserved any timely objection regarding the only alternative that he proposed on appeal -- i.e., reserving a few seats in the courtroom for the public. Pet. App. 11a; see id. at 13a. The court therefore determined that the plain-error standard of review applied. Id. at 14a; see id. at 14a & n.4 (noting that petitioner "never objected to the district court's conclusion that the closure was no broader than necessary" and that petitioner stated after voir dire that he had no objections to the jury selection process).

The court of appeals observed that despite the government's invocation of the plain-error standard, petitioner had never argued that he could meet it. Pet. App. 15a. The court explained that petitioner's failure to do so "mark[ed] the end of the road for an argument for reversal not first presented in the district court." Ibid. (citation omitted). The court then added that "the result would be the same" even if petitioner had tried to argue for plain error because no "clear" or "obvious" error occurred here. Ibid.

The court of appeals observed that -- as explained in the District of New Mexico's plan for resuming jury trials -- the physical configuration of the courtroom and the need for social distancing necessitated placing jurors and potential jurors in the gallery, leaving no room for the public. Pet. App. 15a. The court further observed that "the district court judge, who was present in her courtroom and understood the courtroom's limitations, concluded that the courtroom could not safely hold any more spectators." Ibid. And the court rejected petitioner's premise that keeping a few seats open for the public would necessarily have been "reasonable," even if the district court could "possibly have made room." Id. at 15a-16a. The court of appeals explained that "reorganizing the entire juror seating arrangement for a few people would [have been] unreasonable given the context." Id. at 16a.

With respect to petitioner's argument concerning the lack of a video feed for the first morning of jury selection, the court of appeals again determined that the plain-error standard applied. Pet. App. 16a. Although defense counsel had stated at the time that he had been under the impression that a video feed was also available, the court noted that counsel had been given the internet link to the audio feed and that the District's plan for resuming jury trials contemplated using an audio feed. Id. at 16a n.5. The court also found that petitioner had waived or forfeited any argument that using merely the audio feed constituted plain error because petitioner had failed to adequately address the plain-error standard in his appellate briefing. Id. at 16a-17a. And the court explained that, in any event, petitioner could not have shown that the alleged error was clear or obvious, or that it had seriously affected the fairness, integrity, or public reputation of the judicial proceedings -- as required for plain-error relief -- particularly given that petitioner could have asked to strike the morning's venire panel but did not. Id. at 17a n.6.

b. Petitioner separately contended that all of his convictions should be vacated on the theory -- raised for the first time on appeal -- that Congress "lacks the constitutional authority to criminalize the conduct of Indians on tribal land." Pet. App. 17a. Petitioner acknowledged that his argument "contradict[ed] Supreme Court authority." Ibid. The court of appeals agreed and rejected the argument as foreclosed by precedent. Id. at 17a-18a.

c. Judge Rossman concurred in part and dissented in part. Pet. App. 23a-30a. She agreed with the majority that the district court's "post-objection [Waller] findings were adequate as to the portion of the trial streamed with audio and video," but she disagreed with the majority's analysis of the two hours of voir dire that were available to the public only via an audio feed. Id. at 23a-24a. In her view, petitioner adequately preserved an objection to using only an audio feed, and the use of only an audio feed required reversal and a new trial. Id. at 27a-30a. Judge Rossman also expressed the view that this Court may wish to revisit its precedents recognizing that Congress has the authority to criminalize conduct by Indians on Indian lands, but she agreed with the majority that petitioner's constitutional challenge was foreclosed by those precedents. Id. at 24a n.1.

ARGUMENT

Petitioner renews (Pet. 13-16) his contention that the district court violated his Sixth Amendment right to a public trial by limiting public access to the courtroom where the trial occurred without first considering whether a few seats in the courtroom could have been reserved for members of the public. Petitioner further contends (Pet. 16-21) that the court of appeals erred in applying the plain-error standard of review to his Sixth Amendment claim, and that its application of that standard departs from the approach of two other courts of appeals. Those contentions do not warrant further review. The decision below is correct, does not

conflict with any decision of this Court or another court of appeals, and is independently supported by forfeiture principles. The Court has recently declined to grant petitions for writs of certiorari presenting similar public-trial issues, and the same course is warranted here.[2]

Petitioner separately asks that the Court grant certiorari to overrule United States v. Kagama, 118 U.S. 375 (1886), and to hold instead that Congress "lacks the constitutional authority to criminalize conduct between members of the same tribe that occurs on tribal lands." Pet. i; see Pet. 21-30. Petitioner falls far short of justifying that extraordinary request. This Court has repeatedly recognized Congress's constitutional authority to enact laws regulating the conduct of Indians on tribal lands, including as recently as last Term. See Haaland v. Brackeen, 599 U.S. 255, 273-275 (2023). No further review is warranted.

1. The court of appeals correctly rejected petitioner's Sixth Amendment arguments on plain-error review, and its factbound decision does not warrant further review by this Court.

a. "In all criminal prosecutions, the accused shall enjoy the right to a * * * public trial." U.S. Const. Amend. VI. In Presley v. Georgia, 558 U.S. 209 (2010) (per curiam), this Court confirmed "that the Sixth Amendment right to a public trial extends to the voir dire of prospective jurors." Id. at 213. But the

[2] See Mendonca v. United States, 144 S. Ct. 2531 (2024) (No. 23-6648); Gallman v. United States, 144 S. Ct. 279 (2023) (No. 22-7539).

Court emphasized that, "[w]hile the accused does have a right to insist that the voir dire of the jurors be public, there are exceptions to this general rule." Ibid. And in Waller v. Georgia, 467 U.S. 39 (1984), the Court indicated that a courtroom may be permissibly closed to the public if the trial court finds "an overriding interest that is likely to be prejudiced" absent the closure, the closure is "no broader than necessary to protect that interest," the court "consider[s] reasonable alternatives to closing the proceedings" and the court "make[s] findings adequate to support the closing," id. at 48.

This Court has also separately held that a violation of the public-trial right falls within the "very limited class" of "structural" constitutional errors that are not amenable to harmless-error analysis -- for example, because their effect on the outcome of the proceedings is difficult or impossible to assess. Neder v. United States, 527 U.S. 1, 8 (1999) (quoting Johnson v. United States, 520 U.S. 461, 468 (1997)). Thus, under the harmless-error rule that applies to preserved objections, see Fed. R. Crim. P. 52(a), the defendant can obtain relief for such a violation on appeal without a case-specific showing that the closure affected the defendant's substantial rights.

If, however, a claim of error is "not brought to the [district] court's attention" at the proper time, then a defendant may obtain appellate relief only if he establishes reversible "plain error." Fed. R. Crim. P. 52(b); see, e.g., Greer v. United

States, 593 U.S. 503, 507-508 (2021); Puckett v. United States, 556 U.S. 129, 135 (2009). To establish reversible plain error, a defendant must show "(1) 'error,' (2) that is 'plain', and (3) that 'affects substantial rights.'" Johnson, 520 U.S. at 467 (quoting United States v. Olano, 507 U.S. 725, 732 (1993)) (brackets omitted). If those first three prerequisites are satisfied, the reviewing court has discretion to correct the error based on its assessment of whether "(4) the error seriously affects the fairness, integrity, or public reputation of judicial proceedings." Ibid. (quoting United States v. Young, 470 U.S. 1, 15 (1985)) (brackets and internal quotation marks omitted).

The plain-error inquiry "is meant to be applied on a case-specific and fact-intensive basis," Puckett, 556 U.S. at 142, and "the defendant has the burden of establishing each of the four requirements for plain-error relief," Greer, 593 U.S. at 508. "Meeting all four" requirements "is difficult, 'as it should be.'" Puckett, 556 U.S. at 135 (citation omitted). "This Court has several times declined to resolve whether 'structural' errors * * * automatically satisfy the third prong of the plain-error test." Id. at 140. But the Court has twice recognized that structural errors do not automatically satisfy the fourth prong of plain-error review. See United States v. Cotton, 535 U.S. 625, 633-634 (2002); Johnson, 520 U.S. at 469-470.

b. The court of appeals correctly rejected petitioner's challenge to the district court's Waller findings. The court of

appeals identified the governing principles from this Court's decisions, see Pet. App. 9a-10a, and explained why those principles justified the district court's decision to limit public access to the courtroom during the "unprecedented disruption[s]" caused by the COVID-19 pandemic, id. at 1a; see id. at 11a-17a. Petitioner's challenges to the court of appeals' analysis are misplaced.

Petitioner asserts (Pet. 13-16) that the district court failed to adequately consider the possibility of reserving a few seats in the courtroom for members of the public, and that the court was required to consider that possibility even though petitioner did not suggest it at the time. In particular, petitioner emphasizes (Pet. 14) this Court's observation in Presley that "trial courts are required to consider alternatives to closure even when they are not offered by the parties." 558 U.S. at 214. The Court noted in Presley that, on the facts of that case, some possible alternatives to excluding the defendant's uncle and other members of the public from the courtroom during voir dire included "reserving one or more rows for the public; dividing the jury venire panel to reduce courtroom congestion; or instructing prospective jurors not to engage or interact with audience members." Id. at 215; see id. at 210-211.

But this Court's decision in Presley also makes clear that a trial court is required to consider only "reasonable alternatives to closing the proceedings" Presley, 558 U.S. at 214 (quoting Waller, 467 U.S. at 48). And here, the district court "reasonably

concluded no reasonable alternatives existed." Pet. App. 15a. As the court of appeals explained, the district court judge was in the best position to evaluate the physical limits of her courtroom and to determine whether the courtroom could safely hold additional spectators. Ibid. The court of appeals observed that in light of the "unprecedented challenge" of conducting a jury trial during the height of the COVID-19 pandemic, the district court "made an eminently reasonable determination to seat the jurors," rather than the public, "in the gallery." Ibid. In particular, as the court of appeals recognized, "reorganizing the entire juror seating arrangement for a few people would be unreasonable given the context." Id. at 16a.

Petitioner is therefore mistaken to assert (Pet. 16) that the decision below conflicts with Presley, or warrants summary reversal on that basis. In Presley, the state supreme court had held that the trial court had no obligation to consider reasonable alternatives because the defendant had failed to proffer any -- a view of the trial court's role that this Court found inconsistent with Waller. See Presley, 558 U.S. at 210-211. Here, in contrast, the court of appeals recognized the necessity to consider the factors described in Waller and simply found that the district court "reasonably concluded no reasonable alternatives existed," Pet. App. 15a, and that the specific alternative now urged by petitioner (reserving a few seats for the public) "would be unreasonable given the context," id. at 16a. Any factbound claim

of error in those determinations does not warrant this Court's review. See Sup. Ct. R. 10.

That is particularly so because, as the court of appeals further recognized, petitioner's failure to contemporaneously object to the district court's consideration of the Waller factors means that his belated challenge is subject to plain-error review. Regardless of whether the district court should have sua sponte considered other alternatives even when petitioner did not suggest them, petitioner did not preserve a timely objection. See Pet. App. 14a (observing that petitioner "never objected to the district court's conclusion that the closure was no broader than necessary," and that a litigant "may not hold an objection in his back pocket simply to raise it for the first time on appeal hoping it might ultimately work in his favor"). And the court of appeals emphasized that, even if the district court's assessment of the limits of the courtroom had been erroneous, any such error was not "clear or obvious." Id. at 15a.

2. Petitioner separately contends (Pet. 16-21) that further review is warranted to clarify the circumstances under which the plain-error standard of review applies to public-trial claims. That contention does not focus on the court of appeals' application of plain-error review to the district court's findings under Waller -- to which petitioner clearly had the opportunity to object, and did not -- but instead to the court of appeals' application of plain-error review to petitioner's challenge after the first

morning of voir dire to the use of only audio (rather than also video) to stream the proceeding to the public. See ibid. In petitioner's view, he did not have any opportunity to object to the audiostream earlier, and two other circuits (the Second and Seventh Circuits) would not have applied plain-error review. Petitioner's arguments lack merit.

As the court of appeals recognized, petitioner had ample advance notice of the district court's plan to use the public gallery as socially distanced seating for potential jurors during voir dire and for the selected jurors during trial, while broadcasting the proceedings via audio on the court's website. Pet. App. 14a, 16a & n.5. The notice came not only through the district-wide plan for the resumption of jury trials, but also through the district court's invitation to the parties to view the courtroom in advance, the pretrial email with a link to the audio feed, and the fact that petitioner and his counsel were present in the courtroom during jury selection and could see the seating arrangement. See id. at 5a-6a; see also pp. 4-6, supra. The court of appeals was therefore warranted in finding that petitioner "needed to say so" at the time if he had any Sixth Amendment-based objection, and that his belated challenge was subject to the plain-error standard of review on appeal. Pet. App. 14a, 16a & n.5. And in any event, the court of appeals' determination that petitioner forfeited his objection turned on the specific facts of

this case and accordingly does not warrant this Court's review. See Sup. Ct. R. 10.

Petitioner fails to identify another court of appeals that would have reached a different result on these specific facts. In United States v. Gupta, 699 F.3d 682 (2d Cir. 2012), the defendant argued that the district court's exclusion of his brother and his brother's companion from the courtroom during voir dire violated his Sixth Amendment right to a public trial. Id. at 686. The parties agreed that the defendant's counsel was "unaware of the closure at the time it occurred." Id. at 689. The Second Circuit declined to assume that the defendant was aware at the time of the closure unless he demonstrated otherwise. Id. at 689-690. The court explained that even if it assumed that the defendant had such knowledge, it would not "impute to a defendant -- at least in the circumstances here -- an obligation to raise a legal objection as to which his own defense counsel is ignorant during the throes of trial." Id. at 690. This case, however, does not involve a situation in which the defendant may have been aware of a closure while his attorney was not. Instead, the court of appeals here found that petitioner's counsel was invited to view the courtroom, was able to ask questions on multiple occasions, and was emailed an internet link to the audio-only feed before trial, which "provide[d] 'notice' to counsel," even though it was not on the docket before trial. Pet. App. 16a n.5.

In United States v. Anderson, 881 F.3d 568 (7th Cir. 2018), the defendant argued that the district court's continuation of proceedings after the exterior doors to the courthouse were locked at 5:00 p.m. on the two days of trial violated his Sixth Amendment right to a public trial. Id. at 570. The Seventh Circuit found that, at least as to the first day, the defendant had not "waived" the argument because "the district court made no findings as to whether [the defendant] or his counsel was aware that the courthouse would be locked at 5:00 p.m." Id. at 572. But the defendant was aware of the issue at least by the second day, when defense counsel was let into and out of the building after 5:00 p.m. by a security guard. Id. at 575. Based on those facts, the Seventh Circuit applied the plain-error standard to deny relief. See id. at 576 (holding that the defendant "failed to demonstrate an error that is 'plain' or 'obvious' as required under the plain error standard"). The Seventh Circuit's application of the plain-error standard in that case is consistent with the court of appeals' application of it here.

3. Finally, petitioner contends (Pet. 21-30) that certiorari should be granted to overrule the Court's prior decision in Kagama and to hold that Congress lacks constitutional authority to criminalize conduct by Indians on tribal lands. This Court recently denied a similar request, and the same course is warranted here. See Gordon v. United States, 144 S. Ct. 1083 (2024) (No. 23-6798).

In challenging this Court's 136-year history of recognizing congressional authority in this area, petitioner would in fact have this Court overturn not merely Kagama but "a long line of precedents" recognizing Congress's broad authority over Indians in Indian country. Michigan v. Bay Mills Indian Community, 572 U.S. 782, 798 (2014) (rejecting analogous request to overrule a long line of decisions regarding tribal immunity). Since Kagama, this Court has repeatedly recognized Congress's authority to enact criminal laws governing Indian conduct in Indian country. See, e.g., United States v. Antelope, 430 U.S. 641, 648 (1977) (stating that "Congress has undoubted constitutional power to prescribe a criminal code applicable in Indian country"); see also United States v. Ramsey, 271 U.S. 467, 469-470 (1926); Lone Wolf v. Hitchcock, 187 U.S. 553, 566-567 (1903); United States v. Thomas, 151 U.S. 577, 585 (1894); cf. United States v. Gordon, No. 22-30198, 2023 WL 8014358, at *1 (9th Cir. Nov. 20, 2023) ("[T]he Supreme Court has long held that Congress's plenary power allows it to legislate criminal laws regarding Indian affairs that occur in Indian country."), cert. denied, 144 S. Ct. 1083 (2024); United States v. Lomayaoma, 86 F.3d 142, 145-146 (9th Cir.) (similar), cert. denied, 519 U.S. 909 (1996).

Most recently, in Haaland v. Brackeen, this Court recognized that "Congress's power to legislate with respect to Indians is well established and broad," and the Court "ha[s] not doubted Congress's ability to legislate across a wide range of areas,"

including specifically the two areas of law implicated by petitioner's convictions here -- "criminal law" and "domestic violence." 599 U.S. at 275. The Court also reaffirmed in Brackeen that Congress's authority over Indian affairs derives from multiple sources: those expressly enumerated in the Constitution (the Indian Commerce Clause, Art. I, § 8, Cl. 3, and the Treaty Clause, Art. II, § 2, Cl. 2) as well as the structure of the Constitution and the "trust relationship between the United States and the Indian people." 599 U.S. at 274-275 (citation omitted). The Court approvingly cited multiple cases tracing the trust relationship back to Kagama and earlier. See ibid. (citing United States v. Mitchell, 463 U.S. 206, 225-226 (1983); Seminole Nation v. United States, 316 U.S. 286, 296 (1942); and Morton v. Mancari, 417 U.S. 535, 551-552 (1974)).

Subsequent precedent has thus reinforced Kagama, and petitioner's efforts to upset over a century of law, precedent, and practice cannot be squared with the bedrock principle of stare decisis. See, e.g., Kimble v. Marvel Entm't, LLC, 576 U.S. 446, 455 (2015) (describing stare decisis as a "foundation stone of the rule of law") (citation omitted). "[A]n argument that [the Court] got something wrong" ordinarily cannot "justify scrapping settled precedent." Ibid. Petitioner does show that the longstanding legal framework is unworkable, nor does he provide any other "special justification," Haliburton Co. v. Erica P. John Fund, Inc., 573 U.S. 258, 266 (2014) (quoting Dickerson v. United States,

530 U.S. 428, 443 (2000)), for granting further review to revisit it.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ELIZABETH B. PRELOGAR
Solicitor General

NICOLE M. ARGENTIERI
Principal Deputy Assistant Attorney General

KATHERINE TWOMEY ALLEN
Attorney

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