No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

SAMUEL JOSEPH BARRETT

vs.

WYOMING DEPARTMENT OF CORRECTIONS

STATE PENITENTIARY WARDEN,

in her official capacity, also known as, Neicole Molden, et al

ON WRIT OF CERTIORARI TO THE

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Samuel Joseph Barrett, *Pro se*

Lincoln County Detention Center

PO Box 1364

Kemmerer, WY 83101

New Questions for Review

I. If a state denies a defendant a public trial by implementing a defective trial structure mechanism to limit the spread of a pandemic at the expense of the defendant's right to a public trial, is that defendant entitled to relief?

II. If court-appointed counsel fails to raise meritorious issues of US Constitutional dimension on direct appeal, is that defendant entitled to relief?

III. Did the Coronavirus Pandemic Jury Trial Operational Plan developed and implemented by Wyoming's Seventh Judicial District deny Mr. Barrett a constitutionally firm trial?

LIST OF PARTIES IN COURT BELOW

Samuel Joseph Barrett, *Petitioner*

Wyoming Department of Corrections State Penitentiary Warden,
in her official capacity, also known as, Neicole Molden, *Respondent*

Wyoming Department of Corrections Director,
in his official capacity, also known as, Daniel Shannon, *Respondent*

Wyoming Attorney General, *Respondent*

LIST OF CASES DIRECTLY RELATED TO THIS CASE

A. Court: United States Court of Appeals for the Tenth Circuit; Docket Number: 24-8062; Caption: *Samuel J. Barrett v. Wyoming Dep't of Corrections State Penitentiary Warden, et al*; Date of Entry of Judgment: June 9, 2025

B. Court: United States District Court for the District of Wyoming; Docket Number: 23-CV-00234-SWS; Caption: *Samuel J. Barrett v. Wyoming Dep't of Corrections State Penitentiary Warden, et al*; Date of Entry of Judgment: August 14, 2024

C. Court: Supreme Court of Wyoming; Docket Number: S-23-0266; Caption: *Samuel Joseph Barrett v. State of Wyoming*; Date of Entry of Judgment: December 6, 2023

D. Court: District Court for the Seventh Judicial District (Wyoming); Docket Number: 21676-A; Caption: *Samuel Barrett v. State of Wyoming*; Date of Entry of Judgment: October 25, 2023

E. Court: Supreme Court of Wyoming; Docket Number: S-21-0163; Caption: *Samuel Joseph Barrett v. State of Wyoming*; Date of Entry of Judgment: May 25, 2022

F. Court: District Court for the Seventh Judicial District (Wyoming); Docket Number: 21676-A; Caption: *State of Wyoming v. Samuel Joseph Barrett*; Date of Entry of Judgment: March 31, 2021

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The opinion of the United States District Court for the District of Wyoming appears at Appendix B to the petition and is an unpublished opinion.

The opinion of the highest state court to review the merits appears at Appendix C to the petition and is reported at *Barrett v. State*, **2022 WY 64 *; 509 P.3d 940 **; 2022 Wyo. LEXIS 63 ***; 2022 LX 17909; 2022 WL 1656868**.

The opinion of the Seventh Judicial District Court of Wyoming court appears at Appendix D to the petition and is not reported.

JURISDICTION

The date on which the United States Court of Appeals denied Mr. Barrett's application for a Certificate of Appealability ("CoA") was June 9, 2025. No petition for rehearing was timely filed in Mr. Barrett's case. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

CONSTITUTION OF THE UNITED STATES

AMENDMENT 6

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 defense.

AMENDMENT 14

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

CONSTITUTION OF THE STATE OF WYOMING

Article 1. Declaration of Rights.

These rights are intended to provide for the just determination of every criminal proceeding. They shall be construed to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay.

§ 6. Due Process of Law.

No person shall be deprived of life, liberty or property without due process of law.

§ 8. Courts Open to All; Suits Against State.

All courts shall be open and every person for an injury done to person, reputation or property shall have justice administered without sale, denial or delay. Suits may be brought against the state in such manner and in such courts as the legislature may by law direct.

§ 10. Right of Accused to Defend.

In all criminal prosecutions the accused shall have the right to defend in person and by counsel, to demand the nature and cause of the accusation, to have a copy thereof, to be confronted with the witnesses against him, to have compulsory process served for obtaining witnesses, and to a speedy trial by an impartial jury of the county or district in which the offense is alleged to have been committed. When the location of the offense cannot be established with certainty, venue may be placed in the county or district where the corpus delecti [delicti] is found, or in any county or district in which the victim was transported.

STATEMENT OF THE CASE

1. On June 28, 2019, Mr. Barrett was charged with seven (7) counts of first degree sexual assault, seven (7) counts of second degree sexual assault, one (1) count of sexual exploitation of a minor, one (1) count of possession of child pornography, and one (1) count of blackmail; these counts reflect allegations of four adult women: AB, AG, AH, and KC. [ECF 1[1], Exhibit A, *Barrett v. State*, 2022 WY 64; 509 P.3d 940 - Wyo. 2022].

2. At arraignment, Mr. Barrett pleaded not guilty to all counts. The docket number was CR-21676-A, in the Seventh Judicial District, Natrona County, Wyoming. Mr. Barrett was initially represented by Kurt Infanger of the Natrona County division of the Wyoming State Public Defender's Office; Mr. Don Fuller and Mr. Rob Oldham, both of Casper, Wyoming, eventually replaced Mr. Infanger.

3. The State dismissed all seven (7) of the second degree sexual assault counts prior to trial. [ECF 1, Exhibit B, *State's Motion To Dismiss Counts Two, Four, Six, Eleven, Thirteen, Fifteen, And Seventeen*].

4. Mr. Barrett's case was initially scheduled to go to trial on February 3, 2020. Trial Counsel requested a continuance on January 16, 2020 in response to the late delivery of Discovery by the State and the volume of the Discovery delivered by the State. [ECF 1, Exhibit C, *Waiver of Speedy Trial*].

5. Mr. Barrett's case was next scheduled to go to trial on March 16, 2020. However, when all parties appeared on March 16, 2020 for the start of *voir dire*, the

[1] Mr. Barrett cites to the electronic case filing number where applicable

trial was suspended indefinitely on account of the global Coronavirus Pandemic. [ECF 1, Exhibit D, Transcript of Scheduled Jury Trial dated March 16, 2020].

6. On October 6, 2020, two hundred eight (208) days after the parties appeared in Trial Court for the scheduled original first day of trial, the trial finally commenced. The structure of the proceedings was dictated by the Seventh Judicial District Coronavirus Pandemic Jury Trial Operational Plan ("COVID Plan"). [ECF 1, Exhibit E, COVID Plan]. The State dismissed the remaining first degree sexual assault count involving AB between the first and second COVID Plan *voir dire* panels. [ECF 1, Exhibit F, ***Motion to Amend Third Amended Information***].

7. On October 15, 2020, the jury returned a guilty verdict on all nine (9) remaining counts. On March 21, 2021, the district court imposed a consecutive sentence structure of ten to twelve (10-12) years on one count, followed by thirty-three to fifty (33-50) years, concurrently, for all the other counts. [ECF 1, Exhibit G, ***Judgment and Sentence***].

8. Mr. Barrett timely appealed. Mr. David Westling of the Wyoming State Public Defender's Office, Appellate Division, was appointed to represent Mr. Barrett on appeal. The Wyoming Supreme Court case number was S-21-0163. The two issues Mr. Westling on appeal were (and over the objections of Mr. Barrett were:

> (I) Was there sufficient evidence at trial to support Mr. Barrett's convictions for sexual exploitation of a child under Wyo. Stat. Ann. § 6-4-303(b)(i) and (iv)?

(II) Did the district court abuse its discretion by admitting evidence of Mr. Barrett's prior conviction under W.R.E. 404(b)?

9. On June 10, 2022, the Wyoming Supreme Court affirmed Mr. Barrett's convictions.

10. Mr. Barrett timely mailed a *Motion for Post-Conviction Relief* to Wyoming's Seventh Judicial District on May 23, 2023. [ECF 1, Exhibit H, *Pro Se Motion for Post-Conviction Relief*]. In the motion, Mr. Barrett raised the following issues:

A. The Petitioner was Denied a Constitutionally-Guaranteed Public Trial
B. The Petitioner was Denied Due Process of Law
C. The State Engaged in Prosecutorial Misconduct
D. Errors in Judgment by the Trial Court
E. Plain Error
F. Investigative Bias
G. Denial of Access to Legal Materials and Mailing Materials
H. The Petitioner was Denied Exculpatory Information in Discovery (*Brady*)
I. The Petitioner was Denied Effective Assistance of Trial Counsel
J. The Petitioner was Denied Effective Assistance of Appellate Counsel
K. The State Used an Improperly Obtained Prior Conviction as Evidence to Convict

11. On September 7, 2023 Mr. Barrett received service at the Wyoming State Penitentiary ("WSP") of the State of Wyoming's motion to dismiss. [ECF 1, Exhibit I, *Motion to Dismiss Petitioner's Motion for Post-Conviction Relief*]. On October 20, 2023, after being granted an extension to file his reply brief by no later than October 23, 2023, Mr. Barrett mailed an opposition to the State's motion to

dismiss. [ECF 1, Exhibit J, *Petitioner's Response to State's Motion to Dismiss Petitioner's Motion for Post-Conviction Relief*].

12. On November 2, 2023, Mr. Barrett received service at WSP of the state trial court's order denying Mr. Barrett's post-conviction petition. The state district court did not elucidate its reasoning; instead, the court merely signed the State's proposed motion to dismiss order. [ECF 1, Exhibit K, *Order to Dismiss Petitioner's Motion for Post-Conviction Relief*].

13. On November 8, 2023, Mr. Barrett mailed a *Petition for Writ of Review or Certiorari* to the Wyoming Supreme Court. [ECF 1, Exhibit L, *Petition for Writ of Review or Certiorari*]. On November 22, 2023 Mr. Barrett received at WSP service of the Wyoming Attorney General's *Response to Petition for Writ of Review or Certiorari* [ECF 1, Exhibit M, *Response to Petition for Writ of Review or Certiorari*]. On November 24, 2023 Mr. Barrett mailed his reply brief to the Wyoming Supreme Court [ECF 1, Exhibit **N**, *Petitioner's Response to State's Response to Petition for Writ of Review or Certiorari*]. On December 8, 2023 Mr. Barrett received at WSP service of the Wyoming Supreme Court's *Order Denying Petition for Writ of Review/Certiorari* [ECF 1, Exhibit O, Wyoming Supreme Court Order Denying Petition for Writ of Review/Certiorari].

14. On December 8, 2023 Mr. Barrett timely mailed his *Petition for a Writ of Habeas Corpus* to the United States District Court for the District of Wyoming ("D. Wyo."), the federal court having jurisdiction over cases arising within the state of Wyoming [ECF 1]. D. Wyo. simultaneously denied Mr. Barrett's habeas petition

with prejudice and his request for a CoA on August 14, 2024. [ECF 6, Order Granting Motion to Dismiss]. Mr. Barrett timely filed both a Motion for Reconsideration and Notice of Appeal to D. Wyo. on September 6, 2024.

15. At the same time that Mr. Barrett filed his Motion for Reconsideration in D. Wyo., he also filed a Notice of Appeal in D. Wyo. and to the United States Court of Appeals for the Tenth Circuit("10th CCA") along with a CoA application in the 10th CCA. The 10th CCA denied a CoA on June 9, 2025.

16. Mr. Barrett timely files this *Petition for Writ of Certiorari* on August 22, 2025, seventy-two (74) days after the June 9, 2025 10th CCA entry of final judgment and within the 90 day limitation of Rule 13. (Supreme Court Rule 13).

17. Mr. Barrett does not have any other petitions or appeals pending in either state or federal court from the judgment now under attack. Mr. Barrett is currently incarcerated at the Lincoln County Detention Center, 1040 Justice Center Drive, Kemmerer, WY 83101.

The Questions Raised in this Petition are Constitutional and Unresolved

Was Barrett Denied the Right to a Public Trial, in Violation of the US Constitution (Amendment VI)?

18. Federal District and Circuit Courts have sanctioned the state court's implementation of the Seventh Judicial District Coronavirus Pandemic Jury Trial

Operational Plan ("COVID Plan") that unfairly and arbitrarily deprived Mr. Barrett of his Sixth Amendment right to a public trial. The federal courts have allowed this denial of a Constitutional right due to this Court having not previously addressed this novel issue. The state and federal courts' unfair and arbitrary denial of the public trial right is in conflict with the U.S. Supreme Court's ruling in *Waller v. Georgia*, 467 U. S. 39, 104 S. Ct. 2210, 81 L. Ed. 2d 31 (1984). In its present posture, this case presents a novel and unresolved issue, not controlled by any prior decisions of this Court. If a state denies a defendant a public trial by implementing a defective trial structure mechanism to limit the spread of a pandemic at the expense of the defendant's right to a public trial, is that defendant entitled to relief?

19. This Court has consistently recognized the right to a public trial as a fundamental right. This Court recognized in *Waller* that "the right to an open trial may give way in certain cases to other rights or interests, such as the defendant's right to a fair trial or the government's interest in inhibiting disclosure of sensitive information." *Id.*, at 45, 104 S. Ct. 2210, 81 L. Ed. 2d 31. But *Waller* cautioned that "[s]uch circumstances will be rare,... and the balance of interests must be struck with special care." *Ibid.* To that end, *Waller* announced four requirements that must be satisfied before a trial court may close a courtroom: (1) the closure must "advance an overriding interest that is likely to be prejudiced," (2) the closure must "be no broader than necessary to protect that interest," (3) the court must "consider reasonable alternatives to closing the proceeding," and (4) the court must "make

findings adequate to support the closure." *Id.*, at 48, 104 S. Ct. 2210, 81 L. Ed. 2d 31.

20. Any doubt about the reach of *Waller* to *voir dire* was dispelled in *Presley v. Georgia*, 558 U.S. 209, 213-15, 130 S. Ct. 721, 175 L. Ed. 2d 675 (2010). There, this Court reiterated *Waller*'s holding "that the Sixth Amendment right to a public trial extends beyond the actual proof at trial." 558 U. S., at 212, 130 S. Ct. 721, 175 L. Ed. 2d 675. As such, *Waller*'s four-factor test "provide[s] standards for courts to apply before excluding the public from any stage of a criminal trial." 558 U. S., at 213, 130 S. Ct. 721, 175 L. Ed. 2d 675 (emphasis added). *Waller* and *Presley* straightforwardly govern the courtroom closures at issue in this case.

21. *Presley* makes explicitly clear that the public-trial right extends fully to *voir dire*, as this Court has routinely noted, and the 10th CCA also recently noted in *US v. Veneno*, 94 F.4th 1196 (10th CCA 2024): 'The Sixth Amendment provides that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial." U.S. Const. amend. VI. This right extends to jury selection. *Presley v. Georgia*, 558 U.S. 209, 213-15, 130 S. Ct. 721, 175 L. Ed. 2d 675 (2010) (per curiam).'

22. This Court has recognized that a fundamental right is subject to proscription under the Due Process Clause. "[T]he State's power to regulate procedural burdens was subject to proscription under the Due Process Clause if it 'offends some principle of justice so rooted in the traditions and conscience of our

people as to be ranked as fundamental,'" *Cooper v. Oklahoma*, 517 U.S. 348, 367,134 L. Ed. 2d 498, 116 S. Ct. 1373 (1996).

23. Respondents have never offered an argument that no order existed restricting or excluding public access to Barrett's trial. This is because no such claim could be made. The COVID Plan clearly does exactly those things: it restricts and excludes public access. The COVID Plan, therefore, is a *de facto* order limiting public access, and one for which the state trial court failed to conduct a *Waller* analysis prior to implementing.

24. How, then, to reconcile Respondents' position that the trial was completely public with Barrett's claim that the trial was not public? The answer exists in understanding the difference between theoretically public and actually public. Respondents may well be able to establish that, in theory, access to the trial wasn't denied the public - after all, no standard-form order of the court closing the courtroom exists. However, Barrett can definitively demonstrate that the public was denied access to the trial. In fact, in its order denying Barrett a Certificate of Appealability, the 10th CCA acknowledged the closed nature of Barrett's trial - both completely closed for *voir dire* and partially closed for the remainder of his trial. This state of superposition (to borrow terminology from physics) is actually the issue in dispute; this Court must determine whether a defendant is entitled under the Sixth Amendment to the US Constitution to a theoretically public trial or an actually public trial.

25. Three possibilities exist for the status of a trial regarding public access: fully available to the public, partially available to the public, or fully unavailable to the public. No other possibilities exist.

26. As reflected by sworn affidavits by members of the public who were denied access to the trial proceedings by courthouse security and staff (at the direction of the COVID Plan) [Appendix items F, G, H, I; previously submitted in state and federal court filings as ECF1, Affidavits of *K. Mestas, R. Mestas, R. Barrett, M. Barrett*], the absence of the trial proceedings in the public domain, and a COVID Plan that didn't require considerations of public access, it can be safely concluded that the trial wasn't fully publicly accessible.

27. It would be a strong argument for Respondents to claim that the trial was fully public and that simply no one wished to attend. However, evidence is clear that many members of the public wished to attend and were denied access.

28. After a complete exposition of these facts, all that remains for an observer is the conclusion that Barrett's pandemic-era trial was not fully public. Having established that the trial wasn't actually fully open to the public, the consideration now turns to whether it was partially or completely closed to the public.

29. In contrast to the *Waller* test, which requires a formal court order in order to properly conduct a *Waller* analysis, Barrett proposes a new test that all shall agree is sufficient to measure the public or non-public nature of a trial, regardless of the circumstances of the trial:

I. If the *voir dire* proceedings were fully unavailable to the public, and
II. If the content of witnesses' testimony (especially key witnesses) and evidence (especially key evidence) doesn't exist in the public domain, and
III. Such content cannot be related by any public witnesses to the trial proceedings, and
IV. Such content cannot be obtained by way of media accounts, and
V. Such content would necessitate the public spending money for costly trial transcripts, and
VI. Such trial transcripts would be devoid of transcripts of audio/video exhibits presented at trial for which transcripts do not exist, and
VII. Members of the public sought access to the trial but were denied

the trial shall be considered non-public.

30. By meeting all of the above requirements, Barrett's trial would most accurately be described as fully closed, as the circumstances are far more in alignment than of being just partially closed. Mr. Barrett notes that while the District Court found no issue with the manner in which Mr. Barrett's October 2020 trial was conducted, the District Court itself was closed off to physical public access during the *exact same time period* (and, in fact, extending from March 2020 all the way into 2023), instead implementing technological solutions that permitted the public to observe the proceedings and in order to afford federal defendants' right to a public trial. (Appendix Items K through X: General Orders Restricting Public Courtroom Access during the Coronavirus Pandemic). District Court Judge Scott W. Skavdahl is well aware that his United States District Court for the District of Wyoming courthouse is merely a stone's throw from the location of Mr. Barrett's October 2020 pandemic-era trial at Wyoming's Seventh Judicial District courthouse (as both are located in downtown Casper, Wyoming). In other words, had Mr.

Barrett been a federal defendant, the public and his family could have observed the proceedings of his trial; since his was a state trial, they were denied access and no technological solution was implemented to afford public access. Perhaps this is the lens through which to best understand how Mr. Barrett was denied a public trial. Given this juxtaposition, it is very curious that the District Court did not find that 'reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong'. *Miller-El v. Cockrell*, 537 U.S. 322, 338 (2003).

31. Respondents have invoked the 10th CCA case law of *Veneno* as the controlling case law lens under which Barrett's public trial claim be examined. However, Barrett's trial was substantially different from *Veneno* in that Barrett's trial court didn't issue an order denying the public physical access to the courtroom; instead, a COVID Plan was crafted that, when implemented, affected a closure of the courtroom whereby the public's physical access to the courtroom was curtailed. Therefore, Barrett's claim of a nonpublic trial defies traditional analysis under standards such as *Waller*, and is distinctly different than the case law established by the 10th CCA for *Veneno*.

32. One example of the disparity between Barrett's trial and that in *Veneno* is that no members of the public sought and were denied access in *Veneno*, while several affidavits from members of the public who sought and were denied access to Barrett's pandemic-era trial were submitted with each state- and federal-level claim of a nonpublic trial. Another example is in the *Veneno* trial court recognizing the defendant's right to a public trial and offering an audio feed for *voir*

dire and an audio/video feed for the remainder of the trial proceedings; Barrett's trial court made no such accommodations despite the obvious diminishment of public access and over the objection of Barrett's trial counsel to "... the entire format procedure of this trial..." [ECF 1, ex P, Trial Transcript, page 89]

33. The District Court's rationale for citing the 10th CCA opinion in *Veneno* is therefore misplaced as the two trials were conducted completely differently from a structural perspective; whereas the COVID Plan did nothing but decrease public access and the trial court did nothing to increase public access in the instant case, the *Veneno* trial court considered the public trial right of the accused and implemented technological solutions - first audio-only streaming access and then, prompted by a defense objection, audio-video streaming access - to provide the greatest public access. Where the District Court in the instant case cited to *Veneno* as the prevailing law on COVID Pandemic-era non-public trial claims, the District Court fundamentally misunderstood the vast differences between public access in *Veneno* and public access to Barrett's case.

34. Barrett contrasts his trial with that of *Veneno*:

A. In *Veneno*, public access was completely denied for only two hours of jury selection, whereas in the instant case, the public was denied access to Barrett's entire *voir dire* proceedings.

B. No limitation was made on the number of members of the public able to access the trial proceedings after jury selection in

Veneno, whereas at most only two members of the public could access the proceedings after jury selection for Barrett's case.

C. The *Veneno* court conducted a *Waller* analysis before closing the courtroom, as the 10th CCA noted in its order denying a COA (page 6): "The district court met Waller's standards." Barrett's trial court conducted no such analysis before implementing the COVID Plan.

35. The United States Court of Appeals for the Ninth Circuit ("9th CCA"), a sibling to the 10th CCA, has in *United States of America v. Allen*, 34 F.4th 789, 796 (9th CA 2022) determined that a closure less impactful than that in Barrett's pandemic-era trial infringed upon Mr. Allen's public trial right and granted Mr. Allen relief. In *Allen*, the trial court ordered the courtroom completely closed and arranged for an AT&T dial-in line by which the public may listen to the proceedings (as a means to enhance public access while still limiting the spread of COVID); Barrett's trial court made no such consideration and failed to even consider reasonable alternatives to a (partial or complete) courtroom closure that would enhance public access, such as a dial-in line similar to that which was utilized by the trial court in *Allen* or live-streamed video as was readily available. As the two sibling circuit courts of appeal have arrived at different standards for applying the public trial right to pandemic-era trials, this Court must intervene to resolve the discrepancy; 'reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong'.

36. Wyoming has implicated the Constitutional right to a public trial within its state constitution. The right to a public trial is further implicated in Wyoming state district courts by way of the 14th Amendment. *In re Oliver, 333 U.S. 257, 270 (1948).* This Court should consider this issue because the state court's implementation of the COVID Plan is a procedural mechanism that poses a direct threat to the constitutional right to a public trial. "[W]e consider here whether a State's procedures for guaranteeing a fundamental constitutional right are sufficiently protective of that right." *Cooper.*

37. The Due Process Clause of the Fourteenth Amendment provides that no state shall "deprive any person of life, liberty, or property, without due process of law." U.S. Const. Amend. XIV, 1. This Court has consistently held that, "The Fourteenth Amendment's Due Process Clause protects persons against deprivations of life, liberty, or property; and those who seek to invoke its procedural protection must establish that one of these interests is at stake. A liberty interest may arise from the Constitution itself, by reason of guarantees implicit in the word 'liberty,' or it may arise from an expectation or interest created by state laws or policies." *Wilkinson v. Austin*, 545 U.S. 209, 221, 162 L. Ed. 2d 174, 125 S. Ct. 2384(2005).

38. This is a case involving an "unfair and arbitrary denial" of a U.S. Constitutional right - the right to a public trial. Wyoming denied Barrett the procedural mechanism that enforces and ensures the constitutional right to a public trial, to which he was entitled under state and federal law, simply by implementing a COVID Plan that precluded public access to the courtroom space and did not

afford enhanced access by any other means, such as streaming, webcasting, or a closed-circuit feed to an adjoining courthouse space.

39. The state trial court was aware that videoconferencing, for instance, was a "readily available" alternative to closed and partially closed court proceedings. *Gomes v. U.S. Dep't of Homeland Sec., Acting Sec'y*, No. 20-CV-453-LM, 2020 WL 2606162, at *2 (D.N.H. May 22, 2020) (authorizing videoconferencing for pandemic-era court proceedings). Further, state prosecutors utilized just such technology during Barrett's trial with the assistance of the state trial court when presenting the testimony of its witness Brianna Berquam. [ECF 1, ex P, Trial Transcript, page 639]. In failing to consider options to enhance public access, Wyoming deprived Barrett of his liberty without due process of law.

40. In Barrett's case, trial counsel objected to "... the entire format procedure of the trial... we believe that this whole process is a violation of due process for Mr. Barrett." While perhaps inelegant, this was an objection to every objectionable aspect of the implementation of the COVID Plan, including the non-public nature of the proceedings. Importantly, this objection was lodged during *voir dire*, which the 10th CCA acknowledges was a complete closure of the courtroom, implicated by the COVID Plan [Order Denying Certificate of Appealability[2]].

41. The state court's construction of the COVID Plan ignored Barrett's constitutional guarantee to a public trial and circumvented its basic purpose:

[2] Barrett has been unable to utilize the Federal Courts' ePacer electronic filing system at the Lincoln County Detention Center in Kemmerer, Wyoming since late July 2024. As a result, Mr. Barrett does not have the ability to cite to the ECF number in citations for filings since August 1, 2024 and some filings are cited to only by the filing title.

"A public trial is 'for the benefit of the accused' so 'the public may see he is fairly dealt with and not unjustly condemned' which has the effect of 'keeping his triers keenly alive to a sense of their responsibility and to the importance of their functions." (*Waller*).

42. The District Court's ruling, 'Barrett had not shown "he did not receive a public trial" ' [ECF 6, Order Granting Motion to Dismiss, p. 7] and therefore, 'Barrett could not establish cause to overcome the procedural default of claim I through a showing of appellate IAC', is in contradiction to the findings of the 10th CCA that *voir dire* was a complete closure and that 'only two members of the press or the public were permitted to attend the trial after *voir dire* appears to implicate the trial court's "as space permits" limitation on how many members of the public would be admitted. This amounted to a partial courtroom closure.' [Order Denying Certificate of Appealability, p. 8].

43. Barrett presented the claim of the Constitutional public trial violation in his *pro se Motion for Post-Conviction Relief* and his *pro se Petition For Writ Of Review Or Certiorari*. However, the state courts ruled that the public trial claim was procedurally barred from review because the issues were not raised on direct appeal.

44. In light of the facts that federal courts have found that multiple stages of Barrett's criminal trial were conducted in constitutionally defective ways – "their mouths and noses were simply covered by a thin piece of fabric" [ECF 6, Order Granting Motion to Dismiss, p. 37] by D. Wyo. and *voir dire* was a complete closure and that' only two members of the press or the public were permitted to attend the trial after *voir dire* appears to implicate the trial court's "as space permits"

limitation on how many members of the public would be admitted. This amounted to a partial courtroom closure.' by the 10th CCA - the reasoning in the state court rulings would be subject to review and reversal.

45. In Barrett's Writ of Habeas Corpus, he presented the claim of the Constitutional public trial violation of the state created procedural mechanism (COVID Plan) that foreclosed upon a defendant's constitutional right to a public trial. Barrett argued that Wyoming violated his Fourteenth Amendment (US Constitution) due process rights when it created a liberty interest and then unfairly and arbitrarily denied that liberty interest by implementing a defective COVID Plan that created the liberty interest. D. Wyo. dismissed this claim and stated that the Court was bound by the state court's ruling of procedural bar; thus, the claim was not cognizable in federal habeas review [ECF 6].

46. Barrett presented the claim of the Constitutional public trial violation for the state court's implementation of a defective COVID Plan that created a procedural mechanism that foreclosed upon a defendant's constitutional right to a public trial to the 10th CCA in his application for a CoA. The 10th CCA denied a CoA for this by claiming that "This argument does not convince us that reasonable jurists would find the district court's denial of relief on this claim to be debatable." [Order Denying Certificate of Appealability, p. 7]

47. Barrett was unable to have any state or federal court hear the claim of the public trial violation because the claim - over Barrett's strenuous objections to his appellate counsel - was not raised at the time of Barrett's direct appeal ("Those

are federal issues; not state issues. I'm only working on state issues,"[ECF 1, *Petition for a Writ of Habeas Corpus*, p 256; ECF 1 - Appended Item H: *Pro Se Motion for Post-Conviction Relief*]; the claim was then procedurally barred from review by the state courts after the direct appeal; the federal courts denied Barrett review of a state-created liberty interest following the state-courts' determinations that the public trial issue was procedurally defaulted. All of this gives rise to Barrett's claim of appellate counsel ineffectiveness, particularly given the recent opinion of the 10th CCA that Barrett's trial was fully closed for all of *voir* dire and partially closed for all of his trial. The U.S. District and Circuit Courts have sanctioned the state courts' procedures that unfairly and arbitrarily deprive defendants of their liberty, in direct conflict with the Due Process Clause of the Fourteenth Amendment (US Constitution). The state and federal courts have so far departed from the acceptable and usual course of judicial proceedings and sanctioned such a departure that it calls for an exercise of the U.S. Supreme Court's supervisory power.

Was Barrett Denied Effective Assistance of Counsel on Direct Appeal, in Violation of the US Constitution (Amendment VI and Amendment XIV)?

48. Barrett's court-appointed appellate counsel failed to raise any issues of United States Constitutional dimension on direct appeal - including the issue that Barrett's right to a public trial was violated in his direct appeal - all over Barrett's

protestations. Barrett argued in both his state PCR and federal habeas petitions that his right to effective assistance of appellate counsel was foreclosed by Appellate Counsel David Westling disregarding all issues of Federal Constitutional dimension - including Barrett's right to a public trial. When Westling communicated to Barrett in person, upon Barrett raising these US Constitutional issues, that "Those are federal issues; not state issues. I'm only working on state issues," [ECF 1, *Petition for a Writ of Habeas Corpus*, p 256; ECF 1 - Appended Item H: *Pro Se Motion for Post-Conviction Relief*], Westling denied Mr. Barrett effective assistance of counsel on first appeal. This right to effective assistance of appellate counsel on first appeal has been affirmed by this Court in, amongst other cases, *Evitts v. Lucey, 469 U.S. 392, 83 L.Ed.2d 821, 105 S.Ct.830 (1985)* when it wrote: "Effective assistance of counsel on first appeal as of right held guaranteed by due process clause of Fourteenth Amendment."If court-appointed counsel fails to raise meritorious issues of US Constitutional dimension on direct appeal, is that defendant entitled to relief?

49. Barrett presented the claim of the Constitutional appellate counsel ineffectiveness violation in his *pro se Motion for Post-Conviction Relief* and his *pro se Petition for Writ of Review or Certiorari*. However, the state courts ruled that, among myriad other constitutional issues raised, the issue of public access was not sufficiently meritorious to sustain an appellate counsel ineffectiveness claim.

50. The Federal Courts erred by finding that Barrett's public trial claim, along with several other claims of US Constitutional dimension, was not sufficiently meritorious to overcome the procedural default created by Barrett's appellate

counsel for failing to raise the issue(s) on direct appeal. Barrett timely petitioned the D. Wyo. for a writ of habeas corpus. The District Court erroneously ruled that "Mr. Barrett cannot show he did not receive a public trial" [ECF 6, Order Granting Motion to Dismiss, p.26]. Evidence of this mistake by the district court came in the form of the 10th CCA's findings that *voir dire* was a complete closure and that only two members of the press or the public were permitted to attend the trial after *voir dire* appears to implicate the trial court's "as space permits" limitation on how many members of the public would be admitted. This amounted to a partial courtroom closure.' [Order Denying Certificate of Appealability].

51. The federal courts also erred because, as the U.S. Supreme Court has held, "[a] liberty interest may arise from the Constitution itself, by reason of guarantees implicit in the word 'liberty,' or they may arise from an expectation or interest created by state laws or policies [i.e., 'state-created' liberty interests], see *Wilkinson v. Austin*, 545 U.S. 209, 221, 162 L. Ed. 2d 174, 125 S. Ct. 2384(2005). "[A] person's liberty is equally protected, even when the liberty itself is a statutory creation of the State. The touchstone of due process is protection of the individual against arbitrary action of government, *Dent v. West Virginia*, 129 US 114, 123, 32 L Ed 623, 9 S Ct 231 (1899)." *Wolff v McDonnell*, 418 US 539, 558, 41 L. Ed. 2d 935, 94 S. Ct. 2963 (1974). The right to a public trial arises from the Constitution itself and from an expectation created by state law. Because the sole remedy for a public trial violation is vacating the resulting convictions and resetting the case to a pre-trial posture, Barrett has a substantial and legitimate expectation that he has been

deprived of his right to a public trial by the state court departing from the accepted and usual course of judicial proceedings in ruling on the procedural mechanism to ensure and enforce his right to a public trial. Where a State has provided a procedural mechanism to enforce a defendant's constitutional right to a public trial, it is not correct to say that the defendant's interest in the exercise of that procedural mechanism is merely a matter of state procedural law (*See Hicks v. Oklahoma*, 447 US 343, 346, 65 L. Ed. 2d 175, 100 S. Ct. 2227 (1980)).

52. The federal courts should have entertained Barrett's public trial claim because the right to a public trial applies to Barrett through the Due Process Clause of the Fourteenth Amendment, which is a question federal courts exist to entertain. The U.S. District Court for the District of Wyoming and the U.S. Court of Appeals for the Tenth Circuit have so far departed from the accepted and usual course of judicial proceedings that it calls for an exercise of this Courts supervisory power.

53. Further, Barrett submitted a letter he received from his court-appointed appellate counsel's supervisor [ECF 5 "Petitioner's Response To Motion To Dismiss Petition For Writ Of Habeas Corpus By A Person In State Custody", Appended Item ZZ, "Morgan Letter dated January 23, 2024"] indicating that it was the supervisor's opinion that the appellate attorney did not render constitutionally effective assistance of counsel ("Mr. Westling [Barrett's court-appointed appellate counsel for direct appeal] was a very experienced and competent attorney, but towards the end of his career, his performance and work product diminished."-Kirk Morgan, Chief Appellant Counsel, Wyoming Public Defender.) (Appendix I, "Morgan

Letter dated January 23, 2024"). Having demonstrated in argument I that his trial was completely closed for *voir dire* and partially (and substantially) closed for the remainder of his trial, Mr. Barrett has demonstrated that the District Court erred in not finding that the issue was meritorious, implicating appellate IAC.

Was Barrett's Coronavirus Pandemic-era Trial Constitutionally Infirm as Consequence of the COVID Plan?

54. The Honorable Judge William S. Stickman IV of the District Court for the Western District of Pennsylvania authored the definitive opinion of the intersection of public health and defendants' rights during a global pandemic in September of 2020:

> "The COVID-19 pandemic has impacted every aspect of American life. Since the novel coronavirus emerged in late 2019, governments throughout the world have grappled with how they can intervene in a manner that is effective to protect their citizens from getting sick and, specifically, how they can protect their healthcare systems from being overwhelmed by an onslaught of cases, hindering their ability to treat patients suffering from COVID-19 or any other emergency condition. In this Country, founded on a tradition of liberty enshrined in our Constitution, governments, governors, and courts have grappled with how to balance the legitimate authority of public officials in a health emergency with the Constitutional rights of citizens. In this case, the Court is required to examine some of the measures taken by Defendants Pennsylvania Governor Thomas W. Wolf and Pennsylvania Secretary of Health Rachel Levine to combat the spread of the novel coronavirus. The measures at issue are: (1) the restrictions on gatherings; and, (2) the orders closing "non-life-sustaining" businesses and directing Pennsylvanians to stay-at-home.
>
> "After reviewing the record in this case, including numerous exhibits and witness testimony, the Court believes that Defendants undertook their actions in a well-intentioned effort to protect Pennsylvanians from the virus. However, good intentions toward a laudable end are not alone enough to

uphold governmental action against a constitutional challenge. Indeed, the greatest threats to our system of constitutional liberties may arise when the ends *are* laudable, and the intent *is* good-especially in a time of emergency. In an emergency, even a vigilant public may let down its guard over its constitutional liberties only to find that liberties, once relinquished, are hard to recoup and that restrictions-while expedient in the face of an emergency situation may persist long after immediate danger has passed. Thus, in reviewing emergency measures, the job of courts is made more difficult by the delicate balancing that they must undertake. The Court is guided in this balancing by principles of established constitutional jurisprudence. *County of Butler, et al, v. Wolf*, 486 F. Supp. 3d 883; 2020

55. The Honorable Stickman next took an opportunity to note that

"Before closing this opinion we deem it appropriate, in order to prevent misapprehension [of] our views, to observe-perhaps to repeat a thought already sufficiently expressed, namely-that the police power of a state, whether exercised directly by the legislature, or by a local body acting under its authority, may be exerted in such circumstances, or by regulations so arbitrary and oppressive in particular cases, as to justify the interference of the courts to prevent wrong and oppression .*Id.* at 38. There is no question, therefore, that even under the plain language of *Jacobson*, a public health measure may violate the Constitution." Stickman next quoted U.S. Supreme Court Justice Alito (in arguing that the Court should have granted the requested injunction), "[w]e have a duty to defend the Constitution, and even a public health emergency does not absolve us of that responsibility."

56. Mr. Barrett argues that Justice Alito's opinion - "[w]e have a duty to defend the Constitution, and even a public health emergency does not absolve us of that responsibility." - representing that of this Court, is applicable in the instant case in that many of Mr. Barrett's constitutional rights as a defendant were compromised or outright dismissed by the manner in which his October 2020 trial was conducted. Lost on the D. Wyo. was that Justice Alito continued in his opinion, "But a public health emergency does not give Governors and other public officials

carte blanche to disregard the Constitution for as long as the medical problem persists."

57. In addition to the non-public nature of his trial, Mr. Barrett's October 2020 trial featured the state trial court ignoring the COVID Plan's restriction on jury panel size for voir dire, instructing more than fifteen (15) prospective jurors to appear at each of the three panels utilized for Mr. Barrett's trial. While not every prospective juror attended as instructed, in excess of fifteen (15) did attend each panel as instructed, thus denying the public the space - and subsequent ability - to attend voir dire. The attendance of the prospective jurors is as follows:

Panel #	Called	Present	Not Called	Total
1	18	17	1	19
2	19	16	0	19
3	17	17	2	19

58. As United States District Court Judge Valerie Caproni noted, "Jury service is a civic duty and, while it can be inconvenient, it need not increase the risk of being exposed to a deadly disease." *Joffe v. King & Spalding LLP*, 575 F. Supp. 3d 427; 2021. The District Court chose to read this argument as Mr. Barrett somehow suggesting that the nature of the instant case was similar to the instance case; it is clear from Mr. Barrett's habeas petition, however, that he was highlighting the impact of the pandemic on jurors' ability to safely and fairly discharge their civic duty, regardless of whether the case for which they are empanelled is a criminal or civil one.

59. Barrett argues that the Health Department direction to remove juror number three (#3) for COVID exposure [ECF 1, Trial Transcript pages 630-637, lines 1-25 & page 628, lines 1-14] on day four heightened the intensity in an already-charged healthcare climate. That jurors labored under these circumstances should leave no doubt as to the threat to justice posed by conducting jury trials in this manner.

60. The Wyoming Supreme Court recognized this concern when it suspended jury trials on March 13, 2020, and when it again suspended jury trials on Friday, November 13, 2020 (jury trials only resumed several months later). The article "State Suspends Jury Trials" that was published in the November 16, 2020 edition of the *Wyoming Tribune Eagle* contains the following information about the rationale and actions of Chief Justice Michael K. Davis:

> "The rise in Coronavirus infections prompted Wyoming's Chief Justice on Friday to suspend jury trials until further notice. The COVID-19 surge has caused some courts to fully or partially shutdown according to the statement released Friday by the Wyoming Supreme Court. Those realities prompted Chief Justice Michael K. Davis to order a halt to jury trials for the time being.
>
> "At the time of the restart [in August 2020], cases were rising at a much slower rate. But infections began to spike in mid-September and have surged at unprecedented rates in October and November."

61. It is of note that the jury was tasked with reconciling conflicting and contradictory testimony from over two dozen witnesses in the process of adjudicating the allegations of three different accuser-witnesses spanning a decade of time and involving several hours' worth of audio/video exhibits in a climate in

which a fellow juror had been excused from the trial on account of possible pandemic exposure and two additional unidentified trial participants were excused from the trial on account of possible pandemic exposure; that this process resulted in mistakes, such as overlooking essential elements for two separate counts, and no effort by the jury to review exhibits, including exhibits unpublished due to "technical issues" - such as the July 15, 2015 interview with A. Good in which she admits that everything was consensual - should not be surprising. Barrett argues that it wasn't a matter of "overwhelming evidence" or a "mountain of evidence" as State's attorney K. Taheri alleged in his closing arguments; it was a fearful and rushed jury discharging its duty for a trial conducted in a black hole, deprived of public access or oversight, and over the objection of trial defense counsel, in the midst of a global pandemic.

62. Mr. Barrett argues that the removal of two members of trial counsel on day five of the trial further compromised the ability of trial counsel to effectively assist. The trial court disregarded one of the two remaining defense team members' hesitancy with proceeding (in consideration of his immune-system-compromised spouse's health [ECF 1, Appended Item AA, "Oldham Letter Dated 2-13-23"]):

> "While I do not recall the specific words that took place after it was learned that Ryan and Argeri may have been exposed to COVID, I do recall the generalities of the conversation. I would be willing to say that what you depiction [sic] ["Mr. Oldham candidly informed the Court that he hadn't left his house since March other than to work on this case and that his spouse had a compromised immune system and that was a concern."] does seem (while a paraphrasing of the discussion) accurate."

63. Further, the trial court advised the jury thus:

Court: "All right. Well, ladies and gentlemen, I guess every few days we have to have this talk. I guess the *new normal* is where we find ourselves. All right. Another issue has arisen with someone associated with the trial that had contact with someone else who had contact with someone who tested positive for the virus. There is, again, a time interval between when that person could possibly have been exposed and now. In my assessment, this is very similar to what we already discussed earlier in the case. I don't have any information that the person that may have been exposed is symptomatic or that anyone associated with the trial is symptomatic for the virus. I'm going to follow the same advice I got from the Health Department a few days ago. At this point, with the information that's available, based on that advice, there isn't much risk or concern about us having been exposed to the virus. Again, this is why we have the protocols and why it's important to follow them, which is what we're trying to do. If that situation changes, I will let you know. I think we're in the same spot we were before. I think we can still proceed with the case. But if the circumstances change, I will reconsider that. And, certainly, if I have information that would cause me concern about our collective safety, I am not going to take risks in that regard. But that's the best I have on the information that is available.

So in a few minutes, I hope we'll have another witness. We can return to court and proceed through the end of the day. And - but I did feel that we should be transparent with you, which is what I'm trying to do through the case, and let you know what I know.

So I'll give you a few minutes to situate yourselves, just like we did before. And, hopefully, we'll have another witness within a few minutes, and we'll be able to resume. Thank you for your patience."

[ECF 1, Trial Transcript, page 995, lines 9-25 & page 996, lines 1-25 & page 997, lines 1-7.]

64. Mr. Barrett argues that much of how this event was resolved is failure of the state trial court to follow the COVID Plan, dangerous to the jurors and the then-defendant, and highly prejudicial against the then-defendant. By assuming that the situation was the same as the previous incident in which a juror was excused for possible COVID exposure several days earlier, the court assumed the role of the Health Department and foreclosed consideration of the most current

state of the emergency in Natrona County (where cases were spiking at the time and the hospital's infrastructure had been exceeded) [ECF 1, Exhibit V, CS-T COVID Case Count and Healthcare Infrastructure Articles; *and* Exhibit HH, Data and Chart of *Casper Star-Tribune* COVID Case Count Numbers]. A sample of the headlines from the front page of the statewide newspaper, the *Casper Star-Tribune* (also the newspaper for Casper, Natrona County, Wyoming - the physical location of the Seventh Judicial District Court in which Mr. Barrett's October 2020 trial took place), leading up to and during Mr. Barrett's trial include:

> "Six COVID-19 Cases Prompt UW Law School to Shift Online" - 9-20-2020 (*Casper Star-Tribune* - "*CS-T*")
>
> "Wyoming Virus Numbers Surge" - 9-24-2020 (*CS-T*)
>
> "Separated by the Virus, Comforted by Faith" - 9-27-2020 (*CS-T*)
>
> "Eleven [UW Football] Players Test Positive" - 10-3-2020 (*CS-T*)
>
> "Trump Tests Positive for Virus, Flown to Hospital" - 10-3-2020 (*CS-T*)
>
> "Next 48 Hours 'Critical' " - 10-4-2020 (*CS-T*)
>
> "Will the Curve State to Flatten Anytime Soon? Wyoming's Coronavirus Numbers Are Rising at Unprecedented Rates" - 10-4-2020 (*CS-T*)
>
> "More Seeking Hospital Care" - 10-6-2020 (*CS-T*)
>
> "President Returns Home After Discharge" - 10-6-2020 (*CS-T*)
>
> "Outbreaks Hit Long-Term Care" - 10-7-2020 (*CS-T*)
>
> "State Death Count Grows" - 10-9-2020 (*CS-T*)
>
> "COVID-19 An Unsustainable Trend - With Hospitalizations Surging, Officials Worry About Staffing, Capacity" - 10-11-2020 (*CS-T*)
>
> "COVID-19 'Tip of the Iceberg' WMC [Wyoming Medical Center, located in Casper, Natrona County, Wyoming] Opens Surge Unit to Handle Spike" - 10-15-2020 (*CS-T*)

65. Mr. Barrett further argues that where in the instant case the Honorable Judge Forgey told the jury after two members of Barrett's trial counsel were excused for COVID exposure that, "All right. Well, ladies and gentlemen, I guess every few days we have to have this talk. I guess the ***new normal*** is where we find ourselves," the Honorable Stickman, in *Wolf*, noted that

> "The Court closes this Opinion as it began, by recognizing that Defendants' actions at issue here were undertaken with the good intention of addressing a public health emergency. But even in an emergency, the authority of government is not unfettered. The liberties protected by the Constitution are not fair-weather freedoms-in place when times are good but able to be cast aside in times of trouble. There is no question that this Country has faced, and will face, emergencies of every sort. But the solution to a national crisis can never be permitted to supersede the commitment to individual liberty that stands as the foundation of the American experiment. ***The Constitution cannot accept the concept of a "new normal" where the basic liberties of the people can be subordinated to open-ended emergency mitigation measures.*** Rather, the Constitution sets certain lines that may not be crossed, even in an emergency. Actions taken by Defendants crossed those lines. It is the duty of the Court to declare those actions unconstitutional. Thus, consistent with the reasons set forth above, the Court will enter judgment in favor of Plaintiffs." [emphasis added].

66. Perhaps most troubling of all is that no concern for his health was afforded the then-defendant. That Mr. Barrett wasn't questioned by the state trial court about his comfort in proceeding - either on health or legal grounds - was the denial of substantial rights. In a Hobson's Choice of sorts, Mr. Barrett was forced to continue participating in a trial while being fearful of his own personal health and the risk to his family's health should he have contracted COVID from his exposed trial defense team members. That the state trial court didn't deem the then-

presumed-innocent-defendant's right to a safe trial is troubling; that trial counsel similarly didn't request a moment to consult with the then-defendant about his health or legal concerns in light of the departure of the two members of trial defense counsel is extremely concerning.

67. At the sentencing hearing, neither the state trial court nor the state attorneys offered any comment about the multiple statements made by Mr. Barrett's family (and Mr. Barrett himself) regarding the non-public nature of Mr. Barrett's trial or the fact that members of the public were turned away at the courthouse and/or courtroom doors.

> A. Kathy Mestas, at the sentencing hearing, remarked, "COVID restrictions also made seating unavailable for my family and friends in this courtroom." [ECF 1, Sentencing Hearing Transcript, page 26, lines 3-5.]
>
> B. Samuel Barrett, at the sentencing hearing, remarked, "I really appreciate the fact that we're able to have the public here. That's nice. It's a nice departure from the trial." [ECF 1, Sentencing Hearing Transcript, page 49, lines 21-23.]
>
> C. Samuel Barrett, at the sentencing hearing, remarked, "**The night my verdict was read, my family was not permitted to be in the courtroom. They had to stand outside in the cold. They were joined by justice out in the cold that night.**" [ECF 1, Sentencing Hearing Transcript, page 58, lines 6-9.]

No effort was made by the state attorneys or the state trial court to dispute the fact that the public was denied access. The record, in this regard, stands.

68. The US Constitution cannot simply be suspended for expediency, and the following passage from the Fifth Circuit is in congruence with Mr. Barrett's position:

> "But when it comes to the protection of constitutional rights, our job is not to defer it's to review. Pandemic or not, it is the duty and function of the judiciary to ensure accountability of government under the Constitution and laws of the United States in all cases under Article III, both controversial and otherwise. *See, e.g., Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 68, 208 L. Ed. 2d 206 (2020) ("[E]ven in a pandemic, the Constitution cannot be put away and forgotten."). Our job in these cases is to verify, not trust. *See, e.g., Tandon v. Newsom*, 141 S. Ct. 1294, 1297, 209 L. Ed. 2d 355 (2021) ("This is the fifth time the Court has summarily rejected the Ninth Circuit's analysis of California's COVID restrictions on religious exercise.")."
> *Tucker v. Gaddis*, 40 F.4th 289; 2022 No. 20-40267.

69. Courts across the country consistently arrived at the same conclusions regarding conducting jury trials during a global pandemic, including the District Court for Rhode Island in June of 2021: "Before the Court is a single-defendant criminal case that is nonetheless complex and anticipated to be lengthy. Conducting a criminal jury trial during the ongoing COVID-19 pandemic has presented several logistical and legal issues. While the course of the pandemic is and has been on an improved trajectory, it is certainly not behind us. The Court must be mindful of the need to protect the public health while also preserving constitutional rights." *United States of America v. Huling*, 542 F. Supp. 3d 144; 2021. The Rhode Island District Court further noted that "Jury empanelment will take place in Courtroom 1 which is the largest space available and allows for the greatest distancing. Other spaces will be used for additional venire members and for public viewing on a closed-circuit

system within the courthouse. Thereafter, the trial will be conducted in the Jury Assembly Room and public viewing will again be provided from a closed-circuit system within the courthouse." Finally, that District Court ordered that "... the Court will reserve a separate viewing room in the courthouse for the public and the press to watch a closed-circuit, live video and audio feed of the trial." And "Anyone who is unable to attend in person will be allowed to view the proceedings by Zoom." No such orders flowed from the state court from Wyoming's 7th Judicial District in Mr. Barrett's case and resulted in public access limitations (Appendix Items Y and Z).

70. In a case coming out of the United States District Court for the District Of Utah in 2021, the Court wrote of the effect of the pandemic on justice:

> "Government officials who regulate health practices speak of the economy, new infections, hospital beds, and deaths, but at least in any reported remarks do not mention the denial of rights to defendants awaiting trial. So long as this pandemic continues at this pace, there is no feasible way for a criminal defendant to exercise the constitutional right to jury trial. The courts cannot compel citizens to appear for jury service - and attorneys, witnesses, defendants, and others - when assembly for a prolonged period, in an enclosed space, is unsafe. And the government and public are not acting in ways to create safety. As a result, only one criminal jury trial has been held in the State of Utah - in State Court - since the pandemic hit.
>
> "Many defendants are in pretrial detention. All defendants have the cloud of unresolved criminal charges. Victims are denied their right to a day in court. The justice system is clogged as new cases arise while old cases are still on the dockets. The pandemic's effect on criminal justice is unparalleled, and denies citizens the fundamental constitutional right to trial."
>
> Further,

"Criminal and civil justice impairments are certainly not the most immediate or important effects of the pandemic, but the lack of official and public attention to the problem is disturbing. The courts, where citizen's rights and responsibilities are adjudicated, deserve more attention from government and citizens. Courts are powerless to set policy, and must operate within it, while the policy makers and influencers do not prioritize the impact on the judicial system."

and,

"The Court has made diligent preparations for resumption of in person proceedings including jury trials. Plexiglass barriers for in person hearings have been installed in all courtrooms, and two courtrooms in Salt Lake City and one in St. George are fully outfitted with barriers for jury trials. Signage has been installed, and restrictions on courthouse entry are in place. A mock jury orientation, selection, and trial was conducted so that the court and personnel are ready · when the pandemic danger subsides enough to permit jury trial. A plan for resumption of jury trials, with many exhibits, has been posted by the court."
United States of America v. Wright, United States District Court for the District Of Utah (2021).

71. Mr. Barrett argues that the forethought and considerations engaged by the Utah District Court, "diligent preparations... plexiglass barriers... signage... mock jury orientation, selection and trial..." were never considered by the 7th Judicial District Court and were never part of the COVID Plan. Barrett argues that these are just more instances of the manner in which his October 2020 jury trial was ill-fated. Also, contained within the footnotes of the *Wright* case, was the following requirement for attempting to conduct a jury trial: "Sustained downward trending average of cumulative daily COVID-19 case counts in the District over a 14-day period." This standard was never established in the 7th Judicial District COVID Plan, and had it been established, the spiking case counts in Natrona

County, Wyoming, would have rendered the date to start Barrett's trial ineligible.[ECF 1, Exhibit V, CS-T COVID Case Count and Healthcare Infrastructure Articles.] The final note to the *Wright* case is that, "Due to the deteriorating health statistics, the most recent General Order from Chief Judge Robert J. Shelby generally suspends in person proceedings and trials until after January 31, 2021. This is the latest in a long series of General Orders which have included findings and conclusions for an "ends of justice" exclusion of time under the Speedy Trial Act for all criminal cases in the District. We can anticipate further extensions of closure of the court to criminal trials." Barrett argues that in Utah, a state that neighbors Wyoming not just geographically but also in terms of politics and culture, the recognition of the adverse impacts to a defendant of conducting a jury trial during a pandemic and the establishment of a responsible approach to conducting jury trials cannot be overstated. Barrett does not believe the conditions under which his trial was conducted were malicious or intentionally designed to thwart his ability to defend against the accusations against him in court; rather, it was a failed experiment that the Wyoming Supreme Court abandoned when it re-suspended jury trials in November 2020, just days after the conclusion of Barrett's trial.

72. Mr. Barrett therefore poses the question: Did the Coronavirus Pandemic Jury Trial Operational Plan developed and implemented by Wyoming's Seventh Judicial District deny Mr. Barrett a constitutionally firm trial?

REASONS FOR GRANTING THE PETITION

73. Federal District and Circuit Courts have allowed the state courts' procedures that unfairly and arbitrarily deprive defendants of a public trial to remain, in direct conflict with the United States Constitution's Sixth Amendment and the Due Process Clause of the United States Constitution's Fourteenth Amendment. The right to a public trial arises from the Constitution itself and from an expectation created by state and federal law. Barrett was deprived of his right to a public trial by the creation and implementation of a COVID Plan that denied public access to his trial and then denied Barrett review of that violation on the procedural ground that his appellate counsel was not ineffective for failing to raise the public trial issue on direct appeal - just such an issue as the 10th CCA found foundation for in its order denying Mr. Barrett a certificate of appealability. The state and federal courts have so far departed from the acceptable and usual course of judicial proceedings and sanctioned such a departure that it calls for an exercise of the U.S. Supreme Courts supervisory power.

74. Under the plain reading of the Sixth Amendment to the United States Constitution and the voluminous case law centered around public trial violations (*Waller, Presley, Allen*), Barrett was deprived a public trial resulting in his deprivation of liberty. Under the Fourteenth Amendment, Barrett has a Constitutional right to not be deprived of his liberty without due process of law - both procedural due process and substantive due process; Barrett has been denied

substantive due process though he has at every level sought relief for the public trial violation.

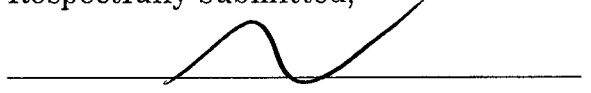
75. The asserted error does not consist of either erroneous factual findings or the misapplication of a properly stated rule of law. The asserted error is one which in equal parts: has been unaddressed by this Court - on account of the novel nature of the Coronavirus Pandemic and the resultant COVID Plan; and the 10thCCA determination is at odds with the 9th CCA - creating a conflicting rule of law between United States Courts of Appeals.

76. This Court has consistently determined that the only remedy for a public trial violation is a new and public trial. Because "the remedy should be appropriate to the violation, a defendant whose right to a public trial was violated is entitled to a new, public proceeding in place of the one that was erroneously closed." *Waller.* at 50. If the convictions obtained against a defendant were done so in violation of the public trial right, then that defendant would be entitled to a vacating of those convictions and a remanding of the case to the state district court for a new trial.

CONCLUSION

77. The petition for a writ of certiorari should be granted.

Respectfully submitted,



Samuel Joseph Barrett

Date: December 1, 2025.