

No. 25-_____

IN THE
Supreme Court of the United States

JAQWON DAVONTE LUPE, aka
JAQWON LUPE,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit**

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Petitioner pleaded guilty to committing an assault on a private residence located on an Indian reservation in Indian country, in violation of 18 U.S.C. §§ 113(b)(3) & 1153. Although his plea agreement contained a waiver of his right to appeal his conviction, petitioner appealed to the Ninth Circuit, contending that his guilty plea and, thus, also his plea agreement (including the appellate waiver provision) were not knowing, intelligent, and voluntary because petitioner erroneously was led to believe that he was guilty of violating §§ 113(b)(3) & 1153 merely because his assault occurred anywhere in Indian country as opposed to occurring at a specific location in Indian country within the “special maritime and territorial jurisdiction of the United States.” Petitioner alternatively contended that the appellate waiver was unenforceable because petitioner was actually innocent of the assault, as it unquestionably did not occur within the “special maritime and territorial jurisdiction of the United States,” an essential element of §§ 113(b)(3) & 1153.

In view of the foregoing, the questions presented are:

I. Whether, in view of *Oklahoma v. Castro-Huerta*, 597 U.S. 629 (2022), “Indian country” in 18 U.S.C. §§ 1151 & 1153 is no longer coterminous with the “special maritime and territorial jurisdiction of the United States.”

II. Whether the Ninth Circuit erred by ruling that petitioner’s guilty plea was knowing, voluntary, and intelligent when the record clearly reveals that petitioner erroneously was led to believe that he was guilty of violating 18 U.S.C. §§ 113(b)(3) & 1153 merely because his assault occurred in Indian country generally as opposed to occurring at a specific location in Indian country within the “special maritime and territorial jurisdiction of the United States.”

III. Whether the Ninth Circuit erred by concluding that petitioner’s actual innocence of the charge under 18 U.S.C. §§ 113(b)(3) & 1153 is not an exception to the general rule requiring enforcement of a waiver-of-appeal provision in a plea agreement.

PARTIES TO THE PROCEEDING

The only parties to the proceeding are those two that appear in the caption of the case in this petition: (1) **Jaqwon Davonte Lupe, aka Jaqwon Lupe**; and (2) **the United States of America**. See Sup. Ct. R. 14.1(b)(i).

RELATED PROCEEDINGS

This case arises from the following proceedings:

- *United States v. Jaqwon Davonte Lupe*, No. 3:24-cr-08114-DJH-1, United States District Court for the District of Arizona. Judgment was entered on April 4, 2025.
- *United States v. Jaqwon Davonte Lupe*, No. 25-2461, United States Court of Appeals for the Ninth Circuit. Judgment was entered on November 19, 2025.

There are no other proceedings in state or federal trial or appellate courts, or in this Court, directly related to this case within the meaning of this Court's Rule 14.1(b)(iii).

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ORDERS BELOW

The order of the Ninth Circuit dismissing petitioner’s appeal on the motion of the government based on the waiver provision in petitioner’s plea agreement (**Appendix A**) is unreported. The order of the Ninth Circuit denying petitioner’s motion for reconsideration *en banc* (**Appendix B**) is unreported.

JURISDICTION

The Ninth Circuit issued its order dismissing petitioner’s direct appeal on November 19, 2025. The Ninth Circuit issued its order denying petitioner’s timely motion for reconsideration *en banc* on April 29, 2026. This petition was timely filed within 90 days of the Ninth Circuit’s order denying rehearing *en banc*. This Court thus has jurisdiction under 28 U.S.C. § 1254.

STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 7(3)

The term “special maritime and territorial jurisdiction of the United States,” as used in this title, includes. . . [a]ny lands reserved or acquired for the use of the United States, and under the exclusive or concurrent jurisdiction thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the State in which the same shall be, for the erection of a fort, magazine, arsenal, dockyard, or other needful building.

18 U.S.C. § 113(a)(3)

Whoever, within the special maritime and territorial jurisdiction of the United States, is guilty of an assault shall be punished as follows: . . . Assault with a dangerous weapon, with intent to do bodily harm, by a fine under this title or imprisonment for not more than ten years, or both.

18 U.S.C. § 1151

Except as otherwise provided in sections 1154 and 1156 of this title, the term ‘Indian country,’ as used in this chapter, means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

18 U.S.C. § 1153

(a) Any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely, murder, manslaughter, kidnapping, maiming, a felony under chapter 109A, incest, a felony assault under section 113, an assault against an individual who has not attained the age of 16 years, felony child abuse or neglect, arson, burglary, robbery, and a felony under section 661 of this title within the Indian country, shall be subject to the same law and penalties as all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States.

(b) Any offense referred to in subsection (a) of this section that is not defined and punished by Federal law in force within the exclusive jurisdiction of the United States shall be defined and punished in accordance with the laws of the State in which such offense was committed as are in force at the time of such offense.”

STATEMENT OF THE CASE

I.

Course of the Proceedings

The indictment charged petitioner, an Indian, with two counts of assault in Indian country. Count One charged petitioner and two codefendants, Jericho Wright and Tyrell Lupe, with aiding and abetting each other in assaulting a victim (“J.L.”) with a dangerous weapon, with intent to do bodily harm, in violation of 18 U.S.C. §§

2, 113(a)(3), and 1153. Count Two charged the same three defendants with assaulting the same victim in a manner that resulted in serious bodily injury, in violation of 18 U.S.C. §§ 2, 113(a)(6), and 1153. ER-70.¹

Pursuant to a written plea agreement (ER-34), which waived petitioner's right to appeal his conviction and sentence except for a claim of ineffective assistance of counsel (ER-38), petitioner pleaded guilty to the charge in Count One. ER-66.² The district court sentenced petitioner to 49 months in prison, to be followed by a three-year term of supervised release, and \$100 special assessment. ER-23.

On petitioner's direct appeal to the Ninth Circuit, the government moved to dismiss the appeal based on the appellate waiver provision in the plea agreement. Petitioner opposed the motion on the ground that (1) his guilty plea was not knowing, intelligent, and voluntary (and, thus, the waiver provision in his plea agreement is not enforceable); and (2) petitioner is actually innocent (which, petitioner contended, is an exception to the general rule that such waiver provisions are enforceable). A three-judge motions panel of the Ninth Circuit granted the motion. App. A. The Ninth Circuit later denied petitioner's motion for reconsideration *en banc*. App. B.

II. Statement of the Facts

At petitioner's guilty-plea hearing, the following exchange occurred:

THE COURT: Now, I'd like you to listen very closely because I am going to ask the government's counsel to place on the record the elements of

¹ "ER" refers to the Excerpts of Record filed in the Ninth Circuit.

² The government dismissed the charge in Count Two. ER-29.

the crime you're pleading guilty to and the facts that they believe they have to support that charge. I ask you to pay close attention because I am going to ask you some questions once that's complete. Mr. Church, place on the record the elements of the crime and the factual basis for it.

MR. CHURCH [the prosecutor]: Yes, Your Honor. The elements of assault with a dangerous weapon are: On or about August 28th, 2020, in the District of Arizona, Mr. Lupe assaulted J.L. by intentionally striking and wounding him. He acted with a specific intent to do bodily harm. He used a dangerous weapon. ***The offense took place on the Fort Apache Indian Reservation***, and Mr. Lupe was an Indian at the time of the crime. Specifically, at the time of the crime he had some quantum of Indian blood and was a member of or was affiliated with a federally-recognized tribe. With respect to the factual basis, the government could prove if this proceeded to trial that on or about August 28th, 2020, Mr. Lupe, while aided by Jericho Wright and Tyrell Lupe, ***within the confines of the Fort Apache Indian Reservation, Indian country***, within the District of Arizona, did intentionally use a knife to strike and wound J.L. The government could prove that Mr. Lupe acted with the intent to inflict bodily harm on J.L., and the government could also prove that Mr. Lupe was an Indian at the time of the crime. Specifically, at the time of the crime he had some quantum of Indian blood and was a member of and was affiliated with a federally-recognized tribe; namely, the White Mountain Apache Tribe.

THE COURT: Now, Mr. Lupe, did you hear everything that the government's counsel stated?

THE DEFENDANT: Yes.

THE COURT: Do you agree with the facts stated by government's counsel?

THE DEFENDANT: Yes.

ER-63-64 (emphasis added).

The presentence report (PSR), which the district court adopted, provided more details about the offense:

. . . White Mountain Apache Tribal Police were ***dispatched to a residence in Cibecue, within the confines of the Fort Apache Indian Reservation***, in the District of Arizona, reference a male who had been stabbed and was bleeding. At approximately 9:17 p.m. officers arrived

and were greeted by a male and female who inquired where emergency medical services (EMS) were at. When both were asked what happened, they indicated there was a bang on their door and the victim was found on the ground stabbed. Both also advised Tyrell Lupe stabbed the victim, J.L, their cousin, which is why he came to their house. The female further advised they busted her window as well. The officer asked the victim who stabbed him, and he responded, Terrell Lupe and Jaqwon Lupe, later determined to be Jaqwon Davonte Lupe, an Indian. The officer observed six or seven stab wounds on the victim, and EMS counted six to 10 stab wounds.

. . . An officer subsequently arrived at Summit Healthcare in Show Low, Arizona, where the victim had been transported by ambulance. He was in pain, moaning and requesting pain medication. The victim again identified Terrell Lupe and Jaqwon Davonte Lupe as his assailants, and implicated Jericho Wright. ***The assault occurred at his mother's residence on her porch***, and he was uncertain why he was assaulted. The victim noted Wright held him down, while Lupe and Jaqwon Davonte Lupe had the knife. The victim was subsequently sedated and rendered unconscious.

PSR ¶¶ 6 & 10 (emphasis added).

REASONS FOR GRANTING THE PETITION

Petitioner's case raises important issues worthy of this Court's review, including the threshold question of whether, in view of *Oklahoma v. Castro-Huerta*, 597 U.S. 629 (2022), "Indian country" in 18 U.S.C. §§ 1151 & 1153 is no longer coterminous with "special maritime and territorial jurisdiction of the United States" (as had been stated in dicta in *Williams v. United States*, 327 U.S. 711, 713-14 (1946)). This issue affects potentially thousands of persons in Indian country throughout the United States, as federal prosecutors regularly prosecute Indians for "major crimes," as set forth in 18 U.S.C. § 1153, that require the prosecution to prove that the alleged

offense occurred in the “special maritime and territorial jurisdiction of the United States” – as a jurisdictional element of the offenses.

If this Court holds that “Indian country” in 18 U.S.C. §§ 1151 & 1153 is not coterminous with “special maritime and territorial jurisdiction of the United States,” then petitioner is actually innocent of the offense to which he pleaded guilty, 18 U.S.C. § 113(a)(3), because an essential element of that offense is that the assault occurred within the “special maritime and territorial jurisdiction of the United States.” Furthermore, petitioner’s guilty plea is constitutionally invalid because, when he pleaded guilty, he erroneously was led to believe that he was guilty if he committed the assault *anywhere* on his Indian reservation (which is Indian country). Finally, petitioner’s case also presents this Court with an opportunity to resolve the circuit split over whether a defendant’s actual innocence of the offense of conviction is an exception to the general rule that an appellate waiver provision in a plea agreement is enforceable.

I. This Court Should Grant Certiorari to Confirm that, in View of *Oklahoma v. Castro-Huerta*, 597 U.S. 629 (2022), “Indian Country” in 18 U.S.C. §§ 1151 & 1153 No Longer Is Coterminous with “Special Maritime and Territorial Jurisdiction of the United States” (as Had Been Stated in Dicta in *Williams v. United States*, 327 U.S. 711, 713-14 (1946)).

To be guilty of assault under 18 U.S.C. § 113(a)(3), when that assault occurred in Indian country, a defendant must have committed the assault in a specific location within Indian country that itself qualifies as the “special maritime and territorial jurisdiction of the United States” – such as an office of the Social Security Administration or the Bureau of Indian Affairs. The fact that an assault occurred *anywhere*

within Indian country does not satisfy this jurisdictional element of § 113(a)(3). Instead, as this Court’s decision in *Oklahoma v. Castro-Huerta*, 597 U.S. 629 (2022), demonstrates, Indian country is not generally coterminous with the “special maritime and territorial jurisdiction of the United States” (i.e., it is not a “federal enclave”). If it were, this Court could not have ruled in the manner that it did – holding that the states have concurrent jurisdiction over some offenses committed in Indian country (i.e., over crimes committed by non-Indians against Indians in Indian country). See *Castro-Huerta*, 597 U.S. at 639-56.

If Indian country were coterminous with the “special maritime and territorial jurisdiction of the United States,” then the federal government’s jurisdiction over Indian country would be *exclusive* for *all* offenses and states thereby would lack concurrent jurisdiction to prosecute *any* offense occurring on Indian country (including offenses committed by non-Indians against Indians in Indian country.) See *id.* at 641 (noting “States ordinarily cannot prosecute crimes committed in federal enclaves”). Yet this Court in *Castro-Huerta* clearly held that states *do* possess concurrent jurisdiction over at least some types of offenses. That *necessarily* means that Indian country is not generally coterminous with the “special maritime and territorial jurisdiction of the United States” (i.e., Indian Country is not *ipso facto* a “federal enclave”). Instead, “special maritime and territorial jurisdiction” exists in Indian country just as it exists anywhere else in the United States – in special federal “enclaves,” such as Post Office property, military bases, and federal agency offices. But an Indian reservation – generally – is not such a federal enclave.

Significantly, *Castro-Huerta* explicitly rejected a contrary statement in *Williams v. United States*, 327 U.S. 711 (1946) – “It is not disputed that this Indian reservation is ‘reserved or acquired for the use of the United States, and under the exclusive or concurrent jurisdiction thereof’ [quoting from the statutory predecessor of 18 U.S.C. § 7(3)³],” *id.* at 713-14 – as unpersuasive dicta and refused to follow it. *See Castro-Huerta*, 597 U.S. 644 (“The Court’s statements in *Williams* were pure dicta.”). Before *Castro-Huerta*, the Ninth Circuit, citing that dicta in *Williams*, repeatedly interpreted the statutory phrase “special maritime and territorial jurisdiction of the United States” as being generally coterminous with “Indian country.” *See, e.g., United States v. Smith*, 925 F.3d 410, 414-16 (9th Cir. 2019). The Ninth Circuit refused to retreat from such precedent in petitioner’s case – as petitioner explicitly had asked the Ninth Circuit to do in view of *Castro-Huerta*.

Section 1153 does not purport to make Indian country coterminous with the “special maritime and territorial jurisdiction of the United States.” To the contrary, by expressly incorporating federal offenses such as section 113(a) – which itself has an express element that an assault must have “occurred within the special maritime and territorial jurisdiction of the United States” – § 1153 necessarily means that *only* assaults occurring within a specific location in Indian Country that *itself* is within the “special maritime and territorial jurisdiction of the United States” may be prose-

³ Section 7(3) defines the “special maritime and territorial jurisdiction of the United States.”

cuted under § 1153. *See* John Bourdeau *et al.*, 19 FED. PROC., L. ED. § 46:1011 (“Prosecution of Crimes Involving Indians under Major Crimes Act, Generally”) (June 2025 update) (“Under the Major Crimes Act, any Indian who commits against the person or property of another Indian or other person . . . a *felony assault within the maritime and territorial jurisdiction of the United States* . . . will be subject to the same law and penalties as all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States.”) (emphasis added).

That Indian country is not generally coterminous with the “special maritime and territorial jurisdiction of the United States” is also evidenced in several other federal statutes that explicitly treat the two as distinct. *See, e.g.*, 18 U.S.C. § 2252A(a)(4)(A) (prohibiting the sale of child pornography “in the special maritime and territorial jurisdiction of the United States . . . **or** in the Indian country”) (emphasis added); 15 U.S.C. § 1175(a) (“It shall be unlawful to manufacture, recondition, repair, sell, transport, possess, or use any gambling device . . . within Indian country as defined in section 1151 of Title 18 **or** within the special maritime and territorial jurisdiction of the United States as defined in section 7 of Title 18”) (emphasis added).

This Court should grant certiorari in order to address this important issue. Resolving this issue in petitioner’s favor necessarily means that: (1) his guilty plea to the § 113(a)(3) offense was not knowing, intelligent, and voluntary; (2) petitioner is actually innocent of the § 113(a)(3) offense. Those two related issues are discussed *infra*.

II. Petitioner’s Guilty Plea Is Constitutionally Invalid Because the Record Clearly Reveals that He Was Led to Believe that He Was Guilty of Violating 18 U.S.C. §§ 113(b)(3) & 1153 Even Though He Did Not Commit the Assault Within the “Special Maritime and Territorial Jurisdiction of the United States,” an Essential Element of the Charged Offense.

The Ninth Circuit rejected petitioner’s argument that his guilty plea was not knowing, intelligent, and voluntary because he was misadvised about an essential element of the offense at his guilty-plea hearing. App. A, at 1. The Ninth Circuit cited and quoted from *United States v. Portillo-Cano*, 192 F.3d 1246, 1250 (9th Cir. 1999) (“[C]ompliance with Rule 11 is the means by which the court is assured that the defendant’s guilty plea is voluntarily and knowingly made.”). The court’s reliance on that portion of *Portillo-Cano* was mistaken. *Portillo-Cano* did *not* hold that a district court’s compliance with Rule 11 *invariably* renders a defendant’s guilty plea constitutionally valid (as intelligent and voluntary). Indeed, another portion of *Portillo-Cano* stated that, “[i]f the [guilty plea] agreement is voluntary, **and** taken in compliance with Rule 11, then the waiver of appeal must be honored,” *id.* at 1250 (quoting *United States v. Wenger*, 58 F.3d 280, 282 (7th Cir. 1995) (emphasis added)) – indicating that compliance with Rule 11 does not necessarily mean that a guilty plea is intelligent and voluntary.

Rule 11 is a prophylactic rule designed to produce valid guilty pleas, but a constitutionally invalid plea can result notwithstanding a district court’s strict compliance with Rule 11. *See Halliday v. United States*, 394 U.S. 831, 832 (1969) (noting “Rule 11’s procedural safeguards . . . are designed to facilitate the determination of the voluntariness of his plea”); *see also United States v. Austin*, 948

F.2d 783, 787 (1st Cir. 1991) (“Strict compliance with Rule 11 is quite often dispositive in determining whether a defendant has knowingly and voluntarily entered a guilty plea.”).

Petitioner has not challenged the district’s court’s compliance with Rule 11’s procedures. Instead, he has contended that his guilty plea was not knowing, intelligent, and voluntary because he was misled at his guilty-plea proceeding to believe that he was guilty when the undisputed facts of this case show that he is actually innocent of the charged offense to which he pleaded guilty. As petitioner’s opening brief in the Ninth Circuit contended:

A conviction based on a guilty plea is constitutionally valid only if the plea was intelligent and voluntary. *Brady v. United States*, 397 U.S. 742, 748 (1970). Appellant’s guilty plea is invalid because, when he entered it, he was unaware that an essential element of the charged offense was that he committed the assault in the “special maritime and territorial jurisdiction of the United States” – and not merely in Indian country. Appellant thus did not receive “real notice of the true nature of the charges” and his guilty plea was not intelligent and voluntary. *Henderson v. Morgan*, 426 U.S. 637, 645 (1976); *see also Bousley v. United States*, 523 U.S. 614, 618-19 (1998) (“[P]etitioner contends that the record reveals that neither he, nor his counsel, nor the court correctly understood the essential elements of the crime with which he was charged. Were this contention proved, petitioner’s plea would be . . . constitutionally invalid.”). Such notice was required in order for appellant to have had a “voluntary and intelligent choice among the alternative courses of action open to [him]” in deciding whether to plead guilty or not guilty. *North Carolina v. Alford*, 400 U.S. 25, 31 (1970).

Appellant’s Opening Brief (9th Cir. No. 25-2461), at 26-27.

Like the record of the guilty-plea proceeding in *Bousley*, the “record [in petitioner’s case] reveals that neither he, nor his counsel, nor the [district] court correctly understood the essential elements of the crime with which he was charged.” *Bousley*,

523 U.S. at 618-19. This Court stated that, in such circumstances, a defendant's guilty "plea would be . . . constitutionally invalid." *Id.*; see also *Bradshaw v. Stumpf*, 545 U.S. 175, 182-83 (2005) (stating that a "guilty plea would indeed be invalid if [the defendant] had not been aware of . . . the elements of the . . . charge to which he pleaded guilty"). The record clearly shows that the district judge, petitioner, defense counsel, and the prosecutor all believed that the relevant element to prove jurisdiction under 18 U.S.C. §§ 113(a)(3) & 1153 was that the charged assault merely occurred *anywhere* on an Indian reservation (which, of course, is Indian country). No one told petitioner that, after *Castro-Huerta*, the actual jurisdictional element is that the assault had to have occurred within a specific part of the reservation that *itself* was within the "special maritime and territorial jurisdiction of the United States." The private residence where petitioner committed the assault is not within the "special maritime and territorial jurisdiction of the United States."

When a criminal defendant pleads guilty with a mistaken belief about an essential element of the charged offense, his guilty plea is not intelligent and voluntary (and thus violates due process). *Henderson*, 426 U.S. at 645. Furthermore, a waiver-of-appeal provision in a plea agreement does not foreclose a challenge on appeal to such an unconstitutional guilty plea. See *United States v. Portillo-Cano*, 192 F.3d 1246, 1250 (9th Cir.1999); *United States v. Castillo*, 516 Fed. App'x 667, 668 (9th Cir. 2013); see also *United States v. Mueller*, 11 Fed. App'x 707, 707 (9th Cir. 2001) ("An express waiver of appeal is valid if the guilty plea is knowingly and voluntarily made."); accord *United States v. Andis*, 333 F.3d 886, 889-90 (8th Cir. 2003) (en banc).

Therefore, the Ninth Circuit clearly erred by holding that petitioner’s guilty plea was constitutionally valid when the record clearly demonstrates that it was not.

III. A Criminal Defendant’s Actual Innocence of the Offense to Which He Pleaded Guilty Constitutes an Exception to the General Rule Requiring Enforcement of a Waiver-of-Appeal Provision in a Plea Agreement.

The Ninth Circuit rejected petitioner’s argument that his actual innocence of the charged assault prevents enforcement of the waiver-of-appeal provision in the plea agreement. App. A. Conversely, at least three other circuits have recognized in published decisions that a waiver-of-appeal provision in a plea agreement does not apply to a defendant’s substantial claim of his actual innocence of the offense of conviction. *See, e.g., United States v. McKinney*, 60 F.4th 188, 192 (4th Cir. 2023); *United States v. Seizys*, 864 F.3d 930, 932 (8th Cir. 2017);⁴ *United States v. Gil-Quezada*, 445 F.3d 33, 37 (1st Cir. 2006).⁵

“[T]he conviction of an innocent person [is] the archetypal case of a manifest miscarriage of justice. . . .” *Sawyer v. Whitley*, 505 U.S. 333, 360 (1992) (Stevens, J., concurring, joined by Blackmun & O’Connor, JJ., concurring in judgment). Therefore,

⁴ *See also United States v. Andis*, 333 F.3d 886, 891 (8th Cir. 2003) (en banc) (“[W]e . . . refuse to enforce an otherwise valid waiver if to do so would result in a miscarriage of justice.”).

⁵ Another circuit court, the Third Circuit, has recognized such an exception in an unpublished decision. *See United States v. Lawton*, 640 Fed. App’x 146, 151 (3d Cir. 2016); *see also United States v. Ray*, 358 Fed. App’x 329, 330 (3d Cir. 2009).

the conviction of an actually innocent defendant warrants correction on appeal notwithstanding a waiver-of-appeal provision in a plea agreement.⁶ This Court has recognized an actual-innocence exception to several other, analogous procedural bars – for the express purpose of avoiding a “miscarriage of justice.” *See, e.g., McQuiggin v. Perkins*, 569 U.S. 383, 399 (2013); *Bousley v. United States*, 523 U.S. 614, 624 (1998); *Schlup v. Delo*, 513 U.S. 298, 327 (1995); *Kuhlmann v. Wilson*, 477 U.S. 436, 545 (1986); *see also United States v. Olano*, 507 U.S. 725, 736 (1993) (“The court of appeals should no doubt correct a plain forfeited error that causes the conviction or sentencing of an actually innocent defendant, *see, e.g., Wiborg v. United States*, 163 U.S. 632 (1896).”).

As discussed *supra*, petitioner is actually innocent of the charge under 18 U.S.C. § 113(a)(3) & 1153 because he did not commit the assault within the “special maritime and territorial jurisdiction of the United States.” Petitioner committed the assault at a private residence in Indian country and thus the assault did not occur within the “special maritime and territorial jurisdiction of the United States” – an essential element of 18 U.S.C. §§ 113(a)(3) & 1153. *United States v. Read*, 918 F.3d

⁶ Although not directly addressing actual innocence, other circuit courts have adopted a “miscarriage-of-justice” exception to the enforcement of appellate waivers in plea agreements. *See United States v. Hahn*, 359 F.3d 1315, 1327 (10th Cir. 2004) (en banc); *United States v. Litos*, 847 F.3d 906, 910 (7th Cir. 2017); *but see Rudolph v. United States*, 92 F.4th 1038, 1048-49 (11th Cir. 2024) (declining to recognize a miscarriage-of-justice exception to appellate waivers); *United States v. Ford*, 688 Fed. App’x 309 (5th Cir. 2017) (noting the Fifth Circuit has “not adopted [a miscarriage-of-justice] exception to the enforcement of appeal waivers”). This Court repeatedly has referred to the conviction of an innocent defendant as a “miscarriage of justice.” *See, e.g., Bousley*, 523 U.S. at 624.

712, 718 (9th Cir. 2019). Section 1153(a) specifically incorporates all the elements of § 113(a)(3), including its jurisdictional element. *See* 18 U.S.C. § 1153(a) (providing that “[a]ny Indian who commits . . . a felony assault under section 113 . . . within the Indian country” may be prosecuted in federal court).⁷

A defendant is actually innocent of a federal offense with a federal “jurisdictional” element when the undisputed evidence shows that the jurisdictional element cannot be satisfied. *See, e.g., United States v. Davies*, 394 F.3d 182, 191-92 (3d Cir. 2005) (stating that, if a federal defendant could establish that the government had failed to prove the “interstate commerce” element of the federal arson statute, the defendant would be actually innocent of that offense); *Waucaush v. United States*, 380 F.3d 251, 254 (6th Cir. 2004) (“Actual innocence does not mean that Waucaush must be innocent of all bad deeds. The question before us is whether Waucaush is actually innocent of violating RICO. Put another way, the inquiry is whether the record contains evidence that the CFP, the enterprise in question, affected commerce within the meaning of RICO.”).⁸ Therefore, the Ninth Circuit erred by enforcing the waiver provision in the plea agreement.

⁷ When originally written, § 1153 did not have any enumerated offenses that referenced specific federal statutes and, instead, only referenced generic offense types. *See United States v. Cleveland*, 503 F.2d 1067, 1069 n.2 (9th Cir. 1974) (quoting the 1948 version of § 1153). In 2013, Congress amended § 1153 by removing “assault with intent to commit murder, assault with a dangerous weapon, and assault resulting in serious bodily injury” and replacing those generic offense types with “a felony assault under section 113 [of Title 18, U.S. Code].” Pub. L. 113-4, title IX, § 906(b), 127 Stat. 125 (Mar. 7, 2013).

⁸ Any argument that § 1153(a)’s express reference to § 113 merely incorporates the *actus reus* and *mens rea* elements of § 113 but not its “jurisdictional” element
(continued)

This Court should grant certiorari to resolve the division among the circuits on this important issue. This Court should hold that a defendant’s actual innocence renders an appellate waiver provision unenforceable. At the very least, this Court should hold this petition for disposition pending this Court’s decision in *Hunter v. United States*, No. 24-1063, which may be relevant to the question of whether the waiver provision in petitioner’s plea agreement is enforceable. Oral argument in *Hunter* occurred on March 3, 2026.

clearly would lack merit. Unlike some other federal statutes that reference federal offenses “described” in other statutes but that do not incorporate those statutes *in toto* (including their jurisdictional elements), § 1153 does not say an offense “described in” § 113. *Cf. Torres v. Lynch*, 578 U.S. 452, 458-59 (2016) (“The Government . . . contends that the statutory phrase has a looser meaning – that ‘describing entails . . . not precise replication,’ but ‘convey[ance of] an idea or impression’ or of a thing’s ‘central features.’ Brief for Respondent 17. On that view, ‘described in,’ *as opposed to the more precise ‘defined in’ sometimes found in statutes*, denotes that the state offense need only incorporate the federal law’s core, substantive elements.”) (emphasis added). Notably, § 1153(b) uses the word “defined in” rather than “described in.” Section 1153(a) thus means the offense “defined” in § 113 – which necessarily includes its jurisdictional element along with its other, non-jurisdictional elements.

CONCLUSION

The Court should (1) grant the petition for a writ of certiorari and address the important threshold question of whether “Indian country” in 18 U.S.C. §§ 1151 & 1513 is coterminous with the “special maritime and territorial jurisdiction of the United States” after *Castro-Huerta*; and (2) hold that petitioner’s guilty plea is constitutionally invalid. At the very least, this Court should address the threshold “Indian country” issue and then vacate the Ninth Circuit’s order dismissing petitioner’s direct appeal and remand with instructions to address the merits of petitioner’s contentions that he is actually innocent and that his guilty plea is constitutionally invalid.

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Respectfully submitted,



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