No.

IN THE

Supreme Court of the United States

ADAM CAREY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Writ of Certiorari
To the United States Court of Appeals
For the Sixth Circuit

Petition for Writ of Certiorari

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"Everyone agrees this case suffered serious error. The main question is what to do about it."
United States v. Maund, 167 F.4th 941, 947 (6th Cir. 2026).

QUESTION PRESENTED

The structural-error doctrine categorically exempts a narrow class of constitutional errors from harmless-error review. *Arizona v. Fulminante*, 499 U.S. 279 (1991). When such an error is preserved and raised on direct appeal, automatic reversal follows without inquiry into prejudice. *Neder v. United States*, 527 U.S. 1 (1999). In *Weaver v. Massachusetts*, 582 U.S. 286 (2017), this Court identified three rationales that have explained why certain errors are structural, including that some errors' effects are "too hard to measure." *Id.* at 295. These rationales were offered as description, not as a test for determining whether a novel error qualifies as structural. But lower courts, reading *Weaver*'s explanatory framing as prescriptive, have used the measurability rationale to deny structural-error status to errors whose effects they found quantifiable. The result is reasoning that treats the ability to perform harmless-error analysis as proof that the analysis is reliable, when the structural-error doctrine's measurability inquiry asks not whether such analysis can be performed but whether the nature of the error renders it a valid method of assessment. This inversion, which *Weaver*'s explanatory framing invited, has divided the lower courts.

The question presented is:

Whether a court of appeals may deny structural-error status to a trial error on the ground that harmless-error analysis of it is possible and its effects quantifiable, when the structural-error doctrine asks not whether such analysis can be performed but whether the nature of the error renders it reliable, and whether *Weaver v. Massachusetts* should be clarified to foreclose that reasoning, which produced in this case harmless-error review of an error that exposed a deliberating jury to excluded evidence on a central disputed issue without curative instruction.

PARTIES TO THE PROCEEDING

Petitioner (defendant-appellant below) is Adam Carey. Respondent (appellee below) is the government of the United States.

RELATED PROCEEDINGS

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

United States v. Maund, No.3:21-cr-00288

United States Court of Appeals (6th Cir.):

United States v. Maund, et al., No. 24-5932

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Adam Carey seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The published opinion of the court of appeals (Pet App. 1-14) reversing the district court's grant of a new trial is available at *United States v. Maund*, 167 F.4th 941 (6th Cir. 2026). The unpublished opinion of the district court (Pet. App. 15-34) granting a Fed. R. Crim. P. 33 motion based on structural error is available at *United States v. Maund*, 2024 U.S. Dist. LEXIS 167287 (M.D. Tenn. 2024).

JURISDICTION

The United States Court of Appeals for the Sixth Circuit entered judgment on February 23, 2026. Pet. App. 1-14. No petition for rehearing was filed. This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution states, in relevant part, "No person shall … be deprived of life, liberty, or property without due process of law." U.S. Const. amend. V.

The Sixth Amendment to the United States Constitution states, in relevant part, "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury…and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him… and to have the Assistance of Counsel for his defence." U.S. Const. amend. VI.

INTRODUCTION

In *Arizona v. Fulminante*, 499 U.S. 279 (1991), this Court adopted a structural-error doctrine that operates as a categorical rule. An error either affects the framework within which the trial proceeds (defying harmless-error analysis) or it does not. The classification is binary and qualitative. In other words, it turns on the nature of the error, not the magnitude of its effects or the willingness of a reviewing court to assess them. *Neder v. United States*, 527 U.S. 1, 14 (1999) ("constitutional error is either structural or it is not"). Under that framework, when a preserved structural error is raised on direct appeal (as here), automatic reversal follows without inquiry into prejudice. *Id.* at 7.

But *Weaver v. Massachusetts*, 582 U.S. 286 (2017), which sought to provide additional guidance to the lower courts, has caused confusion. *Weaver* did not disturb the *Fulminante* categorical rule. Rather, as a means of explaining how the lower courts have applied this binary rule, *Weaver* identified three rationales that descriptively explain why certain errors are structural, including that some errors' effects are "too hard to measure," *id.* at 295. The rationales were offered to bring coherence to a doctrine that had developed case by case. They were not offered as a checklist for determining whether a novel error qualifies as structural. However, lower courts have treated the *Weaver* opinion, which was at its core an ineffective assistance of counsel case, as having established a litmus test of sorts for identifying structural error. This has resulted in lower courts treating the second *Weaver* rationale, too-hard-to measure, as a quantitative test that is equivalent to the harmless-error test, rather than the qualitative description intended by *Weaver*.

This case involves a preserved error, reviewed on direct appeal, where the Sixth Circuit, confused by *Weaver*, treated the too-hard-to-measure qualitative question as equivalent to the quantitative harmless error test, presenting this Court with the ideal vehicle to clarify what it meant in *Weaver*.

STATEMENT OF THE CASE

The predicate facts underlying the legal issue presented for this Court's review are not in dispute. On November 17, 2023, a jury convicted Petitioner of conspiracy to commit kidnapping, kidnapping resulting in death, and conspiracy to commit murder-for-hire.[1] Pet. App. 17.

On January 29, 2024, at a status conference, the district court informed counsel that as a result of an administrative error, the jury was provided nine (9) exhibits not admitted into evidence at trial during their deliberations. Petitioner timely filed a Rule 33 motion for new trial based on the error, which Petitioner alleged is structural.[2] The government opposed the motion.

The district court ruled that it was necessary to hold a *Remmer* hearing.[3] The court held a *Remmer* hearing on May 15, 2024. At the hearing, jurors were individually asked questions designed to determine whether they had reviewed the inadmissible exhibits improperly given to them during deliberations and whether they had considered those exhibits in reaching their verdict. Attorneys for each of the three (3) co-defendants were then allowed to ask follow-up questions. The testimony of the jurors confirmed that they had reviewed and considered the unadmitted exhibits.

In a detailed ruling, the district court found that the jurors' consideration of the unadmitted evidence constituted structural error. The district court also, having listened to and observed the testimony of the jurors, and with the knowledge of how the issues implicated by the jurors'

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[1] Co-defendant Brockway was also convicted on these same charges. Co-defendant Maund was found guilty of conspiracy to commit murder-for-hire.
[2] Co-defendants Brockway and Maund filed similar motions.
[3] *Remmer v. United States*, 347 U.S. 227 (1954).

consideration of the unadmitted exhibits affected the entirety of the trial, ruled that Petitioner was entitled to a new trial. The district court conscientiously analyzed both the law and the facts of the case in reaching its conclusion.[4] In concluding that the error in this case resulted in fundamental unfairness, the district court reasoned, "unlike cases in which the extraneous information is obviously not part of the evidence presented during the trial, this extraneous evidence was delivered to the jury in evidence binders, in some cases marked with evidence stickers." Pet. App. 33. Citing *Weaver v. United* States, 582 U.S. 286, 295 (2017), the district court held that the error here was "simply too hard to measure." Pet. App. 33. The court held:

> The jury was exposed to extraneous evidence upon which the Court conditioned potential submission of other evidence, the effects of which are too hard to measure. The Court thus finds the error in this case is not amenable to harmless-error analysis and the defendants are entitled to a new trial without a showing of prejudice. *See Weaver*, 582 U.S. at 295-96. Indeed, it would be fundamentally unfair to expect the defense to meet such a burden under these circumstances when the uncertainties of the effects of the additional evidence make such a showing virtually impossible.

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[4] Appellate courts typically rely on the type of detailed factual and legal reasoning present in the district court's order in Petitioner's case. *See e.g.*, *State v. Gutierrez*, 2020 Nev. Unpub. LEXIS 1153, *4 (Nev. 2020) ("Because the district court's exhaustive factual findings are supported by the record and its legal conclusions are sound, we affirm."). This is as it should be. This Court's emphasis on the primacy of the trial judge in making new trial decisions is well-settled in its own jurisprudence, and at common law. *See, e.g., Cone v. W. Virginia Pulp & Paper Co.*, 330 U.S. 212, 216 (1947) (recognizing the discretion to direct a verdict or order a new trial that resides in the district court, the Court stated that the district court " this discretion with a fresh personal knowledge of the issues involved, the kind of evidence given, and the impression made by witnesses," because the judge "saw and heard the witnesses and has the feel of the case which no appellate printed transcript can impart," and thus has "a perspective peculiarly available to him alone."); and *Patton v. Texas & P. Ry. Co.*, 179 U.S. 658, 660 (1901) ("[T]he judge is primarily responsible for the just outcome of the trial. He is not the mere moderator of a town meeting, submitting questions to the jury for determination, nor simply ruling on the admissibility of testimony, but one who in our jurisprudence stands charged with full responsibility. He has the same opportunity that jurors have for seeing the witnesses [and] for noting all those matters in a trial not capable of record."). Here, the Sixth Circuit eschewed these important principles and substituted its less-informed judgment for that of the district court.

Pet. App. 34.

The Sixth Circuit acknowledged at the outset, "Everyone agrees this case suffered serious error. The main question is what to do about it." *Maund*, 167 F.4th at 947; Pet. App. 7. Nonetheless, the appellate court reversed. The panel opinion purported to apply this Court's decision in *Weaver* but quickly took a left turn. The panel wrote:

> There are three independent reasons an error may be structural. *Id.* at 29. First, an error may be structural where "the right at issue is not designed to protect the defendant from erroneous conviction but instead protects some other interest," for example "the defendant's right to conduct his own defense." *Id*. Second, an error may be "structural if the effects of the error are simply too hard to measure," for example where "a defendant is denied the right to select his or her own attorney." *Id*. Third, an error may be "structural if the error always results in fundamental unfairness," for example where "an indigent defendant is denied an attorney." *Id*. at 296. However, "an error can count as structural even if the error does not lead to fundamental unfairness in every case." *Id*. (citation modified).

Maund, 167 F.4th at 948; Pet App. 8. But then the panel got confused. It began its analysis by asking whether error under *Bruton v. United States*, 391 U.S. 123 (1968) or *Remmer v. United States*, 347 U.S. 227 (1954) is structural. It concluded that neither error falls under the structural error doctrine, but that question skipped important predicate steps. For one thing, as the Court acknowledged, the error here is distinct from *Remmer* in at least two ways: (1) the influence on the jury occurred with "the imprimatur of the Court," CA6 R. 40, Brockway Br., at 21-22, and (2) the error was discovered post-verdict, leaving no opportunity for a curative instruction." *Maund*, 167 F.4th at 949 (6th Cir. 2026); Pet. App. 9. Those distinctions matter because they are critical to the district court's opinion finding that the error is too hard to measure and therefore structural.

Instead, the panel, in conclusory fashion held, "Although we have not previously considered whether an error like this—jury exposure to unadmitted exhibits with no curative instruction—is structural, we find that it is not." *Maund*, 167 F.4th at 950; Pet App. 10. The panel gets to that conclusion by reasoning, "the error here is not too hard to measure. In fact, we frequently expect lower courts to measure the effects of *Bruton* and *Remmer* errors via harmless-error analysis." *Id*. It bears noting that first, that the panel opinion reverts to its reliance on a *Bruton* and *Remmer* analysis. In doing so it is apparent that the panel conflates the test for harmless error with the *Weaver* too-hard-to-measure category of structural errors. These concepts are distinct and ask different questions. Harmless-error analysis is quantitative. The *Weaver* too-hard-to-measure category of structural error cases is qualitative in nature.

Importantly, the panel did not address, much less explain, any error, in the district court's statement that the error was structural because "any inquiry into prejudice would necessitate consideration not only of the effects of the evidence erroneously presented to the jury, but also the effects of evidence not presented, not to mention speculation about the potential arguments of counsel had the various exhibits been properly admitted." Pet App. 38. That critical factor was determinative for the district court yet ignored by the panel.

REASONS FOR GRANTING THE PETITION

Few guarantees are more central to our system of justice than the right to a fair trial by jury — "the most fundamental of all freedoms" and "the great bulwark of civil and political liberties." *Estes v. Texas*, 381 U.S. 532, 540 (1965); 2 J. Story, *Commentaries on the Constitution of the United States* 541 (4th ed. 1873). At the core of that guarantee is the requirement that the evidence developed against a defendant "come from the witness stand in a public courtroom where there is full judicial protection of the defendant's right of confrontation, of cross-examination, and of counsel." *Parker v. Gladden*, 385 U.S. 363, 364–65 (1966); *see also Turner v. Louisiana*, 379 U.S. 466, 472–73 (1965). "The theory of our system is that the conclusions to be reached in a case will be induced only by evidence and argument in open court, and not by any outside influence," *Patterson v. Colorado*, 205 U.S. 454, 462 (1907) — a principle that "goes to the fundamental integrity of all that is embraced in the constitutional concept of trial by jury." *Turner*, 379 U.S. at 472. A defendant's right to an impartial jury requires a verdict based solely on the evidence presented at trial, *Irvin v. Dowd*, 366 U.S. 717, 723 (1961), and it is vital "that the jury should pass upon the case free from external causes tending to disturb the exercise of deliberate and unbiased judgment." *Mattox v. United States*, 146 U.S. 140, 149 (1892). Indeed, "[f]ew, if any, interests under the Constitution are more fundamental than the right to a fair trial by 'impartial' jurors, and an outcome affected by extrajudicial statements would violate that fundamental right." *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1075 (1991) (plurality opinion). Without the basic protections these principles require, "a criminal trial cannot reliably serve its function as a vehicle for determination of guilt or innocence, *see Powell v. Alabama*, 287 U.S. 45 (1932), and no criminal punishment may be regarded as fundamentally fair." *Rose v. Clark*, 478 U.S. 570, 577–78 (1986). Violations of these protections warrant reversal even where a defendant cannot show personal harm, because “[f]undamental errors that jeopardize parties' substantial rights should be reversed on appeal to protect the integrity of the legal system.” Barry Edwards, *A Scientific Framework for Analyzing the Harmfulness of Trial Errors*, 8 UCLA Crim. Just. L. Rev. 1, 4–5 (2024). The question this petition presents — whether the accidental submission of excluded evidence to a deliberating jury is structural error requiring automatic reversal — goes to the heart of that guarantee.

I. This Court’s Structural-Error Doctrine Treats Constitutional Errors as Either Structural, Requiring Automatic Reversal, or Trial Errors Subject to Harmless-Error Review.

The structural-error doctrine begins with a recognition that not all constitutional errors are alike. Most errors that occur during a criminal trial can be assessed in context, e.g. improper evidentiary rulings, flawed jury instructions, prosecutorial misconduct. A reviewing court can examine the record, weigh the error against the remaining evidence, and determine whether the error actually affected the outcome. These are trial errors, and they are subject to harmless-error review. *Chapman v. California*, 386 U.S. 18, 24 (1967).

But a narrow class of constitutional errors cannot be assessed in this manner. These errors do not merely risk a wrong outcome. They corrupt the framework within which the trial proceeds — the constitutional machinery that makes any fair assessment of outcome possible. For errors of this kind, harmless-error analysis is not merely difficult, it cannot produce a reliable answer, because the framework that analysis depends upon has itself been destroyed. *Fulminante*, 499 U.S. at 309–10. These are structural errors, and when a preserved structural error is raised on direct appeal, automatic reversal follows without inquiry into prejudice. *Neder*, 527 U.S. at 7.

The classification is binary and qualitative. It turns on the nature (that is, quality) of the error. The question is whether it is the kind that destroys the trial framework itself. It does not ask the size (quantity) of the error’s effects, the strength of the remaining evidence, or the willingness of a reviewing court to assess the damage. *Id.* at 14 ("constitutional error is either structural or it is not"). A functional-equivalence approach, under which courts ask whether a particular error produced effects similar to those of a known structural error, is "inconsistent with [this Court's] traditional categorical approach to structural errors." *Id.*

The rationale for automatic reversal is neither punitive nor arbitrary. It reflects a considered judgment that some errors so thoroughly destroy the constitutional framework of the trial that no part of that trial can be relied upon to measure the harm. As this Court explained in *Fulminante*, structural errors are those "affecting the framework within which the trial proceeds, rather than simply an error in the trial process itself." 499 U.S. at 310. When the instrument of measurement is itself broken, the measurement cannot be trusted.

The structural errors this Court has identified share a common characteristic: each destroys something basic and essential — something that must be present throughout the trial for the proceedings to be constitutionally sound. The total deprivation of counsel, *Gideon v. Wainwright*, 372 U.S. 335 (1963); a biased tribunal, *Tumey v. Ohio*, 273 U.S. 510 (1927); racial discrimination in grand jury selection, *Vasquez v. Hillery*, 474 U.S. 254 (1986); denial of self-representation, *Faretta v. California*, 422 U.S. 806 (1975); denial of a public trial, *Waller v. Georgia*, 467 U.S. 39 (1984); a constitutionally deficient reasonable-doubt instruction, *Sullivan v. Louisiana*, 508 U.S. 275 (1993); denial of counsel of choice, *United States v. Gonzalez-Lopez*, 548 U.S. 140 (2006). Each of these errors makes it impossible to know what a constitutionally sound trial would have looked like — not because the harm is large, but because the harm is of a kind that harmless-error analysis cannot reliably assess.

That is the framework *Weaver v. Massachusetts*, 582 U.S. 286 (2017), inherited. As the next section explains, *Weaver*'s attempt to bring additional coherence to that framework has instead generated confusion in the lower courts about what the framework requires.

II. *Weaver v. Massachusetts* Sought to Explain the Structural-Error Doctrine but Has Instead Generated Confusion About How That Doctrine Is to Be Applied.

Weaver v. Massachusetts, 582 U.S. 286 (2017), arose from a narrow and specific set of circumstances. During Kentel Weaver's murder trial, the courtroom was closed to the public for two days of jury selection. Defense counsel did not object. Weaver raised the closure for the first time five years later in a motion for new trial, arguing that counsel's failure to object constituted ineffective assistance of counsel. The Massachusetts Supreme Judicial Court acknowledged that the closure was a structural error but denied relief because Weaver had not demonstrated prejudice under *Strickland v. Washington*, 466 U.S. 668 (1984). This Court affirmed.

Weaver's holding was narrow and context specific. It addressed a single question: whether a defendant who raises a structural error for the first time through an ineffective assistance claim on collateral review must demonstrate *Strickland* prejudice to obtain relief. The Court held that he must. *Weaver*, 582 U.S. at 300–01. That holding said nothing about preserved structural errors raised on direct appeal — the posture in which *Fulminante*'s automatic-reversal rule applies without qualification, and the posture presented here. *Id.* at 293–94 (where an objection to structural error is made at trial and raised on direct appeal, the defendant is generally entitled to automatic reversal.)

What *Weaver* added beyond its holding that has generated the confusion this petition addresses, was an extended discussion, offered as explanation rather than as rule, of why certain errors have been deemed structural. Writing for the majority, Justice Kennedy identified three rationales that have descriptively explained the Court's prior structural-error designations. First, some errors are structural because the right at issue protects an interest other than accurate conviction, such that harm to the outcome is beside the point. *Id.* at 295. Second, some errors are structural because their effects are “too hard to measure.” *Id.* Third, some errors are structural because they always result in fundamental unfairness, making any showing of harmlessness futile. *Id.* at 295–96. Justice Kennedy acknowledged that these rationales are not rigid and that more than one may apply in a given case. *Id.* at 296.

These rationales were offered to explain what the Court had done in past cases — not to supply a test for what courts should do with novel errors. *Weaver* nowhere stated that an error failing to satisfy one or more of its rationales is therefore not structural. It nowhere displaced *Fulminante*’s categorical framework or *Neder*’s instruction that “constitutional error is either structural or it is not.” 527 U.S. at 14. And it nowhere suggested that its rationales, developed in the context of an unpreserved error raised on collateral review through an ineffective-assistance claim, were intended to govern preserved errors raised on direct appeal.

But that is not how *Weaver* has been read.

A. Lower Courts Have Misread Weaver’s Explanatory Rationales as a Prescriptive Test.

In the nine years since *Weaver* was decided, lower courts have increasingly treated its three rationales not as an explanation of why past errors have been deemed structural but as a checklist for determining whether new errors qualify. Most consequentially, courts have seized on *Weaver*’s second rationale — that some errors’ effects are “too hard to measure” — and turned it into a quantitative question: if a court can perform harmless-error analysis and arrive at a conclusion, then the error’s effects are not too hard to measure, and therefore the error is not structural.

That reasoning gets the doctrine backwards. It treats the availability of harmless-error analysis as proof that the analysis is reliable. But the structural-error doctrine exists precisely because some errors make harmless-error analysis unreliable regardless of a court’s willingness to perform it. A court can always construct a harmless-error inquiry. It can always examine the remaining evidence and ask whether the verdict was surely unattributable to the error. The question *Fulminante* and *Sullivan* require is not whether that inquiry can be performed but whether, given the nature of the error, the fundamental requirements of a fair trial have been met. Courts misreading *Weaver* have collapsed that distinction.

The result is a logical inversion. Structural-error status is the threshold question that determines whether harmless-error analysis is available at all. Courts reading *Weaver* as a measurability checklist have used the availability of harmless-error analysis as the test for structural-error status. They have answered the question by assuming the answer.

B. This Misreading Has Produced Conflicting Results in the Lower Courts.

The consequences of this misreading are visible in the decisions of the lower courts, both federal and state, that have grappled with *Weaver* in the years since it was decided.

In *Maund*, the Sixth Circuit held that the accidental submission of excluded evidence to a deliberating jury — including an exhibit bearing directly on a central disputed issue, delivered without curative instruction and discovered only months after verdict — was not structural error because its effects were not too hard to measure. The court's reasoning was direct: because courts routinely conduct harmless-error analysis of *Remmer* and *Bruton* errors, this error's effects were quantifiable, and therefore the error was not structural. *Id.* at 950. The court then conducted its own harmless-error analysis, found the error harmless as to each defendant, and reversed the district court's grant of new trials.

That reasoning shows the misreading precisely. The Sixth Circuit did not ask whether harmless-error analysis, given the nature of this error, was a reliable way to assess its effects. It asked whether such analysis was available and its results expressible — and finding that it was, concluded the error was not structural. *Weaver*'s measurability rationale, intended as a qualitative description of why certain errors cannot fairly be assessed for harmlessness, became in the Sixth Circuit's hands a quantitative test that any error subject to harmless-error review automatically fails.

The Sixth Circuit is not alone in its struggle. In a comprehensive survey of nearly nine hundred published circuit-court opinions addressing the structural-error doctrine, Professor Zachary Henderson concluded that *Weaver*'s three-rationale framework is "hopelessly vague and unhelpfully non-prescriptive" and that it "provide[s] no mechanism for deciding whether an error in a future case is structural." Zachary L. Henderson, *A Comprehensive Consideration of the Structural-Error Doctrine*, 85 Mo. L. Rev. 965, 976 (2020). Henderson's survey found that the circuit courts have identified more than a dozen ostensibly structural errors that this Court has never addressed, and that the confusion driving those decisions is traceable to the absence of a workable framework. *Id.* at 968. Henderson also identified a deeper problem with *Weaver*'s second rationale specifically: by suggesting that efficiency costs justify deeming certain errors structural, *Weaver* introduced a concept that "has never before appeared in the Supreme Court's structural-error jurisprudence" and that "appears to fly in the face of Justice Rehnquist's wholesale rejection of a functional-equivalency test." *Id.* at 975. That concern is well-founded. If efficiency costs can inform whether an error is structural, then the categorical binary *Neder* preserved collapses into precisely the kind of case-by-case balancing *Fulminante* was designed to end. Henderson warned explicitly that *Weaver*'s enumerated rationales "read almost like a call to return to the post-*Chapman*, pre-*Fulminante* mode of ad hoc decision-making" — the very disorder *Fulminante* was designed to end. *Id.* at 976.

The confusion has spread beyond the federal courts. State courts applying *Weaver* have fared no better. Pennsylvania's Supreme Court in *Commonwealth v. Taylor*, 309 A.3d 754 (Pa. 2024), applied *Weaver*'s three rationales as a prescriptive checklist and found structural error after concluding the error satisfied all three categories. That the *Taylor* court reached the opposite result from the Sixth Circuit in *Maund* — despite applying the same *Weaver*-derived checklist — underscores the problem: *Weaver*'s framework does not produce consistent results even among courts that apply it the same way.

C. The Contrast Between *Noushfar* and *Maund* Illustrates the Confusion Weaver Caused.

The consequences of *Weaver's* misreading are thrown into sharpest relief by comparing the Sixth Circuit's decision in *Maund* with the Ninth Circuit's earlier decision in *United States v. Noushfar,* 78 F.3d 1442 (9th Cir. 1996). The two cases involve the same essential error: evidence that was never admitted at trial reached a deliberating jury without the parties' knowledge and without curative instruction. The two courts reached opposite results. The difference between them is not the facts. It is *Weaver*.

In *Noushfar,* decided more than two decades before *Weaver*, the Ninth Circuit had no three-rationale taxonomy to apply as a checklist. It had only *Fulminante's* categorical framework: does this error affect the framework within which the trial proceeds, or is it an error in the trial process itself? Applying that framework, the Ninth Circuit held that allowing a jury to hear recordings during deliberations that had never been presented in open court was structural error requiring automatic reversal. *Noushfar,* 78 F.3d at 1445. The court's reasoning was straightforward and faithful to *Fulminante*: the jury had evaluated evidence that was never tested through cross-examination, never addressed in argument, and never subjected to the evidentiary rulings and instructions the constitutional framework requires. The deliberative process had been fundamentally altered. Harmless-error analysis could not reliably assess what a constitutionally sound deliberation would have produced. Automatic reversal followed.

The Sixth Circuit in *Maund* confronted the same error but asked a different question, the question *Weaver's* misread taxonomy invited. Rather than asking whether the nature of the error was one that corrupts the trial framework, it asked whether the error's effects were too hard to measure. Finding that courts routinely conduct harmless-error analysis of *Remmer* and *Bruton* errors, it concluded the effects were quantifiable, the error was not structural, and harmless-error review applied. *Maund,* 167 F.4th at 950; Pet. App. 10. The court equated *Weaver's* description of constitutional errors which are *qualitatively* too hard to measure with the *quantitative* harmless error test. These concepts are not the same.

The *Noushfar* court's approach is more faithful to this Court's structural-error jurisprudence for a simple reason: it asked the right question. *Fulminante* and *Neder* require a qualitative judgment about the nature of the error, specifically whether it is the kind that corrupts the constitutional framework itself. They do not permit a quantitative inquiry into whether a court can construct a harmless-error analysis and arrive at a conclusion. The Ninth Circuit, working from *Fulminante* alone, asked the qualitative question and reached the correct result. The Sixth Circuit, working through *Weaver's* taxonomy, asked the quantitative question and reached the opposite one. That divergence, produced not by different facts but by different readings of what the structural-error inquiry requires, is precisely the confusion this petition asks this Court to resolve.[5]

[5] The Ninth Circuit subsequently declined to extend *Noushfar* beyond its specific facts in *Eslaminia v. White*, 136 F.3d 1234 (9th Cir. 1998). That limitation does not affect the analytical point: *Noushfar* demonstrates what the correct *Fulminante* framework looks like when applied to this category of error, regardless of whether the Ninth Circuit has applied it consistently.

D. The Source of the Confusion Is *Weaver* Itself, and Only This Court Can Correct It.

The lower courts' misreading of *Weaver* is not the product of carelessness. It is the natural consequence of *Weaver*'s explanatory framing. By identifying three rationales in enumerated form, *Weaver* created a framework that looks like a test even if it was intended as description. By offering that framework without clarifying its relationship to *Fulminante*'s categorical rule, *Weaver* left lower courts without the guidance they needed to apply the doctrine consistently. And by arising in the specific context of an unpreserved error raised on collateral review — a context in which prejudice considerations genuinely complicate the structural-error analysis — *Weaver* created conditions under which its reasoning would be over-read and applied to preserved errors on direct appeal, where it does not belong.

The result is a structural-error doctrine that has, in the nine years since *Weaver*, become less coherent rather than more. Courts facing a novel error and asking whether it is structural have no reliable answer from *Weaver*. They have three rationales of uncertain relationship to one another, uncertain force as a test, and uncertain application outside the ineffective-assistance context in which *Weaver* arose.

This Court is the only institution that can resolve this confusion. The source of the problem is this Court's own opinion, and only this Court can clarify what that opinion means and what it does not. This case presents that opportunity in the cleanest possible posture — preserved error, direct appeal — in which *Weaver*'s IAC-specific reasoning has no application and *Fulminante*'s automatic-reversal rule applies in full.

III. The Accidental Submission of Excluded Evidence to a Deliberating Jury by the Trial Court Is Structural Error Requiring Automatic Reversal.

Whether a particular error is structural does not turn on how serious it appears in retrospect or how difficult its effects prove to quantify in a given case. It turns on whether the nature of the error is one that destroys the constitutional framework within which the trial proceeds — making harmless-error analysis not merely difficult but unreliable as a method of assessment. *Fulminante*, 499 U.S. at 309–10. The error here meets that standard. It is structural not because the excluded evidence happened to be particularly damaging, but because the nature of this error — excluded evidence delivered by the court itself into the jury room as part of the official record, without adversarial testing, without counsel's framing, and without jury instructions — destroys the deliberative process in a way that no harmless-error inquiry can reliably assess, regardless of how willing a court is to try.

A. The Structural-Error Doctrine Protects the Integrity of the Deliberative Process.

The structural errors this Court has recognized share a defining characteristic that sets them apart from trial errors, however serious. Each eliminates or destroys something the constitutional framework requires to be present throughout the proceedings — something so basic that its absence makes the trial itself constitutionally unsound rather than merely imperfect. *Neder*, 527 U.S. at 8–9. The two most instructive precedents here are *Sullivan* and *Gonzalez-Lopez*, because each addresses a different dimension of the same core principle: harmless-error analysis breaks down when an error makes it impossible to know what a constitutionally sound trial would have looked like.

In *Sullivan*, the trial court gave a constitutionally deficient reasonable-doubt instruction that allowed conviction on a lower standard than the Sixth Amendment requires. The error was structural not because its effects were large, but because asking whether the jury would have reached the same verdict under a proper instruction required the court to substitute its own judgment for the juries on a question the jury never validly decided. *Sullivan*, 508 U.S. at 281–82. There was no constitutionally sound verdict to assess for harmlessness. The instrument of measurement, the jury's application of the correct legal standard, had never existed. Harmless-error analysis in that context, as Justice Scalia explained, would amount to "pure speculation," requiring a court to ask what "a reasonable jury would have done" in a proceeding that never occurred. *Id.* at 281.

In *Gonzalez-Lopez*, the trial court erroneously denied the defendant his chosen counsel. The error was structural not because the defendant could show his chosen counsel would have performed better, but because neither he nor the government could know what a trial with chosen counsel would have looked like. The constitutional injury was not a measurably worse outcome. It was the removal of a basic element of the trial (the defendant's chosen advocate) that shaped every strategic decision made from the moment of appointment onward. *Gonzalez-Lopez*, 548 U.S. at 150. The effects of that removal are present in every instance but "necessarily unquantifiable," because they pervade the entire proceeding. *Id* (quoting *Sullivan*, 508 U.S. at 282). Harmless-error analysis requires comparing the trial that occurred against the trial that should have occurred. When the difference between those trials is the identity of counsel that comparison cannot be made reliably. Counsel's decisions impact every aspect of the case: from theory of the case, to argument, to presentation of evidence, to which jury instructions to present. There is no valid baseline.

Both *Sullivan* and *Gonzalez-Lopez* rest on the same insight: harmless-error analysis breaks down when an error makes it impossible to reconstruct the constitutionally sound proceeding against which the actual proceeding must be measured. That is the standard this error must be assessed against.

B. Excluded Evidence Delivered by the Court Into the Jury Room Destroys the Deliberative Process in a Way Harmless-Error Analysis Cannot Reliably Assess.

The harm from this error is not simply that the jury saw something it should not have seen. It is that the jury evaluated excluded evidence in a deliberative process that lacked every safeguard the constitutional framework of trial is specifically designed to provide. No court can reliably reconstruct what the jury's deliberations would have looked like without that evidence, or with that evidence subjected to the adversarial process it never received.

Evidence reaches a jury through a process. Counsel on both sides have the opportunity to object to its admission, to challenge its foundation, to cross-examine the witnesses who sponsored it, and to argue its significance or insignificance to the jury in closing. The trial court rules on its admissibility and instructs the jury on how to evaluate what it has received. These are not formalities. They are the constitutional machinery through which evidence is transformed from raw information into something a jury can evaluate fairly. When the trial court excludes evidence after that process, it has determined that the evidence does not belong before the jury.

When excluded evidence nonetheless reaches a deliberating jury delivered by the court itself, it arrives having bypassed every element of that process. It was not tested through cross-examination in the jury's presence. It was not addressed in closing argument, because counsel had no reason to address evidence the court had ruled inadmissible. It was not accompanied by jury instructions, because the court never contemplated that the jury would receive it. And critically, it arrived not as a suspicious outside influence — the kind of extrinsic contact that *Remmer* addresses, which jurors understand did not come from the court — but as an apparent part of the official record, carrying the court's own implicit approval as evidence the jury was meant to evaluate.

The harmless-error question in this context is: would the jury have reached the same verdict if the error had not occurred? But that question cannot be answered reliably, for the same reason it could not be answered in *Sullivan* and *Gonzalez-Lopez*. We cannot know how counsel would have shaped their arguments and defenses if the excluded evidence had been properly before the jury during trial. What witnesses they would have called. What cross-examination they would have pursued. What themes they would have developed in closing. We cannot know how the jury would have weighed the excluded evidence if it had been accompanied by those arguments and those instructions, rather than delivered silently into the deliberation room carrying the court's stamp of approval. And we cannot know what the jury made of the evidence when it arrived in that form — whether it shaped the deliberative dynamic, whether it affected how jurors assessed the admitted evidence, whether it resolved doubts that counsel, properly warned, might have addressed. The deliberative process that actually occurred is not a sound baseline against which to measure anything. It is the problem.

This is not a case where the harm is hard to estimate. It is a case where harmless-error analysis requires reconstructing a deliberative process that never existed in constitutionally sound form. It is a case in which the excluded evidence either was absent or was present and subjected to the full machinery of adversarial testing, evidentiary rulings, and jury instructions that the Constitution requires. Neither version of that process occurred. What occurred instead was a deliberation in which the jury evaluated excluded evidence as if it had been properly admitted, without any of the safeguards that admission would have required. Asking whether the jury would have reached the same verdict in a constitutionally sound proceeding requires imagining a trial that never took place. That is precisely the speculation *Sullivan* identified as the mark of structural error.

C. This Error Is Categorically Different From the Extrinsic Influence Errors to Which the Sixth Circuit Analogized It.

The Sixth Circuit's contrary conclusion rested on an analogy to *Remmer* and *Bruton* errors — errors that courts assess through harmless-error analysis. *Maund*, 167 F.4th at 950; Pet. App. 10. That analogy fails because it misidentifies the nature of the error.

Remmer and *Bruton* errors involve influences that are recognizably external to the court's evidentiary framework: an unauthorized communication with a juror, a codefendant's statement admitted in a way that violates the Confrontation Clause. In each case, the jury understands at least implicitly that the influence did not come from the court as part of the official record. The court retains the ability to address the error through curative instructions or post-verdict inquiry. The constitutional framework of the trial, though compromised, remains sufficiently intact to provide a workable baseline for harmless-error assessment.

This error is different in three fundamental ways. First, the excluded evidence arrived with the court's own stamp of approval as it was delivered as part of the official exhibit record, in a form indistinguishable from properly admitted evidence. The jury had no reason to treat it with the skepticism a juror naturally brings to an outside influence she knows did not come from the court. She had every reason to treat it as evidence the court had determined she was meant to evaluate. Second, the error was discovered only after verdict, eliminating any possibility of a curative instruction or any assessment of how the evidence shaped deliberations before the jury reached its decision. Third, and most fundamentally, the error did not introduce an outside influence into an otherwise intact deliberative process. It replaced a constitutionally sound deliberative process —

one in which the excluded evidence was either absent or properly tested — with one in which that evidence was considered without any of the safeguards the Constitution requires.

Remmer errors can be assessed for harmlessness because the deliberative process, though affected by an outside contact, remains recognizable as the process the Constitution requires. The baseline still exists. Here it does not. The deliberative process that occurred is not a flawed version of the constitutionally required process. It is a fundamentally different process — one that included evidence the constitutional framework specifically excluded — and no harmless-error analysis can reliably reconstruct what the required process would have produced.

D. The *Gonzalez-Lopez* Principle Confirms That This Error Is S*tructural.*

Gonzalez-Lopez established that an error is structural when it removes a basic element of the trial in a way that makes it impossible to know what a constitutionally sound trial would have looked like. 548 U.S. at 150. The same principle applies here with equal force. The error in this case removed basic elements of the constitutional trial framework — adversarial testing of the excluded evidence, counsel's opportunity to address it, the court's opportunity to instruct the jury about it — and replaced them with a deliberative process in which those elements were absent. The trial that should have occurred in which the excluded evidence was either absent from deliberations or present and subjected to the full constitutional framework, cannot be reliably reconstructed for the same reason the trial in *Gonzalez-Lopez* could not be. We cannot know how chosen counsel would have shaped the defense; equally, we cannot know how counsel here would have shaped their arguments, examinations, and trial strategy if the excluded evidence had been properly before the jury. In each case, the error removes something basic, and its removal changes everything that follows in ways no after-the-fact analysis can reliably sort out.

That is the qualitative judgment the structural-error doctrine requires. This error is structural not because it was serious. It is structural because its nature makes harmless-error analysis an unreliable way to assess it because that analysis requires reconstructing a constitutionally sound deliberative process that never occurred.

IV. This Case Presents a Clean Vehicle for This Court to Provide Needed Guidance to the Lower Courts on How to Identify Structural Error.

The confusion *Weaver* generated will not resolve itself. Nine years of lower court decisions have shown that *Weaver*'s explanatory framework, without clarification from this Court, produces inconsistent results across jurisdictions and across error types. This case gives the Court the opportunity to provide that clarification on a well-developed factual record, in the cleanest possible procedural posture, in a case where the answer to the structural-error question is both outcome-determinative and, under the correct framework, clear.

A. The Structural-Error Question Was Squarely Presented, Fully Litigated, and Directly Decided Below.

The question presented is not one that appeared for the first time on appeal. It was the central issue at every stage of the proceedings below. When the district court discovered the administrative error more than two months after verdict, it invited the parties to brief the structural-error question directly. Each defendant filed a motion for new trial expressly arguing that the error was structural and required automatic reversal. The government opposed, arguing that harmless-error review governed. The district court conducted a full evidentiary hearing at which jurors were questioned individually about their exposure to the unadmitted exhibits, made specific factual findings about the extent of that exposure, and issued a written opinion holding that the error was structural. The government appealed on the structural-error question alone. The Sixth Circuit addressed it as a pure question of law reviewed de novo. *See Washington v. Recuenco*, 548 U.S. 212, 218–19 (2006).

The result is a record that presents the structural-error question with unusual clarity. The factual predicate including what exhibits the jury received, which were unadmitted, what relationship those exhibits bore to the contested issues at trial, and what the jury's actual exposure to them was, is established by the district court's findings after a full evidentiary hearing. Those findings are not contested on appeal. What remains is the pure legal question this petition presents.

B. The Procedural Posture Is the Strongest Possible Vehicle for the Question Presented.

The structural-error doctrine's automatic-reversal rule applies with full force when a preserved error is raised on direct appeal. *Neder*, 527 U.S. at 7. That is precisely this case. The error was preserved. When the district court notified the parties of the mistake, defendants promptly moved for new trials, presenting the structural-error argument before the district court had ruled. The government raised the issue on direct appeal, challenging the district court's structural-error determination as the sole basis for its appeal.

This posture eliminates every complication that has attended the structural-error doctrine in other procedural contexts. There is no ineffective-assistance overlay requiring analysis of *Strickland* prejudice. There is no plain-error complication arising from an unpreserved objection. There is no collateral review issue. There is no curative-opportunity rationale of the kind *Weaver* relied upon. The error was discovered only after verdict, leaving no opportunity for the trial court to address it before the jury returned its decision.

Weaver itself identified the direct-appeal posture as the one in which automatic reversal applies without qualification. 582 U.S. at 293–94. This case presents the structural-error question in exactly that posture.

CONCLUSION

The structural-error doctrine exists to protect defendants from having to prove prejudice from errors that destroy the framework of the trial process itself. That protection has been eliminated throughout one of the country's largest and busiest federal circuits by a decision that misread this Court's own precedent. The Court should grant certiorari to restore it. The petition should be granted.

Respectfully submitted,

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