No. 19-102

# In the Supreme Court of the United States

LEROY BACA, PETITIONER

*v.*

UNITED STATES OF AMERICA

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

## BRIEF FOR THE UNITED STATES IN OPPOSITION

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## QUESTIONS PRESENTED

1. Whether the district court's jury instructions correctly defined the term "corruptly" in 18 U.S.C. 1503(a).

2. Whether the court of appeals correctly determined that the district court did not abuse its discretion in deciding to identify jurors by number, rather than by name.

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## OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-7) is not published in the Federal Reporter but is reprinted at 761 Fed. Appx. 724. The statement of findings of the district court regarding identification of jurors by number (Pet. App. 8-10) is unreported.

## JURISDICTION

The judgment of the court of appeals was entered on February 11, 2019. A petition for rehearing was denied on April 19, 2019 (Pet. App. 16). The petition for a writ of certiorari was filed on July 18, 2019. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## STATEMENT

Following a jury trial in the United States District Court for the Central District of California, petitioner

was convicted of conspiracy to obstruct justice, in violation of 18 U.S.C. 371; obstruction of justice, in violation of 18 U.S.C. 1503(a); and making false statements in a matter within federal jurisdiction, in violation of 18 U.S.C. 1001(a)(2). C.A. E.R. 296. The court sentenced petitioner to 36 months of imprisonment, to be followed by one year of supervised release. *Ibid.* The court of appeals affirmed. Pet. App. 1-7.

1. Petitioner is the former Sheriff of Los Angeles County, California. Presentence Investigation Report (PSR) ¶ 27. Among other things, petitioner was responsible for managing the Los Angeles County jails. *Ibid.* While serving in that capacity, he interfered with a federal investigation of jail conditions by concealing a witness and evidence, intimidating a federal agent, and lying to federal authorities.

a. In July 2010, federal authorities began investigating alleged corruption and civil-rights abuses in the Los Angeles County jails. PSR ¶ 32. The investigation uncovered numerous instances in which sheriff's deputies had assaulted inmates, falsified reports to cover up the assaults, and smuggled contraband into the jails in exchange for bribes. See Gov't C.A. Br. 4-6 (summarizing trial evidence).

In the course of their investigation, federal authorities enlisted an inmate at one of the jails, Anthony Brown, to serve as a confidential informant. PSR ¶ 33. An undercover FBI agent approached a sheriff's deputy who worked at the jail and offered the deputy a bribe in exchange for smuggling a cell phone to Brown. *Ibid.* The deputy accepted the bribe and delivered the phone to Brown, who used it to communicate covertly with federal authorities about conditions inside the jail. *Ibid.*; see Gov't C.A. E.R. 454-456.

In August 2011, sheriff's deputies working at the jail discovered Brown's cell phone and discovered that he had used it to call a telephone number associated with the FBI's civil-rights division. PSR ¶ 33; see Gov't C.A. E.R. 131. After learning that the phone had been confiscated, the FBI Assistant Director in charge of the Los Angeles field office contacted petitioner and told him that the phone belonged to the FBI and had been provided to Brown in connection with an authorized federal investigation. PSR ¶¶ 28, 34. The Assistant Director asked petitioner to return the phone to the FBI, but petitioner refused. Gov't C.A. E.R. 25-26, 80-81. Instead, petitioner immediately called his second-in-command, Undersheriff Paul Tanaka, and requested an emergency meeting with other Sheriff's Department officials. PSR ¶ 34. In advance of that meeting, sheriff's deputies interviewed Brown in an attempt to learn what he had told federal authorities. PSR ¶ 35.

b. On August 19, 2011, petitioner convened a meeting with Undersheriff Tanaka and other members of the Sheriff's Department to discuss the federal investigation. PSR ¶ 36. A department supervisor told petitioner that Brown had admitted to sheriff's deputies that Brown was an informant in an FBI "civil rights investigation" and that he had used the cell phone to provide information to the FBI about "jail abuses." Gov't C.A. E.R. 79-80, 89-90, 142. At another meeting with petitioner the next day, deputies played recordings of three telephone calls that Brown had made to the FBI (using jail phones) in which Brown discussed becoming an informant. *Id.* at 83-88.

The revelation that FBI agents had recruited an inmate inside the jails to provide information about the

conduct of Sheriff's Department employees upset petitioner. See, *e.g.*, Gov't C.A. E.R. 91, 269, 424-425. He stated that he planned to "keep[]" the cell phone rather than return it to the FBI, *id.* at 80-81, and instructed his subordinates to get "everything off" the phone, *id.* at 90. Petitioner also issued several orders designed to prevent Brown from communicating further with the FBI. Among other things, petitioner canceled Brown's scheduled transfer to a state prison so that Brown would remain in Sheriff's Department custody, *id.* at 81, 138-139, and directed that no one be permitted to see or speak with Brown unless petitioner or Undersheriff Tanaka authorized it, *id.* at 90-92, 139-140, 306. A senior Sheriff's Department official later testified that he had "never encountered anything" like the restrictions petitioner placed on access to Brown. *Id.* at 306.

Petitioner's third-in-command, Assistant Sheriff Cecil Rhambo, advised petitioner not to interfere with the FBI's investigation. Gov't C.A. E.R. 269-270, 273. Rhambo specifically warned petitioner that restricting access to Brown and "hiding the phone, whatever it was they were doing, that it could be construed as obstruction." *Ibid.* Petitioner did not follow Rhambo's advice.

c. On August 23, 2011, sheriff's deputies at the jail inadvertently allowed FBI agents to meet with Brown. PSR ¶ 39. As soon as a Sheriff's Department lieutenant learned what was happening, he "ordered the interview to be stopped." Gov't C.A. E.R. 97. Sheriff's deputies went to the room where Brown was meeting with the FBI agents and began "pounding on the door" and "yelling, 'This interview is over.'" *Id.* at 467. Deputies then entered the room, told the FBI agents that Brown was "not to be interviewed," "grabbed" Brown, and "ripped him out of the room." *Id.* at 188.

Sheriff's Department supervisors reported the incident to petitioner and Undersheriff Tanaka. PSR ¶ 42. Undersheriff Tanaka was "visibly upset" and "berate[d]" the supervisors in a tone that was "pretty much screaming, using profanity." Gov't C.A. E.R. 331. He told the supervisors that they had "let [petitioner] down." *Id.* at 100. Petitioner was less heated, telling the supervisors, "It's okay. It's a chess game." *Id.* at 149.

d. In an effort to ensure that petitioner's order prohibiting contact with Brown "wouldn't be violated again," petitioner and his subordinates took extraordinary steps to conceal Brown's whereabouts. Gov't C.A. E.R. 326. Shortly after terminating Brown's interview with the FBI, Sheriff's Department officials moved him to the jail's infectious-disease ward and posted two guards outside his cell 24 hours a day. *Id.* at 107-109, 133. Petitioner and Undersheriff Tanaka authorized "unlimited overtime" pay for the deputies on guard duty, who were led to believe that their assignment involved "one of the most important investigations" in the "160-year history" of the department. *Id.* at 113, 152-153, 225-226, 260. The guards were instructed not to talk to Brown and not to allow him to be removed from his cell unless certain department officials were physically present. *Id.* at 112-113.

On August 25, 2011, federal authorities obtained an order from the United States District Court for the Central District of California directing the Sheriff's Department to transfer Brown to federal custody in order to secure his appearance before a federal grand jury. Gov't C.A. E.R. 469-470, 694-695; see PSR ¶ 46. After receiving that order, Sheriff's Department officials removed the hard copy of Brown's inmate records from the central file and tampered with the department's

inmate-locator database to make it appear that Brown was no longer in the department's custody. Gov't C.A. E.R. 285-294; see PSR ¶ 47. The officials then rebooked Brown under a series of false names (including "John Rodriguez," "Kevin King," and "Chris Johnson") in order to hide his whereabouts. Gov't C.A. E.R. 233-243; see PSR ¶ 48.

On August 26, 2011, Sheriff's Department officials moved Brown (under the alias "Kevin King") to another jail. Gov't C.A. E.R. 240-243; see PSR ¶ 51. They instructed the deputies at that jail to "keep [Brown] happy" in the hope that he would start cooperating with the Sheriff's Department instead of the FBI. Gov't C.A. E.R. 244-246; see *id.* at 324 (testimony that Sheriff's Department officials hoped to "[p]ull Anthony Brown away from" the FBI and get him to "work for" the Sheriff's Department instead). Department officials also instructed the deputies responsible for guarding Brown, and their supervisors, not to comply with any federal "inmate removal order, visitation order, or any other order of the court," and that they should instead refer any such order to department leadership. *Id.* at 675 (capitalization omitted); see PSR ¶ 50.

Petitioner's subordinates kept him fully apprised of the efforts to hide Brown from federal authorities and to prevent Brown from testifying before the grand jury. See, *e.g.*, Gov't C.A. E.R. 157-158, 342-343, 350-351; PSR ¶ 51 n.6. Those efforts succeeded. Despite the FBI's repeated attempts to locate Brown—including by consulting the Sheriff's Department's inmate-locator database, which falsely indicated that Brown had been "release[d]," Gov't C.A. E.R. 472-475, 718—federal authorities had "absolutely no idea where he was" and

were unable to enforce the district court's order transferring him to federal custody so that he could testify before the grand jury. *Id.* at 478-479. Brown, believing that the FBI had abandoned him, told the Sheriff's Department that he no longer had any "desire to testify for the FBI" and that he would cooperate with the Sheriff's Department. *Id.* at 477-478.

e. In addition to shielding evidence from federal authorities, petitioner sought to interfere with the federal investigation by launching his own sham "investigation" of the FBI. PSR ¶ 37. Although petitioner was aware that the FBI had legal authority to supply Brown with a cell phone as part of an undercover operation, see Gov't C.A. E.R. 273, 572, he nonetheless ordered the Sheriff's Department's internal-affairs bureau—which was ordinarily responsible for investigating misconduct by the department's own personnel—to investigate the FBI for the supposed "crime" of introducing contraband into the jail. *Id.* at 308, 311-313, 371, 383-384; see *id.* at 296, 308-309, 558. Like petitioner, the head of the internal-affairs bureau knew that the FBI had committed no "illegal act," but he nonetheless "follow[ed] [petitioner's] orders" to investigate. *Id.* at 383; see *id.* at 371-372. Petitioner and Undersheriff Tanaka directly supervised the investigation and received updates on its progress "numerous times a day." *Id.* at 314-316.

In the course of their investigation, Sheriff's Department officers interviewed the deputy who had given Brown the cell phone in exchange for a bribe and directed that deputy not to cooperate with federal authorities. PSR ¶ 53; see Gov't C.A. E.R. 485-490. The officers then surreptitiously installed a GPS tracking device on the deputy's car and followed his movements in an effort to

determine whether he was violating orders by "meeting with the FBI." Gov't C.A. E.R. 367.

The Sheriff's Department also petitioned a Los Angeles superior court judge to issue an order directing the FBI to disclose records pertaining to "any and all investigations, past or present, occurring within the confines of the Los Angeles County Jail system" within the last two years. Gov't C.A. E.R. 723. The department justified that request by representing (falsely) that it had probable cause to believe that the FBI had engaged in "criminal actions" by "conspir[ing] to smuggle a cellular telephone" into the jail. *Id.* at 721-722. The judge refused to issue such an order, noting that he had "no jurisdiction over any federal agency." *Id.* at 723 (emphasis omitted).

Having failed to obtain legal process, petitioner and his subordinates resorted to intimidation and harassment. Sheriff's Department investigators conducted surveillance of the lead FBI agent on the case, Special Agent Leah Marx, and collected detailed information on her movements. Gov't C.A. E.R. 368-370. Although they found no evidence that Agent Marx had committed a crime, see *ibid.*, a sheriff's deputy called her and left a message stating that he was "investigating a felony criminal complaint" against her and was preparing a warrant for her arrest. Gov't C.A. Br. 20 (quoting audio recording); see Gov't C.A. E.R. 498-499; PSR ¶ 56.

When that threat failed to produce results, petitioner authorized sheriff's deputies to "go to Agent Marx's house" and threaten her in person. Gov't C.A. E.R. 373-374; see *id.* at 421-422; PSR ¶ 60. Two armed deputies then confronted Agent Marx outside her apartment and told her (falsely) that they were "in the process of swearing out a declaration for an arrest warrant

for [her]." Gov't C.A. Br. 21 (quoting video recording); see Gov't C.A. E.R. 500-502; PSR ¶ 61. In a subsequent telephone call with FBI supervisors, the deputies reiterated that threat and stated that petitioner was fully aware of the supposed plan to arrest Agent Marx. Gov't C.A. E.R. 534-536; see PSR ¶ 62. After the call, the deputies congratulated themselves on "scar[ing]" the FBI. Gov't C.A. Br. 22 (quoting audio recording); see PSR ¶ 62. Petitioner reviewed a video of the deputies' confrontation with Agent Marx and "said it was the best laugh that he had in months." Gov't C.A. E.R. 380.

The same day that petitioner authorized his deputies to threaten Agent Marx outside her home, he gave a television interview in which he stated that he "resent[ed] the FBI's intrusion" into the jails and falsely accused the FBI of committing crimes. Gov't C.A. Br. 20 (quoting video recording) (brackets in original); see Gov't C.A. E.R. 371-372; PSR ¶ 59. The next day, petitioner met with the U.S. Attorney and the FBI Assistant Director in charge of the Los Angeles field office. PSR ¶ 64. Petitioner challenged them to "'gun up,'" *ibid.*, which the U.S. Attorney understood as a threat to "go to war" with federal authorities "and fight this out," Gov't C.A. E.R. 552-554.

f. In April 2013, petitioner agreed to be interviewed by federal agents who were investigating whether members of the Sheriff's Department had obstructed justice by interfering with the federal investigation of the jails. PSR ¶ 66. Petitioner made a number of false statements during that interview. He claimed that, following the August 2011 meetings with his subordinates, he had "no clue" that Brown's cell phone was related to an FBI civil rights investigation. Gov't C.A. Br. 24 (quoting audio recording); see PSR ¶ 66(a). Petitioner additionally

denied having any "direct involvement" in preventing the FBI from contacting Brown and stated that was unaware that sheriff's deputies had broken up a meeting between FBI agents and Brown. Gov't C.A. Br. 24 (quoting audio recording); see PSR ¶ 66(b)-(c). And he denied knowing that his subordinates had planned to threaten Agent Marx with arrest. Gov't C.A. Br. 25 (quoting audio recording); see PSR ¶ 66(e).

2. A grand jury in the Central District of California returned an indictment charging petitioner with conspiracy to obstruct justice, in violation of 18 U.S.C. 371; obstruction of justice, in violation of 18 U.S.C. 1503(a); and making false statements in a matter within federal jurisdiction, in violation of 18 U.S.C. 1001(a)(2). C.A. E.R. 432-441. The parties reached an agreement for petitioner to plead guilty to the false-statement offense and receive a six-month prison sentence. Gov't C.A. E.R. 734-750. The district court, however, rejected the agreement because that sentence was insufficient, in light of the evidence that petitioner had engaged "in a broad ranging conspiracy to obstruct justice that included hiding an inmate from the grand jury, altering records, witness tampering and threatening an FBI agent," *id.* at 756; see *id.* at 753-760. Petitioner then withdrew his guilty plea and proceeded to trial. *Id.* at 761.

Before petitioner's trial began, the district court decided (over petitioner's objection) that the jurors would be identified using their juror numbers rather than by using their names. C.A. E.R. 332-333; see *id.* at 328-329. The court explained that such a procedure would avoid problems that had arisen during earlier trials of petitioner's co-conspirator subordinates—who were tried separately and convicted of various federal offenses, see

PSR ¶¶ 6-25—in which jurors had indicated "that they were in fear of intimidation because of the nature of the[] charges and because of the defendant's ties to law enforcement." C.A. E.R. 334. The court did not otherwise limit the parties' access to information about the jurors—each of whom was required to fill out a detailed juror questionnaire and was subject to voir dire. See *id.* at 331-332, 335. The jury was ultimately unable to reach a unanimous verdict, and the court declared a mistrial. *Id.* at 288-291.

Before petitioner's second trial, the district court again determined that it was "appropriate" to identify the jurors by number, rather than by name. Pet. App. 8. It noted that petitioner was alleged to have been the leader of "an organized criminal conspiracy" that engaged in acts of witness tampering and intimidation, and that, in the earlier trials of petitioner's co-conspirators, some jurors had "expressed apprehension" that the defendants could use their ties to law enforcement "to access jurors' private information" or to take other actions that might jeopardize the jurors' safety. *Ibid.* The court also noted that petitioner's case had attracted considerable media attention, further "enhancing the possibility that jurors' names would become public." *Id.* at 9. The court explained that disclosure of juror names could compromise the fairness of the trial by exposing them "to potential intimidation and harassment" and to extraneous information about the case. *Ibid.* The court determined that identifying jurors by numbers rather than by name would mitigate those concerns, "protect the defendant and allow him to receive a fair trial[,] and protect the integrity of the judicial process." *Ibid.*

In order to "safeguard against any potential prejudice" to petitioner, Pet. App. 10, the district court twice

instructed the jury that the use of numbers to identify jurors was a "standard practice" that was designed "to protect jury privacy, to protect the integrity of the system[,] and to ensure that both sides receive a fair trial." Gov't C.A. E.R. 2-3, 4. It expressly admonished the jurors that the procedure "ha[d] nothing to do with the issues in this case and nothing to do with the guilt or innocence of the defendant." *Id.* at 3-4.

The jury found petitioner guilty on all counts. Gov't C.A. E.R. 907-909. The district court sentenced petitioner to concurrent terms of 36 months of imprisonment on each count, to be followed by one year of supervised release. C.A. E.R. 296.

3. The court of appeals affirmed. Pet. App. 1-7. As relevant here, petitioner argued that the circumstances of his case did not support the identification of jurors by number, see Pet. C.A. Br. 38-43, and that the district court had improperly instructed the jury on the mens rea required to prove obstruction of justice, see *id.* at 62-68.

The court of appeals determined that the district court had not abused its discretion in finding that the circumstances of this case warranted identifying the jurors by number rather than by name. Pet. App. 3 (citing *United States* v. *Shryock*, 342 F.3d 948, 970-971 (9th Cir. 2003), cert. denied, 541 U.S. 965 (2004)). The court of appeals explained that the district court's procedure "was reasonable in light of the highly publicized nature of this case, [petitioner's] and his co-conspirator[s'] positions as former high-ranking law enforcement officers, and the nature of the charges at issue." *Ibid.* The court further determined that the district court had "minimized any risk of prejudice to [petitioner] by instructing the jury that" the procedure "was utilized to

protect the jurors' privacy and was unrelated to [petitioner's] guilt or innocence." *Ibid.*

The court of appeals also rejected petitioner's challenge to the jury instructions. Pet. App. 5-6. The district court had instructed the jury that, to find petitioner guilty of obstruction of justice under 18 U.S.C. 1503(a), it had to find that he "acted corruptly, meaning [that he] had knowledge of the federal grand jury investigation and intended to obstruct justice." Pet. App. 14. The government argued that petitioner had waived his challenge to that instruction by not raising it in the district court and by affirmatively agreeing that intentional obstruction satisfied Section 1503(a)'s mens rea requirement. Gov't C.A. Br. 98. The court of appeals did not reach the waiver issue. Instead, it determined that the instruction was correct. Pet. App. 5 (citing *United States* v. *Rasheed*, 663 F.2d 843, 852 (9th Cir. 1981), cert. denied, 454 U.S. 1157 (1982)).

**ARGUMENT**

Petitioner contends (Pet. 10-23) that the district court's jury instructions defining the term "corruptly" in 18 U.S.C. 1503(a) were erroneous. Specifically, he contends that "corruptly" requires proof that a defendant not only was aware of a particular proceeding and intended to obstruct it but also acted with a "specific intent to obtain an unlawful advantage" that indicates "consciousness of wrongdoing." Pet. 10 (emphasis omitted). Petitioner waived that argument by affirmatively requesting instructions that identified an intent to obstruct justice as the sole mens rea required by Section 1503(a); at a minimum, the argument was forfeited and is reviewable only for plain error. In any event, petitioner's interpretation of Section 1503(a) is inconsistent with this Court's precedent and with decisions of

other courts of appeals, and it would not have changed the outcome of petitioner's trial.

Petitioner additionally contends (Pet. 24-37) that the district court abused its discretion by identifying jurors by number rather than by name. The court of appeals rejected that argument, and its decision resolving that factbound, case-specific question does not conflict with any decision of this Court or of another court of appeals. Further review is not warranted.

1. Petitioner contends (Pet. 10-23) that the district court's instruction to the jury on the mens rea required by Section 1503(a) was incorrect. That contention is waived, and at a minimum it is forfeited and reviewable only for plain error. And petitioner has not demonstrated any error, much less plain error. Moreover, even if the court had erred, petitioner was not prejudiced.

a. Section 1503 imposes criminal penalties on those who obstruct justice by taking various specified actions, such as "imped[ing] any grand or petit juror * * * in the discharge of his duty" or "injur[ing] any [court] officer, magistrate judge, or other committing magistrate." 18 U.S.C. 1503(a). The statute also imposes criminal penalties on anyone who "corruptly * * * influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice." *Ibid.*

In *United States* v. *Aguilar*, 515 U.S. 593 (1995), this Court determined that Section 1503(a)'s general obstruction provision requires proof of a "nexus" between a defendant's obstructive conduct and a specific judicial proceeding (including a grand jury proceeding) that he intends to obstruct. *Id.* at 599-600 (citation omitted); see *id.* at 599 ("The action taken by the accused must be

with an intent to influence judicial or grand jury proceedings."). The Court explained that, "if the defendant lacks knowledge that his actions are likely to affect the judicial proceeding, he lacks the requisite intent to obstruct" and has not violated Section 1503(a). *Id.* at 599; cf. *Pettibone* v. *United States*, 148 U.S. 197, 206 (1893) (interpreting Section 1503's predecessor statute to require proof that the defendant "knew or had notice that justice was being administered in [a] court" and intentionally "obstruct[ed] or imped[ed] the due administration of justice in [that] court").

Consistent with *Aguilar*, the district court instructed the jury in this case that Section 1503(a) required proof beyond a reasonable doubt that petitioner (i) "influenced, obstructed, or impeded, or tried to influence, obstruct, or impede a federal grand jury investigation," and (ii) "acted corruptly, meaning [that he] had knowledge of the federal grand jury investigation and intended to obstruct justice." Pet. App. 14. The court further instructed the jury that, to find petitioner guilty, it was required to find that petitioner "acted with the purpose of obstructing the pending grand jury investigation" and "knew that his actions had the natural and probable effect of interfering" with that investigation. *Id.* at 14-15. The court explained that, although "the government need not prove that [petitioner's] sole or even primary intention was to obstruct justice," it was required to prove "that one of [petitioner's] intentions was to obstruct justice" and that the "intention to obstruct justice [was] substantial." *Id.* at 15. The jury, by its verdict, found each of those requirements proved beyond a reasonable doubt. See Gov't C.A. E.R. 907-909.

b. Petitioner did not object to the district court's jury instructions on the ground that they misstated Section 1503(a)'s mens rea requirement. To the contrary, petitioner himself requested an instruction that identified "intentionally" obstructing a federal grand-jury proceeding as the only mens rea required by Section 1503(a). D. Ct. Doc. 191, at 3 (Dec. 9, 2016) (Disputed Instructions); see D. Ct. Doc. 265, at 12 (Feb. 17, 2017) (proposing same instruction at second trial). Petitioner also jointly proposed an instruction under which the jury was required to find that he had the "substantial" intent to obstruct justice, but not necessarily the "sole" or "primary" intent. D. Ct. Doc. 263, at 53 (Feb. 17, 2017) (Joint Instructions); see Disputed Instructions 3.

As for the definition of "'corruptly'" in Section 1503(a), petitioner contended in the district court that the term should be interpreted "not as a *mens rea*, but as an *actus rea* [sic]" requiring proof that obstruction was accomplished "'by bribery.'" Disputed Instructions 5; see *ibid.* (arguing that "corruptly" in Section 1503(a) does "not describe a state of mind, but a forbidden means of influencing, obstructing, or impeding" (brackets, citation, and internal quotation marks omitted)). Petitioner therefore urged the court to "read[] 'corruptly' as meaning 'by bribery,'" and to instruct the jury that Section 1503(a) makes it a crime to "intentionally" obstruct "a federal grand jury investigation by bribery." *Id.* at 3, 8.

Petitioner's arguments in the district court are incompatible with his current assertion (Pet. 17-22) that the term "'corruptly'" in Section 1503(a) is in fact a mens rea requirement that goes beyond *Aguilar*'s requirement of knowledge of a federal judicial proceeding

and intent to obstruct it. Petitioner specifically requested jury instructions that defined Section 1503(a)'s mens rea element simply as "intentionally" obstructing a federal grand jury proceeding. Disputed Instructions 3; see Joint Instructions 53. He also urged the court to construe the term "corruptly" as requiring proof of certain conduct (bribery) and "not [to] describe a state of mind" at all. Disputed Instructions 5 (citation omitted). Those requests are inconsistent with his argument in this Court (Pet. 17-22) that the term "corruptly" in Section 1503(a) requires proof of conscious wrongdoing and a specific intent to obtain an unlawful advantage, and that the intent to obstruct a known federal proceeding is insufficient to violate the statute.

This Court does not "permit an accused to elect to pursue one course at the trial and then, when that has proved to be unprofitable, to insist on appeal that the course which he rejected at the trial be reopened to him." *Johnson* v. *United States*, 318 U.S. 189, 201 (1943). When a district court "follow[s] the course which [the defendant] himself helped to chart and in which he acquiesced until the case was argued on appeal," a challenge to the district court's decision is "plainly waived." *Ibid.*; see Gov't C.A. Br. 98 (asserting waiver in court of appeals). Petitioner's waiver of his argument concerning the jury instructions is a sufficient reason to deny the petition for a writ of certiorari.

c. Even if petitioner had not waived his challenge to the district court's jury instructions concerning Section 1503(a)'s mens rea requirement, review would be limited to plain error because petitioner did not properly preserve that argument. See Fed. R. Crim. P. 30(d) (stating that a party "must inform the court of the specific objection" to a proposed instruction "and the

grounds for the objection before the jury retires to deliberate," and that "[f]ailure to object in accordance with this rule precludes appellate review" except for plain error). Under the plain-error rule, petitioner has the burden to establish (i) error that (ii) was "clear or obvious, rather than subject to reasonable dispute," (iii) "affected [his] substantial rights, which in the ordinary case means he must demonstrate that it 'affected the outcome of the district court proceedings,'" and (iv) "'seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings.'" *Puckett* v. *United States*, 556 U.S. 129, 135 (2009) (citations omitted); see *Rosales-Mireles* v. *United States*, 138 S. Ct. 1897, 1904-1905 (2018). "Meeting all four prongs is difficult, 'as it should be.'" *Puckett*, 556 U.S. at 135 (quoting *United States* v. *Dominguez Benitez*, 542 U.S. 74, 83 n.9 (2004)).

i. Petitioner cannot demonstrate error, let alone a clear or obvious one. The district court's instructions on Section 1503(a)'s mens rea requirement were consistent with this Court's decision in *Aguilar*. See 515 U.S. at 599 (explaining that Section 1503(a) requires proof that the defendant acted "with an intent to influence judicial or grand jury proceedings" and with "knowledge that his actions [we]re likely to affect the judicial proceeding"). They were also consistent with circuit precedent. See, *e.g.*, *United States* v. *Rasheed*, 663 F.2d 843, 852 (9th Cir. 1981) ("We hold that the word 'corruptly' as used in [Section 1503(a)] means that the act must be done with the purpose of obstructing justice."), cert. denied, 454 U.S. 1157 (1982). Petitioner cannot establish reversible plain error under those circumstances. See, *e.g.*, *United States* v. *Frady*, 456 U.S. 152, 163 (1982) (explaining that claim of error is not reversible under plain-error standard unless it was "so

'plain'" under governing law that a court would be "derelict in countenancing it, even absent the defendant's timely assistance in detecting it").

Petitioner's contrary arguments lack merit. He principally relies (Pet. 17-18) on *Marinello* v. *United States*, 138 S. Ct. 1101 (2018), in which this Court held that 26 U.S.C. 7212(a)—which imposes criminal penalties on a person who "corruptly * * * obstructs or impedes, or endeavors to obstruct or impede, the due administration of" the Internal Revenue Code—requires proof of "a 'nexus' between the defendant's conduct and a particular administrative proceeding" that the defendant intends to obstruct. 138 S. Ct. at 1109. The Court in *Marinello* noted that this construction was consistent with *Aguilar*'s interpretation of Section 1503(a), which similarly requires proof that the defendant knew of a pending proceeding and intended to obstruct it. *Id.* at 1106 (citing *Aguilar*, 515 U.S. at 599).

Nothing in *Marinello* suggests that *Aguilar*'s statement of Section 1503(a)'s mens rea requirement—the same requirement set forth in the jury instructions in this case—was incorrect. Petitioner notes (Pet. 17) that the government argued in *Marinello* that the term "corruptly" in Section 7212(a) "means acting with 'the specific intent to obtain an unlawful advantage.'" 138 S. Ct. at 1108 (quoting Oral Argument Tr. at 37, *Marinello*, *supra* (No. 16-1144) (Dec. 6, 2017)). As the government explained in *Marinello*, however, that requirement derives from "the 'special treatment' generally afforded to *mens rea* requirements in criminal tax statutes." Gov't Br. at 19, *Marinello*, *supra* (No. 16-1144) (Oct. 23, 2017) (quoting *Cheek* v. *United States*, 498 U.S. 192, 200 (1991)). This Court has recognized that "the complexity of the tax laws" may make it "difficult for the average citizen to

know and comprehend the extent of the[ir] duties and obligations" and that mens rea requirements in criminal tax statutes (like Section 7212(a)) should therefore be interpreted more stringently than in other contexts. *Cheek*, 498 U.S. at 199-200; see *United States* v. *Bishop*, 412 U.S. 346, 361 (1973). Courts have accordingly recognized that "[t]he meaning of 'corruptly' in Section 7212(a) is * * * more specific and demanding than the meaning of that term as applied in other, more general obstruction statutes," including Section 1503(a). Gov't Br. at 19, *Marinello*, *supra*; see *id.* at 19-20 (citing cases). Petitioner identifies no reason to apply the tax-specific mens rea requirement in Section 7212(a) to the distinct context of Section 1503(a).

Petitioner's reliance (Pet. 18-19) on *Arthur Andersen LLP* v. *United States*, 544 U.S. 696 (2005), is similarly misplaced. In that case, the petitioner had been convicted of violating 18 U.S.C. 1512(b), which imposes criminal penalties on a person who "knowingly * * * corruptly persuades another person" to withhold testimony or destroy documents in connection with an "official proceeding." 18 U.S.C. 1512(b)(2)(A) and (B). The Court explained that "Section 1512(b) punishes not just 'corruptly persuading' another, but '*knowingly* . . . corruptly persuading' another," *Arthur Andersen*, 544 U.S. at 704 (brackets omitted), and determined that the addition of "'knowingly'" required proof that the defendant was "conscious of wrongdoing," *id.* at 706. The Court distinguished Section 1503(a), which does not include "knowingly" as an element. *Id.* at 705 n.9.

In any event, this Court determined in *Arthur Andersen* that the jury instructions in that case were deficient not only because they omitted "consciousness of wrongdoing," but also because they did not require

"*any* nexus between the 'persuasion' to destroy documents and any particular proceeding"—or, indeed, "any 'corruptness' at all." 544 U.S. at 706-707 (brackets omitted). In this case, by contrast, the jury was required to find beyond a reasonable doubt that petitioner was aware of the federal grand-jury proceeding; that he had the purpose and "substantial" intent to obstruct that proceeding; and that he knew that such obstruction would be "the natural and probable effect" of his actions. Pet. App. 14-15. Nothing in *Arthur Andersen* indicates that those instructions were insufficient.

ii. Petitioner asserts (Pet. 11-17) that the courts of appeals have not adopted uniform definitions of "corruptly" under Section 1503(a) and similar statutes and that this Court's review is warranted to resolve that "confusion." Petitioner does not, however, identify any court of appeals that has adopted the specific mens rea requirement he advocates for Section 1503(a). And even if other circuits had adopted such a requirement, it would not establish that the district court's instructions in this case—which comport with precedent from this Court and the court of appeals—were clearly or obviously erroneous. See *Puckett*, 556 U.S. at 135.

In any event, the various formulations of "corruptly" adopted by the courts of appeals are not inconsistent. In *United States* v. *Rasheed*, *supra*, the court below observed that "corruptly" has been defined as "an evil or wicked purpose" or "a wrongful design to acquire some pecuniary or other advantage." 663 F.2d at 852 (citations omitted); cf. *Arthur Andersen*, 544 U.S. at 705 (noting that "'corruptly'" is "normally associated with wrongful, immoral, depraved, or evil"). The court ulti-

mately adopted a third definition—"the purpose of obstructing justice"—that encompasses the other two. *Rasheed*, 663 F.2d at 852.

As petitioner acknowledges (Pet. 11-14), the courts of appeals have generally recognized that the intentional and purposeful obstruction of a federal judicial proceeding logically requires the sort of wrongful or evil state of mind that other definitions of "corruptly" envisage. "[A]fter all, very few non-corrupt ways to or reasons for intentionally obstructing a judicial proceeding leap immediately to mind." *United States* v. *North*, 910 F.2d 843, 881-882 (D.C. Cir. 1990) (per curiam), opinion withdrawn and superseded in part on other grounds, 920 F.2d 940 (D.C. Cir. 1990), cert. denied, 500 U.S. 941 (1991); see, *e.g.*, *United States* v. *Ogle*, 613 F.2d 233, 238 (10th Cir. 1979) (explaining that "'corruptly'" means "bad, wicked, or having an evil purpose," and that an effort to "obstruct or impede the due administration of justice is per se unlawful and is tantamount to doing the act corruptly"), cert. denied, 449 U.S. 825 (1980); *United States* v. *Haas*, 583 F.2d 216, 220-221 (5th Cir. 1978) (identifying various definitions of "'corruptly'" and concluding that "a deliberate and knowing act improperly to influence a grand juror" would satisfy them), cert. denied, 440 U.S. 981 (1979). The circuits thus generally understand an instruction under which the jury must find an intentional and purposeful effort to obstruct justice—like the one given here—naturally

encompasses a "wrongful," "evil," or "immoral" intent, even if it does not also include those precise words.[1]

d. Even if the district court had plainly erred, this case would be an unsuitable vehicle for considering the question presented because petitioner cannot make the further showing that any error in the district court's jury instructions "affected [his] substantial rights" or "'seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings.'" *Puckett*, 556 U.S. at 135 (citation omitted); cf. *Neder* v. *United States*, 527 U.S. 1, 15 (1999) (holding that preserved claims of error in jury instructions may be harmless).

Petitioner contends (Pet. 21) that the jury instructions permitted his conviction even if the jury found that petitioner "believed [that] the federal investigation was being conducted in violation of the state laws that he was tasked with enforcing as Sheriff"—an apparent reference to his claim that the FBI had acted illegally by introducing a cell phone into the jail. But petitioner identifies no likelihood that the jury would have credited that defense and acquitted him had it received the instructions he now advocates.

Petitioner identifies no plausible basis on which the jury, having found that he intentionally and purposefully sought to obstruct a federal grand jury with full knowledge that his actions were likely to have that obstructive effect, could have reasonably concluded that petitioner was unaware that his actions were wrongful.

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[1] To the extent that petitioner contends (Pet. 12-16) that internal disagreement exists within some courts of appeals over the definition of "corruptly," any such intracircuit tension would not warrant this Court's review. See *Wisniewski* v. *United States*, 353 U.S. 901, 902 (1957) (per curiam) ("It is primarily the task of a Court of Appeals to reconcile its internal difficulties.").

The evidence at trial established that petitioner was well aware that the FBI had done nothing wrong and that his own actions were likely criminal. See, *e.g.*, Gov't C.A. E.R. 269-270, 273, 572. Indeed, on the one occasion that petitioner and his co-conspirators sought legal process from a state court in furtherance of their scheme to disrupt the federal investigation, their request was denied on the ground that the court had no authority to superintend the actions of the FBI. *Id.* at 722-723. And even if the jury had credited petitioner's assertion that he believed the FBI's introduction of a cell phone into the jail was improper, the jury still would not have had reasonable grounds on which to conclude that all of the actions petitioner and his co-conspirators took to obstruct the grand jury proceeding as a whole were justified—actions that included hiding an inmate, falsifying records, tampering with witnesses, threatening an FBI agent, and instructing Sheriff's Department employees not to comply with a federal court order. See pp. 3-10, *supra*.

Moreover, the jury unanimously found petitioner guilty of *conspiracy* to obstruct justice in addition to actual obstruction. See Gov't C.A. E.R. 908. In its instructions concerning the charged conspiracy, the district court informed the jury that it needed to find beyond a reasonable doubt "that there was a plan to commit the crime of obstruction of justice" and that petitioner "willfully participat[ed] in th[at] unlawful plan with the intent to advance or further some object or purpose of the conspiracy." Pet. App. 13. Having found that petitioner "willfully participated" in a plan to commit a criminal obstruction offense, no reasonable likelihood exists that the jury would have failed to conclude that petitioner knew his actions were wrongful.

2. Petitioner separately contends (Pet. 24-37) that the district court abused its discretion in identifying jurors by number rather than name. That factbound contention lacks merit and does not warrant review.

a. This Court has long recognized "the weighty government interest in insulating the jury's deliberative process" from outside influences that could adversely affect the jury's ability to render a fair and impartial verdict. *Tanner* v. *United States*, 483 U.S. 107, 120 (1987); see *Estes* v. *Texas*, 381 U.S. 532, 564 (1965) (Warren, C.J., concurring) ("[T]he criminal trial under our Constitution has a clearly defined purpose, to provide a fair and reliable determination of guilt, and no procedure or occurrence which seriously threatens to divert it from that purpose can be tolerated."). A fair and impartial jury serves the interests of both parties, see *Arizona* v. *Washington*, 434 U.S. 497, 516 (1978), and a defendant's rights "must in some instances be subordinated to the public's interest in fair trials designed to end in just judgments," *Wade* v. *Hunter*, 336 U.S. 684, 689 (1949).

Consistent with those principles, the courts of appeals have uniformly determined that, in appropriate circumstances, trial courts may decline to provide juror names or other identifying personal information in order to protect juror privacy and avoid potential interference with the jury. See, *e.g.*, *United States* v. *DeLuca*, 137 F.3d 24, 31 (1st Cir.), cert. denied, 525 U.S. 874, and 525 U.S. 917 (1998); *United States* v. *Paccione*, 949 F.2d 1183, 1191-1193 (2d Cir. 1991), cert. denied, 505 U.S. 1220 (1992); *United States* v. *Scarfo*, 850 F.2d 1015, 1021-1023 (3d Cir.), cert. denied, 488 U.S. 910 (1988); *United States* v. *White*, 810 F.3d 212, 225-227 (4th Cir.), cert. denied, 136 S. Ct. 1833 (2016); *United*

*States* v. *Krout*, 66 F.3d 1420, 1426-1428 (5th Cir. 1995), cert. denied, 516 U.S. 1136 (1996); *United States* v. *Deitz*, 577 F.3d 672, 684-686 (6th Cir. 2009), cert. denied, 559 U.S. 984 (2010); *United States* v. *DiDomenico*, 78 F.3d 294, 301-302 (7th Cir.), cert. denied, 519 U.S. 1006 (1996); *United States* v. *Darden*, 70 F.3d 1507, 1532-1533 (8th Cir. 1995), cert. denied, 517 U.S. 1149, and 518 U.S. 1026 (1996); *United States* v. *Shryock*, 342 F.3d 948, 970-971 (9th Cir. 2003), cert. denied, 541 U.S. 965 (2004); *United States* v. *Ross*, 33 F.3d 1507, 1519-1522 (11th Cir. 1994), cert. denied, 515 U.S. 1132 (1995); *United States* v. *Edmond*, 52 F.3d 1080, 1089-1094 (D.C. Cir.) (per curiam), cert. denied, 516 U.S. 998 (1995). Congress has similarly authorized district courts "to keep [juror] names confidential in any case where the interests of justice so require." 28 U.S.C. 1863(b)(7).

Although the courts of appeals have not adopted precise standards governing the use of juror-confidentiality procedures, they agree on the general parameters that should inform that decision. The circuits have broadly determined, for example, that such procedures are "unusual measure[s]" that may be warranted only where "'(1) there is a strong reason for concluding that [confidentiality] is necessary to enable the jury to perform its factfinding function, or to ensure juror protection; and (2) reasonable safeguards are adopted by the trial court to minimize any risk of infringement upon the fundamental rights of the accused.'" *Shryock*, 342 F.3d at 971 (quoting *DeLuca*, 137 F.3d at 31); see, *e.g.*, *White*, 810 F.3d at 225; *Darden*, 70 F.3d at 1532; *Krout*, 66 F.3d at 1427; *Edmond*, 52 F.3d at 1090; *Ross*, 33 F.3d at 1519-1520; *Paccione*, 949 F.2d at 1192. That determination depends heavily on the circumstances of each case

and, accordingly, is committed to the discretion of the district court. *Shryock*, 342 F.3d at 970; see, *e.g.*, *Krout*, 66 F.3d at 1426 ("[A]ll [other circuits] hold that a lower court's decision to empanel an anonymous jury is entitled to deference and is subject to abuse of discretion review.").

The courts of appeals have identified a variety of factors that may guide the exercise of a district court's discretion. Those factors include

> (1) the defendants' involvement with organized crime; (2) the defendants' participation in a group with the capacity to harm jurors; (3) the defendants' past attempts to interfere with the judicial process or witnesses; (4) the potential that the defendants will suffer a lengthy incarceration if convicted; and (5) extensive publicity that could enhance the possibility that jurors' names would become public and expose them to intimidation and harassment.

*Shryock*, 342 F.3d at 971 (citing cases from seven other circuits). Those factors "are neither exclusive nor dispositive," however, and trial courts should consider "the totality of the circumstances" in determining whether confidentiality of juror names is warranted on the facts of a particular case. *Ibid.*

b. The district court's decision to employ such a procedure in this case comports with those principles. The court issued written factual findings in support of its determination that the procedure was "appropriate." Pet. App. 8 (capitalization omitted). In those findings, the court explained that petitioner was charged with leading "an organized criminal conspiracy" that engaged in acts of witness tampering and intimidation; that jurors in earlier trials of petitioner's co-conspirators had reported feeling intimidated and had expressed serious concerns

about whether the defendants could access their personal information; and that petitioner's trial was the subject of intense media scrutiny. *Id.* at 8-9.

The district court determined that disclosing the jurors' names could compromise the fairness of the trial by exposing them "to potential intimidation and harassment" and to extraneous information about the case, and that identifying them by number would "protect the defendant and allow him to receive a fair trial[,] and protect the integrity of the judicial process." Pet. App. 9. The court, however, did not otherwise limit the parties' access to information about the jurors—who were required to fill out detailed juror questionnaires and were subject to voir dire. And it sought to "safeguard against any potential prejudice" to petitioner by repeatedly instructing the jurors that identifying them by number was a standard practice intended to protect their privacy and was unrelated to petitioner's guilt or innocence. *Id.* at 10; see C.A. E.R. 331-332, 335; Gov't C.A. E.R. 2-4.

The court of appeals determined that, under those circumstances, the district court did not abuse its discretion. Pet. App. 3. The court of appeals additionally determined that the district court had "minimized any risk of prejudice to [petitioner] by instructing the jury that an anonymous jury was utilized to protect the jurors' privacy and was unrelated to [petitioner's] guilt or innocence." *Ibid.* Those factbound, case-specific determinations do not warrant this Court's review. See *United States* v. *Johnston*, 268 U.S. 220, 227 (1925) ("We do not grant * * * certiorari to review evidence and discuss specific facts.").

c. Petitioner contends (Pet. 25, 29-35) that the district court's procedures violated his Sixth Amendment

right to a public trial. Petitioner did not present that claim to the court of appeals. Instead, he simply contended that the circumstances of his particular case did not warrant declining to provide the names of jurors, relying on the various factors that courts of appeals have identified as relevant to that discretionary determination. See Pet. C.A. Br. 36-43. Petitioner briefly asserted that any error on the issue should be treated as a "structural error" not subject to harmless-error review because it could "implicate[]" his "Sixth Amendment rights" in a manner "similar" to a violation of "the right to a public trial." *Id.* at 43. But he did not contend that the district court's decision actually violated the Sixth Amendment. The court of appeals accordingly did not address that issue. See Pet. App. 3.

Petitioner's Sixth Amendment argument thus was "not raised or resolved in the lower courts." *Taylor* v. *Freeland & Kronz*, 503 U.S. 638, 646 (1992) (brackets and citation omitted). This Court ordinarily does not address such issues absent "unusual circumstances." *Ibid.* (citation omitted); see, *e.g.*, *OBB Personenverkehr AG* v. *Sachs*, 136 S. Ct. 390, 397-398 (2015); *Zivotofsky ex rel. Zivotofsky* v. *Clinton*, 566 U.S. 189, 201 (2012) (declining to review claim "without the benefit of thorough lower court opinions to guide our analysis of the merits"). Petitioner identifies no reason for this Court to depart from that practice to address the merits of his Sixth Amendment argument in the first instance.

In any event, petitioner's argument lacks merit. Petitioner contends (Pet. 25, 29-35) that identifying the jurors in his case by number rather than by name violated his right to a public trial. None of the cases on which he relies supports that contention. In *Press-Enterprise Co.* v. *Superior Court*, 464 U.S. 501 (1984), this Court

held that barring the public and the press from six weeks of voir dire proceedings in a criminal case, "without considering alternatives to closure," violated the First Amendment. *Id.* at 513. In *Presley* v. *Georgia*, 558 U.S. 209 (2010) (per curiam), the Court held that the Sixth Amendment's public-trial guarantee likewise precludes a trial court from excluding the public from voir dire without "consider[ing] alternatives to closure." *Id.* at 214. And in *Waller* v. *Georgia*, 467 U.S. 39 (1984), the Court held that, in certain circumstances, "the closure of [an] entire suppression hearing" violates the Sixth Amendment. *Id.* at 48.

Each of those cases involved the complete closure of proceedings in a criminal case without consideration of less-restrictive alternatives. This case, in contrast, involves the limited confidentiality of juror names in an otherwise-public trial. Far from *denying* the right to a public trial, the district court's decision to address potential threats to juror safety and impartiality by withholding the jurors' names rather than by closing any portion of the proceedings is precisely the sort of "reasonable measure to accommodate public attendance at criminal trials" that this Court has required in order to *protect* the right to a public trial. *Presley*, 558 U.S. at 215; cf. *Press-Enterprise Co.*, 464 U.S. at 512 (noting that "valid privacy right[s]" may require that "the name of a juror [be] withheld" in proceedings that are otherwise open to the public).

Moreover, even if the withholding of juror names could be properly considered a "closure" of the proceedings, petitioner identifies no sound reason for this Court to review the district court's factbound determination that such a step was warranted based on the circum-

stances of this case. This Court has repeatedly recognized that "[t]he 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." *Presley*, 558 U.S. at 213 (quoting *Waller*, 467 U.S. at 45); see *id.* at 215 ("There are no doubt circumstances where a judge could conclude that threats of improper communications with jurors or safety concerns are concrete enough to warrant closing *voir dire*."); see also *Weaver* v. *Massachusetts*, 137 S. Ct. 1899, 1909 (2017) (explaining that "the public-trial right * * * is subject to exceptions," including where the trial court "mak[es] proper factual findings in support of the decision to" close the proceedings).

In making that determination, "the balance of interests must be struck with special care" based on the unique circumstances of each case. *Waller*, 467 U.S. at 45; see *Press-Enterprise Co.*, 464 U.S. at 510. The district court made extensive findings to justify its decision in this case, including that petitioner was charged with using his ties to law enforcement to orchestrate a campaign of witness tampering and intimidation and, critically, that jurors in the trials of petitioner's co-conspirators had reported feeling intimidated. Pet. App. 8-9. The court further found that any risk of prejudice to petitioner from withholding juror names could be ameliorated by jury instructions and other measures. See *id.* at 9. The sufficiency of those findings is a factbound question that does not warrant review.

d. Petitioner asserts (Pet. 27-29) that the court of appeals' decision in this case conflicts with decisions of the Third and Seventh Circuits establishing a rebuttable presumption that juror names should be disclosed to

the press. See *United States* v. *Blagojevich*, 612 F.3d 558 (7th Cir. 2010) (adopting common-law presumption); *United States* v. *Wecht*, 537 F.3d 222 (3d Cir. 2008) (same under First Amendment). That assertion lacks merit.

In both cases petitioner cites, the courts of appeals recognized that withholding juror names may be appropriate where "some unusual risk" exists that jurors would be subjected to intimidation, harassment, or other interference if their names were disclosed—a risk that is best assessed by trial courts after "an appropriate inquiry into the facts." *Blagojevich*, 612 F.3d at 564-565 (emphasis omitted); see *Wecht*, 537 F.3d at 241 (citing *Scarfo*, 850 F.2d at 1017). In *Blagojevich*, the court of appeals faulted the district court for withholding juror names without "mak[ing] any findings of fact" and remanded for further consideration. 612 F.3d at 563. But the Seventh Circuit did not suggest that any particular fact would be "indispensable" to the district court's decision or otherwise opine on "when it is appropriate to delay the release of jurors' names," *id.* at 564-565. In *Wecht*, the court of appeals determined that the facts of that case—involving a county coroner who allegedly used his office to enrich himself—presented no likelihood that jurors would be subjected to intimidation or outside influence if their names were revealed. 537 F.3d at 240-242. But the Third Circuit acknowledged that a different result could be appropriate in other cases. *Id.* at 241. Neither decision suggests that the district court's discretionary determination to identify jurors by number in this case was erroneous.

Petitioner's challenge (Pet. 29-35) to that decision ultimately reduces to his disagreement with the lower

courts as to whether the facts warranted that course. That disagreement does not warrant further review.

## CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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