

No. 18–7224

IN THE
SUPREME COURT OF THE UNITED STATES

JOSE ALEJANDRO ACUNA VALENZUELA,
PETITIONER,

·vs·

STATE OF ARIZONA,
RESPONDENT.

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

BRIEF IN OPPOSITION

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CAPITAL CASE

QUESTIONS PRESENTED FOR REVIEW

- 1) Should this Court grant certiorari to review whether the Arizona Supreme Court correctly concluded that Ariz. Rev. Stat. § 21–211 did not disqualify a prospective juror from sitting on the jury in Acuna’s capital trial, where the court evaluated the claim only as a matter of state law and clearly indicated that its conclusion rested on state grounds that are separate, adequate, and independent from any federal question?
- 2) Should this Court grant certiorari to review whether the Arizona Supreme Court correctly affirmed the trial court’s denial of Acuna’s motion for a new trial under the Arizona Rules of Criminal Procedure, where the court evaluated the claim only as a matter of state law and clearly indicated that its conclusion rested on state grounds that are separate, adequate, and independent from any federal question?

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OPINION BELOW

On September 25, 2018, the Arizona Supreme Court unanimously affirmed Acuna's first-degree-murder conviction and death sentence. Pet. App. 1a–33a. The court's opinion is reported at *State v. Acuna Valenzuela*, 426 P.3d 1176 (Ariz. 2018).

STATEMENT OF JURISDICTION

Acuna timely filed his petition for writ of certiorari on December 20, 2018, *see* U.S. SUP. CT. R. 13.1, 13.3, but as discussed below, this Court lacks jurisdiction to consider the claims presented in the petition because the Arizona Supreme Court decided them on separate, adequate, and independent state grounds. *See, e.g., Foster v. Chatman*, --- U.S. ---, 136 S. Ct. 1737, 1745 (2016) (“This Court lacks jurisdiction to entertain a federal claim on review of a state court judgment ‘if that judgment rests on a state law ground that is both ‘independent’ of the merits of the federal claim and an ‘adequate’ basis for the court’s decision.’”) (Quoting *Harris v. Reed*, 489 U.S. 255, 260 (1989)).

CONSTITUTIONAL PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution provides, in pertinent part:

In all criminal prosecutions, the accused shall enjoy the right to . . . an impartial jury

The Fourteenth Amendment to the United States Constitution provides, in pertinent part:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law

STATEMENT OF THE CASE

Edgar S. testified during a criminal proceeding in 2008 that resulted in Acuna being convicted and sentenced to prison. Pet. App. 14a–15a. In August 2011, after Acuna was released from prison, he crossed paths with Edgar and Edgar’s girlfriend, Perla M., at a Baskin Robbins. Pet. App. 14a. Acuna’s eyes widened when he saw Edgar, and Acuna left while yelling, “I told you I didn’t want to [expletive] see you.” Pet. App. 15a. Outside, Acuna complained to a friend that Perla had lied to him when she told him that she was no longer seeing or talking to Edgar. *Id.* Acuna also grumbled to his friend that he “did prison time for [Edgar].” *Id.*

A short time later, Edgar and Perla left the Baskin Robbins and got into Perla’s car. *Id.* Edgar said, “Baby he’s coming,” and Perla looked over her shoulder and saw Acuna running towards them and firing a gun. *Id.* Acuna shot out the windows of the car and shot Edgar multiple times. *Id.* Acuna then ran behind the car and began shooting at Perla before fleeing the scene. *Id.* Perla survived the attack, despite being shot in the upper back. *Id.* Edgar, however, died from his injuries. *Id.*

A jury found Acuna guilty of first-degree murder, attempted first-degree murder, discharge of a firearm at a structure, and misconduct involving weapons. *Id.* The jury also concluded that two statutory aggravators had been proven beyond a reasonable doubt during the aggravation phase—namely, that Acuna had previously been convicted of a serious offense and that he murdered Edgar in

retaliation for testifying in a court proceeding. *Id.* The jury then determined that Acuna should be sentenced to death for Edgar's murder. *Id.*

After the jury sentenced Acuna to death, a juror posted a blog online that detailed her thoughts and experiences as a juror during the trial, including her opinions of the prosecutor and defense attorney. Pet. App. 22a. The same juror had previously disclosed during voir dire that she was friends with a prosecutor in the Maricopa County Attorney's Office who was unconnected with the case, but the juror avowed that she could put that friendship aside and remain impartial in Acuna's case. Pet. App. 18a. Accordingly, the trial court rejected Acuna's motion to strike the juror for cause under Ariz. Rev. Stat. § 21-211, as a person "interested directly or indirectly in the matter." *Id.*

Acuna again attempted to disqualify the juror, and moved to vacate the judgment under Arizona Rule of Criminal Procedure 24.2, citing the juror's post-verdict blog as newly discovered evidence of an anti-defense bias. Pet. App. 22a. The trial court denied Acuna's motion to vacate his convictions and sentences after concluding the blog did not constitute newly discovered evidence under Ariz. R. Crim. P. 24.2 or demonstrate that the juror harbored an anti-defense bias. *Id.* Acuna appealed, and the Arizona Supreme Court affirmed his convictions and sentences. Pet. App. 33a. This petition followed.

REASONS FOR DENYING THE WRIT

This Court faithfully observes the fundamental bounds of its jurisdiction and will not encroach upon the jurisdiction of the states and their ability to interpret their respective laws and constitutions. *Florida v. Powell*, 559 U.S. 50, 56 (2010);

see also, e.g., Minnesota v. National Tea Co., 309 U.S. 551, 557 (1940). This is especially true on direct review of a state court’s judgment—“this Court has no power to review a state law determination that is sufficient to support the judgment” because the “resolution of any independent federal ground for the decision could not affect the judgment and would therefore be advisory.” *Coleman v. Thompson*, 501 U.S. 722, 729 (1991).

To be sure, however, ambiguous adjudications by state courts may not “stand as barriers to a determination by this Court of the validity under the federal constitution of state action.” *National Tea Co.*, 309 U.S. at 557. Accordingly, when determining whether a state-court decision rests on an adequate and independent state ground, this Court follows the following presumption:

When a state court decision fairly appears to rest primarily on federal law, or to be interwoven with the federal law, and when the adequacy and independence of any possible state law ground is not clear from the face of the opinion, we will accept as the most reasonable explanation that the state court decided the case the way it did because it believed that federal law required it to do so.

Powell, 559 U.S. at 56–57 (quoting *Michigan v. Long*, 463 U.S. 1032, 1040–41 (1983) (brackets and ellipsis omitted)). To rebut this presumption, a state-court decision must indicate “clearly and expressly that it is alternatively based on bona fide separate, adequate, and independent grounds.” *Id.* (quoting *Long*, 463 U.S. at 1041).

The adequacy and independence of the state law grounds for the Arizona Supreme Court’s conclusions regarding Acuna’s claims are clear from the plain language of the court’s decision. First, the court clearly and expressly reviewed the trial court’s decision not to strike the complained-of juror for cause under Ariz. Rev. Stat. § 21–211. Pet. App. 18a–19a. In fact, Acuna raised the claim below as an

alleged violation of Ariz. Rev. Stat. § 21–211, *see* Pet. App. 17a, and the Arizona Supreme Court relied exclusively on its prior interpretations of that statute when rejecting Acuna’s state-law claim. Pet. App. 18a–19a. Acuna merely reasserts the same state-law claim in this petition, arguing that the juror’s friendship with an unconnected prosecutor amounted to “an interest” under Ariz. Rev. Stat. § 21–211 and disqualified the juror. Pet. at 8–9. The Arizona Supreme Court’s denial of Acuna’s claim, therefore, rested on state statutory grounds that are separate, adequate, and independent from any interpretation of federal law, and as a result, this Court lacks jurisdiction to review the claim. *See Herb*, 324 U.S. at 125–26 (stating that this Court’s “only power over state judgments is to correct them to the extent that they incorrectly adjudge federal rights”).

Second, the Arizona Supreme Court reviewed the trial court’s denial of Acuna’s motion for a new trial under the applicable Arizona Rules of Criminal Procedure and related Arizona case law. Pet. App. 22a–24a. Although the court quoted *Peña-Rodriguez v. Colorado*, --- U.S. ---, 137 S. Ct. 855, 869 (2017), and acknowledged that a juror’s statements are admissible to impeach a verdict if they demonstrate racial animus that “cast serious doubts on the fairness and impartiality of the jury’s deliberations and resulting verdict,” there was no suggestion of racial animus in this case. Pet. App. 23a. Consequently, as the Arizona Supreme Court clearly and expressly held, Acuna’s argument failed because the juror’s blog was inadmissible to challenge the verdict under the Arizona Rules of Criminal Procedure and related Arizona case law. *Id.* at 24a. The decision expressly rested on state law grounds that are separate, adequate, and independent

from any interpretation of federal law; thus, this Court lacks jurisdiction to consider the claim. *See Herb*, 324 U.S. at 125–26.

Moreover, even if Acuna’s claims were not decided by the Arizona Supreme Court on separate, adequate, and independent state grounds, this Court should still deny certiorari. As discussed below, the claims presented are fact-intensive, involve the application of straightforward and well-defined legal principles, and allege errors that only affect Acuna’s case. The claims, therefore, do not warrant this Court’s intervention. *See* SUP. CT. R. 10 (“A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.”); *see also, e.g., Butler v. McKellar*, 494 U.S. 407, 429 (1990) (Brennan, J., dissenting) (“[This Court’s] burden and responsibility are too great to permit it to review and correct every misstep made by the lower courts in the application of accepted principles. Hence the Court generally will not grant certiorari just because the decision below may be erroneous.”) (Quotations omitted).

I. THIS COURT SHOULD NOT GRANT CERTIORARI TO CORRECT PERCEIVED ERRORS IN THE ARIZONA SUPREME COURT’S DECISION AFFIRMING THE TRIAL COURT’S DENIAL OF ACUNA’S MOTION TO STRIKE A PROSPECTIVE JUROR FOR CAUSE.

As discussed, Acuna argues the Arizona Supreme Court erroneously affirmed the trial court’s denial of his motion to strike a prospective juror for cause. Pet. at 7–9. Specifically, Acuna argues the juror should have been dismissed due to a perceived bias that was based on her friendship with a prosecutor who was employed by the agency prosecuting his case. *Id.* at 8. Acuna’s claim is meritless. The Arizona Supreme Court correctly affirmed the trial court because the juror’s

friend was not involved in Acuna's case and the juror's answers during voir dire demonstrated that she could put the friendship aside and decide the case fairly and impartially.

The Sixth Amendment guarantees criminal defendants the right to a verdict by impartial and indifferent jurors—that is, jurors “capable and willing to decide the case solely on the evidence before it.” *Smith v. Phillips*, 455 U.S. 209, 217 (1982). There are two types of juror bias that have been recognized as potential Sixth Amendment violations: actual bias and implied bias. *See, e.g., Estrada v. Scribner*, 512 F.3d 1227, 1240 (9th Cir. 2008). However, Acuna does not identify, and there is no evidence to suggest, that the complained-of juror held any such bias. *See United States v. Olsen*, 704 F.3d 1172, 1089–95 (9th Cir. 2013) (explaining that “actual bias . . . stems from a pre-set disposition not to decide an issue impartially” and that implied bias “may exist in exceptional circumstances where, for example, a prospective juror has a relationship to the crime itself or to someone involved in a trial, or has repeatedly lied about a material fact to get on the jury”).

Acuna, instead, speculates that the juror was biased because she was friends with a prosecutor in the Maricopa County Attorney's Office, which prosecuted his case. Pet. at 8. But the Maricopa County Attorney's Office serves one of the nation's most populated counties and employs hundreds of prosecutors in order to prosecute the 35,000 felony cases that arise each year.¹ As a result, it is neither surprising, nor unusual, that a prospective juror may be acquainted with a person that is employed by such a large prosecuting agency.

¹ The Maricopa County Attorney's Office, <https://www.maricopacountyattorney.org/> (last visited Feb. 4, 2019).

Regardless, as discussed, the juror's friend was not involved in Acuna's case, and the juror said the friendship "would 'more likely than not' be irrelevant to her ability to be fair and impartial in this case." Pet. App. 18a. Thus, notwithstanding Acuna's unsupported speculations, there is nothing to suggest the juror was biased in violation of Acuna's Sixth Amendment rights. *See Smith*, 455 U.S. at 215–18 ("The safeguards of juror impartiality . . . are not infallible; it is virtually impossible to shield jurors from every contact or influence that might theoretically affect their vote."). This Court should deny certiorari on the claim.

II. THIS COURT SHOULD NOT GRANT CERTIORARI TO CORRECT PERCEIVED ERRORS IN THE ARIZONA SUPREME COURT'S DECISION AFFIRMING THE TRIAL COURT'S DENIAL OF ACUNA'S MOTION TO VACATE HIS CONVICTIONS AND SENTENCES.

Acuna argues next that the Arizona Supreme Court incorrectly upheld the trial court's denial of his motion to vacate his convictions and sentences based on an online blog that was posted by the same juror after Acuna's trial. Pet. at 9–10. Acuna argues his convictions and sentences should have been vacated, and he should have received a new trial, because the juror's blog demonstrated an undisclosed but "preexisting pro-State/anti-defense bias." *Id.* at 9. Acuna is mistaken.

In order to obtain a new trial based on previously undiscovered juror bias, "a party must first demonstrate that a juror failed to answer honestly a material question on voir dire, and then further show that a correct response would have provided a valid basis for a challenge for cause." *McDonough Power Equip., Inc. v. Greenwood*, 464 U.S. 548, 556 (1984). Acuna does not identify any question that the juror answered dishonestly during voir dire or demonstrate that an otherwise

honest answer would have provided a valid basis to challenge the juror for cause. Pet. at 9–10. Moreover, as the trial court found and the Arizona Supreme Court confirmed, the juror’s blog does not demonstrate a pro-State/anti-defense bias, as Acuna claims, when the blog is read in its entirety. Pet. App. 21a–24a. Consequently, even if Acuna could use the juror’s blog as evidence to impeach the verdict, *see generally Peña-Rodriguez, supra*, the blog would not have entitled Acuna to a new trial. *See McDonough*, 464 U.S. at 556–57. Thus, Acuna’s motion was correctly denied, and certiorari on the claim should be denied.

CONCLUSION

Based on the foregoing authorities and arguments, Respondent respectfully requests this Court to deny Acuna’s petition for writ of certiorari.

Respectfully submitted,

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