

No. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

JASON Johnson — PETITIONER  
(Your Name)

vs.

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals, Second Circuit  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

JASON Johnson  
(Your Name)

ATTICA Correctional Facility, P.O. Box 149  
(Address)

ATTICA, NY.  
(City, State, Zip Code)

585-591-2006  
(Phone Number)

QUESTION PRESENTED

DID TRIAL COURT UNREASONABLY APPLY SUPREME COURT'S PRECEDENT WHEN IT BYPASSED STEP 3 OF THE BATSON v. KENTUCKY REQUIREMENT'S IN IT'S CONSIDERATION OF PETITIONER'S CLAIM OF PATTERN OF RACIAL DISCRIMINATION IN JURY SELECTION PROCESS?

CENTRAL TO THE PRESENT WRIT IS THE MANNER IN WHICH 66% OF ALL AFRICAN-AMERICAN PROSPECTIVE JUROR'S IN THE JURY POOL OF THIS CASE, WERE TARGETED FOR EXCLUSION BY THE PROSECUTION; AND THE FAILURE OF TRIAL COURT TO CONDUCT THE STEP 3 ANALYSIS OF BATSON MANDATE IN EVALUATION OF PETITIONER'S DUE PROCESS CLAIM OF RACIAL DISCRIMINATION IN THE JURY SELECTION.

FINALLY, DID THE UNITED STATES COURT OF APPEAL'S, SECOND CIRCUIT ERRONEOUSLY REVERSE DISTRICT COURT'S GRANT OF HABEAS CORPUS RELIEF, THAT WAS BASED ON DETERMINATION THAT THE PROSECUTION'S USE OF IT'S PEREMPTORY STRIKE'S TO EXCLUDE FOUR AFRICAN-AMERICAN PROSPECTIVE JUROR'S DURING JURY SELECTION AMOUNTED TO INTENTIONAL DISCRIMINATION?

## LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

A "pro se complaint 'however inartfully pleaded' must be held to 'less stringent standards than formal pleadings drafted by lawyers'".

(*United States v. Morgan*, 346 U.S. 502, 505, n.3 [1954])

OPINIONS BELOW

United States Court of Appeals, Second Circuit Reversed Southern District of New York Court's determination [October 10, 2018].

Johnson v. Gonyea, -- Fed. APPX -- 2018 WL 4922794 (Appendix A).

United States District Court, Southern District of New York [October 31, 2017] Grant of Habeas Corpus Petition. Johnson v. Arribas, Slip Copy, 2017 WL 6729857 (Appendix B)

Court of Appeals of New York, Denied leave to appeal application, [August 10, 2015].

People v. Johnson, 26 N.Y.3d 930 (Appendix C)

Supreme Court of New York, Appellate Division, First Department, Affirmance of conviction [May 29, 2014]

People v. Johnson, 117 A.D.3d 637 (Appendix D)

## JURISDICTION

The New York highest court of review entered its endorsement of Appellate Court's determination of May 29, 2014. The Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

## CONSTITUTIONAL AND STATUTORY PROVISIONS IMPLICATED

Constitution of the United States, Amendment V:

Involving racial discrimination in the selection of venire  
Jury.

"No person shall be \*\*\* deprived of life, liberty, or property without due process  
of law"

Constitution of the United States, Amendment XIV:

The Constitution forbids striking even a single  
prospective juror for a discriminatory purpose.  
An accused entitled to a verdict rendered by  
a jury of his own peers.

"Nor deny to any person within its jurisdiction the equal  
protection of the law"

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Appendix B- United States District Court, Southern District of New York order Granting Petition for Writ of Habeas. Johnson v. Aditus 2017 WL 6729857

Appendix C- Court of Appeals of the State of New York, Denial of Application for Leave to Appeal. People v. Johnson, 26 N.Y.3d 930

Appendix D- Supreme Court of the State of New York Appellate Division, First Department's Order denying reargument. People v. Johnson, 117 A.D.3d 637.

Appendix E- Constitutional provisions and statutes involved.

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Constitutional Authority

<u>U.S. CONST. Amend. V</u> .....
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Statutory Authorities
<u>28 U.S.C. § 2254(d)</u> .....

## STATEMENT OF CASE

This is a case that yet again bring's focus to racial discrimination in the selection of petit juries in criminal trials, as well as the evasive manipulative tactic's employed by prosecutor's to avoid constitutional scrutiny .

In the writ presented now before the court, petitioner humbly seeks constitutional intervention for the blatant disregard of due process right's as it relate's to Batson protection's in jury selection. Specifically, trial court refusal to conduct the 3 step analysis of the Batson requirement's. This failure to fully evaluate petitioner's due process claims of racial discrimination led to the exclusion of the four african-american jurors, which effectively deprived petitioner of his fundamental right to a jury of his peers.

The pattern of purposeful discrimination that occurred in this case was clearly established by defense counsel. The trial court completely disregarded the defense request for specific redress of discriminatory manner in which african-american's were being excluded by the prosecution. This court has made it clear that explanation must be undisputedly race-neutral, and that generalized reasoning devoid of viable substance can only be percieved as purposeful racial discrimination in violation of the equal protection clause of the Fourteenth Amendment (Brown v. Alexander, 543 F.3d 94, 100-101 (2nd Cir. 2008)).

Here, the manner in which african-american prospective juror's were struck by the prosecutor was clearly motivated by racial intent. The prosecutor's proffered reason's for striking what constituted 66% of african-american's called as part of all 3 round's of the jury selection were clearly pretextual for discriminatory intent (Snyder v. Louisiana, 552 U.S. 472, 128 S. Ct. 1203; Miller-El v. Dretke, 545 U.S. 231, 125 S. Ct. 2317 (2005)). And while it is clear that trial court was in the best position to evaluate the prosecution's demeanor while offering purported race-neutral explanation for striking african-american juror's where the record fail's to reflect meaningful consideration of proffered explanation for striking potential juror's (Hernandez v. New York, 500 U.S. 352, 369, 111 S. Ct. 1859 (1991)). As it does here; reversal of conviction is mandated. Because required factual determination is absent from step 3 of the Batson analysis (Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 266, 97 S. Ct. 555 (1977)).

## REASON FOR GRANTING THE PETITION

The constitution forbids striking even a single prospective juror for a discriminatory purpose (United States v. Vasquez-Lopez, 22 F.3d 900, 902 (C.A. 9 1994)). This court has made it clear that when considering a Batson objection, or reviewing a rule regarding a claim of Batson error, all circumstances relating to the issue of racial animosity must be consulted (United States v. Lane, 866 F.2d 103, 105 (C.A. 4 1989); United States v. Clemons, 843 F2d 741, 747 (C.A. 3 1988)).

The trial court's failure to conduct the third step of the Batson analysis was an unreasonable application of constitutional safeguard's which deprived Petitioner his fundamental right to a jury of his peer's (United States v. Battle, 836 F2d 1084, 1086 (C.A. 8 1987); United States v. David, 803 F.2d 1567, 1571 (C.A. 11 1986)).

This case present's one of the rare set's of "exceptional circumstances" that requires this court's judicial intervention. Especially, in light of the second circuit court of appeal's erroneous over-ruling of district court's determination to grant writ of habeas corpus relief regarding trial court's abdication of it's duty to adequately consider Petitioner's challenge to pattern of discriminatory preclusion of 66% of prospective african-american jurors called for jury selection. As well as the clear implausibility of initial explanations offended by the prosecution for striking of juror's.

This court has recognized that a peremptory strike shown to have been motivated in substantial part by discriminatory intent could not be substantiated based on any lesser showing by the prosecution.

Therefore, "secondary racially neutral" explanations proffered by the prosecution after initial explanation relied on by the second circuit court of appeal's was an unreasonable application "of this court's precedents (Carmichael v. Chappius, 848 F.3d at 544; Davis v. Ayala, 135 S.Ct at 2198; citing 28 U.S.C.A. § 2254 (D)).

#### CONCLUSION

For all the above stated reasons, the Petitioner humbly, and sincerely urges this court to grant Certiorari for the pattern of purposeful discrimination of african-american prospective juror's in the jury selection process in this case.

I declare under penalties of perjury (28 U.S.C. § 1746) that the following is true, accurate, and correct.

Dated: December 22, 2018  
Attica, New York

Respectfully submitted,

  
\_\_\_\_\_  
Jason Johnson  
Petitioner, Pro se  
P.O. Box 149  
Attica, New York 14011-0149

No. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

Jason Johnson — PETITIONER  
(Your Name)

VS.  
New York State — RESPONDENT(S)

**PROOF OF SERVICE**

I, Jason Johnson, do swear or declare that on this date, December 22, 2018, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

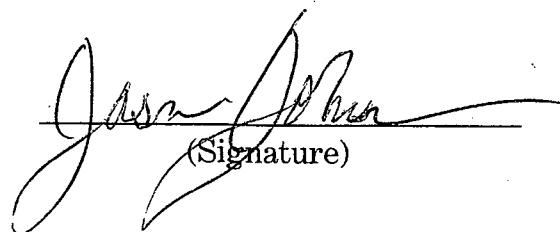
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I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 22, 2018

  
(Signature)