No. 18-937

In the Supreme Court of the United States

ABELINO MANRIQUEZ,

Petitioner,

v.

RALPH DIAZ, Acting Secretary, California Department of Corrections and Rehabilitation

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE CALIFORNIA SUPREME COURT

BRIEF IN OPPOSITION

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CAPITAL CASE

QUESTION PRESENTED

Whether the California Supreme Court correctly concluded on the facts of this case that juror C.B. was not impermissibly biased against petitioner at the sentencing phase of his capital murder trial.

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STATEMENT

1. The State charged petitioner Manriquez with four counts of murder in the shooting deaths of Miguel Garcia, George Martinez, Efrem Baldia, and Jose Gutierrez on four separate days in 1989 and 1990. *People v. Manriquez*, 37 Cal. 4th 447, 551-567 (2005). The State also alleged, as a special circumstance making Manriquez eligible for the death penalty, that he had committed multiple murders. *Id.* at 551. At the guilt phase of the trial, the prosecution presented testimony from eyewitnesses identifying Manriquez as the shooter in each of the four homicides. *Id.* at 553-555, 558-559, 562-563, 565. Their testimony established that Manriquez had shot Garcia during an argument at a restaurant; that, after being evicted from a topless bar, Manriquez returned with a gun and shot doorman Martinez; that Manriquez shot the unarmed Baldia, who was romantically involved with Manriquez's girlfriend; and that Manriquez shot Gutierrez while the latter was asleep at a bar. *Id.* at 553-566. Ballistics evidence confirmed that the bullets recovered from Garcia's body had been fired from the gun police found in Manriquez's possession. *Id.* at 554-555. In addition, Manriquez admitted to the police that he had shot Baldia. *Id.* at 566-567. The jury found Manriquez guilty as charged. *Id.* at 551.

At the sentencing phase of the trial, the prosecution presented evidence in aggravation establishing Manriquez's involvement in three additional killings. *People v. Manriquez*, 37 Cal. 4th at 568. These occurred when Manriquez and his half-brother attempted to sell some cheese under the pretense that it was cocaine—an attempt that culminated in a gun fight during which each of the three victims suffered

multiple fatal gunshot wounds. *Id*. at 568-569. In addition, the prosecution presented evidence that Manriquez had raped a friend's babysitter at gunpoint. *Id*. at 569-570.

The defense introduced testimony, from Manriquez's relatives, describing Manriquez's childhood in rural Mexico as one of deprivation and abuse. *People v. Manriquez*, 37 Cal. 4th at 570; *see also* Pet. App. 5-8. They described Manriquez as living with family members on a ranch in a locale that lacked electricity, a school, a church, a store, or regular law enforcement. 37 Cal. 4th at 570. According to their testimony, Manriquez as a child worked from 3 a.m. to 5 p.m. every day of the year except Good Friday; he did not have toys and "[t]here was no Christmas"; and he "would be hit or beaten," on a daily basis, "all over with a belt" or a rod. *Id.* When Manriquez was seven years old, his father and grandmother once took turns whipping him while he was tied to a tree. *Id.* His grandmother burned the children's feet to keep them from running away. *Id*. at 571. Later, Manriquez left to live with his mother, but that household was also abusive. *Id*.

In closing argument, Manriquez's counsel said to the jury, "And before you judge him, put yourself in his place. Would you be the person you are today? No question you wouldn't be. Would you do the things he did? Maybe, maybe not." Pet. App. 40. The judge then instructed the jury that mitigating circumstances do not "constitute a justification or excuse for the crime in question but may be considered" as an extenuating circumstance in determining the appropriateness of the death penalty. 10 R.T. 2322.

The jury returned a death verdict. *People v. Manriquez*, 37 Cal. 4th at 552. The California Supreme Court affirmed the convictions and death sentence on

appeal. *Id.* This Court denied certiorari. *Manriquez v. California*, 547 U.S. 1179 (2006).

2. In a later state habeas corpus petition, filed in 2008, Manriquez claimed that the jury foreperson, C.B., had committed prejudicial misconduct during jury selection by concealing the fact that she had been physically and sexually abused as a child growing up on a farm, and by lying when she denied that she ever had seen a crime committed or that she ever feared being hurt or killed as a result of violence. Pet. App. 4; *see id.* at 9-10. He also claimed that juror C.B. was actually biased against him because she was unable to "consider fairly and impartially the [sentencing phase] mitigating evidence" based on her childhood experiences. Pet. App. 163. He further asserted that, "at the very least," C.B.'s omissions "revealed a presumptive, implied bias against Petitioner." *Id.* In support, he cited a written answer C.B. had voluntarily given in response to a request for suggestions about improving future trials. *Id.*; *see id* at 10. In it she wrote:

> The mitigating circumstances offered during the sentencing phase [were] actually a detriment in most of the [jurors'] minds, especially mine. I grew up on a farm where I was beat[en], raped, [and] used for slave labor from the age of [five through] 17. I am successful in my career and am a very responsible *Law abiding* citizen. It is a matter of choice!

Pet. App. 10 (emphasis in original; alterations in court's opinion). She added:

> As to the mitigating evidence, I recall that [petitioner] grew up on a farm and was abused. I told the other jurors about

> what I had heard about farms in Mexico. But, I was regularly beaten from age three to age [17] while I lived with a foster mother on a farm in Pennsylvania . . . . At the farm there was also a home for aged people and one of the residents raped me when I was five. Having been through abuse myself, I do not view abuse as an excuse. I told the other jurors about my experience and my belief that childhood abuse was not an excuse. [¶] The abuse issue was discussed in penalty deliberations. A couple of other jurors also had rough childhoods. I remember that one of the jurors . . . said he had a stepfather who would beat him once in a while. [¶] I had heard that life on farms in Mexico was real tough, with long work hours and very little food. Again, I did not accept this as an excuse and said so.

Id. at 10-11 (alterations in court's opinion).

The California Supreme Court appointed a referee to conduct an evidentiary hearing. Pet. App. 5, 12-14. At the hearing, juror C.B. testified that, when she grew up in the 1950s, "abuse was not a crime": "Kids were abused all the time. And using kids for hard labor was very common." *Id.* at 12. She said that she had been physically abused between the ages of five and fourteen, that she feared being hurt, and that she had been sexually "molested." *Id.* at 11-12. Before Manriquez's trial, C.B. had shared her recollections of those experiences only with very close friends. *Id.*

Juror C.B. explained that, in answering the questionnaire, her "childhood experiences 'did not come to

mind.'" Pet. App. 12. She "did not disclose her childhood abuse because 'the question indicated a violent act not necessarily a crime, and I did not consider my childhood a violent act.'" *Id.* "Similarly, she 'did not consider anything in my life as criminal acts.'" *Id.* She elaborated:

> I did not consider myself a victim of a crime. I was a victim of circumstance. And that being said, I never thought of myself as having been a victim of any kind. So [at petitioner's trial], I did not even think about the fact that I had been criminally assaulted . . . . [¶] And as far as the molestation, it was a one-time thing, it never happened again. It went into the recesses of my mind. And it was not even thought of . . . until the very end of this whole trial.

Id. (alterations in court's opinion). The juror further testified that the sentencing trial had "'triggered' her childhood memories" and that she told the other jurors, "I had been raised in an abusive environment and had been molested, raped when I was five, and that I did not feel that was an excuse to become an unproductive, violent person in my adulthood." *Id.* at 14.

The referee found that juror C.B.'s nondisclosure was neither intentional nor deliberate, and that she was not actually biased against Manriquez. Pet. App. 3, 73-90.

3. The California Supreme Court denied relief. Pet. App. 3-71. It noted that, under California law, a juror who conceals relevant facts or gives false answers during voir dire commits misconduct regardless

of whether the concealment was intentional or inadvertent. *Id.* at 15. It further explained, "Once a court determines a juror has engaged in misconduct, a defendant is presumed to have suffered prejudice. It is for the *prosecutor* to rebut the presumption by establishing that there is 'no substantial *likelihood* that one or more jurors were actually biased against the defendant.'" *Id.* (citations omitted). In that regard, "a showing that the nondisclosure was unintentional may rebut the presumption of prejudice," although it remains possible that "an unintentional nondisclosure may mask actual bias." *Id.* at 17. "The ultimate question remains whether petitioner was tried by a jury where a substantial likelihood exists that a juror was actually biased against petitioner." *Id.*

The supreme court accepted juror C.B.'s explanation that her childhood experiences did not come to mind when she was completing the pretrial questionnaire. Pet. App. 23-29. It agreed that C.B.'s nondisclosure was unintentional and did not indicate bias in light of the facts. *Id.* at 29-36. The court observed that, while a juror's nondisclosure might suggest an attempt to conceal if the juror had reason to foresee that the information would be connected to an issue raised at the trial, here "C.B. knew nothing about [Manriquez] prior to his trial." *Id.* at 37-38.

Turning more generally to the question of bias, the supreme court noted that, under California law, "[j]urors are actually biased if they cannot act 'with entire impartiality, and without prejudice to the substantial rights of any party.'" Pet. App. 42. The court found that, unlike in the cases cited by Manriquez, there was no indication that C.B. had prejudged or expressed doubt regarding the credibility of any witness,

or otherwise questioned that Manriquez actually suffered the abuse that his witnesses described. *Id*. Moreover, she did not "engraft her own childhood experiences onto those of the mitigation witnesses' experiences." *Id*. at 43. Rather, she came to a conclusion as to the mitigating weight that should be given to the evidence that was presented at the sentencing hearing. *Id*. at 42. The court therefore found that, "as permitted, C.B. applied her life experiences when she interpreted petitioner's mitigating evidence and weighed it against the evidence in aggravation," concluding, "petitioner has not shown a substantial likelihood that Juror C.B. was actually biased." *Id*. at 53-54.

In reaching this conclusion, the court stressed the difference between the jury's function at the guilt phase and its function at the sentencing phase. Pet. App. 48-51. It explained:

> [U]nlike the fact-finding function undertaken by the jury at the guilt phase, the sentencing function at the penalty phase is inherently moral and normative, not factual; the sentencer's power and discretion . . . is to decide the appropriate penalty for the particular offense and offender under all the relevant circumstances . . . . And such considerations plainly contemplate jurors drawing upon their varied backgrounds and experiences when making these moral and normative decisions.

Id. at 49 (internal citations and quotation marks omitted). The court observed that "this different kind of decisionmaking" at the sentencing phase distin-

guished Manriquez's case from those in which a challenged juror might improperly decide a defendant's guilt based on her own personal circumstances rather than on the evidence actually presented. *Id*. at 50. Here, the state court found, C.B. had "*applied* her life experiences" when interpreting petitioner's mitigation evidence, and "the record did not support the inference that she had difficulty in separating her own experiences from the evidence in petitioner's case." *Id*. at 46.

Last, the state court rejected Manriquez's argument, based on federal circuit authority, that C.B. was "impliedly biased, if not actually biased." The court explained:

> We recognize that there is nonprecedential federal case law concerning the constitutional guarantees of a fair trial and impartial jury that [has] implied bias even in situations when actual bias has not been shown. Indeed, a number of federal courts have implied bias on the basis of "similarities between the juror's experiences and the facts giving rise to the trial." (*Gonzalez v. Thomas*, *supra*, 99F.3d at 987; see *Hunley v. Godinez* (7th Cir. 1992) 975 F.2d 316, 319 [collecting cases in which courts have presumed bias because "the prospective juror has been the victim of a crime or has experienced a situation similar to the one at issue in the trial"].) But even were we to adopt this approach, it would not alter our conclusion in this case.

Pet. App. 54 n.4 (second set of brackets in original).

Justices Liu and Franson dissented. Pet. App. 55-71.[1] They disagreed with the court's conclusion that the record did not show a substantial likelihood of actual bias. *See id.* at 56, 62-71. Alternatively, they would have held that juror C.B.'s inaccurate answers during voir dire improperly prejudiced Manriquez's ability to exercise peremptory strikes and to frame his strategy at trial. *Id.* at 55-61.

ARGUMENT

1. Manriquez argues that this Court should grant review "to confirm that a juror must in some circumstances be disqualified because of similarities between the juror's experiences and the events giving rise to trial, to decide the legal test governing this decision, and [to] review the misapplication of those standards here." Pet. 34. But the California Supreme Court did not question the legal principle that disqualification based on life experiences could be appropriate in some circumstances; and its determination, after careful review, that the circumstances here did not require that result does not warrant this Court's review.

Manriquez's claim depends heavily on the argument that juror C.B. subjectively held a "categorical, predetermined opinion" that Manriquez's childhood experiences did not "excuse" the commission of murder, which improperly influenced her consideration of the penalty-stage evidence in this case. Pet. 35-36; *see* Pet. i. In essence, he argues that C.B. was *actually* biased in his case. After an evidentiary hearing, the state-court referee and the California Supreme Court

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[1] Justice Franson was appointed to serve as a Justice pro tem in this case because of a vacancy on the court that existed at that time. *See* Pet. App. 62 n.*.

resolved that factual claim against him. Pet. App. 12-14, 39-54, 86-90.

Manriquez's alternative argument that bias should be "implied" in some cases as a matter of law, based on similarities between a juror's background and the facts of a case, in the end also proves to involve attempting to gauge and weigh degrees of similarity among innumerable factors disclosed by all the evidence of each case. *See, e.g.*, Pet. 36. Moreover, in an alternate ruling, the state supreme court held that even adopting that theory would not change its rejection of Manriquez's claim. Pet. App. 54 n.4.

The state court's rulings on these fact-bound questions do not warrant review by this Court.

2. It appears that this Court has previously denied certiorari in cases seeking review of questions relating to whether and when disqualifying juror bias should be "implied." *See McKinney v. Johnson*, 137 S. Ct. 1228 (2017) (No. 16-854); *United States v. Tucker*, 534 U.S. 816 (2001) (00-1726); *Skaggs v. Otis Elevator Co.*, 528 U.S. 811 (1999) (No. 98-1771); *United States v. Greenwood*, 513 U.S. 929 (1994) (No. 94-277).[2] There is no reason for a different result here.

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[2] In *McKinney*, the petition argued that the federal courts were "vexed and deeply divided" over "whether . . . a juror's bias can be implied and if so, under what circumstances." 2017 WL 83813 at *20-21. In *Tucker*, the petition argued that bias should be presumed as a matter of law on particular facts and, as a primary reason for granting review, that the Court "should resolve the conflict in the lower courts on implied juror bias." 2001 WL 34125056 at *15-16 (heading capitalization omitted). In *Skaggs*, the question presented was whether "the constitutional guarantee to trial by a fair and impartial jury include[s] the preservation of the opportunity to prove implied bias on the part of a juror?"

The California Supreme Court's adjudication of Manriquez's claim comports with this Court's precedents. Although jurors certainly must be impartial, *Morgan v. Illinois,* 504 U.S. 719, 728 (1992), this Court has never held that the Constitution requires disqualification of a juror in a state court trial for "implied" rather than actual bias. In the context of federal prosecutions, it has said that bias "may be actual or implied; that is, it may be bias in fact or bias conclusively presumed as a matter of law." *United States v. Wood,* 299 U.S. 123, 133 (1936). And it has held that a presumption of prejudice applies to certain kinds of juror misconduct, subject to rebuttal by the government. *Remmer v. United States*, 347 U.S. 227, 229 (1954). In a case arising in state court, *Smith v. Phillips*, 455 U.S. 209, 217-218 (1982), the Court ruled that a post-trial hearing was sufficient to resolve a claim of juror partiality. The Court has also recognized that, while "[t]he necessity of truthful answers" during voir dire is "obvious," there is an inevitable possibility of misunderstandings or differences of interpretation during that process; and once a trial has concluded, reviewing courts should be very hesitant to set aside its result "because of a juror's mistaken, though honest, response to a question" in voir dire. *McDonough Power Equipment, Inc. v. Greenwood*, 464 U.S. 548, 554-555 (1984); *see also id*. at 556 (Blackmun, J., concurring)

1999 WL 33641347 at *i. In *Greenwood*, the question presented was "[w]hether, under the sixth amendment, a criminal defendant is entitled to a new trial based on an implied bias theory, in circumstances where a juror concealed during *voir dire* a connection to parties with a large financial stake in the defendant's conviction as well as other information that would have kept him off the jury, but then denied harboring bias against the defendant when his connection was uncovered at a post-trial hearing." 1994 WL 16043913 at *i.

("[I]n most cases, the honesty or dishonesty of a juror's response is the best initial indicator of whether the juror in fact was impartial.").

Here, the California Supreme Court afforded Manriquez a full evidentiary hearing on the questions of juror misconduct and bias. Pet. App. 3, 12-14. It applied a presumption of prejudice on account of juror C.B.'s mistaken answers in her jury questionnaire. *Id.* at 15-16. And only after a thorough and detailed analysis of the penalty-phase evidence and the juror's post-trial testimony did it conclude that C.B.'s answers during voir dire were honest, although mistaken; that the presumption of prejudice had been rebutted; and that there was no substantial likelihood that juror C.B. was actually biased. *Id.* at 40-55.

Manriquez points out (Pet. 22-23) that in her concurring opinion in S*mith v. Phillips*, 455 U.S. 209 (1982), Justice O'Connor expressed the view that the Court had not foreclosed the use of implied bias in appropriate "extreme" or "extraordinary" cases. 455 U.S. at 221-223 (O'Connor, J., concurring); *see also McDonough*, 464 U.S. at 556-557 (Blackmun, J., concurring). Examples she gave of what might count as an "extreme" or "extraordinary" case were "a revelation that the juror is an actual employee of the prosecuting agency, that the juror is a close relative of one of the participants in the trial or the criminal transaction, or that the juror was a witness or somehow involved in the criminal transaction." *Id.* at 222. Those examples are all susceptible to an objective and simple binary inquiry: whether the juror falls within a predetermined and narrow category describing immediate personal connections to the crime itself or to the criminal or courtroom actors. But Manriquez's argument involves no such question of clear categorical

status. Instead, adopting his argument would apparently require trial judges to preside over potentially wide-ranging and debatable inquiries into how closely myriad facts in a juror's or potential juror's background might match up with myriad facts potentially relevant to guilt, mitigation, or aggravation in a particular case. And those inquiries would presumably often need to be undertaken *before trial*. In any event, to the extent any such inquiry might have been warranted in this case, the California Supreme Court considered the facts in retrospect (and with the benefit of a focused evidentiary hearing) and determined that using an "implied bias" standard would not have changed the result in this case. Pet. App. 54 n.4.

3. Manriquez argues that the lower courts have not adopted any single test for evaluating whether or when "too great a similarity between [a] juror's experience and the case can constitute bias under the Sixth Amendment." Pet. 25; *see* Pet. 25-33. Any lack of uniformity does not warrant review in this case.

First, Manriquez has not demonstrated any conflict over the existence or application of any federal constitutional implied-bias rule to proceedings in state courts—as opposed to perhaps in federal courts subject to this Court's supervisory powers. Although he cites federal appellate decisions applying an implied-bias rule to state court proceedings (Pet. 28, 32-33, 36), they do not conflict with each other or with the California Supreme Court's decision here. *See* Pet. 28 (citing *Fields v. Brown*, 503 F.3d 755, 772-775 (9th Cir. 2007) (declining to find implied bias on the facts of that case)); *id.* at 33 (citing *Hunley v. Godinez*, 975 F.2d 316, 318-320 (7th Cir. 1992) (implying bias in "extreme situation" where two jurors were burglarized in their hotel rooms while they were sequestered during

a murder and burglary trial)); *id.* at 32-33 (citing *Burton v. Johnson*, 948 F.2d 1150, 1157-1159 (10th Cir. 1991) (implying bias where juror in a trial for murder involving domestic violence was willfully dishonest in failing to disclose that she had suffered domestic violence)).

Second, as the decision below explains (Pet. App. 48-50), Manriquez's claim for relief arises in the unique context of a juror's discretionary sentencing decision in a capital case. In the California system, at the sentencing phase each juror makes his or her own "moral," "normative," and "discretionary" judgment about whether, in the juror's view, the aggravating circumstances are so substantial in comparison with mitigating circumstances that death is the appropriate punishment. *Id.* at 49; *see Tuilaepa v. California*, 512 U.S. 967, 972-973 (1994). In weighing the aggravating and mitigating evidence, "a penalty phase juror properly considers 'personal religious, philosophical, or secular normative values.'" Pet. App. 49. Thus, the jurors' moral and discretionary judgments will be shaped, properly, by their "varied backgrounds and experiences." *Id.* The cases cited by Manriquez almost all concern alleged implied bias in the fundamentally different context where the juror's task is to find historical facts in determining objectively whether the defendant committed a charged crime.

The only case cited by Manriquez (Pet. 30-31) that addresses alleged bias at the discretionary sentencing phase of the capital trial is *Sampson v. United States*, 724 F.3d 150 (1st Cir. 2013). That case relied on this Court's decision in *McDonough* to vacate a capital sentence where (i) a juror was "deliberately dishonest" during voir dire (*id.* at 166) and (ii) the "cumulative

effect" of the juror's "habitual dissembling," her "intense emotions" regarding her intentionally concealed life experiences, and the similarities between those experiences and the penalty-phase evidence "demonstrated bias (and, thus, a valid basis for excusal for cause)" (*id*. at 167-168). There is no inconsistency between that decision and the decision below in this case.

Third, there is no clear conflict over "implied bias" even in the separate context of jurors determining a defendant's guilt or innocence. Lower federal courts have agreed that bias may be implied in extraordinary circumstances where some objective factor casts doubt on the juror's impartiality; but, rather than formulating strict categories, they tend to address each case on its own facts. *See United States v. Russell*, 595 F.3d 633, 641 (6th Cir. 2010) (bias may be implied, based on individual facts of a case, where circumstances indicate that juror's substantial emotional involvement would adversely affect impartiality); *Fuller v. Bowersox*, 202 F.3d 1053, 1056 (8th Cir. 2000) (bias may be implied based on "proof of specific facts which show such a close connection to the facts at trial . . . ."); *United States v. Gonzalez*, 214 F.3d 1109, 1112 (9th Cir. 2000) ("potential for substantial emotional involvement" standard based on objective facts); *Tinsley v. Borg*, 895 F.2d 520, 527 (9th Cir. 1990) ("[p]rudence dictates that courts answering [the] question [of implied bias] should hesitate before formulating categories of relationships which bar jurors from serving in certain types of trials"); *United States v. Torres*, 128 F.3d 38, 45-46 (2nd Cir. 1997) ("average man" approach inquiring whether the circumstances "offer a possible temptation to the average man . . . to forget the burden of proof required to convict the defendant,"

but each case must turn on its own facts) (quoting *Tumey v. Ohio*, 273 U.S. 510, 532 (1927)); *Gonzalez v. Thomas*, 99 F.3d 978, 989 (10th Cir. 1996) ("potential for substantial emotional involvement" standard; recognizing that courts should hesitate before creating categories of relationships where bias must be implied) (citing *Tinsley*, 895 F.2d at 527); *Hunley v. Godinez*, 975 F.2d at 319-20 (implied bias may exist in "'extreme' situations where the prospective juror is connected to the litigation at issue in such a way that is highly unlikely that he or she could act impartially during deliberations"; but courts should refrain from creating categories of relationships that mandate implied bias) (citing *Tinsley*, 5 F.2d at 527); *Jackson v. United States,* 395 F.2d 615, 618 (D.C. Cir. 1968) (objective standard where an ordinary person "so circumstanced" could not remain impartial); *see also Sampson*, 724 F.3d at 165-166 ("[a]ny inquiry in potential bias in the event of juror dishonesty must be both context specific and fact specific"; "totality of the circumstances" inquiry considering factors such as juror's "interpersonal relationships," her "ability to separate her emotions from her duties," "the similarity between the juror's experiences and important facts presented at trial," the "scope and severity" of any dishonesty, and "the juror's motive for lying").

Manriquez argues that the Second Circuit "refuses to follow the Ninth Circuit's implied-bias approach," citing *United States v. Brown*, 644 F.2d 101, 104-105 (2nd Cir. 1981), and *United States v. Torres*, 128 F.3d at 45. Pet. 29.[3] But the Second Circuit, although es-

[3] *Brown*, 644 F.2d at 103-104, involved a prospective juror in a bank robbery case who was employed at another branch of the

chewing strict rules implying bias based on "occupational or special relationships," nonetheless considers implied bias based on the particular circumstances presented in the case. *Torre*s, 128 F.3d at 46 (quoting *Brown*, 644 F.2d at 104-105). This approach is consistent with the practice of the Ninth Circuit. *See Tinsley v. Borg*, 895 F.2d at 527 (declining to create a categorical approach).

Manriquez contends that the First Circuit's approach conflicts with that of other circuits because it does not differentiate between "kinds of bias" but instead follows a "totality of the circumstances" approach. Pet. 30-31. But this seems to be more a question of semantics rather than substance. As Manriquez himself notes, in the case that he cites the First Circuit considered, as part of the totality of the circumstances, the similarity between a juror's background and the facts of the case before it. *See* Pet. 31; *Sampson*, 724 F.3d at 167. It evaluated the honesty of the juror's answers on voir dire in conjunction with factors such as "the juror's interpersonal relationships; the juror's ability to separate her emotions from

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same bank that was robbed. The Second Circuit acknowledged that the facts of *Brown* were similar those in *United States v. Allsup*, 566 F.2d 68, 71-73 (9th Cir. 1977) (two jurors employed as tellers of different branches of the bank that was robbed should have been excused for cause, as they might have feared similar robberies). *Brown* declined to reach the same ultimate result as *Allsup*, concluding that any error was harmless because the challenged juror did not serve on the jury (after being peremptorily challenged). In *United States v. Panza*, 612 F.2d 432, 441 (9th Cir. 1979), the Ninth Circuit declined to extend *Allsup* to jurors who banked, rather than worked, at a different branch, or to reverse a conviction because the defense had to use a peremptory challenge to remove a potential juror who banked at the branch involved in the case).

her duties; the similarity between the juror's experiences and important facts presented at trial; the scope and scope and severity of . . . [any] dishonesty [on the part of the juror]; and the juror's motive for lying." *See Sampson*, 724 F.3d at 166 (citations omitted). This approach is consistent with the approach employed by circuits that have recognized implied bias. *See, e.g., Fields v. Brown*, 503 F.3d at 769 (considering a challenged juror's truthfulness on voir dire followed by review as to whether extraordinary circumstances suggest that the "relationship between a prospective juror and some aspect of the litigation . . . [makes] it highly unlikely that the average person could remain impartial in his deliberations under the circumstances") (quoting *Tinsley v. Borg*, 895 F.2d at 527) (internal quotation marks omitted); *Johnson v. Luoma*, 425 F.3d 318, 325-326 (6th Cir. 2005) (considering juror's truthfulness followed by review under the factors relevant to implied bias, such as whether "the relationship between a prospective juror and some aspect of the litigation [makes] . . . it highly unlikely that the average person could remain impartial . . . .") (quoting *Person v. Miller*, 854 F.2d 656, 664 (4th Cir. 1988); *United States v. Medina*, 430 F.3d 869, 877-878 (7th Cir. 2005) (considering juror's truthfulness on voir dire followed by implied bias factors); *Gonzalez v. Thomas,* 99 F.3d at 984-985 (same).

Similarly, as Manriquez notes (Pet. 33), the Seventh and D.C. Circuits review claims of juror partiality based on the individual circumstances of the case rather than applying a categorical approach. *See, e.g., United States v. Medina*, 430 F.3d at 877-878 (in compelling circumstances, bias may be implied where a challenged juror's personal experience is closely related to the crimes at issue in the trial); *United States v. Bony*, 543 F.2d 1333 (D.C. Cir. 1992) (bias could not

be implied based solely on the discovery of a juror's felon status and remanding the matter for a hearing to ascertain the reasons for the juror's deliberate concealment). That approach does not create any conflict among the circuits.

Finally, Manriquez argues that the Eighth Circuit has issued conflicting opinions on questions of implied bias. Pet. 33. But any such internal disagreement would be a matter for that court to resolve in the first instance. *See Wisniewski v. United States*, 353 U.S. 901, 902 (1957).

4. In any event, the California Supreme Court correctly determined that juror C.B. was not biased, and the result in this case would not change if some other formulation of a bias test were applied.

As noted earlier, the court below gave Manriquez the benefit of a rebuttable presumption of prejudice because of juror C.B.'s non-disclosures during voir dire. Pet. App. 15-17. After considering C.B.'s post-trial declarations and testimony, however, the court concluded that her voir dire responses were mistaken but honest, which weighed heavily against any finding of bias. *Id.* at 29-36; *see id.* at 16-17. Further, as the state court explained, Manriquez's claim failed in light of the fundamental difference between a juror's duty to objectively assess facts at the guilt phase and a juror's state-law duty at the penalty phase to bring to bear on the subjective sentencing determination his or her own norms, philosophy, and experiences. *Id.* at 48-50. It thus was up to juror C.B., in casting her vote, whether the evidence of Manriquez's childhood abuse bore a sufficient connection with his later commission of the four charged murders that it would tend to warrant, in her own estimation, a sentence of life imprisonment without parole rather than the death penalty.

Manriquez argues that juror C.B.'s views about child abuse prevented her from acting impartially in considering his mitigating evidence. Pet. 35-36. But the record supports the California Supreme Court's conclusion that there was no overly emotional involvement on C.B.'s part. Pet. App. 46. The record did not suggest that C.B. had difficulty in separating her own experiences from the evidence in the case; she had neither expressed any ongoing trauma nor displayed any "obsession" or emotions relating to her childhood experiences; and she had not engrafted those experiences on to the evidence Manriquez offered in mitigation at the penalty trial. *Id.* at 43-46.

On this point, Manriquez confuses a juror's refusal to consider evidence or argument about mitigation with the juror's ultimate determination that the evidence did not mitigate the crime so as to make the death sentence inappropriate. Here, for example, as the court recognized, C.B. did not automatically reject the testimony of the child-abuse witnesses, but instead "came to a conclusion as to the weight to be given the evidence that was presented." Pet. App. 42. There was likewise no evidence that she "could not or would not deliberate" over the mitigation question; rather, "her undisputed testimony indicated that she participated in the jury's deliberations." *Id.* at 53. C.B. never said that she refused to even consider Manriquez's argument that such abuse was mitigating.

Instead, C.B. and the other jurors, after deliberating, concluded that the childhood abuse Manriquez suffered was not sufficient to overcome the evidence of the four murders he was convicted of committing, together with the aggravating evidence that he had committed three other homicides and a gunpoint rape, in

determining that the death penalty was the appropriate punishment. After directing an evidentiary hearing and carefully considering the resulting evidence, the California Supreme Court concluded that the jury's determination in that regard was not tainted by either actual or implied bias on the part of C.B. *See* Pet. App. 53-54 & n.4. There is no need for further review.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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