No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

AYANNA ANGLE,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

When a court of appeals finds that a district court, in overruling an objection to the prosecution's use of peremptory juror strikes, failed to complete all three steps of the analysis laid out in this Court's opinion in *Batson v. Kentucky*, 476 U.S. 79 (1986), and its progeny, what relief should the court of appeals grant?

PARTIES TO THE PROCEEDING

All parties to the proceeding are listed in the caption. The petitioner is not a corporation.

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Petitioner Ayanna Angle respectfully requests that a Writ of Certiorari be issued to review the judgment of the United States Court of Appeals for the Ninth Circuit entered on February 21, 2019. App. A.

OPINION BELOW

The court of appeals' memorandum (*id*.) is designated "Not for Publication," but is available at 761 F. App'x. 775. The pertinent district court rulings (App. D) are unreported.

JURISDICTION

The United States District Court for the District of Arizona had jurisdiction over the government's federal charges against Ms. Angle pursuant to 18 U.S.C. § 3231. The judgment of the United States Court of Appeals for the Ninth Circuit was entered on February 21, 2019. App. A at 1. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

PERTINENT CONSTITUTIONAL PROVISIONS

The Due Process Clause of the Fifth Amendment to the United States Constitution reads as follows:

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

U.S. Const., amend. V.

The Due Process Clause of the Fourteenth Amendment to the United States Constitution reads as follows:

> * * * nor shall any State deprive any person of life, liberty, or property, without due process of law; * * *

U.S. Const., amend. XIV.

STATEMENT OF THE CASE

Ayanna Angle is a 35-year-old mother of three. In the summer of 2015, she was working as a salesperson at a T-Mobile store in Yuma, Arizona, a small city in the southern part of the state. During her lunch break on June 8, Ms. Angle visited Jones & Jones, a federally-licensed firearms dealer about 30 minutes outside of Yuma. Ms. Angle asked the store's co-owner, Margaret Jones, for a handgun, but it was not in stock, so Ms. Angle decided to purchase a rifle. When Ms. Jones explained that Ms. Angle lacked the proper identification to make the purchase, Ms. Angle left, and came back a short time later with a temporary Arizona driver's license. Ms. Angle then filled out the necessary paperwork, purchased a Colt Model LE6920 Highlander rifle for $1,066.05 in cash, and left. Ms. Jones felt that there was something "unusual" about the transaction, but by the time of trial she could not remember what it had been. In any case, she called the Bureau of Alcohol, Tobacco and Firearms (ATF) to report Ms. Angle's purchase.

Ms. Angle returned to the store the next day and bought two more of the same type of rifle. Ms. Jones called the ATF again, and reported Ms. Angle's latest purchase. Ms. Jones also gave the ATF the license plate number of the white Hummer Ms. Angle had left in.

Two ATF agents then surveilled the T-Mobile store where Ms. Angle worked. At about 5:25 p.m., they saw a white Hummer stop by the store. Ms. Angle got out

and entered the T-Mobile store, and the Hummer drove away. One of the ATF agents called Yuma police and asked them to "develop [their] own reason" to make a "traffic stop" of the Hummer.

A Yuma police officer caught sight of the Hummer, and developed the reason that its license plate was obscured by mud and dirt. When he pulled behind the Hummer and turned on his police lights, the Hummer pulled into the bay of a carwash and stopped. Walking up to the car, the officer noticed two long, closed, cardboard gun boxes in the back. Ms. Angle's boyfriend Jose Manuel Martinez was in the driver's seat, and a man named Luis Plaza was in the front passenger seat.

An ATF agent soon arrived on the scene and took over the investigation. He had Yuma police run the two men's driver's licenses and determined that Mr. Martinez was a felon, and thus legally barred from possessing firearms. No arrests were made at that time, but the ATF seized the firearms.

While all this was happening, another ATF agent went into the T-Mobile store and, pretending to be a customer (she was in plain clothes), talked to Ms. Angle. When a Border Patrol Agent arrived to provide support, the ATF agent identified herself as such, and asked Ms. Angle to speak with them. Ms. Angle agreed. Ms. Angle acknowledged that she had recently bought three Colt firearms at Jones & Jones. She said she had "no clue" what sort of ammunition they took. She said she bought them to "go have fun with my kids." She said that while her boyfriend Mr. Martinez had gone with her, she had bought the guns "for [her]self." Agent White asked Ms. Angle whether Mr. Martinez had "a record." Ms. Angle

responded with a long "ummm," then said, "honestly, he might have a record." Asked what made her think so, Ms. Angle responded that she thought "Keith" had once told her that Mr. Martinez "did some time, maybe," adding: "like over five years." The ATF agents later rummaged through Ms. Angle's trash and found receipts for the gun purchases. One of the agents adopted a false identity to "friend" Ms. Angle on Facebook, combed through her Facebook page, and found photographs confirming that she and Mr. Martinez were in a relationship.

Twenty months later, the government procured a two-count indictment against Ms. Angle and Mr. Martinez. Count 1 charged Mr. Martinez with unlawful possession, aided and abetted by Ms. Angle, of two firearms that she bought at Jones & Jones, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). Count 2 charged that Ms. Angle knowingly "disposed of" those rifles to Mr. Martinez, knowing and having reasonable cause to believe that he was a convicted felon, in violation of 18 U.S.C. §§ 922(d)(1) and 924(a)(2). Ms. Angle pleaded not guilty and invoked her right to a jury trial.

During jury selection on the first day of trial, the district court overruled Ms. Angle's objections to the government's use of peremptory strikes to exclude three Hispanic individuals from her jury. The struck individuals were Jurors 9, 27, and 41. The last of these jurors, Juror 41, was a housewife and mother of a one-year-old boy. She had a bachelor of economics degree, and a husband who was self-employed in utility repair. She lived in Tolleson, Arizona, liked walking and reading, and had

not served on a jury before. She had two uncles with drug convictions, but assured the court that this would not bias her:

> PANELIST FORTY-ONE: 41. My uncles, the brother of my father, they both are – were in prison, one here and one in Mexico for drug transportation.
>
> THE COURT: And do you think that those experiences would prevent you from being fair and impartial if selected as a juror here?
>
> PANELIST FORTY-ONE: No.

She was also Hispanic. The prosecutor struck her from Ms. Angle's jury.

When Ms. Angle's counsel challenged the strike, the prosecutor proffered a single purported race-neutral reason, noting that Juror 41 "has uncles who went to prison for drug smuggling," and adding that "[t]hose are types of cases that the U.S. Attorney's Office regularly prosecutes." App. D at 8.

Ms. Angle's counsel pointed out that there had been "a lot of jurors whose spouses were in trouble, cousins, uncles," and added: "It doesn't seem that different. *Id*. at 9. " The court nevertheless proceeded to overrule the objection on the following rationale:

> THE COURT: Thank you, Mr. Sands. And I do find that with respect to juror number 41, the government did make a prima facie case for the reason that they struck juror number 41.

Id.

The court then summoned the jury into the courtroom and commenced the trial. After three days of trial, the jury returned with a verdict of guilty on both counts. The district court sentenced Ms. Angle to 20 months of incarceration, followed by a three-year term of supervised release.

Ms. Angle filed a timely appeal to the Ninth Circuit, challenging (*inter alia*) the district court's overruling of her objections to the prosecution's use of peremptory strikes to remove Jurors 9, 27, and 41 from her jury. After accepting briefing and hearing argument, the Ninth Circuit entered an order for a limited remand. App. B. The order affirmed the district court's denial of Ms. Angle's objections to the government's peremptory strikes of Jurors 9 and 27. *Id.* at 2. With respect to the strike of Juror 41, however, the order noted that the district court had failed to proceed to the third step of the *Batson* analysis. *Id.* at 3-4. The order accordingly directed the district court to "determine in the first instance whether the government acted with purposeful discrimination when it struck Juror 41." *Id.* at 4.

Several weeks later, without receiving any additional briefing or argument, the district court entered a 4-page order on the remand. App. C. The first three-and-a-half pages of the order consist of a summary of the underlying facts, and a reiteration of the first two steps of the district court's *Batson* analysis. *Id.* at 1-3. Finally, in the last half-page, the district court offered the following rationale as to why it found the third step of the *Batson* analysis satisfied:

> Finally, the Court is (and at the time, was) persuaded by the Government's race-neutral reason for striking Juror 41. In responding to the Government's proffered reason for the strike, the Defendant stated, "we've had a lot of jurors whose spouses were in trouble, cousins, uncles. It doesn't seem that different." (*Id.* at 133:4-6). The Court presumes the Defendant's statement was intended to show that the Government's stated reason was a pretext. *Purkett v. Elem*, 514 U.S. 765 (1995). However, the Court finds that argument unpersuasive. The Defendant's generalized argument that other jurors had family members who "were in trouble" was insufficient to persuade

> the Court that the Government struck Juror 41 because she is Hispanic. The Government's reasons were sufficiently specific as to Juror 41's family experiences with the very type of crimes which are routinely prosecuted by the Government.

Id. at 4.

Two weeks later, also without receiving any additional briefing or argument, the Ninth Circuit entered its Memorandum affirming Ms. Angle's convictions. App. A. The memorandum found that the district court had "thoroughly consider[ed] the record" in arriving at its conclusion that the government's strike of Juror 41 did not reflect purposeful discrimination, and had "reasonably concluded" that Ms. Angle's objection was "unpersuasive" and "insufficient." *Id*. at 2.

REASON FOR GRANTING THE WRIT

Federal and state courts of appeals "have struggled with the question of what should happen when (1) the trial court denies a defendant's Batson challenge without making the necessary factual findings to permit appellate review and (2) the prosecutor's race-neutral explanation for the challenged strike cannot be confirmed or rejected on the basis of the record." William H. Burgess and Douglas G. Smith, *The Proper Remedy for a Lack of* Batson *Findings: The Fall-Out from* Snyder v. Louisiana, 101 J. Crim. L. & Criminology 1, 2 (2011) (hereafter *Burgess and Smith*). Some courts have held that a new trial is required in all such cases, while others – like the Ninth Circuit in the instant case – have remanded such cases with instructions that the district court supply 'post-hoc' findings on a cold record. And one court of appeals has concluded that no relief at all is called for in these circumstances. This confusion and disarray – and the associated likelihood of

arbitrary and unfair dispositions, like the Ninth Circuit's treatment of the instant case – will persist until this Court provides guidance as to what relief is appropriate in these circumstances. The Court should grant the writ and provide clarity to this important and routinely-applied due process doctrine.

ARGUMENT

This Court should clarify what relief is appropriate when a court of appeals finds that a district court, in overruling an objection to the prosecution's use of a peremptory juror strike, failed to complete all three steps of the analysis laid out in this Court's opinion in *Batson v. Kentucky*, 476 U.S. 79 (1986), and its progeny.

For well over a century, this Court has "been unyielding in its position that a defendant is denied equal protection of the laws when tried before a jury from which members of his or her race have been excluded by the State's purposeful conduct." *Powers v. Ohio*, 499 U.S. 400, 404 (1991). The Court has recognized that such discrimination inflicts a wide range of harms not only on the defendant, but also on the excluded juror, the court, minorities generally, and the broader society. It denies the defendant "the protection that a trial by jury is intended to secure." *Batson*, 476 U.S. at 86. It subjects the excluded juror to "a profound personal humiliation heightened by its public character." *Powers*, 499 U.S. at 413-14. It jeopardizes the integrity of the court, by inviting cynicism respecting the jury's neutrality and undermining public confidence in adjudication. *Miller-El v. Dretke*, 545 U.S. 231, 238 (2005). And it harms minorities generally by establishing state-sponsored group stereotypes rooted in, and reflective of, historical prejudice. *Id*. at 237-38.

Pursuant to *Batson*, a claim of a discriminatory peremptory juror strike is subject to a three-step analysis. The first step asks whether a prima facie showing of discrimination has been made. *Hernandez v. New York*, 500 U.S. 352, 358 (1991). The second step requires the district court to determine whether the prosecutor has proffered race-neutral bases for striking the juror in question. *Snyder v. Louisiana*, 552 U.S. 472, 476-77 (2008). The third step requires the district court to "undertake a sensitive inquiry into such circumstantial and direct evidence of intent as may be available" and determine whether the prosecutor struck the juror with discriminatory intent. *Batson*, 476 U.S. at 93 (internal quotation marks omitted).

Although this three-step analysis is well-established and routinely applied, serious confusion exists as to what relief is appropriate when a court of appeals finds, as the Ninth Circuit did here, that the district court failed to complete all three steps of the analysis. The lower courts' approaches may be broken down into three broad categories.

One group of courts takes the position that a new trial must be ordered in such cases. This approach may be thought to follow from this Court's opinion in *Snyder*, wherein this Court reversed the defendant's conviction and ordered a new trial after concluding that the district court failed to make adequate findings in the course of rejecting a *Batson* challenge. *Snyder*, 552 U.S. at 485-86. The prosecution had defended its strike of an African-American juror on the ground (*inter alia*) that the juror "looked very nervous." *Id.* at 478. Defense counsel disputed this characterization, but the trial judge summarily overruled the *Batson* objection. *Id.*

at 479. Although it was able to examine (and discredit) the prosecutor's other race-neutral justification for striking this juror, this Court found it impossible, with no express finding by the trial judge, to assess the prosecutor's assertion regarding the juror's nervous demeanor. *Id.*

Some lower courts, following *Snyder*'s lead, have held that a new trial is required when the trial judge failed to complete all three steps of *Batson* review. *See*, *e.g.*, *Haynes v. Quarterman*, 561 F.3d 535, 540-41 (5th Cir. 2009), *rev'd sub nom. Thaler v. Haynes*, 559 U.S. 43 (2010) (granting habeas corpus petition and ordering new trial or release where trial judge who overruled demeanor-based *Batson* objection did not fully observe struck jurors' demeanor); *People v. Collins*, 187 P.3d 1178, 1183-84 (Colo. App. 2008) (reversing defendant's convictions where trial judge failed to make express findings regarding prosecutor's proffered demeanor-based race-neutral explanations for the challenged strike).

Another group of courts, of which the Ninth Circuit (as evidenced by the instant case) is a member, has held that remands to the trial court are appropriate in such circumstances, notwithstanding *Snyder*. Some of these courts take the view that the timeframe of the pertinent events in *Snyder* – *i.e.*, the fact that more than ten years passed between the peremptory strikes in question and this Court's opinion – constrain the significance of this Court's grant of a new trial in that case. *Snyder*, 552 U.S. at 486; *see*, *e.g.*, *United States v. Alvarez-Ulloa*, 784 F.3d 558, 565-66 (9th Cir. 2015) (stating that, where trial judge failed to properly complete *Batson* analysis, court of appeals may remand case to district court for factual hearing or

new trial, or decide *de novo* whether strikes were motivated by purposeful discrimination); *United States v. McMath*, 559 F.3d 657, 666-67 (7th Cir. 2009) (remanding for further findings where trial judge failed to make express finding regarding prosecutor's demeanor-based justification for strike, and distinguishing *Snyder* on the ground that "voir dire occurred only a little over a year ago"); *Dolphy v. Mantello*, 552 F.3d 236 (2d Cir. 2009) (remanding for further findings where trial judge failed to assess credibility of prosecutor's race-neutral justification for strike).

Finally, one court of appeals has taken the position that a trial judge's failure to make factual findings in overruling a *Batson* objection is not necessarily error at all. In *Smulls v. Roper*, 535 F.3d 853 (8th Cir. 2008) (*en banc*), the Eighth Circuit reasoned that a trial court's ruling on a *Batson* challenge "is itself a factual determination," which may attract deference notwithstanding a lack of express reasoning in support. *Id*. at 860. The court distinguished *Snyder* on the ground that in that case the prosecutor had proffered two race-neutral justifications, one of which was demeanor-based and the other of which was belied by the record. *Id*. at 860-61.

The existence of these differing approaches to this important question generates substantial confusion and unfairness in cases involving *Batson* objections – which are made with great frequency in all manner of trials, state and federal, civil and criminal. In and of itself, this variance means that the strength and substance of a litigant's constitutional right to be free from invidious discrimination in jury selection turns on the happenstance of which state or federal

jurisdiction his trial happens to take place in. And the remand procedure that many courts – like the Ninth Circuit here – have unwisely chosen to employ in these circumstances tend to produce a wide spectrum of burdensome and unfair results. On the one hand, they may saddle trial judges with convoluted mini-trials, as the judge and litigants vainly seek to recreate complex nuances of voir dires that took place months, or years, earlier. Such proceedings may take on "a life of [their] own, leading to successive appeals and additional proceedings." *Burgess and Smith*, *supra*, at 23; *see also id.* at 27-28 (discussing example involving multiple successive appeals). On the other hand, they may – as in the instant case – consist of meaningless remands that generate pro forma recitations of post-hoc *Batson* findings (App. C at 4), which then draw unjustified summary deference from the court of appeals. App. A at 2. Finally, the notion that, as the Eighth Circuit has concluded, no relief at all is warranted where a trial judge failed to expressly apply the analysis set forth in *Batson* effectively nullifies the force of *Batson* and its progeny as effective checks on invidiously discriminatory use of peremptory strikes.

The latter two scenarios raise no concerns regarding the conservation of judicial resources, but they do tend to suggest that the lower courts have treated this Court's silence on the subject as a license to whittle away at the force of *Batson* until its concrete value to litigants approaches extinction. Rather than permitting this confusion and unfairness to persist and intensify, this Court should grant the writ and make plain that a new trial is required when the trial judge failed to expressly complete all three steps of the *Batson* analysis in the first instance.

CONCLUSION

For the reasons set forth above, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted on May 22, 2019.

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