No. _____

In the
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2019

Chance Dechristian Adams, *Petitioner,*

v.

State of Minnesota, *Respondent.*

On Petition for a Writ of Certiorari to the
Supreme Court of the State of Minnesota

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

When a peremptory strike of a prospective juror is challenged under *Batson v. Kentucky*, 476 U.S. 79 (1986), and a prosecutor offers multiple reasons for the strike, must the reviewing court examine each proffered reason for the presence of pretext for racial discrimination, as the Ninth Circuit and courts in eight states have held, or may the court cease its *Batson* analysis upon finding one non-pretextual reason for the strike, as two circuits and the Minnesota Supreme Court have held?

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner Chance Dechristian Adams respectfully prays that a writ of certiorari issue to review the judgment below.

OPINION BELOW

The opinion of the Minnesota Supreme Court appears at Appendix A to this petition. The court's opinion is published at 936 N.W.2d 326 (Minn. 2019).

JURISDICTION

The Minnesota Supreme Court issued its decision on November 6, 2019. That decision appears at Appendix A. Petitioner timely filed a petition for rehearing. The Minnesota Supreme Court denied the petition for rehearing on December 9, 2019. A copy of the order denying rehearing is attached at Appendix B. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS

U.S. Const. amend. XIV, sec. 1:

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. 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; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

A. The Offense

The facts of this case are undisputed. On June 17, 2017, petitioner Chance Adams approached two teenage men in a Minneapolis, Minnesota park, brandished a firearm, demanded property from the men, then shot and killed one of the men. (App. A-2.)

The State of Minnesota, by the Hennepin County Attorney's Office, charged Adams with first-degree felony murder, second-degree intentional murder, first-degree aggravated robbery, and possession of a firearm by an ineligible person. Adams pleaded not guilty. He gave notice that he intended to defend himself on the ground that at the time of the incident he was too intoxicated to form the requisite criminal intent. *See* Minn. Stat. § 609.075 (2016) (providing that a person's voluntary intoxication "may be taken into consideration in determining [criminal] intent or state of mind").

B. Voir Dire

The case proceeded to a jury trial. The issue concerns the prosecutors' peremptory strike of Juror #9, an African-American woman. (*Id.* at 2-3.) Juror 9 was the first African-American person questioned during voir dire. (*Id.* at 2.)

On her jury questionnaire, Juror 9 indicated a family member had 1) been questioned by police, 2) been convicted of a crime, and 3) been charged with a crime. (T. 189-90.)[1] During voir dire, Juror 9 stated that her brother had been charged with robbery and gun possession. (T. 188-89.) She said the gun case was recent and her brother was

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[1] "T." refers to the consecutively-paginated ten-volume transcript of Adams's jury trial, which was filed in district court.

currently in prison for that offense. (T. 189.) When asked how her brother was treated, Juror 9 stated that her brother felt he was not treated fairly but that she had no opinion on the matter. (T. 189.) Juror 9 indicated that she had no information about her brother's case beyond what he told his family, and that she knew nothing about her brother's interactions with police. (T. 189.)

Juror 9 stated affirmatively that she wanted to be selected as a juror. (T. 190-91.) She wanted the victim's family to "find justice" and wanted to hold the murderer responsible. (T. 191.) Juror 9 stated that no one should have their life taken away and that justice would mean a "consequence" for the guilty actor. (T. 191.) Due to these answers, Juror 9 was asked whether she was biased toward either the State or the defendant, and she stated that she was not. (T. 192.) Juror 9 indicated that she would follow all jury instructions. (T. 194.)

The prosecutors asked Juror 9 numerous questions about her brother. (T. 196-203.) Juror 9 repeated that her brother felt the charges against him were not fair, which influenced him to take his case to trial. (T. 196.) Juror 9 did not talk to her brother about that decision and never attended any part of his trial. (T. 197.) Juror 9 is not close with her brother and only heard information about his case from her mother. (T. 197.) Juror 9 stated that she has other siblings but does not know them or spend time with them and does not enjoy being around them. (T. 197.) She stated that other of her siblings are "in trouble" but that she does not talk to or "get to know" them. (T. 197.)

Juror 9 explained that she has no problem with prosecutors, as it is a job like any other. (T. 198.) One prosecutor asked Juror 9 to spell the name of her brother who had the

recent gun case. (T. 198.) She did so. (T. 198.) The prosecutor asked what sentence her brother received. (T. 198.) Juror 9 responded "He got like 20, 21 I think." (T. 198.) The prosecutor asked her if that was an "appropriate" sentence. (T. 198.) Juror 9 said she could not say because she does not know what he did. (T. 198.) She also indicated that she thought that, because her brother engaged in criminal behavior, he deserved what he got. (T. 198.) The prosecutor then asked Juror 9 to spell her brother's name again. (T. 199.)

The prosecutor asked if Juror 9 had any biases based on what happened to her brother or other family members. (T. 199.) She said, "No, none at all, because obviously [Adams is] here for his case. They two different people, so I can't put them in a bond together." (T. 199.) The prosecutor asked Juror 9 if Adams's gun charges would have "any bearing" on her. (T. 199-200.) She again said, "No, none at all." (T. 200.)

The prosecutor proceeded to ask several questions on different subjects but then returned, again, for a third time, to Juror 9's brother. (T. 200-01.) The prosecutor told Juror 9 that her brother's case had been "handled by a colleague." (T. 201.) The prosecutor expressed concern regarding whether Juror 9 could be fair, knowing his co-worker prosecuted her brother. (T. 201.) Juror 9 stated, "I don't feel that way. It's fine." (T. 201.) She repeated that she did not know anything specific about her brother's prosecution. (T. 201.) The prosecutor then asked Juror 9 to list the names of her other siblings, which she did. (T. 202.) Juror 9 stated she sees her siblings only on holidays and does not talk to them about their legal problems. (T. 202.)

When the prosecutors struck Juror 9, Adams raised a *Batson* challenge. (App. A-3.) The district court found that Adams made a prima facie case, at step one of *Batson*,

that the prosecutors struck Juror 9 because of her race. The court based this finding on the fact that the prosecutors, when they questioned Juror 9, deviated from their normal pattern of questioning prospective jurors. (*Id.* at 4.) The district court found the circumstances of the strike raised an inference that it was based on race, given that Juror 9 was the only juror to be questioned about her family members. (T. 208-09.) The court also noted that Juror 9 was the only juror to be asked questions by the prosecutors to which she had answered "no" on the jury questionnaire. (T. 208-09.)

The prosecutors offered two reasons, which they argued were race neutral, for the strike. (App. A-4.) First, the prosecutors argued they struck Juror 9 because of her family members' involvement with the legal system. (*Id.*) The prosecutors argued that Juror 9's brothers had felony convictions and at least one prior case was prosecuted by an assistant county attorney in their "unit." (T. 209-10.) The prosecutors argued they were concerned about Juror 9's fairness and impartiality due to the "very close contact" between Juror 9, her family, and the prosecutors' "unit." (T. 210.) The prosecutor stated, "I actually liked [Juror 9]," but said he could not "take the chance" that Juror 9 "might [have] some other agenda attached to this." (T. 211.)

Second, the prosecutors claimed they struck Juror 9 because she had failed to disclose a prior misdemeanor conviction. (App. A-4.) The district court found the prosecutors satisfied step two of *Batson* by giving race-neutral reasons for the strike. (*Id.*)

Adams argued that the prosecutors' stated reasons for striking Juror 9 were pretextual and that the real reason for the strike was Juror 9's race. (*Id.* at 5) Adams argued that Juror 9 had no relationship with her legally-troubled siblings, so her family's

involvement with the legal system could not be the real reason for the strike. (*Id.*) As to Juror 9's alleged dishonesty, Adams showed that her prior misdemeanor conviction had been vacated. (*Id.* at 4-5; T. 215.) He therefore argued Juror 9 was not dishonest when she answered that she had no convictions. (*Id.*)

Step three of *Batson* required the court to determine whether the race-neutral reasons were a pretext for racial discrimination. The court's lackluster step three analysis found only that the prior-conviction reason was "sufficient to overcome the *Batson* challenge." (App. A-5; T. 218.) The court failed to analyze the other proffered reason—Juror 9's family members' involvement with the criminal justice system—for evidence of pretext. (App. A-5, 7.)

C. The Minnesota Supreme Court Opinion

The Minnesota Supreme Court noted that the State offered two reasons for the strike of Juror 9. (*Id.* at 4.) But, like the district court, the supreme court analyzed only one of those reasons. (*Id.* at 7-9.) Like the district court, the Minnesota Supreme Court held that Juror 9's purported dishonesty about a vacated misdemeanor conviction was a race-neutral reason for the strike and that Adams had not shown this reason to be pretextual. (*Id.*) The Minnesota Supreme Court said nothing about whether or not the family-member reason was a pretext for racial discrimination against Juror 9. Instead, the supreme court rejected Adams's *Batson* argument because it agreed with the lower court's ruling "that <u>one</u> of the State's reasons was sufficient to overcome the *Batson* challenge...." (*Id.* at 7 (emphasis added).)

D. The Petition for Rehearing

Based on the Minnesota Supreme Court's failure to analyze the second reason for the strike, Adams petitioned for rehearing. The court denied the petition. (App. B.)

REASONS FOR GRANTING REVIEW

IN ORDER TO DETERMINE WHETHER A PEREMPTORY STRIKE WAS SUBSTANTIALLY MOTIVATED BY RACE, MUST A DISTRICT COURT EXAMINE FOR EVIDENCE OF PRETEXT FOR RACIAL DISCRIMINATION EVERY REASON PROFFERED BY A PROSECUTOR IN SUPPORT OF THE STRIKE, OR MAY THE COURT CEASE ITS *BATSON* ANALYSIS AFTER FINDING ONE NON-PRETEXTUAL REASON AND LEAVE OTHER REASONS UNEXAMINED?

The Minnesota Supreme Court found it permissible for a district court to cease the *Batson* pretext analysis upon finding a single non-pretextual reason for a strike, thus leaving other proffered reasons unexamined for racial discrimination. By so holding, the court added to a split of authority among both state and federal courts. This Court should grant certiorari in this case to decide an issue of paramount importance regarding racial discrimination in jury selection.

A. *Batson* and Peremptory Strikes

Racial discrimination in jury selection offends the Equal Protection Clause of the Fourteenth Amendment. *Batson v. Kentucky*, 476 U.S. 79, 85 (1986). While a defendant has no right to a jury made up in whole or in part of persons of his race, he does have a right to a jury selected using nondiscriminatory criteria. *Id.* A prosecutor violates equal protection when she peremptorily strikes a juror based on the juror's race. *Id.* at 85, 89.

This Court has articulated a three-step analysis to determine whether a peremptory challenge was based on a juror's race:

> First, the defendant must make a prima facie showing that the prosecutor has exercised challenges on the basis of race. Second, if the requisite showing has been made, the burden shifts to the prosecutor to articulate a race-neutral explanation for striking the jurors in question. Finally, the trial court must determine whether the defendant has carried his burden of proving purposeful discrimination.

Hernandez v. New York, 500 U.S. 352, 358-59 (1991) (citing *Batson*, 476 U.S. at 96-98). This Court has stated the standard for *Batson* step three is whether the challenged strikes were "motivated in substantial part by discriminatory intent." *Foster v. Chatman*, 136 S. Ct. 1737, 1754 (2016) (citing *Snyder v. Louisiana*, 552 U.S. 472, 478 (2008)); *accord Flowers v. Mississippi*, 139 S. Ct. 2228, 2244 (2019).

B. The Open Question

As occurred here, it is common for prosecutors to proffer multiple reasons for a single peremptory strike. *See, e.g.*, *Foster*, 136 S. Ct. at 1748, 1751; *Snyder*, 552 U.S. at 478; *State v. Adams*, 936 N.W.2d 326, 328 (Minn. 2019). This Court has not yet addressed how a district court or a reviewing court must handle the presence of multiple facially race-neutral reasons at *Batson* step three: must the court examine each reason for pretext, or may the court cease the analysis upon finding one non-pretextual reason for the strike, thus leaving other reasons unexamined?

Neither *Batson* nor any of this Court's subsequent cases answer this question. And underlying this straightforward question about *Batson* analysis is a much larger, important question about race-based strikes. Must the opponent of a strike prove that the strike was

solely based on race to establish an equal protection violation, or is it enough to prove that the strike was *in part* based on race? If the Constitution forbids only strikes that are solely based on race, courts conducting *Batson* analyses may permissibly stop upon finding a single non-pretextual reason for the strike, without regard for the presence of additional race-based reasons. If the Constitution instead forbids strikes that are even partially based on race, courts must examine every proffered reason for pretext, because only then can the court know whether and to what extent the strike was based on race. The resolution of this question has the power to radically reduce racial discrimination in the use of peremptory strikes. And, as the federal and state split of authority shows, an answer is both necessary and can only come from this Court.

C. The Circuit Split

The Circuit Courts of Appeal are split on what courts must do when presented, in the *Batson* context, with multiple reasons for a peremptory strike. Two diametrically-opposed positions have developed: The first holds that a peremptory strike violates equal protection only when it is solely based on race and therefore a court may cease its analysis upon finding a single non-pretextual reason supporting the strike. *See Washington v. Roberts*, 846 F.3d 1283, 1292 (10th Cir. 2017); *Akins v. Easterling*, 648 F.3d 380, 392 (6th Cir. 2011). The second holds that a peremptory strike based even in part on race violates equal protection, so courts must analyze every race-neutral reason for pretext. *See Crittenden v. Chappell*, 804 F.3d 998, 1017 (9th Cir. 2015).

The sole-motivation approach holds that a strike violates equal protection only when it is *solely* based on race. *Washington*, 846 F.3d at 1291-92; *Akins*, 648 F.3d at 391-92. In

jurisdictions applying the sole-motivation approach, the presence of any race-neutral, non-pretextual reason for a strike will defeat a *Batson* challenge, even where the strike was in part based on the juror's race. Therefore, courts applying the sole-motivation approach may cease their step three *Batson* analysis upon finding a single non-pretextual reason for a strike. The presence of other racially discriminatory reasons, in the view of these courts, neither affects the analysis nor violates equal protection.

On the other hand, the Ninth Circuit has held that courts must examine each proffered reason for a peremptory strike because the only permissible way to conclude a strike was not racially motivated is to examine each reason for pretext. *Crittenden*, 804 F.3d at 1006, 1017; *see also Williams v. Pliler*, 616 F. App'x 864, 870 (9th Cir. 2015). This approach, sometimes called the "per se" or "taint" approach, holds that to determine whether the strike was "motivated in substantial part by discriminatory intent," *Foster*, 136 S. Ct. at 1754, courts must examine all proffered reasons, and that a single non-pretextual reason does not end this analysis. *Crittenden*, 804 F.3d at 1017 (citing *Cook v. LaMarque*, 593 F.3d 810, 814-15 (9th Cir. 2010)). Under this approach, only once each proffered reason is deemed to be race-neutral and non-pretextual may the court accurately conclude the strike is constitutional.

State courts are divided as well. At least eight states and the District of Columbia have adopted the "tainted" approach, concluding that one discriminatory reason for a peremptory strike taints any nondiscriminatory reasons offered, and therefore courts must examine each given reason for pretext for racial discrimination. *Ex parte Sockwell*, 675 So. 2d 38, 40-41 (Ala. 1995); *State v. Lucas*, 18 P.3d 160, 162-63 (Ariz. Ct. App. 2001);

Robinson v. United States, 878 A.2d 1273, 1284 (D.C. 2005); *Rector v. State*, 444 S.E.2d 862, 865 (Ga. Ct. App. 1994); *McCormick v. State*, 803 N.E.2d 1108, 1112-13 (Ind. 2004); *State v. Shuler*, 545 S.E.2d 805, 813 (S.C. 2001); *Benavides v. Am. Chrome & Chem., Inc.*, 893 S.W.2d 624, 626-27 (Tex. App. 1994); *Riley v. Commonwealth*, 464 S.E.2d 508, 510-11 (Va. Ct. App. 1995); *State v. Jagodinsky*, 563 N.W.2d 188, 191-92 (Wis. Ct. App. 1997). The Minnesota Supreme Court has now taken the opposite approach by holding that the prosecutors' strike of Juror 9 was permissible based on one non-pretextual reason, without analyzing the other given reason for the strike to determine if that reason was a mere pretext for racial discrimination.

D. This Case and This Issue Merit Review

This Court's jurisprudence shows the difficulty of crafting a legal standard to eliminate racial discrimination in jury selection. After this Court declared unconstitutional laws prohibiting jury service on the basis of race, racial discrimination persisted through the use of "various discriminatory tools to prevent black persons from being called for jury service." *Flowers*, 139 S. Ct. at 2239. Once those tactics failed, prosecutors continued to exclude persons of color from juries through their use of discriminatory peremptory strikes. *Id.* One of the primary concerns animating *Batson* was that prosecutors' peremptory challenges were "largely immune from constitutional scrutiny." 476 U.S. at 92-93. *Batson* created a test to combat that immunity, in part by forcing prosecutors to state their reasons for strikes and by demanding that trial and reviewing courts review the record to determine whether those reasons are pretext for racial discrimination.

Racial discrimination in jury selection persists. *See, e.g.*, *Flowers*, 139 S. Ct. at 2251. Lawyers and courts have developed new ways to insulate race-based strikes from review. The sole-motivation standard is one such tactic. If a court may cease its *Batson* analysis upon finding a single non-racial reason for a strike, prosecutors may insulate race-based strikes from review by naming a single race-neutral non-pretextual reason. In a sole-motivation jurisdiction, a prosecutor could say, "I struck Juror 9 because she's black. I also struck Juror 9 because she was dishonest about a prior conviction." As long as the latter reason was deemed non-pretextual, the reviewing court would have to hold that the strike did not violate the Equal Protection Clause.

This hypothetical is not as far-fetched as it may seem. As just one example, in *Howard v. Senkowski*, a prosecutor explicitly admitted that race was a factor in his peremptory strikes. 986 F.2d 24, 25 (2d Cir. 1993). The Second Circuit held that this admission of a racial motivation "is not inconsistent with the existence of some other race-neutral explanation for the prosecutor's action. A person may act for more than one reason. Where more than one reason motivates challenged action, the issue is what standards apply in determining whether the action is invalid because of the partially improper motivation." *Id.* at 26. On remand, the court concluded that, even though the prosecutor admitted that he based his strikes in part on race, the strikes did not violate equal protection. *People v. Howard*, 601 N.Y.S.2d 548 (1993). Cases like *Howard* show that this practice is certain to continue, unless and until this Court prohibits it.

As lower courts have recognized, this Court's existing jurisprudence does not answer this question. *See, e.g.*, *Akins*, 648 F.3d at 390. And in the absence of an answer

from this Court, both potential answers appear reasonable. On habeas review, circuit courts have held that neither the sole-motivation approach nor the per se or tainted approach is an unreasonable application of federal law. This means defendants across the United States have different federal equal protection rights based on their geographic location. In the Ninth Circuit and at least eight states, a prosecutor cannot make a strike that is in any amount based on a juror's race. And in those places, reviewing courts look at every proffered reason to make the ultimate determination about racial discrimination. But in Minnesota, and in the 6th and 10th Circuits, prosecutors can insulate race-based strikes by providing other race-neutral non-pretextual reasons, because courts in those places will stop the *Batson* analysis upon finding a single permissible reason for a strike. *Batson* is a rule of federal constitutional criminal procedure, and therefore the approaches cannot truly coexist—it must be one or the other. Only this Court can answer this question and settle the split.

This Court should grant the writ and hold that the Equal Protection Clause of the Fourteenth Amendment is violated when a prosecutor strikes a juror for even a single reason that is pretext for racial discrimination. This is the only holding that comports with the principles of *Batson* and the need to eliminate racial discrimination from jury selection. Such a holding also would build on this Court's *Batson* jurisprudence. This Court has emphasized that, when undertaking a *Batson* analysis, courts must look to "all of the circumstances that bear upon the issue of racial animosity." *Snyder*, 552 U.S., at 478; *see also Foster*, 136 S. Ct. at 1748 (refusing the "State's invitation to blind ourselves to [the] existence" of notes regarding the race of prospective jurors, despite the unclear authorship

of those documents). It is difficult to square the sole-motivation approach, which permits judges to ignore evidence of pretext upon finding a sliver of legitimacy in a strike, with this Court's admonition to look at "all of the circumstances" surrounding a strike. This Court should grant the writ to eliminate the practice, currently legal in Minnesota and two circuits, of approving race-based strikes when non-racial reasons are given for the same strikes.

This case provides an excellent vehicle for the consideration of this issue. The record is clear and undisputed. The *Batson* issue was fully litigated and preserved. This Court would not be hamstrung by the habeas standard but instead could directly reach the merits.

Moreover, Adams's case is worthy of review because the record contains ample evidence that the family-member-legal-system-involvement reason was a pretext to strike Juror 9 because she is African-American.

First, the suggestion that Juror 9 was struck due to her family members' involvement in the legal system is incredible in light of her actual responses. Far from aligning herself with her family, Juror 9 showed that she has little affiliation with or affection for her criminally-troubled family members.

Second, the prosecutor's exaggeration of Juror 9's answers is evidence of pretext. The prosecutor argued he struck Juror 9 due to her "very close" connection to the prosecutors' office and "unit." Juror 9 did not give any indication that she knew or cared which "unit" or attorney prosecuted her brother. The prosecutors showed only that Juror 9's brother—with whom she is not close—was prosecuted an unknown number of years

ago by an unknown attorney who works with Adams's prosecutors. This is a far cry from "very close." Even more problematic is the prosecutor's argument that accepting Juror 9 would be "tak[ing] a chance" because he could not be sure whether she had an "agenda" attached to Adams's trial. This statement went beyond exaggeration; it is a completely unfounded character assassination. Juror 9 was asked if she had any problem with prosecutors generally or if this trial would be difficult given that other unknown Hennepin County prosecutors prosecuted her brother. She said no. Nothing in her answers stated or even remotely suggested animosity toward the government or any particular Hennepin County employee. And yet the prosecutor suggested that there was a "chance" that Juror 9 had an "agenda" that would hurt the State. The prosecutor left this "agenda" unnamed, but it seems to suggest that Juror 9 had a secret motive to get revenge on the State by gaining admission to a jury and then submarining the State's case.

Third, the prosecutors' deviation from their normal questioning during voir dire of Juror 9 shows that striking her was pretext for racial discrimination. Juror 9 was asked markedly different questions than the jurors that preceded her. Juror 9 was asked twenty-five questions about her family members, their involvement with the legal system, and the effect on her of that involvement. Most jurors were asked zero questions about their family members' criminal histories. Even the white juror who admitted that his brother-in-law had committed a sexual assault was asked only one question about it. (T. 113, 128.) Two-thirds of the total questions the prosecutors asked Juror 9 related to her family. The difference in her questioning suggests either that the prosecutors had a different script for

her because she is black or that they planned to strike her and used in-depth questioning about her family to develop a pretextual reason to mask its racial discrimination.

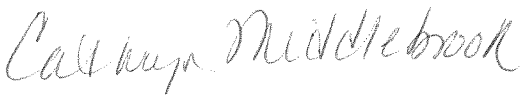
Fourth, the family-member-involvement reason is pretextual because it disproportionately affects people of color. The prosecutors struck Juror 9 based on her family members' "involvement with the legal system including arrest and/or convictions." This has no qualitative measure—it is not limited to family members with felony convictions, family members with lots of convictions, family members currently in prison, or jurors who happen to care or have feelings about those legal-system contacts. Instead, it sweeps in every person with any family member who has been "involved" with the legal system. Although arrests and convictions are listed as examples, "involvement" covers anyone who has been interviewed or investigated or even merely stopped for a traffic violation. Because people of color in America are disproportionately arrested and convicted of crimes, this reasoning will necessarily have a disproportionate impact on them. The significant evidence of pretext for striking Juror 9 makes Adams's case all the more worthy of the writ.

CONCLUSION

Over three decades after *Batson*, racial discrimination in jury selection persists. Granting this writ would allow this Court to address this problem, to resolve a circuit split and provide clarity in the law, and to protect the equal protection rights of criminal defendants and prospective jurors. Petitioner Adams respectfully requests this Court grant the writ.

Dated: February 28, 2020

Respectfully submitted,



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