No. _____

OCTOBER TERM 2020

In the

Supreme Court of the United States

TERRY LEE FROMAN,

Petitioner,

v.

THE STATE OF OHIO,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE OHIO SUPREME COURT

CAPITAL CASE

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CAPITAL CASE

QUESTION PRESENTED

1) Does trial counsel have an obligation to conduct a meaningful and comprehensive voir dire as it relates to racial bias, explicit or implicit, of jurors whose responses on their juror questionnaires indicate the presence of a racial bias against the Defendant and where those jurors were selected as members of the panel who would ultimately vote in favor of a death sentence?

2) Where defense counsel abdicates its constitutional duties to voir dire prospective jurors as it relates to racial bias, explicit or implicit, and where the trial court fails to assure the empaneling of an unbiased jury, is structural error present?

PARTIES TO THE PROCEEDINGS

Petitioner Terry Lee Froman, a death-sentenced Ohio prisoner, was the Appellant in The Supreme Court of Ohio.

Respondent, the State of Ohio, was the Appellee in The Supreme Court of Ohio.

RELATED PROCEEDINGS

Per Supreme Court Rule 14.1(b)(iii), the following cases relate to this petition:

Underlying Trial:
Court of Common Pleas, Warren County, Ohio
State of Ohio v. Terry Lee Froman, Case No. 14CR30398
Judgment Entered June 22, 2017

Appellate Proceedings:
Ohio Supreme Court, Case No. 2017-0938
State v. Froman, Slip Opinion No. 2020-Ohio-4523
Conviction and Sentence Affirmed: November 24, 2020
Application to Reopen, filed February 22, 2021 (pending decision)

Initial Postconviction Proceedings:
Court of Common Pleas, Warren County, Ohio
State of Ohio v. Terry Lee Froman, Case No. 14CR30398
Judgment Entered November 5, 2020 (denying petition)

Appellate Proceedings:
Court of Appeals, Warren County, Ohio, Twelfth Appellate District
State of Ohio v. Terry Lee Froman, CA 2020-12-080
Pending oral argument

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The opinion of The Supreme Court of Ohio in this cause, reported as *State v. Froman*, Slip Opinion No. 2020–Ohio–4523, is found in the accompanying Appendix as "Attachment A." The Supreme Court's Reconsideration Entry, denying motion for rehearing is "Attachment B." The Warren County Court of Common Pleas Journal Entry, *State of Ohio v. Terry Froman*, Case No. 14 CR 30398, Entry of Sentencing Opinion, Filed June 22, 2017, is "Attachment C."

STATEMENT OF JURISDICTION

Froman invokes this Court's jurisdiction to grant the Petition for Writ of Certiorari to the Ohio Supreme Court on the basis of 28 U.S.C. § 1257(a). The Ohio Supreme Court issued its decision on September 24, 2020. Froman thereafter sought rehearing, which was denied by the Supreme Court on November 24, 2020. By this Court's order of March 19, 2020, the filing deadline for this petition extends to April 23, 2021.

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the following Amendments to the United States Constitution:

Sixth Amendment, which provides:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Fourteenth Amendment, which provides in pertinent part:

> No State shall…deprive any person of life, liberty, or property, without due process of law; nor deny any person withing its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

On October 20, 2014, Froman was indicted in the Warren County, Ohio Court of Common Pleas on two counts of aggravated murder (Counts 1 and 2), two counts of kidnaping (Counts 3 and 4), and one count of discharging of a firearm on or near prohibited premises (Count 5). Voir dire began on June 05, 2017 and the trial phase began on June 08, 2017. Closing arguments were held on June 13, 2017, and on that same date, the jury found Froman guilty on Counts 1–4.

The penalty phase began on June 15, 2017. On that same date, the jury returned its verdict recommending a death sentence for Froman.

What began in Paducah, Kentucky with the death of Eli Mahoney would ultimately end in Warren County, Ohio with the death of Kim Thomas, Eli's mother, on Interstate 75 just north of the Kentucky border.

After Froman's arrest, without delay, the media began painting him with familiar racial stereotypes and condemning him as guilty. Dozens of articles ran in the years between the shootings and Froman's trial, and by the media's own reporting, the shootings stunned the region. Many of these articles drummed up the same racist sentiments Froman had dealt with since childhood. These articles claimed to readers that Froman was a Black man, and that the victim was his White girlfriend that he kidnapped and killed. The media also made sure to expose Froman's

criminal history, which included prior charges of domestic violence, kidnapping, and stalking, some of which never resulted in conviction.

What the media reported to be facts often sensationalized the issues and got critical components wrong. The media portrayed Froman as subhuman in direct contrast to how they wrote about Thomas and Mahoney. These pervasive media accounts made Froman's appointed counsel appropriately concerned about access to unbiased jurors amid these reports, and counsel filed a motion for a venue change. The trial court held the motion in abeyance pending "a careful and searching voir dire." February 07, 2017, Entry and Order Holding Defendant's Motion #79 for a Change of Venue in Abeyance. While counsel was correct to file this motion, the appropriateness of their actions ended there.

Juror questionnaires, which trial counsel received prior to trial, revealed that several jurors were exposed to news reports about this case, that some were stuck in traffic due to the Interstate 75 shutdown, and that one even presumed Froman guilty. Juror 1 wrote that he "remember[ed] hearing about it because of traffic, not what happen" and indicated that he heard about it on the radio. Juror 5 curiously indicated that he knew nothing about the deaths of Thomas or Mahoney, but subsequently admitted that he had heard about the case on television and knew specific details. Juror 13 admitted that "what little I have read seems as if he is guilty. And from firing attorneys and judges leaving case it seems like it to me." He further said that "my family and I heard about it on radio while we were stuck in traffic jam due to what happened on I-75." He then noted that he also heard about the case on television

and in the newspapers. Juror 23 said that she "vaguely remembered" the case "from the news." She went on to say that her son-in-law is a police officer in a nearby town and that "when [she] heard shooting on 75 near there of course its (sic) always concern[ing] [and] something remembered when brought back up." She said that she heard about the case on television and discussed it with other people. All of these would be selected to sit in judgment of Froman and decide his fate.

The questionnaires revealed more than just exposure to the prejudicial pretrial publicity. At least four jurors—Jurors 5, 13, 46, and 49—endorsed racist beliefs.

Despite these obvious warning signs of bias, neither the trial court nor defense counsel adequately questioned—or questioned at all—these jurors on issues of bias or race. The court conducted no individual voir dire and instead questioned jurors in panels. During these panels, the court asked perfunctory questions about pretrial publicity exposure. Tr. vol. 40, pp. 199, 257–58; Tr. vol. 41, pp. 6–7, 134–35, 208–11; vol. 42, pp. 12–13. Juror 13 indicated, consistent with his questionnaire, that he had formed an opinion that Froman was guilty based on what he had read. The court asked minimal follow up questions to determine whether this juror could actually be fair. Tr. vol. 40, pp. 199–201. In fact, most of the court's follow up on this issue was nonexistent or negligible, at best. Tr. vol. pp. 41, 208–11; Tr. vol. 41, pp. 6–7, 65–66, 134–35, 208–11, 254; vol. 42, pp. 12–13. No questions were asked of other jurors about whether hearing these admissions from fellow prospective jurors made them also believe Froman was guilty.

The court failed to inquire of jurors whether they saw a newspaper article about the case in the jury room after discovering that early in voir dire, a prospective juror had such an article and told at least one other prospective juror about it. Though these jurors did not ultimately serve, the court failed to ask any other jurors who did serve about whether they overheard the jurors discussing the article.

Defense counsel also failed to clarify whether these jurors could be fair and impartial. Despite having questionnaires which revealed that at least four seated jurors were exposed to prejudicial pretrial publicity, counsel failed to ask any of these jurors questions about this exposure. They asked no questions, despite the fact that counsel himself had pointed out this issue to the court in its change of venue motion and knew that the court wanted to wait for a thorough voir dire before ruling on the motion.

Moreover, counsel repeatedly conceded Froman's guilt to the jury in voir dire. Tr. vol. 40, p. 237; Tr. vol. 41, pp. 40, 183, 185; Tr. vol. 42, p. 135. Trial counsel did not appear to recognize discriminatory language, even asking one juror whether he had problems with "Orientals." Tr. vol. 42, p. 119. Despite having questionnaires that revealed at least four jurors with racist sentiments and having been previously found "deficient" by the Ohio Supreme Court for failing to question a juror who made expressly racist statements, counsel failed to ask these jurors any questions about their beliefs.

Counsel never asked a single question to seated jurors about whether these White jurors harbored racial prejudice against a Black man, despite what they wrote

on their questionnaires. Tr. vol. 42, pp. 116–20; 157-58. He also told the jury "I don't think race is an issue either. I don't think race is an issue." Tr. vol. 41, p. 44. But in a case where the State accused his Black client of murdering a White woman and her child, and where more than one juror expressed racist views, race inevitably was an issue.

In his direct appeal, Froman presented the issues contained herein to the Ohio Supreme Court. That court rejected Froman's arguments and found that Froman failed to establish that Jurors 5, 13, 46, and 49 were actually biased against him and failed to establish that trial counsel were ineffective. *See* Attachment A at ¶¶ 57, 61.

REASONS FOR GRANTING THE WRIT

The Sixth and Fourteenth Amendments to the United States Constitution mandate that a defendant be tried before a jury free of racial bias. That did not happen here. At least four seated jurors expressed racially biased views on their juror questionnaires. Jurors 5, 13, 46, and 49 all voted to impose a death sentence. Froman was denied his constitutional right to a fair and impartial jury due to trial counsel's ineffectiveness and due to the trial court's failures during voir dire to identify and exclude unqualified jurors.

I. Capital defendants are entitled to be tried before a fair and impartial jury.

The jury is an "essential instrumentality – an appendage of the court, the body ordained to pass upon guilt or innocence." *Sinclair v United States*, 279 U.S. 749, 765 (1929). It serves as the "prized shield against oppression." *Glasser v. United States*, 315 U.S. 60, 84 (1942). As such, it is imperative that the jury be impartial. *Ross v.*

Oklahoma, 487 U.S. 81, 85 (1988). The Constitution expressly guarantees as much, assuring criminal defendants "the right to a . . . trial, by an impartial jury . . .." U.S. Const. amend. VI; *see also Wainwright v. Witt*, 469 U.S. 412 (1985); *Turner v. Murray*, 476 U.S. 28 (1986). An impartial jury is one in which each juror is "capable and willing to decide the case solely on the evidence before [him or her]." *McDonough Power Equip., Inc. v. Greenwood*, 464 U.S. 548, 554 (1984) (quoting *Smith v. Phillips*, 455 U.S. 209, 217 (1982) (internal quotation marks omitted)). A single juror's bias or prejudice strips a criminal defendant of this constitutional right. *Tillman v. United States*, 406 F.2d 930, 937 (5th Cir. 1969), vacated on other grounds, 395 U.S. 830 (1969); *see also United States v. Hendrix*, 549 F.2d 1225, 1227 (9th Cir. 1977).

In Ohio, a state that requires jury unanimity for a death sentence, a single juror's unconstitutional bias can make the difference between life and death. *See* Ohio Rev. Code Ann. § 2929.04(A). A criminal defendant's right to an impartial jury is afforded no less significance under Ohio state law. *See* Ohio Const. art. I, § 10; *see also State v. Jackson*, 107 Ohio St.3d 53, 2005–Ohio–5981, 836 N.E.2d 1173. "The purpose of our jury system is to impress upon the community as a whole that a verdict is given in accordance with the law by persons who are fair and impartial." *Cordova v. Emergency Prof'l Servs.*, 8th Dist. Cuyahoga No. 105061, 2017–Ohio–7245 (*citing Powers v. Ohio*, 499 U.S. 400, 413 (1991)); *see also State v. Coley*, 93 Ohio St.3d 253, 258, 754 N.E.2d 1129 (2001) (the right to a jury trial encompasses the right to impartial jurors (*citing Irvin v. Dowd*, 366 U.S. 717, 722 (1961)). An infringement on a criminal defendant's right to a fair and impartial jury requires reversal of the

conviction and sentence, and remand for a new trial. *See State v. Sweitzer*, 11th Dist. Trumbull No. 98-T-0203, 2000 WL 973416 (July 14, 2000).

Racial bias is anathema to a criminal defendant's right to an impartial jury protected by state and federal law. Juries are designed to ensure the "protection of life and liberty against race or color prejudice." *Batson v. Kentucky*, 476 U.S. 79, 87 (1986) (*citing Strauder v. West Virginia*, 100 U.S. 303, 309 (1879) (internal quotation marks omitted)). When racial bias enters the jury room, that protection is turned on its head. Indeed, three times since May 23, 2016, this Court has reversed and remanded capital sentences due to concerns about the reliability and legitimacy of jury verdicts infected by racial bias. *See Foster v. Chatman*, _ U.S. _, 136 S. Ct. 1737 (2016); *Peña-Rodriguez v. Colorado*, _ U.S. _, 137 S. Ct. 855 (2017); and *Buck v. Davis*, _ U.S. _, 137 S. Ct. 759, 776 (2017).

As this Court recognized in *Buck*, the possibility of race infecting a jury's decision "is a disturbing departure from a basic premise of our criminal justice system: Our law punishes people for what they do, not who they are. Dispensing punishment on the basis of an immutable characteristic flatly contravenes this guiding principle." *See Buck,* 137 S. Ct at 778. Shortly thereafter, in *Peña Rodriguez*, this Court explained that racial bias in the jury room is "a familiar and recurring evil that, if left unaddressed, would risk systemic injury to the administration of justice." 137 S. Ct. at 868. These recent decisions and well-established case law make clear that a defendant's Sixth Amendment right to an impartial jury is essential to ensuring the public's trust that a criminal trial can produce a just result. Yet, in

violation of Froman's rights under the United States and Ohio Constitutions, the jury that convicted and sentenced him to death was not impartial.

II. At least four seated jurors expressed racially biased views on their juror questionnaires.

Froman raised two claims in his direct appeal to the Ohio Supreme Court relating to the empaneling of biased jurors due to not just defense counsel's failure, but the trial court's failure to *sua sponte* voir dire the panels on race and dismiss biased jurors. *See Rosales-Lopez v. United States*, 451 U.S. 182, 189 (1981); *State v. Hughes,* 258 F.3d 453, 464 (6th Cir. 2001). The court denied Froman relief on these claims despite the fact that the juror questionnaires of Jurors 5, 13, 46, and 49 all indicated the presence of racially biased views against Froman. All four of these jurors would sit in judgment of him and vote to impose a death sentence.

A. Trial counsel failed to conduct a meaningful voir dire which resulted in racially biased jurors sitting on the panel and Froman was prejudiced.

Jurors 5, 13, and 46 indicated that they "agree[d]" that "some races and/or ethnic groups tend to be more violent than others" and in the space provided, failed to offer any further explanation. When asked if they believed whether racial discrimination against Black people is a problem in our society, they indicated that they felt it is "[n]ot too serious" of a problem.

Juror 49 indicated that she "strong[ly] agree[d]" that "some races and/or ethnic groups tend to be more violent than others," and in the space provided wrote "statistics show there are more black people commit (sic) crimes. And certain religions have violent beliefs." She further noted that racial discrimination against Black

people was "not a problem" and reiterated a "bad" experience she had with a Black man. Juror 49 was seated as an alternate during the trial phase but was subsequently seated on the panel during the penalty phase and voted for death.

Trial counsel asked few questions of these jurors and failed to ask them any questions about racial bias. Tr. vol. 40, pp. 233-34, 238-39, 253; vol. 41, pp. 110-16; vol. 42 pp. 85-6, 114-15, 122-23, 133-35, 184-88, 200. Counsel failed to challenge these jurors for cause or to use a preemptory challenge. Tr. vol. 40, pp. 253-54; vol. 41, pp. 110-16; vol. 42 pp. 51-54, 200.

Neither side, nor the trial court, addressed race with the venire in any meaningful way. The prosecutor simply asked whether everyone agreed that "race should not play any role in your discussions" and whether being perceived as racist for voting for Froman's death would prevent them from doing so. Tr. vol. 41, pp. 36–38, 92–94, 179–82, 243–45; Tr. vol. 42, pp. 51–53. Trial counsel limited their questions to whether White jurors would listen to a Black juror during deliberation. Tr. vol. 41, pp 44–45, 48; vol. 42, pp. 67, 132. Trial counsel here utterly failed to follow the prevailing standards and instead simply told potential jurors, "I assume none of you people are racist. There is no reason for me to believe that. That would be a totally false impression because there's nothing to indicate that." Tr. vol. 42, p. 55. The long form questionnaires of Jurors 5, 13, 46, and 49 demonstrate otherwise.

Counsel also told the jury "I don't think race is an issue either. I don't think race is an issue." Tr. vol. 41, p. 44. But in a case where the State accused a Black man of murdering a White woman and her child, and where more than one juror expressed

racist views, race inevitably was an issue. Counsel failed to ask a single question about whether White jurors harbored racial prejudice and did not inquire into the racist views expressed on the questionnaires.

All of the jurors indicated during voir dire that race should play no role in the decision–making process. However, the voir dire of Jurors 5, 13, 46, and 49 was insufficient to assure that an impartial jury was empaneled. The voir dire must include questioning specifically directed to racial prejudice in order to meet the requirement that an impartial jury be impaneled. *See, e.g., Turner v. Murray*, 476 U.S. at 36-37; *Mu'Min v. Virginia*, 500 U.S. 415, 424 (1991).

A failure to uncover racial bias does not mean it does not exist, and a searching voir dire was required in Froman's case. His trial counsel recognized this:

> You were asked about race, okay. You know, the fact that you know that the man is an African American man and we know Warren County really doesn't have a lot of African Americans and I think the prosecutor is right up front on that. We may very easily not have an African American on the jury. Now, the only thing I'm asking you is that any issue in your life? That concept, does anybody have an issue with what you should do to do the right thing? Does anybody, would that factor in at all? I'd like you to set that aside then if you don't have prejudice then it's not a factor. **If you have prejudice, I can't do anything about it, can I? You're not going to tell me the truth…**
>
> ***
>
> There is a quote and I'm not a person who uses quotes very much, but I think it's really true, the most characteristic fact -- characteristic feature of prejudice is it's (sic) inability to recognize itself.

Tr. vol. 40, pp. 244-45 (emphasis added); *see also*, vol. 41, p. 49. The answers to Questions 50 and 53 on the juror questionnaires should have alerted counsel to ask

these jurors questions designed to elicit whether they harbored racial bias, whether explicit or implicit. Implicit racial bias is subtle and often concealed beneath a venire of conformity, platitudes, half-truths, and even lies. It is not easily recognizable. It certainly is not the sort of bias that a juror would acknowledge in voir dire, in open court, in front of a room full of strangers. Not because the juror seeks to intentionally conceal the bias or to mislead the court. But rather, because it is the type of bias, racial or otherwise, that a person often does not recognize within themselves.

An expression of explicit racial bias is much easier to recognize than implicit or harbored racism. All can recognize that a person wearing a white cloak and hood to hide their identity marching with a burning cross is an expression of racial bias. The use of racially derogatory language and flyers left on a stranger's car in a mall parking lot are readily identifiable acts of an expressed racial bias. These types of expressly racial statements are not the basis for Froman's claims relating to racial bias. The types of statements that are the foundation for his claims are statements that can only be discovered through careful, considerate, and targeted questioning. Questioning that should have been conducted during voir dire, but due to trial counsel's ineffectiveness, was not. *Strickland v. Washington*, 466 U.S. 668 (1984). As a result, Froman was prejudiced. *Id.*

To prevail on the prejudice prong of *Strickland*, Froman does not have to prove that the jury's sentencing decision would have been different. He only needs to demonstrate that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A

reasonable probability is a probability sufficient to undermine confidence in the outcome." *Wiggins v. Smith*, 539 U.S. 510, 534 (2003) (quoting *Strickland*, 466 U.S. at 694); *State v. Herring*, 142 Ohio St.3d 165, 2014–Ohio–5228, 28 N.E.3d 1217, ¶ 114. And, in a weighing state like Ohio, that standard is met by showing "a reasonable probability exists that, but for counsel's error, one juror would have voted against death." *Williams v. Anderson*, 460 F.3d 789, 804 (6th Cir. 2006).

Froman easily meets the "one member of the panel" test under an objective review of trial counsel's deficient performance during voir dire. *Williams*, 460 F.3d at 804.

There is a reasonable probability that had defense counsel conducted a meaningful voir dire to exclude the unqualified jurors identified herein, at least one member of the jury would have voted against death.

B. The trial court failed in its responsibilities to assure that a fair and impartial jury, free from racial bias, was seated in judgement of Froman.

One of counsel's "most essential responsibilities" was to protect Froman's "constitutional right to a fair and impartial jury by using voir dire to identify and ferret out jurors who are biased against the defense." *Miller v. Francis*, 269 F.3d 609, 615 (6th Cir. 2001); *see also*, *United States v. Blount*, 479 F.2d 650, 651 (6th Cir. 1973); *Rosales-Lopez*, 451 U.S. at 188; *Mu'Min v. Virginia*, 500 U.S. at 431. Where counsel abdicates this responsibility, it is the trial court's duty to assure an impartial jury is empaneled. *See Rosales-Lopez*, 451 U.S. at 189; *Frazier v. United States*, 335 U.S. 497, 511 (1948); *Hughes*, 258 F.3d at 464; *United States v. Torres*, 128 F.3d 38, 43 (2d Cir. 1997). "The presence of a biased jury is no less a fundamental structural

defect than the presence of a biased judge." *Johnson v. Armontrout*, 961 F.2d 748, 756 (8th Cir. 1992). To try a defendant when an impartial jury has been impaneled is "akin to providing him no trial at all." *Id.*

Here, the trial court failed to *sua sponte* voir dire and dismiss certain jurors who expressed racial bias, thus allowing Froman to be tried before an impartial jury. *See Buck,* 137 S. Ct. at 776-77. "'[I]n each case a broad discretion and duty reside in the court to see that the jury as finally selected is subject to no solid basis of objection on the score of impartiality….' Accordingly, the presiding judge has the authority and responsibility, either **sua sponte** or upon counsel's motion, to dismiss prospective jurors for cause." *Hughes,* 258 F.3d at 464 (**emphasis in original**) (quoting *Torres*, 128 F.3d at 43. "'When a prospective juror manifests a prior belief that is both material and contestable…it is the judge's **duty** to determine whether the juror is capable of suspending that belief for the duration of the trial.'" *Hughes*, 258 F.3d at 464 (emphasis added) (quoting *Thompson v. Altheimer & Gray*, 248 F.3d 621, 627 (7th Cir. 2001)). Here, the trial court did no such thing.

The trial court's failure to assure a fair and impartial jury, free of racial bias, was seated was structural error. The "threshold inquiry in determining whether an alleged error is structural error is whether such error involves the deprivation of a constitutional right." *State v. Colon*, 118 Ohio St.3d 26, 2008–Ohio–1624, 885 N.E. 917, at ¶ 21. However, not all constitutional violations are structural in nature. Structural errors "permeate the entire conduct of the trial from beginning to end so that the trial cannot reliably serve its function as a vehicle for determination of guilt

or innocence." *State v. Perry*, 101 Ohio St.3d 118, 2004–Ohio–297, 802 N.E.2d 643, at ¶ 17, *citing, Arizona v. Fulminante*, 499 U.S. 279 (1991), quoting *Rose v. Clark*, 478 U.S. 570, 577-78 (1986). Froman's deprivation was so severe and pervasive that a structural error occurred and thus, his conviction and death sentence are unconstitutional.

The imposition of a death sentence by a racially biased jury rises to a "constitutional defect[] that def[ies] analysis by harmless error standards because [it] affect[s] the framework within which the trial proceeds, rather than simply being an error in the trial process itself." *State v. Perry*, 101 Ohio St.3d at ¶ 17.

Froman has established that he was convicted by a jury that was actually biased against him. "The 'presence of a biased juror cannot be harmless; the error requires a new trial **without a showing of actual prejudice**.'" *Hughes*, 258 F.3d at 463 (quoting *United States v. Gonzalez*, 214 F.3d 1109, 1111 (9th Cir. 2000) (citations omitted) (emphasis added).

III. Conclusion.

Froman and this Court can have no assurance that the seated jurors were both "free from bias or prejudice" and capable of fairly considering the evidence before them. *Morgan v. Illinois*, 504 U.S. 719, 729-30 (1992); *State v. Madison*, 160 Ohio St.3d 232, 2020–Ohio–3735, 155 N.E.3d 867, ¶ 30. The implicit, harbored racism that many of these jurors held meant that "the color of [Froman]'s skin made him more deserving of execution." *Buck*, 137 S. Ct. at 775.; *see also State v. Graham*, Slip Opinion No. 2020–Ohio–6700, at ¶ 230 (Donnelly, J., concurring) ("In Ohio, as

elsewhere, black defendants with white victims are far more likely to receive the death penalty than all other defendants facing capital charges.").

It is axiomatic that capital proceedings require a "heightened standard of reliability." *State v. Scott*, 91 Ohio St.3d 1263, 1264, 2001–Ohio–99, 746 N.E.2d 1124. *See also Gregg v. Georgia*, 428 U.S. 153 (1976) ("[T]he penalty of death is different in kind from any other punishment imposed under our system of criminal justice."). However, given the jury panel's expressions of racial bias, the outcome of Froman's capital trial is far from reliable; it is instead contaminated with racial prejudice. *See Tharpe v. Sellers*, 138 S. Ct. 545, 546 (2018) (explaining that juror's affidavit "presents a strong factual basis for the argument that [the defendant's] race affected [the juror's] vote for a death verdict. . .. The Eleventh Circuit erred when it concluded otherwise"). Allowing his conviction and death sentence to stand deprives not only Froman of his constitutional rights, but also robs Americans of confidence in the criminal justice system.

For all the aforementioned reasons, Froman respectfully requests that this Court grant his petition for writ of certiorari and order full briefing on the matters raised herein.

Respectfully Submitted,

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