No. _____

IN THE
Supreme Court of the United States

ORLANDO CARTER,
Petitioner,

v.

DISTRICT OF COLUMBIA,
Respondent.

On Petition for a Writ of Certiorari
To the District of Columbia Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the District of Columbia Court of Appeals' categorical prohibition on changes of venue deprives defendants of the right to trial by an impartial jury in violation of this Court's decision in *Groppi v. Wisconsin*, 400 U.S. 505 (1971).

LIST OF PARTIES AND PROCEEDINGS

(i) The parties to the proceeding in the court whose judgment is sought to be reviewed were: Orlando Carter, Robert Leonard Bost, Jeffrey Best, Lamar J. Williams, Sanquan Carter, and the United States of America.

(ii) There are no corporate entities involved in this case.

(iii) The following are all of the proceedings in state and federal trial and appellate courts that are directly related to the case in this Court:

(a) Consolidated Appeal to the D.C. Court of Appeals

Orlando Carter v. United States, No. 12-CF-1699, District of Columbia Court of Appeals. Judgment entered February 15, 2018; rehearing denied April 7, 2021.

Sanquan Carter v. United States, No. 12-CF-1589, District of Columbia Court of Appeals. Judgment entered February 15, 2018; rehearing denied April 7, 2021.

Robert Leonard Bost v. United States, No. 12-CF-1589, District of Columbia Court of Appeals. Judgment entered February 15, 2018; rehearing denied April 7, 2021.

Jeffrey Best v. United States, No. 12-CF-1589, District of Columbia Court of Appeals. Judgment entered February 15, 2018; rehearing denied April 7, 2021.

Lamar J. Williams v. United States, No. 12-CF-1589, District of Columbia Court of Appeals. Judgment entered February 15, 2018; rehearing denied April 7, 2021.

(b) Consolidated D.C. Superior Court Trial

United States v. Orlando Carter, Criminal Action No. 2010-CF1-5677, Superior Court of the District of Columbia, Criminal Division. Judgment entered September 11, 2012.

United States v. Sanquan Carter, Criminal Action No. 2010-CF1-5176, Superior Court of the District of Columbia, Criminal Division. Judgment entered September 11, 2012.

United States v. Robert Leonard Bost., Criminal Action No. 2010-CF1-7155, Superior Court of the District of Columbia, Criminal Division. Judgment entered September 11, 2012.

United States v. Jeffrey Best, Criminal Action No. 2010-CF1-7370, Superior Court of the District of Columbia, Criminal Division. Judgment entered September 11, 2012.

United States v. Lamar J. Williams, Criminal Action No. 2010-CF1-7157, Superior Court of the District of

Columbia, Criminal Division. Judgment entered September 11, 2012.

TABLE OF CONTENTS

TABLE OF APPENDICES

TABLE OF AUTHORITIES

CASES

CONSTITUTIONAL PROVISIONS AND STATUTES

OTHER AUTHORITIES

PETITION FOR A WRIT OF CERTIORARI

Orlando Carter petitions for a writ of certiorari to review the judgment of the District of Columbia Court of Appeals.

OPINION BELOW

The decision of the District of Columbia Court of Appeals (Pet. App. 1a) is reported at 178 A.3d 1156 (D.C. 2018). The District of Columbia Court of Appeals' denial of Orlando Carter's petition for rehearing *en banc* (Pet. App. 99a) is unreported. The underlying criminal judgment is at Pet. App. 102a.

JURISDICTION

The judgment of the District of Columbia Court of Appeals was entered on February 15, 2018. Pet. App. 1a. The District of Columbia Court of Appeals denied Orlando Carter's petition for rehearing *en banc* on April 7, 2021. Pet. App. 99a. This Court has jurisdiction pursuant to 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution provides in relevant part: "In all criminal prosecutions, the accused shall enjoy the right to a . . . trial, by an impartial jury." U.S. Const. amend. VI.

The Fourteenth Amendment to the United States Constitution provides in relevant part: "[N]or shall any state deprive any person of life, liberty, or property without due process of law." U.S. Const. amend. XIV.

INTRODUCTION

Fifty years ago in *Groppi v. Wisconsin*, 400 U.S. 505 (1971), this Court held that a state law that categorically bars a change of venue for a jury trial in a criminal case violated the right to trial by an impartial jury guaranteed by the Sixth and Fourteenth Amendments. The D.C. Court of Appeals nonetheless has repeatedly adopted the position—and confirmed that position again in this case—that criminal defendants in the District of Columbia are categorically barred from seeking a change of venue regardless of the extent of local prejudice. The D.C. Court of Appeals' position directly contravenes this Court's holding in *Groppi* and must be reversed. Without this Court's intervention, criminal defendants in the District of Columbia will continue to be denied the right to a fair trial by an impartial jury that is otherwise guaranteed to criminal defendants everywhere else in the country.

Pretrial publicity posed a grave threat to Petitioner Orlando Carter's ability to obtain a fair trial in the District of Columbia. He therefore moved for a change of venue. Under this Court's decision in *Groppi*, he should have been afforded the opportunity to show that a change in venue was warranted. The D.C. Superior Court denied him that opportunity. It held—and the D.C. Court of Appeals affirmed—that a change of venue is, as a categorical matter, never available to criminal defendants in the District of Columbia. But that categorical rule cannot coexist with the protections of the Sixth and Fourteenth Amendments, nor with this Court's precedents. Under the D.C. Court of Appeals' rule, even if the jury pool was hopelessly and

egregiously tainted, a defendant could never obtain a change of venue. That approach is flatly inconsistent with the basic requirement of a "fair trial in a fair tribunal." *Groppi*, 400 U.S. at 509 (quoting *In re Murchison*, 349 U.S. 133, 136 (1955)).

There is no prospect that the D.C. Court of Appeals will correct course from its erroneous holding—it has now reaffirmed its approach and declined the opportunity to reconsider the issue *en banc*, despite having been presented with *Groppi* at each stage of the proceedings below. Absent this Court's intervention, criminal defendants in the District of Columbia will be afforded a different level of federal constitutional protection than criminal defendants everywhere else in the United States. The application of the federal constitution should not depend on whether a defendant is charged in the District of Columbia.

The petition for certiorari should be granted.

STATEMENT OF THE CASE

1. In late March 2010, a series of sensational crimes took place in Washington D.C. Pet. App. 4a-10a. A missing bracelet sparked a chain reaction of retribution and violence, culminating in a mass shooting at a funeral that killed three people—all of them teenagers—and injured six others. Pet. App. 4a, 9a-10a. A fourteen-mile police chase followed. Pet. App. 9a-10a. Compounding the tragedy, two more teenagers had already been killed in the lead-up to the mass shooting, and two injured. Pet. App. 6a, 9a.

Five young men—Petitioner Orlando Carter, his brother Sanquan Carter, Jeffrey Best, Robert Lee Bost,

and Lamar J. Williams—were arrested and charged in connection with the crimes.[1] Pet. App. 10a-11a. They ultimately were tried in a consolidated trial. Pet. App. 11a.

These events naturally garnered immediate and intense media coverage over print, television, radio, and the internet. Pet. App. 16a-17a, 117a-118a. Mr. Carter's arrest and booking were televised, for example, and there was a deluge of articles on local television stations' websites. Pet. App. 117a-118a. Moreover, interest in the case remained strong over time: Two months after the crimes, for example, the *Washington Post* ran a front-page long-form series on the crimes that purported to describe in rich detail the crimes and Mr. Carter's involvement in them. And coverage continued in the subsequent months and up until trial. Pet. App. 117a-118a.

2. On January 19, 2012, recognizing the grave risk posed by this pretrial publicity to his constitutional right to a fair trial, Mr. Carter moved for a change of venue to a federal district court outside of Washington D.C. Pet. App. 116a. In the same motion, he requested an evidentiary hearing at which to "adduce proof regarding the voluminous amount of local media attention paid to [Mr. Carter's] case from March 22, 2010 through the present." Pet. App. 116a. He acknowledged that D.C. Court of Appeals cases had made passing reference to the unavailability of venue changes in the District of Columbia, but explained that those cases had not engaged with—and indeed were directly contrary to—

[1] In this petition, "Mr. Carter" refers to Orlando Carter.

this Court's decision in *Groppi v. Wisconsin*. Pet. App. 118a-123a.

The trial court summarily denied Mr. Carter's motion on January 27, 2012 during a pretrial hearing. Pet. App. 126a-127a. It then provided an oral explanation of its reasoning at a pretrial hearing on February 9, 2012, stating that the D.C. Court of Appeals had held that "there is no ability for change of venue in the District of Columbia" and that a motion for a change of venue is "not a proper motion in this jurisdiction." Pet. App. 128a-130a. In addition, the trial court said, it was "confident" that it could "pick a fair jury." Pet. App. 129a. Mr. Carter thus was never given an opportunity to introduce evidence regarding pretrial publicity, nor did the trial court make any effort to assess its nature or volume before denying Mr. Carter's motion.

The case then proceeded to jury selection and *voir dire*, which made clear that there was extensive awareness of the charged crimes in the venire. Indeed, three individuals who ultimately sat on the jury expressly indicated in *voir dire* that they recalled reading or hearing about the crimes in the media. Pet. App. 21a-22a.

On May 7, 2012, the jury convicted Mr. Carter on all counts. And on September 11, 2012, the trial court sentenced 23-year-old Mr. Carter to life without parole. Pet. App. 102a-104a.

3. Mr. Carter appealed, challenging the trial court's denial of his motion for a change of venue.[2] The D.C.

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[2] Mr. Carter challenged other aspects of his conviction on appeal as well, but he seeks certiorari only on the venue issue.

Court of Appeals rejected his argument on February 15, 2018. Pet. App. 1a. It agreed with the trial court that a change of venue is categorically "not available for cases tried before the Superior Court of the District of Columbia." Pet. App. 18a. Relying on prior D.C. Court of Appeals precedent in *United States v. Edwards*, 430 A.2d 1321 (D.C. 1981), the court reasoned that "because the Superior Court of the District of Columbia 'sits as a single unitary judicial district,' a change of venue is not available in the District of Columbia." Pet. App. 19a. The D.C. Court of Appeals described this as a "fundamental rule" in the jurisdiction and observed that "the trial court's denial of a motion for a change of venue is 'required.'" Pet. App. 19a.

The court acknowledged that the pretrial publicity in this case was "high." Pet. App. 21a. According to the court, however, this did not violate Mr. Carter's constitutional right to a fair trial because the court believed that *voir dire* adequately safeguarded his rights. Pet. App. 21a-22a. And the court noted that the three jurors who recalled the pretrial publicity "expressly stated that it would not influence their decision." Pet. App. 21a.

The court's only mention of this Court's decision in *Groppi* was in a footnote. Pet. App. 19a-20a n.14. The court recognized that *Groppi* held that "under the Constitution a defendant must be given an opportunity to show that a change of venue is required in his case." Pet. App. 19a n.14 (citing *Groppi*, 400 U.S. at 511). But the court apparently saw no tension in forbidding that very opportunity to Mr. Carter, because the court reasoned that *Groppi* arose in Wisconsin—"a large state

with multiple 'venues' within the same 'jurisdiction'"—whereas Mr. Carter's case arose in the "single unitary judicial district" of the Superior Court of the District of Columbia. Pet. App. 19a-20a n.14 (quoting *Welch v. United States*, 466 A.2d 829, 834 (D.C. 1983)).

On May 14, 2018, Mr. Carter petitioned for rehearing *en banc*, reiterating his argument that the categorical denial of a change of venue violated his Sixth Amendment rights and directly contravened this Court's holding in *Groppi*. The D.C. Court of Appeals took no action on the petition for almost three years, and then summarily denied it on April 7, 2021. Pet. App. 99a-100a.

REASONS FOR GRANTING THE WRIT

This case presents a critical issue regarding a defendant's ability to vindicate his right to a fair and impartial trial in the Nation's capital. The categorical rule adopted by the D.C. Court of Appeals is directly contrary to this Court's decision in *Groppi v. Wisconsin* and to basic constitutional principles. This case is an excellent vehicle through which to resolve this problem. And this misapplication of the law cannot be corrected absent this Court's intervention. The petition for certiorari should therefore be granted.

I. THE DECISION BELOW IS DIRECTLY CONTRARY TO THIS COURT'S DECISION IN *GROPPI V. WISCONSIN*.

The D.C. Court of Appeals has taken the position that its own precedent dictates that change of venue motions must be denied as a categorical matter. But that precedent—and now the decision below—directly

contravene the basic Sixth Amendment and due process principles laid out in this Court's decision in *Groppi v. Wisconsin*, 400 U.S. 505 (1971).

1. In *Groppi*, this Court held that "under the Constitution a defendant must be given an opportunity to show that a change of venue *is* required in *his* case." 400 U.S. at 511. In other words, he must have the opportunity to show that "only a change of venue [is] constitutionally sufficient to assure the kind of impartial jury that is guaranteed by the Fourteenth Amendment." *Id.* at 510.[3]

The defendant in *Groppi* was a Catholic priest charged with the misdemeanor offense of resisting arrest. *Id.* at 505. He moved for a change of venue out of Milwaukee County "to a county where community prejudice against this defendant does not exist and where an impartial jury trial can be had." *Id.* at 506. He asked the court to either "take judicial notice of 'the massive coverage by all news media in this community of the activities of this defendant'" or to permit him "to offer proof of the nature and extent thereof, its effect upon this community, and on the right of defendant to an impartial jury trial." *Id.* The trial judge declined, based entirely on the fact that, as a categorical matter, Wisconsin law did not permit a change of venue in

[3] The right of a state court defendant to trial by an impartial jury is guaranteed by principles of due process and by the Sixth Amendment, as applied to the states through the Fourteenth Amendment. *Ristaino v. Ross*, 424 U.S. 589, 595 n.6 (1976); *see also Turner v. Murray*, 476 U.S. 28, 36 n.9 (1986) (plurality opinion). The right is the same, regardless of the description of the source.

misdemeanor cases. *Id.* The defendant was then tried and convicted. *Id.*

The Supreme Court of Wisconsin affirmed the conviction, holding that Wisconsin law did, in fact, foreclose venue changes in misdemeanor cases. *Id.* at 506-07. And it found no constitutional problem with that law, on the grounds that there were other tools available to the defendant to mitigate any prejudice in the community. *Id.* at 507. The court reasoned that a defendant could ask for a continuance to let the prejudice dissipate, or he could "challenge prospective jurors on *voir dire*." *Id.* And if those measures failed, he could seek to set aside the verdict after the fact "based on the denial of a fair and impartial trial." *Id.* (quotation marks omitted).

This Court reversed. *Id.* at 508. It acknowledged that "[t]here are many ways to try to assure the kind of impartial jury that the Fourteenth Amendment guarantees." *Id.* at 509. In some instances, publicity during the trial itself poses a threat to the impartiality of the jury. *Id.* In *Groppi*, though, the Court was "concerned with the methods available to assure an impartial jury in a situation where, because of prejudicial publicity or for some other reason, the community from which the jury is to be drawn may already be permeated with hostility toward the defendant." *Id.* at 509-10.

On that front, the Court found that continuances and *voir dire* were not panaceas. A defendant might seek a continuance "in the hope that in the course of time the fires of prejudice will cool." *Id.* at 510. But continuances work against a defendant's speedy trial rights and may,

in any event, be ineffective. *Id.* Nor is *voir dire* "always adequate to effectuate the constitutional guarantee." *Id.* (citing *Irvin v. Dowd*, 366 U.S. 717 (1961)). Those features of a jury trial could not, in other words, save the Wisconsin statue in question.[4] The Court found that due process entitled Father Groppi to an opportunity to show that community prejudice required a change of venue—even though he was a mere misdemeanant. *Id.* at 505, 508, 511.

Rideau v. Louisiana—on which the *Groppi* Court relied—is also instructive. 373 U.S. 723 (1963). In *Rideau*, a video of the defendant confessing to the crime was broadcast widely on local television. *Id.* at 725-26. Nevertheless, the trial court denied the defendant's request for a change of venue. *Id.* That violated the Constitution—as this Court observed—because the television coverage "in a very real sense *was* [the defendant's] trial." *Id.* at 726. Without a change of venue, any jury trial would be a "hollow formality." *Id.* Notably, this was so even though the all three jurors who were exposed to the coverage averred during *voir dire* that they could judge the case impartially notwithstanding. *Id.* at 725; *see also id.* at 732 (Clark, J., dissenting).

2. The D.C. Court of Appeals did not heed these precedents. Instead, it treated its own precedent in

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[4] The Supreme Court also rejected the suggestion that Groppi was "not in a position to attack the statute because he made an insufficient showing of community prejudice"—Groppi had been denied the "opportunity to produce evidence of a prejudiced community," and so could not be faulted for an insufficient showing on appeal. *Id.* at 508 n.5.

United States v. Edwards, 430 A.2d 1321 (D.C. 1981), as the controlling case on this issue. Pet. App. 19a. But *Edwards* did not address whether a defendant must be afforded an opportunity to advocate for a change in venue; it simply stated conclusorily, in a discussion about whether closing the courtroom during pretrial detention hearings violated the First Amendment, that "[c]hange of venue is not available in the District of Columbia." 430 A.2d at 1343, 1345.

In any event, the D.C. Court of Appeals was wrong to suggest there was "no . . . tension" between its application of *Edwards* and this Court's decision in *Groppi*. *See* Pet. App. 19a n.14. Indeed, neither of the reasons provided by the decision below in defense of its conclusion are persuasive.

First, the court explained that, unlike a state (such as Wisconsin) with multiple districts, the District of Columbia "sits as a single unitary judicial district." Pet. App. 19a-20a n.14. But that is the source of the constitutional problem here, not the solution. Moreover, it is not an insuperable barrier to transfer.

As a preliminary matter, the Constitution does not forbid the transfer of a case from the District of Columbia to a federal district court elsewhere. Crimes committed in the District of Columbia are "crimes against the United States." *Burke v. United States*, 103 A.2d 347, 352 (D.C. 1954); *United States v. Cella*, 37 App. D.C. 433, 435 (1911). And the courts of the District of Columbia reflect this reality. They are quasi-federal and share many features of federal courts: They were created by Congress, and their judges are nominated by the President and confirmed by the Senate. *See* District

of Columbia Self-Government and Governmental Reorganization Act, Pub. L. No. 93-198, §§ 431, 433, 87 Stat. 774, 792-96 (1973) (codified at D.C. Code §§ 1-204.31, 1-204.33); District of Columbia Court Reform and Criminal Procedure Act of 1970, Pub. L. No. 91-358, 84 Stat. 473. The United States Attorney's Office for the District of Columbia prosecutes crimes in the D.C. courts. *See* U.S. Dep't of Justice, *United States Attorney's Office, District of Columbia*, Superior Court Division, https://www.justice.gov/usao-dc/superior-court-division (updated June 28, 2021). And individuals convicted of crimes in the District are committed to the custody of the Attorney General of the United States through the Bureau of Prisons. *See* National Capital Revitalization and Self-Government Improvement Act of 1997, Pub. L. No. 105-33, § 11201, 111 Stat. 251, 734 (codified at D.C. Code § 24-101).

In light of the quasi-federal nature of the prosecution and punishment of crimes in the District of Columbia, transferring a case from the D.C. Superior Court to a federal district court outside of the District of Columbia upon the defendant's request for a change of venue is analogous to transferring a case between federal district courts of different states to ensure the cases is not tainted by pretrial publicity. And such transfers are permitted where appropriate. *See, e.g.*, *United States v. McVeigh*, 918 F. Supp. 1467 (W.D. Okla. 1996) (transferring from Oklahoma to Colorado); *United States v. Tokars*, 839 F. Supp. 1578 (N.D. Ga. 1993) (transferring from Georgia to Alabama), *aff'd*, 95 F.3d 1520 (11th Cir. 1996); *United States v. Moody*, 762 F. Supp. 1485 (N.D. Ga. 1991) (transferring from Georgia to Minnesota).

Indeed, District of Columbia rules do not always limit defendants charged with crimes in the District of Columbia to District of Columbia courts. In the context of guilty pleas, for example, the D.C. Rules of Criminal Procedure already provide for the disposal of cases in federal district courts outside of the District of Columbia where the defendant was charged in the District and where certain other conditions are met. D.C. R. Crim. P. 20(a).

Here, the D.C. Court of Appeals effectively held that there was no procedural mechanism available for transfer. Pet. App. 18a-19a. But such a mechanism could have been provided under the D.C. Rules of Criminal Procedure. There is no constitutional obstacle to such a mechanism, *see supra* p. 11—and because there is no obstacle, there is a constitutional mandate to make such a mechanism available. The issue in *Groppi* was no different: Wisconsin could not, consistent with defendants' impartial jury and due process rights, preclude venue transfers on a categorical basis. 400 U.S. at 510-11. The same is true here.

Second, the D.C. Court of Appeals echoed in conclusory fashion *Groppi*'s observation that "[t]here are many ways to try to assure the kind of impartial jury that the [Constitution] guarantees," Pet App. 20a n.14 (quoting *Groppi*, 400 U.S. at 509)—but then utterly failed to engage *Groppi*'s explanation of the inadequacies of those methods in a case of pretrial publicity. As this Court has already explained, methods like continuances and *voir dire* are not always sufficient to protect a defendant's impartial jury right. *Groppi*, 400 U.S. at 510.

Given these potential deficiencies, continuances and *voir dire* cannot justify a categorical bar on venue changes.

3. The D.C. Court of Appeals' categorical rule yields untenable results. Under the decision below, even if it is clear that the jury pool is thoroughly and completely tainted by prejudice against the defendant, the defendant will not be afforded any opportunity to argue for a transfer of venue. There would be no change of venue even if (as was the case in *Rideau*) a defendant's televised confession rendered the trial a "hollow formality," 373 U.S. at 725-26, or (as was the case in *Irvin v. Dowd*) *voir dire* made clear that there was a "'pattern of deep and bitter prejudice' shown to be present throughout the community," such that eight of the twelve seated jurors expressed a belief during *voir dire* that the defendant was guilty, 366 U.S. at 727. These scenarios would, of course, "violate[] even the minimal standards of due process." *Id.* But under the D.C. Court of Appeals' rule, there would be no way to obtain a change of venue to avoid this constitutional problem. That cannot be correct.

II. THIS CASE IS AN APPROPRIATE VEHICLE FOR RESOLVING THIS ISSUE.

This case is an excellent vehicle for resolving the question presented for a number of reasons.

First, the question presented has been squarely presented and passed on at every stage of the litigation, from the D.C. Superior Court through Mr. Carter's petition for rehearing *en banc*. There is no question that the courts below relied solely on their mistaken belief that a change of venue was categorically barred in the District of Columbia in ruling against Mr. Carter. There

was no finding that Mr. Carter failed to provide sufficient evidence of community prejudice given that he was precluded from making any showing at all. In *Groppi*, this Court "reject[ed] the suggestion that the appellant is not in a position to attack the [categorical bar] because he made an insufficient showing of community prejudice" where his "motion [for a change of venue] was denied in its entirety, thus foreclosing any opportunity to produce evidence of a prejudiced community." 400 U.S. at 508 n.5.

Second, because this case comes to the Court on direct appeal, it has none of the procedural complications associated with habeas appeals. The question presented was preserved at all stages below and is properly before this Court.

Third, the question presented has real implications for Mr. Carter's case. Under this Court's precedents, he should have been afforded the opportunity to show that a change of venue was warranted in his case. Denying him that opportunity was unconstitutional and requires the vacatur of his conviction. As in *Groppi*, "[w]hether corrective relief can be afforded the appellant short of a new trial will be for the [District of Columbia] courts to determine in the first instance." 400 U.S. at 512 n.13.

III. THIS ISSUE IS WORTHY OF REVIEW, AS IT GOES TO A CRITICAL CONSTITUTIONAL RIGHT AND WILL NOT BE RESOLVED ABSENT THIS COURT'S INTERVENTION.

The question presented implicates a critical constitutional right. Trial by jury is "the most priceless" safeguard "of individual liberty and of the dignity and worth of every man." *Irvin*, 366 U.S. at 721. "Few, if

any, interests under the Constitution are more fundamental than the right to a fair trial by 'impartial' jurors." *Gentile v. State Bar of Nev.*, 501 U.S. 1030, 1075 (1991) (Rehnquist, J., dissenting, but delivering the opinion of the Court with respect to this quotation). "[A]n outcome affected by extrajudicial statements would violate that fundamental right." *Id.*; *accord Sheppard v. Maxwell*, 384 U.S. 333, 362 (1966).

"In essence, the right to jury trial guarantees to the criminally accused a fair trial by a panel of impartial, 'indifferent' jurors." *Neb. Press Ass'n v. Stuart*, 427 U.S. 539, 551 (1976) (quotation marks omitted); *Irvin*, 366 U.S. at 722. Put differently, as this Court observed in *Groppi* itself, "[a] fair trial in a fair tribunal is a basic requirement of due process." 400 U.S. at 509 (quoting *In re Murchison*, 349 U.S. 133, 136 (1955)); *accord Neb. Press*, 427 U.S. at 551. Even decades ago, this Court warned that, "[g]iven the pervasiveness of modern communications and the difficulty of effacing prejudicial publicity from the minds of the jurors, the trial courts must take strong measures to ensure that the balance [between publicity and due process] is never weighed against the accused." *Sheppard*, 384 U.S. at 362.

The D.C. Court of Appeals' erroneous interpretation of the impartial jury right will not be resolved absent this Court's intervention. The D.C. Court of Appeals is now fully entrenched in its position, having expressly adopted its statement from *Edwards* about the unavailability of venue transfers to situations in which a defendant's impartial trial rights are seriously imperiled. The court was confronted with *Groppi* in the parties' briefing below and declined to conform to that

case's clear holding. Now that it has declined the opportunity to hear the case *en banc* (after holding Mr. Carter's *en banc* petition for nearly three years), it is clear that its position is set.

The fact that there is no divide among the courts of appeals on this issue is not a barrier. This Court regularly hears cases where—as here—the question presented is unique to a particular place, as the question presented is here. *See, e.g.*, *Fin. Oversight & Mgmt. Bd. for P.R. v. Aurelius Inv., LLC*, 140 S. Ct. 1649, 1654 (2020) (addressing whether the Puerto Rico Oversight, Management, and Economic Stability Act's method for appointing members to the Financial Oversight and Management Board violated the Appointments Clause); *Sturgeon v. Frost*, 139 S. Ct. 1066, 1073 (2019) (addressing whether the Nation River qualified as "public land" for purposes of the Alaska National Interest Lands Conservation Act); *Limtiaco v. Camacho*, 549 U.S. 483, 485 (2007) (addressing whether bonds issued by the Governor of Guam violated the debt-limitation provision in Guam's Organic Act).

The D.C. Court of Appeals' position means that simply because of the unique status of the judicial system in the District of Columbia, defendants charged and tried in the District receive lesser constitutional protections than do defendants charged and tried anywhere else in the country. The protections of the Sixth and Fourteenth Amendments should not depend on geography.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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