No. ____________________

IN THE

SUPREME COURT OF THE UNITED STATES

Malik Nasir — PETITIONER
(Your Name)

vs.

United States of America RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Third Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Malik Nasir 33547-183
(Your Name)

Post Office Box 1000 U.S.P.
(Address)

Leavenworth, Kansas 66048
(City, State, Zip Code)

____
(Phone Number)

QUESTION(S) PRESENTED

Should the district court's denial of a defendant's motion for judgment of acquittal be affirmed by the Third Circuit when the affirmance clearly conflicts with its own instructive precedent as well as the rulings of the United States Supreme Court, the D.C. Circuit, Tenth Circuit, Ninth Circuit and Fifth Circuit where the same points arose in litigation?

Should it be a violation of the Fourth Amendment when there was no probable cause to search appellant Malik Nasir's vehicle when the known information failed to connect Mr. Nasir with the storage unit that officers suspected to hold drugs?

Should the Third Circuit deny a defendant due process and the right to trial "by an impartial jury" U.S. Const. amend. VI when the seating of a juror who candidly acknowledged her inclination to credit law enforcement deprived Mr. Nasir of an impartial jury?

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page.

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

[ ] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[X] reported at 982 F.3d 144; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

[ ] reported at ______; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix ______ to the petition and is

[ ] reported at ______; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the ______ court appears at Appendix ______ to the petition and is

[ ] reported at ______; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[X] For cases from federal courts:

The date on which the United States Court of Appeals decided my case was ~~[illegible]~~ December 1, 2020

[X] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: ____________, and a copy of the order denying rehearing appears at Appendix ______.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including ____________ (date) on ____________ (date) in Application No. __A______.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from state courts:

The date on which the highest state court decided my case was ____________. A copy of that decision appears at Appendix ______.

[ ] A timely petition for rehearing was thereafter denied on the following date: ____________, and a copy of the order denying rehearing appears at Appendix ______.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including ____________ (date) on ____________ (date) in Application No. __A______.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

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STATEMENT OF THE CASE

Malik Nasir was sentenced to 17½ years of imprisonment based on a nonviolent marijuana offense. While ordinarily his alleged conduct would have carried a statutory maximum of less time, the government increased his sentencing exposure by means of an unusual charge under 21 U.S.C. 856(a)(1). That provision, often called the 'crack house statute,' provides greater punishment for one who maintains a premises for the purposes of manufacturing, distributing or using a controlled substance.

There was no evidence of such an offense here, be it at trial or, for that matter, anywhere in the record. Instead the government's case was that Mr. Nasir rented a small public storage unit to store marijuana for distribution elsewhere at a later time. As a matter of statutory construction, see Issue 1 infra, using a premises for storage alone does not supply a conviction under 21 U.S.C. 856(a)(1), and Mr. Nasir is therefore entitled to a judgment of acquittal.

Additional errors marked the proceedings from start to finish. At the outset, critical evidence linking Mr. Nasir to the storage unit was recovered by means of an unconstitutional search of his automobile. Before trial, the district court erroneously denied his motion to suppress. In selecting the jury, the court erroneously seated a member of the venire whom Mr. Nasir sought to have excused based on her candid admission that she would tend to credit the veracity of the police officers. For all of these reasons, the judgment of conviction must be vacated and the matter remanded.

REASONS FOR GRANTING THE PETITION

A. Defendant asserts that the Third Circuit was bias in its judicial decision to affirm the district court's denial of defendant's motion for judgment of acquittal where affirmance conflicts with its own instructive precedent as well as the rulings of the United States Supreme Court, the D.C. Circuit, Tenth Circuit, Ninth Circuit and Fifth Circuit where the same points arose in litigation.

B. Defendant asserts that the district court violated his Fourth Amendment rights when there was no probable cause to search his vehicle when the known information failed to connect Mr. Nasir with the storage unit that officers suspected to hold drugs.

C. Defendant asserts that the Third Circuit denied his due process and the right to trial "by an impartial jury" U.S. Const. amend. VI. when the seating of a juror who candidly acknowledged her inclination to credit law enforcement deprived Mr. Nasir of an impartial jury.

A. The search of the Mercury Mariner

On December 21, 2015, Joseph Liberto manager of Liberto Mini Storage in Dover, called the Delaware State Police's Kent County Drug Unit to report that he suspected someone to be storing illegal drugs in Unit C69. Sergeant Lance Skinner and Detective Jason Vernon responded to the storage unit.

Mr. Liberto advised that, as many as five times a day, the tenant of unit C69 would enter the 5'-by-5' unit and pull the door closed behind him, then re-emerge after a brief time and leave. Liberto had maneuvered a camera above the unit and taken a photograph of the interior, which showed two coolers, two buckets, a plaid-patterned vinyl or plastic bag, what looked to be a box of baggies, and possibly an aerosol can. The state police later that day summoned a drug-sniffing dog, whose handler advised of a positive alert outside unit C69.

Liberto supplied police with a rental agreement signed by Malik Nasir, along with a copy of Nasir's driver's license, and said it was Nasir who had rented unit C69. The agreement, however, actually identified Nasir as the renter of unit C43. Sergeant Skinner later testified that he failed to notice which unit was identified on the agreement. State Police ran a criminal history search on Mr. Nasir, and learned he had been convicted 14 years earlier on drug charges in Virginia.

That evening, Detective Vernon and another colleague applied to a state justice of the peace for a warrant to search unit C69. Meanwhile, Sergeant Skinner and other officers stationed themselves at the storage facility to await the warrant, and a detective staked out an address on Ediman Court in Dover listed on Mr. Nasir's driver's license. At about 10:00 p.m., before the warrant issued, the detective observed Mr. Nasir leave in a Mercury Mariner SUV and tailed him as he drove to the storage facility.

Police stopped the Mariner as it entered a 'C' lane of storage units, about 100 feet from unit C69, and there detained Mr. Nasir. Sergeant Skinner proceeded to search the Mariner. In the center console area, he later testified, was a key fitting the lock on unit C69. A subsequent search of the storage unit, following the warrant's issuance that night, turned up roughly six pounds of marijuana, along with four scales, a Home Depot bucket, and other items pictured in the photograph previously supplied by

Mr. Liberto.

The next day, police obtained a warrant for the Ediman Court residence, as well as two vehicles registered to Mr. Nasir, one a white Dodge Charger previously seen in the driveway. In the trunk of the Charger, police found five handguns with ammunition and accesories.

B. The motion to suppress

A federal grand jury returned a three-count indictment. The first count charged a violation of the so-called "crack house statute,"[1] based on maintaining the storage unit for the purpose of "manufacturing, distributing or using" marijuana. 21 U.S.C. 856(a)(1). The second count charged possession of marijuana with intent to distribute, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(D). The third count charged possession of firearms in or affecting interstate commerce after conviction of a felony, in violation of 18 U.S.C. 922(g)(1).

1. E.g., United States v. Flores-Olague, 717 F.3d 526, 531 (7th Cir. 2013); United States v. Shetler, 665 F.3d 1150, (9th Cir. 2011)

Mr. Nasir moved to suppress the key to unit C69 and other evidence recovered from his vehicles, the home, and the storage unit as fruits of searches conducted in violation of the Fourth Amendment. With regard to Sergeant Skinner's warrantless search of the Mercury Mariner, the district ruled there was probable cause to believe evidence would be found inside. Consequently, the court held, the search abided the Fourth Amendment either as an incident of arrest or pursuant to the automobile exception to the warrant requirement.

C. Juror No. 27

A venire of prospective jurors was summoned for Mr. Nasir's trial. In voir dire examination, the district court began by asking members to make a mental note of whether their answer was "yes" to any of a series of several dozen questions. After reading through the list, the court called venire members to side bar to inquire further as to any affirmative answers. One question was:

"Would you give more or less weight to the testimony of a law enforcement agent or police officer than you would give to that of a civilian witness, simply because he or she is employed as a law enforcement agent or police officer?"

Juror Number 27 answered "yes." At the side bar that ensued, she candidly advised that she thought she might tend to credit police officers. For one thing, she acknowledged, "my daughter dates a state police officer. And I really have a lot of respect for them." She added that "I feel for the most part they all do a good job, and they try to be fair. I think I might tend to believe what they say." The district court asked Juror 27 whether she thought she could nonetheless be fair, and she responded that she "would hope I would." In light of this exchange, the defense moved to strike for cause, but the court denied the motion and seated Juror 27.

D. The prosecution's circumstantial case

At trial, the government offered testimony from seven members of the Delaware State police force, along with a federal agent and a state forensic chemist; the sole additional witness was Mr. Liberto. There was circumstantial evidence tending to associate Mr. Nasir with the sale of marijuana, such as a plastic bag with $5,000 in cash that officers testified they recovered from one of the home's bedrooms. In the same bedroom they found a key for the Dodge Charger and the vehicle's title, along with other paperwork, in Mr. Nasir's name. A small amount of marijuana (about one gram) was recovered from a bag in the cargo area of the Mariner and, according to one officer, from a Home Depot bucket in the home's garage. The government attempted to account for the rental agreement's identification of Mr. Nasir as the occupant of a different unit by producing through Mr. Liberto a document titled "Transfer Receipt," which purported to memorialize a switch from unit C43 to unit C69 several weeks after the initial rental.

The defense drew attention to the circumstantial nature of the government's case. No one - including Mr. Liberto, - had ever seen Mr. Nasir at unit C69. No one will ever know if that is where he was headed, counsel urged, because police officers stopped him shortly after he entered the parking lot. Meanwhile, Mr. Liberto recalled that the unit had often been visited by someone driving a red Mustang, not one of Mr. Nasir's three cars. There was no personal property, nor any fingerprints or DNA, linking any of the storage unit's contents with Mr. Nasir.[2]

From the outset of opening remarks to the conclusion of closing argument, the prosecutor compensated for the circumstantial character of the government's case by foregrounding the recovery of the key to unit C69 from the Mercury Mariner. The jury returned a guilty verdict on all counts.

Summary of Argument

I

The government failed to prove the offense it charged under the federal "crack house statute," 21 U.S.C. 856(a)(1), to elevate Mr. Nasir's sentencing exposure. Section 856(a) defines two distinct crimes: maintaining a place for the purpose of "manufacturing, distributing, or using" a controlled substance, id. 856(a)(1); and making a place available to other persons with a purpose of "manufacturing, storing, distributing, or using" a controlled substance 856(a)(2).

Mr. Nasir was charged under subsection (a)(1), the provision omitting "storing" as a prohibited purpose. This conspicuous omission presents a textbook case for application of the interpretive rule that "where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." Rusello v. United States, 464 U.S. 16, 23 (1983). Application of this disparate inclusion canon here compels the conclusion that maintaining a place solely to store a substance, in contemplation of distribution or ~~[illegible]~~ use elsewhere at some later time, does not make out a violation of subsection (a) (1). To the extent any ambiguity lingers, the rule of lenity forecloses the harsher alternative construction.

There was no evidence at trial that the rental unit at the Liberto facility was used for any purpose beyond storage. Accordingly, the evidence was insufficient to support Mr. Nasir's conviction on Count One, and the district court erred in denying his motion for a judgment of acquittal pursuant to Criminal Procedure Rule 29(a).

II

The warrantless search of the Mercury Mariner upon Malik Nasir's arrival at Liberto Mini Storage was not supported by probable cause and therefore violated the Fourth Amendment. At the moment Sergeant Skinner launched the search, the reasonably trustworthy information known to him did not establish any connection between unit C69 and either Mr. Nasir or the vehicle. The facility manager's identification of Mr. Nasir as the unit's occupant was evidently unreliable, as the very document supplied by the manager as his basis of knowledge showed Mr. Nasir to be renting a different unit altogether.

Due to the absence of probable cause, the search cannot be upheld as an incident of Mr. Nasir's arrest or pursuant to the automobile exception to the warrant requirement. Admission of the key recovered from the center console area and the marijuana recovered from the bag in the cargo area was reversible error.

III

The seating of a juror who candidly professed her allegiance to law enforcement deprived Mr. Nasir of an impartial jury. The juror's disclosure that she doubted her ability to set aside a tendency to credit police officers indicated actual bias. Her response to the judge's follow-up question asking whether she thought she could be fair remained equivocal, and therefore required that she be excused for cause. Under controlling precedent, the denial of Mr. Nasir's motion to strike was structual error of a kind always requiring reversal. See United States v. Mitchell, 690 F.3d 137, 138 (3d Cir. 2012).

ARGUMENT

I

The evidence was insufficient as a matter of law to support conviction under the federal "crack house statute," 21 U.S.C. (a)(1), as there was no proof of any manufacture, use, or distribution of drugs at unit C69, but rather only evidence that drugs were stored there

The government contends the evidence sufficed to support conviction on Count One because a jury could infer appellant Malik Nasir intended to distribute the marijuana stored in unit

C69. This argument fails to give effect to Congress's deliberate omission of storage of drugs, as such, from the purposes for which it is unlawful to maintain a premises under 21 U.S.C. 856(a)(1). As here storage was the one and only use made of unit C69 in relation to distribution, the evidence was insufficient.

A. The standard of review is no bar to relief.

The government contends review is for plain error, but cites as authority only cases in which the defendant failed entirely to move for judgment of acquittal. E.g., United States v. Wolfe, 245 F.3d 257, 260 (3d Cir. 2001). Here, counsel did so move, submitting that, "succinctly," the government had not "proved Mr. Nasir in possession of either the firearms or the marijuana." While the correct preservation rule in this situation has been the subject of considerable discussion among panels,[1] the Court's precedent states without elaboration that a "theory" not "argued" below in support of a sufficiency challenge will be reviewed for plain error. United States v. Vampire Nation, 451 F.3d 189, 203 (3d Cir. 2006).

The issue may be largely academic, as ordinarily the government's failure to prove the defendant guilty as charged is reversible plain error. see Wolfe, 245 F.3d at 261; United States v. Gaydos, 108 F.3d 505, 509 (3d Cir. 1997). Relief will be granted when, as here, the trial was "devoid of evidence" on an essential element. United States v. Castro, 704 F.3d 125, 138 (3d Cir. 2013).

B. The storage unit was not maintained in violation of 21 U.S.C. 856(a)(1).

On the merits, the government confuses the issues in stating that "courts focus on the reason(s) why the defendant maintained the premises, and not on discrete distribution activities therefrom." It is correct that "manufacturing, distributing, or using any controlled substance," 21 U.S.C. 856(a)(1), need not be a place's "sole" purpose, but rather a "primary or principal" one. This precept, however, speaks to an unrelated context: where a person maintains premises—commonly, a residence—for more than one purpose. The rule stressed by the government ensures that use of a controlled substance in one's home is not a federal felony punishable by up to 20 years' imprisonment.

In this case, by contrast, the issue arises not from a premises' use for multiple purposes, but from the crack house statute's distinctive treatment of "storing" as a prohibited purpose in subsection (a)(2) but not (a)(1). The government does not dispute that this selective omission must be given effect under the well-established "disparate inclusion" canon. Rusello v. United States, 464 U.S. 16, 23 (1983). But its argument neglects this precept by supposing that a premises used at any point in the process of bringing a product to market is maintained "for the purpose of... distributing" within the meaning of 856(a)(1). Considered from start to finish, "distribution" entails a whole series of activities: shipment, storage, retail marketing, and transfer to the end user, to name a few. When a place's one and only function in this process is storage, subsection (a)(1)'s selective omission of "storing" as a prohibited purpose forecloses conviction.

It is thus irrelevant that the tenant's sole purpose in maintaining unit C69 was to store drugs and equally irrelevant that the drugs stored in the unit were intended for distribution. What matters is that there was no evidence the unit was maintained for any function relating to distribution other than storage. While there need not be "an actual distribution from the premises," i.e., an on-site transfer, here the only relationship between the unit and distribution was the marijuana's storage in the unit. On a proper of construction of 856(a)(1), that falls short as a matter of law.[2]

II.

There was not probable cause to search the mercury mariner because the information known to the officer responsible for the search failed to connect Mr. Nasir with unit C69.

While the government's doctrinal framing of the Fourth Amendment issue is somewhat confounding, the heart of the issue is clear. Because Sergeant Skinner and his partner carelessly neglected the red flag indicating Mr. Nasir was not the occupant of C69, the search of Nasir's vehicle was unlawful.

A. There was not probable cause.

The government frames the lawfulness of the search as a question of whether there was "reason to believe" evidence would be found in the Mariner perhaps suggesting some standard other than probable cause as traditionally understood. Compare United States v. Donahue, 764 F.3d 293, 300 (3d Cir. 2014) (dictum) with United States v. Vasquez-Algarin, 821 F.3d 467, 477-478 (3d Cir. 2016). Yet at the same time, the government's argument turns on whether police had probable cause to arrest Mr. Nasir. Thus, whichever side's framing is adopted, the question is whether "the various indicia of reliability (and unreliability)" known to Sergeant Skinner warranted a person of reasonable prudence in the belief Mr. Nasir was the occupant of unit C69. Illinois v. Gates, 462 U.S. 213, 234 (1983).

That belief was not warranted, because: the face of the rental agreement suggested the facility owner had pulled the wrong paperwork in identifying Mr. Nasir as the occupant. In discussing officers' "corroboration" of the facility owner's report, the government identifies circumstances tending to show that drugs were stored in Unit C69.[3] But it meanwhile acknowledges that no evidence corroborated the facility owner's identification of Nasir as the tenant of Unit C69. As reviewed in the opening brief, the owner's reliance for this represantation on paperwork identifying Mr. Nasir as the occupant of a different unit altogether raised uncertainty too grave for his report to provide probable cause.

This identification of unreliability was more significant than the details held to draw probable cause into question in Andrews v. Scuilli, 853 F.3d 690 (3d Cir. 2017). The government would distinguish Andrews on the ground that the officer in that case was aware of discrepancies in an apparently trustworthy witness's report, whereas here the officers failed altogether to notice the rental agreement's indication that Mr. Nasir was not unit C69's tenant. In other words, the government suggests the officer in Andrews acted recklessly (or worse), whereas here the officers were careless. But this distinction would be relevant only were the issue their omission from the warrant application of the rental agreement's identification of Mr. Nasir as the occupant of a different unit. See generally Franks v. Delaware, 438 U.S. 154 (1978). As to the issue in fact raised - whether or not there was probable cause - the officers' state of mind is irrelevant. E.g., Devenpeck v. Alford, 543 U.S. 146 (2004). The government thus offers no reason to ignore the guidance to be drawn from Andrews v. Scuilli.

B. The error was not harmless.

The government otherwise contends the Fourth Amendment error was harmless because the key recovered from the Mercury Mariner was not the only evidence linking Mr. Nasir with unit C69. But this observation falls far short of the government's burden to show beyond a reasonable doubt that constitutional error did not contribute to the verdict. Chapman v. California, 386 U.S. 18, 26 (1967).

As previously reviewed, the prosecution made the key its 'Exhibit A,' time and again recalling its recovery from the Mariner to answer doubt arising from the complete lack of direct evidence linking Mr. Nasir with the unit. On this record, to say the constitutional error did not contribute to the verdict is untenable.

III.

The seating of a juror who candidly acknowledged her inclination to credit law enforcement deprived Mr. Nasir of an impartial jury.

As reviewed in the opening brief, Mr. Nasir was deprived of his right to an impartial trier of fact by the seating of a juror who disclosed that her acquaintance with members of the state police force, including her daughter's boyfriend, led her to expect she might give extra weight to their testimony. In response to questions inviting her to assure the court she could be fair, Juror 27 never affirmed a belief she could lay aside this bias. As "doubts regarding bias must be resolved against the juror," United States v. Mitchell, 690 F.3d 137, 143 (3d Cir. 2012), the equivocation expressed by Juror 27 required she be struck for cause.

The government now resists that conclusion by stressing the deference owed district judges' appraisal of demeanor, and by drawing attention to the judge's striking of other prospective jurors for reasons including bias in favor of law enforcement. Neither of these points fairly responds to the issue raised.

A. Demeanor is not implicated when a prospective juror never affirms a belief in her impartiality.

As acknowledged in the opening brief, great deference is paid a district court's determination of impartiality. Yet the government, for its part, fails to confront the fact that Juror 27 never affirmed she could be impartial. Appraisals of demeanor aside, a prospective juror must profess impartiality before a judge may credit the assurance.

Juror 27 could only promise to "work to be impartial," as the government puts it. This sort of promise to "try" to be fair falls short of the clear and unequivocal assurance required. See Thompson v. Altheimer & Gray, 248 F.3d 621, 626 (7th Cir. 2001); see also, e.g., United States v. Kechedzian, 902 F.3d 1023, 1030 (9th Cir. 2018) (Fisher, J., sitting by designation); United States v. Sithithongtham, 192 F.3d 1119, 1121 (8th Cir. 1999). In the absence of such "final, unequivocal assurances," United States v. Klemis, 859 F.3d 436, 445 (7th Cir. 2017), the deference given a judge's assessment of demeanor is not the controlling rule. Rather, in this situation, "doubts regarding bias must be resolved against the juror." Mitchell, 690 F.3d at 143; accord United States v. Nelson, 277 F.3d 164, 202 (2d Cir. 2002); United States v. Gonzalez, 214 F.3d 1109, 1114 (9th Cir. 2000).

This is not to say that equivocal

phrasing of any kind always renders a prospective juror subject to excusal for cause. But once some sign of partiality has appeared, the venire member must be able to affirm that he or she could lay aside preconceptions and judge the evidence fairly. The requirement that this affirmation be clear and unequivocal is the counterpart of the deference accorded a district judge's assessment of such assurances' veracity.

The government offers no meaningful response to the ruling in Sithithongtham that a juror who stated he was "sure I could probably be fair and impartial" should have been excused because "probably" is "not good enough." 192 F.3d at 1121. Instead, the government's brief characterizes Sithithongtham as a case supposedly involving a judge who showed "complete indifference to law enforcement bias." That is not accurate. None of the opinions in the case suggest any "systemic" failing, id., on the part of the judge.

The government otherwise remarks that defense counsel did not regard Juror 27 as so "obviously biased" as to merit a peremptory strike. But of course, counsel ran out of peremptory strikes, exercising all 12 afforded by Criminal Procedure Rule 24(b)(2) and (c)(4)(A), so that the seating of Juror 27 may reflect no more than counsel's view that other venire persons were even more obviously (if perhaps less candidly) prone to favor the prosecution. See Altheimer & Gray, 248 F.3d at 623 (discussing limited inferences to be drawn from attorney's exercise of peremptory strikes).

B. The excusal of other members of the venire is irrelevant.

The government's remaining point - that the court's striking of a number of prospective jurors demonstrates it tried to conduct an effective voir dire merits little discussion. "An impartial jury is one in which all of its members, not just most of them, are free of interest and bias." United States v. Parse, 789 F.3d 83, 111 (2d Cir. 2015). Thus the seating of "any juror who should have been dismissed for cause" requires reversal. United States v. Martinez-Salazar, 528 U.S. 304, 316 (2000). Accordingly, the most punctilious conduct of voir dire with respect to the remainder of the venire could not cure the error in seating Juror 27.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Malik R. Nasir

Date: 4/28/2021