No. 21-6348

IN THE SUPREME COURT OF THE UNITED STATES

RAFAEL RAMIRO-MEDINA, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals permissibly affirmed the district court's denial of petitioner's claim of racially biased jury selection under Batson v. Kentucky, 476 U.S. 79 (1986), rather than remanding to the district court for further proceedings on an aspect of the claim that the court of appeals determined the existing record furnished a sufficient basis to resolve.

ADDITIONAL RELATED PROCEEDINGS

United States District Court (S.D. Cal.):

United States v. Ramiro-Medina, No. 19-cr-2028 (Dec. 20, 2019)

United States Court of Appeals (9th Cir.):

United States v. Ramiro-Medina, No. 19-50382 (Aug. 26, 2021)

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OPINION BELOW

The opinion of the court of appeals (Pet. App. A1-A4) is not published in the Federal Reporter but is reprinted at 857 Fed. Appx. 901.

JURISDICTION

The judgment of the court of appeals was entered on August 26, 2021. The petition for a writ of certiorari was filed on November 16, 2021. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Southern District of California, petitioner was convicted on four counts of transporting persons who were unlawfully present in the United States, in violation of 8 U.S.C. 1324(a)(1)(A)(ii) and (v)(II). Judgment 1. He was sentenced to nine months of imprisonment, to be followed by two years of supervised release. Judgment 2-3. The court of appeals affirmed. Pet. App. A1-A4.

1. In May 2019, petitioner picked up four passengers who had just entered the United States unlawfully by swimming across the All-American Canal, which runs along the border between California and Mexico. Gov't C.A. Br. 2. A United States Border Patrol agent in a marked vehicle soon began following petitioner's car, at which point he drove off the road. Id. at 2-3. The passengers got out of the car, and petitioner continued driving off-road along the All-American Canal with agents in pursuit. Id. at 3. After petitioner's vehicle became stuck in the dirt, he was arrested. Ibid.

Agents later learned that the four individuals were citizens of Mexico and Guatemala who had arranged to pay between $1000 and $5000 to be smuggled into the United States. Gov't C.A. Br. 3. A federal grand jury in the Southern District of California charged petitioner with four counts of transporting persons who were unlawfully present in the United States, in violation of 8 U.S.C. 1324(a)(1)(A)(ii) and (v)(II). C.A. E.R. 115-116.

2. Petitioner proceeded to a jury trial. The jury venire consisted of 40 people, including at least five or six Hispanic people. C.A. E.R. 108-109; C.A. Supp. E.R. 8. During jury selection, one juror -- Dean Taber -- indicated he would have difficulty being impartial because he performed medical work at a correctional facility where he often interacted with individuals who were in the country unlawfully. C.A. E.R. 15-16. Later on, Taber and another juror -- Margarita Caudillo -- stated that news stories about the government separating immigrant families at the border would make them partial to one side. Id. at 35-36.

The district court did not pursue the topic further with Taber but followed up with Caudillo, asking if her "knowledge" of family separations would "impact [her] ability to be fair." C.A. E.R. 36. Caudillo said yes. Ibid. The court followed up again, asking if that "effect" would "remain even in spite of [its] instructions * * * to fairly and impartially judge the credibility of each witness." Ibid. Caudillo said she "believe[d] [she] c[ould] go ahead and be fair and impartial" but that "[t]he knowledge [of family separations] w[ould] always be there in the back of [her] head." Id. at 37; see id. at 37-38.

Taber, who both parties agreed should be dismissed, was one of several prospective jurors the district court struck for cause. C.A. E.R. 69-71, 97-103, 109. The government also sought to dismiss Caudillo for cause because she had stated that her knowledge of family separations at the border "would impact her

ability to be fair." Id. at 103. The government explained that although Caudillo had later said she could follow the court's instructions, she had also acknowledged "that [her concerns] would always be in the back of her mind." Ibid. The court, however, deemed a dismissal for cause to be unwarranted, noting that although Caudillo "began * * * with a view that led the [c]ourt to have some concerns," it was satisfied by her answers to follow-up questions that "she is prepared to compartmentalize and set aside * * * this knowledge [of family separations] that she referenced." Id. at 103-104. The parties then exercised their peremptory challenges. Id. at 106. The government used three of its six challenges, one of which was on Caudillo and another of which was on Claudia Cruz, also a Hispanic woman. Id. at 107-108; see id. at 55; C.A. Supp. E.R. 18. Petitioner challenged those strikes as discriminatory under Batson v. Kentucky, 476 U.S. 79 (1986). C.A. E.R. 107.

The district court rejected petitioner's Batson challenge, finding that he had not established a prima facie case of racial discrimination. C.A. E.R. 107-108. The court found that two (and possibly three) of the seated jurors were Hispanic and that no evidence indicated the government was making its jury-selection decisions based on "racial animus." Id. at 108. The court noted that "the government sought to exclude" Caudillo based on the "information that she had in the back of her mind regarding

separation of children from their parents" at the border, and that Cruz was "at times difficult to understand." Id. at 107-108.

The next day, the district court asked both parties to "supplement the record" on the Batson issue in case the court of appeals disagreed with the district court's determination that petitioner had failed to establish a prima facie case. C.A. Supp. E.R. 7. The defense stated that "the only thing" it wished to "add to the record" was that only three of the 40 people in the venire were Hispanic women -- Caudillo, Cruz, and a woman who had been dismissed for cause. Id. at 7-8; see C.A. E.R. 101-103.

Turning to the government, the district court observed that there was a "pretty fully developed record" on the government's reasons for seeking to dismiss Caudillo, and asked whether the government "want[ed] to say anything beyond what was said at sidebar" the day before. C.A. Supp. E.R. 9. The government stated that it wished to "supplement" the record with its reasons for striking Cruz: she "made virtually no eye contact," "sat with her arms crossed much of the time," "spoke so quietly that no one could hear her," and "did not appear to be engaged in the jury selection process." Id. at 10, 16-17. Petitioner challenged those reasons as pretextual, but did not address Caudillo. Id. at 16-20.

The district court reaffirmed its rejection of petitioner's Batson challenge. C.A. Supp. E.R. 20-22. The court explained that it "continue[d] to find that there was no prima facie case made," "incorporating [its] earlier comments" on that issue. Id.

at 20; see id. at 14-15. The court then addressed the reasons for challenging Caudillo and Cruz. The court observed that Caudillo's comments expressing concern about family separations at the border were similar to comments by Taber, who was removed for cause. C.A. Supp. E.R. 21; C.A. E.R. 69. The court explained that "the [c]ourt itself had enough concerns about Ms. Caudillo's comments * * * that [it] felt compelled to follow up" as to whether she could be impartial. C.A. Supp. E.R. 15; see id. at 21. The court found that even if its follow-up colloquy with Caudillo had assuaged the court's concerns, the government continued to have "good-faith reasons" for seeking to excuse her. Id. at 21. The court then considered the government's proffered reasons for striking Cruz, and found no "artifice, subterfuge, [or] some means of hiding racial animus." Id. at 22.

After a two-day trial, the jury found petitioner guilty on all counts. C.A. Supp. E.R. 23-24. The district court sentenced him to four concurrent terms of nine months of imprisonment, to be followed by two years of supervised release. C.A. E.R. 2-4.

3. The court of appeals affirmed in an unpublished memorandum opinion. Pet. App. A1-A4. On appeal, petitioner abandoned his challenge to the government's peremptory strike of Cruz but contended that the peremptory strike of Caudillo violated Batson. Pet. C.A. Reply Br. 2-3. The court explained that "Batson established a three-step, burden-shifting framework to determine whether an attorney engaged in purposeful discrimination when

exercising peremptory strikes." Pet. App. A2. First, "the defendant must make a prima facie showing that the challenge was based on an impermissible ground, such as race." Ibid. (citation omitted). "Second, if the trial court finds the defendant has made a prima facie case of discrimination, the burden then shifts to the prosecution to offer a race-neutral reason for the challenge that relates to the case." Ibid. (citation omitted). "Third, if the prosecutor offers a race-neutral explanation, the trial court must decide whether the defendant has proved the prosecutor's motive for the strike was purposeful racial discrimination." Ibid. (citation omitted).

The court of appeals determined that it need not decide whether the district court had erred in finding no prima facie case of racial discrimination at the first step of the Batson inquiry because any error at step one would be moot given that the district court's Batson determination could be affirmed based on steps two and three. Pet. App. A2-A4. The court of appeals observed that the district court "did not misapply step two of the Batson inquiry" when the government had sought to remove Caudillo for cause based on her "concern about remaining impartial due to her views of the federal government's family separation policy" and "[m]oments later," the district court had referred to that "race-neutral reason" when addressing petitioner's Batson challenge. Id. at A3. The court of appeals explained that "the government implicitly adopted this reason * * * during [the]

supplemental Batson hearing," and that it constituted a valid, race-neutral reason for the peremptory strike. Ibid.

Although the court of appeals took the view that the district court had "arguably misapplied" step three of the Batson inquiry by finding that the government "offered [its reason for striking Caudillo] in good faith" without otherwise "expressly determining whether purposeful discrimination occurred," the court of appeals found that "even if the district court so erred," the "record [wa]s adequately developed" to allow it to "review de novo" whether petitioner had satisfied his burden under the third step, without remanding to the district court. Pet. App. A3-A4 (citing United States v. Alvarez-Ulloa, 784 F.3d 558, 565-566 (9th Cir. 2015)). And the court of appeals explained that petitioner had not established "purposeful racial discrimination" because "[t]he government had legitimate concerns about whether Juror Caudillo could be impartial, given the nature of the charges"; "no evidence" indicated "that the government failed to strike non-Hispanic jurors who shared similar concerns"; and "the seated jury included at least two Hispanic jurors." Id. at A4.

4. Petitioner completed his prison term on February 5, 2020. Federal Bureau of Prisons, Find an Inmate, https://www.bop.gov/inmateloc (Register Number 95976-198). He was removed to Mexico shortly thereafter. On February 4, 2022, he completed his term of supervised release.

ARGUMENT

Petitioner contends (Pet. 6-15) that the court of appeals erred in affirming the district court's rejection of petitioner's jury-selection claim based on its assessment of information in the existing record, rather than remanding the case to the district court for further proceedings. The court of appeals' decision is correct, and no conflict exists between that unpublished, non-precedential decision and any decision of this Court or another court of appeals. In addition, this case would be a poor vehicle for considering the question presented because multiple independent grounds support the judgment below. This Court has denied a petition for a writ of certiorari raising a materially identical issue, see Potenciano v. United States, 139 S. Ct. 321 (2018) (No. 17-9130), and the same disposition is appropriate here.

1. In Batson v. Kentucky, 476 U.S. 79 (1986), this Court held that the Constitution prohibits the use of peremptory challenges to strike jurors based on their race. Id. at 89. As the court of appeals observed, inquiry into an alleged Batson violation by the government consists of three steps. Pet. App. A2. First, the defendant must establish a prima facie case of racial discrimination by showing that the "relevant circumstances raise an inference" that such discrimination occurred. Batson, 476 U.S. at 96; see Johnson v. California, 545 U.S. 162, 170 (2005). Second, if a defendant makes such a showing, the prosecution must come forward with a race-neutral explanation for

each challenged strike. Purkett v. Elem, 514 U.S. 765, 767 (1995) (per curiam). Third, if the prosecution provides a race-neutral explanation, the trial court considers the "parties' submissions" and "determine[s] whether the defendant has shown purposeful discrimination." Foster v. Chatman, 578 U.S. 488, 499 (2016) (citation omitted); see Flowers v. Mississippi, 139 S. Ct. 2228, 2241 (2019). "[T]he ultimate burden of persuasion regarding racial motivation rests with, and never shifts from, the opponent of the strike." Purkett, 514 U.S. at 768.

The ultimate question of discriminatory intent is a finding of fact to which "a reviewing court ordinarily should give * * * great deference." Batson, 476 U.S. at 98 n.21; see Flowers, 139 S. Ct. at 2244. Accordingly, "[o]n appeal, a trial court's ruling on the issue of discriminatory intent must be sustained unless it is clearly erroneous." Flowers, 139 S. Ct. at 2244 (quoting Snyder v. Louisiana, 552 U.S. 472, 477 (2008)); see Hernandez v. New York, 500 U.S. 352, 364-366, 369 (1991) (plurality opinion).

2. The court of appeals' factbound application of those principles to this case does not warrant this Court's review. See Sup. Ct. R. 10 ("A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law."); United States v. Johnston, 268 U.S. 220, 227 (1925) ("We do not grant a certiorari to review evidence and discuss specific facts.").

a. Petitioner does not dispute that a reviewing court need not address the first step of the Batson inquiry if it can resolve the claim at the latter two steps. Pet. App. A2-A3 (citing Hernandez, 500 U.S. at 359 (plurality opinion)). Nor does the petition in this case raise any question as to whether the district court permissibly applied the second step of the Batson inquiry in finding that the prosecutor provided a race-neutral explanation for striking Caudillo. Id. at A3. And while the court of appeals took the view that the district court had "arguably misapplied" the third step by finding that the government "offered [its reason for striking Caudillo] in good faith" without otherwise "expressly determining whether purposeful discrimination occurred," it found "the record * * * adequately developed" for "de novo" review. Id. at A3-A4 (citation omitted). The court cited a circuit precedent, United States v. Alvarez-Ulloa, 784 F.3d 558 (9th Cir. 2015), in which the court had similarly resolved a Batson step-three question on an "adequately developed" record without "remanding for a factual hearing." Pet. App. A4. And the court explained that the record here established that petitioner had not satisfied his burden to show that purposeful racial discrimination occurred. Ibid.

The court of appeals' approach in this case represents a straightforward application of the uncontroversial principle that a reviewing court may resolve a factual issue without remanding to a lower court where "the record permits only one resolution of the

factual issue." Sprint/United Mgmt. Co. v. Mendelsohn, 552 U.S. 379, 387 n.3 (2008) (quoting Pullman-Standard v. Swint, 456 U.S. 273, 292 (1982)). Petitioner expressly acknowledges (Pet. 13) the validity of that principle, and this Court has confirmed it across a wide variety of contexts. See, e.g., Mendelsohn, 552 U.S. at 387 & n.3; cf. Jackson v. Virginia, 443 U.S. 307, 313 (1979) (explaining that a reviewing court may reverse a conviction where no "rational factfinder could have concluded beyond a reasonable doubt that" the relevant element was proven).

Courts of appeals have repeatedly applied that principle in the Batson context, declining to remand Batson claims when the record would permit only one finding. See, e.g., United States v. Stephens, 514 F.3d 703, 713 (7th Cir.) (stating that the district court erred in its Batson step-three analysis but declining to remand because "[v]iewing the record now in its entirety presents only one plausible conclusion -- that there is no Batson violation in this case"), cert. denied, 555 U.S. 969 (2008); King v. Moore, 196 F.3d 1327, 1334 (11th Cir. 1999) ("A remand is unnecessary here * * * because the district court could not find an inference of discrimination [under Batson] on this record without clearly erring."), cert. denied, 531 U.S. 1039 (2000); United States v. Allison, 908 F.2d 1531, 1537 (11th Cir. 1990) (declining to remand a Batson-related factual issue because the record permitted only one finding), cert. denied, 500 U.S. 904 (1991). And although the court of appeals here did not expressly state, in its short

unpublished opinion, that the record did not permit any other conclusion, the court's observation that the record was "adequately developed," its identification of multiple pieces of evidence supporting the legitimacy of the government's strike, and its failure to identify any evidence supporting an inference of discrimination, Pet. App. A4, all indicate that the decision is best understood in that commonsense and well-accepted way, cf. Mendelsohn, 552 U.S. at 386 (explaining that a reviewing court should not lightly presume legal error by a lower court).

b. Petitioner more broadly asserts (Pet. 10-12) that the court of appeals has improperly "claimed the authority" to conduct de novo factfinding when resolving Batson claims. But he provides no sound reason to construe the decision below to be premised on such a view of the court's authority.

As noted, the unpublished decision in this case relied on the Ninth Circuit's earlier decision in Alvarez-Ulloa. Pet. App. A4. That decision, in turn, relied on three cases for the proposition that "de novo" review of certain aspects of a Batson claim may be appropriate, none of which held that the court of appeals may act as the primary factfinder. Alvarez-Ulloa, 784 F.3d at 565-566. In one of the decisions referenced by Alvarez-Ulloa, the Ninth Circuit emphasized that, "[o]rdinarily, it is for the trial court, rather than for the appeals court, to perform the third step of the Batson process in the first instance." United States v. Alanis, 335 F.3d 965, 969 n.5 (2003). The court of appeals in

that case determined, however, that if the district court had "properly proceed[ed] to step three, it would have concluded that the prosecutor's gender-neutral explanations were pretexts for purposeful discrimination," and the court of appeals accordingly resolved the Batson claim. Id. at 969 (emphasis added); cf. SmithKline Beecham Corp. v. Abbott Labs., 740 F.3d 471, 478-479 (9th Cir. 2014) (similar).

The second decision Alvarez-Ulloa relied upon -- the Seventh Circuit's decision in United States v. Stephens, supra -- similarly recognized that remand for a Batson step-three finding is unnecessary and "would be a redundant exercise" where the record "presents only one plausible conclusion." Stephens, 514 F.3d at 713. And the third decision, Green v. LaMarque, 532 F.3d 1028, 1033 (9th Cir. 2008), was a habeas case finding a state trial court's Batson ruling to be premised on "an unreasonable determination of the facts." None of the three cases holds that a court of appeals may resolve factual questions without regard to whether a district court could have properly reached a contrary conclusion. Indeed, in Alvarez-Ulloa itself, the court rested its determination that remand was unnecessary on its observation that the record in that case was "well-developed and there [were] not outstanding issues that would benefit from an additional hearing." 784 F.3d at 566.

3. Petitioner errs in contending (Pet. 7-10) that the unpublished decision below (and the circuit precedent it applied)

conflicts with the decisions of several other courts of appeals. According to petitioner (Pet. 7), when those other appellate courts conclude that a trial court committed legal error in conducting the third step of the Batson analysis, they invariably remand to the trial court for it to make a new factual determination. That is incorrect.

The decisions cited by petitioner merely recognize or apply the general rule that "[w]hen a court has failed to make needed credibility findings as to each challenged strike 'the appropriate course usually will be to remand for findings by the court as to the challenged strikes and an ultimate determination on the issue of discriminatory intent.'" United States v. Thomas, 303 F.3d 138, 146 (2d Cir. 2002) (emphasis added; citation omitted); accord United States v. Alvarado, 923 F.2d 253, 256 (2d Cir. 1991) (applying general rule); Jones v. Plaster, 57 F.3d 417, 421 (4th Cir. 1995) ("[W]hen the district court fails to articulate its findings, remand for further proceedings may be necessary.") (emphasis added); United States v. Joe, 928 F.2d 99, 104 (4th Cir.) (applying general rule), cert. denied, 502 U.S. 816 (1991); United States v. Romero-Reyna, 867 F.2d 834, 837-838 (5th Cir. 1989) (same), cert. denied, 494 U.S. 1084 (1990); United States v. McAllister, 693 F.3d 572, 583 (6th Cir. 2012) (same); United States v. Torres-Ramos, 536 F.3d 542, 560-561 (6th Cir.) (same), cert. denied, 555 U.S. 1088 (2008), and 556 U.S. 1196 (2009); United States v. Kimbrel, 532 F.3d 461, 469 (6th Cir. 2008) (applying

principle that appellate courts ordinarily should not resolve factual issues not addressed by district court); United States v. Harris, 192 F.3d 580, 588 (6th Cir. 1999) (applying general rule); United States v. Rutledge, 648 F.3d 555, 560 (7th Cir. 2011) (same); United States v. McMath, 559 F.3d 657, 666 (7th Cir.) (same), cert. denied, 558 U.S. 881 (2009); United States v. Taylor, 509 F.3d 839, 845 (7th Cir. 2007) (finding that defendants had made a "strong case" of purposeful discrimination); United States v. Horsley, 864 F.2d 1543, 1546 (11th Cir. 1989) (per curiam) (remanding because district court applied wrong legal standard in finding no prima facie showing).

None of the decisions cited by petitioner stated that remands are required even when a reviewing court is able to conclude that a remand could produce only one result. Indeed, at least two of the circuits cited by petitioner (the Seventh and the Eleventh) have rejected Batson claims without remanding to the district court in such circumstances. See, e.g., Stephens, 514 F.3d at 713 (Batson step three); King, 196 F.3d at 1334 (Batson step one). The cited decisions therefore do not conflict with the approach reflected in the court of appeals' decision, and petitioner cites no decision of any court recognizing the existence of a circuit conflict on the question presented.

4. In any event, this case is an unsuitable vehicle for reviewing the question presented. Resolution of the question in petitioner's favor would not affect the ultimate disposition of

the case because the decision below could be affirmed on any of several alternative grounds. See Dandridge v. Williams, 397 U.S. 471, 475 n.6 (1970) (prevailing party may rely on any ground to support the judgment, even if not considered below).

First, even if the court of appeals' decision does not adequately convey that the court was applying the standard petitioner embraces -- that remand is unnecessary if the record supports only one conclusion, see Pet. 13; Mendelsohn, 552 U.S. at 387 & n.3 -- the court's analysis makes clear that it would have reached the same result under that standard. The court observed that "[t]he government had legitimate concerns about whether Juror Caudillo could be impartial," given her statements about family separations at the border and the immigration-related charges against petitioner. Pet. App. A4; see C.A. E.R. 36-38. The court found "no evidence that the government failed to strike non-Hispanic jurors who shared similar concerns." Pet. App. A4; see C.A. E.R. 35-36, 69 (government agreed to strike the only other such juror for cause). And the court noted that "the seated jury included at least two Hispanic jurors," Pet. App. A4, which is particularly significant because the government did not exercise three of its peremptory challenges, C.A. Supp. E.R. 18. Petitioner makes no attempt to argue that he would prevail under the standard he embraces, nor does he take issue with any particular determination the court of appeals made with respect to the evidence in the "adequately developed" record. Pet. App. A4.

The judgment below may also be affirmed on the ground that the district court committed no legal error at step three of the Batson inquiry. Although the court of appeals took the view that the district court had "arguably misapplied step three" of the Batson analysis by not "expressly determining whether purposeful discrimination [against Caudillo] occurred," Pet. App. A3 (emphasis added), the district court ultimately committed no legal error. The court held a supplemental hearing specifically to address the second and third steps of the Batson inquiry, C.A. Supp. E.R. 9, where petitioner did not contest the basis for dismissing Caudillo, id. at 7-22. And after the hearing, the court found that the government had "good-faith reasons" for seeking to excuse Caudillo, and that the government's reasons for striking the other Hispanic juror at issue were not a "means of hiding racial animus." Id. at 21-22; accord id. at 15. Particularly given that context, the court's finding that the government "offered" its reason for striking Caudillo in "good faith," id. at 15, 21, is tantamount to a finding that the government's reason was nondiscriminatory.

Finally, the judgment below may be affirmed on an alternative ground that the court of appeals did not reach, Pet. App. A2-A4: the district court did not clearly err in finding that petitioner failed to establish a prima facie case of racial discrimination at the first step of the Batson analysis. In the district court, the only evidence petitioner relied on at step one was that the

government exercised two peremptory strikes against Hispanic women and, according to petitioner, the 40-person venire included only three Hispanic women. C.A. E.R. 107; C.A. Supp. E.R. 7-8. Although a "'pattern' of strikes against [Hispanic] jurors" is one of the "relevant circumstances" that "might give rise to an inference of [racial] discrimination," Batson, 476 U.S. at 96-97, the district court did not clearly err in finding that the two strikes here did not rise to that level, particularly given that the seated jury included two or three Hispanic individuals, C.A. E.R. 108-109, and the government declined to exercise three of its peremptory challenges, C.A. Supp. E.R. 18.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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