

No.

IN THE SUPREME COURT OF THE UNITED STATES

DIANN RAMCHARAN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

*On Petition for a Writ of Certiorari to
the United States Court of Appeals for the Tenth Circuit*

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Diann Ramcharan and three others were charged and convicted of immigration fraud involving inter-racial sham marriages. Three defendants, including Ramcharan, are persons of color, and also are not citizens (two are from Trinidad and Tobago and another is African-American). During voir dire, Ramcharan asked the district court to inquire of the jury panel their views on race and ethnicity regarding this case. The district court refused to ask a single question about these things.

This Court held that the Constitution requires a trial judge to grant a request for racial-bias questions if “racial issues are inextricably bound up with the conduct of the trial.” *Rosales-Lopez v. United States*, 451 U.S. 182, 189 (1981). The Tenth Circuit affirmed, finding that since this case dealt with marriage fraud rather than a violent crime against a person of a different race than the accused, there were no “special circumstances” of constitutional dimension requiring such inquiry. The question presented is:

Is it an abuse of discretion for a district court, when there is a proper request by the accused, to refuse to conduct reasonable voir dire inquiry into racial/ethnic bias in a case involving illegal-immigrant racial-minority defendants accused of marriage and immigration fraud?

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TO: The Honorable Chief Justice and Associate Justices of the United States Supreme Court:

Diann Ramcharan petitions respectfully for a writ of certiorari to review the judgment of the United States Court of Appeals for the Tenth Circuit.

OPINION BELOW

The United States Court of Appeals for the Tenth Circuit decided this case by published opinion filed April 19, 2022. *See* attached Appendix.

JURISDICTION

The judgment of the United States Court of Appeals for the Tenth Circuit was entered April 19, 2022. Petitioner did not seek rehearing. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution provides, in part:

In all 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[.]

Federal Rule of Criminal Procedure 24(a)(1), provides:

The court may examine prospective jurors or may permit the attorneys for the parties to do so.

STATEMENT OF THE CASE

On May 8, 2019, a Second Superseding Indictment was filed accusing Petitioner Diann Ramcharan and four others—Rajesh Ramcharan, Angelica Guevara, Galima Murry, and Ken Harvell—with four counts: 1) knowingly entering into marriage for the purpose of evading immigration laws; 2) knowingly making fraudulent statements on form I-751 (Petition to Remove Conditions on Residence to the United States Citizenship and Immigration Service; 3) knowingly making fraudulent statements on form I-485 (Application to Adjust Status) to the United States Citizenship and Immigration Service; and 4) conspiracy to commit marriage/immigration fraud. ROA I at 81.

One of the co-defendants, Angelica Guevara, turned, pled guilty, and became a witness for the Government. Jury trial for the remaining four commenced on January 8, 2020, in Denver, Colorado, before the Hon. David M. Ebel, Senior Circuit Judge of the Tenth Circuit. At the conclusion of the evidence, the jury convicted Diann Ramcharan on all counts. ROA I at 929 (Verdict Form); ROA VI at 1743-44 (verdict transcript).¹

¹ The jury also convicted Rajesh Ramcharan on all counts. ROA I at 927. Galima Murry was convicted on counts 2 and 4. ROA I at 931. Ken Harvell was acquitted on counts 1 and 2, but

Formal sentencing was held on June 24, 2020. Judge Ebel sentenced Diann Ramcharan to 4 months custody of the Bureau of Prisons and 2 years of supervised release. ROA VI at 1914 (transcript of sentencing in open court); ROA I at 1104 (Judgment Form).²

Each defendant appealed, and in a consolidated published opinion, the Tenth Circuit affirmed on April 19, 2022.

STATEMENT OF THE FACTS

As Ramcharan set forth in the court below, this case deals with the intersecting relationships of four people: Diann Ramcharan, Rajesh Ramcharan, Angelica Guevara, and Galima Murry. Over the course of time, Diann and Rajesh Ramcharan married each other (twice actually) and divorced; Diann then married Murry; and Rajesh married Angelica. These marriages were all performed by Pastor Ken Harvell.

However, the Government asserted, and ultimately convinced the jury, that these latter two marriages were fraudulent, and that all of the defendants conspired to enter into these domestic relationships for the purpose of assisting the Ramcharans (and their son) with immigration officials. ROA VI at 126-27.

The story actually began in the Caribbean location of Trinidad and Tobago, where Diann and Rajesh Ramcharan were married on March 31, 2001. ROA VI at 160. They eventually made their way to the U.S., but entered the country on six-month admission visitor visas; but later acquired two-

convicted on counts 3 and 4. ROA I at 932.

² Rajesh Ramcharan was sentenced to 3 months in custody and 2 years of supervised release. ROA I at 1129. Ken Harvell was sentenced to 3 years probation. ROA I at 1123. Galima Murry was sentenced to 8 months in custody and 2 years of supervised release. ROA I at 1032. Angelica Guevara, who had pled guilty, was sentenced to 1 year probation. ROA I at 1114.

year visitor visas (their son was also in the U.S. on the same visas). *Id.* 184-85, 190.

Thus, both Rajesh and Diann found themselves in the U.S. having overstayed their visas. It was around 2010, according to the Government, when the “fraud” started—and by that time Rajesh and Diann had been married for nine years, had three kids, and lived in Colorado Springs where they operated a landscaping business called R&D Enterprises. ROA VI at 128, 251.

The first witness for the Government was an immigration officer named Michael Martin, who detailed some of the time line facts from the documents in the immigration file of the Ramcharans. *Id.* 158. On July 13, 2010, Rajesh and Diann married for a second time, this time in Colorado. *Id.* 166. However, they filed for divorce on September 29, 2010, and a divorce decree was filed on April 27, 2011. *Id.* 167. A short time later, on May 2, 2011, Diann remarried Galima Murry who was a sergeant in the Army. *Id.* 168. Thereafter, Rajesh married Angelica Guevara on March 16, 2015. *Id.*

These subsequent marriages, in and of themselves, were not a cause for concern; however, more paperwork was prepared and filed with immigration when Guevara filed a petition to assist her new husband, Rajesh; and Sgt. Murry (now married to Diann) filed paperwork to assist Diann and her son. *Id.* 178, 204-05.

Officer Martin delved into the weeds a little more, starting comparing the paperwork and logging the dates, and he noticed several “red flags” that caused him to become suspicious of immigration fraud, such as the fact that Murry did not show up to the immigration hearing, only Diann and her son did (Diann said that he was deployed at the time), the fact that Diann separated from Rajesh after the birth of a child in November, and then moved in with Sgt. Murry in May, a vehicle transfer from R&D Enterprises to Sgt. Murry, a statement from Diann that Rajesh had

returned to Trinidad which did not square with the paperwork, the fact that Sgt. Murry deployed to Afghanistan just a week or two after the marriage date with Diann, etc. *Id.* 197, 202-03, 229.

It was Officer Martin who got the prosecutorial ball rolling and referred the matter for further investigation. *Id.* 254-55, 308. He had never met Sgt. Murry, or Guevara, or Pastor Harvell, or Rajesh; he just saw some red flags in the paperwork presented to immigration, which did not mean immigration fraud necessarily, and he acknowledged that every relationship and marriage is different, especially where a divorced couple share minor children which was the case here. *Id.* 244, 252, 257.

Most of the witnesses for the Government were federal agents who interviewed the parties, or neighbors who testified that Rajesh and Diann lived together and held themselves out as husband and wife while they were married to other people, or Army officials who testified that Sgt. Murry benefitted from being married to Diann. *See, e.g.*, ROA VI at 492 (testimony of Army CID Officer Erik Pepen); 592 (testimony of neighbor Richard Lyle); 612 (testimony of Sgt. Murry's brother, to whom he left his possessions in his will, rather than Diann); 728 (testimony of Shannie Johnson who knew Rajesh and Diann and they held themselves out as husband and wife); 808 (testimony of Agent Steven Lindsey who interviewed Rajesh); and 821 (testimony of Agent Christopher Moore re interviews with Guevara, Diann, and Pastor Harvell).

However, at this point the case for fraud was circumstantial, none of the suspects had made any incriminating statements, there were no confessions, and any prosecution was based upon speculation. This changed when indicted co-conspirator Angelica Guevara decided to plead guilty, work a deal with the Government (hoping to get probation in this case, which is what she got), and testify against the others. ROA VI at 321-23.

Guevara was Government witness number two, and she told the jury that she had married Rajesh in a “fake marriage” for immigration purposes, and it was presided over by Pastor Harvell. ROA VI at 318-20.

She had actually met Diann first when the two of them worked at Wal-Mart around 2013. *Id.* 327. She knew that Diann and Rajesh lived together at that time with their three kids, and they acted like husband and wife. *Id.* 327-28.

One day at Wal-Mart, a co-worker noticed Diann’s military ID (she was married to Sgt. Murry at this point) and Diann divulged to Guevara that she was in an “immigration marriage” and referred to Sgt. Murry as her “green card husband” which worked out for Murry because he received benefits from the Army as a result of being married and being a step-father. *Id.* 329-30.

According to Guevara, Diann asked her if she would marry Rajesh because his visa had expired. *Id.* 330. Guevara testified that she was moved by the sad story told by Diann, that Diann’s family might break up, and she decided to help out by marrying Rajesh, which she ended up doing in a “fake ceremony” presided over by Pastor Harvell. *Id.* 330-32; 347 (present at the wedding were Diann, Rajesh, Pastor Harvell, and their kids).

Guevara testified that she did this out of kindness, received nothing for it, and was actually in a relationship with another man at the time. *Id.* 348-356, 378-80. She never lived with Rajesh or consummated the marriage with him. *Id.* 355.

According to Guevara, she got tripped up at an immigration hearing involving paperwork that she had filed to help Rajesh, could not keep up with the narrative about someone to whom she was married but did not know, so she got flustered and decided to “tell the truth.” *Id.* 360-61.

Armed with this newly found resource, the Government decided to set up Diann by having

Guevara call her with agents listening in and the call being recorded, hoping to elicit some incriminating response. *Id.* 362, 365-66, 409.

However, it did not turn out the way they had hoped. Diann not only did not make any incriminating statements or confession, she earnestly told Guevara—and remember that Diann did not know that the call was being recorded, she thought she was having a private conversation with a friend—that her marriage to Sgt. Murry was not fake, and that they were legitimately married, contrary to the position of the Government. *Id.* 413.

In addition to that evidentiary fizzle, the defense presented testimony from Mary Ann Tarby, an occupational therapist who treated Diann for carpal tunnel syndrome. *Id.* 1318. Tarby told the jury that during 2015-16, she treated Diann, and that Diann seemed stressed over her husband's (Sgt. Murry) Army career, and that his constant deployments and absence was hard on her and her children, she did not see him often, and they had drifted apart not having the same life goals. *Id.* 1322-23. Diann never expressed any regrets marrying Sgt. Murry. *Id.* 1323.

More importantly, Diann described Rajesh not as her true husband, but rather as the father of her children. *Id.* 1324 (“He was somebody that...he was the children’s father, and he helped a lot with the care giving of the children.”)

Thus, two witnesses (including a turned co-conspirator) testified to having unguarded, private conversations with Diann about her personal life and neither yielded any indication that Diann was in a “fake marriage” or was insincere in her relationship to Murry.

It is clear from the record that this case not only involved directly issues surrounding illegal immigration into the United States and inter-racial marriage, it also involved four-out-of-five non-Caucasian defendants, viz. from Trinidad and Tobago (Mr. & Mrs. Ramcharan), an African-

American from Liberia (Sgt. Murry), and a Hispanic female (Angelica Guevara). ROA II at 10 (Diann Ramcharan); 32 (Rajesh Ramcharan—listed on the PSR as “other race”); 77 (Sgt. Murry); and 97 (Guevara).

The Government’s evidentiary presentation included evidence of marriage between Mrs. Ramcharan and Sgt. Murry, as well as a marriage between Mr. Ramcharan and Guevara, with a background of immigration fraud allegations.

Against this backdrop of Government evidence of illegal interracial marriage, the legal problem in this case began even before the Government called its first witness. On the morning of the second day of voir dire, the district court heard objections from the parties to that process, and specifically a motion that had been filed by counsel for Mr. Ramcharan objecting to the voir dire procedure and for direct panel questioning on race/ethnicity views and possible biases related to immigration status (Mr. & Mrs. Ramcharan, although having entered the U.S. legally, had overstayed their visas). ROA VII at 204 (transcript of discussion); ROA I at 283 (Objection to Voir Dire Procedure and Motion for Additional Voir Dire of Potential Jurors).

This motion was brought up when the Government was exercising peremptory challenges (it had three left at that point), and the Government objected because the motion was untimely. *Id.* 205.

Counsel responded that the request was timely, that the voir dire process was still ongoing, and the overarching purpose of it was to ensure the accused of a fair and impartial jury under the Sixth Amendment. *Id.* 206-07. Information about the views of the jurors on the subjects of race/ethnicity was important to ascertain whether they would be impartial and apply the law fairly to these particular defendants. *Id.* 207.

Counsel for Mr. Ramcharan was particularly concerned about finding out the views of the panel because “my client is black—he’s actually Indian, really; he comes across as a black man living in America...I think most people would see him that way.” *Id.* 207-08. Counsel also noted that Sgt. Murry is African-American, and Ms. Ramcharan “is of darker color.” *Id.* 208. Counsel argued to the court: “I think [it] is important for the Court to examine with the jurors how they feel about defendants who don’t look like them and whether or not they have any implicit or explicit bias.” *Id.*

After counsel for Mr. Ramcharan urged her motion for this type of voir dire and made her argument to the Court, counsel for Mrs. Ramcharan stated: “Your Honor, very shortly. I would just join in the motion that Ms. Beck has made.” *Id.* 209. Counsel for Mrs. Ramcharan also pointed out that she requested “can-opener” questions, “that if I had an opportunity to ask the jury, I would say, ‘We are living in a country right now where the President has indicated there are certain shithole countries.’” *Id.* 210.

Counsel understood that the district court probably would not phrase a voir dire question in that manner, but nevertheless stated, “I think it’s important for the record that this is the political climate that we are living in” and “immigration is a hot topic.” *Id.* Counsel argued that “I find it so hard to believe that none of these jurors claim to have strong opinions about this” partly because they had not been asked directly by the Court. *Id.*

The Government objected to any voir questions about race, stating that, in its view, this case did not involve any evidence that race, ethnicity, or religion played any role in what happened. *Id.* 212.

The district court replied: “I agree with you.” *Id.*

The district court made this decision despite the strong evidence that members of the panel

held strong views and the potential for racial/ethnic bias was evident. Three panelists had been excused for cause based upon strong views on immigration and other subjects; and Judge Ebel admitted that, “I’ve never issued as many...for-cause challenges as I have in this case.” ROA VI at 60-61, 107-08, 117, 121, 149-50, 18-82, 213).

Defense counsel then made one last pitch:

The race and ethnicity of our clients is evidence in this case. There will be in-court identifications of them. And they are all sitting here, their color is evident, and the jury is going to be able to see that. The countries that they come from, their countries of origin, we’re all going to hear about that. The fact that Mr. Murry was adopted from an African country, the fact that Mr. and Mrs. Ramcharan are from Trinidad and Tobago in the Caribbean, that is all evidence in this case. It’s not injecting it, it’s here, and you have to deal with it.

Id. 212.

The district court did not deal with it; rather, the district court ignored it, and did not ask a single member of the panel about their views on race or ethnicity. Instead, the district court asked some additional questions about their willingness to follow the law, that each defendant has the right to remain silent, the presumption of innocence, and the burden of proof. *Id.* 215-18.

REASONS FOR GRANTING THE WRIT

This Court should consider this case to address the proper role of voir dire questions to ascertain juror views on race/ethnicity vis-a-vis illegal immigration issues when those things are part of the factual presentation of the Government’s case and present in the form of the physical appearance of the accused.

In the view of Mrs. Ramcharan, the abdication of duty by the district court to make *any* inquiry at all into possible racial/ethnic bias on the part of the panel is both tone-deaf to the seismic shift in the national mood on race relations and contra to the authority of this Court.

The national discourse is important because the national focus on race relations in our country informs the nature of voir in our courts, and topics that were once perhaps uncomfortable or taboo to discuss no longer are. Race relations and prejudices in the population at large do not disappear in the courtroom. Litigants like Ramcharan are entitled to a reasonable opportunity to ascertain possible prejudice in jurors during voir dire in a case that presents those facts.

The public view on interracial marriage, especially coupled with an allegation that the interracial marriages were part of immigration fraud, is important for the accused to ascertain proper jurors in a case like this one, and to exercise intelligently peremptory challenges.

It must be remembered that interracial marriage was banned under color law in some states until this Court finally put a stop to that in 1967. *See Loving v. Virginia*, 388 U.S. 1 (1967). One of those states was Oklahoma. *Loving*, 388 U.S. at 6 n.5. Thus, the types of marriages at issue in this case were illegal in Oklahoma within the lifetimes of citizens still living in Oklahoma. It is reasonable for an accused like Ramcharan to request the district court to ascertain the views of potential jurors on this issue.

As Ramcharan stated below, while it is important to have these discussions in the town square, it is perhaps more important to have them in the courtroom where there are direct, real consequences to people of color like the defendants in this case.

The district court can be forgiven for failing to predict the societal sea-change that occurred in early 2020 (the first day of trial was January 8, 2020—just before it happened), but must be found to have abused its discretion under the precedent of this Court regarding the rules of voir dire.

This Court has permitted questioning of venirepersons about racial bias. *Turner v. Murray*, 476 U.S. 28, 36-37 (1986) (*plurality*) (holding that a defendant charged with an interracial capital

crime is entitled to question venirepersons about racial bias); *see also Ristaino v. Ross*, 424 U.S. 589, 594-98 (1976) (stating that inquiry into racial bias can be required in certain circumstances); and *Ham v. South Carolina*, 409 U.S. 524, 526-27 (1973) (concluding that the defendant's right to due process was violated by the state court's refusal to permit questioning about racial bias).

The foundational requirement under the Sixth Amendment of a fair and impartial jury is secured by the voir dire process of questioning prospective jurors about any biases they may have against the accused. As early as 1931, this Court reversed a criminal conviction in the case of an African-American, tried for the murder of a white police officer, who had requested that prospective jurors be asked whether they held any racial prejudice.

This Court held that the "essential demands of fairness" required the trial court to question potential jurors on racial bias upon request of the accused. *See Aldridge v. United States*, 283 U.S. 308, 310 (1931).

Again, in *Ham*, this Court once again found reversible error where the trial court refused to inquire about racial bias during voir dire in a case involving an African-American defendant accused of marijuana possession; and in *Rosales-Lopez v. United States*, 451 U.S. 182 (1981), this Court held that under certain circumstances specific voir dire on racial bias is constitutionally required, that is, when the issue of race is "inextricably bound up with the conduct of the trial" and there are "substantial indications of the likelihood of racial or ethnic prejudice affecting the jurors." *Rosales-Lopez*, 451 U.S. at 189-90.

In addition, the Court in *Rosales-Lopez* held that in cases where race bias voir dire is not constitutionally required, but requested by the accused (as in the case of Mrs. Ramcharan), it is reversible error to not honor that request where the circumstances indicate a "reasonable possibility"

that such prejudice might influence the jury. *Id.*; see also *Turner*, 476 U.S. at 33 (reversing conviction upon failure to permit race-based voir dire and concluding that the legal standard is whether under all of the circumstances presented there was a constitutionally significant likelihood that, absent questioning about racial prejudice, the jurors would not be indifferent as [they stand] unsworn).

In this case, race-based voir dire was constitutionally required under *Rosales-Lopez* and *Turner* because race was “inextricably bound up with the conduct of the trial” and there existed “substantial indications of the likelihood of racial or ethnic prejudice affecting the jurors.” This case involved four defendants of color, from three different cultural backgrounds, each charged with illegal interracial marriage that was for the purposes of curing illegal immigration.

The inter-racial marriages and the immigration status of the Ramcharans were essentially elements of the charged offenses. Under these circumstances, it was unconstitutional for the district court to refuse to ask the panel a single, even innocuous or non-confrontational question about racial views.

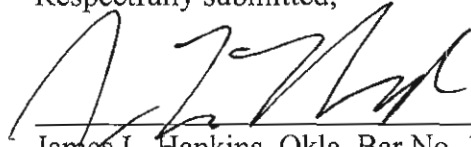
Even if race-based voir dire was not constitutionally required, counsel for Mrs. Ramcharan requested it, and under *Rosales-Lopez* it is an abuse of discretion to deny such a request where the circumstances indicate a “reasonable possibility” that such prejudice might influence the jury, which is a standard that has clearly been met in this case.

CONCLUSION

For the reasons stated above, the Petitioner prays respectfully that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Tenth Circuit.

DATED this 18th day of July, 2022.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. L. Hankins', is written over a horizontal line.

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