

## **APPENDIX**

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Appendix A

**NOT FOR PUBLICATION**

**FILED**

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

**JUN 26 2024**

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

LUIS ANGEL CRUZ-CRUZ, AKA Angel  
Sanchez-Cruz,

Defendant-Appellant.

No. 22-50111

D.C. No.

3:22-cr-01009-JO-1

Southern District of California, San  
Diego

**AMENDED  
MEMORANDUM\***

Appeal from the United States District Court  
for the Southern District of California  
Jinsook Ohta, District Judge, Presiding

Submitted December 5, 2023\*\*  
Pasadena, California

Before: CALLAHAN, R. NELSON, and BADE, Circuit Judges.

Defendant-appellant, Luis Angel Cruz-Cruz, appeals from his misdemeanor conviction for attempting to enter the United States by misrepresentation. Cruz-Cruz asserts that the prosecution's peremptory strike of a young Latino juror

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See Fed. R. App. P. 34(a)(2).*

violated his right to equal protection (a *Batson*<sup>1</sup> challenge) and that there was insufficient evidence to support the jury's conviction. We have jurisdiction pursuant to 28 U.S.C. § 1291. We presume the parties' familiarity with the facts of the case and do not discuss them in detail here. The district court's judgment is affirmed.

1. "Purposeful racial discrimination in selection of the venire violates a defendant's right to equal protection because it denies him the protection that a trial by jury is intended to secure." *Batson v. Kentucky*, 476 U.S. 79, 86 (1986). Ruling on a *Batson* challenge invokes a three-step process: (1) a defendant must make a *prima facie* showing that the peremptory challenge was exercised on the basis of race; (2) if such a showing is made, the prosecution must offer a race-neutral reason for the strike; and (3) in light of the response, the trial court must determine whether the defendant has shown the prosecution's race-neutral reasons masked purposeful discrimination. *United States v. Mikhel*, 889 F.3d 1003, 1028 (9th Cir. 2018) (citing *United States v. Alvarez-Ulla*, 784 F.3d 558, 565 (9th Cir. 2015)).

Ordinarily, we review a district court's ruling on a *Batson* challenge for clear error. *Id.* at 1028 (citing *Snyder v. Louisiana*, 552 U.S. 472, 478 (2008)).

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<sup>1</sup> "Batson" is a shorthand description of a claim that a juror was stricken for an improper racial reason. *See Batson v. Kentucky*, 476 U.S. 79 (1986).

However, we “sometimes appl[y] de novo review when the district court’s analysis was deficient, either because the court did not engage in a meaningful analysis or failed altogether to conduct a step three *Batson* assessment.” *United States v. Hernandez-Garcia*, 44 F.4th 1157, 1166 (9th Cir. 2022). Still, the defendant bears the ultimate burden of showing purposeful discrimination. *Alvarez-Ulloa*, 784 F.3d at 566. Also, we give “broad deference to district judges, who observe *voir dire* first hand.” *United States v. Vasquez-Lopez*, 22 F.3d 900, 902 (9th Cir. 1994); *see also Hernandez v. New York*, 500 U.S. 352, 365 (1991).

Here, the district court followed *Batson*’s three steps: it held that Cruz had made a prima facie showing of racial discrimination, it required that the prosecution proffer race-neutral reasons for the strike, and it then evaluated whether Cruz had shown the prosecution’s race-neutral reasons masked purposeful discrimination. Thus, we review the district court’s determination of no purposeful discrimination for clear error. *Mikhel*, 889 F.3d at 1028.

Cruz first argues that the government failed, at *Batson*’s second step, to offer a race-neutral reason for striking Juror 22, “a young Latino man,” when the prosecutor “said, in quite plain terms, that he chose not to strike a similar juror [Juror 10] because, in part, ‘she also was an Asian female.’” Cruz asserts that the prosecutor implicitly admitted that he struck a juror because of his race when he expressly justified keeping another person on the jury because of her race. But this

argument is a step too far, when, as here, the prosecutor asserted a number of race-neutral traits for striking Juror 22 (he was young, unmarried, and unemployed, with no children and no prior jury experience), and the district court found that the strike was not racially motivated. To the extent that Cruz's arguments are directed at *Batson*'s second step, we review those arguments *de novo*, and find that the prosecutor proffered race-neutral reasons for striking Juror 22.

Cruz further alleges that the district court erred at *Batson*'s third step because (1) in comparing jurors, Cruz was incorrectly required to show an empaneled juror identical to Juror 22, rather than merely similar; (2) it failed to engage in a meaningful analysis when it did not recognize the prosecutor's shifting reasons as pretextual justifications; and (3) it incorrectly ruled that the jury's overall diversity "undercut any claim of discrimination against Latinos."

To Cruz's first argument, even under his standard he fails to show first that there was a similar juror to Juror 22. Cruz points to other jurors who shared individual traits with Juror 22, (one who was single, one who was unemployed, and one who was young and had no prior jury experience) but having one trait in common does not make two jurors similar. The juror who came closest to being comparable to Juror 22 was Juror 10, who was young, unemployed, had no children, and had no prior jury experience. But she was married, and her husband

was self-employed. These traits suggest that Juror 10 had a different life experience from Juror 22.

To Cruz's second point, the district court accepted that the five traits mentioned by the prosecutor (young, unemployed, unmarried, had no children, and had no prior jury experience) are race-neutral grounds for striking a juror, and Cruz's briefs on appeal do not sufficiently argue otherwise. Perhaps the district court might have been more skeptical of the prosecution's additional reasons for striking Juror 22, but, giving "broad deference to district judges, who observe *voir dire* first hand," *Vasquez-Lopez*, 22 F.3d at 902, Cruz has not shown that the district court clearly erred.

To Cruz's third argument, the district court did not perceive "the presence of various races on the jury [to] undercut any claim of discrimination against Latinos." Rather, after concluding that the prosecutor's motive was not purposeful racial discrimination, it noted the panel's diversity. This was not a factor in evaluating the prosecution's motive for striking Juror 22 so much as observation that Cruz's assertion of discriminatory motive did not find support in the overall context of the jury selection.

**2.** We review de novo the denial of a Rule 29 motion for judgment of acquittal. *United States v. Lombera-Valdovinos*, 429 F.3d 927, 928 (9th Cir. 2005). However, "we ask whether, 'after viewing the evidence in the light most favorable

to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.”” *United States v. Niebla-Torres*, 847 F.3d 1049, 1054 (9th Cir. 2017) (internal quotation marks omitted) (quoting *United States v. Corona-Garcia*, 210 F.3d 973, 978 (9th Cir. 2000)).

Cruz argues that the government failed to prove two elements of his misdemeanor conviction: (1) it did not offer sufficient evidence that he was an alien at the time of his attempted entry, and (2) it failed to prove that he willfully made a false statement for the purpose of gaining entry.

Cruz’s challenge to the sufficiency of the evidence of his alienage is not persuasive because there was sufficient corroborating evidence supporting his admission that he was not a United States citizen. He sought to enter the United States using a Washington state driver’s license that stated, “Federal Limits Apply.” After he twice asserted that he had a U.S. passport, database searches revealed that he did not have a U.S. passport and had never applied for one. Moreover, his admission of alienage came after he had been fully *Mirandized* and his effort to reenter the U.S. without documentation had been thwarted.

Cruz’s challenge to the sufficiency of his willful false statement is similarly unconvincing. The jury could reasonably find that Cruz, having lived in the U.S. for over a decade, fully understood Officer Hobbs and deliberately (i.e. willfully) told him that he had a passport in the hope that the officer would allow him to

reenter. Perhaps the jury could have disbelieved Officer Hobbs' testimony. But Cruz has not shown that, when viewing the evidence in the light most favorable to the government, no rational trier of fact could have found his statement was made willfully.

The district court's judgment is **AFFIRMED**.

Appendix B

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

JUN 26 2024

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

LUIS ANGEL CRUZ-CRUZ, AKA Angel  
Sanchez-Cruz,

Defendant-Appellant.

No. 22-50111

D.C. No. 3:22-cr-01009-JO-1  
Southern District of California,  
San Diego

ORDER

Before: CALLAHAN, R. NELSON, and BADE, Circuit Judges.

The memorandum disposition filed on December 8, 2023, is hereby amended as follows. The sentence on page 4 of the disposition that reads: “Although the district court might have concluded that the prosecution’s comment concerning Juror 10 reflected an underlying bias, Cruz has not shown that the district court clearly erred absent additional evidence refuting the prosecution’s race-neutral reasons” is deleted, and is replaced with the following sentence: “To the extent that Cruz’s arguments are directed at *Batson*’s second step, we review those arguments *de novo*, and find that the prosecutor proffered race-neutral reasons for striking Juror 22.” The amended memorandum disposition will be filed concurrently with this order.

The panel has voted to deny the petition for panel rehearing and to deny the

petition for rehearing en banc. The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for rehearing and the petition for rehearing en banc are denied.

1 SAN DIEGO, CALIFORNIA; MAY, MONDAY 9, 2022; 12:56 P.M.

2 || -00o-

3 (In chambers discussions.)

4 THE COURT: We're on the record outside the presence  
5 of the jury.

6 So Defense counsel, is there an issue you'd like to  
7 raise?

8 MR. MORGAN: Yes, Your Honor. We'd like to raise a  
9 Batson challenge with respect to Juror No. 22. It is my  
10 understanding that he is a Hispanic male. He's unemployed.  
11 He's single. He has no kids. No prior jury experience.

12                   But when looking at the composition makeup of the  
13 jury, we got No. 8, who is single, No. 25 who is single. We  
14 got No. 26, who is single. We've also got -- as far as no  
15 kids, we got No. 8, No. 21.

16 As far as prior jury experience, we have No. 10. We  
17 have No. 9, you know. And I would also reflect that during  
18 both the Government's and the Defense counsel's own voir dire,  
19 this individual didn't answer any sort of questions. He didn't  
20 answer any questions from when the Court did their own voir  
21 dire.

22 And so for me, at this point, you know, I know that  
23 race is supposed to be a substantially motivating factor. I  
24 can see that, at this point, as the only factor.

25 THE COURT: Mr. Deputy, do you still have that -- the

1 chart with the names of all the jurors?

2 THE CLERK: Yes, I'll go get it.

3 (The courtroom deputy exits and re-enters chambers.)

4 THE COURT: Yes. Thank you.

5 Let's see, in terms of race makeup of the jurors, who  
6 have been selected so far in terms of the --

7 MR. MORGAN: So as far Ms. Tapia, I'm not sure if  
8 that's her married name. And that would be Juror No. 1. I'm  
9 not sure if she's -- I'm sorry, Your Honor. Give me one  
10 second.

11 THE COURT: For the remaining jurors?

12 MR. MORGAN: For the remaining jurors. I'm sorry.

13 THE DEFENDANT: Do you want to know the race of the  
14 people that are currently selected?

15 MR. MORGAN: Right.

16 No. 9, Tapia [verbatim], a white male. No. 10, Liu, I  
17 believe, is an Asian female. No. 16, I believe is a Hispanic  
18 female. 17 is a white male. 19, I believe, is an Asian male.  
19 No. 20 is a Hispanic male -- or female. No. 21 -- this may be  
20 a married name. I'm unsure. Patricia Valdivia.

21 THE COURT: Valdivia. Uh-huh.

22 MR. MORGAN: No. 22, I believe, is a white female. No  
23 No. 12, Mr. Eisenreich, is a male. No. 26 is a white female.  
24 No. 29 is an Asian female, I believe.

25 The Alternate No. 30, a black male. And No. 34 also.

1 2, I believe, is a white male.

2 Is that the information you're requesting?

3 THE COURT: Yes, thank you.

4 MR. MORGAN: Thank you, Your Honor.

5 THE COURT: So, Government, you're race neutral reason  
6 for striking that particular juror who I understand is a  
7 Hispanic male, unemployed, single.

8 MR. DESHONG: Of course.

9 THE COURT: And with -- who hadn't had responses to --  
10 who hadn't raised their hand in response to the specific  
11 questions -- the specific court voir dire questions?

12 MR. DESHONG: Of course. It was really, sort of,  
13 accumulation of factors that led us to proceed. He may lack  
14 experience, which would make it difficult to make the decision  
15 to convict or not convict in jury service.

16 And it's a lot of the factor that Defense counsel --  
17 he appeared to be young. He's single. He has no children.  
18 He's unemployed. And he's never been on a jury before. So  
19 it's really the accumulation of those factors with his age that  
20 led us to be concerned he may have liked -- lacked the likely  
21 experience of making tough choices and gave us concern about  
22 whether he would be able to, sort of, come to a decision in  
23 deliberations.

24 THE COURT: Okay. Defendant, at this time, I know you  
25 did a breakdown. Are there -- are there other people that --

1 there were other jurors who hadn't been jurors before; is that  
2 correct?

3 MR. MORGAN: Right.

4 THE COURT: And have you looked at what the Government  
5 is saying in terms of the -- the aggregate of someone who is  
6 starting out and hasn't had these life experiences?

7 MR. MORGAN: Right, Your Honor. And at this point,  
8 we're not --

9 MS. CLARK: Where's the first page? Well, No. 8, Your  
10 Honor, is both single and has no children.

11 MR. DESHONG: I believe No. 8 was a financial  
12 controller.

13 MS. CLARK: Yes. Just multiple factors.

14 THE COURT: Okay. Yeah, no, but this is useful. It  
15 is single, no children, but financial controller.

16 MS. CLARK: No. 9 is unemployed and also had no prior  
17 jury experience.

18 THE COURT: With children. And was that the person  
19 who --

20 MS. CLARK: They do, who are older, and both have  
21 children and have multiple of the factors. No. 10 was a  
22 younger person and had no prior jury experience.

23 THE COURT: Children?

24 MS. CLARK: It's unclear based on my notes. I don't  
25 know the answer to that.

1                   MR. MORGAN: No. 10. No. 10 does not have children.  
2 No. 10, in fact, is -- falls in the same category as Juror No.  
3 22. This person would be unmarried with no -- no children,  
4 so...

5                   MS. CLARK: And No. 16 is also unemployed. I don't  
6 believe prior jury experience. They do have young children.  
7 Number -- No. 21 has no children. They do work in sales, but  
8 no prior jury experience, and also no children.

9                   And then No. 25 and 26 are both single and my notes  
10 don't reflect whether they have children. No. 29, likewise,  
11 single and --

12                  MR. MORGAN: I'm sorry. Number?

13                  MS. CLARK: 25 has no children and is not married.  
14 They do work. But no -- single and no children.

15                  No. 26 is also not married and no children. And then  
16 No. 29 is unmarried and no children. So there are jurors in  
17 the current jury pool that likewise have some limited life  
18 experience in terms of marriage and children and unemployment  
19 and without prior jury experience and various combinations.

20                  THE COURT: Okay. So at this point, I'm just going to  
21 ask the Government -- I'm going to give you the option of just  
22 withdrawing that strike and just making another strike if you  
23 don't want that option, then I will rule.

24                  MR. DESHONG: We do not want that option. We're  
25 slightly at a disadvantage because I thought that would be a

1       jury instruction issue but -- I didn't bring all my notes. But  
2       I can explain some of these if it would be helpful in -- just  
3       to clarify that different people were unemployed. Different  
4       people didn't have children or were single.

5               However, it's also perception of age. You know, 22  
6       was a pretty young man who was single, not married, or with no  
7       children and unemployed, which led us to question whether he  
8       had been employed or just recently finished school. And so  
9       that was really the core of the decision.

10              Jurors who were unemployed or may be single but  
11       employed, you know, that's a sort of a different analysis  
12       because, you know, many people are single and have jobs where  
13       they have responsibilities and make decisions or maybe are  
14       older and presumably worked for a career but may be unemployed  
15       at the moment. And so that was really the distinction between  
16       22 and some of the other jurors.

17              I can speak to No. 10. While she -- they are correct  
18       that she was also -- I believe she had a husband who was  
19       self-employed. But she also was an Asian female. We -- I  
20       believe she maybe had an accent. She has experience crossing  
21       the border that we may use in this case. Had likely used a  
22       passport to travel internationally and dealt with the  
23       immigration system that we believe would be relevant to bear on  
24       this case.

25              I don't have my notes in front of all the others, but

1 I think, really -- piecemeal doesn't really encapsulate it  
2 because it is a combination of age, no serious relationship, no  
3 children, and no employment and possibly never had serious  
4 employment.

5 THE COURT: This is the Court's ruling: The Court  
6 finds that defendant has made the prima facie showing that the  
7 challenge was based on a -- possibly based on a racial ground.

8 The Court finds that the burden having shifted to the  
9 prosecution, that they have offered the race neutral reason for  
10 that particular challenge.

11 The Court has considered the Prosecutor's race neutral  
12 explanation. And the Court is aware of its duty to make a  
13 finding, whether the Prosecutor's motive to strike was  
14 purposeful racial discrimination. The Court does not find so.  
15 The Court finds that the Prosecutor -- Court finds credible the  
16 Prosecutor's explanation that the aggregation of the  
17 combination of the person being struck -- their youth, their  
18 single status, their lack of children, their lack of jury  
19 experience, the combination of that, a person who has not had  
20 enough life experience to draw on for -- in terms of having a  
21 perspective on -- on things that could possibly happen, is both  
22 a legitimate reason and a plausible reason and one that the  
23 Court finds credible.

24 The Court also notes the racial composition of the  
25 remainder of the selected jurors noting that two of them appear

1 to be Latino. A third one possibly Latina, at least by her  
2 surname, with no reason to -- with no reason to believe that  
3 she is not Latina. There are also black jurors, Asian jurors,  
4 and I -- looks like two black jurors on that jury. Asian  
5 jurors.

6 While perhaps not a perfect mix, does look to be a  
7 fairly diverse jury and one that is not lacking in  
8 representation from the Latino pool.

9 So based on all of that, the Court is denying the  
10 Batson challenge.

11 (In chambers discussions concluded.)

12 THE COURT: Good afternoon, everyone. Thank you for  
13 your patience.

14 At this time the courtroom deputy will read out loud  
15 the names and numbers of the jurors, the selected jurors.

16 THE CLERK: Yes, Your Honor.

17 Your Honor, Juror No. 1 will be Michelle Smith.

18 Ms. Smith, if you can come forward and take the first  
19 seat at top.

20 Juror No. 2 will be Francois Pelletier.

21 And then, Mr. Pelletier, you're going to take the next  
22 seat next to Juror No. 1.

23 Juror No. 3 will be Hui Liu.

24 Juror No. 4, will be Marissa Gonzales-Ordonez.

25 Juror No. 5 will be Brian Senti.

**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA  
 V.

LUIS ANGEL CRUZ-CRUZ (1)  
 also known as: Angel Sanchez-Cruz

USM Number 05465-506

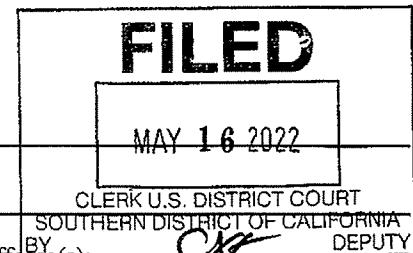
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THE DEFENDANT:

pleaded guilty to count(s) \_\_\_\_\_

was found guilty on count(s) 2 of the Indictment.  
 after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of such count(s), which involve the following offense(s):



| <u>Title &amp; Section</u> | <u>Nature of Offense</u>  | <u>Count</u> | <u>Number(s)</u> |
|----------------------------|---|--------------|------------------|
| 8 USC 1325(a)(3)           | IMPROPER ENTRY BY AN ALIEN BY FALSE OR<br>MISLEADING REPRESENTATION OR WILLFUL<br>CONCEALMENT OF A MATERIAL FACT (Class B<br>Misdemeanor) |              | 2                |

The defendant is sentenced as provided in pages 2 through 2 of this judgment.  
 The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s) 1 of the Indictment.

Count(s) \_\_\_\_\_ is dismissed on the motion of the United States.

Assessment: \$10.00 waived.  
 Pursuant to the motion of the United States under 18 USC 3573, the special assessment provided for under 18 USC 3013 is waived and remitted as uncollectible.

JVTA\* Assessment: \$  
 \*Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

Fine waived  Forfeiture pursuant to order filed \_\_\_\_\_, included herein.

IT IS ORDERED that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States Attorney of any material change in the defendant's economic circumstances.

May 13, 2022

Date of Imposition of Sentence

  
 HONORABLE JINSOOK OHTA  
 UNITED STATES DISTRICT JUDGE

AO 245B (CASP Rev. 1/19) Judgment in a Criminal Case

DEFENDANT: LUIS ANGEL CRUZ-CRUZ (1)  
CASE NUMBER: 22CR1009-JO

Judgment - Page 2 of 2

**IMPRISONMENT**

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:  
TIME SERVED.

- Sentence imposed pursuant to Title 8 USC Section 1326(b).
- The court makes the following recommendations to the Bureau of Prisons:
  - The defendant is remanded to the custody of the United States Marshal.
  - The defendant must surrender to the United States Marshal for this district:
    - at \_\_\_\_\_ A.M. on \_\_\_\_\_
    - as notified by the United States Marshal.
  - The defendant must surrender for service of sentence at the institution designated by the Bureau of Prisons:
    - on or before
    - as notified by the United States Marshal.
    - as notified by the Probation or Pretrial Services Office.

**RETURN**

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_ DEPUTY UNITED STATES MARSHAL