No. _____

IN THE

Supreme Court of the United States

MANINDER SINGH, *et al.*,

Petitioners,

v.

NISSAN MOTOR COMPANY, LTD., AND NISSAN NORTH AMERICA, INC.

Respondent.

APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEAL FOR THE SUPREME COURT OF NEVADA

To the Honorable Elena Kagan, Associate Justice of the Supreme Court of the United States and Circuit Justice:

Pursuant to this Court's Rule 13.5, the Applicants, Maninder Singh, individually and as heir of the estate of Jasvir Kaur, Kewal Singh, and Nirbhai Singh; Gurdev Singh, as heir of the estate of Jasvir, Kewal, and Nirbhai; Surjit Kaur, individually and as heir to the estate of Kewal; Lakhvir Hans, as heir to the estate of Kewal; and Sheryl Bell, administrator of the estates of Kewal, Jasvir, and Nirbhai (collectively the "Singhs"), respectfully request a 30-day extension of time, up to and including May 13, 2025, within which to file a petition for a writ of certiorari.

The Supreme Court of Nevada affirmed the Singhs' judgment by unpublished order on September 12, 2024 (attached as Exhibit A), and denied a petition for rehearing on January 13, 2025 (attached as Exhibit B). Unless extended, the time within which to file a petition for a writ of certiorari will expire on April 14, 2025. This application has been filed more than 10 days before this date. The Court has jurisdiction under 28 U.S.C. § 1257(a).

1. The Singhs respectfully submit that good cause exists to grant their request. The issue the Singhs intend to present in their petition for a writ of certiorari involves federal constitutional protections regarding discrimination during jury selection, including the right to equal protection. *See* Sup. Ct. R. 10(c) (explaining that the Court may exercise its discretion to grant a certiorari petition if a state court has decided an important issue of federal law that the Court should settle). Specifically, courts are divided on whether the United States Constitution requires automatic reversal in cases involving discriminatory jury selection procedures in violation of *Batson v. Kentucky*, 476 U.S. 79 (1986), involving prospective alternate jurors, *Dixon v. State*, 485 P.3d 1254, 1258 (Nev. 2021) (discussing the different approaches to the issue); *see*, *e.g.*, *United States v. Harris*, 192 F.3d 580, 587-88 (6th Cir. 1999) (finding harmless error review inappropriate because "the harm inherent in a discriminatorily chosen jury inures not only to the defendant, but also to the jurors not selected because of their race, and to the integrity of the judicial system as a whole and "[b]ecause the process of jury selection—even the selection of alternate jurors—is one that affects the entire conduct of the trial"); *United States v. Lane*, 866 F.2d 103, 106 n.3 (4th Cir. 1989) (claiming that if the case had involved an alternate and no alternate deliberated, then the defendant "would not have been prejudiced by the peremptory challenge to [the excused alternate juror], regardless of the stated reason"); *State v. Ford*, 513 S.E.2d 385, 387 (S.C. Ct. App. 1999) ("Any *Batson* violation in regards to a possible alternate juror is harmless where an alternate was not needed for deliberations."). Only this Court can resolve the division between lower

courts. *See* Sup. Ct. R. 10(b) (explaining that the Court may exercise its discretion to grant a certiorari petition if a state court has decided an important federal question in a way that conflicts with a decision of another state court or federal circuit courts).

2. Counsel of record has been extremely busy since the Supreme Court of Nevada issued its order denying rehearing. In addition to the day-to-day press of business, counsel spent an extensive amount of time drafting numerous documents in a complicated medical malpractice case involving multiple defendants, *Underwood vs. Sunrise MountainView Hospital*, No. A-20-808331-C (Nev. Dist. Ct.), including a reply in support of a motion for a new trial and a supplemental motion for a new trial. Counsel also had to prepare for argument on the motions. Counsel then argued motions in limine, oppositions thereto, and oppositions to motions for summary judgment in a case involving the sexual assault of a hospital patient. *Burnett v. Sunrise Hospital, et. al.*, Case No. A-22-851622-C (Nev. Dist. Ct.). Once those matters were completed, counsel immediately began preparing a lengthy pretrial petition or a writ of mandamus in the Supreme Court of Nevada, which involved time sensitive issues given that trial is scheduled for later this year. *Loadholt v. District Court (Xpedition, LLC*), No. 90309 (Nev.). Counsel then turned his attention toward drafting an answer to a pretrial petition for a writ of mandamus in in *Renown Regional Med. Center v. District Court (Freeman)*, No. 89838 (Nev.), which the Supreme Court of Nevada unexpectedly ordered on January 10, 2025. Counsel had previously sought two extensions in that matter and did not anticipate successfully obtaining a third.

Counsel has been diligently working on the instant petition, but has been unable to complete it given his other obligations. In the light of the foregoing, the Singhs respectfully request that this Court grant a 30 day extension, up to and including May 13, 2025, to file a petition for writ of certiorari in this case. Counsel for Respondents, Kory Koerperich, graciously indicated that Respondents do not oppose Petitioner's request.

Accordingly, Petitioners respectfully request the entry of an order extending their time to file a petition for writ of certiorari by 30 days, to and including Tuesday, May 13, 2025.

Respectfully submitted this 2nd day of April, 2025.

/s/ Charles L. Finlayson
Micah S. Echols, Esq.
David P. Snyder, Esq.
Charles L. Finlayson, Esq.

Christian Morris Trial Attorneys
Christian M. Morris, Esq.

Robins Cloud, LLP
Bill Robins, III, Esq.,

The Mann Law Firm
Mohinder Singh Mann, Esq.
Gurinder Singh Mann, Esq.

Counsel for Petitioners

CLAGGETT & SYKES LAW FIRM
4101 Meadows Ln., Ste. 100
Las Vegas, Nevada 89107
(702) 655-2346 – Telephone
charlie@claggettlaw.com

No. _____

IN THE

Supreme Court of the United States

MANINDER SINGH, *et al.*,

Petitioners,

v.

NISSAN MOTOR COMPANY, LTD., AND NISSAN NORTH AMERICA, INC.

Respondent.

CERTIFICATE OF COMPLIANCE

As required by Supreme Court Rule 33.1(h), I, Charles L. Finlayson, a member of the Bar of this Court, certify the Application for an Extension of Time Within Which to File a Petition for a Writ of Certiorari to the United Stated Court of Appeal for the Supreme Court of Nevada is 860 words, excluding the parts of the petition that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury the foregoing is true and correct.

This 2nd day of April 2025.

/s/ Charles L. Finlayson

Micah S. Echols, Esq.
Charles L. Finlayson, Esq.
David P. Snyder, Esq.
CLAGGETT & SYKES LAW FIRM

Christian M. Morris, Esq.
CHRISTIAN MORRIS TRIAL ATTORNEYS

Counsel for Petitioners

No. _____

IN THE

Supreme Court of the United States

MANINDER SINGH, *et al.*,

Petitioners,

v.

NISSAN MOTOR COMPANY, LTD., AND NISSAN NORTH AMERICA, INC.

Respondent.

CERTIFICATE OF SERVICE

I hereby certify that I am a member in good standing of the bar of this Court and that on this 2nd day of April, 2025, I caused a copy of the foregoing Application For An Extension Of Time Within Which To File A Petition For Writ Of Certiorari to be served by first-class mail on counsel identified below, pursuant to Rule 29.5 of the Rules of his Court. All parties required to be served have been served.

Counsel for Respondent:

Kurt Bonds
ALVERSON TAYLOR & SANDERS
6605 Grand Montecito Pkwy., Suite 200
Las Vegas, Nevada 89149
(702) 384-7000

Thomas M. Klein
Paul R. Lee
KLEIN THOMAS & LEE
340 E. Palm Ln., Ste. A310
Phoenix, Arizona 85004
(602) 935-8300

Daniel F. Polsenberg
Abraham G. Smith
Kory J. Koerperich
Lauren Wigginton
WOMBLE BOND DICKINSON LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
(702) 949-8200

/s/ Charles L. Finlayson

Micah S. Echols, Esq.
Charles L. Finlayson, Esq.
David P. Snyder, Esq.
CLAGGETT & SYKES LAW FIRM

Christian M. Morris, Esq.
CHRISTIAN MORRIS TRIAL ATTORNEYS

Counsel for Petitioners

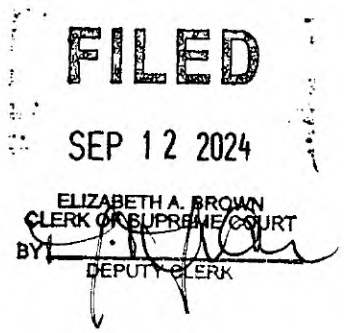
EXHIBIT A

EXHIBIT A

IN THE SUPREME COURT OF THE STATE OF NEVADA

MANINDER SINGH, INDIVIDUALLY AND AS HEIR OF THE ESTATE OF JASVIR KAUR, KEWAL SINGH, AND NIRBHAI SINGH; GURDEV SINGH, AS HEIR OF THE ESTATE OF JASVIR KAUR, KEWAL SINGH, AND NIRBHAI SINGH; SURJIT KAUR, INDIVIDUALLY AND AS HEIR OF THE ESTATE OF KEWAL SINGH; LAKHVIR HANS, AS HEIR OF THE ESTATE OF KEWAL SINGH; AND SHERYL BELL, ADMINISTRATOR OF THE ESTATES OF KEWAL SINGH, AND JASVIR KAUR AND NIRBHAI SINGH,
Appellants,
vs.
NISSAN MOTOR COMPANY, LTD.; AND NISSAN NORTH AMERICA, INC,
Respondents.

No. 85869



ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

This is an appeal from a district court judgment following a jury verdict and a post-judgment order awarding costs in a negligence and product liability matter. Eighth Judicial District Court, Clark County; David M. Jones, Judge.

Three members of the Singh family died in a car accident. Appellants, surviving members of the Singh family, sued Respondents Nissan Motor Company, Ltd., and Nissan North America, Inc. (collectively Nissan). The Singhs were unsuccessful at trial, and the district court

awarded costs in favor of Nissan. The Singhs raise two issues on appeal: first, that the district court judge improperly denied a Batson challenge for an alternate juror; second, that the district court judge improperly awarded costs to Nissan when Nissan failed to provide sufficient documentation. Because the second alternate juror was never seated, we conclude any error was harmless and affirm the judgment based on the jury verdict. Additionally, we conclude the district court erred in awarding costs based on insufficient supporting documentation. We reverse the award of costs and remand for the district court to recalculate the costs consistent with this order.

Striking Khan was harmless because the second alternate did not deliberate with the jury

During jury selection, Nissan exercised one of its peremptory challenges on alternate prospective juror Dinyal Khan. The Singhs objected that the peremptory strike was based on race under *Batson v. Kentucky*, 476 U.S. 79 (1986). *See also Edmonson v. Leesville Concrete Co., Inc.*, 500 U.S. 614 (1991) (holding the Equal Protection Clause of the U.S. Constitution prohibits race-based exclusion of jurors in civil cases). The district court denied the *Batson* challenge and allowed the strike. Following the strike, a different juror replaced Khan as the second alternate at trial. During the trial, the first alternate was seated on the jury; however, the second alternate was never seated as a regular member of the jury and did not deliberate. After deliberations, the jury found in favor of Nissan and awarded no damages to the Singhs.

The Singhs moved for a new trial, arguing that the district court erred in denying their *Batson* challenge. The district court denied the new trial motion, reasoning that Nissan provided at least one race-neutral reason for striking Khan. During the hearing, the district court

acknowledged that without this alternative reason, striking Khan "would have been *Batson* all day long."

Discriminatory jury selection in violation of *Batson* "generally constitutes structural error that mandates reversal." *Diomampo v. State*, 124 Nev. 414, 423 185 P.3d 1031, 1037 (2008). Yet, "where a discriminatory peremptory challenge was made against a prospective alternate juror and no alternate was called upon to deliberate," harmless-error review applies. *Dixon v. State*, 137 Nev. 217, 222, 485 P.3d 1254, 1259 (2021). Under a harmless error review, reversal is only warranted when an error affects a party's substantial rights such that "a different result might reasonably have been reached" but for the error. *See McClendon v. Collins*, 132 Nev. 327, 333, 372 P.3d 492, 495-96 (2016) (internal quotation marks omitted). Addressing this standard, the Singhs argue that *Dixon*'s harmless-error review applies only when no alternate deliberates on the jury, and here, a first alternate was seated and deliberated with the jury.

In *Dixon*, we held that "[t]here is no constitutional right to alternate jurors, nor is there a right to be an alternate juror." 137 Nev. at 222, 485 P.3d at 1259. Despite acknowledging the district court erred in denying the *Batson* challenge, we found the error to be harmless because no alternate deliberated with the jury. *Id.* at 223, 45 P.3d at 1259. The same rationale applies here.

Although the first alternate juror was seated and deliberated, the second alternate was ultimately excused without participating in deliberations. Even if the district court had granted the Singhs' *Batson* challenge, Khan, who had been slotted as a second alternate, would not have deliberated on the jury. As a result, any error in the district court's denial of the Singhs' *Batson* challenge to Nissan's use of a peremptory challenge to

remove a prospective second alternate juror based on race can only amount to harmless error. *See McClendon v. Collins*, 132 Nev. at 333, 372 P.3d at 495-96. Stated another way, Khan's ability to serve as an alternate had no effect on the outcome of the trial and was therefore harmless because the second alternate who replaced Khan did not deliberate with the jury anyway. To the extent the Singhs argue *Dixon* should be overturned, that argument fails as they do not present a compelling argument that *Dixon* is unworkable or badly reasoned. *Cf. State v. Lloyd*, 129 Nev. 739, 750, 312 P.3d 467, 474 (2013) (recognizing that while stare decisis plays a critical role in our jurisprudence, governing decisions that are unworkable or badly reasoned should be overruled).[1]

Nissan failed to provide sufficient documentation to support its request for costs

After prevailing at trial, Nissan moved for costs. In its initial memorandum of costs Nissan requested $940,517.41. The Singhs filed a motion to retax, arguing that Nissan failed to include sufficient documentation. Nissan then filed a supplement to the memorandum of costs without leave of the court. In the supplement, Nissan requested $148,444.28 in costs, decreasing its requested expert fees to the statutory limit at that time. *See* NRS 18.005(5) (2007); 2007 Nev. Stat., ch. 440 § 7, at 2191 (allowing costs awards to include "[r]easonable fees of not more than five expert witnesses in an amount of not more than $1,500 for each witness, unless the court allows a larger fee after determining that the circumstances surrounding the expert's testimony were of such necessity as

[1]To the extent the Singhs urge us to adopt a new *Batson* test addressing when both a discriminatory reason and a neutral reason have been provided for a peremptory strike, we decline to do so here.

to require the larger fee"). Nissan attached an itemized list of expenses and several receipts and invoices to its supplement. The district court granted the motion to retax and awarded Nissan $144,936.99 in costs, seemingly consistent with the Singhs' argument that $3,507.29 of the claimed costs were not recoverable under NRS 18.005.

We review an award of costs to the prevailing party for an abuse of discretion. NRS 18.020 and NRS 18.050 give the district court wide discretion in awarding costs to the prevailing party, but these "costs must be reasonable, necessary, and actually incurred." *Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. 114, 120, 345 P.3d 1049, 1054 (2015). A review of the record reveals that Nissan failed to provide documentation substantiating each cost. Indeed, it failed to provide documentation to support most of its copies and postage costs, some of its deposition and transcript costs, some of its translation costs, and most of its service of process costs. The lack of documentation for these requested costs falls short of what is required under Nevada law. *See Village Builders 96*, 121 Nev. 261. 277-78, 112 P.3d 1082,1093 (2005) (concluding a party requesting costs must provide documentation for each copy made to ensure that the costs awarded are only those costs actually incurred); *see also Cadle Co.*, 131 Nev. at 121, 345 P.3d at 1054 (concluding an affidavit providing only the date and cost of each copy failed to demonstrate the costs were "necessary to and incurred in the present action" (quoting *Bobby Berosini, Ltd. v. PETA*, 114 Nev. 1348, 1352-53, 971 P.2d 383, 386 (1998))).

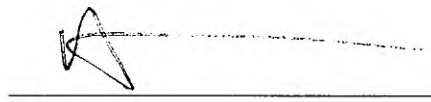
While Nissan failed to provide documentation to support its requested court fees and expert fees, the district court had sufficient information to determine these fees were incurred in this action, namely independent knowledge about standard court fees and testimony from

Nissan's experts that their fees far exceeded the requested amount. Because the district court had a sufficient basis to award these costs, we affirm with respect to the award for court fees and expert witness fees.

With respect to the costs for copies, postage, depositions, transcripts, translations, and service of process, the district court abused its discretion in awarding costs in an amount that was not supported by the documentation provided by Nissan. *Hyatt v. Franchise Tax Bd. of the State of Cal.*, No. 84707, 2023 WL 4362562, at *2 (Nev. Jul. 5, 2023) (Order Affirming in Part, Reversing in Part and Remanding) (recognizing that without justifying documentation a district court may not award costs). We remand for the district court to recalculate the cost award.

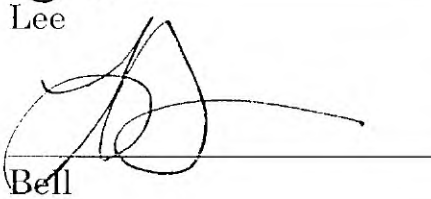
Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART, REVERSED IN PART as to the cost award only, AND REMANDED to the district court for proceedings consistent with this order.[2]



_____, J.
Herndon

_____, J.
Lee



_____, J.
Bell

[2]To the extent the parties raise arguments on appeal that we did not specifically address, we are not persuaded that those arguments warrant reversal.

cc: Hon. David M. Jones, District Judge
Stephen E. Haberfeld, Settlement Judge
Robins Cloud, LLP\Santa Monica
Claggett & Sykes Law Firm
Christian Morris Trial Attorneys
The Mann Law Firm\San Jose
Holland & Hart LLP/Las Vegas
Lewis Roca Rothgerber Christie LLP/Las Vegas
Hall & Evans / Las Vegas
Klein Thomas & Lee/Phoenix
Clark County District Attorney
Andrea Leite Vieira
Legal Aid Center of Southern Nevada, Inc.
American Civil Liberties Union of Nevada/Las Vegas
Eighth District Court Clerk

EXHIBIT B

EXHIBIT B

IN THE SUPREME COURT OF THE STATE OF NEVADA

MANINDER SINGH, INDIVIDUALLY AND AS HEIR OF THE ESTATE OF JASVIR KAUR, KEWAL SINGH, AND NIRBHAI SINGH; GURDEV SINGH, AS HEIR OF THE ESTATE OF JASVIR KAUR, KEWAL SINGH, AND NIRBHAI SINGH; SURJIT KAUR, INDIVIDUALLY AND AS HEIR OF THE ESTATE OF KEWAL SINGH; LAKHVIR HANS, AS HEIR OF THE ESTATE OF KEWAL SINGH; AND SHERYL BELL, ADMINISTRATOR OF THE ESTATES OF KEWAL SINGH, AND JASVIR KAUR AND NIRBHAI SINGH,
Appellants,
vs.
NISSAN MOTOR COMPANY, LTD.; AND NISSAN NORTH AMERICA, INC,
Respondents.

No. 85869

FILED

JAN 13 2025

ELIZABETH A. BR...
CLERK OF SUPREME ...
BY
DEPUTY CLERK

ORDER DENYING EN BANC RECONSIDERATION

En banc reconsideration denied. NRAP 40A(a), (g).

It is so ORDERED.

_____, C.J.
Herndon

_____, J.
Parraguirre

_____, J.
Bell

_____, J.
Stiglich

_____, J.
Cadish

_____, J.
Lee

Pickering, J., dissenting:

I would order an answer and therefore respectfully dissent.

Pickering, J.
Pickering

cc: Hon. David M. Jones, District Judge
Robins Cloud, LLP\Santa Monica
Claggett & Sykes Law Firm
Christian Morris Trial Attorneys
The Mann Law Firm\San Jose
Womble Bond Dickinson (US) LLP/Las Vegas
Hall & Evans / Las Vegas
Klein Thomas & Lee/Phoenix
Clark County District Attorney
Andrea Leite Vieira
Legal Aid Center of Southern Nevada, Inc.
American Civil Liberties Union of Nevada/Las Vegas
Eighth District Court Clerk