

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

CARL L. ROBINSON,

Petitioner,

v.

UNITED STATES,

Respondent.

**On Petition for Writ of Certiorari to the
Sixth Circuit Court of Appeals**

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

In *Allen v. United States*, this Court approved the practice of trial courts to admonish a deadlocked jury to continue deliberations toward a unanimous verdict. Then, in *Jenkins v. United States*, this Court prohibited trial court instructions that coerced the jury's verdict, such that a trial judge may not demand a jury reach a unanimous decision. Coercive instructions to reach a verdict violate a criminal defendant's constitutional right to a fair trial under the Sixth Amendment, and the right to Due Process under the Fifth and Fourteenth Amendments.

The question presented is whether a trial court coerces a jury's verdict in violation of a defendant's constitutional rights when it instructs jurors they must resolve all issues, fails to inquire into the nature of the jury's deadlock, uses *Allen*-charge-like statements in response to the jury's questions, repeats *Allen* charges late in deliberations, and corrupts *Allen*-charge language.

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PARTIES TO THE PROCEEDING

All parties are listed in the Sixth Circuit's caption.

REFERENCE TO OPINIONS AND ORDERS BELOW

The September 29, 2017 opinion of the Court of Appeals for the Sixth Circuit is published as *United States v. Robinson et al.*, 872 F.3d 760 (6th Cir. 2017), *reh'g denied*, No. 15-4098, 2017 U.S. App. LEXIS 24623 (6th Cir. 2017). The opinion of the District Court for the Southern District of Ohio, denying codefendant Shane Floyd's Motion for a New Trial, which Petitioner Dr. Carl L. Robinson joined, is unpublished but is available as *United States v. Floyd et al.*, No. 2:14-CR-126, 2015 U.S. Dist. LEXIS 129263 (S.D. Ohio Sept. 25, 2015). These opinions and orders are reproduced in the appendix to this petition.

STATEMENT OF JURISDICTION

Petitioner seeks review of the September 29, 2017 judgment and opinion of the Sixth Circuit Court of Appeals. The Sixth Circuit Court denied en banc review on December 5, 2017 and issued a mandate on December 13, 2017. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. CONST. AMEND. V:

The Fifth Amendment to the Constitution of the United States provides, in pertinent part “[n]o person shall be . . . deprived of life, liberty, or property, without due process of law”

U.S. CONST. AMEND. VI:

The Sixth Amendment to the Constitution of the United States provides, in pertinent part, “[i]n all criminal 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”

U.S. CONST. AMEND. XIV:

The Fourteenth Amendment to the Constitution of the United States provides, in pertinent part, that no State shall “deprive any person of life, liberty, or property, without due process of law”

STATEMENT OF THE CASE

Robinson's twelve-person jury was deadlocked from the moment it retired to deliberate. App. 63–65, 77–78, 91. Fatigued by a three-day standoff, the jury rendered a unanimous guilty verdict on the final day of deliberations, convicting Robinson and two other African-American educators of bribery, conspiracy, and making false statements. App. 322–24.

The district court chipped away at the jury's gridlock with repeated *Allen* charges and *Allen*-charge-like statements. See *Allen v. United States*, 164 U.S. 492 (1896). For example, the court approached the jury's twice-reported impasse by delivering two *Allen* charges on consecutive days without pause. App. 309–11, 318–20. On the second day of deliberations, the first *Allen* charge landed on the heels of the court's admonition that "ultimately all of these issues have to be resolved." App. 302. At the end of the second day, the court emphasized to the jury, "I want to be clear that I expect you to continue your deliberations toward a unanimous verdict," App. 311, and warned jurors to "reflect on . . . particularly . . . the so-called *Allen* charge." App. 312. On the third day, the court's second *Allen* charge implored jurors to reach a unanimous verdict if they considered themselves "mature adults," and, like the first charge, came without inquiry into the jury's deadlock. App. 318–20. Approximately three hours after the second charge,¹ the court's insistence on unanimity tipped the scales to a guilty verdict. App. 322.

¹ This three-hour time frame on the third day of deliberations, from 11:26 a.m. to 2:34 p.m., presumably included the jury's break for lunch. See App. 321–22.

As post-verdict interviews revealed, the court’s disinterest in the nature of the jury’s deadlock bred its oblivion to racial bias in the jury room. *See* App. 70 (juror A.R. explained she did not think deliberations “could continue because [sic] they were just racist, racist, racist”). Two members of the twelve-person jury, A.R. and M.S., believed Robinson and his codefendants “were innocent from the very beginning,” but the jury foreperson forbade discord with the majority. App. 77. The foreperson berated the dissenting jurors—who, like defendants, were African-American—for failing to convict their “black brothers” and informed the court the jury was deliberately deadlocked. *See, e.g.,* App. 67, 177, 193. A.R. and M.S. stood their ground but the situation “got real, real heated,” App. 984, and the foreperson made M.S. “so mad to the point [her] eyes started watering.” App. 224. The foreperson’s harassment of A.R. and M.S. made “everyone else” on the jury “very upset.” App. 225. By the third day of deliberations, the court’s two *Allen* charges and at least three *Allen*-charge-like statements compounded the foreperson’s racially-motivated pressure on the dissenting jurors, and they voted to convict all defendants. App. 302, 309–12, 318–20, 322.

Procedural History

The district court denied codefendant Floyd’s Motion for a New Trial, joined by Robinson, because 1) it did not find the second *Allen* charge unduly coercive; and 2) co-counsel violated a local rule by interviewing jurors after the verdict without seeking leave of court. App. 44, 46, 54, 56. Robinson and his codefendants appealed and a split panel of the Sixth Circuit Court of Appeals affirmed. App. 5.

On appeal Robinson argued 1) the district court's instruction to the jury to resolve "all issues" was impermissibly coercive under *United States v. Harris*, 391 F.2d 348, 351 (6th Cir. 1968), where the Sixth Circuit invalidated a trial court's instruction that the case "must be decided"; and 2) the court's *Allen* charges and *Allen*-charge-like statements coerced the verdict, particularly when viewed in concert with the foreperson's racial bias against African-American jurors and defendants. App. 10.

Over a heated dissent, a two-judge majority determined the *Allen* charges did not coerce the jury's verdict. App. 5, 20. Although the district court strayed from the Sixth Circuit's pattern language, repeated the charges late in deliberations without probing into the jury's deadlock, and spouted multiple *Allen*-charge-like comments demanding unanimity, the Sixth Circuit held Robinson's district court "cur[ed] any coercive effect" of its defective charges on the jury. App. 20. Furthermore, the Sixth Circuit untethered the district court's repeated *Allen* charges from the impact of the foreperson's racial bias on Robinson's verdict, and found no Sixth Amendment violation. App. 16, 30. On December 5, 2017, the Sixth Circuit denied en banc review. App. 328.

REASONS FOR GRANTING THE WRIT

In this case, consecutive, improperly-modified *Allen* charges sacrificed the fairness of Robinson's trial by silencing two dissenting jurors and pressuring them to succumb to a guilty verdict. The district court's influence on the verdict also denied Robinson fair treatment and deprived him of due process under the Fifth and

Fourteenth Amendments. Resolution of these issues is of national importance because it implicates foundational principles of our criminal justice system, including the sovereignty of the jury and the rights of criminal defendants to a fair trial and due process.

I. The Circuit Courts are Split as to Whether Multiple, Improperly-modified *Allen* Charges Impose an Impermissibly Coercive Effect on the Jury, and Whether Subsequent Standard Charges Cure Such a Coercive Effect.

This case raises the question of whether multiple *Allen* charges survive constitutional scrutiny. The nation's Courts of Appeal are divided in analyzing when and how repeated *Allen* charges constitute coercion, and when, if ever, a properly-worded charge may remedy a defective one. The Court should grant this petition to resolve (a) the Sixth Circuit's split with almost all circuits as to whether multiple charges are unduly coercive, (b) the Sixth Circuit's split with the First, Second, and Fifth Circuits on when delivering standard charges cures an impermissibly-worded charge, and (c) the Sixth Circuit's contradiction of the principles set forth in *Jenkins v. United States*, 380 U.S. 445 (1965).

A. The Circuits are Split as to Whether Multiple *Allen* Charges Impermissibly Coerce the Jury into Rendering a Verdict.

This case highlights a long-standing divide among circuits regarding the constitutionality of repeated *Allen* instructions. Since this Court approved the practice of instructing deadlocked juries to continue working toward unanimity in *Allen v. United States*, 164 U.S. 492 (1896), *Allen*'s progeny has been testing the constitutional limits of repeating those instructions throughout deliberations. *See*,

e.g., *United States v. Haynes*, 729 F.3d 178, 194 (2d Cir. 2013) (vacating conviction by holding, in part, that a second, unsolicited *Allen* charge “could reasonably be perceived by the jurors as the Court communicating its insistence on the jury reaching a unanimous verdict”); *United States v. Evanston*, 651 F.3d 1080, 1085 (9th Cir. 2011) (reasoning “it is per se error to give a second *Allen* charge where the jury has not requested one” because it “serves no purpose other than impermissible coercion”); *United States v. Angiulo*, 485 F.2d 37, 39 (1st Cir. 1973) (cautioning the *Allen* charge “may cause a jury to agree when they might otherwise never have come to agreement, thereby losing for the defendant whatever safeguard he might have had in a hung jury”). Over a century later, circuits scatter on a wide spectrum between leniency and outright prohibition of multiple *Allen* charges.

For instance, the Eighth and D.C. Circuits view *Allen* charges as less coercive the earlier they appear, and encourage *Allen* instructions prior to deliberations along with the jury’s general instructions. *See, e.g.*, *Kent v. United States*, 343 F.2d 247, 261 (D.C. Cir. 1964), *rev’d on other grounds*, 383 U.S. 541 (1966); *Nick v. United States*, 122 F.2d 660, 674 (8th Cir. 1941). Those courts reason an *Allen* charge issued alongside jury instructions, prior to any stated disagreement among jurors, alleviates the logical perception of judicial disapproval when the court issues a charge to an already deadlocked jury. *See Lowenfield v. Phelps*, 484 U.S. 231, 253–54 (1988) (Marshall, J., dissenting) (reasoning an *Allen* charge following a jury poll conveys coercion because it implies the court’s disapproval); *Kent*, 343 F.2d at 261; *Nick*, 122 F.2d at 674.

Some circuits draw even brighter limitations on how and when multiple *Allen* charges can be used. For example, the Fifth Circuit finds no distinction as to the timing of an *Allen* charge, because “[n]o matter when the charge was made, it gave the jury false notions of the validity and force of majority opinion.” *Green v. United States*, 309 F.2d 852, 856 (5th Cir. 1962). According to this reasoning, “[t]he vice in the charge was the court’s interference with the jury function,” not when the charge was given. *Id.* Similarly, the Tenth Circuit advised a court may *only* issue an *Allen* charge in its general jury instructions, and not “during the course of deliberations.” *United States v. Blandin*, 784 F.2d 1048, 1050 (10th Cir. 1986).²

Still at odds are the D.C., First, Second, Third, and Ninth Circuits. *See e.g.*, *Epperson v. United States*, 495 A.2d 1170, 1175 (D.C. 1985) (requiring extraordinary circumstances to repeat *Allen* charge); *United States v. Barone*, 114 F.3d 1284, 1304–05 (1st Cir. 1997), *cert. denied*, 522 U.S. 1021 (1997) (finding no abuse of discretion where the district court issued a second, revised *Allen* charge quickly after the first after it determined the jury failed to seriously deliberate after its initial *Allen* charge); *Spears v. Greiner*, 459 F.3d 200 (2d Cir. 2006) (holding jury’s partial verdict indicated the jury individually considered multiple *Allen* charges); *United States v. Fioravanti*, 412 F.2d 407, 420 (3d Cir. 1969) (“[T]his court will not let a verdict stand which may have been influenced in any way by an *Allen* Charge.”); *Evanston*, 651

² However, in a key illustration of inconsistency, the same circuit court upheld three *Allen* charges two years later, where the first charge was included in the general instructions, because the jury deliberated an additional two days before reaching a verdict. *United States v. Ailsworth*, 138 F.3d 843, 851–52 (10th Cir. 1998).

F.3d at 1085 (Ninth Circuit upholding per se rule against multiple *Allen* charges); *United States v. Seawell*, 550 F.2d 1159, 1163 (9th Cir. 1977) (same).

In Robinson’s case, the Sixth Circuit splits from other Courts of Appeals’ approach to recurrent *Allen* charges by failing to consider the coercive impact of multiple charges altogether. It approves consecutive charges on the final days of deliberations despite the district court’s knowledge the jury was deadlocked for at least two of its three days of debate after Robinson’s “lengthy and complex” trial, and it supports the district court’s ultimatum for jurors to reach a verdict as “mature adults” without probing into potential juror misconduct. App. 18–20 (interpreting the second *Allen* charge as a “plea for civility and respect”). In doing so, the court circumvents factors other circuits find crucial to striking down multiple *Allen* charges, such as the time the jury spent deliberating, the recency of the court’s first *Allen* charge, the nature of the jury’s ultimate verdict, or any combination thereof. At the expense of Robinson’s constitutional rights, the Sixth Circuit charts its own path by eviscerating the balance of timing and phrasing of repeat *Allen* charges necessary to evaluate coerciveness of a jury verdict.³

Without explicit guidance from this Court, circuit jurisprudence will continue its path of increasing unpredictability and erosion of the right to a fair jury trial with repeated, unapproved *Allen* charges.

³ Notably, the court’s holding also ignores its own finding in *United States v. Sawyers*, where it held “an *Allen* charge coming relatively early is arguably less coercive than one coming after a jury has worn itself out after several days of deadlocked deliberations.” 902 F.2d 1217, 1220 (6th Cir. 1990).

B. The Circuits are Split as to Whether Repeated, Subsequent *Allen* Charges Ameliorate Prior, Improperly-modified Charges.

Courts continuously divide on whether, and in what circumstances, a repeated *Allen* charge ameliorates or induces coercion of a jury verdict. *See Fioravanti*, 412 F.2d at 416 n.20 (citing cases). At a baseline, Courts of Appeal agree that modification of approved *Allen* language must preserve the “elements of the original charge” intended to “ameliorate its coercive effect.” *United States v. Scott*, 547 F.2d 334, 337 (6th Cir. 1977) (citing *United States v. Flannery*, 451 F.2d 880, 883 (1st Cir. 1971)). However, the Sixth Circuit splits with the First, Second, and Fifth Circuits on whether a properly-worded *Allen* charge can cure the coercive effect of a defective one. By granting this petition, this Court can prevent trial courts from inadvertently compelling guilty verdicts by making clear that successive *Allen* charges have an increasingly coercive effect.

In contrast to the Sixth Circuit’s holding that the second *Allen* charge in Robinson’s case “cur[ed] any coercive effect” of the court’s unapproved statements in and around its first charge, App. 20, the First, Second, and Fifth Circuits view successive *Allen* charges as increasingly coercive. *See Barone*, 114 F.3d at 1305 (“[C]aution needs to be used before the modified *Allen* charge is given for a second time.”); *United States v. Fossler*, 597 F.2d 478, 483–85 (5th Cir. 1979) (finding the second *Allen* charge an abuse of discretion because jury indicated deadlock three times in three days, and the jury rendered a verdict one hour after the second charge); *United States v. Robinson*, 560 F.2d 507 (2d Cir. 1977) (en banc), *cert. denied*, 435

U.S. 905 (1978) (recognizing successive charges may be coercive, but finding no abuse of discretion because the court’s charges “fail[ed] to mention any ‘need’ to reach a verdict”). For instance, the Second Circuit in *United States v. Crispo*, 306 F.3d 71, 76–77 (2d Cir. 2002) affirmed a supplemental *Allen* charge where the jury continued to deliberate for a “couple hours,” but struck down a second modified *Allen* charge in another case because the jury could reasonably view the extra charge as the court “communicating its insistence” on a unanimous verdict. *Haynes*, 729 F.3d at 193–94. Similarly, the Sixth Circuit split hairs between its ruling in *Harris*, which struck down a court’s instruction that a lawsuit “must be decided,” and in *Robinson*, where the court told the jury to resolve “all the issues.” App. 19–20.

Whereas the difference on appeal between *Crispo* and *Haynes* could stem from the jury’s request for a second *Allen* charge in the former, and the court’s *sua sponte* instruction in the latter, the Sixth Circuit’s divergence from *Harris* based on the *type* of jury question that prompted the charge widens the ambiguity of how appellate courts evaluate the effect of multiple *Allen* charges. Under the current *Allen* framework, courts are unconstrained in choosing unlimited means to their desired end.

As this case demonstrates, *Allen* jurisprudence is littered with seemingly identical scenarios which turn on the whim of a court’s unpredictable list of justifications. For that reason, the Court should grant this petition to resolve the vagaries between the Sixth Circuit and the First, Second, and Fifth Circuits’ approach to assessing the coerciveness of successive *Allen* instructions. Granting this

petition will establish predictability in judicial use of multiple *Allen* charges and define the parameters of their timing and permissible modifications. Failure to address these issues would result in grave discrepancies in the availability of constitutional protections guaranteed to criminal defendants by the Constitution.

C. This Case Presents an Excellent Vehicle to Resolve the Constitutional Validity of Multiple *Allen* Charges and Their Impact on a Defendant’s Right to a Fair Trial and Due Process.

This case presents an ideal opportunity to address the constitutionality of multiple *Allen* charges that jeopardize defendants’ “right to rely on the fact that an ultimate jury disagreement is a permissible result of a trial.” *Scott*, 547 F.2d at 337. First, it demonstrates the Sixth Circuit’s deviance from this Court’s admonition against coercive *Allen* charges in *Jenkins*. Second, this case illustrates how leaving repeat *Allen* charges to excessive judicial discretion may lead to constitutional violations that contradict this Court’s jurisprudence in related areas of law. The Court should grant this petition to protect future litigants from jury verdicts cultivated by unconstitutional pressure.

i. The Lower Court’s Holding Contradicts this Court’s Mandate that Jurors Have a Right Not to Surrender Views Conscientiously Held.

In *Jenkins v. United States*, this Court made clear “the principle that jurors may not be coerced into surrendering views conscientiously held is so clear as to require no elaboration.” 380 U.S. at 446. Here, the Sixth Circuit impermissibly challenged this decades-old presumption by refusing to find coercion in *Allen* charges

that so closely parallel the language of rejected charges in *Jenkins* and its progeny. Its defiance of *Jenkins* merits this Court's review.

This Court's holding in *Jenkins* remains the centrifuge for evaluating judicial coercion of jury verdicts. There, the jury reported its inability to agree on both counts in question after two hours of deliberations. *Jenkins*, 380 U.S. at 446. In response, the lower court told the jury, "[y]ou have got to reach a decision in this case." *Id.* In a one-paragraph analysis, this Court concluded "the judge's statement had the coercive effect attributed to it." *Id.*

Relying on *Jenkins*, *inter alia*, the Sixth Circuit in *Harris* struck down an instruction which read "this lawsuit must be decided." 391 F.2d at 356. Like *Jenkins*, the *Harris* court emphasized the totality of the circumstances surrounding the charge, namely the lower court's "statement that this was the second trial of the case and that another jury had failed to make a verdict." *Id.* "With this as a premise and with the firm admonition from the court that the case had to be decided at some time by some jury, it is not an unreasonable conclusion that the minority, already subjected to pressure from the majority, agreed in effect to majority rule." *Id.* Under this reasoning, *Harris* is on all fours with *Jenkins*, and Robinson's case should have followed suit.

By denying the coercive impact of the district court's *Allen* charges in *Robinson*, the Sixth Circuit departs from *Jenkins* in form and in substance. As to form, the *Allen* instructions in *Robinson*, "ultimately all of these issues have to be resolved," App. 302, are materially indistinguishable from instructions struck down in *Harris*

and *Jenkins*, which state, respectively, “[this] lawsuit must be decided,” *Harris*, 391 F.2d at 351–52, and “[y]ou have got to reach a decision in this case.” *Jenkins*, 370 U.S. at 446. The *Robinson* court’s attempt to distinguish this case based on the context of the jury’s question is belabored and impermissibly trumps *Jenkins*’ admonition to safeguard juror sovereignty against judicial imposition. *See Jenkins*, 380 U.S. at 446 (“[J]urors may not be coerced into surrendering views.”) (quotation marks omitted). The Sixth Circuit should have found the lower court’s statement coercive in light of all the circumstances, just as this Court did in *Jenkins*.

As to substance, the Sixth Circuit failed *Jenkins* by cherry-picking circumstances and neglecting to account for their totality. For example, it held the court issued “two pattern *Allen* charges emphasizing dissenting jurors’ freedom to continue to dissent, curing any coercive effect.” App. 20. But the second charge strayed from the Sixth Circuit’s approved instructions, App. 318–20, and the first charge appeared between two *Allen*-charge-like instructions demanding unanimity from the jury. App. 302, 309–12; Pattern Crim. Jury Instr., 6th Cir. 9.04 (2015 ed.). Therefore, even if a proper charge may “cure” prior improper language, *see supra* § I(B), the lower court’s condescending remark scolding jurors to act as “mature adults” does not fit the bill.⁴ *See* App. 42 (“[T]his coercive instruction in the present case was

⁴ The language in the lower court’s second *Allen* charge, which strayed from pattern Sixth Circuit instructions read, in relevant part:

But as mature adults, every one of you has had a disagreement with someone and has been able to work through it at some point in your lives.

not ‘cured’ by the subsequent *Allen* charges . . . [but] very likely compounded the coercion.”) (Donald, J., concurring in part and dissenting in part); *Barone*, 114 F.3d at 1304 (warning “[a] successive charge tends to create a greater degree of pressure” on jurors).

Robinson’s case showcases a particularly damaging result of the wide latitude afforded lower courts in crafting, manipulating, and repeating *Allen* instructions. It is a powerful vehicle to unify courts’ understanding of coercion in the *Allen* charge context and protect a criminal defendant’s right to a fair trial and due process.

ii. The Racial Animus that Permeated Robinson’s Jury Verdict Exposes the Consequences of Allowing Courts to Deliver Multiple *Allen* Charges.

Robinson’s case is a perfect pathway to resolving the circuit split regarding multiple *Allen* charges because it exposes the consequences of pressuring a jury to render a verdict. By steadfastly insisting on a verdict without inquiring into the basis for disagreement, the court pressured minority jurors A.R. and M.S. to abandon their closely-held beliefs. The juxtaposition of successive *Allen* charges and the foreperson’s bias against the African-American jurors highlights the need to prevent courts from blindly imposing unanimity on the jury.

So this is important enough for you to return to the jury room and resume your deliberations[.]

App. 320–21. *See* App. 42 (“The latter instruction, particularly, by asserting a likeness between a juror’s solemn responsibilities and the ordinary process of resolving discord and reaching agreement in everyday life, arguably mischaracterized the legal and constitutional import of a jury’s deliberations.”) (Donald, J., concurring in part and dissenting in part).

Here, the two African-American jurors, A.R. and M.S., whom the white foreperson harassed and humiliated due to their shared race with Robinson and his codefendants, revealed a tumultuous three days of deliberations and a verdict shaped in large part by the lower court’s *Allen* charges and *Allen*-charge-like language. *See, e.g.*, App. 132 (“The Judge said that if we couldn’t come to a decision, you know . . . [h]e was just repeating that . . . [i]t won’t stand to reason other people would see it the way we could.”); App. 198 (“[The Judge] just said, you’ll are to go back and follow the rules, and you’ll are to read back over section such and such or whatever section that he said, and he sent us back there to deliberate . . . quite a few times back there to deliberate.”)⁵ To prevent this type of pressure on jurors, judicial inquiry into deadlock before commencing supplemental *Allen* instructions would lessen the possibility of a racially-biased verdict and satisfy this Court’s undertaking to “purge racial prejudice from the administration of justice.” *See Peña-Rodriguez v. Colorado*, 137 S. Ct. 855, 855 (2017); *see also Nick*, 122 F.2d at 674 (“If [an *Allen* charge] is made in the face of an existing disagreement in the jury it is quite evident that its entire force would be felt as applying to an existing situation which had developed.”).

The timing and social relevance of this case, particularly in light of this Court’s heightened attention to eliminating racial bias from our criminal justice system

⁵ That the information about the jury’s internal deliberations transpired during co-counsel’s unapproved interview with the jurors does not relieve the Sixth Circuit of its duty to assess the constitutionality of multiple *Allen* charges in context of *all* the circumstances. *See Jenkins*, 380 U.S. at 446 (emphasizing the need to evaluate the impact of *Allen* charges under the totality of the circumstances).

under *Peña-Rodriguez*, demand the Court's action in this case. Otherwise, defective *Allen* charges, repeated toward the end of deliberations without pause, may inadvertently condone racial bias in the jury room by inducing jurors to submit to a verdict against their conscience. The current state of *Allen* jurisprudence permits this result and cannot stand.

Ultimately, the Sixth Circuit should have considered this Court's directive to evaluate the coerciveness of *Allen* charges under the totality of the circumstances. The Court should grant this petition to ensure Robinson and his codefendants receive the full scope of protections afforded to them in our Constitution.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,



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