No. 22-6579

In the Supreme Court of the United States

JAIME ARMANDO HOYOS,

Petitioner,

v.

RONALD DAVIS, WARDEN,

Respondent.

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

BRIEF IN OPPOSITION

ROB BONTA
Attorney General of California
JAMES WILLIAM BILDERBACK II
Senior Assistant Attorney General
KRISTINE A. GUTIERREZ
ANTHONY DA SILVA*
Deputy Attorneys General

STATE OF CALIFORNIA
DEPARTMENT OF JUSTICE
600 West Broadway, Suite 1800
San Diego, CA 92101
(619) 738-9143
Anthony.DaSilva@doj.ca.gov
**Counsel of Record*

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CAPITAL CASE
QUESTION PRESENTED

Whether the court of appeals erroneously denied federal habeas relief based on petitioner's challenge to the California Supreme Court's conclusion that the record in this case failed to establish a prima facie case of discrimination at the first step of the analysis set forth in *Batson v. Kentucky*, 476 U.S. 79 (1986).

DIRECTLY RELATED PROCEEDINGS

Supreme Court of the United States:

Hoyos v. California, No. 07-8213 (Feb. 19, 2008) (denying certiorari).

United States Court of Appeals for the Ninth Circuit:

Hoyos v. Davis, No. 17-9909 (Oct. 17, 2022) (this case below) (affirming denial of federal habeas petition).

United States District Court for the Southern District of California:

Hoyos v. Davis, No. 09CV0388 L (NLS) (Oct. 5, 2017) (denying federal habeas petition).

California Supreme Court:

In re Hoyos, No. S190357 (Oct. 30, 2013) (denying petition on state collateral review).

People v. Hoyos, No. S041008 (July 23, 2007) (affirming judgment on direct appeal).

Superior Court of California, County of San Diego:

People v. Hoyos, No. CR133354 (July 11, 1994) (entering judgment of conviction and sentence).

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STATEMENT

1. Petitioner Jaime Armando Hoyos and his brother-in-law Jorge Emilio Alvarado were convicted of the first-degree murder of Daniel and Mary Magoon in 1992. Pet. App. A 6-7.[1] They were acquitted of attempted murder but convicted of assault with a firearm for injury to the Magoons' three-year-old son. *Id.* at 7. They were also convicted of conspiracy to commit robbery, first-degree robbery, burglary, grand theft of a firearm, and transporting over 28.5 grams of marijuana. *Id.* The jury returned a verdict of life without the possibility of parole for Hoyos's murder of Daniel. *Id.* It returned a verdict of death for the murder of Mary. *Id.*

2. During jury selection, defense counsel objected to the prosecution's use of peremptory challenges to excuse two Hispanic jurors, Margaret A. and Lisa H., and one Hispanic alternate juror, Yolanda M. Pet. App. A 12-13. On her juror questionnaire, prospective juror Margaret A. wrote "[n]ot enough English" in response to a question whether the case was one on which she would like to serve as a juror. *Id.* at 7. She also selected "[y]es" in response to questions asking whether she had trouble understanding or speaking English, whether she spoke and understood Spanish, and whether she "would be *unable* to set aside her interpretation of testimony and accept [the court's translation]." *Id.* at 7-8 (alterations omitted).

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[1] "Pet. App. A" refers to the first appendix and "Pet. App. B" refers to the second appendix filed with the petition. The page numbers in the appendices are the ones assigned by the electronic filing system in the court of appeals.

During voir dire, Margaret A. told the court that she understood the juror questionnaire but stated, "I don't speak English that well and I don't understand a lot of words that you are saying." Pet. App. A 8. The court stated that she seemed to be "quite articulate" based on her responses. C.A. Dkt. 47-3 at 169. In response to the court's questions, she further said that she would be able to ask for clarification if she did not understand a word during the proceedings. *Id.* at 170. On further questioning, she stated that she understood terms like "aggravating," "mitigating," and "evidence," but could not describe their meaning. Pet. App. A 8. When asked again if she would feel comfortable seeking clarification on a word's definition, she responded that she did not know and explained that she became nervous regarding English. *Id.* She further stated that, if she had difficulty understanding something, she probably would let the matter pass. *Id.*

Hoyos challenged Margaret A. for cause based on her difficulty understanding English. Pet. App. A 8. Counsel argued that "the specific thrust of my problem with her is that no matter what she understands, she couldn't communicate that to any other jurors in deliberations and would likely be intimidated or a non-entity in deliberations." *Id.* at 29. The prosecution joined the for-cause challenge based on similar concerns. *Id.* The prosecutor asserted that Margaret A. would be "very reluctant to raise her hand and say I don't understand something." *Id.* Alvarado opposed the challenge. C.A. Dkt. 47-3 at 189; C.A. Dkt. 53-2 at 29. The court declined to excuse Margaret A. for cause

but advised the parties that they could address their concerns using peremptory challenges. Pet. App. A 8-9.

Prospective juror Lisa H. wrote on her questionnaire that she "believed in the death penalty (and the justice system) but only in certain instances" and was "not certain what benefit [the death penalty has] for society." Pet. App. A 9, 37. She volunteered on voir dire that she "tended to side with . . . life in prison as opposed to the death penalty." *Id.* at 10, 37 (alterations omitted). When asked by the trial court if she could keep an "open mind" and whether she was "capable of" returning a verdict for death, Lisa H. said she thought that she "could be fair and open minded." *Id.* at 37. She also stated that she thought that she would be able to return a verdict of death but "would have to be real convinced that [the death penalty] outweighed [life in prison] heavily." *Id.* at 10. And she said she would place the burden on the prosecution to convince her "one way or another" about returning a death verdict, contrary to the court's instruction, although she later clarified that her statement about the burden was "incorrect." *Id.* at 38.

Prospective alternate juror Yolanda M. wrote on her questionnaire that she did not feel she could be part of a jury that could "impose the death penalty." Pet. App. A 36. During voir dire, she explained that her "strong religious beliefs deep down inside" would make it difficult for her to impose the death penalty. *Id.* at 9, 36. She stated that she felt the death penalty "actually shouldn't happen" and that she would not "be able to judge somebody feeling

that way." *Id.* at 36. She further noted that "because of her strong beliefs," she "would choose the other option rather than the death penalty." *Id.* at 36-37 (alterations omitted). She also told Alvarado's counsel that she thought she could put her views aside. *Id.* at 9. In an unsuccessful challenge for cause, the prosecutor argued that he did not "believe that Yolanda M. truly would be able to impose the death penalty" given her answers in the juror questionnaire. *Id.* at 37 (alterations omitted).

After the court dismissed members of the venire for cause or hardship, the trial court selected 42 prospective jurors from a venire panel of 79. Pet. App. A 11. The prosecution was allowed 30 peremptory challenges and used its fifth strike to excuse Margaret A. *Id.* The prosecution used its sixth peremptory challenge to remove Lisa H. *Id.* The prosecution exercised two more strikes and the defense one; the parties then accepted the jury, and it was sworn. *Id.* The parties subsequently considered alternate jurors and exercised additional peremptory challenges. *Id.* at 11-12. The prosecution removed eight alternates, including Yolanda M. *Id.* at 12. It did not use its remaining 13 peremptory strikes. *Id.* at 28.

The trial court then addressed defendant Alvarado's *Batson* motion, which Hoyos joined. Pet. App. A 13. The court denied the motion. *Id.* It first stated that it was "mindful of the fact" that the jury had one Hispanic juror and members of other minority groups, including two African American jurors. *Id.* at 14. With respect to the strike of Margaret A., the court stated that she

had "indicated, frankly, it would be very difficult for her to serve as a juror in this case because of the inability that she said she has to speak English[.]" *Id.* The court explained that, under those circumstances, "such a juror may have a great degree of difficulty with such a complex case" given "the length of trial, the number of witnesses, and the magnitude of the[] issues." *Id.* The court noted that Margaret A. said that "she wasn't comfortable with doing it." *Id.* And while the court was not inquiring of the prosecution, it could "see good reasons why one would want to excuse such a person from service on the jury in view of the problems with the English language, spoken and understanding." *Id.*

Regarding the strike of Yolanda M., the court observed that she had "indicated to the court in her questionnaire that she, in fact, had a conscientious objection to the death penalty." Pet. App. A 14 (ellipses omitted). The court noted that although she "indicated orally she would be able to keep an open mind," the prosecution "has the right to exercise peremptories as to individuals who have feelings pro or con as the death penalty is concerned." *Id.* The court "didn't see anything about" the strike of Yolanda M. "that cause[d] [it] to think she was excused for purposes of race." *Id.* As to the strike of Lisa H., the trial court noted that she had said "she would tend to side with life in prison rather than the imposition of a death sentence essentially." *Id.*

Based on these facts, the court found that defense counsel had not made a prima facie showing of discrimination. Pet. App. A 14-15. The court explained: "Observing the manner in which all of these jurors were questioned by the prosecution, the extent of the questioning, the use of these peremptories, the presence of at least one Hispanic on the panel, it seems to me that there really isn't anything from which I could reasonably find the exercise of peremptories based upon race." *Id.* at 15 (alterations and ellipses omitted).

3. On direct appeal, the California Supreme Court affirmed Hoyos's conviction and sentence. *People v. Hoyos*, 41 Cal. 4th 872 (2007), *abrogated on other grounds by People v. McKinnon*, 52 Cal. 4th 610, 641 (2011). With respect to his claim that the prosecution's challenges of Margaret A., Lisa H., and Yolanda M. reflected improper racial bias, the court applied the three-step framework that this Court set forth in *Batson v. Kentucky*, 476 U.S. 79 (1986). *See Hoyos*, 41 Cal. 4th at 900. The court explained that, under this Court's decision in *Johnson v. California*, 545 U.S. 162 (2005), a defendant satisfies the first step of the *Batson* analysis "'by producing evidence sufficient to permit the trial judge to draw an inference that discrimination has occurred.'" *Hoyos*, 41 Cal. 4th at 900. It also determined that, when a trial court finds no prima facie case of group bias, the appellate court "reviews the record of voir dire for evidence to support the trial court's ruling" and will affirm "where the record suggests grounds upon which the prosecutor might reasonably have challenged the jurors in question." *Id.* (internal quotation marks omitted).

The California Supreme Court then examined the record de novo and concluded that it did not support an inference that the prosecution had excused the three jurors based on race. *Hoyos*, 41 Cal. 4th at 901-903. Regarding Margaret A., the court explained that the "record demonstrates both the prosecutor and defendant's own counsel were reasonably concerned about the prospective juror's English language skills and, on this basis, the prosecutor was entitled to excuse her." *Id.* at 902. As to Lisa H., the court concluded that the record strongly suggested that the prosecutor had grounds for concern about her possible bias against the death penalty. *Id.* Likewise, as to Yolanda M., the record suggested that the prosecutor had reason to be concerned about her possible bias against the death penalty in light of her expression of religious reservations about it. *Id.* at 903.

4. Hoyos sought habeas relief in federal district court under 28 U.S.C. § 2254(d). Pet. App. A 16-17. Under that provision, a federal court may not grant relief unless the state court's decision "was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States," or "was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. § 2254(d).

The district court denied the petition. Pet. App. A 17-18. With respect to Hoyos's *Batson* claim, the court held that the California Supreme Court's rejection of the claim was not an unreasonable application of this Court's clearly

established precedent and was not based on an unreasonable determination of the facts. *Id.* at 17. The district court also rejected Hoyos's contention that the state court's failure to conduct comparative juror analysis sua sponte violated clearly established federal law, and, after conducting its own comparative juror analysis, concluded that the comparison did "'nothing to undermine the reasonableness of the California Supreme Court's findings and conclusions.'" *Id.* at 17-18.

5. a. The court of appeals affirmed. Pet. App. A 6. First, the court determined that the California Supreme Court had unreasonably applied this Court's decision in *Johnson* in reviewing Hoyos's claim. *Id.* at 23-25. Citing its prior precedents, the court of appeals reasoned that it had "repeatedly interpreted *Johnson* to mean that," at the first step of the *Batson* analysis, "'the existence of grounds upon which a prosecutor *could* reasonably have premised a challenge does not suffice to defeat an inference of racial bias.'" *Id.* at 22 (citing *Currie v. McDowell*, 825 F.3d 603, 609 (9th Cir. 2016) (alterations omitted) (quoting *Johnson v. Finn*, 665 F.3d 1063, 1069 (9th Cir. 2011)); *see also Williams v. Runnels*, 432 F.3d 1102, 1108 (9th Cir. 2006). In this case, the California Supreme Court "unequivocally stated" that it would "'affirm the trial court's ruling where the record suggests grounds upon which the prosecutor might reasonably have challenged the jurors in question.'" Pet. App. A 24 (alterations omitted). The court of appeals thus held that de novo review applied. *Id.* at 25.

Applying that de novo review, the court concluded that, based on the record before it, Hoyos did not meet his burden of showing an inference of discrimination. Pet. App. A 41-42. With respect to challenged juror Margaret A., the court of appeals concluded that "the trial-court transcript leaves no doubt about the basis for the prosecutor's objection." *Id.* at 29. Margaret A. "clearly demonstrated difficulty with understanding some of the vocabulary used during the proceeding, and the prosecutor's joinder in Hoyos's unsuccessful attempt to have Margaret A. excused for cause due to her difficulty with English significantly undercuts Hoyos's argument that the prosecutor's use of a peremptory challenge raised an inference of racial bias" at *Batson*'s first step. *Id.* at 29-30. Hoyos also did not identify a similar non-Hispanic juror whom the prosecutor declined to excuse, "nor is one apparent from [the court's] review of the record." *Id.* at 30. The court of appeals thus agreed with the California Supreme Court, "[o]n de novo review," that the exclusion of Margaret A. did not create an inference of racial bias. *Id.*

Turning to Lisa H. and Yolanda M., the court assumed without deciding that the number of Hispanic jurors struck by the prosecution—either two out of four or three of five—could support an inference of discrimination. Pet. App. A 32-33.[2] But in this case, the record dispelled any such inference. *Id.* at 33-41. The court observed that the number of challenged jurors included one

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[2] The relevant statistic depends on whether it is calculated at the time the motion was made (two out of four) or at the time it was argued (three out of five). Pet. App. A 27, 32-33.

whom Hoyos himself sought to remove for cause. *Id.* at 33. The court reasoned that Hoyos did not argue that the prosecutor disparately questioned Hispanic jurors, and the court's "de novo review [did] not reveal any such discrepancy in questioning." *Id.* at 34. And "although two additional Hispanic veniremembers remained" after the parties' peremptory strikes, "the prosecutor did not exhaust all of his allotted peremptory challenges." *Id.*

The court next conducted a comparative juror analysis and concluded that "a comparison of the struck jurors to the seated jurors undermines any inference of racial bias." Pet. App. A 35-36. The court noted that Hoyos failed to identify a member of the venire who expressed religious objections to capital punishment comparable to those of Yolanda M. *Id.* at 36. And the reasons the prosecutor gave for seeking Yolanda M.'s removal for cause "provide contemporaneous indication of his reasoning": He did not "'believe that she truly would be able to impose the death penalty, given her answers on the juror questionnaire.'" *Id.* at 37.

As to Lisa H., the court could not discern whether the prosecutor also challenged her for cause. Pet. App. A 37. Although the court concluded that this circumstance made the analysis of her challenge the most difficult of the three, it was not persuaded that any of the seated jurors identified by Hoyos expressed reservations about the death penalty equivalent to those articulated by Lisa H. *Id.* at 37-41. Accordingly, based on its review of the record "and on

de novo review," the court held that Hoyos failed to raise an inference of discrimination and the California Supreme Court therefore did not err in rejecting his *Batson* claim. *Id.* at 41-42.

b. Judge Ikuta, joined by Judge Bumatay, concurred, agreeing with the court's interpretation of the record, but wrote separately to explain that the court's decision not to defer to the California Supreme Court's ruling was based on erroneous circuit precedent. Pet. App. A 50. They noted that, at the time the California Supreme Court ruled in Hoyos's case, no decision of this Court "clearly precluded a court from relying on evidence showing a nondiscriminatory basis for a peremptory strike." *Id.* at 52. But in *Currie v. McDowell*, 825 F.3d 603, the court of appeals had held that this Court's decision in *Johnson v. California* clearly established the principle that "'the existence of grounds upon which a prosecutor could reasonably have premised a [peremptory] challenge does not suffice to defeat an inference of racial bias at the first step of the *Batson* framework.'" Pet. App. A 55. Although *Currie* "was clearly wrong," the concurrence concluded, the panel was not free to depart from it. *Id.* at 56, 58. And "[l]uckily, in this case [the court] reach[ed] the same conclusion as the California Supreme Court after reviewing the record de novo[.]" *Id.* at 58. Thus, the concurrence determined, the court's "adherence to [prior] erroneous precedent does not change the outcome" in this case. *Id.*

c. In a simultaneously filed memorandum disposition, the court denied Hoyos's other six certified claims and declined to address the three uncertified

claims. Pet. App. A 6; Pet. App. B 1-2. The court subsequently denied Hoyos's petition for rehearing en banc. Pet. App. A 5.

ARGUMENT

Hoyos asks this Court to grant certiorari to consider whether he established a prima face case of discrimination under the standard this Court set forth in *Johnson v. California*, 545 U.S. 162 (2005). *See* Pet. i, 15. Applying de novo review, the court of appeals properly concluded that the record in this case did not support an inference of racial bias at *Batson*'s first step. This would also not be an appropriate case for reviewing that fact-bound determination because, as the concurring judges concluded, the California Supreme Court's decision is entitled to deference.

1. a. The Fourteenth Amendment's Equal Protection Clause forbids a prosecutor from challenging a potential juror on the basis of race. *Batson v. Kentucky*, 476 U.S. 79 (1986); *Miller-El v. Dretke*, 545 U.S. 231, 238-239 (2005). In *Batson*, this Court enumerated three steps, "which together guide trial courts' constitutional review of peremptory strikes." *Johnson*, 545 U.S. at 168. "First, the defendant must make out a prima facie case by showing that the totality of the relevant facts gives rise to an inference of discriminatory purpose. Second, once the defendant has made out a prima facie case, the burden shifts to the State to explain adequately the racial exclusion by offering permissible race-neutral justifications for the strikes. Third, if a race-neutral explanation is tendered, the trial court must then decide whether the opponent

of the strike has proved purposeful racial discrimination." *Id.* (internal quotation marks, citations, footnote, and alterations omitted).

The instant case involves step one of *Batson*'s three-part test. Pet. App. A 20. At step one of *Batson*, the trial court must determine whether there is "evidence sufficient to permit [it] to draw an inference that discrimination has occurred." *Johnson*, 545 U.S. at 170. In deciding whether the defendant has made a prima facie case of discrimination, "the trial court should consider all relevant circumstances," including "the prosecutor's questions and statements during *voir dire* examination and in exercising his challenges," which "may support or refute an inference of discriminatory purpose." *Batson*, 476 U.S. at 96-97; *see also Johnson*, 545 U.S. at 169-170.

b. The court of appeals correctly concluded that the record lacked evidence sufficient to permit an inference that the prosecution's strikes reflected a discriminatory purpose. Hoyos argues first that the court of appeals "erred in concluding that 'the exclusion of Margaret A. does not give rise to an inference of bias.'" Pet. 6. In support of his argument, Hoyos points out that the trial court repeatedly stated that she was able to express herself in English and offers alternate inferences from the fact that both the defense and prosecution attempted to remove her for cause due to her difficulty speaking and understanding English. *Id.* at 6-8. The court of appeals' conclusions, however, were supported by the record. As explained above, Margaret A. said in voir dire that she did not speak English well, that she did not understand a lot of

words the judge was using, and that she would likely be uncomfortable interrupting proceedings to seek clarification if needed. Pet. App. A 8; *see also supra* p. 2. These facts "leave[] no doubt about the basis for the prosecutor's objection" to Margaret A. Pet. App. A 29. As the court of appeals recognized, the record established her English-language difficulty; and the prosecutor stated expressly that his joinder in Hoyos's for-cause challenge was based on her reluctance to request clarification if she did not understand something during trial. *Id.* at 29-30. Hoyos argues that the court of appeals improperly considered the fact that he himself sought to excuse her for cause. Pet. 7. But Hoyos's own effort to remove Margaret A. based on concerns that her language difficulties would impede her ability to deliberate, Pet. App. A 29, is an additional circumstance undermining any inference of bias in the prosecution's peremptory strike.

Hoyos next contends that the court of appeals erred in its comparative analysis of three non-Hispanic members of the venire who were seated on the jury—Jimmy C., Dolores R., and Kirsten T.—whom he describes as expressing reservations about the death penalty equivalent to those of struck Hispanic jurors Lisa H. and Yolanda M. Pet. 9-15. As the petition notes (*id.* at 9), disparate questioning of jurors can be evidence of racial bias. *Miller-El v. Cockrell*, 537 U.S. 322, 344 (2003). It is also well established that jurors need not be identical in all respects for their comparison to be probative. *Miller-El v. Dretke*, 545 U.S. at 247 n.6. The court of appeals, however, properly rejected

Hoyos's comparisons because the record did not support the premise of his argument, that the three white jurors' views on the death penalty were comparable to those of the two Hispanic jurors. Pet. App. A 38-40.

As noted above, both Lisa H. and Yolanda M. expressed significant reservations about the death penalty. Lisa H. wrote on her questionnaire that she was uncertain of any societal benefit to the death penalty, and volunteered on voir dire that she "tended to side with life in prison as opposed to [the] death penalty." Pet. App. A 9-10, 37 (alterations omitted). Although she expressed during voir dire that she thought she "could be fair and open minded," *id.* at 37, she persistently gave qualified answers, stating she "would have to be real convinced that [the death penalty] outweighed [life in prison] heavily." *Id.* at 10. For her part, Yolanda M. stated on her juror questionnaire that she could not be part of a jury that could "impose the death penalty." *Id.* at 36. During voir dire, she explained she would have difficulty imposing the death penalty based on "strong religious beliefs" and would choose life in prison over the death penalty. *Id.* at 36-37.

Hoyos argues that Jimmy C., Dolores R., and Kirsten T. had reservations about the death penalty that were "functionally indistinguishable" from those expressed by Lisa H. and Yolanda M. (Pet. 15), but the record refutes that characterization. Unlike Lisa H. and Yolanda M., Jimmy C. did not hesitate about his willingness to apply the death penalty. Pet. App. A 39. Hoyos argues that this is an "unfair" characterization of Jimmy C. because it "ignores the

fact that [he] believed that the death penalty should be restricted to Charles Manson type serial murder or presidential assassinations." Pet. 13. However, Jimmy C.'s response was to a question asking whether "there are any circumstances where a person convicted of murder should automatically receive the death penalty." C.A. Dkt. 47-3 at 167; *see* Pet. App. A 39. There is no indication in the record that Jimmy C. tended to favor life in prison over the death penalty like Lisa H., or that "he expressed religious beliefs that would impair his ability to impose the death penalty" like Yolanda M. *Id.* When asked to elaborate during voir dire, Jimmy C. clarified that he "would weigh the evidence and give the death penalty only in the case of a very serious crime" and suggested that he would consider the death penalty warranted if the defendant killed someone in the course of a bank robbery—a crime analogous to the charges against Hoyos here. *Id.* Thus, as the court of appeals properly concluded, Jimmy C.'s responses "suggested he would weigh the evidence and impose the death penalty if warranted." *Id.*

Hoyos is also incorrect in arguing that juror Kirsten T. showed a hesitancy to impose the death penalty equivalent to that of Lisa H. and Yolanda M. *See* Pet. 12-13. Kirsten T. stated on her questionnaire that the death penalty "fills her with trepidation." Pet. App. A 40 (alterations omitted). But she also wrote in her questionnaire that she thought, "unfortunately for me, I'd be a good juror," and on voir dire "she demonstrated no hesitation" about imposing

the death penalty. *Id.* Furthermore, Kirsten T. said that she could make the decision to impose the death penalty and could "live with that [decision]." *Id.*

Finally, Hoyos argues that Dolores R., had similar attitudes towards the death penalty as Lisa H. and Yolanda M. because she agreed during leading defense questioning that the death penalty should be reserved for the "worst of the worst." *See* Pet. 12. The record does not show that Dolores R. had the same reservations about capital punishment as Lisa H. and Yolanda M. Pet. App. A 40. Dolores R. explained that, in her view, the death penalty was "part of our law," is "there to be used if the situation warrants the use of the death penalty," and "that's what makes our system work." *Id.* (alterations omitted). Unlike Yolanda M., the record did not indicate that Dolores R. had religious objections to the death penalty. *Id.* Also, unlike Lisa H., Dolores R. did not "consistently express hesitation about her ability to impose the death penalty." *Id.*

2. This is also not an appropriate case for review of Hoyos's disagreement with the court of appeals' de novo interpretation of the factual record. As the two concurring judges explained, the California Supreme Court's ruling does not reflect an unreasonable application of *Johnson*. Pet. App. A 52-53. *Johnson* held only that, at *Batson*'s first step, a defendant need only produce evidence sufficient to allow the trial court to draw an inference of discrimination; he need not establish that it is "'more likely than not'" that the prosecution's strikes were racially motivated. *Johnson*, 545 U.S. at 168-170. And, *Johnson*

recognized that "a prima facie case of discrimination can be made out by offering a wide variety of evidence[.]" *Id.* at 169 (footnote omitted); *see also Batson*, 476 U.S. at 96-97 (trial courts "should consider all relevant circumstances," including "the prosecutor's questions and statements during *voir dire* examination and in exercising his challenges," which "may support or refute an inference of discriminatory purpose."). Accordingly, even if this Court were to conclude that the court of appeals erred in its de novo analysis of the specific factual record here, Hoyos would still not be entitled to relief given the deference that must be accorded to the California Supreme Court's denial of Hoyos's *Batson* claim.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

ROB BONTA
Attorney General of California
JAMES WILLIAM BILDERBACK II
Senior Assistant Attorney General
KRISTINE A. GUTIERREZ
ANTHONY DA SILVA
Deputy Attorneys General

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