No. 24-7370

IN THE
Supreme Court of the United States

JONATHAN DAVIS,

PETITIONER,

v.

UNITED STATES OF AMERICA,

RESPONDENT.

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

REPLY BRIEF FOR PETITIONER

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This case presents three important and recurring questions: Does the Constitution require selected jurors to be free from implied bias? What standards should apply when assessing a claim of implied bias? And, finally, is a juror impliedly biased if he has been the victim of a crime nearly identical to the crime alleged at trial?

Granting certiorari would allow the Court to resolve a longstanding circuit split over the standard of review for implied bias claims. It would also allow the Court to address the relationship between the implied bias doctrine and Sixth Amendment—a relationship which has been repeatedly questioned since the decision in *Smith v. Phillips*, 455 U.S. 209 (1982).

The Brief in Opposition does not deny the existence of a relevant circuit split. It does not identify any procedural obstacles to this Court's review. And it does not try to minimize the importance of the questions presented. Nevertheless, the government opposes review on the grounds that Petitioner has not explained how adopting a different standard of review would change the appellate court's analysis, has not explained how the appellate court's analysis is incompatible with prior precedent, and has ultimately raised a "factbound" issue which does not merit further review.

The government's arguments are flimsy. In Petitioner's case, adopting a different standard of review would require the appellate court to conduct an independent analysis—one which holds trial court judges to a uniform standard. Nothing in this Court's jurisprudence sanctions the approach that the appellate court ultimately took, and the Court should seize this opportunity to resolve legal uncertainty which has persisted for decades and which implicates one of our most fundamental rights.

I. When evaluating claims of implied bias, lower courts are divided over the appropriate standard of review.

A. The government correctly recognizes that, by applying deferential review, the Eighth Circuit's decision implicated an extensive and deeply entrenched circuit split.

The government concedes, as it must, that there is a split of authority regarding the appropriate standard of review on appeal. *See* Br. in Opp. at 8-9. In fact, five circuits review implied bias claims for abuse of discretion while two circuits review de novo and one circuit employs a mixed standard. Pet. at 17-18 & n.4 (collecting cases).

In Petitioner's case, the District Court concluded that the challenged juror (Juror No. 40) had "sound and solid" credibility and, consequently, that his profession of impartiality could be trusted. Pet. App. 21a. After the District Court refused to dismiss Juror No. 40 for cause, Petitioner requested de novo review of the decision. Pet. C.A. Br., at 32-34 (8th Cir. Feb. 5, 2024). In response, a panel of the Eighth Circuit conducted an unusually truncated abuse-of-discretion analysis, which proceeded as follows:

> [T]he question is whether an empaneled juror who was a victim in a similar crime nearly 50 years ago is an "extreme situation[ ] where the relationship between a prospective juror and some aspect of the litigation is such that it is highly unlikely that the average person could remain impartial in his deliberations under the circumstances."
>
> We conclude that this case does not constitute an "extreme situation" warranting a finding of implied bias, and the district court did not abuse its discretion in empaneling Juror No. 40 over defendant's objection.

Pet. App. 12a (internal citation omitted).

The panel emphasized that "[t]he district court . . . is in the best position to address the demeanor and credibility of the prospective jurors," *id.* at 9a, but it did not explain how it had relied on the District Court's "demeanor and credibility" findings—a glaring omission, given Petitioner's argument that these findings should have "no impact on [the court's]

analysis." Pet. C.A. Br., at 42 (8th Cir. Feb. 5, 2024). Indeed, the court of appeals gave *no explanation whatsoever* for its conclusion that this case was not an "extreme situation" warranting a finding of implied bias. That would not have been permissible if the court had been required to apply de novo review; de novo review plainly calls for a more comprehensive analysis than the court undertook here. *See De Novo*, Black's Law Dictionary (12th ed. 2024) ("When a court engages in de novo review of a legal issue, it makes an independent determination without deference to any earlier analysis about the matter. It is treated as if no previous decision had been made: there is no presumption of the correctness or validity of any prior finding, recommendation, or conclusion."). For that reason, the Brief in Opposition falls flat when it accuses Petitioner of failing to "meaningfully explain" how adopting a different standard of review would change the Eighth Circuit's reasoning. Br. in Opp. at 8. Simply put, adopting a different standard of review would change the Eighth Circuit's reasoning by requiring that the court *actually conduct* an analysis.

B. This Court has granted certiorari to address similar circuit splits.

This Court has granted certiorari in similar cases. *See, e.g.*, *Ornelas v. United States*, 517 U.S. 690 (1996). The question presented in *Ornelas* was whether to apply a deferential standard when reviewing whether a law enforcement officer had reasonable suspicion or probable cause under the Fourth Amendment. *See id.* at 694-95. In fact, the petitioners in *Ornelas* sought certiorari after the Seventh Circuit affirmed a finding of probable cause in an unpublished opinion which read, in relevant part, as follows:

> Our review is deferential. The district judge's finding of probable cause may be set aside only if clearly erroneous. We do not find clear error. The district judge's opinion, although brief, adequately reviews the circumstances on which the decision to search the car was based and explains why taken as a totality they gave the officers probable cause to conduct the search.

United States v. Ornelas, 52 F.3d 328 (7th Cir. 1995) (unpublished), *vacated,* 517 U.S. 690 (1996).[1]

There are clear parallels between the Seventh Circuit's decision in *Ornelas* and the Eighth Circuit's decision in this case. Both decisions rested upon conclusory and underdeveloped analyses; and, in both cases, that flaw can be attributed to the use of an incorrect legal standard.

In *Ornelas*, this Court observed that "[a] policy of sweeping deference would permit, in the absence of any significant difference in the facts, the Fourth Amendment's incidence to turn on whether different trial judges draw general conclusions that the facts are sufficient or insufficient to constitute probable cause." *Ornelas*, 517 U.S. at 697 (cleaned up). The same is true in this case: applying a deferential standard of review allows trial judges to draw different conclusions about whether a given set of facts is sufficient or insufficient to establish implied bias. Such varied results are "inconsistent with the idea of a unitary system of law." *Id.* And, given enough time, such varied results will cause the atrophy of the Sixth, Fifth, and Fourteenth Amendments.

Ornelas also emphasized that "legal rules . . . acquire content only through application." *Id*. If the courts of appeals continually defer to the determinations of trial court judges, little analysis is necessary. The applicable legal principles remain unclear. And the doctrine remains underdeveloped.

That is precisely the point that Petitioner has made. *See* Pet. at 18 ("[T]he appellate court's chosen standard of review can have a profound impact on the merits analysis for

[1] The Seventh Circuit issued a separate opinion with respect to the district court's finding of reasonable suspicion. *See United States v. Ornelas-Ledesma*, 16 F.3d 714 (7th Cir. 1994), *vacated,* 517 U.S. 690 (1996).

implied bias claims."). And it is a point that the Brief in Opposition failed to understand or appreciate.

C. The Eighth Circuit should have applied de novo review and the government does not argue otherwise.

Petitioner's case required the court of appeals to decide whether a hypothetical person in Juror No. 40's position would be able to remain impartial. "The answer to how a hypothetical person would act is, by its nature, one that courts refine over time, building out principles that 'acquire content only through application.' *De novo* review is therefore essential[.]" *Bufkin v. Collins*, 604 U.S. 369, 385 (2025) (internal citation omitted). Indeed, de novo or independent review ensures the development of uniform precedent, establishing a "defined set of rules," *id.*, and "serv[ing] the dual goals of doctrinal coherence and economy of judicial administration." *Salve Regina College v. Russell*, 499 U.S. 225, 231 (1991).

De novo review is also the best fit when applying a constitutional standard—in that situation, there is a "strong presumption that determinations . . . are subject to *de novo* review, even if they require courts to plunge into the factual record." *Bufkin*, 604 U.S. at 384 (cleaned up). For these reasons, the Eighth Circuit's decision was wrong. Abuse of discretion was not the correct standard to apply in this case—and, notably, the government does not waste ink attempting to argue otherwise. *See* Br. in Opp. at 6-9 (arguing that de novo review "would have no effect on the outcome of this case" but declining to defend the use of the standard).

II. When implied bias claims are evaluated on the merits, lower courts use various standards and employ an ahistorical, opaque test focusing on a scenario's "extremity."

The government asserts that, on the merits, the courts of appeals all apply similar tests. *See* Br. in Opp. at 10-11. But Petitioner never argued otherwise. *See* Pet. at 18-19 (noting that all implied bias tests used by the courts of appeals can be traced back to the "average man"

test articulated in *Tumey v. Ohio*, 273 U.S. 510, 532 (1927)). On the merits, there is little relevant variation in the way that the test for implied bias is articulated. What *does* vary are the outcomes—the decisions that courts reach when the average man test is applied. *See infra* at n.4. And it is clear, from these inconsistent outcomes, that there is a lack of consensus over which circumstances are "extreme" and which are not.

A. Intervention is important because conflict over the appropriate merits test stems from this Court's decision in *Smith v. Phillips*.

The Petition for Certiorari traced a significant amount of lower court confusion to the decision in *Smith v. Phillips*, 455 U.S. 209 (1982). *See* Pet. at 9. The Brief in Opposition appears to agree that *Smith* is the leading case; yet, it struggles to articulate how the Eighth Circuit's analysis is compatible with *Smith*, ultimately arguing that "Even assuming that the court of appeals placed significant weight on the district court's credibility findings, that was commensurate with [*Smith*] . . . . Petitioner fails to show that the trial court's voir dire colloquy with Juror No. 40—analogous to the actual-bias hearing [*Smith*] contemplated—was inadequate to determine the juror's ability to be impartial." Br. in Opp. at 9 (internal citation omitted). This argument ducks the central issue at play.

Petitioner has never argued that the District Court's colloquy with Juror No. 40 was an insufficient means of determining actual bias. The issue has always been whether Juror No. 40 was *impliedly* biased—whether there was "a bias attributable in law to the prospective juror regardless of actual partiality." *United States v. Wood*, 299 U.S. 123, 134 (1936). *Smith* did not address the procedure or analysis necessary to adjudicate implied bias claims. At most, *Smith* concluded that a juror seeking employment with a prosecuting entity was not a situation in which the implied bias doctrine applied. *See* 455 U.S. at 215-16 (disagreeing with the assertion that "the law must impute bias to jurors in Smith's position" and emphasizing that

this Court previously concluded that "[a] holding of implied bias to disqualify jurors because of their relationship with the Government is no longer permissible" (quoting *Dennis v. United States*, 339 U.S. 162, 171-72 (1950))).

Granted, the *Smith* opinion was not a model of clarity. For decades, the decision has confused lower courts,[2] academic commentators,[3] and, apparently, the government with its pronouncement that "the remedy for allegations of juror partiality is a hearing in which the defendant has the opportunity to prove actual bias." *Id.* at 215. Petitioner's argument has never attacked the "adequacy" of the colloquy with Juror No. 40. Petitioner's argument is—and always has been—that the colloquy with Juror No. 40 was adequate to establish the necessary facts, that this was not a situation where an implied bias claim had been foreclosed by prior precedent, and that this *was* a scenario where the "relationship between a prospective juror and some aspect of the litigation" made it "highly unlikely that the average person could remain impartial." Pet. C.A. Br., at 34-35 (8th Cir. Feb. 5, 2024) (quoting *United States v. Needham*, 852 F.3d 830, 840 (8th Cir. 2017)).

Thus, the Brief in Opposition proves Petitioner's point: this Court needs to clarify how *Smith* relates to claims of implied bias. For, when combined with abuse-of-discretion review, a merits test focusing on "extreme" circumstances is too vague to serve as a meaningful check on trial courts or to guarantee the right to an impartial jury.

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[2] *See United States v. Bowman*, 106 F.4th 293, 304 n.11 (4th Cir. 2024) ("[T]he validity of even a narrow implied-bias doctrine is uncertain"); *United States v. Russell*, 595 F.3d 633, 641 (6th Cir. 2010) ("[T]here is a question as to the continued viability of the implied-bias doctrine after *Smith.*"); *see also Cutts v. Smith*, 630 F. App'x 505, 509 (6th Cir. 2015) (unpublished) (reviewing this Court's case law and concluding that *Smith v. Phillips* "introduced a level of uncertainty that has remained unresolved in more than three decades").

[3] *See* Pet. at 9 (collecting scholarship published within a year of *Smith*).

III. Appellate decisions addressing implied bias due to personal experience have not identified a consistent set of factors relevant to a decision on the merits.

In this case, Petitioner has consistently argued that Juror No. 40 was biased because he was the victim of a near-identical crime. Lower courts have addressed similar arguments in the past.[4] However, decades of legal development have not led to any sort of agreement regarding the factors which are relevant to this analysis. Does it matter if the juror concealed relevant facts during voir dire? If the juror was the victim as opposed to their close friend or family member? If recency matters, what about geographic proximity? Or the type of crime?

It is difficult—if not impossible—to identify patterns in the analyses and outcomes of analogous implied bias cases. Indeed, without any consensus over the appropriate standard of review, with the widespread application of a vague and ahistorical merits test, and with inconsistent outcomes in cases involving similar fact patterns, it is speculative, at best, to

[4] *See, e.g.*, *United States v. Umaña*, 750 F.3d 320, 341 (4th Cir. 2014) (reasoning, in a case involving charges of murder in aid of racketeering, that it was within the trial court's discretion to qualify a juror whose brother had been the victim of murder attempt 30 years prior; additionally emphasizing that "it is generally within a trial court's discretion to qualify a juror whose close relative was a victim of a crime similar to that with which a defendant is charged" because such a situation is not "extreme" enough to warrant a finding of implied bias); *Fields v. Brown*, 503 F.3d 755, 768-75 (9th Cir. 2007) (reasoning, on habeas review from a case involving allegations of robbery, sexual assault, and murder, that there was no basis to invalidate the defendant's conviction because of a selected juror's honest disclosure that his wife had been the victim of an unsolved rape and robbery committed by somebody who resembled the defendant; emphasizing that "when the issue of bias arises after trial . . . dishonesty in voir dire is the critical factor"); *United States v. Powell*, 226 F.3d 1181, 1189 (10th Cir. 2000) (reasoning, in a case involving kidnapping and sexual assault, that a juror whose daughter had been raped 10 years prior was properly qualified); *United States v. Gonzalez*, 214 F.3d 1109 (9th Cir. 2000) (reversing the defendant's conviction for conspiracy, cocaine distribution, and money laundering; reasoning that a selected juror should have been excused under either an express or implied bias theory after she disclosed that her ex-husband had used and dealt cocaine, which caused the break-up of her family); *Dyer v. Calderon*, 151 F.3d 970, 981-84 (9th Cir. 1998) (reasoning, on habeas review in a murder case, that a juror who had concealed the fact of her brother's murder was impliedly biased); *Gonzales v. Thomas*, 99 F.3d 978, 987-91 (10th Cir. 1996) (reasoning, on habeas review from a conviction for criminal sexual penetration, that a juror who had previously been raped was not impliedly biased; emphasizing that the experience did not have a "detrimental life-changing impact," had occurred 25 years prior, and had never been reported); *Hunley v. Godinez*, 975 F.2d 316 (7th Cir. 1992) (concluding, on habeas review from a case where the defendant allegedly committed burglary and murder, that the jury as a whole was impliedly biased because four members had been burglarized while sequestered; emphasizing that the burglary "placed the jurors directly in the victim's situation before she was murdered," that the entire jury was notified of the burglaries, that it was a close case, and that holdout jurors had changed their votes after the burglaries); *Burton v. Johnson*, 948 F.2d 1150, 1158-59 (10th Cir. 1991) (ordering a new trial for a defendant who had been convicted of murder after raising a battered woman defense; reasoning that a juror who had not disclosed her own ongoing abuse was impliedly biased).

assert that any other circuit would "reach the same outcome as the decision below based on the facts of this case." Br. in Opp. at 12. That is why Petitioner highlighted *Skilling v. United States*, 561 U.S. 358 (2010). *See* Pet. at 24-26 (urging the Court to use *Skilling* as "a playbook on how to provide guidance for lower courts confused about juror bias"). Analyzing juror prejudice in a high-profile case, the *Skilling* Court emphasized the size and characteristics of the community where the crime occurred, the prejudicial content of the news coverage, the period of time between the news coverage and trial, and the ultimate outcome. *Skilling*, 561 U.S. at 381-84. The opinion's reasoning was clear, cogent, and provided a roadmap for future cases.

A similar roadmap can be produced by granting certiorari in this case. In fact, the government does not argue otherwise. It points to no procedural defects or preservation issues that would impede this Court's review. The path forward is clear.

IV. The questions presented are worthy of this Court's review.

Overall, the government argues that Petitioner presents a "factbound" question which does not warrant this Court's intervention. Br. in Opp. 8. Notably, the government used that same argument to oppose the grant of certiorari in *Skilling. See* Br. in Opp., 2009 WL 2481332, at *24 ("Petitioner's fact-specific challenge to the sufficiency of the voir dire warrants no further review."). But that was an argument which was unsuccessful in 2010, and it is an argument which should be unsuccessful today.

The doctrine of implied bias is badly in need of clarification and harmonization, and the stakes could not be higher. "The founders saw representative government and trial by jury as 'the heart and lungs' of liberty." *Erlinger v. United States*, 602 U.S. 821, 829 (2024) (quoting Letter from Clarendon to W. Pym (Jan. 27, 1766), in 1 Papers of John Adams 169 (R. Taylor

ed. 1977)). The Court must act to breathe new life into the doctrine of implied bias, to protect the vitality of the Sixth, Fifth, and Fourteenth Amendments, and to safeguard our liberty.

CONCLUSION

For the foregoing reasons and those stated in the petition, a writ of certiorari should be granted.

Respectfully submitted this 29th day of October, 2025,

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