No. _____
(CAPITAL CASE)

IN THE

Supreme Court of the United States

CEDRIC RICKS,

Petitioner,

v.

TEXAS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE TEXAS COURT OF CRIMINAL APPEALS

PETITION FOR A WRIT OF CERTIORARI

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Cedric Ricks is scheduled for execution March 11, 2026

CAPITAL CASE
QUESTION PRESENTED

Whether a State violates due process by barring access to its postconviction review procedures—thereby depriving a prisoner of a state-created liberty interest—when it refuses to consider a claim that could not meaningfully have been raised in earlier proceedings because the State alone possessed and withheld material evidence supporting it.

PARTIES BELOW

All parties are listed on the cover page in the case caption. There are no corporate parties involved in this case.

LIST OF RELATED CASES

371st District Court of Tarrant County, Texas

State of Texas v. Cedric Ricks, No. 1361004R

Court of Criminal Appeals of Texas

Ricks v. State, No. AP-77,040 (direct appeal)

Ex parte Ricks, No. WR-85,278-01 (initial state post-conviction proceeding)

Ex parte Ricks, No. WR-85,278-02 (subsequent state post-conviction proceeding)

United States District Court for the Northern District of Texas

Ricks v. Lumpkin, No. 4:20-cv-1299, 2023 WL 8125338 (N.D. Tex. Nov. 22, 2023)

United States Court of Appeals for the Fifth Circuit

Ricks v. Lumpkin, 120 F.4th 1287 (5th Cir. 2024)

Supreme Court of the United States

Ricks v. Guerrero, No. 24-7038 (certiorari from federal habeas)

Ricks v. Texas, No. 17-7676 (certiorari from direct appeal)

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PETITION FOR A WRIT OF CERTIORARI

Cedric Ricks petitions this Court for a writ of certiorari to review the judgment of the Texas Court of Criminal Appeals.

OPINIONS BELOW

The March 4, 2026, order from the Texas Court of Criminal Appeals is attached as Appendix A.

STATEMENT OF JURISDICTION

The Texas Court of Criminal Appeals entered its order on March 4, 2026. This Court has jurisdiction under 28 U.S.C. § 1257(a).

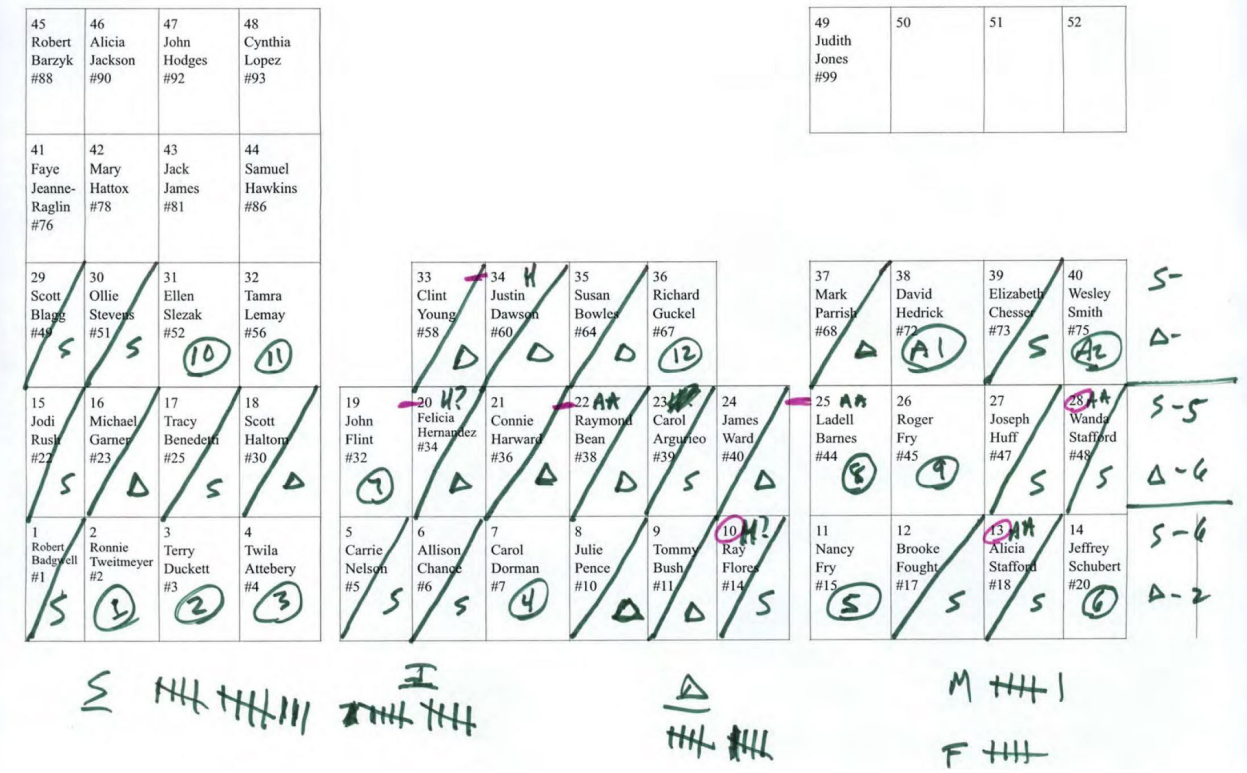
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Fourteenth Amendment to the United States Constitution, which provides in relevant parts:

> nor shall any State deprive any person of life, liberty, or property, without due process of law;
>
> nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Cedric Ricks was convicted of capital murder and sentenced to death in 2014 in Tarrant County, Texas. The State discriminated on the basis of race in jury selection in violation of the Equal Protection Clause of the Fourteenth Amendment. *Batson v. Kentucky*, 476 U.S. 79 (1986). This is most powerfully established by the State's jury selection notes—disclosed for the first time during Ricks's federal habeas proceedings—in which they singled out Black and Hispanic veniremembers within the strike zone:



Ex. 8. The State marked the letters "AA" by the names of Black veniremembers within the strike zone and used purple pen to emphasize any minority veniremembers. *Id.* The State also tracked the race of each veniremember on the panel:

Panel Random List - continued ....

Start Date : Thursday, March 20, 2014 9:00 am
Judge : Mollee Westfall
Room : 371ST District Court, 5th Floor
Case Name : 371 03/20/14

Rnd No	Orig No	New OrderNo	Candidate ID	Name	Gender
20	20	14		FLORES, RAY	Male H/m
21	21	15		FRY, NANCY KATHERINE	Female W/F
22	22	16		NIXON, DONNA JEAN	Female B/F
23	23	17		FOUGHT, BROOKE ELAINE	Female W/F
24	24	18		STAFFORD, ALICIA ANN	Female B/F
25	25	19		BRIDGES, MARY HARPER	Female W/F
26	26	20		SCHUBERT, JEFFREY LOY	Male W/m
27	27	21		UNDERWOOD, NATHANIAL LEE self-employed A/C work	Male W/m
28	28	22		RUSH, JODI LAURENE	Female W/F
29	29	23		GARNER, MICHAEL AARON	Male W/m Scottsdale w/ 12
31	31	24		BROCK, ANTHONY ALLEN lost car - has to take bus (cloth)	Male W/m
33	33	25		BENEDETTI, TRACY SCHWARZ	Female W/F
34	34	26		KNAPP, ROBERT THOMAS	Male W/m

Legend
J = Juror, A = Alternate, CP = For Cause (P), CD = For Cause (D), PD = Peremptory (D), PP = Peremptory (P), JC = Joint Cause, C = Court, NU = Not Used

Ex. 6 a 2. "[T]he focus on race in the prosecution's file plainly demonstrates a concerted effort to keep black prospective jurors off the jury." *Foster v. Chatman*, 578 U.S. 488, 514 (2016). Despite diligent attempts to obtain them by trial and state habeas counsel, those notes were disclosed by the State for the first time—likely inadvertently— while Ricks's federal habeas proceedings were ongoing.

At trial, Ricks already suspected that the State had singled out minority jurors to exclude them from his jury. Trial counsel timely raised a *Batson* objection and, when the trial court denied it "just based on the numbers . . . without the necessity of the State having to offer race-neutral reasons," asked that the trial court review the State's jury selection notes and "place those notes in their original format and seal them in the record." 30 RR 25–26, 35–36. The State objected and the trial court denied counsel's request: "I will not require the State's notes regarding those strikes to be included in the record." *Id.* at 37.

Based on the "limited information" in the record, Ricks's direct appeal counsel investigated but did not raise a *Batson* claim on direct appeal. App. B at ¶ 6. The Texas Court of Criminal Appeals ("TCCA") endorsed this as an objectively reasonable strategic decision by direct appeal counsel. *Ex parte Ricks*, 2020 WL 6777958, *1 (Tex. Crim. App. Nov. 8, 2020). As recently stated by Ricks's direct appeal counsel, "[h]ad this information been made a part of the appellate record, [she] would have developed the *Batson* issue" on direct appeal. App. B at ¶ 7.

Ricks continued to pursue evidence of the State's *Batson* violation in state habeas. His counsel "asked the attorney representing the State to be able to review the State's complete file," which "turned out to be a difficult process." App. C at ¶ 3. The State "[e]ventually" acquiesced and represented to state habeas counsel that it had made its file available, but the State's jury selection notes "were not part of the files turned over to [her] by the State." *Id.* at ¶ 4. As recently

stated by state habeas counsel, "[h]ad the State's notes from jury selection been in the files turned over to [her] by the State, [she] would have used them to support the allegation in Mr. Ricks's habeas application that the State violated *Batson* during his trial." *Id.* at ¶ 5.

It was not until November 2021, during federal habeas proceedings that the State turned over, likely inadvertently, their racially-annotated notes showing that they were tracking the race of potential jurors and singling out minority jurors who fell within the strike zone. Armed with this evidence of the State's discriminatory intent, Ricks sought, but was denied, a *Rhines* stay to return to the state court to present his *Batson* allegations. *Ricks v. Lumpkin*, 2023 WL 8224931, *13 (N.D. Tex. Sept. 26, 2023). Thus, his first opportunity to present this evidence to the state courts was not until this Court denied certiorari last fall.[1] *Ricks v. Guerrero*, 146 S. Ct. 124 (Oct. 6, 2025) (Mem).

Finally in possession of this evidence, Ricks seized the opportunity to raise the *Batson* claim in the state courts for the first time. In accordance with Texas's statutory framework for receiving merits adjudication of a claim raised in a subsequent state habeas application, Ricks showed that due to the State's conduct and despite his trial and state habeas counsel's diligence, this evidence of the State's discriminatory intent was previously unavailable to him. *See* Tex. Code Crim. Proc. art. 11.071 §§ 5(a)(1), (e). Still, the TCCA found that Ricks "failed to show that he meets satisfies the requirements of Article 11.071 § 5" and dismissed Ricks's *Batson* claim. App. A at 2–3. That finding thus rewarded the State's concealment of evidence establishing its

[1] Under Texas's abstention doctrine, "[t]he long time practice of [the TCCA] is to automatically dismiss writ applications when the applicant also has a writ pending in federal court that relates to the same conviction." *Ex parte Soffar*, 120 S.W.3d 344, 345 (Tex. Crim. App. 2003). Had Ricks returned to state court to present these *Batson* allegations prior to the conclusion of his federal habeas proceedings, the TCCA would accordingly have automatically dismissed his successor application.

discrimination on the basis of race in jury selection. The State's racial discrimination in jury selection therefore never was—and absent this Court's intervention, never will be—scrutinized.

REASONS FOR GRANTING THE WRIT

This case presents an important question of federal law worthy of this Court's review. As applied to Ricks, the TCCA's application of its post-conviction review procedures to prevent merits adjudication of the State's *Batson* violation was fundamentally unfair and violated due process. *Medina v. California*, 505 U.S. 427, 445–46 (1992). The case presents this Court an opportunity to ensure that individuals seeking to utilize state post-conviction procedures can do so in a manner that comports with due process. This issue is particularly important here, as the failure to provide Ricks with adequate process prevented him from being able to vindicate a compelling *Batson* claim. This Court should therefore intervene to remedy this injustice.

I. Closing the courthouse doors to a death-sentenced person who diligently pursued facts supporting his claim for relief is fundamentally unfair and violates due process.

A. Texas must administer its state post-conviction framework in a manner consistent with due process.

Texas's post-conviction statutory framework generally prohibits a court from considering the merits of a claim presented in a habeas corpus application filed after the statutory time limit for filing an initial habeas corpus application. Tex. Code Crim. Proc. art.11.071 § 5. The statute nevertheless permits merits adjudication of a claim raised in a subsequent application where that claim "could not have been presented previously in a timely initial application . . . because the factual or legal basis was unavailable on the date the applicant filed the previous application[.]" Tex. Code Crim. Proc. art. 11.071 § 5(a)(1). The statute further specifies that a factual basis is deemed unavailable "if the factual basis was not ascertainable through the exercise of reasonable

diligence on or before" the date of the previously-filed application. *Id.* at § 5(e).[2] Thus, upon showing that a claim raised in a subsequent application meets § 5(a)(1), an applicant may receive merits adjudication of that claim—and state habeas corpus relief.

This Court has made clear that once a state establishes a liberty interest in obtaining relief from an unconstitutional conviction or sentence, as Texas has done with the enactment of § 5 and Article 11.071 more broadly, the procedures for vindicating that interest must comport with fundamental fairness. *See Dist. Attorney's Off. for Third Jud. Dist. v. Osborne*, 557 U.S. 52 (2009). In short, a State that chooses to open the door to postconviction claims for relief from a conviction or sentence tainted by constitutional error cannot then close it without providing adequate process under the Due Process Clause. A prisoner may therefore bring a procedural due process claim alleging that "the State's procedures for postconviction relief are fundamentally inadequate to vindicate the substantive rights provided," *Osborne* 557 U.S. at 69, although the threshold for such a claim is high.

There are two elements to a procedural due process claim: (1) "deprivation by state action of a protected interest in life, liberty, or property," and (2) "inadequate state process." *Reed v. Goertz*, 598 U.S. 230, 236 (2023). A procedural due process violation occurs where the state procedure "'offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental,' or 'transgresses any recognized principle of fundamental fairness in operation.'" *Osborne*, 557 U.S. at 69 (2009) (quoting *Medina*, 505 U.S. at 446, 448).

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[2] The claim must further rest upon "sufficient specific facts that, if proven, establish a constitutional violation sufficiently serious as to likely require relief[.]" *Ex parte Campbell*, 226 S.W.3d 418, 422 (Tex. Crim. App. 2007).

B. The TCCA's finding that the State's withholding access to evidence of its racial discrimination that was in its sole possession does not meet § 5(a)(1) violates fundamental fairness.

In accordance with the Texas framework described above, Ricks sought merits adjudication of the *Batson* claim by establishing that the factual basis for that claim was not previously available through the exercise of reasonable diligence. He showed that the State stymied trial and state habeas counsel's access to the unequivocal evidence of the State's race-based decision-making in jury selection. *See Foster* 578 U.S. at 514 ("[T]he focus on race in the prosecution's file plainly demonstrates a concerted effort to keep black prospective jurors off the jury."); *see also id.* at 511 (document reflecting preoccupation with veniremembers' race "entitled to significant weight, especially given that it is consistent with our serious doubts about the prosecution's account of the strike"). In addition to the trial record reflecting trial counsel's request, for the State's notes, the State's objection, and the trial court's denial of that request, Ricks proffered sworn declarations from direct appeal and state habeas counsel establishing their diligence:

- At trial, the State objected to, and the trial court denied, trial counsel's request that the trial court review the State's jury selection notes and make those materials part of the record. 30 RR[3] 36–37.
- On direct appeal, counsel was limited to the record as it existed following the State's objection to, and trial court's denial of, inspection of the State's jury selection notes and inclusion of them in the record under seal. Based on that record, direct appeal

[3] RR refers to the Reporter's Record at Ricks's trial.

counsel did not raise a *Batson* claim, App. B at ¶ 6, a decision the TCCA endorsed as objectively reasonable. *Ricks*, 2020 WL 6777958, at *1. As sworn by direct appeal counsel though, "[h]ad this information been made a part of the appellate record, [she] would have developed the ***Batson*** issue and included it as a point of error in Mr. Ricks's brief to the Court of Criminal Appeals on direct appeal." App. B at ¶ 7.

- In state habeas, the State misrepresented to state habeas counsel that it had made its entire file available to her:

> 3. As part of my representation of Mr. Ricks, I asked the attorney representing the State to be able review the State's complete file in connection with its prosecution of Mr. Ricks's case. I made this request before filing Mr. Rick's habeas application. Getting access to the State's file turned out to be a difficult process. Eventually, the State turned over numerous CDs and indicated that the remainder of its file was available electronically via Tarrant County's discovery sharing platform, ECFS. I reviewed all of the materials that the State turned over to me.
>
> 4. Federal habeas counsel showed me the State's notes from jury selection, including a panel list and a strike zone chart annotated to reflect the race of potential jurors. These materials were not part of the files turned over to me by the State.
>
> 5. Had the State's notes from jury selection been in the files turned over to me by the State, I would have used them to support the allegation in Mr. Ricks's habeas application that the State violated *Batson* during his trial.

App C.

- In federal habeas and in connection with proceedings in the trial court arising from Ricks's access to trial records, the State argued that Ricks's "federal habeas counsel has already been granted the same access as was granted to [his] trial counsel to the casefile of [his] prosecution maintained by the Tarrant County Criminal District Attorney" and that any "further relief is unnecessary" because federal habeas counsel had already been provided "with the same documents as were provided to his state

habeas counsel[.]" The State did not turn over these notes until November 2021, when they were likely inadvertently included in records made available for federal habeas counsel's review.

These notes were therefore not available through the exercise of "reasonable diligence" at the time of Ricks's first and only prior state habeas application.

Based on these allegations, supported by the record and sworn declarations from prior counsel, Ricks should have been entitled to merits review under Texas's post-conviction review procedures. By finding that he was not, the TCCA unfairly prohibited any merits adjudication of the *Batson* claim, in violation of due process, and ultimately deprived him vindication of his Fourteenth Amendment right to equal protection. As applied to Ricks, allowing Article 11.071 § 5 to bar him from presenting his *Batson* claim violated due process. Moreover, absent this Court's intervention, the State's misconduct—both in striking jurors on the basis of race and then preventing access to decisive evidence of its racial discrimination—will also have been rewarded.[4]

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[4] Confronted with procedural bars standing in the way of remedying racial discrimination in criminal jury proceedings, this Court has repeatedly emphasized that "racial bias implicates unique historical, constitutional, and institutional concerns[,]" to which procedural bars must yield. *Pena-Rodriguez v. Colorado*, 580 U.S. 206, 224 (2017). In *Buck v. Davis*, 580 U.S. 100 (2017), it rejected the argument that a claim alleging that trial counsel was ineffective for introducing racist testimony should fail based on estoppel or waiver insofar as racism was injected into the proceedings by the defendant's own counsel. *Id.* at 125–26 (describing argument as "beside the point"). In *Pena-Rodriguez*, the Court created an exception to the long-standing bar on juror testimony to allow consideration of racist statements made by jurors during their deliberations. 580 U.S. at 225. In *Powers v. Ohio*, 499 U.S. 400 (1991), it rejected the argument that a defendant does not have standing to challenge racially discriminatory strikes against potential jurors who are of a different race to that of the defendant's. *Id.* at 411–15. And just this term, the Supreme Court granted certiorari in a *Batson* case on the question of whether, as a matter of Supreme Court caselaw, a petitioner can waive his right to rebut a prosecutor's step two reasons. *Pitchford v. Cain*, No. 24-7351, __ S. Ct. __, 2025 WL 3620434 (Dec. 15, 2025) (Mem). This Court has thus signaled its continued scrutiny of procedural bars standing in the way of claims that racial discrimination infected a trial.

These concerns are especially heightened in the *Batson* context because, as this Court has emphasized, "[r]ather, it is because racial discrimination in the selection of jurors 'casts doubt on the integrity of the judicial process' and places the fairness of a criminal proceeding in doubt." *Powers*, 499 U.S. at 411 (quoting *Rose v. Mitchell*, 443 U.S. 545, 556 (1979)). In addition, "[t]he harm from discriminatory jury selection extends beyond that inflicted on the defendant and the excluded juror to touch the entire community." *Batson*, 476 U.S. at 87; *Powers*, 499 U.S. at 409 ("An individual

II. The State failed to provide Ricks adequate process to raise a powerful *Batson* claim based on newly available evidence.

This Court's intervention is warranted because the State failed to provide Ricks with adequate process to vindicate his liberty interests and protect his Fourteenth Amendment right to equal protection. At trial, immediately following the parties' simultaneous exercise of their peremptory strikes, trial counsel timely raised a *Batson* objection. 30 RR 25–26. In support of their *prima facie* case, trial counsel explained that (1) Ricks is Black, (2) the State struck the only two Black women (A. Stafford and W. Stafford) and the only Hispanic person (Flores) within the strike zone,[5] and (3) the State disparately questioned one of the Black women against whom it exercised a peremptory strike. 30 RR 26–32. The State then asked that the record reflect that the defense had struck a Black person and a person whom the State identified as Hispanic[6] and that one Black person was seated on the jury. *Id.* at 30. The court denied the *Batson* challenge "just based on the numbers [and] without the necessity of the State having to offer race-neutral reasons." *Id.* at 35. It also denied trial counsel's request that the court review the State's jury selection notes and place those notes in the record under seal. *Id.* at 36.

Despite Ricks's diligent attempts to obtain those notes at trial and during state habeas proceedings, those notes were disclosed by the State for the first time after his appeal and initial

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juror does not have a right to sit on any particular petit jury, but he or she does possess the right not to be excluded from one on account of race.").

[5] Flores was the only person within the strike zone who identified his race on the juror questionnaire as Hispanic. The trial court later found that veniremember Dawson had "a heritage that includes half-Hispanic," 30 RR 34, in response to the State's argument that he "appears to be Hispanic" and yet had not been struck by the State, *id.* at 31. The State further asserted that veniremember Hernandez, against whom it had not exercised a peremptory strike, was Hispanic. *Id.* at 30. Both Dawson and Hernandez identified their race as white on their juror questionnaires.

[6] *See* n.6.

state post-conviction review proceeding, which prevented him from being able to use them without passing through additional state restrictions on review. The notes reflect that the State was marking its materials to single out the race of Black and Hispanic veniremembers and provide substantial support for the allegation that the State violated *Batson*. Exs. 7; 8.[7] This "persistent focus on race in the prosecution's file" and further evidence set out below establishes that the State struck venirepersons on the basis of race. *Foster*, 578 U.S. at 512. The State's discrimination on the basis of race in jury selection violates the Equal Protection Clause of the Fourteenth Amendment.

Discrimination on the basis of race or ethnicity in jury selection violates the Equal Protection Clause of the Fourteenth Amendment. *Batson*, 476 U.S. at 86. "The Constitution forbids striking even a single prospective juror for a discriminatory purpose." *Flowers v. Mississippi*, 588 U.S. 284, 303 (2019) (citing *Foster*, 578 U.S. at 499); *see Snyder v. Louisiana*, 552 U.S. 472, 478 (2008) (same). In adjudicating a *Batson* challenge, courts generally follow a three-step analysis:

> First, a defendant must make a prima facie showing that a peremptory challenge has been exercised on the basis of race; second, if that showing has been made, the prosecution must offer a race-neutral basis for striking the juror in question; and third, in light of the parties' submissions, the trial court must determine whether the defendant has shown purposeful discrimination.

Hall v. Texas, 663 S.W.3d 15, 41 (Tex. Crim. App. 2021) (quoting *Snyder*, 552 U.S. at 476–77).

Here, the trial court denied the *Batson* claim at step one, but the State later provided purportedly race-neutral reasons in state habeas on a related claim. In support of establishing that the State violated *Batson*, Ricks can show that: (1) the State annotated its jury selection materials

[7] "Ex." refers to the exhibits Ricks filed with his subsequent state habeas application.

to reflect the race and ethnicity of veniremembers; (2) the State struck A. Stafford on the basis of race; and (3) the State struck W. Stafford on the basis of race.

A. The State annotated its jury selection materials to reflect the race and ethnicity of veniremembers.

The State annotated the race and ethnicity of all veniremembers on a list of qualified members of the panel and of minority veniremembers on a strike-zone chart. On a typed 17-page list of veniremembers titled "Random Panel List," the State made the following annotations:

- "W/M" by the names of white male veniremembers;
- "W/F" by the names of white female veniremembers;
- "B/F" by the names A. Stafford, Nixon, Williams, W. Stafford, Jeanne-Raglin, McLean, and Slay;
- "B/M" by the names Bean, Barnes, Jackson, Reynolds, Buris, Runnels, and Vance;
- "H/M" by the names Flores, Saucedo, and Hernandez; and
- "Other/M South Asian" by the name Parikh.

Ex. 6. On a typed chart with each box corresponding to the name of a qualified veniremember and in order of qualification, the State singled out Black and Hispanic veniremembers:

- The number 28, corresponding to W. Stafford, has been circled in purple pen and the annotation "AA" made in green pen;
- The number 13, corresponding to A. Stafford, has been circled in purple and the annotation "AA" made in green pen;
- The number 10, corresponding to Flores, circled in purple and the annotation "H" made in green pen;
- The annotation "AA" made in green pen by the name Barnes.

Ex. 8. The State did not include the race of white veniremembers. This "persistent focus on race in the prosecution's file" underscores that the State impermissibly struck veniremembers on the

basis of race in violation of the Equal Protection Clause of the Fourteenth Amendment. *Foster*, 578 U.S. at 512.[8]

B. The State struck A. Stafford on the basis of race.

Trial counsel raised a *Batson* objection challenging the State's peremptory strike against A. Stafford. 30 RR 25–26. Amongst other factors, trial counsel pointed to the State's disparate questioning of A. Stafford, which was the longest of any *voir dire* by the State. *Id.* at 32. The State's materials from jury selection also reflect that the State annotated the letters "B/F" and "AA" by A. Stafford's name on the State's list of veniremembers and a strike-zone chart. Exs. 7; 8.

In state habeas, the State represented that it had exercised a peremptory strike against A. Stafford because:[9] (1) "she indicated in her juror information sheet that she was not in favor of the death penalty;" (2) she "expressed distrust in the criminal justice system," "she did not always feel that everyone is treated fairly in the criminal justice system," and "[s]he stated that there is much room for improvement in the criminal justice system" in her questionnaire; (3) her brother had received a 25-year sentence and the State did "not want to accept veniremembers with relatives or friends who are in trouble with the law or with family members who have been convicted of a crime;" (4) "[s]he had prior jury service that resulted in a not guilty verdict;" and (5) "[s]he was

[8] As the Supreme Court has cautioned, that the State further annotated certain materials to include gender and ultimately struck the only two Black women who could have served is a further red flag for discriminatory intent. *See J.E.B. v. Alabama*, 511 U.S. 127, 145 (1994) ("Because gender and race are overlapping categories, gender can be used as a pretext for racial discrimination.").

[9] The State provided these supposedly race-neutral reasons in response to Ricks's claim during his initial state habeas proceedings that his direct appeal counsel was ineffective for failing to raise *Batson* error on appeal. That claim was resolved in state court without the State's racially-coded jury selection notes that the State disclosed for the first time in federal habeas.

45 years old with no children." 3 SHCR 1462. Comparator juror analysis establishes that these reasons are all pretextual.

From the outset, the timing of these reasons—given in state habeas nearly 3 years after jury selection—should give this Court pause. *See Miller-El v. Dretke*, 545 U.S. 231, 246 (2005) (describing State's later-in-time reason for strike as "difficult to credit"). By providing these reasons by affidavit only and objecting to a live hearing, the State further deprived the trial court of the opportunity to assess, and Ricks to challenge, their credibility.[10] The laundry-listing of reasons should also call into question their reliability. *See Foster*, 578 U.S. at 502 (describing "laundry-list" of reasons given by State). In addition to these red flags, Ricks can demonstrate that these reasons are pretextual because they also apply to white jurors the State did not strike. *See Miller-El*, 545 U.S. at 241 ("If a prosecutor's proffered reason for striking a black panelist applies just as well to an otherwise-similar nonblack who is permitted to serve, that is evidence tending to prove purposeful discrimination to be considered at *Batson*'s third step.").

First, the State represented it struck A. Stafford because she indicated in her questionnaire that "she was not in favor of the death penalty." 3 SHCR 1462. But three white jurors not struck by the State (jurors Attebery, Slezak, and Guckel) also answered "not in favor" to that same question. Exs. 10; 13; 15 at 4. And all four justified their answers in similar manners: A. Stafford explained that "you must have a clear understanding of what constitutes the offense of capital murder and the offense must be proven;" Attebery wrote that "it depends on the circumstances so thos [sic] to be considered;" Slezak "d[idn't] think the death penalty should be used too often;"

[10] Moreover, the judge who adjudicated the state habeas proceedings did not conduct *voir dire*.

and Guckel would limit its use to "special circumstances." *Id.* Moreover, in response to whether the death penalty "serves any legitimate purpose," A. Stafford answered "yes" whereas Attebery answered "no." Exs. 18; 10 at 4. Of particular salience to the facts of the case, A. Stafford specified that the death penalty should be available for "[m]alicious violent acts against children." Ex. 18 at 4.

Second, the State criticized A. Stafford for "express[ing] distrust in the criminal justice system," that "she did not feel that everyone is treated fairly in the criminal justice system," and "stat[ing] that there is much room for improvement in the criminal justice system" in her questionnaire. 3 SHCR 1462. But her views were no different, if not of greater benefit to the State, than those of juror Attebery. Asked about their "personal opinions about the criminal justice system," A. Stafford wrote that she "d[idn't] always feel that everyone is treated fairly' and Attebery that "[s]ometimes the criminal justice system can be to [sic] lenient on some people and hard on others." Exs. 18; 10 at 17. Likewise, in response to "[h]ow successful" the criminal justice system is, A. Stafford answered that it has "much room for improvement" and Attebery that it is "[s]uccessful in some areas." *Id.* But when asked to rate the punishment of offenders, A. Stafford rated it as "just about right" whereas Attebery thought it "too severe." *Id.* Moreover, in her *voir dire*, juror Attebery stated that she believed her uncle had been falsely convicted. 12 RR 198.

Third, the State indicated that it struck A. Stafford because it "[d]id not want to accept veniremembers with relatives or friends who are in trouble with the law or with family members who have been convicted of a crime." 3 SHCR 1462. But had this been a genuine concern, then the State should have also struck juror Attebery, whose uncle was convicted of a sexual offense against his son and her son of family violence, and juror Flint, whose son was or had been incarcerated. Exs. 10; 12 at 13, 14.

Moreover, A. Stafford and juror Attebery were disparately questioned about their family members' experiences of the criminal justice system. During *voir dire*, the State questioned A. Stafford extensively about the circumstances of her brother's conviction and in a manner designed to "arm [the] prosecutor with seemingly race-neutral reasons to strike"[11] her:

> Q. Do you feel like he was treated fairly in that case?
>
> A. He took a plea bargain. He was advised to take a plea bargain, and so. . .
>
> Q. Well, what's your -- what's your -- what's your perception of whether or not he was treated fairly?
>
> A. My perception is that he took the plea, which is what his attorney advised. I don't know, if he would have gone to trial, if he would have received that sentence, because due to the -- you know, the circumstances, he actually was the only person that did any time.
>
> Q. Okay.
>
> A. And I honestly -- you know, it's my brother. I don't know all the details of the -- you know, of the situation of the case,
>
> Q. Uh-huh.
>
> A. -- but. . .
>
> Q. And that's why I'm just asking you about your perception of how things went.
>
> A. Yeah.
>
> Q. I mean, obviously, here's what I'm getting at.
>
> A. Uh-huh.
>
> Q. Robert and I are prosecutors.
>
> A. Yes.

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[11] *Flowers*, 588 U.S. at 310.

Q. And, you know, I'm sensitive -- when people like you come into the courthouse and you have a relative that's been convicted, --

A. Uh-huh.

Q. -- I'm sensitive to the fact that you may feel like a prosecutor was overbearing or overzealous or just somehow your loved one was railroaded into taking a plea bargain that you don't think they deserved.

A. I was going to say, honestly, he took the plea bargain based on his attorney's, you know, information or what his attorney advised him to do. And my parents are older or whatever else. And, you know, he was advised from his attorney that if you take this plea -- if you pretty much take the plea, go do a quarter of your sentence, pretty much, when you come up for parole, you're not in trouble, whatever else, then more than likely you will come home, and with someone with no history of anything. So he just did what the attorney advised. So --

Q. Well, so, I guess, let me ask it a different way.

A. Okay.

Q. Do you feel like that was a fair outcome to the case for him?

A. For him? No.

Q. Okay. And why not?

A. Because I think that, you know -- whatever the circumstances were, I just feel as though that everyone that was involved or had anything to do with it should have also been punished.

Q. Whose fault do you think it is that everyone involved was not punished? Why do you think that happened?

A. I really honestly don't know. That's, you know, a question that, you know, I've had.

15 RR 83–85. By stark contrast, the State asked juror Attebery just two questions about her uncle's conviction:

Q. Do you feel like he was falsely convicted?

A. From what I know of him, yes, I felt that way, but I didn't live in the house, and, you know, sometimes people are not what they seem.

Q. So you kind of feel like you just don't have enough facts one way or the other to know for sure?

A. Yeah. [. . .]

12 RR 198. Even when she indicated she thought her uncle was falsely convicted, the State immediately brushed her concerns aside. *Id.*; *see Flowers*, 588 U.S. at 310 (by disparately questioning white and Black jurors, "[p]rosecutors can decline to seek what they do not want to find about white prospective jurors"). Similarly, the State did not question juror Flint on his son's prison or jail time *at all*. *See* 17 RR 5–52. Tellingly, the State did not dispute that its questioning of A. Stafford was the longest of any veniremember.[12] 30 RR 32.

Fourth, the State claimed that it struck A. Stafford because she "had prior jury service that resulted in a not guilty verdict." 3 SHCR 1462. But three white jurors not struck by the State also indicated that they had previously served as jurors (jurors Attebery, Dorman, Flint). Exs. 10; 11; 12 at 15–16. And whereas A. Stafford was questioned repeatedly by the State on the verdict in the case, 15 RR 71–72, 101–02, juror Flint was never asked about the verdict and jurors Dorman and Attebery were not asked by the State about their prior jury service at all, 17 RR 12; 13 RR 70–143.

Fifth, the State treated A. Stafford differently to white jurors not struck by the State who also did not have children. Although the State claimed that it "d[id] not want to accept veniremembers who have no children because it is [its] belief that they are not as invested in our community," 3 SHCR 1462, the very first juror the State accepted on the jury, a white man (juror

[12] After the State finished its *voir dire* of A. Stafford, the trial court remarked that "[s]ince you've been sitting there for about an hour and 20 minutes, why don't we take a break for just a minute before the Defense asks you some questions?" 15 RR 139.

Twietmeyer), did not have any children. Ex. 9 at 7. Likewise, the State did not exercise a peremptory strike against juror Lemay, a 44-year-old white woman with no children, nor against alternate juror Smith, a white man with no children. Exs. 14; 17 at 7.

In sum, a side-by-side comparison of A. Stafford, a Black woman against whom the State exercised a peremptory strike, and white jurors who were seated on the jury, betrays the pretextual nature of the State's reasons for striking A. Stafford. Based on this comparator juror analysis, the State's "persistent focus"[13] on her race in its jury selection materials, and disparate questioning by the State, Ricks has established purposeful discrimination on the basis of race on the part of the State when it struck A. Stafford.

C. The State struck W. Stafford on the basis of race.

Ricks can also establish that W. Stafford was struck by the State on the basis of race. Trial counsel included W. Stafford in their *Batson* objection. 30 RR 25–26. The State's materials from jury selection reflect that the State annotated the letters "B/F" and "AA" by W. Stafford's name on the State's panel list and its strike-zone chart. *See* Exs. 7; 8. Ricks can also show that the State's proffered race-neutral explanations for striking W. Stafford were pretextual since they also applied to white jurors. *See Miller-El*, 545 U.S. at 241.

In state habeas, the State represented that it had exercised a peremptory strike against W. Stafford because: (1) "she stated that her idea of grace or the idea that somebody is just a human being could be enough to spare their life;" (2) "she was an ordained minister whose discussion regarding forgiveness caused me concern;" (3) "her mother was at one time incarcerated in prison;"

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[13] *Foster*, 578 U.S. at 512.

and "[s]he also had spent six days in the Tarrant County jail[.]" 3 SHCR 1462. Comparator juror analysis establishes that these reasons are pretextual.

First, as to the State's supposed concern about W. Stafford's religious beliefs, W. Stafford stated on *voir dire* that she would have "no hesitation" in finding the defendant guilty, even knowing that that the punishment would be life without parole or death. 20 RR 243. Indeed, W. Stafford made clear she was in favor of the death penalty—much more so than, for example, juror Attebery. *See*, *supra*. In her juror questionnaire, W. Stafford indicated that she was "in favor" of the death penalty and explained that "[a] crime must have consequences." Ex. 19 at 4. She also agreed that "yes," capital punishment serves a legitimate purpose, which she explained as "[t]o put away/punish/serve notice that all actions have consequences." *Id.* When asked for the "best argument in favor of the death penalty," W. Stafford replied that "God has allowed the laws of the land by man. We have to honor that." *Id.* W. Stafford further answered that "no" the death penalty has never been applied in an unfair or discriminatory manner. *Id.* She described the criminal justice system as "very successful" in dealing with crime and "a great system," and she rated the punishment of offenders as "just about right." *Id.* at 17. Finally, W. Stafford indicated in her questionnaire that she could return a verdict resulting in the death penalty and, during *voir dire*, unequivocally stated that her training in the ministry would not prevent her from answering the special issues in a way that would result in the death penalty. 20 RR 268–69.

The State even remarked that W. Stafford had agreed several times that, as required by law, the answer to the special issues depended on the evidence:

> Q. Okay. Okay. Now -- and you've said that a lot, depending on the evidence. Okay?
>
> A. Yes. I think that's what it boils down to for me.

Q. That's key, isn't it?

A. That's key for me.

Q. Okay. It depends on the evidence in the case, right?

A. Correct.

Q. And a juror should let the evidence guide them, right?

A. Correct.

Id. at 264. W. Stafford reiterated that she could answer no to the mitigation special issue knowing that it would result in the death penalty and that her training in the ministry would not stand in the way of that. *Id.* at 266, 268–69.

When asked by the State to give examples of mitigating factors, W. Stafford replied she was "not really sure at this moment." 20 RR 257. She agreed with the State's examples that the defendant's age or background could be mitigating. *Id.* at 257–59. It was only on *voir dire* by the defense that W. Stafford agreed with the defense's statement that "the idea of grace or that somebody is just a human being, that could be enough . . ." *Id.* at 280. The State's failure to engage at all on an issue it later claimed to be concerned about belies its pretextual nature. *See Miller-El*, 545 U.S. at 246 (describing reason for strike as "implausible" where "the prosecution asked nothing further about [issue], as it probably would have done if the [issue] had actually mattered").

The State's focus on her comment to the defense ignores her unequivocal commitment to following the law and evidence, even if it resulted in Ricks's execution. *See Miller-El*, 545 U.S. at 246 (criticizing the summation of a struck veniremember's voir dire testimony that "mentioned only his statements that everyone could be rehabilitated, failing to note that [he] affirmed that he could give the death penalty if the law and evidence called for it, regardless of the possibility of divine grace"). Indeed, the State's supposed reason ignores that W. Stafford unequivocally stated

that she could and would follow the law and evidence—even when the State pointed Ricks out to her as the person who would be executed:

Q. And see the guy at the end of the table down there?

A. Uh-huh.

Q. That's who we're asking to be executed, right?

A. I understood.

Q. You understand that?

A. Yes, sir.

Q. Can you do that?

A. Yes, sir, I can, to the best of my ability.

Q. Okay. If we prove our case, you can do that?

A. Yes, sir, I can.

20 RR 270. Based on her answers to the State's *voir dire*, she "should have been an ideal juror in the eyes of a prosecutor seeking a death sentence, and the prosecutors' explanations for the strike cannot reasonably be accepted." *Miller-El*, 545 U.S. at 246.

Second, the State's supposed concern with W. Stafford's involvement in church ministry is belied by the fact that the State did not object to seating alternate juror Hedrick, a white man and youth minister and online campus pastor. 24 RR 118–19; Ex. 16. Nor did the State strike juror Dorman, a white woman, whose questionnaire indicated that she was or had been a teacher, deacon, and elder at the Disciples of Christ Church. Ex. 11 at 8.

Finally, as to the State's argument that it struck W. Stafford because her mother had been incarcerated, as discussed above, the State did not strike juror Attebery, a white woman whose uncle served 20 years in prison. Remarkably, by contrast with juror Attebery, W. Stafford

unequivocally stated that she believed that her mother was treated fairly by the criminal justice system. 20 RR 272. The State even remarked that it did not think the experience of her mother would impact W. Stafford's ability to serve as a juror. *Id.* ("I don't think you're one of these people, but some folks, those are issues that could affect their ability to be a juror.") This volte-face in state habeas "reeks of afterthought" and only confirms the pretextual nature of the State's supposed reasons. *Miller-El*, 545 U.S. at 246.

These side-by-side comparisons of W. Stafford, a Black woman against whom the State exercised a peremptory strike, and similarly situated white jurors betrays the pretextual nature of the State's reasons for striking W. Stafford. Based on these comparisons and the State's "persistent focus"[14] on her race in its jury selection materials, Ricks has established purposeful discrimination on the basis of race by the State when it struck W. Stafford.

CONCLUSION

This Court should grant *certiorari*. It should also stay Ricks's execution pending the disposition of this petition, as requested by separate application.

[14] *Foster*, 578 U.S. at 512.

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