

No. 25-6980
(CAPITAL CASE)

IN THE
Supreme Court of the United States

Cedric Ricks, Petitioner,

v.

The State of Texas, Respondent.

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

**BRIEF OF AMICUS CURIAE FAIR AND JUST PROSECUTION IN
SUPPORT OF PETITION FOR WRIT OF CERTIORARI**

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BRIEF OF AMICUS CURIAE¹

INTEREST OF AMICUS

Amicus curiae is Fair and Just Prosecution (FJP), a project of the Tides Center. FJP brings together elected prosecutors from around the nation as part of a network of leaders committed to a justice system grounded in fairness, equity, compassion, and fiscal responsibility. FJP's network includes prosecutors from both rural and urban communities who collectively represent nearly 20% of Americans.

FJP is committed to protecting the integrity of our justice system, advancing accountability and fairness, and ensuring the safety of everyone in our communities. FJP believes that prosecutorial power carries profound responsibility. The prosecutor's role is not merely to secure convictions, but to achieve justice and remain impartial. That obligation extends to every stage of the criminal justice process, from jury selection to habeas proceedings.

FJP has a deep understanding of the crucial role that prosecutors play in upholding the integrity of the jury selection process and the critical importance of prosecutors' acknowledging when constitutional errors have infected that process. FJP recognizes that discriminatory jury selection practices undermine the integrity

¹ Pursuant to Rules 32.7(a) and 37.6, Amicus certifies that no party or party's counsel authored this brief in whole or in part and that no party or party's counsel made a monetary contribution intended to fund the preparation or submission of this brief. All counsel of record received timely notice of Amicus's intent to file this brief; and the brief is filed earlier than 10 days before the due date.

of the result in individual cases and public confidence in the system as a whole. The rights and procedures enshrined in *Batson v. Kentucky*, 476 U.S. 79 (1986), represent an important avenue for defendants to vindicate their rights to be free from a trial infected with racial discrimination. Additionally, *Batson* represents the only realistic opportunity to vindicate the rights of the jurors who are being discriminated against and excluded from participation in one of the pillars of our democracy. FJP believes that this Court must step in to prevent a miscarriage of justice and to effectuate *Batson* in rare situations like this one, where newly discovered evidence demonstrates that jurors in Mr. Cedric Ricks's case were improperly discriminated against due to race.

SUMMARY OF ARGUMENT

Forty years ago, this Court determined in *Batson v. Kentucky* that, to ensure defendants receive a fair trial and equal protection under the law, no state may exclude a prospective juror because of their race. *Id.* The ruling was intended to protect against the systematic exclusion of Black and other jurors of color.

Now, four decades later, the racially discriminatory practices that *Batson* sought to eliminate persist. Petitioner Cedric Ricks sits on death row after trial prosecutors used peremptory strikes against two Black prospective jurors under circumstances that strongly suggested racial discrimination. Beginning at trial and for nearly a decade afterwards, prosecutors resisted defense counsel's diligent efforts

to obtain prosecutors' jury selection notes to seek meaningful judicial review of Petitioner's *Batson* claim. When prosecutors finally turned over the notes, *after* Petitioner's state habeas proceedings had concluded, those notes revealed powerful evidence that the challenged strikes were indeed racially motivated. Petitioner filed a Subsequent Application for Post-Conviction Writ of Habeas Corpus pursuant to TEX. CODE OF CRIM. PROC. ART. 11.071 § 5(a)(1) in the trial court on February 26, 2026, raising a *Batson* claim based on the newly disclosed notes. The Texas Court of Criminal Appeals (TCCA) subsequently dismissed Petitioner's Application as an abuse of the writ without reviewing the merits of the claim on March 4, 2026. Now, this Court must step in to prevent the execution of an individual whose jury was selected in an egregious violation of *Batson* where prosecutors improperly focused on race and excluded Black jurors.

Every instance of racially discriminatory jury selection inflicts a constitutional triple harm: it harms defendants by depriving them of their right to a fair trial free from racial animus; it harms Black and other citizens of color by excluding them from participating in their fundamental civic duty of jury service—"the most substantial opportunity that most citizens have to participate in the democratic process" other than voting, *Flowers v. Mississippi* ("*Flowers VI*"), 588 U.S. 284, 293 (2019); and it harms the community as a whole by undermining the integrity of a justice system that promises equal treatment under the law, eroding public trust in that system.

Those harms are most acute when the stakes are highest in capital cases like this one.

Given their unique roles as ministers of justice, prosecutors play an integral role in ensuring that *Batson* violations are not perpetuated. When *Batson* violations do occur, prosecutors should welcome appellate and post-conviction review of meritorious *Batson* claims, not withhold the evidence necessary for judicial review or raise procedural defenses to them. Indeed, prosecutors are tasked not merely with winning convictions, but with acting in the interests of justice, convicting only those who can be proven guilty beyond a reasonable doubt through a fair process. Prosecutors thus have a number of important duties at trial, including ensuring the jury selection process is free from racial discrimination. Prosecutors' ethical duties also continue into post-conviction proceedings. Prosecutors who have learned that racial discrimination infected jury selection should rectify the constitutional violation, not resort to gamesmanship to insulate cases from merits review. When prosecutors abandon their legal and ethical obligation to do justice, it is imperative that this Court step in and provide relief. *Batson's* protections will count for little if prosecutors are allowed to thwart meritorious *Batson* claims by withholding evidence of invidious discrimination. This Court should grant the writ.

ARGUMENT

I. Striking Jurors Based on Race Harms Defendants, Potential Jurors, and the Public.

The Fourteenth Amendment’s guarantee of equal protection prohibits racial discrimination in jury selection. This Court held in *Batson* that the Equal Protection Clause forbids prosecutors from exercising peremptory challenges to exclude jurors on account of their race. 476 U.S. at 89.

To enforce its constitutional mandate, *Batson* established a burden-shifting framework: Once a defendant makes a prima facie showing of discrimination, the prosecutor must articulate race-neutral reasons for the strikes, and the trial court must then determine whether the defendant has proven purposeful discrimination. 476 U.S. at 96-98. Trial courts are supposed to assess “the prosecutor’s credibility” and “the prosecutor’s race-neutral explanations in light of all of the relevant facts and circumstances.” *See Flowers VI*, 588 U.S. at 302-03; *see also Foster v. Chatman*, 578 U.S. 488, 501 (2016) (this searching review “demands a sensitive inquiry into such circumstantial evidence of intent as may be available” (cleaned up)).

The constitutional prohibition on racial discrimination in jury selection serves multiple vital interests. The “harm from discriminatory jury selection . . . touch[es] the entire community.” *Johnson v. California*, 545 U.S. 162, 172 (2005) (quoting *Batson*, 476 U.S. at 87); *see also Davis v. Ayala*, 576 U.S. 257, 285 (2015) (Court has repeatedly emphasized that racially motivated jury selection “undermines our

criminal justice system” and “poisons public confidence in the evenhanded administration of justice”). When prosecutors exclude Black jurors on the basis of race, as prosecutors did in this case, they violate defendants’ Sixth and Fourteenth Amendment rights, deny excluded jurors their constitutional right to participate in democratic governance, and undermine the legitimacy of the justice system. These harms are particularly egregious in capital cases, where discriminatory jury selection can determine not only conviction or acquittal, but whether a defendant lives or dies—as it did here.

a. Striking Jurors Based on Race Deprives the Defendant of a Fair Trial.

Empirical evidence demonstrates that racially homogeneous juries produce systematically different and less fair outcomes than diverse juries. Research shows that less diverse juries spend less time deliberating, consider fewer perspectives, and are more likely to convict defendants of color. *See* Samuel R. Sommers, *On Racial Diversity and Group Decision Making: Identifying Multiple Effects of Racial Composition in Jury Deliberation*, 90 J. PERSONALITY & SOC. PSYCHOL. 597, 608 (2006); *see also* Shamena Anwar et al., *The Impact of Jury Race in Criminal Trials*, 127 QUART. J. ECON. 1017 (2012); William J. Bowers et al., *Death Sentencing in Black and White: An Empirical Analysis of Jurors’ Race and Jury Racial Composition*, 3 J. CONST. L. 171 (2001). All-white and nearly all-white juries make more mistakes and

are more likely to presume guilt, particularly when judging Black defendants. Sommers, *supra*, at 603-04.

Diverse juries, on the other hand, have proven to be better equipped when it comes to accurately assessing witness credibility from multiple perspectives, identifying problems like racial profiling and stereotyping, and holding prosecutors to their burden of proof. *Id.* at 600-06; *see also* William J. Bowers et al., *Crossing Racial Boundaries: A Closer Look at the Roots of Racial Bias in Capital Sentencing When the Defendant Is Black and the Victim Is White*, 53 DEPAUL L. REV. 1497, 1507-08, 1511, 1531 (2004). Thus, this Court has long recognized that racialized jury selection “places the fairness of a criminal proceeding in doubt.” *Powers v. Ohio*, 499 U.S. 400, 411 (1991). And because we cannot reverse an execution, the nature of capital punishment demands the highest level of procedural fairness and the most rigorous scrutiny. *See e.g. Furman v. Georgia*, 408 U.S. 238, 286, 289 (1972) (Brennan, J., concurring) (“Death is a unique punishment”) (“Death . . . is in a class by itself.”); *Lockett v. Ohio*, 438 U.S. 586, 604 (1978) (plurality opinion) (“[T]his qualitative difference between death and other penalties calls for a greater degree of reliability when the death sentence is imposed.”); *McCleskey v. Kemp*, 481 U.S. 279, 340 (1987) (Brenan, J. dissenting) (“It hardly needs reiteration that this Court has consistently acknowledged the uniqueness of the punishment of death.”).

b. Striking Jurors Based on Race Deprives the Struck Jurors of Their Right to Participate in the Democratic Process.

Exclusion from jury service based on race denies an essential aspect of citizenship to members of the community, inflicting dignitary harm on excluded citizens in addition to the harm it causes to defendants.

Jury service is a “duty, honor, and privilege.” *Powers*, 499 U.S. at 415. “Other than voting, serving on a jury is the most substantial opportunity that most citizens have to participate in the democratic process.” *Flowers VI*, 588 U.S. at 293. Thus, exclusion of Black citizens because of their race signals that Black citizens are presumed unqualified by state actors to decide important questions. *Strauder v. West Virginia*, 100 U.S. 303, 308 (1880) (racial exclusion from jury service places “a brand upon [excluded citizens], affixed by the law, an assertion of their inferiority”), *abrogated on other grounds by Taylor v. Louisiana*, 419 U.S. 522, 536 n.19 (1975). “A venireperson excluded from jury service because of race” therefore “suffers a profound personal humiliation heightened by its public character.” *Powers*, 499 U.S. at 413-14.

The harm is made worse because excluded jurors have virtually no practical recourse and thus little reason to challenge their exclusion. “The reality is that a juror dismissed because of race probably will leave the courtroom possessing little incentive to set in motion the arduous process needed to vindicate his own rights.” *See Powers*, 499 U.S. at 415. And even when excluded jurors muster the courage to try, courts are reluctant to hear their collateral claims. *See, e.g., Pipkins v. Stewart*, 105 F.4th 358, 362-63 (5th Cir. 2024) (per curiam) (affirming W.D. La. summary judgment in Equal

Protection action under 42 U.S.C. § 1983 against the Caddo Parish District Attorney’s alleged custom of discriminatory peremptory strikes); *Hall v. Valeska*, 849 F. Supp. 2d 1332, 1337-40 (M.D. Ala. 2012) (dismissing § 1983 action by excluded jurors challenging systematic racial discrimination in peremptory strikes), *aff’d*, 509 F. App’x 834 (11th Cir. 2012).

Peremptory strikes have historically been and to this day still are used to exclude Black potential jurors and other jurors of color. *Cf.* Hon. Morris B. Hoffman, *Peremptory Challenges Should Be Abolished: A Trial Judge’s Perspective*, 64 U. CHI. L. REV. 809, 819 (1997) (describing peremptory strikes as “the last great tool of Jim Crow”). Peremptory strikes have been and are used to racialize juries not only based on explicit race-based policies, but also by using pretextual “race-neutral” criteria that have the same intended discriminatory effect. *See* Equal Justice Initiative, *Race and the Jury: Illegal Discrimination in Jury Selection* (2021).

The harm caused by discriminatory jury selection is compounded by the backdrop of systemic barriers that already compromise equal participation of jurors of color. From the start, Black citizens face underrepresentation in jury pools largely because jury selection systems rely heavily on voter registration and driver’s license lists that systematically exclude communities of color. Julie A. Cascino, *Following Oregon’s Trail: Implementing Automatic Voter Registration to Provide for Improved Jury Representation in the United States*, 59 WM. & MARY L. REV. 2575, 2578-79 (2018) (“Due to the low registration rates of these groups, voter rolls often do not

accurately represent the proportion of eligible minority, low-income, or young voters in a specific community. Accordingly, jury pools are less representative of that community as well.”). People of color also face disproportionate disqualification due to past involvement with the criminal justice system and resulting financial hardship; hardship that is more prevalent in marginalized communities at the outset. *See* Ginger Jackson-Gleich, *Rigging the Jury: How Each State Reduces Jury Diversity by Excluding People with Criminal Records*, Prison Policy Initiative (Feb. 18, 2021). Further, Black jurors encounter higher rates of for-cause challenges, frequently based on their lived experiences with law enforcement and the courts. *See, e.g.*, Thomas Ward Frampton, *For Cause: Rethinking Racial Exclusion and the American Jury*, 118 MICH. L. REV. 785, 790-95 (2020) (studies in Mississippi and Louisiana found that Black prospective jurors were more than three times more likely as white prospective jurors to be excluded “for cause”). Each of these realities operates to reduce jury diversity; together, they aggravate the injuries that racialized peremptory strikes already inflict, which are constitutionally intolerable on their own.

c. Striking Jurors Based on Race Harms the Public by Undermining the Community’s Faith in the Fairness of the Justice System and Making the System Less Effective.

“Discrimination in the jury selection process undermines our criminal justice system and poisons public confidence in the evenhanded administration of justice.” *Ayala*, 576 U.S. at 285. The consequences of discriminatory jury selection extend to all of us. A justice system that tolerates racial discrimination in jury selection—or

that tolerates attempts by prosecutors to thwart judicial review—forfeits the public trust on which effective law enforcement and public safety depend.

This Court has recognized that racial bias in the jury system is a “familiar and recurring evil that, if left unaddressed, would risk systemic injury to the administration of justice.” *See Peña-Rodriguez v. Colorado*, 580 U.S. 206, 224 (2017). And because it “implicates unique historical, constitutional, and institutional concerns,” this Court demands vigilant judicial attention to ensure that racial bias does not infect a defendant’s right to a fair trial. *See, e.g., id.* at 225 (holding that the Sixth Amendment requires an exception to the no-impeachment rule when a juror makes clear statements indicating reliance on racial stereotypes to convict, as racial bias differs from other jury misconduct and threatens systemic harm to the administration of justice); *see also id.* at 221 (the constitutional “imperative to purge racial prejudice from the administration of justice” has deep historical roots).

“The duty to confront racial animus in the justice system is not the legislature’s alone.” *Id.* at 222. When “called upon to enforce the Constitution’s guarantee against state-sponsored racial discrimination in the jury system,” this Court has consistently held that “discrimination on the basis of race, ‘odious in all aspects, is especially pernicious in the administration of justice.’” *Id.* at 222-23 (quoting *Rose v. Mitchell*, 443 U.S. 545, 555 (1979)).

“Enforcing th[e] constitutional principle” of equal protection in jury selection helps to “protect the rights of defendants and jurors, and to enhance public confidence in the fairness of the criminal justice system.” *Flowers VI*, 588 U.S. at 301. This Court has warned repeatedly of the dangers in racializing jury selection in particular because it “places the fairness of a criminal proceeding in doubt,” which “casts doubt on the integrity of the judicial process” itself. *Powers*, 499 U.S. at 411 (quoting *Rose*, 443 U.S. at 556). “Jury service preserves the democratic element of the law, as it guards the rights of the parties and ensures continued acceptance of the laws by all of the people.” *Id.* at 407 (citing *Green v. United States*, 356 U.S. 165, 215 (1958) (Black, J., dissenting)). The jury serves as “a vital check against the wrongful exercise of power by the State and its prosecutors,” and striking jurors because they are not white damages “both the fact and the perception of this guarantee.” *Id.* at 411 (citing *Batson*, 476 U.S. at 86).

These concerns are not abstract. From FJP’s experience, public safety depends on public trust, and that public trust depends on a justice system that treats people fairly. When people have trust in legal authorities and view the police, the courts, and the law as legitimate, they are more likely to report crimes, cooperate as witnesses, and accept police and judicial system authority. *See* Tom R. Tyler & Jeffrey Fagan, *Legitimacy and Cooperation: Why Do People Help the Police Fight Crime in Their Communities?*, 6 OHIO ST. J. CRIM. L. 231, 263 (2008); *see also* Tom R. Tyler & Jonathan Jackson, *Popular Legitimacy and the Exercise of Legal Authority:*

Motivating Compliance, Cooperation, and Engagement, 20 PSYCH., PUB. POL'Y, & L. 78, 78-79 (2014). On the other hand, when the public does not trust law enforcers, community members may be less willing to participate in the criminal justice system. See, e.g., Giffords L. Ctr. to Prevent Gun Violence, *In Pursuit of Peace: Building Police-Community Trust to Break the Cycle of Violence* (Sept. 9, 2021), <https://tinyurl.com/3nf737kt>. This reluctance hampers the ability of the courts, police, and prosecutors to fulfill their public safety obligations. Without cooperative victims and witnesses, police are unable to investigate, prosecutors are unable to bring charges, and juries are unable to convict the guilty or free the innocent. *Id.*

II. Prosecutors Should Encourage Judicial Review of Meritorious Batson Claims, Not Withhold Evidence of Discrimination.

Prosecutors should encourage appellate and post-conviction review, or even agree to a new trial, when they discover that the convicting jury was the product of racial discrimination.

Prosecutors have a duty to pursue justice, not merely convictions, and that means upholding the integrity of the criminal trial process. The American Bar Association's Model Rules on Professional Conduct make it clear that prosecutors are "minister[s] of justice and not simply . . . advocate[s]." Model Rules of Pro. Conduct r. 3.8 cmt. 1 (Am. Bar Ass'n 2025), <https://tinyurl.com/2452takv>. "This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice, that guilt is decided upon the basis of sufficient evidence, and that special

precautions are taken to prevent and rectify the conviction of innocent persons.” *Id.* Indeed, prosecutors are tasked with representing “a sovereignty whose interest in a criminal prosecution is not that it shall win a case, but that justice shall be done.” *United States v. Bagley*, 473 U.S. 667, 675 n.6 (1985) (alterations omitted) (quoting *Berger v. United States*, 295 U.S. 78, 88 (1935)).

Prosecutors must likewise be dedicated to ensuring the legitimacy and integrity of the trial process. For example, the “use of unlawful discriminatory peremptory challenges is not legitimate advocacy” under ABA Model Rule of Professional Conduct 8.4(g). ABA Comm. on Pro. Ethics & Grievances, Formal Op. 517 at 3 (July 9, 2025), <https://tinyurl.com/yc2pr4jj>. In fact, “[i]t is as much [the prosecutor’s] duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use legitimate means to bring about a just one.” *Berger*, 295 U.S. at 88. It thus goes without saying that prosecutors must comply with *Batson* by not using peremptory strikes to discriminate against potential jurors based on race.

A prosecutor’s obligation to do justice continues after conviction. “The public trust” placed in prosecutors “requires that they be quick to confess error when, in their opinion, a miscarriage of justice may result from their remaining silent.” *Young v. United States*, 315 U.S. 257, 258 (1942). And more than a century ago, in *Cook v. United States*, 138 U.S. 157, 185 (1891), this Court recognized that “it was ... [the] duty” of the government’s representatives in a criminal case to concede reversible error. The American Bar Association’s Criminal Justice Standards for the

Prosecutorial Function thus do not require prosecutors to “invoke every possible defense to a collateral attack” if “the interests of justice” would not be served by doing so. Criminal Justice Standards for the Prosecutorial Function, Standard 3-8.5 (Am. Bar Ass’n 4th ed. 2017), <https://tinyurl.com/4xw5f582>. And prosecutors build public confidence when they honor those rules and that trust, as when the Oklahoma Attorney General recently joined death-row defendant Richard Glossip in asserting error in Glossip’s case under *Napue v. Illinois*, 360 US 264 (1959), “conceding both that [a key witness’s] testimony was false and that the prosecution knowingly failed to correct it.” *Glossip v. Oklahoma*, 145 S. Ct. 612, 627 (2025).

Likewise, if a prosecutor “come[s] to realize that participants in a previous defendant’s case are ethically flawed,” the prosecutor must “decide whether justice requires them to take action that would help [the] defendant.” Fred C. Zacharias, *The Role of Prosecutors in Serving Justice After Convictions*, 58 VANDERBILT L. REV. 171, 178, 182 (2005). That’s because prosecutors should seek to defend only convictions “legally obtained.” National District Attorneys Association, *National Prosecution Standards* 9-1.3 (4th ed. Jan. 2023). A contrary approach—authorizing prosecutors to act with the sole purpose of shielding convictions—would send the troubling message that the justice system’s singular objective is to keep people in prison, rather than to do justice. Indeed, various laws and policies encourage or require prosecutors to seek justice after conviction. For example, courts have held that a state’s *Brady* obligations to turn over exculpatory evidence that the state knew about at trial

continues during post-conviction proceedings. *See, e.g., In re Jenkins*, 525 P.3d 1057, 1067 (Cal. 2023); *Whitlock v. Brueggemann*, 682 F.3d 567, 588 (7th Cir. 2012); *Canion v. Cole*, 115 P.3d 1261, 1262 (Ariz. 2005) (en banc); *High v. Head*, 209 F.3d 1257, 1264 n.8 (11th Cir. 2000); *Thomas v. Goldsmith*, 979 F.2d 746, 749-50 (9th Cir. 1992).

Prosecutors cannot have faith in a conviction when jurors were struck based on race, so prosecutors should support appellate and post-conviction review of meritorious *Batson* claims—like Petitioner’s claims here. In FJP’s experience, many prosecutors care about the integrity of the capital convictions they secure, and they welcome the opportunity to demonstrate that their jury selection was non-discriminatory. When prosecutors instead withhold evidence of racial discrimination in the jury selection process to prevent meaningful judicial review, as prosecutors in this case did for nearly a decade, they abandon their obligation to do justice. In such cases, it is imperative for the judiciary to provide the necessary review and correction.

The *Batson* violation in Petitioner’s case has eluded remediation in part due to the prosecution failing to turn over jury selection notes reflecting racial discrimination despite defense counsel’s diligent efforts to obtain them. The delayed disclosure, after Petitioner’s initial state habeas proceedings had concluded, now positions Texas to execute Mr. Ricks based on a procedural bar manufactured by the State’s repeated refusal to disclose evidence of a *Batson* violation. Justice demands more and because Petitioner’s execution is imminent, this Court has the last opportunity to remedy the egregious injustice that has occurred in this case.

Justice requires Mr. Ricks to have a trial free from racialized jury selection tactics. And the people of Texas deserve better than a justice system that promises equal protection while turning a blind eye when fundamental constitutional rights are trampled.

CONCLUSION

For all of the foregoing reasons, amicus respectfully submits that the Court should grant the petition and stay Mr. Ricks's execution.

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