

No. 25-7068
UNITED STATES SUPREME COURT

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SUPREME COURT, U.S.

United States of America
Respondant

v.

Eduardo Luciano
Petitioner

Petition for Writ of Certiorari

From the United States Court of Appeals for the Seventh Circuit
Case No.: 24-1251

From the District Court for the Northern District of Indiana
Case No.: 2:18-CR-00007-JD-JEM

Eduardo Luciano
BOP #: 17315-027
United States Penitentiary McCreary
P.O. Box 3000
Pine Knot, KY 42635

QUESTIONS PRESENTED

- A. Were Defendant's Sixth Amendment right to an unbiased jury violated as-applied to him where a juror was questioned after voir dire under "voir-dire-like" conditions but Defendant was not allowed to use an available peremptory strike, as the government has not and cannot prove a "historical analogue" to only allowing for-cause strikes after voir dire?

Defendant answers "yes".

- B. Did the District Court abuse its discretion by failing to strike a juror for cause during voir dire who lied during voir dire and failed to correct her lie during a subsequent defacto reopening of voir dire, and whose explanation was simply scientifically implausible?

Defendant answers "yes".

LIST OF PARTIES

All Parties appear in the caption of the case on the cover page.

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully requests that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the 7th Circuit appears at Appendix A, and is reported at United States v. Luciano, 2025 U.S. App. LEXIS 25610 (Sept. 30, 2025)

The opinion of the United States Court of Appeals for the 7th Circuit denying panel review appears at Appendix C, and is reported at United States v. Luciano, 2025 U.S. App. LEXIS 29039 (7th Cir. 2025).

The opinion of the District Court for the Northern District of Indiana denying motion for a new trial appears at Appendix B, and is reported at United States v. Luciano, 2022 U.S. Dist. LEXIS 226669 (N.D. Ind. 2022).

JURISDICTION

The date on which the United States Court of Appeals decided my case was September 29, 2025.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: November 5th, 2025, and a copy of the order denying rehearing appears at Appendix C.

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Luciano claims that his Sixth Amendment right to an impartial jury was violated. The Sixth Amendment, as applicable to Luciano's claim, reads:

Amendment 6: Rights of the Accused

In all crimes prosecuted, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state and district wherein the crime shall have been committed...

STATEMENT OF THE CASE

"Luciano was a leader of the Latin Courts gang in Hammond, Indiana. The Latin Courts frequently engaged in drug dealing and violence, particularly against a rival gang known as the Latin Kings. One day in 2015, Luciano noticed a large crowd of Latin Kings and other community members holding a vigil. Luciano met with three other Latin Courts and made a plan to shoot into the crowd, with the goal of killing Latin Kings. Two Latin Courts, not including Luciano, drove to the vigil and opened fire, killing a 16-year-old girl and a former Latin King." Order, 24-1251 at 2.

"On January 17, 2018, a grand jury indicted Eduardo Luciano, and several of his co-conspirators, on one count of conspiracy to participate in racketeering activity. (DE 1)... A later superseding indictment... then added three more counts, including one count of conspiracy to possess with intent to distribute and distribute cocaine and marijuana and two counts of murder resulting from the use and carrying of a firearm during and in relation to a crime of violence..."

District Court's Order denying a new trial, DE 359 at 1. The order of denial is dated December 16, 2022.

Luciano went on to be found guilty and sentenced to life in prison. He filed a timely notice of appeal. Counsel filed an Anders brief, and Luciano filed a response pursuant to Cir. R. 51(b) as well as one supplement.

The 7th Circuit Court of Appeals denied the appeal on September 29th, 2025, and denied a motion for panel rehearing on November 5th, 2025. As such, Luciano's petition for a writ of certiorari is timely anytime before February 3rd, 2026 (90 days after denial of panel rehearing. It is thus timely.

REASONS TO GRANT THE PETITION

- A. Defendant's Sixth Amendment Right was Violated when he was not able to use his Available Peremptory Strike on Juror Number 4 as the Government must Prove a Historical Analogue to only Allowing a for Cause Strike after Voir Dire.

- B. District Court Abused its Discretion in Failing to Strike Juror Number 4 for Cause when she Lied During Voir Dire and Failed to Correct her Lie by Lying Again.

A. Luciano's Sixth Amendment Right was Violated When He Was Not Able to Use His Available Peremptory Strike on Juror Number 4 as the Government Must Prove a Historical Analogue

Luciano claims that Juror Number 4 should have been struck, and in his case he should have been allowed to use his peremptory strike. Consider the narrative from the District Court's Order denying his motion for a new trial:

The first day of trial took place on July 18, 2022. (DE 311). After voir dire was conducted and the jury selected, Juror Number 4 sent a note to the Court indicating that "she used to clean [a] house for the mother of one of the AUSAs." (DE 340 at 2:7-9.) The Court informed the Government and the Defense that it planned to bring Juror Number 4 into the courtroom, separate from the rest of the jury, so that it could ask "her [questions] about [the note] to determine if it creates any bias for her." (Id. at 2:16-25). [essentially reopening voir dire].

Juror Number 4 was then brought into the Courtroom. (Id. at 3:1-4.) Juror Number 4 indicated that she knew the mother of one of the AUSAs, Caitlin Padula, from cleaning the mother's house. (Id. at 10-20). Juror Number 4 stated that the last time she cleaned the mother's house was "[a]pproximately five-and-a-half years ago" and that she "never" saw the mother outside of the home. (Id. at 3:21-4:4.) The juror informed the Court that she thought she may have interacted with Ms. Padula "one time," approximately "six [or] seven years ago" when she went to clean the mother's home. (Id. at 3:10-17, 4:16-22.) The juror also stated that she did not believe that this relationship would impact her ability to be fair and impartial to both sides and that she had her "own mind[.]" (Id. at 5:3-13.) The Court then allowed for Defense Counsel, John Cantrell, to ask the juror questions. Mr. Cantrell inquired into the length of the business relationship between the juror and Ms. Padula's mother. (Id. at 5:16-22.) The juror responded by saying that it was around "two [or] three years" and that she cleaned the house "every week[.]" (Id. at 6:8-17.)

Opinion and Order Denying Motion for New Trial, DE 359, at 2. The Court ultimately did not remove Juror 4 for cause, denying the use of a peremptory strike as well. But here, the issue is the use of a peremptory strike, one of which Luciano still possessed:

Mr. Cantrell: The only thing that I would like to highlight is, I probably -- had I known that [that Juror Number 4 knew AUSA Padula] I probably would have strick her, and I [do] have a strike left.

Trial Transcript, Day One, DE 443, 268:17-19. The District Court then stated:

The Court: I understand you may have chosen to exercise a peremptory challenge had you known all of this, but that's not the standard for removing a juror for conflict... I don't think there is any cause or basis to remove her under those circumstances.

Trial Transcript Day One, DE 443, 269:18-20, 270:3-4. In his motion for a new trial, Luciano claimed that he was prejudiced by the inability to use his available peremptory strike:

Luciano argues that a new trial is warranted due to this Court's decision not to remove Juror Number 4. According to Luciano, this caused him prejudice because "he would have exercised a peremptory strike had the relationship [between the juror and AUSA Padula's mother] been disclosed during jury slection." (DE 337 ¶9.)

The Court acknowledges that Luciano may have exercised a peremptory strike had he known about the juror's prior business relationship with Ms. Padula's mother. However, the mere fact that Luciano would have used a peremptory strike if he had such information does not warrant a new trial. "[A litigant] is entitled to a fair trial but not a perfect one, for there are no perfect trials." McDonaugh Power Equipment, Inc. v. Greenwood, 464 U.S. 548, 553 (1984) (quoting Brown v. U.S., 411 U.S. 223, 231-232 (1973)). Voir dire protects the right to a fair trial by helping to expose possible bias. Id. at 554. Meanwhile, peremptory challenges

excuse jurors for "hints of bias not sufficient to warrant challenges for cause..." Id. However, given the investment of judicial resources a trial represents, there has long been a lofty standard in order to obtain a new trial based on pre-existing juror bias: "[T]o obtain a new trial... a party must first demonstrate that a juror failed to answer honestly a material question on voir dire, and then further show that a correct response would have provided a valid basis for a challenge for cause." Id. at 556; see also U.S. v. DeLatorre, 572 F. Supp. 2d 967, 988 (N.D.Ill. 2008) ("To obtain a new trial based on a claim of pre-existing juror bias, the defendant must show that the juror lied in response to a question in voir dire, and that a truthful answer would have been grounds to exclude the juror for cause) This standard applies to a Court's decision not to remove a juror both after the verdict is entered and prior to the verdict being entered. See United States v. Warner, 498 F.3d 666, 684 (7th Cir. 2007) (noting that the rule set forth in McDonough applies to pre-verdict decisions on whether to remove a juror for cause).

Luciano fails to argue that Juror Number 4's relationship required the Court to remove her for cause. Luciano simply notes that he would have exercised a peremptory strike had he known this information. But this is not sufficient. The composition of a jury may be changed "after the time for peremptory challenges has expired only if the cause standard is met." Warner, 498 F.3d at 685 (emphasis added) (affirming the district court's standard for juror removal where the district court "stated that the appropriate action would be to excuse any juror for whom the newly acquired information would have led to a challenge for cause by one of the parties that the court would have granted.").

Opinion and Order, DE 359 at 2-5. The district court dismissed Luciano's claim that he should have been able to use his peremptory strike by noting that 7th Circuit case law required a finding of cause.

In his Anders Brief, Counsel analyzed this claim and rejected it:

2. Trial

a. Juror Issues

Counsel also considers raising two potential juror issues but rightly concludes that it would be frivolous to do so. First, counsel considers challenging the district court's decision to remove an alternate juror who fell asleep multiple times during the first couple of days of testimony at trial, but a district court has ample discretion in choosing how to handle a sleeping juror, see U.S. v. Freitag, 230 F.3d 1019, 1023 (7th Cir. 200) and we see no error in removing a juror who slept through parts of a witness's testimony.

Second, Counsel considers arguing that the district court should have removed one juror, who, after opening statements and the start of testimony, alerted the court that she used to clean the house of the mother of one of the prosecuting attorneys. But to prevail on appeal, Luciano would have to show that the juror did not honestly answer a material question on voir dire and that a correct answer would have supported a challenge for cause. United States v. Benade, 654 F.3d 753, 780-81 (7th Cir. 2011). And the record does not support a valid for-cause challenge because the juror in question unequivocally assured the court that she could be fair and impartial to both parties, See U.S. v. Taylor, 777 F.3d 434, 440-41 (7th Cir. 2015).

Order Denying Appeal, 24-1251 DE 30, at 2-3. With this extensive background, Luciano claims that both the district court and the 7th Circuit Court of Appeal violated his Constitutional right to an impartial jury guaranteed by the 6th Amendment, as the government cannot show a historical analogue to only allowing challenge for cause after voir dire, as it must under a series of cases, most recently New York State Rifle Association v. Bruen, 597 U.S. 1 (2022) (applying the "historical analogue showing" of a regulation of a constitutional right, to wit, the right to keep and bear arms under the Second Amendment).

The Historical Analogue Standard under Bruen et al

New York State Rifle and Pistol Association v. Bruen is the latest

in a series of cases requiring that the government show a historical analogue to any regulation of a constitutional right. Consider this extended quotation from Bruen itself:

In sum, the Court of Appeals' second step [means-end or rational basis test] is inconsistent with Heller's [D.C. v. Heller, 554 U.S. 570] historical approach and its rejection of means-end scrutiny. We reiterate that the standard for applying the Second Amendment is as follows: when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the nation's historical tradition of firearm regulation. Only then may a court conclude that the individual's conduct falls outside the Second Amendment's "unqualified command". Konigsberg, 366 U.S. at 50.

This Second Amendment standard accords with how we protect other constitutional rights. Take, for instance, the Freedom of Speech in the First Amendment, to which Heller repeatedly compared the right to keep and bear arms. 554 U.S. at 582, 595, 606, 618, 634-35... In that context, "[w]hen the Government restricts speech, the government bears the burden of proving the constitutionality of its actions." U.S. v. Playboy Ent. Grp. Inc., 529 U.S. 803, 819 (2000); see also Philadelphia Newspapers, Inc. v. Hepps, 475 U.S. 767, 777 (1986). In some cases, that burden includes showing whether the expressive conduct falls outside the category of protected speech. See Illinois ex. rel. Madigan v. Telemarketing Associates Inc., 538 U.S. 600, 620 (2003). And to carry that burden, the government must generally point to historical evidence about the reach of the First Amendment's protections. See e.g. U.S. v. Stevens, 559 U.S. 460, 468-71 (2010) (placing the burden on government to show that a type of speech belongs to a "historical and traditional categor[y]" of constitutionally protected speech "long familiar to the bar.")

And beyond the freedom of speech, our focus on history also comports with how we assess many other constitutional claims. If a

litigant asserts the right in court to be "confronted with the witnesses against him", U.S. Const. Am. VI, we require courts to consult history to determine the scope of that right. See, e.g. Giles v. California, 554 U.S. 353, 358 (2008) ("admitting only those exceptions [to the Confrontation Clause] established at the time of the founding." Similarly, when a litigant claims a violation of his rights under the Establishment Clause, members of this court "look to history for guidance." American Legion v. American Humanist Ass'n, 139 S. Ct. 2067, 2087 (2019) (plurality opinion). We adopt a similar approach here.

To be sure, "[h]istorical analysis can be difficult; it sometimes requires resolving threshold questions and making nuanced arguments about which evidence to consult and how to interpret it." McDonald, 561 U.S. at 803-04 (Scalia, J., Concurring). But reliance on history to inform the meaning of the constitutional text - especially text meant to codify a pre-existing right - is, in our view, more legitimate, and more administrable than asking judges to "make difficult empirical judgments" about "the costs and benefits of firearms restrictions," especially given their "lack [of] expertise" in the field. Id. at 790-91 (plurality Op.).

Bruen, 142 S. Ct. at *12-13. As we can clearly see from this extended citation, the search for a historical analogue to justify a restriction upon a constitutional right does not just apply to the Second Amendment. Bruen itself cites a number of cases that use the framework in regards to the First Amendment's freedom of speech and religion, as well as the Sixth Amendment's confrontation clause. There can be no doubt that this historical analogue standard applies to the Sixth Amendment's right to an unbiased jury. Luciano specifically claims that it does apply to him in the context of his right to peremptorily strike Juror Number 4 when, effectively, voir dire was reopened to examine her for possible removal for cause. This is an as-applied challenge for Luciano.

While it is the Government's burden to prove a historical analogue, and Luciano could simply stop here and ask this court to remand his case to determine if the government can find a historical analogue, Luciano

will continue, claiming that the Government cannot prove a historical analogue, and ask for his sentence to be vacated for a new trial.

No Historical Analogue to "For Cause" Requirement After Voir Dire

Normally, a search for a historical analogue requires access to various law review articles, none of which inmates with the Federal Bureau of Prisons have access to in their law libraries, so pro se defendants are at a great disadvantage. But Providence has provided a previous Supreme Court case that has done all the work for Luciano. He extensively quotes it here:

In providing for jury trial in criminal cases, Alabama adheres to the common-law system of trial by an impartial jury of 12 men who must unanimously agree on a verdict, the system followed in the federal courts by virtue of the Sixth Amendment. As part of this system it provides for challenges for cause and substitutes a system of strikes for the common-law method of peremptory challenge. Alabama contends that its system of peremptory strikes-- challenges without cause, without explanation and without judicial scrutiny-- affords a suitable and necessary method of securing juries which in fact and in the opinion of the parties are fair and impartial. This system, it is said, in and of itself, provides justification for striking any group of otherwise qualified jurors in any given case, whether they be Negroes, Catholics, accountants, or those with blue eyes. Based on the history of this system and its actual use and operation in this country, we think there is merit in this position.

The peremptory challenge has very old credentials. In all trials for felonies at common-law, the defendant was allowed to challenge peremptorily 35 jurors, and the prosecutor originally had a right to challenge any number of jurors without cause, a right which was said to tend to "infinite delays and danger." Coke on Littleton 156 (14th ed 1791). Thus, the Ordinance for Inquests, 33 Edw 1, Stat 4 (1305), provided that if "they that sue for the King will challenge any ... Jurors, they shall assign... a Cause certain." So persistent was the view that a proper jury

trial required peremptories on both sides, however, that the statute was construed to allow the prosecution to direct any juror after examination to "stand aside" until the entire panel was gone over and the defendant had exercised his challenge; only if there was a deficiency of jurors in the box at that point did the Crown have to show cause in respect to jurors recalled to make up the required number. Peremptories on both sides became the settled law of England, continuing in the above form until after the separation of the Colonies.

This common law provided the starting point for peremptories in this country. In the federal system, Congress early took a part of the subject in hand in establishing that the defendant was entitled to 35 peremptories in trials for treason and 20 in trials for other felonies specified in the 1790 Act as punishable by death, 1 Stat 119 (1790). In regard to trials for other offenses without the 1790 statute, both the defendant and the Government were thought to have a right to peremptory challenge, although the source of this right was not wholly clear. In 1865, the Government was given by statute five peremptory challenges in capital and treason cases, the defendant being entitled to 20, and two in other cases where the right of the defendant to challenge then existed, he being entitled to 10, 13 Stat 500 (1865). Subsequent enactments increased the number of challenges the Government could exercise, the Government now having an equal number with the defendant, in capital cases, and six in cases where the crime is punishable by more than one year's imprisonment, the defendant or defendants having ten.

Swain v. Alabama, 380 U.S. 202, 767-69 (1965). Clearly, peremptory challenges, which evolved into strikes, were common law rights that existed throughout the timeframe necessary for proving a historical analogue (Colonial times, early Republic, etc.). Note that "[a]lthough there has been some criticism in the twentieth century leveled at peremptory challenges on the basis of delays, expense, and the elimination of qualified jurors incident to their use, the system has survived these attacks." Id. at 770. Even more, this "delay, expense, elimination of qualified jurors" excuse is exactly what the district

court cited as the reasoning for only allowing challenges for cause after voir dire. Opinion Denying Motion for New Trial, at 4, citing McDonough, Brown. and DeLatorre. But those reasons are "means-ends", or even "rational basis", neither standard of which meets the requirements of Bruen et al. Continuing:

The system of struck juries also has its roots in ancient common-law heritage. Since striking a jury allowed both sides a greater number of challenges and an opportunity to become familiar with the entire venire list, it was deemed an effective means of obtaining more impartial and better qualified jurors. Accordingly, it was used in causes of "great nicety" or "where the sheriff [responsible for the jury list] was suspected of partiality." 3 Bl Comm 357. It is available in many States for both civil and criminal cases...

In contrast to the course in England, where both peremptory challenge and challenge for cause have fallen into disuse, peremptories were and are freely used and relied upon in this country, perhaps because juries here are drawn from a greater cross-section of a heterogenous society. The voir dire in American trials tend to be extensive and probing, operating as a predicate for the exercise of peremptories, and the process of selecting a jury protracted. The persistence of peremptories and their extensive use demonstrates the long and widely held belief that peremptory challenge is necessary part of trial by jury. See Lewis v. U.S., 146 U.S. 370, 376. Although "[t]here is nothing in the Constitution of the United States which requires the Congress grant peremptory challenges," Stilson v. U.S., 250 U.S. 583, 586, nonetheless the challenge is "one of the most important of the rights secured to the accused." Pointer v. U.S., 151 U.S. 396, 408. The denial or impairment of the right is reversible error without a showing of prejudice, Lewis v. U.S., 146 U.S. 370; Harrison v. U.S., 163 U.S. 140; cf. Colorado & Sante Fe R. Co. v. Shane, 157 U.S. 348. "For it is, as Blackstone says, an arbitrary and capricious right; and it must be exercised with full freedom, or it fails of its full purpose." Lewis, 146 U.S. at 378.

The function of the challenge is not only to eliminate the extremes of partiality on both sides, but to ensure the parties that the jurors before whom they try the case will decide on the basis of the evidence placed before them, and not otherwise. In this way the peremptory satisfies the rule that "to perform its high function in the best way 'justice must satisfy the appearance of justice'". In re Murchison, 349 U.S. 133, 136. Indeed, the very availability of peremptories allows counsel to ascertain the possibility of bias through probing questions on the voir dire and facilitates the exercise of challenges for cause by removing the fear of incurring the juror's hostility through examination and challenge for cause. Although historically the incidence of the prosecutor's challenge has differed from that of the accused, the view in this country has been that the system should guarantee "not only freedom from any bias against the accused, but also from any prejudice against his prosecution. Between him and the state the scales are to be evenly held." Hayes v. Missouri, 120 U.S. 68, 70.

The essential nature of the peremptory challenge is that it is one exercised without a reason stated, without inquiry, and without being subject to the court's control. State v. Thompson, 68 Ariz 386. While challenges for cause permit rejection of jurors on a narrowly specified, provable and legally cognizable basis of partiality, the peremptory permits rejection for a real or imagined partiality that is less easily designated or demonstrable.

Hayes, 120 U.S. It is often exercised upon the "sudden impressions and unaccountable prejudices we are apt to conceive upon the bare looks and gestures of another.", Lewis, 146 U.S. at 376, upon a juror's "habits and associations," Hayes 120 U.S. 68, 70, or upon the feeling that "the bare question [a juror's] indifference may sometimes provoke a resentment," Lewis, 146 at 376.

Swain, 380 U.S. 202 at 770-72. Clearly, the purpose of the peremptory strike, so exhaustively documented above, was violated in Luciano's case. Counsel had the right to strike Juror Number 4 for almost any reason during voir dire. Certainly, knowledge of and friendliness to the AUSA

was more than a valid reason to peremptorially strike her, much more valid than "bare looks and gestures of another".

Luciano's claim is that, after opening arguments, when Juror Number 4 informed the court of her knowledge, and the court dismissed the other jurors and initiated questioning of Juror Number 4, voir dire was re-opened. While the court did not say so much, that is exactly what happened. And it violates the purpose of the peremptory strike to deny its use in this very exact situation.

Luciano does not claim that an available peremptory strike can be used at any time after voir dire. But in his situation, as-applied to him during the voir-dire-like questioning of Juror Number 4, he **MUST** have been able to use his available peremptory strike, else the entire purpose and the availability of the peremptory strike under the Constitution will be violated. Failure to do so is unconstitutional as-applied to Luciano.

B. The District Court Abused its Discretion by Failing to Strike a Juror for Cause Who Lied During Voir Dire and Failed to Correct Her Lie Later, by Lying Again.

Luciano claims that Juror Number 4 lied during voir dire when she visually recognized AUSA Caitlin Padula but did not say so, and then told the court after opening arguments that she audially recognized the AUSA by her voice during opening arguments, thus "correcting" a lie with another lie. Because these lies were never corrected, her affirmation of her ability to be impartial despite her familiarity with the AUSA cannot be trusted. It was therefore an abuse of discretion by the district court to fail to strike her for cause.

BACKGROUND

During voir dire, the court asked the jurors if they recognized any of the attorneys. "Do any of you know any of the attorneys in this case." Trial Transcript, DE 443, at 18:15. Juror Number 4 did not raise her hand. After voir dire, Juror Number 4 sent a note to the court saying that she "used to clean house for the mother of one of the AUSA's". DE 340 at 2:7-9. The court then sent out the rest of the jury and began questioning Juror No. 4 in "voir-dire-like" conditions, essentially reopening voir dire.

During this defacto subsequent voir dire, the following colloquy occurred:

The Court: Okay. All Right. Can we bring in just Juror Number 4, Ms. Carole Lane.

(Brief pause)

(ENTER Juror Number 4, Carole Lane.)

The Court: Ms. Lane, have a seat in your normal spot, if you would.

So I got a note or an indication that you think you may have or are cleaning the home of the mother of an AUSA; is that correct?

Juror Lane: I think I may have. And I'm not sure. Is your mom Kate?

Ms. Padula: Yeah.

Juror Lane: Okay. I think I met you, like -- it would have been

like six, seven years ago.

And when I look at her, she doesn't look familiar. But as soon as she started talking, I'm thinking, "Ooh, I think that is her." [emphasis added]. So I don't know her, but I know her mom.

The Court: Okay. And --

Juror Lane: But not -- Like, I'm not a friend with her mom. I cleaned her house.

The Court: Okay. When is the last time you cleaned her house?

Juror Lane: Approximately five-and-a-half years ago.

The Court: Okay. And were you socially friendly with her mom?

Juror Lane: Just in a very casual way.

The Court: I mean outside the home, outside your being --

Juror Lane: No, never.

The Court: -- there for cleaning, did you guys go out or --

Juror Lane: Never, no.

The Court: Okay. You just knew her from cleaning her home?

Juror Lane: Right.

The Court: And you were both friendly during the time you were there?

Juror Lane: Correct.

The Court: Okay. And did you have much interaction with Ms. Padula?

Juror Lane: I think that she just answered the door one time because the -- I think their grandmother was there, and she was taking care of her that day, and so she answered the door; and then, I mean, we didn't even really have a conversation.

Like, I -- I don't really remember. Do you? Do you remember me?

Ms. Padula: I don't. As candor to the Court, if my grandmother was home, I would have been with her that day.

The Court: Okay. Okay.

Ms. Padula: Not really talked to Ms. Lane.

The Court: So is there anything about this relationship that would impact your ability to be fair and impartial to both sides in this case?

Juror Lane: I would -- yeah, I -- I have my own mind, and I know what's right and wrong.

The Court: Right. So the fact that you know her mom a little bit

from cleaning her house or you me [Ms. Padula], perhaps, once on one occasion, is that going to impact your --

Juror Lane: No.

The Court: -- Being fair and impartial?

Juror Lane: No.

Trial Transcript, DE 443, at 263:17-265:25.

Luciano's claim is multifaceted: (1) Juror Number 4 actually recognized AUSA Padula during voir dire, but did not raise her hand; (2) not raising her hand was a lie: she did in fact recognize AUSA Padula visually; (3) during the subsequent defacto reopened voir dire, Juror Number 4 did not correct her previous lie, instead claiming that she only recognized AUSA Padula when she heard her voice, which is scientifically implausible; (4) Because the original lie was never corrected, and Juror Number 4 attempted to correct it with another lie, we cannot trust her affirmation of impartiality; (5) the district court abused its discretion by not striking this uncorrected liar for cause.

IT IS SCIENTIFICALLY IMPLAUSIBLE THAT JUROR NUMBER 4
RECOGNIZED AUSA PADULA AUDIALLY BUT NOT VISUALLY

While Luciano is very limited in what he has access to in the USP McCreary law library, he has been able to read a book called "The Triumph of Sociobiology", John Alcock, Oxford University Press, 2001, which Providentially has a lot to say about memory based on sight vs. hearing:

Selection and Remembering Faces:

Another example of social learning that is dependent upon a "prepared" brain is provided by our ability to recognize faces, a skill we are so good at that we take it for granted. Nonetheless, face recognition is an astonishing human attribute. Carey, S. 1992 "Becoming a Face Expert", Philosophical Transactions of the Royal Society of London B 335:95-103. We can make accurate identifications of familiar faces rapidly; a half second will do. If we are given a pack of fifty photographs of faces we have not seen

previously and are permitted to examine each photograph for just five seconds, we will later be able to pick out 90 percent or more of these faces from a large photo collection in which some previously observed images are intermingled with those of novel faces.

The development of this skill almost certainly has something to do with the young infant's drive to examine the visual stimuli associated specifically with faces. Babies are more likely to look at a moving schematic face in its normal position (eyes above mouth) as opposed to the identical image upside down. Supra. Here then is another attentional bias and perceptual preference of infants that directs a flow of socially relevant information to regions of the developing brain designed to accommodate the input. These mechanisms nearly guarantee that the brain gathers inputs relevant to learning faces, making us all expert at this socially relevant task.

Evidence for the existence of specialized circuitry developed primarily to face recognition comes from a variety of sources, but of special interest are those with brain trauma that eliminate a person's capacity to put identities with faces. Ellis, A.W. and A.W. Young, 1996. Human Cognitive Neuropsychology. East Sussex, UK: Psychology Press. The most revealing cases involve people who have retained their intellect, can see perfectly well, and are able to identify objects without difficulty, but they draw a blank with human faces, even those of friends and family, even their own facial image. de Renzi, E. and G. Di Pellegrino. 1998. "Prosopagnosia and alexia without object agnosia. Cortex 34: 403-15.

...

In addition, on empirical grounds, the more that is learned about the brain, the more detailed we can be about the location of units dedicated to particular functions. Technological advances now permit neurologists to record the side of brain activity in fully conscious, naturally behaving subjects. Experiments of this sort reveal that information about faces is processed in a dist-

inctive part of the visual cortex called the fusiform face area. Kanwisher, N., J. McDermott, and M.M. Chun. 1997. "The fusiform area: A module in human extrastriate cortex specialized for face perception", Journal of Neuroscience 17:4302-4311. which becomes active when persons are confronted with images of faces, especially unfamiliar ones.

Triumph of Sociobiology, at 171-173. This quotation strongly supports Luciano's claim that Juror Number 4 visually recognized AUSA Padula. She claimed that she only met her once, and briefly at that. Ms. Padula did not recognize Juror Number 4 visually, supporting a finding that the meeting was brief. But a brief meeting, as we can see, can scientifically support the claim that someone is recognizable visually.

The same cannot be said for audially recognizing the voice of another:

The channeled nature of learning is nowhere more apparent than in the ability of speechless infants to acquire a language, an obvious plastic trait that nevertheless is utterly dependent on neuronal mechanisms with well-defined properties. In fact, language learning by babies requires a battery of marvelously specialized devices. For example, units in the brain must filter the acoustical information in the infant's environment, retaining information relevant to speech sounds while discarding the rest (with respect to language formation). In addition, auditory systems enable babies to recognize what sounds constitute words in the string of sounds that make up each spoken phrase or sentence. Infants create memories of the relevant work sounds, listen carefully to their own initial babblings, compare their output with the memories of speech that they have acquired, try to produce good matches, associate word sounds with objects and verbs, derive abstract grammatical rules from the speech of others, take pleasure from effective communication with others, build up vast vocabularies (a task that begins even before they can speak or understand words, Jusczyk, P.W. and E.A. Hohne. 1997. "Infants'

memory for spoken words." Science 277: 1984-1986.), generate entirely novel word sequences that make sense to others, and so on and on.

All of this happens because the juvenile human brain is capable of processing accoutical input in a very special manner. Some perceptual components of a "language acquisition system" do occur in other primates that are incapable of speech, as demonstrated by the tendency of cotton-top tamarin monkeys to turn toward the speaker upon hearing sentences spoken in Japanese after the monkeys had become used to hearing sentences spoken in Dutch. Ramus, F. et al. 2000. "Language discrimination by human newborns and by cotton-top tamarin monkeys" Science 288: 349-51. Interestingly, the cotton-tops do not turn toward the speaker when tapes of these same sentences are played backwards, just as preverbal human infants apparently can only tell there is a language difference if the tapes are played forward. Thus, the origin of certain perceptual systems now utilized in speech acquisition long antedates the evolution of language, but even so, only our species has the structured ability to integrate an entire battery of perceptual and vocal mechanisms in the service of acquiring and then producing a spoken language. This adaptive outcome arises only because of the way in which the underlying brain mechanisms work together. As J.R. Saffran and colleagues put it, "Linguistic structure cannot be learned through undirected analyses of input sentences, no matter how complex or numerous the analysis may be." p. 1181 in Saffran, J.R., R.N. Aslin, and E.L. Newport. 1997. "Acquiring language: Response." Science 276: 1180ff. The infant's brain analyzes what it hears in a highly directed, as opposed to undirected, fashion and thereby derives basic rules of speech organization from sounds repeated in a pattern ABA (e.g., la ni la) show little interest in this familiar patter even when new "words" are substituted for the training sequence (e.g. do ka do) but pay attention again if the pattern changes from ABA to ABB (as in, ni la la, or ko da da), Marcus, G.F. at al. 1999. "Rule learning by seven-month-old infants." Science: 77-80. This directed attentional system

reflects the effects of past selection acting on the underlying genetic, developmental, and neuronal mechanisms needed to absorb the rhythm of speech. The special products of selection are a tiny subset of all those that are conceivable, yet they make it possible for three-year-olds everywhere to use and comprehend spoken language.

The sophistication and careful design of our language-learning mechanisms can be illustrated by a look at another of the many developmental features involved in language acquisition. When human infants enter this world, they are born with the auditory capacity to discriminate between the complete battery of phonetic units of human speech, such as "da" versus "ba", including some word sounds that are not utilized by every language. For example, very young infants can tell the difference between different vowel sounds that are produced only by English-speaking and only by Swedish-speaking individuals, respectively. (Babies reveal that they have detected a difference when they increase the rate at which they suck on a pacifier upon exposure to an acoustical stimuli that seem novel to them.)

But the infant's perception of the building blocks of language changes as a result of exposure to one language or another. Kuhl, P.K. et al 1992. "Linguistic experience alters phonetic perception in infants by six-months of age." Science 255: 606-08. A child reared in an English-speaking household will at six months of age lump together slight variants of the basic phonemes that are characteristic of the English language. As a result, a sound that is actually structurally more similar to a vowel sound found in the Swedish language will be perceived by the now experienced infant as a familiar vowel in his native language. Remember that this capacity to generalize, that is, to lump together similar sounds into a shared distinctive category, takes place long before the infant can understand speech, let alone produce it.

What is the significance of this finding? The ability to categorize the acoustical stimuli provided by speakers into a complex set of word sounds must help the infant understand the meaning of

spoken words when the child begins this task at about nine or ten months of age. The baby will be listening to a variety of speakers who will inevitably differ somewhat in the acoustical structure of the words they produce. But the listening child will be able to categorize the speech sounds in a manner appropriate for the language of its culture instead of making fine-scale discriminations between all possible speech sounds, which could actually hinder the eventual comprehension and production of one language in particular.

Triumph of Sociobiology at 167-69. Luciano extensively quotes here to show that it is not the quality of sounds that is being listened to by an infant. An infant is not listening to "la" or "ba" for differences in how the sound is said (by say, the baritone of a man or the tenor of a woman). He is listening to the content ("la" vs. "ba"). Thus, there is no "specialized circuitry" for recognition of an individual based on their voice, in sharp contrast to that for the visual identification based on faces.

Research indicates that the human brain generally retains visual information much more effectively than auditory information. This phenomenon, known as the "picture superiority effect", suggests that images are more likely to be remembered than words. (en.wikipedia.org/wiki/Picture_Superiority_effect). One reason for this is that vision occupies a significant portion of the brain's processing capacity. Jonathan Schooler, a cognitive psychologist, notes that humans are "very visually oriented", making it easier to recall images than sounds. (www.nationalgeographic.com/health/article/sensory-memory).

Additionally, studies have found that our memory for sounds is significantly worse than for visual information. This suggests that the brain may process auditory information differently, leading to less robust memory retention for sounds. (www.sciencedaily.com/releases/2014/02/140226174439.html).

To summarize:

- 1) The brain has dedicated systems for visual memory, especially for

faces.

- 2) Faces provide many stable, distinctive features (shape, spacing, symmetry).
- 3) Visual memories are usually more detailed and longer-lasting.
- 4) Recognition works even after long gaps or brief exposure.
- 5) Voices are less stable (they change with mood, health, age).
- 6) Background noise and context strongly affect recall.
- 7) Most people only reliably recognize very familiar voices.
- 8) Voices change with mood, health, age, and context. It is implausible that a voice during an opening statement would be remembered in this context.

Thus, it is simply scientifically implausible that Juror Number 4 recognized AUSA Padula's voice six or seven years after a brief encounter with her at the front door of her mother's house, after listening to her opening arguments at a trial (her voice would be different in that situation than in a casual meeting). It simply cannot be as Juror Number 4 claimed it to be.

The only plausible explanation is that Juror Number 4 did in fact recognize AUSA Padula visually during voir dire, but did not inform the court, for whatever reason. Of course, we do not know the reason, but an innocent explanation cannot be assumed, as we shall see from the case law.

STANDARD OF REVIEW FOR ABUSE OF DISCRETION DURING VOIR DIRE

The process of empaneling a jury is firmly entrusted to the sound discretion of the trial judge and will not be disturbed absent an abuse of discretion. U.S. v. Rubin, 37 F.3d 49, 54 (2nd Cir. 1994),

Despite its importance, the adequacy of voir dire is not easily subject to appellate review. The trial judge's function at this point in the trial is not unlike of the jurors later in the trial. Both must reach conclusions as to impartiality and credibility by relying on their own evaluations of demeanor, evidence, and of responses to questions. Rosales-Lopez v. U.S., 451 U.S. 182, 188 (1981).

"In reviewing denials of challenge for cause, we 'accord great deference to the judgment of the experienced trial judge based on his unique opportunity to assess the credibility of jurors during voir dire, as well as their demeanor throughout the course of the trial." U.S. v. Nurudin, 8 F.3d 1187 (7th Cir. 1993) (quoting U.S. v. Barnes, 909 F.2d 1059, 1070-71 (7th Cir. 1990)

U.S. v. Beasley, 48 F.3d 262, 266 (7th Cir. 1995). From this quotation, we can see that the bar for abuse of discretion in this case is extremely high. The trial judge is given a lot of leeway, because he is there in the courtroom, able to evaluate demeanor, responses, etc.

Luciano claims that, in this case, it can be clearly seen that the district court abused its discretion, because Juror Number 4's demeanor, responses, etc. are not at issue. What is at issue is what she answered, not how she answered it. Her answer was simply not scientifically plausible, no matter how she answered the question.

"Where a juror 'knew one of the officers who was involved in the case and who testified at trial' his 'direct connection to an officer testifying in the case is a classic example of bias.'" U.S. v. Hill, 2025 U.S. App. LEXIS 22619 (7th Cir. Sept. 2, 2025) at LEXIS 10 (internal citation omitted). "In the context of juror selection, we use the term "implicit bias" to denote situations in which there is a close relationship between the prospective juror and someone or something in the case as so a court should 'err[] on the side of caution' and excuse the prospective juror." U.S. v. Polichemi, 219 F.3d 698, 704 (7th Cir. 2000) (internal citation omitted).

Luciano claims that Juror Number 4's knowledge of AUSA Padula was implied bias. Because we have an uncorrected lie during voir dire, we cannot accept her affirmation later that she can be unbiased. Why should we trust that statement that she only recognized AUSA Padula after hearing her, which is scientifically implausible? Neither can be trusted.

Remember, Juror Number 4 said "I think I do recognize her", clearly indicating that she recognized her previously, but perhaps simply not

with certainty. But that is not good enough. If she previously suspected that she knew AUSA Padula, she should have brought that to the attention of the court when asked during voir dire. Then, perhaps, what occurred during the subsequent defacto reopening of voir dire could have been brought up in voir dire (the actual voir dire), where, at least, Luciano could have struck her peremptively. Juror Number 4's lie is what actually deprives Luciano of his Sixth Amendment right to an unbiased jury, in addition to the court's abuse of discretion for not striking her for cause.

An uncorrected lie during voir dire is grounds for striking for cause. After all, "[c]oncealment or misstatement by a juror upon a voir dire examination is punishable as a contempt if its tendency and design are to obstruct the process of justice." Clark v. U.S., 53 S. Ct. 465, 467 (1933). Unfortunately, because of the deficiency of the trial judge and his incuriousness, we have no idea what Juror Number 4's motive was for lying and if it was "willful and deliberate". But again, the reason we don't know is that the district court did not probe Juror Number 4's lie, taking at face value the implausible claim that she remembered AUSA Padula's voice but not her face. This all is covered by Luciano's abuse of discretion claim.

THE DISTRICT COURT ABUSED ITS DISCRETION IN OTHER WAYS

Even if this court does not believe that the district court abused its discretion by keeping an uncorrected liar on the jury for scientifically implausible reasons, the district court abused its discretion in at least two other ways.

First, during voir dire, Juror Number 4 proved that her memory was nothing special:

The Court: Let me see here. And you also indicated that you know someone close that had a drug arrest?

Prospective Juror [Juror Number 4]: Well, I'm not sure. [emphasis added]. I know my son, when he was a teenager [e.a.], was arr-

ested, and he had an unopened -- or an opened -- I don't know what it was -- of alcohol in his trunk.

And I don't -- I'm not positive if he got arrested for marijuana, but because I wasn't sure and I think he may have, I thought I should raise my hand.

The Court: Okay. And that was how long ago?

Prospective Juror: Over 20 years ago.

The Court: Okay. Anythin about his --

Prospective Juror: Or actually -- yeah. It would be -- he's 31, and he was a teenager, like 18.

The Court: Okay. Anything about that experience that would impact your ability to be fair and impartial to both sides?

Prospective Juror: No.

Trial Transcript, DE 443, 37:4-21. This colloquy both supports Luciano's previous claim and stands alone as another claim. It is proof of her lie that she remembered AUSA Padula audially but not visually. Here, we have a much more traumatic situation (her son being arrested for drugs and booze), which she doesn't clearly remember, but we are to believe that she can remember the voice of someone she met briefly in roughly the same timeframe (13 years for the drugs and booze vs. 6 or 7 years for the voice). Again, it is scientifically implausible.

But this colloquy can stand with Juror Number 4's colloquy during the subsequent defacto reopening of voir dire to find that she is lying independent of the scientific evidence. By itself, it is simply implausible that she could remember the voice of AUSA Padulla after a brief meeting at the front door of Padula's mother's house, but she couldn't remember the details of an event that every other mother in America in the same circumstances would remember in excruciating detail (and would keep the memory alive by constantly reminding her son about it for the rest of his natural life).

Either way, Juror Number 4 is a liar. The district court abused its discretion by keeping this uncorrected liar on the jury, and her affirmation that she could be unbiased cannot be trusted.

The second issue is that Juror Number 4 did not follow clear instructions by the court not to discuss the case with the other jurors before deliberations, and she did so:

"During this recess and all other recesses, you must not discuss the case with anyone. This includes you family, **other jurors** [emphasis added], anyone involved in the trial. Do not access any news reports to the extent available." Trial Tran., DE 443 at 172:15-18.

"You can only discuss the case in the jury room with your fellow jurors during deliberations. I expect you will inform me as soon as you become aware of another juror's violation of these instructions." Tr. Tran. DE 443 at 190:16-19.

So not only did the district court charge the jury with not speaking about the case with each other before deliberations, but it charged them with the duty to inform the court of any breaking of this instruction by other jurors.

During the subsequent defacto reopening of voir dire, Juror Number 4 admitted that she did exactly that, that none of the other jurors informed the court, and he just let this information go unchallenged:

The Court: Okay. Thank you, ma'am.

Juror Number 4: You're welcome.

The Court: **And you don't need to share this with the other jurors** [emphasis added]

Juror Number 4: Well, you know what? **I was talking to the one woman because she had the same problem, so they do know because I did.** [emphasis added]. I'm sorry.

The Court: All right. **That's okay.** [emphasis added]. All right. Thank you ma'am.

(EXIT juror Number 4, Carole Lane).

Tr. Tran. DE 443 at 267:10-19. This is an extremely disturbing colloquy.

Juror Number 4 does not just admit that she violated the clear instructions given to her by the court, but that the other jurors did so as well, yet no one was going to inform the court that this happened. And Juror Number 4 infected the entire jury with the knowledge that she was familiar with AUSA Padulla and her family. And what about "the one woman" who "had the same problem"? Tr. Tran. DE 442 at 267:15? The court never even asked about that. It really seemed as if the court was trying to wipe all this under the rug, because the consequence could have been to start over with an entire new jury. They ALL potentially showed that they can't follow instructions. To keep Juror Number 4 on the jury under these circumstances and to not enquire further about what she said was an abuse of discretion.

CONCLUSION

For the foregoing reasons, Eduardo Luciano respectfully requests that this court GRANT his petition and issue the writ of certiorari.

Respectfully Submitted,

x Eduardo Luciano

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I swear under the penalty of perjury that I deposited the foregoing into the USP McCreary Prison Legal Mail System on this 23 day of January, 2026 with first-class postage pre-paid.