No. _____

IN THE SUPREME COURT OF THE UNITED STATES

JAIME CENTENO,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

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QUESTION PRESENTED

Under the third step of *Batson v. Kentucky,* 476 U.S. 79 (1986), a trial court must determine whether one party exercised a peremptory strike with a discriminatory intent. If a trial court legally errs at this step, every court of appeals *except* the Ninth Circuit remands for the lower correct to reconsider its decision under the correct legal standard. The Ninth Circuit, by contrast, believes it has the discretionary authority to conduct appellate fact-finding and "decide *de novo"* under a totality of the circumstances whether the strike was motivated by purposeful discrimination. *United States v. Alvarez-Ulloa,* 784 F.3d 558, 565-66 (9th Cir. 2015). The question presented is:

If a trial court legally errs at step three of *Batson*, may an appellate court resolve the factual question of whether a party acted with discriminatory intent?

Parties, Related Proceedings, And Rule 29.6 Statement

The parties to the proceeding below were Petitioner, Jaime Centeno, and the United States. There are no nongovernmental corporate parties requiring a disclosure statement under Supreme Court Rule 29.6.

All proceedings directly related to the case, per Rule 14.1(b)(iii), are as follows:

- *United States v. Centeno*, No. 22-cr-02864-H, U.S. District Court for the Southern District of California, Judgment issued on October 30, 2023.
- *United States v. Centeno*, No. 23-3279, U.S. Court of Appeals for the Ninth Circuit, Memorandum disposition issued February 5, 2026.

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

Petitioner Jaime Centeno respectfully prays that the Court issue a writ of certiorari to review the order of the United States Court of Appeals for the Ninth Circuit entered on May 8, 2026.

INTRODUCTION

The Court should grant this petition to resolve the question of whether the Ninth Circuit—and the Ninth Circuit alone—may resolve factual questions of discriminatory intent when a trial court legally errs at *Batson*'s third step. If a trial court has misapplied *Batson*, six circuits remand the case back to the trial court to permit it to properly apply the substantive law and make a factual finding regarding discrimination. But the Ninth Circuit claims it has the discretionary authority to conduct appellate fact-finding in the first instance to determine the party's intent based solely on its review of the written transcript. Only the Court can resolve this lopsided conflict.

This case presents an ideal vehicle to resolve the question presented. Not only did Petitioner preserve it at every stage, the Ninth Circuit's decision further entrenching its incorrect approach. The Ninth Circuit's fact-finding in this case was also particularly egregious because it not only determined that prosecutors did not discriminate at step three—it made the *underlying findings of fact* that this determination rested on (and blatantly erred in these findings). This case therefore squarely raises the question presented.

This is an important issue because the Ninth Circuit's outlier approach undercuts the fairness of the jury selection process. As the Sixth Circuit put it: the "factual question[]" of a prosecutor's intent "hinge[s] on [a] ring-side credibility determination[] that no appellate court can fairly make on the basis of a non-sentient record." *United States v. Kimbrel*, 532 F.3d 461, 468 (6th Cir. 2008). And an inaccurate *Batson* determination means that either a juror and one party are denied equal protection or the other party is unfairly impugned as racist.

Finally, the Ninth Circuit's approach is flatly contrary to this Court's precedent. This Court has "frequently" reminded federal appellate courts that they "are not to decide factual questions *de novo*." *Maine v. Taylor*, 477 U.S. 131, 145 (1986). Thus, if the trial court "failed to make a finding because of an erroneous view of the law," remand to the trial court for it to resolve the factual dispute is "required." *Alabama Legislative Black Caucus v. Alabama*, 575 U.S. 254, 268 (2015) (quotations omitted). This rule is particularly appropriate in *Batson* cases, where the "best evidence of the intent of the attorney exercising a strike is often that attorney's demeanor." *Thaler v. Haynes*, 559 U.S. 43, 49 (2010). Because an appellate court is especially ill-suited to make factual findings about alleged discriminatory motives and the facts underlying them, the Court should move swiftly to correct the Ninth Circuit's erroneous approach.

OPINION BELOW

A three-judge panel of the Ninth Circuit affirmed Mr. Centeno's conviction. *See* Appendix A. The Ninth Circuit denied Mr. Centeno's motion for a rehearing *en banc*. *See* Appendix B.

JURISDICTION

On February 5, 2026, the Court of Appeals denied Mr. Centeno's appeal and affirmed his conviction. *See* Appendix A. Mr. Centeno then filed a petition for panel rehearing and rehearing *en banc*, which the Court of Appeals denied on May 8, 2026. *See* Appendix B. This Court thus has jurisdiction under 28 U.S.C. § 1254(1).

STATEMENT OF FACTS

In November 2022, Border Patrol agents arrested Petitioner near the U.S./Mexico border and charged him with attempting to illegally reenter the United States under 8 U.S.C. § 1326. The case proceeded to trial.

During jury selection, the district court brought thirty-eight individuals into the courtroom and asked the potential jurors to introduce themselves. The court followed up with questions such as: is there any reason you could not be a fair and impartial juror; does anybody in your family or close to you work in law enforcement; do you have any experience going back and forth to Mexico; and have you ever been referred to secondary inspection from the primary screening.

After voir dire, the court struck six jurors for cause, two of which were on the government's motion. Of the two the government moved to strike, one was a female juror. The government then used four of its six peremptory challenges to strike female jurors.

The defense made a Batson motion on the basis of sex. Initially, the court denied the motion after a two-sentence exchange with government counsel:

THE COURT: Did you have -- did you have valid reasons for your selections?

[THE PROSECUTOR]: Yes, your Honor.

THE COURT: The Court denies the Batson motion. Thank you.

Possibly concerned about the brevity of this exchange, the prosecutor later asked to supplement the record to offer reasons for striking the female jurors.

For Juror 15, the government explained that it "struck her because she did have a negative experience with Secondary Inspection. Every time she gets sent to Secondary, she is wondering why. We didn't want that to affect her ability to kind of assess our CBP officer witnesses in this case."

For Juror 18, the government said, "she had an opinion regarding deportation that was somewhat negative. She felt that some of the deportations were 'unjust' and even though she said she could set her opinions aside, we felt that her negative experiences and belief that it was unjust would also bias her opinion of this case."

For Juror 24, the government explained, “she said she would comply with the law but had bad experiences or negative experiences because she had friends whose parents were deported, and she would like to be unbiased, but she didn’t necessarily agree that the parents were rightfully deported.”

For Juror 25, the government said, “the woman who . . . recently started a new job, a promotion, and she said that she might have a ‘psychological issue’ even if her employer had no issues with being here. She herself would be thinking about work.”

After each of the first three proffers for Jurors 15, 18, and 24, the court responded identically: “The Court believes that’s a fair explanation.” After the final proffer for Juror 25, the court responded similarly: “The Court believes that’s a fair explanation and a nondiscriminatory reason.” In doing so, the court ruled that the government had met its burden of offering gender neutral justifications. But that’s as far as the district court’s analysis went. It never conducted an analysis to determine whether those reasons were pretexts for purposeful discrimination.

The government’s proffered reasons for striking Jurors 15 and 25, however, were not supported by the record. For example, the “psychological issue” mentioned by Juror 25 was expressed only after the court asked her if she had any issues with time. Even then, the exact quote from Juror 25 when asked if she would have an issue with time was, “I think psychologically for me, but my organization is fine with me being here.” Juror 25 explained that the psychological issue was because in addition to being a juror, she was "going to work some nights." But she assured the court that she could "absolutely" listen to the evidence if selected as a juror.

The proffer for Juror 15 was similarly misrepresented. At no point did Juror 15 indicate she had a "negative experience" with secondary inspection. Instead, she explained that "[i]t was kind of confusing because I didn't understand why I had to keep doing it. And, so, every time I would go over to Mexico, I would have to go to Secondary. And, so, I just wondered why." Although she wondered why she would be sent to secondary, she noted that she would not "view that negatively" against the government.

Despite other male jurors in the venire expressing similar views to female Jurors 25 and 15, the men were not stricken. For example, Jurors 2 and 28 also expressed timing issues. When the court asked Juror 2 whether he had any timing issues, he said, "I'm currently taking a couple of summer classes right now." When Juror 28 was asked the same timing hardship question, he said, "[b]esides my wife not wanting me to be here and on a plane to Vancouver, no." Yet the government chose not to strike them.

There were also three other male jurors (Jurors 3, 13, and 35) who were employed with their own jobs to think about, yet the prosecution did not strike them. Juror 3 explained he worked as a "an industrial hygienist at UC San Diego." Juror 13 worked as a "program manager in the diagnostic reagents manufacturing space." And Juror 35 worked as a "[r]estaurant host" at a resort. Even taking the government's explanation without comparison to other jurors, the proffered reasons for striking Juror 25—concerns with work—were unrelated to the case.

At trial, the selected jury then convicted Petitioner of illegal reentry. Petitioner filed an appeal with the Ninth Circuit challenging, *inter alia*, the trial court's *Batson* ruling and specifically requested a remand for the district court to conduct the step-three analysis. The Ninth Circuit affirmed the conviction. *See* Pet. App. A.

In its memorandum disposition, the Ninth Circuit, assumed that "the district court erred in failing to conduct the *Batson* step three analysis. Pet. App. at 3. Relying on prior precedent, however, the Ninth Circuit conducted a "*de novo* review of the record," and concluded "that no purposeful discrimination was shown." *Id.* (citing *United States v. Alvarez-Ulloa*, 784 F.3d 558, 565–66 (9th Cir. 2015)).

Petitioner filed a petition for *en banc* rehearing. In this petition, Petitioner contended that the Ninth Circuit should reexamine its position as the only circuit that conducts fact-finding at the third *Batson* step. The Ninth Circuit denied the petition for rehearing *en banc. See* Pet. App. B. at 3. This petition follows.

REASONS FOR GRANTING THE PETITION

I.

The Ninth Circuit—unlike every other Court of Appeals—resolves factual *Batson* questions on a *de novo* standard of review.

In cases where a trial court has legally erred at the third step of the *Batson* framework, appellate courts must decide whether to conduct the fact-finding itself or remand for the trial court to do so. The Ninth Circuit stands alone in holding that it may resolve such factual questions in the first instance—a lopsided inter-circuit split that only this Court can resolve.

A. Six courts of appeals do not conduct appellate fact-finding when the trial court legally errs at *Batson*'s third step.

When a trial court legally errs in applying *Batson*'s third step, six courts of appeal remand, leaving it to the trial court to apply the correct substantive standard (as clarified on appeal) and to make the step-three finding of whether the prosecutor had a discriminatory intent. These courts do not conduct appellate fact-finding.

For example, in *United States v. Joe*, 928 F.2d 99, 103 (4th Cir. 1991), the Fourth Circuit held that the trial court had erred by denying a *Batson* challenge merely because "members of the defendants' racial group were seated on the jury." The defendants asked the Fourth Circuit to "conduct a review of the reasons offered by the government and determine in the first instance whether it exercised its strikes in a discriminatory manner." *Id.* at 103. The Fourth Circuit said no: "We are not well positioned to conduct this important analysis with only a cold record and without the benefit of findings and supporting reasons of the tier of fact." *Id.* at 104. The court further noted that the relevant individuals were not "present before this court to permit us to judge their credibility or to adequately follow-up with our inquiry to further explore the validity of the various arguments the parties may advance." *Id.* Thus, the court remanded the case to the trial court to conduct the proper *Batson* analysis. *Id.*; *see also Jones v. Plaster*, 57 F.3d 417, 421 (4th Cir. 1995) (holding that the trial court misapplied *Batson* and remanding the case for fact-finding, noting that the court had "observed with its own eyes the very acts in dispute").

Similarly, in *United States v. Kimbrel*, 532 F.3d 461, 467—68 (6th Cir. 2008), the Sixth Circuit determined that the trial court misapplied *Batson*. The trial court had sustained a prosecutor's *Batson* objection but "conflated steps two and three" of the analysis by incorrectly placing the burden of persuasion on defense counsel. *Id.* at 47. The government, however, contended that, even if the court erred, the appellate court could "determine for itself whether the government satisfied its ultimate burden of persuasion." *Id.* at 468. The Sixth Circuit refused: "*Batson*'s third step, which asks whether a peremptory strike is motivated by purposeful discrimination and whether proffered neutral justifications are mere pretext, presents factual questions that hinge on ring-side credibility determinations that no appellate court can fairly make on the basis of a non-sentient record." *Id.* Thus, the court remanded to the trial court for it to make the required findings. *See id.*; *see also United States v. McAllister*, 693 F.3d 572, 582 (6th Cir. 2012) (holding that the trial court misapplied *Batson* and remanding for the court to make the necessary findings under the proper standard); *United States v. Torres-Ramos*, 536 F.3d 542, 559—61 (6th Cir. 2008) (same); *United States v. Harris*, 192 F.3d 580, 588 (6th Cir. 1999) (same).

The Second Circuit also does not conduct appellate fact-finding in the *Batson* context. For example, in *United States v. Thomas*, 303 F.3d 138, 146 (2d Cir. 2002), the Second Circuit held that the trial court had erred by not evaluating the prosecutor's credibility in articulating a race-neutral reason for a strike at step three of the process. The court, however, did not then conduct appellate fact-finding to resolve the *Batson* issue itself. Instead, the court held that "'the appropriate course'" was either to grant a new trial or (more "'usually'") to remand to the trial court for it to make a finding "'on the issue of discriminatory intent[.]'" *Id.* (quoting *Barnes v. Anderson*, 202 F.3d 150, 155 (2d Cir. 1999)). Consistent with its "usual[]" practice, the court then remanded the case for the trial court to resolve the question of the prosecutor's intent. *Id.*; *see also United States v. Bontzolakes*, 536 F. App'x 41, 44 (2d Cir. 2013) (holding that the trial court misapplied *Batson* and remanding for the court to make the necessary step-three findings under the proper standard); *United States v. Alvarado*, 923 F.2d 253, 256 (2d Cir. 1991) (same).

This is also consistent with the Seventh Circuit's approach. In *United States v. Rutledge*, 648 F.3d 555, 560 (7th Cir. 2011), the Seventh Circuit held that the trial court erroneously denied the defendant's *Batson* challenge without determining whether the prosecutor's reason was pretextual. Faced with this "evidentiary gap," the court did not conduct appellate fact-finding and fill the gap itself. Rather, it held that a "remand [was] necessary" for the trial court to resolve whether the "asserted reason [was] believable or pretextual." *Id.*; *see also United States v. McMath*, 559 F.3d 657, 666 (7th Cir. 2009) (holding that the trial court misapplied *Batson* and remanding for the court to make the necessary findings under the proper standard); *United States v. Taylor*, 509 F.3d 839, 844–46 (7th Cir. 2007) (noting that "it is the district court's job, not ours, to weigh the credibility of the government's reason for the peremptory challenge and decide whether the defendants met their burden of establishing discrimination").

Nor does the Fifth Circuit conduct appellate fact-finding in *Batson* cases. In *United States v. Romero-Reyna*, 867 F.2d 834, 837 (5th Cir. 1989), the Fifth Circuit determined that the trial court had misapplied *Batson* by failing to sufficiently evaluate the prosecutor's proffered reasons for striking minority jurors. The Fifth Circuit, however, did not evaluate the prosecutor's reasons itself. Instead, the court remanded the case for the "district court" to "make the required *Batson* findings[.]" *Id.* at 838.

Finally, in *United States v. Horsley*, 864 F.2d 1543, 1546 (11th Cir. 1989), the Eleventh Circuit held that the trial court had misapplied *Batson* by (among other things) requiring the defendant to prove that the prosecutor had relied on "systematic discriminatory use of peremptory challenges." The Eleventh Circuit did not then conduct appellate fact-finding. Rather, the court remanded the case for the district court to apply the proper substantive standard and to make factual findings under that proper standard. *Id.*

As these cases show, courts of appeals confronted with legal error in the *Batson* context do not make factual findings under the correct legal standard. Instead, they almost uniformly remand for the trial court to do so.

B. The Ninth Circuit—and only the Ninth Circuit—conducts its own fact finding when the trial court legally errs at *Batson*'s third step.

The only court of appeals that has claimed the authority to "decide *de novo* whether the government's strikes were motivated by purposeful discrimination" is the Ninth Circuit. *See Alvarez-Ulloa*, 784 F.3d at 565–66.

The Ninth Circuit first seized this purported authority in *United States v. Alanis,* 335 F.3d 965 (9th Cir. 2003). In that case, the defendant raised a gender-based *Batson* claim before his sexual-abuse-of-a-minor trial when "the prosecutor used all six of her peremptory challenges to strike men from the jury." *Id.* at 966. The prosecutor offered up a "gender-neutral explanation for striking each man," including that several had no children. *Id.* at 967. In response, the trial court merely confirmed that the prosecutor had "offered a plausible explanation" for her strikes and denied the *Batson* challenge on that basis without proceeding to step three. *Id.*

The Ninth Circuit reversed. The court first determined that the trial court had erred by simply determining that the prosecutor had offered a plausible reason for the strikes. *Id.* at 968—69. The inquiry was not whether the prosecutor's reasons were plausible, but whether they were mere pretext to cover up "purposeful discrimination[.]" *Id.* at 969. At this point, the court—without citing any authority—held it could conduct appellate fact-finding in the first instance because it could determine on the "cold record" that the prosecutor had acted with a discriminatory intent. *Id.* at 969 n.5. And that was because three women who remained on the jury also did not have children. *Id.* at 969. The Ninth Circuit took this to mean that the prosecutor must have not been credible when she claimed her reason for striking some male jurors was because they did not have children. *Id.* Thus, without ever seeing or hearing the prosecutor explain her reasons behind the strikes or giving her the chance to respond to the court's comparative-juror analysis, the court determined that she must have been relying on a gender-based criterion to strike jurors.

The Ninth Circuit has shown no sign of retreating from this self-created rule of discretionary fact-finding. In cases of *Batson* error, the court continues to review the record *de novo*, weigh competing pieces of evidence, and make a factual finding about purposeful discrimination. *See, e.g., United States v. Palacios-Herrera*, 812 F. App'x 467, 468 (9th Cir. 2020) (finding no discriminatory intent); *United States v. Potenciano*, 728 F. App'x 620, 623 (9th Cir. 2018) (same); *United States v. Rodarte*, 734 F. App'x 465, 466 (9th Cir. 2018) (same); *United States v. Mikhel*, 889 F.3d 1003, 1031 (9th Cir. 2018) (same); *United States v. Calderon-Jimenez*, 637 F. App'x 295, 297 (9th Cir. 2016) (same); *United States v. Hitsman*, 624 F. App'x 462, 466 (9th Cir. 2015) (same); *SmithKline Beecham Corp. v. Abbott Laboratories*, 740 F.3d 471, 479 (9th Cir. 2014) (same); *Alvarez-Ulloa*, 784 F.3d at 565–67 (same); *United States v. Potenciano,* 728 Fed. App'x 620, 623 (2018); *United States v. Palacios-Herrera*, 812 Fed. App'x 467, 468 (2020) (same); *United States v. Ramiro-Medina*, 857 Fed. App'x 901, 902 (2021) (same); *United States v. Hernandez-Garcia*, 44 F.4th 1157 (2022) (same).

In short, while other circuits unanimously hold that remand is the appropriate course, the Ninth Circuit has doubled down on its outlier fact-finding position. Because this split will not resolve itself, the Court should intervene to provide a uniform rule among the circuits.

II.

Petitioner's case is an excellent vehicle and presents an egregious example of the Ninth Circuit's incorrect approach.

Petitioner's case provides an excellent vehicle for this Court to resolve the circuit split. The Ninth Circuit decided Petitioner's case in a disposition that further entrenches its overreaching approach to fact-finding. *See* Pet. App. A. And Petitioner specifically preserved this issue before the three-judge panel and again in his petition for rehearing *en banc*. Yet the Ninth Circuit expressly declined his invitation to reconsider a position that has put it at odds with every other circuit. *See* Pet. App. B.

This case also presents yet another example of appellate fact-finding like the Ninth Circuit's prior cases. Here, the Ninth Circuit not only concluded that prosecutors did not discriminate at step three—it actually made the underlying findings of fact that this determination rested on. The Ninth Circuit made two findings of fact. First, the court admitted there was a "statistical disparity" between the women struck by the government in comparison to the men, it nevertheless found that the statistical disparity was "not large, especially given the small size of the sample." Pet. App. A at 4. Second, the court found that "the government offered a persuasive, gender-neutral reason for exercising a peremptory strike for each of the four challenged female jurors." *Id.*

In making these findings the Ninth Circuit ignored other evidentiary tools in making its finding. Although the Ninth Circuit addressed "statistical evidence," it failed to address the other tools that Petitioner pointed out. For example, that the prosecutor made "misrepresentations of the record." *Flowers v. Mississippi*, 588 U.S. 284, 302 (2019); AOB 22–23. Or that a "side-by-side comparison" of Juror 25 with prospective male jurors who were not struck that show Juror 25 was similarly situated to them. *Flowers*, 588 U.S. at 302; AOB 23. Finally, that the prosecutor's reason for striking Juror 25 was not relevant to the case. *Flowers*, 588 U.S. at 302; AOB 24–25.

These errors show precisely why this Court has admonished courts of appeal "not to decide factual questions *de novo*." *Taylor*, 477 U.S. at 145. Because this case shows the dangers of appellate fact-finding and provides an excellent vehicle to correct the Ninth Circuit's overreach, the Court should use it to resolve the question presented.

III.

Resolving the question presented is vital to the fair administration of the criminal-justice system.

The stakes of a *Batson* challenge makes its adjudication especially important. If a court improperly grants a *Batson* challenge, the prosecutor or defense attorney will have been unfairly tarred as a purveyor of racial discrimination—conduct that violates not only the Constitution, but ethical rules too. *See* ABA RULES OF PROF.

CONDUCT, Rule 8.4(g) (prohibiting a lawyer from engaging "in conduct that the lawyer knows" is "discrimination on the basis of race"). For a prosecutor, it could also trigger an investigation by the Department of Justice's Office of Professional Responsibility. On the other hand, if a court improperly *denies* a *Batson* challenge, the Constitution's foundational guarantee of equal protection of the laws becomes an empty promise—both for the defendant and for the juror wrongfully struck. *See Batson*, 476 U.S. at 85–87. This will "undermine public confidence in the fairness of our system of justice." *Id.* at 87.

The Ninth Circuit's appellate fact-finding rule makes it more likely that it will inaccurately adjudicate a *Batson* challenge. That follows from the reality that an appellate court has no way to meaningfully assess a prosecutor's demeanor and thus no way to meaningfully evaluate their credibility. *See Kimbrel*, 532 F.3d at 468. Nor can an appellate court evaluate the demeanor and conduct of jurors themselves. The Ninth Circuit's rule, then, undermines the fair administration of justice. It is therefore especially important that the Court grant review in this case and make clear that appellate fact-finding has no place in *Batson cases*.

IV.

The decision below conflicts with this Court's precedent and was wrongly decided.

Granting review is particularly warranted because the Ninth Circuit's outlier rule is inconsistent with this Court's precedent on appellate fact-finding, as well as *Batson*.

"'Factfinding,'" this Court has stated, "'is the basic responsibility of district courts, rather than appellate courts[.]'" *Pullman-Standard v. Swint*, 456 U.S. 273, 291–92 (1982) (quoting *DeMarco v. United States*, 415 U.S. 449, 450 n. (1974)). This flows from the fact that trial courts have "institutional advantages" over appellate courts when it comes to fact-finding. *Salve Regina College v. Russell*, 499 U.S. 225, 233 (1991). "The trial judge's major role is the determination of facts, and with experience in fulfilling that role comes expertise." *Anderson v. City of Bessemer City, N.C.*, 470 U.S. 564, 574 (1985) ("*Anderson I*"). This advantage is at its apex when a factual determination turns on a witness's credibility. The trial court has "the unique opportunity . . . to evaluate the credibility of witnesses" because it sees and hears the witnesses testify. *Inwood Laboratories, Inc. v. Ives Laboratories*, 456 U.S. 844, 855 (1982). The trial court "can be aware of variations in demeanor and tone of voice that bear so heavily on the listener's understanding of and belief in what is said." *Anderson I*, 470 U.S. at 575. These are "matters that cannot be gleaned from a written transcript." *Johnson v. Finn*, 665 F.3d 1063, 1073 (9th Cir. 2011).

Trial courts' fact-finding advantage means that when a trial court fails to make a finding relevant to an appeal, or when it makes a finding applying the wrong legal standard, the appellate court "'should not . . . resolve[] in the first instance'" the factual dispute. *Pullman-Standard*, 456 U.S. at 291–92 (quoting *DeMarco*, 415 U.S. at 450 n.). Indeed, this Court has "frequently" reminded the lower appellate courts that they "are not to decide factual questions *de novo*." *Taylor*, 477 U.S. at 145. "'[A]ppellate courts must constantly have in mind that their function is not to decide factual issues *de novo*.'" *Anderson I*, 470 U.S. at 573 (quoting *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 395 U.S. 100, 123 (1969)). Thus, rather than have the appellate court conduct fact-finding in these circumstances, this Court has held that "'remand" to the trial court for it to conduct fact-finding is "required." *Alabama Legislative Black Caucus*, 135 S. Ct. at 1268; *accord Icicle Seafoods, Inc. v. Worthington*, 475 U.S. 709, 714 (1986). The exception to this rule is when the "record permits only one resolution of the factual issue"; in that case, no appellate fact-finding occurs because the appellate court can decide the uncontested factual issue as a matter of law, *see Pullman-Standard*, 456 U.S. at 292, similar to what happens in the summary-judgment context, *see Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247—50 (1986). "All of this," this Court has observed, "is elementary." *Pullman-Standard*, 456 U.S. at 292.

These "elementary" requirements have particular salience in *Batson* cases. The ultimate *Batson* inquiry—whether the prosecutor had a discriminatory intent in striking a prospective juror—is "'a pure issue of fact.'" *Miller-El v. Cockrell*, 537 U.S. 322, 339 (2003) (quoting *Hernandez v. New York*, 500 U.S. 352, 365 (1991)); *accord Batson*, 476 U.S. at 98 n.21. In resolving that fact question, a court must determine whether a prosecutor's stated reasons for the peremptory strike were the actual reasons or whether they were "pretexts" to hide "purposeful discrimination." *Purkett v. Elem*, 514 U.S. 765, 768 (1995). The inquiry, then, focuses on the prosecutor's credibility in articulating the reason for the strike:

> In the typical peremptory challenge inquiry, the decisive question will be whether counsel's race-neutral explanation for a peremptory

> challenge should be believed. There will seldom be much evidence bearing on that issue, and the best evidence often will be the demeanor of the attorney who exercises the challenge. As with the state of mind of a juror, evaluation of the prosecutor's state of mind based on demeanor and credibility lies peculiarly within a trial judge's province.

Miller-El, 537 U.S. at 339 (quoting *Hernandez*, 500 U.S. at 365). Thus, an appellate court is not fairly situated to accurately resolve the *Batson* inquiry itself when a trial court legally errs in resolving *Batson*'s third step in some way. In these circumstances, a remand to the trial court is needed and required.

There is no way to reconcile this mountain of authority, and the "elementary" principles upon which they are based, *see Pullman-Standard*, 456 U.S. at 292, with the Ninth Circuit's claim that it can conduct appellate fact-finding in the *Batson* context. Indeed, in *Alanis*, the case in which the Ninth Circuit first exercised this extraordinary authority, the court did not cite *any* case from *any* court to support its view of the appropriateness of appellate fact-finding. *See* 335 F.3d at 969. Since *Alanis*, the court has never attempted to reconcile this holding with the Court's precedent. And here, when Petitioner asked the court to reconsider its outlier position in his petition for rehearing *en banc*, the Ninth Circuit declined to do so without comment. *See* Pet. App. B at 3.

In short, the Ninth Circuit's appellate fact-finding rule is inconsistent with this Court's precedent. No justification for it has ever been articulated, and none is apparent. That is likely why no other court of appeals has followed the Ninth Circuit's lead. The Court should therefore grant review or summarily reverse and "confirm[] that the Court of Appeals for the Ninth Circuit erred, misapplying settled rules that limit its role and authority." *Rice v. Collins*, 546 U.S. 333, 335 (2006) (reversing the Ninth Circuit on a *Batson* issue in a unanimous opinion).

CONCLUSION

To correct the Ninth Circuit's outlier position, the Court should grant this petition for a writ of certiorari.

Respectfully submitted,

Date: July 29, 2026

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