

No. _____

**In the Supreme Court
of the United States**

KEVIN TIDWELL

Petitioner

v.

UNITED STATES OF AMERICA

Respondent

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

Public Copy—Sealed Materials Redacted
PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether a criminal defendant is denied the right to an impartial jury and due process when, during voir dire in a gang case, multiple prospective jurors openly express fear of the gang and fear of serving, yet the trial court declines to conduct a fuller inquiry into juror safety concerns and intimidation and gives only a general curative instruction on bias?

LIST OF ALL PARTIES

The parties to the proceeding in the United States Court of Appeals for the Sixth Circuit were:

Kevin Tidwell, Defendant-Appellant and Petitioner here;

Jorge Flores, Defendant-Appellant;

Jose Pineda-Caceres, also known as Jose Pineda-Caceras, Defendant-Appellant; and

United States of America, Plaintiff-Appellee.

No party has a stock ticker symbol.

CORPORATE DISCLOSURE STATEMENT

Petitioner Kevin Tidwell is an individual, not a nongovernmental corporation.

RELATED PROCEEDINGS/DIRECTLY RELATED CASES

United States of America v. Kevin Tidwell, No. 3:18-cr-000293, U.S. District Court for the Middle District of Tennessee. Judgment entered July 3, 2024.

United States of America v. Jorge Flores et al.: *Jorge Flores* (24-5610); *Kevin Tidwell* (24-5626); *Jose Pineda-Caceres* (24-5641), United States Court of Appeals for the Sixth Circuit. Judgment entered April 15, 2026.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Kevin Tidwell respectfully prays this Court grant a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit, entered on April 15, 2026.

OPINIONS BELOW

The unpublished opinion of the United States Court of Appeals for the Sixth Circuit is reported at *United States v. Flores*, No. 24-5610/24-5626/24-5641, 2026 U.S. App. LEXIS 10890 (6th Cir. Apr. 15, 2026), and appears at **Appendix A** to the petition.

JURISDICTION

The judgment of the United States Court of Appeals for the Sixth Circuit was entered on April 15, 2026. No petition for rehearing was filed. This petition is timely because it is filed within 90 days after entry of that judgment. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amend. VI provides, in relevant part, as follows:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury

STATEMENT OF THE CASE

On July 26, 2021, Defendant Kevin Tidwell was indicted in a sixty-count superseding indictment, alleging his involvement in a RICO conspiracy as a member of the criminal street gang MS-13. (*Second Superseding Indictment*, R. 150, PageID 404; *Information Sheet*, R. 150-9, PageID 475). The case proceeded to trial on April 4, 2023, against Mr. Tidwell and three other

co-defendants; the trial concluded on May 2, 2023, taking 18 days to try. (*See Trial Transcript*¹ Vol. 1, R. 638, PageID 6346; Vol. 18, R. 615, PageID 6194). Jury voir dire began on April 4, 2023, and due to the expected length of the trial, a large jury pool was summoned, and voir dire was done in two large panels of approximately 60 each. *Pretrial Conference Transcript*, R. 783, PageID 8118-8119; Vol. 1, R. 638, PageID 6357. The court began the voir dire, though the government and each defendant were allowed to ask questions.

At one stage of the questioning, in partial response to a question, "Venireperson X"², a prospective juror, stated:

[REDACTED]

[REDACTED]

Vol 2, R. 639 at PageID 6649:6-23 (emphasis added).

Venireperson X then added:

[REDACTED]

¹ The trial transcript consists of a total of 18 volumes, with volume three being split into two parts, 3A and 3B. The words "Trial Transcript" will be omitted in future citations, with the words *Vol.* ___ used to cite the trial transcripts.

² Venireperson X is a pseudonym used to protect their identity.

Id. at PageID 6650:9-21.

Venireperson X then states: [REDACTED]

[REDACTED]

[REDACTED] *Id.* at PageID 6650:24-6651:2 (Emphasis added).

Next, counsel for Mr. Flores asks to approach. *Id.* at PageID 6651. Counsel states: “Your Honor, I think at this point, [Venireperson X] has poisoned the entire -- there are two issues that I have. A, she's poisoned the entire venire talking about MS-13 and what she's heard. B, I'm curious to find out -- first, [REDACTED] so I want to know did she do research last night, where did she hear about --” *Id.* at PageID 6651:17-23.

The government conceded, “Well, I mean, she did have some colorful comments. And I think a corrective instruction either through the redirect or from the Court is that the evidence is what comes in court, the Court provides them, that, you know, evidence is what's presented in court, not anything you hear from the news.” *Id.* at PageID 6652:5-10.

The Court, in discussing the issue with counsel, states:

.... there are various different ways to [handle] something like that. One -- one possibility -- and the reason I thought why maybe you weren't cutting her off, just say okay, now this sort of the door is opened, there's going to be some negative perceptions could come into this trial about MS-13. Now I'm going to get and ask the jurors, okay, suppose you heard negative things about MS-13; what impact would that have on you in your ability to give my client a fair trial where there's no evidence right now that they were involved in MS-13 or that they're responsible for MS-13?

Id. at PageID 6653:15-25.

Flores' counsel then summarizes, stating, "... my take on it was, where you just went is where I was trying to go. She clearly wanted none of that. And, in fact, I think she sort of -- she sort of doubled down but actually poured gasoline in her response. *Id.* at PageID 6654:24-6655:3.

Counsel for Flores then summarizes the problem:

And today, she comes on, and not only does she start talking about MS-13 and about them [REDACTED] and this, that, and the other, but *she basically gives a sermon about it to everybody in the courtroom.* And I don't -- if any of those other people didn't know anything about MS-13, which they said they didn't, they do now. And, like, there's a taint that is in effect. And I think she did it on purpose.

Id. at PageID 6655:9-16 (emphasis added).

Counsel for Mr. Tidwell, follows with: "Also, as [counsel] said, she's poisoned the entire jury because not only has she said what [counsel] said, but *she also went on to say that* [REDACTED] *which I think adds fuel to the fire and adds a fear factor.*" *Id.* at PageID 6655:17-

21 (emphasis added). The district court then states:

.... I think out of a curative instruction, in my view, would be fine in this sense, because one, I can make it very strong. The other thing is -- correct me if I'm wrong, [counsel for the US] -- but they do need to start with a clean slate and not be impacted by any juror's view about MS-13. But the bad information in terms of admissible evidence and the government's view is coming about MS-13. Fair to say?

Id. at PageID 6656:13-20.

The court also adds "But she said obviously things that, you know, you could see would be inflammatory. I think it can be corrected though. I really do." *Id.* at PageID 6657:17-19. Counsel for the government then states: "I agree with Your Honor. I think you could give a strong curative instruction that her comments were not evidence, that the jurors need to pay attention to the evidence in this trial, and put whatever they know about MS-13 out of their minds and focus on the evidence at this trial." *Id.* at PageID 6657:21-6658:1. Counsel for Flores then summarizes: "I think that's impossible. There's one thing -- and I've been on your side of -- I've been on your side.

It's impossible for them to put it out of their mind. That part of it is impossible.” *Id.* at PageID 6658:2-5.

The district court then allows: “.... I thought that maybe because -- and I understand why you wouldn't want to hear her pontificate, right? But since it's coming anyway, if they get that taste of what's coming from MS-13, are they going to shut off and deny your clients their presumption of innocence and so forth?” *Id.* at PageID 6659:15-20. Counsel for Flores then summarizes: “she took the opportunity she took two and three opportunities to keep the double down and to pour gasoline on it, she just had an intend [sic] at that point.” *Id.* at PageID 6660:6-12.

Counsel for Flores then argues, [REDACTED]

[REDACTED] I mean, clearly she should be stricken for cause, but whether the entire panel is stricken, I don't believe we've gone that far.” *Id.* at PageID 6661:11-15 (emphasis added).

The district court then states its decision:

You know, I -- yeah, you know, so *if anyone is moving, I'm going to deny and give a curative instruction because I do think it's curable*. I also -- you know, and I know this is a tough decision for defense counsel, because you don't want to sort of inject negative things about MS-13, but I think -- you know, on the one hand. But on the other hand, I think it would be real value of seeing, well, what happens when you hear these negative things about MS-13? And that's something that I have to know, too.

Id. at PageID 6661:16-25 (emphasis added).

Counsel for Flores then states “Here's the problem. My next question is going to be does anybody else feel the same way she does. *Id.* at PageID 6662:23-25. At which time the court says “Yeah, and there's real value, I think, in that. But what I may do after that, after you get your answer, after you talk to anyone about that, then I give the curative instruction.” *Id.* at PageID 6663:1-4.

Later, Counsel for Flores asks, "Before we take another question, I just have one question for everybody is there anybody else that feels the way [Venireperson X] feels in regards to gangs or -- I think [Venireperson X] used MS-13." *Id.* at PageID 6664:18-23. Another prospective juror then states:

[REDACTED]

[REDACTED]

Id. at PageID 6665:9-21 (emphasis added).

Another juror then attempts to interject, at which point, the Court states "no wait." *Id.* at 6666:7. The government then states: "I think we're heading down this path again, and that's why I asked for Your Honor -- if it was possible for Your Honor to come out with the instruction so we don't continue to keep going down this path where you guys are saying that they're tainting the jury pool, making all these negative comments about gangs." *Id.* at 6666:14-19.

Flores counsel then follows, "But here's the problem: If you don't get that out -- if you give the curative instruction now, you're not going to get their true feelings where they are. But the whole point of the curative instruction is once they tell you that I've got this bias, for the Judge to say, well, can you put that aside and follow the rules and instructions given by the Court?" *Id.* at 6666:20-6667:2.

The Court then sums up the entire predicament, stating, "There is this real tension between -- You need to know how they feel. But then you can assert, well, they express how they feel and it's going to taint the jury pool. I do understand that." *Id.* at 6667:9-13. Flores' counsel then states:

"I want to see if there's anybody else that has that issue, because that's a big issue in this case. Because just because you prove that they're in MS-13, there are other things that you have to prove. But if they stop, if their -- if their bias is going to force them to stop listening at the point that you -- at the point that you prove that they're MS-13 members, then they've got to go." *Id.* at 6669:13-20.

A third prospective juror also echoes the fear stated by Venireperson X, discussing his fear:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] *Id.* at

6670:14-20 (emphasis added). The prospective juror then continues, generally unprompted, stating: [REDACTED]

[REDACTED]
[REDACTED] *Id.* at
6671:11-15.

The district court then gives its "curative instruction," explaining that what jurors may have heard are not facts in the case and that jurors must set those things aside and allow the defendants to start with a clean state. *Id.* at 6672-6674. Although the court addresses issues involving prejudice, it does not address whether the jury pool is afraid to serve as a juror, given the statements of fear expressed to the pool by Venireperson X, and echoed by several other jurors, or whether their fear will affect their judgment. The court also failed to address juror safety, how juror anonymity would work, or whether and how courtroom security would be provided.

Mr. Tidwell was later convicted of the majority of the counts for which he was indicted, to include conspiracy to participate in racketeering activity, two counts of conspiracy to commit murder in aid of racketeering, attempted murder in aid of racketeering, two counts of murder in aid of racketeering, two counts of use, carry, brandish, or discharge of a firearm during and in relation to a crime of violence, and two counts of murder in aid of racketeering. (*Judgment*, R. 768, PageID 7777-7778). Following his conviction, Mr. Tidwell was sentenced to life plus 30 years. (*Id.* at PageID 7779).

REASONS FOR GRANTING THE WRIT

I. The Sixth Circuit's Decision Conflicts with the Seventh Circuit's Approach to the Inquiry Required When Repeated Juror Fear Arises During Voir Dire, and the Question Presented Is of Substantial Importance to the Integrity of the Sixth Amendment

A criminal defendant's Sixth Amendment right to an impartial, "indifferent" jury requires that verdicts be based exclusively on the evidence. *Irvin v. Dowd*, 366 U.S. 717, 722–23 (1961). When repeated juror fear infects the venire, a trial court must actively investigate the taint rather than passively relying on boilerplate curative language that merely addresses bias, a separate issue from fear. By holding that a generalized instruction on bias is sufficient to cure pervasive expressions of fear, the decision below departs from fundamental Sixth Amendment principles and is in conflict with the Seventh Circuit's decision in *United States v. Blich*, 622 F.3d 658 (7th Cir. 2010).

A. The Facts Giving Rise to the Constitutional Question

During jury selection in the trial of Petitioner Kevin Tidwell, defense counsel's questioning about gangs and organizational affiliation triggered a cascade of open fear in the venire. Venireperson X told the entire panel that [REDACTED]

[REDACTED]

Vol. 2, R. 639, PageID 6649:6-8, 6650:24-6651:1. Defense counsel timely objected at sidebar, warning that Venireperson X had "poisoned the entire venire" and that her statement added "a fear factor." *Id.* at 6651:17-20, 6655:17-21. Venireperson X's expression of fear was immediately echoed by another prospective juror, who said," *Id.* at 6665:10-12. A third prospective juror then added that *Id.* at 6670:19-20.

Rather than individually questioning the remaining venire or empaneling a new venire, the district court gave a generalized curative instruction on bias and then asked the panel collectively if anyone would not be able to set aside preconceptions. The three identified jurors were dismissed for cause, and voir dire proceeded with the same venire. The jury was drawn from multiple venire groups, meaning the fear and bias expressed in the first panel could reasonably have carried over to the second. The district court took no steps to investigate whether it had, however.

B. The Sixth Circuit Applied an Erroneous Standard That Conflicts with *Blitch*

The Sixth Circuit affirmed, applying plain-error review because counsel did not renew objections after the curative instruction or formally move for a mistrial on Sixth Amendment grounds. *United States v. Flores*, No. 24-5610/24-5626/24-5641, 2026 U.S. App. LEXIS 10890, at *8-10, 12 (6th Cir. Apr. 15, 2026) (*unpublished*). The panel held that because only a few prospective jurors, rather than all, had voiced safety concerns, the case was distinguishable from *Blitch*, and the curative instruction, combined with the dismissals, was sufficient. *Id.* at 11-12.

That reasoning is flawed in two respects that warrant this Court's review. First, the Sixth Circuit drew a legally meaningless line at the number of jurors who verbalized fear. There is no

principled constitutional basis for holding that the Sixth Amendment is implicated only when all venirepersons voice concern, rather than when a limited number do so in terms both vivid and specific to the extent that the expression itself is inherently prejudicial to others who heard it. *See United States v. Blich*, 622 F.3d 658, 665-667 (7th Cir. 2010) (vacating conviction where district court declined to conduct individualized voir dire in response to widespread safety concerns).

Second, the Sixth Circuit presumed that the voir dire approach used to address potential bias was sufficient to cure venire fear. In effect, the court held that a single, collective curative instruction on bias neutralized specific, emotionally charged disclosures of fear, even though fear is a distinct and more urgent concern and this Court has held that juror assurances and boilerplate instructions cannot alone overcome strong indications of prejudices. *See Irvin v. Dowd*, 366 U.S. 717, 728 (1961).

C. The Sixth Circuit Misapplied the Requirement That Bias Focus only on the Seated Jurors

The Sixth Circuit correctly stated the rule from *Ross v. Oklahoma*, 487 U.S. 81, 86 (1988), that any claim of an impartial jury must focus on the jurors who ultimately sat, not merely on dismissed prospective jurors. *Flores*, 2026 U.S. App. LEXIS 10890, at *11. But the court then failed to apply that rule in a constitutionally sufficient manner. The question is not merely whether the three jurors who expressed bias were removed, they were, but whether their emotionally charged disclosures contaminated remaining panel members who heard them and went on to serve.

The district court conducted no individualized examination of those remaining prospective jurors to determine whether the expressed atmosphere of fear had affected their ability to serve impartially. A collective ask of "can anyone not set aside preconceptions," answered by silence, is

constitutionally inadequate when jurors have just heard that a fellow panel member [REDACTED]

[REDACTED] *See Blitch*, 622 F.3d at 665-668.

D. The Standard of Review Applied Below Was in Error

The Sixth Circuit erred in applying plain-error review. During voir dire, defense counsel objected as soon as the defect arose, arguing on the record that the prospective juror's remarks had tainted the venire, and Tidwell's counsel expressly joined that objection by adding that the comments injected fear into the panel. The district court then made a definitive ruling, stating "if anyone is moving, I'm going to deny and give a curative instruction because I do think it's curable," and the district court proceeded with the same venire. *Vol. 2*, R. 639, PageID 6661:16-18.

This was sufficient to preserve the issue. Federal Rule of Criminal Procedure 51(b) provides that a party preserves a claim of error by informing the court, when the ruling is made or sought, of the action the party wants the court to take or of the objection to the court's action and its grounds, and Rule 51(a) makes clear that formal exceptions are unnecessary. Once counsel raised the objection and the court rejected it, no redundant objection after the curative instruction was required to preserve the claim.

Abuse-of-discretion review therefore should have governed the district court's handling of voir dire and refusal to strike the tainted venire. By instead applying plain-error review because counsel did not re-object after the curative instruction, the panel imposed an extra preservation requirement not found in Rule 51(b) and improperly shifted to the Petitioner the burden to reassert a constitutional objection already preserved on the record.

In any event, even under plain-error review, the error affected Petitioner's substantial rights and seriously undermined the fairness and integrity of the proceedings. The trial court retained a

venire exposed to repeated, emotionally charged expressions of fear about MS-13 without determining whether the remaining prospective jurors could decide the case free from that fear.

E. The Question Presented Is Important and Recurring

The constitutional adequacy of a trial court's response to juror fear expressions during voir dire is a question that will recur in many high-profile organized crime, gang, cartel, or terrorism prosecutions, in which the mere mention of the alleged enterprise triggers fear in prospective jurors. Federal courts have increasingly encountered this problem as prosecutions under the Racketeer Influenced and Corrupt Organizations Act (18 U.S.C. § 1962) and the Violent Crimes in Aid of Racketeering statute (18 U.S.C. § 1959) routinely involve organizations, such as MS-13, drug cartels, and similar groups, whose reputations for violence are widely known to the public.

The absence of a clear, uniform standard for how district courts must respond to fear-based expressions during voir dire creates significant uncertainty in the lower courts and leaves defendants constitutionally exposed based on nothing more than which circuit they happen to be tried in. This Court should grant the petition to resolve the circuit conflict and establish a workable standard consistent with the Sixth Amendment's guarantee of an impartial jury.

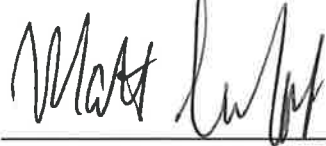
CONCLUSION

For the foregoing reasons, Petitioner Kevin Tidwell respectfully requests that this Court grant the petition for a writ of certiorari. The Sixth Circuit's decision is in substantial conflict with the 7th Circuit in *United States v. Blich*, 622 F.3d 658 (7th Cir. 2010), misapplies the constitutional guarantee of an impartial jury under *Irvin v. Dowd*, 366 U.S. 717 (1961), and leaves unresolved, a recurring question that will likely arise in every federal gang and organized crime prosecution in which the identity and reputation of the alleged enterprise alone is sufficient to compromise the impartiality of the venire. This Court's intervention is necessary to establish a uniform standard

requiring district courts to conduct meaningful, individualized inquiry when expressions of juror fear threaten to corrupt the foundation of a fair trial.

Dated: July 12, 2026

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Matt Gulotta", written over a horizontal line.

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