

Statement of SOTOMAYOR, J.

SUPREME COURT OF THE UNITED STATES

STEVEN RICHARD MULKEY *v.* ALABAMA

ON PETITION FOR WRIT OF CERTIORARI TO THE
COURT OF CRIMINAL APPEALS OF ALABAMA

No. 25–7499. Decided October 5, 2026

The petition for a writ of certiorari is denied.

Statement of JUSTICE SOTOMAYOR respecting the denial of certiorari.

The right to an impartial jury, embedded both in the Sixth Amendment and the Fourteenth Amendment’s Due Process Clause, is fundamental to our system of justice. See *Gray v. Mississippi*, 481 U. S. 648, 657 (1987); *Gomez v. United States*, 490 U. S. 858, 876 (1989). It is the role of a judge to protect, not endanger, that impartiality. In this case, during jury selection for a capital murder trial, the trial judge held a potential juror in contempt for being 30 minutes late to court and ordered him arrested. Those orders were issued in front of the remaining pool of potential jurors.

After the judge ordered the tardy juror arrested, two potential jurors, who were questioned individually during *voir dire*, expressed fear of sharing their views about the case. One potential juror asked, after the judge inquired about his unwillingness to recommend the death penalty, “Will I be charged or thrown in jail?” 6 Record 409. Another, after being asked whether he was willing to consider mitigating factors in deciding whether to recommend a death sentence, stated: “Well, I kind of based [my opinion] on what the Judge told me, because I don’t want to get in trouble for my beliefs.” 7 *id.*, at 482. Although the judge assured these jurors that they would not be punished for sharing their views, this assurance was given during the individual questioning and not in the presence of the rest of

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the jury pool. It is unknown how many other potential jurors felt similarly but did not share their fear because they were not called for individual questioning.

This case comes to us on plain-error review because no objection to the judge's conduct was raised below. Because that posture limits the scope of our review, I concur in the Court's denial of certiorari. I write, however, to highlight that this case provides an example of why judges should restrain themselves from conducting any proceedings that are collateral to the trial in front of a jury.

The record here amply demonstrates how a judge's conduct can have a profoundly negative impact on members of the jury pool. Such conduct may affect not only what potential jurors are willing to say in front of the judge, but also whether they will apply their independent judgment instead of following what they perceive the judge may personally think. See, e.g., *Starr v. United States*, 153 U. S. 614, 626 (1894). If potential jurors are not comfortable expressing their own views, *voir dire*'s "critical function" of identifying and removing prospective jurors who cannot be impartial is undermined. *Rosales-Lopez v. United States*, 451 U. S. 182, 188 (1981) (plurality opinion). "The influence of the *voir dire* process," moreover, "may persist through the whole course of the trial proceedings." *Powers v. Ohio*, 499 U. S. 400, 412 (1991). This danger is especially acute in a capital case such as this one, where the defendant's life hangs in the balance. To guard against it, judges should limit exposing a jury to collateral proceedings, particularly when those proceedings might frighten or intimidate the jury.