NO. 08-987

In The Supreme Court of the United States

RUBEN CAMPA, RENE GONZALEZ, ANTONIO GUERRERO, GERARDO HERNANDEZ, AND LUIS MEDINA,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

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

BRIEF OF *AMICI CURIAE* NATIONAL LAWYERS GUILD AND NATIONAL CONFERENCE OF BLACK LAWYERS IN SUPPORT OF PETITIONER

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INTEREST OF AMICI CURIAE[1]

The National Lawyers Guild, Inc. is a non-profit corporation formed in 1937 as the nation's first racially integrated voluntary bar association, with a mandate to advocate for the protection of rights granted by the United States Constitution and fundamental principles of human and civil rights. Since then the Guild has been at the forefront of efforts to develop and ensure respect for the rule of law and basic legal principles. As one of the non-governmental organizations selected to officially represent the American people at the founding of the United Nations in 1945, its members helped draft the Universal Declaration of Human Rights and in 1948 founded one of the first non-governmental organizations to be granted observer status in the United Nations, the International Association of Democratic Lawyers. The Guild has participated in the major social justice movements in the twentieth century, including racial discrimination in such cases as *Hansberry v. Lee,* 311 U.S. 32 (1940), which struck down segregationist Jim Crow laws in Chicago. As in this case, the Guild has long fought to ensure defendants a fair forum, with our members filing the first post-Reconstruction actions using the removal process in prosecutions that threatened the

[1] Pursuant to Rule 37, counsel for all parties received timely notice of the intent to file this brief. Consent from counsel for Petitioners to the filing of all *amicus curiae* briefs is on file with the Court. A letter from Counsel for Respondent consenting to the filing of this brief is on file with the Court. *Amicus* affirms that no counsel for any party authored this brief in whole or in part and that no person or entity other than *amicus* made a monetary contribution for the preparation or submission of this brief.

civil rights of minority activists. *See Baines v. City of Danville*, 321 F.2d 643 (4th Cir. 1963), *aff'd* 384 U.S. 890 (1966) (over dissents from Chief Justice Warren and Justices Douglas, Brennan and Fortas, as stated in *City of Greenwood v. Peacock*, 384 U.S. 808, 835 (1966)). The efforts of National Lawyers Guild members were instrumental in successfully halting discriminatory and retaliatory state court criminal proceedings against civil rights activists in the South. *Dombrowski v. Pister,* 380 U.S. 479 (1965).

The National Conference of Black Lawyers (NCBL) was established in 1968. It is an association of lawyers, law professors, law students, legal activists and others whose mission is to serve as the legal arm of the movement for Black liberation, to protect human rights, to achieve self-determination of Africa and communities in the African Diaspora and to work in coalition to assist in ending oppression of all peoples. *Amicus* NCBL's interest in the instant case is rooted in its longstanding commitment to both racial justice and the normalization of relations between Cuba and the United States of America. The organization has appeared before this honorable Court as *amicus curiae* in the past in cases that concerned race and the law -- most notably in the matter of *Grutter v. Bollinger*, 539 U.S. 306 (2003). Through the years, *Amicus* NCBL has given considerable attention to the issue of racial discrimination in legal proceedings, and the organization is well suited to offer insight and analysis concerning such issues in the case at bar.

Amici submit that their perspectives on the widespread implications of racial discrimination in

jury selection will be of value to the Court in evaluating the issues presented.

SUMMARY OF ARGUMENT

Amici National Lawyers Guild and National Conference of Black Lawyers write to amplify an overarching issue in this case. Exploiting prejudices against a particular community in jury selection deeply offends the rights of criminal defendants and potential jurors. Moreover, any court's tolerance for race-based discrimination in the form of peremptory challenges to strike black venirepersoners -- and the resulting concern that the judicial system is unable to root out this practice so long as it remains at a "moderated" level -- undermines the integrity of the legal system and the appearance of justice.

In this case, the court of appeals held that the prosecution evaded what in most circuits would be the *prima facie*-level inquiry of defendants' rights under *Batson v. Kentucky* merely by not using all of its strikes to eliminate each and every minority juror. *Batson v. Kentucky*, 476 U.S. 79 (1986). This represents a violation of the Equal Protection clause of the Fourteenth Amendment, and a somber threat to this Court's goal of eradicating racism and discrimination in our judicial system. At the heart of *Batson* is the principle that the burden of establishing a *prima facie* case cannot be onerous one. This Court has reaffirmed that tenet in recent years, and the other circuits acknowledge and adhere to a less burdensome standard than was applied by the Eleventh Circuit here. This case presents the Court with an opportunity to respond

directly to the concerns of Justice Marshall, who even in *Batson* warned that, without stringent review, prosecutors would be "left free to discriminate against blacks in jury selection provided that they hold that discrimination to an 'acceptable' level." *Id.* at 105.

This case presents an important test for our judiciary: whether foreign citizens with unpopular views can get a fair trial in our system. While issues of venue and whether pro-Cuba defendants should have been tried in Miami are addressed in the Petition, for purposes of this brief it is important to note that racist assumptions about how African Americans think and what their social influences are may have been at play, and certainly give the appearance of having been at play. As discussed in Part IV(A), *infra*, there is a prevailing prejudiced assumption that African Americans are apart from the Cuban American community and relatively accepting of Fidel Castro, and the disparate exclusion of blacks from the jury against such a background adds an appearance of injustice to what is already a *prima facie* case of racial discrimination.

This Court has the opportunity to re-establish public confidence in our system of justice, confidence that has been diminished in part by the prosecution's use of two-thirds, or seven of its eleven peremptory challenges, to strike black members of the venire in Miami-Dade Country, where blacks comprise 21% of the population. In so doing, the Court will restore the all-important appearance of justice to this case. *Amici* urge the Court to grant certiorari and ultimately to grant petitioners relief.

ARGUMENT

I. INTRODUCTION

This case represents a retrogression from the Court's commitment to freeing the justice system of its remaining vestiges of racism. While opposition to the Cuban government is famously widespread and predominant in southern Florida, the African American community is perceived as being insulated from the Cuban American community and such views. *See* Part IV(A), *infra*. Consistent with this prejudice about African Americans' influences and opinions, this case saw an extraordinary use of peremptory challenges against African American venirepersons. In addition to denying prospective jurors the privilege of fully participating in the administration of justice, the end result is the denial of a fair trial for the defendants.[2] A further, overarching consequence is the perception by the general public that the criminal justice system is unjust and unfair.

[2] Given what the United Nations Working Group on Arbitrary Detentions deemed "the climate of bias and prejudice against the accused in Miami [which] persisted and helped to present the accused as guilty from the beginning," the added injustice of preventing a cross-representative jury, and thus ensuring a fair trial, is particularly grave. Report of the United Nations Working Group on Arbitrary Detentions, U.N. Doc.E/CN.4/2006/7/Add.1

II. THIS COURT MUST TAKE AN ACTIVE ROLE IN ELIMINATING RACISM

As early as 1880, Justice William Strong reaffirmed that the Fourteenth Amendment was created to ensure that blacks were guaranteed the same civil rights as whites, and that blacks cannot be excluded from jury service on the basis of race. *Strauder v. West Virginia*, 100 U.S. 303 (1880). However, the Court made the burden of proof so stringent that the pattern of excluding black jurors persisted. *Swain v. Alabama*, 380 U.S. 202 (1965). Nobel Laureate Karl Gunnar Myrdal documented disparate treatment of African Americans in the Southern courts, writing in his 1944 study that the entire judicial system was "overripe for fundamental reforms." Karl Gunnar Myrdal, *An American Dilemma: The Negro Problem and Modern Democracy*, 555. In 1986 the Court replaced the insurmountable test articulated in *Swain* with a less onerous three-part procedure to establish the existence of discrimination in the exercise of peremptory challenges. *Batson v. Kentucky*, 476 U.S. 79 (1986).

Despite these efforts, African Americans continue to bear the brunt of inequalities in all aspects of the justice system, including jury selection. Mark Mauer, *Young Black Men and the Criminal Justice System: A Growing National Problem* (1990). Still today, the promise of *Batson v. Kentucky* to attain representative juries remains elusive in practice. John J. Francis, *Peremptory Challenges,* Grutter*, and Critical Mass: A Means of Reclaiming the Promise of* Batson, 29 Vt. L. Rev. 297 (2005) (surveying ongoing difficulties in eliminating racism

in jury selection); Cassia C. Spohn, *Courts, Sentences, and Prisons* 124 Daedalus 119 (1995) (reviewing cases decided in the first decade under *Batson*). Given the entrenched difficulties of realizing reform through *Batson*, the justice system must be ever vigilant in ensuring an adherence to bias-free jury representation.

This Court has repeatedly expressed its intolerance of racial discrimination in the use of peremptory challenges to keep blacks off juries. In its determination to eradicate remaining, reviled fixtures of bias, its decisions over the past several years indicate that the right to a jury free from bias is a right that needs to be constantly monitored, with courts looking beyond prosecutors' race-neutral proffers. *Miller-El v. Dretke,* 545 U.S. 231 (2005); *Johnson v. California*, 545 U.S. 162 (2005).

It is not enough to accept the prosecution's proferred race-neutral reasons for exercising peremptory challenges. "The right to a jury free of discriminatory taint is constitutionally protected . . . . The right to use peremptory challenges is not," wrote Justice Breyer in *Miller-El v. Dretke*. *Miller-El*, 545 U.S. at 273. Prosecutorial discretion is undisputedly a determinative factor in the outcome of cases. Note, *Judging the Prosecution*, 119 Harvard Law Review 2121, 2122 (2006).

Prosecutorial peremptory challenges generally effect systemic harm by making it more likely than not that mostly white juries will convict minority defendants. "The increased certainty of conviction attending reliance on such juries gives prosecutors tremendous power over defendants, leading … to

unfair convictions . . . . [T]he real power of the cross-representative petit jury is its potential to constrain the exercise of prosecutorial discretion in a way that courts and others cannot." *Judging the Prosecution*, 119 Harv. L. Rev. at 2137.

In this case, the trial court acknowledged a host of factors related to external pressures to influence jury selection. On the first day of jury selection, the families of anti-Castro victims held a press conference, whose presence en masse during *voir dire* clearly revealed an intention to influence jury selection; and although this was noted by the trial court (Vol. 1:111), it did not result in any meaningful attempt to cure or reduce its impact on the jury.

III. STATING A *PRIMA FACIE* CASE UNDER *BATSON V. KENTUCKY* IS NOT BURDENSOME

Despite the elusiveness of a real end to racism in jury selection even post-*Batson*, a genuine and sincere effort to maintain a commitment to its underlying goal must be preserved. The requirements for stating a *prima facie* case under *Batson* are not and should not be onerous.[3] The first

[3] The defendant must show that he is a member of a cognizable racial group, that the prosecution has exercised peremptory challenges to strike from the jury vernire members of the defendant's race, and that these facts and other relevant circumstances raise an inference that the prosecutor used the strikes to exclude venirepersons on the basis of their race. *Batson v. Kentucky*, 476 U.S. at 96 (1986). (Whether or not the defendant was of the same race as the excluded venireperson was deemed irrelevant a few years later. *Powers v. Ohio*, 499 U.S. 400 (1990).)

step is not to be so burdensome that a defendant has to persuade the judge, on the basis of all the facts, some of which the defendant-objector can never know with certainty, that the challenge was more likely than not the result of purposeful discrimination. Rather, as this Court held in 2005, "a defendant satisfies the requirements of *Batson* by producing evidence sufficient to permit the trial judge to draw an inference that discrimination has occurred." *Johnson v. California*, 545 U.S. 162 (2005). The Circuits, and this Court, employ this modest "inferential" standard for setting the threshold requirements.

Justice Stevens, writing for the majority in *Johnson v. California,* said that the California Supreme Court had made it too difficult for defendants to set forth a *prima facie* claim of bias in jury selection. *Id.* The California Supreme Court had required a "more likely than not" standard to launch a *Batson* inquiry. Justice Stevens said the "overriding interest in eradicating discrimination" requires state courts to adopt standards that make it easier for *Batson* claims to be tested, rather than being excluded at the outset. *Id.* at 172.

The Eleventh Circuit's holding that no *Batson* inquiry is required when even one juror in a protected class is seated by a party that does not use all of its peremptory strikes is diametrically opposed to the fundamental principle that race-based exclusion from a jury of even one person violates the Fourteenth Amendment. In addition to conflicts with this principle, the Eleventh Circuit's decision is inconsistent with the other Circuits and with at least one previous decision of this Court.

A. *Prima facie* Burden "Not Onerous" in the Circuit Courts

As the circuits have consistently recognized,[4] an overly burdensome *prima facie* test would result in a

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[4] The First Circuit has held that the *prima facie* burden is "not onerous" and requires only "circumstances sufficient . . . to raise an inference" of discrimination. *United States v. Escobar-de Jesus*, 187 F.3d 148, 164-65 (lst Cir. 1999). In the Second Circuit, the burden is "minimal" to demonstrate "circumstances surrounding the peremptory challenges raise an inference of discrimination." *Overton v. Newton*, 295 F.3d 270, 277, 279n.10 (2d Cir. 2002). The Third Circuit requires "circumstantial evidence tending to support" an inference of discrimination. *Johnson v. Love*, 40 F.3d 658, 665-66 (3d Cir. 1994).

In the Fourth Circuit the initial burden raises "at least an inference" that the prosecution has used its strikes to eliminate jurors based on race. *United States v. Grimmond*, 137 F. 3d 823, 834 (4th Cir. 1998). The Fifth Circuit also applies the "raise an inference." The integrity of the jury is a centrally important element in the achievement of a fair trial. The judiciary is obligated to "satisfy the appearance of justice" by conducting *voir dire* in a manner which minimizes the impact of racial, ethnic or other improper bias on the jury. *Batson v. Kentucky*, 476 U.S. 79, 90 (1986); *Turner v. Murray*, 476 U.S. 28, 35-38 (1986); *Rose v. Clark*, 478 U.S. 579, 587 (1986).

A *prima facie* case in the Seventh Circuit requires "facts and circumstances raising an inference that the potential jurors were excluded because of race." *United States v. Cooper*, 19 F. 3d 1154, 1159 (7th Cir. 1994). The Eighth Circuit standard as is "circumstances that give rise to a reasonable inference of racial discrimination." *United States v. Wolk*, 337 F.3d 997, 1007 (8th Cir. 2003) (quoting *Simmons v. Luebbers*, 299 F.3d 929, 941 (9th Cir. 2002). The Sixth and Tenth Circuits have found a *prima facie* case in instances where the only member of a protected group in the venire was struck. *United States v. Mahan*, 190 F.3d 416, 424-25 (6th Cir. 1999); *Heno V. Sprint/United Mgmt. Co.,* 208 F.3d 847, 854 (10th Cir. 2000); *United States v. Joe*, 8 F.3d, 1488, 1499 (10th Cir. 1993).

retrogression to the *Swain* standard, which offered only dissembled criticism of racial discrimination in jury composition while making it nearly impossible to remedy.

In this case, the contrast between challenges to the percentage of blacks in the surrounding population is even greater than disparities found to either support or constitute a *prima facie* case of a *Batson* violation in cases in other circuits. *See e.g. Turner v. Marshall*, 63 F.3d 807, 813 (9th Cir. 1995) (disparity of 56% peremptory challenges to 30% African American venirepersons supports inference of discrimination); *United States v. Alvarado*, 923 F. 2d 253, 256 (2d Cir. 1991 (finding *prima facie* case where prosecution challenged 50% of minority venirpersons who represented 30% of pool). *See also Coulter v. Gilmore*, 155 F.3d 912, 919 (7th Cir. 1998) (ratio of 90% peremptory challenges to 29% minority venirepersons raises inference of discrimination); *Jones v. Ryan*, 987 F.2d 960, 971 (3d Cir. 1993) (*prima facie* case of purposeful racially discriminatory use of peremptory challenges with ratio of 75% peremptories to 20% minority vernirepersons).

Here, the prosecutor's strike rate of 63.6% is in blatant disproportion to what one would expect from the racial composition of Miami Dade County, whose population at the time of the trial was 21% African-American.

Other courts, based on the facts at hand, would have found that the petitioners made a *prima facie* claim under *Batson*. Outside the Eleventh Circuit it is well settled that a rate of minority challenges

"significantly higher than the minority percentage of the venire would support a statistical inference of discrimination" and a *prima facie* case under *Batson*. *United States v. Alvarado*, 923 F.2d 253, 255 (2d Cir. 1991).

Yet here, the Circuit refused to enter into the second and third steps of *Batson* and prevented the chance to adjudge if the peremptory strikes were genuine. As it stands, a strong perception exists that race was the determining factor in keeping blacks off the jury.

IV. SATISFYING THE "APPEARANCE OF JUSTICE"

The integrity of the jury and the selection process are centrally important elements in the achievement of a fair trial. The judiciary is obligated to "satisfy the appearance of justice" by conducting *voir dire* in a manner that minimizes the impact of racial, ethnic or other improper bias on jury selection. *Batson v. Kentucky*, 476 U.S. 79, 90 (1986); *Turner v. Murray*, 476 U.S. 28, 35-38 (1986); *Rose v. Clark*, 478 U.S. 579, 587 (1986). "Elements of *voir dire* continue to implicate greater societal rights." *Batson v. Kentucky*, 476 U.S. 79, 87 (1986). "*Voir dire* communicates to the people by satisfying the axiom that to perform its highest function in the best way must satisfy the appearance of justice." *Swain v. Alabama*, 380 U.S. 202 (1965).

This Court has recognized that the exclusion of blacks from juries undermines the integrity of the justice system. *Georgia v. McCollum*, 505 U.S. 42, 49-50 (1992). Jury selection violations have an

impact on the integrity of the judicial system and on the appearance of justice.

A *per se* rule that peremptory strikes will not be reviewed so long as at least one African American escaped discriminatory exclusion does tremendous harm to the principles underlying *Batson* as well as the mechanisms for eradicating discrimination and providing a system that both is and appears just. As Professor Covey recently explained:

> The Equal Protection Clause was intended "to put an end to governmental discrimination on account of race," and *Batson* advances that goal in three ways: it symbolizes official intolerance of discrimination in jury selection; it seeks to deter such discrimination; and it provides marginal incentives not to strike minority jurors and thereby enhances jury diversity. Of these functions, *Batson* probably has served the first most successfully. As a rhetorical device, *Batson* and its progeny have sent a strong message to the criminal justice system that discrimination in jury selection cannot and will not be tolerated. Indeed, the Court has stated that nowhere is the Fourteenth Amendment's command to eliminate official racial discrimination more compelling than in the judicial system; *Batson* was crafted specifically with this goal in mind. The constitutional command to root out discrimination has

> been treated as so overriding that the Supreme Court repeatedly has stated that the exclusion of even a single juror on account of his or her race, ethnicity, or gender calls it into force. *Batson* was fashioned not only to prevent actual discrimination, but also to abolish perceived discrimination and to combat "cynicism" and a loss of "public confidence" in the criminal justice system.

Russell D. Covey, *The Unbearable Lightness of Batson: Mixed Motives and Discrimination in Jury Selection*, 66 Md. L. Rev. 279, 316-17 (2007) (citations omitted).

If the rule here were allowed to stand, the judiciary will reasonably be seen as turning its back on the principle that even a single instance of discrimination must be exposed and rejected.

A. An Appearance of Injustice Infects this Case

Misrepresentations by the United States Attorney to the Court at this stage should be viewed in the same manner as misrepresentations to the jury at trial. When the impartiality and integrity of the jury is called into question, either by intentional misrepresentation by jurors or by failure of the Court to take sufficient measures to ensure its impartiality, *Clark v. United States*, 289 U.S. 1, 11 (1933), as occurred in this case, public confidence upon which the judicial process depends is

compromised in a manner that requires a new trial. "More is at stake then the rights of the petitioner; 'justice must satisfy the appearance of justice,'" *Offutt v. United States*, 348 U.S. 11, 14 (1954).

The Eleventh Circuit acknowledged a host of factors designed to influence jury selection in this case, including the media and a range of influences from the anti-Castro movement in Miami. *Campa v. United States*, 459 F.3d 1121, 1136, 1152, 1161 (11th Cir. 2006) (noting incidents of jurors approached by the media, an article about the case, efforts to control media access, and a press conference on the courthouse grounds). The prosecutor's use of peremptory strikes to keep blacks from the jury must be considered in the larger context of the highly-charged extenuating circumstances.

In this case, peremptorily excluding African Americans from the jury at a rate three times greater than their population ratio fed into the racial biases concerning isolated and homogeneous demographic groups. As the Court will no doubt see briefed comprehensively elsewhere, the prosecutor would have had an interest in securing a largely Cuban American jury for these defendants who supported the Cuban government. The notion that the Cuban American community in South Florida is hostile to pro-Cuba causes is so pervasive as to warrant judicial notice, and was argued by the government in a case where such prejudices would have run against its interests. Def's Venue Mot., *Ramirez v. Ashcroft*, No. 01-CV-4835 (S.D. Fla. June 25, 2002). For purposes of this brief, it is important to note only that the African American community in southern Florida is perceived to be *uniquely* immune

from the anti-Cuba sentiment of the area. As explained immediately below, such a pro-prosecution prejudice would not have been assumed to exist among the African American community, so there would be an interest in excluding such jurors on the basis of their race.

The notion that there is a tension between the black population and the Cuban American community, especially over the government's approach to Cuba, is widespread and frequently emphasized in the mainstream press. As one sociologist noted:

> Throughout the trajectory of the Elián [Gonzalez] spectacle, media coverage resulted in diverse afterimages of varying intensity. Among the two most prominent media afterimages were stories on child custody issues and stories on immigration policy. . . . The most common topics addressed in these stories were INS treatment of undocumented youth and U.S.-Haitian immigration policy -- facets of immigration policy rarely addressed by mainstream journalists. Whereas the newsworthiness of stories on INS treatment of undocumented youth resulted from the Elián newspeg, stories on U.S.-Haitian immigration policy also referenced a second newspeg: protests by Haitians living in Miami who objected to what they considered a double standard in the U.S. treatment of Haitian versus Cuban refugees.

Anne Teresa Demo, "The Afterimage: Immigration Policy After Elián," 10 *Rhetoric & Public Affairs* 27 (2007).

There is a general perception that the African American and Cuban American populations in South Florida are distinct and hold differing views of the Cuban government. Thus in the election after Elián Gonzalez was returned to Cuba by federal authorities, a single candidate was slandered contradictorily as both against the Cuban American population and too integrated with them, depending on the ethnic population of the audience. In Cuban American neighborhoods, he faced claims that he supported Janet Reno (under whose authority Elián Gonzalez was returned to Cuba), while in African American neighborhoods he was attacked with claims that he was using the case to cozy-up to the anti-Cuba electorate. *See* Dana Canedy, *Lawyer for Cuban Boy's Relatives Is Elected Miami Mayor*, N.Y. Times, Nov. 14, 2001, at A14 (describing these events and characterizing it as "vintage Miami politics" of playing off "deep divisions among racial and ethnic groups" in that city).

Tensions between the two communities received international attention when local and national black leaders called for a boycott of Miami after its Mayor and the Metro-Dade Commission refused to honor Nelson Mandela, under pressure from the Cuban American community there, which objected to Mr. Mandela's willingness to meet with Fidel Castro. *See e.g.* Arthur S. Hayes, "Black Groups Plan a Miami Boycott to Protest City's Treatment of Mandela," *Wall Street Journal*, Aug. 6, 1990, B6.

Going further, some anti-Cuba commentators assert that the African American population is disproportionately inclined to be open minded about Fidel Castro and perhaps even outrightly supportive of him. *See e.g.* Jay Nordlinger, "In Castro's Corner: A Story of Black and Red," *National Review* March 6, 2000, 40 (noting that pro-Castro statements have been common from highly regarded African American entertainers, including Danny Glover and Bill Cosby's wife, and political figures, including Sen. Charles Rangel who asked "Why should [Elián Gonzalez] stay here . . . just because 'we have some Cuban-American congressmen from Miami who are up for reelection?'").

Against such a backdrop, the disproportional exclusion of African Americans from a jury for pro-Cuba defendants more than raises an appearance of injustice. The refusal of the Eleventh Circuit to engage in even the standard *prima facie* review only magnifies the appearance of injustice, and leaves the system unable to determine whether these peremptory exclusions were motivated by the broad racial prejudices described above, in violation of *Batson*.

CONCLUSION

It took this Court over a century to provide jurists with a test to help determine the properness of peremptory challenges. Social influences disfavorable to blacks no doubt intervened to slow this process after the Court's first enunciation in 1879 that the premise that exclusion of prospective

jurors based on race violated the Equal Protection clause of the Fourteenth Amendment. *Strauder*, 100 U.S. at 303. When the initial test in *Swain v. Alabama* proved too onerous for challengers, in 1986 this Court provided a more workable three-part test in *Batson v. Kentucky* aimed at putting an end to longstanding bias and discrimination in the United States courts of justice. *Batson*, 476 U.S. at 87; *Swain*, 380 U.S. at 202.

The Eleventh Circuit's decision in *Ruben Campa, Rene Gonzalez, Antonio Guerrero, Gerardo Hernandez, and Luis Medina, Petitioners, v. United States* is at odds with this Court's commitment to eradicating the taint of racial prejudice that has long infected judicial proceedings. Finding that the prosecution evaded a *prima facie* inquiry under *Batson* undermines the goals of *Batson* where, as here, the ratio of jurors excluded to the percentage in the surrounding community was consistent with the ratios in cases that warranted review in other Circuits. Given that the trial court acknowledged a host of external pressures to influence jury selection, the Circuit Court should have adhered to the spirit of *Batson* and questioned the prosecution's practice of excluding most of the African American venirepersons.

Amici ask this Court to grant certiorari in this case so that a fair trial might be had, restoring the rights of the defendants and the jurors while satisfying the appearance of justice.

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