IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 2014

No. 14-

CURTIS GIOVANNI FLOWERS,

Petitioner,

-vs.-

STATE OF MISSISSIPPI,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE MISSISSIPPI SUPREME COURT

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CAPITAL CASE

QUESTIONS PRESENTED

I. WHETHER COMPELLING A DEFENDANT TO STAND TRIAL SIX TIMES ON THE SAME CHARGES, WHERE THREE JUDGMENTS WERE REVERSED DUE TO PROSECUTORIAL MISCONDUCT AND TWO OTHER TRIALS ENDED WITH HUNG JURIES, VIOLATES THE DOUBLE JEOPARDY CLAUSE OF THE FIFTH AMENDMENT OR THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT?

II. WHETHER A PROSECUTOR'S HISTORY OF ADJUDICATED PURPOSEFUL RACE DISCRIMINATION MUST BE CONSIDERED WHEN ASSESSING THE CREDIBILITY OF HIS PROFFERED EXPLANATIONS FOR PEREMPTORY STRIKES AGAINST MINORITY PROSPECTIVE JURORS?

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Petitioner, Curtis Giovanni Flowers, prays that a writ of certiorari issue to review the judgment of the Mississippi Supreme Court.

CITATION TO OPINION BELOW

The decision of the Mississippi Supreme Court affirming Flowers' convictions and death sentence is published at 158 So.3d 1009, and is attached as the Appendix to this petition.

JURISDICTION

The decision of the Mississippi Supreme Court at issue here was announced on November 13, 2014, and a timely request for rehearing was denied on March 26, 2015. *See* Appendix. This Court's jurisdiction is invoked pursuant to 28 U.S.C. §1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the Fifth Amendment to the United States Constitution, which provides: "[N]or shall any person be subject for the same offence to be twice put in jeopardy of life or limb[.]"

This case also involves the Fourteenth Amendment to the United States Constitution, which provides: "No State shall ... deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

Petitioner, Curtis Flowers, has been tried six times – five of them capitally, including the one that produced the judgment challenged here – in connection with a notorious 1996 quadruple homicide at a furniture store in the small town of Winona, Mississippi. There has never been any physical, or forensic evidence connecting Flowers to the crime; the motive and methods ascribed to Flowers by the prosecution are objectively improbable; the witnesses relied upon to make up the circumstantial case for guilt have by turns been contradictory, unbelievable, or non-probative;[1] and the prosecution's relentless exclusion of African-Americans from the juries has been an enduring point of contention. Notwithstanding the shortcomings of its evidence and the unseemliness of its tactics, however, the prosecution has stayed committed to convicting (and executing) Flowers, and has been afforded extraordinary leeway to experiment and refine its attack despite three reversals for misconduct and two guilt-or-innocence phase hung juries.

[1]The specific deficiencies in the prosecution's case against Flowers are detailed at pp. 8-49 of his brief to the Mississippi Supreme Court but omitted from this petition because they do not directly contribute to the concise statement necessary to frame the Questions Presented. *See* Supreme Court Rule 14.1(g).

Undersigned counsel's extensive research has revealed no other American criminal case, capital or not, in which the defendant has been forced to run the same gamut fully half a dozen times on account of the prosecution's chronic inability to succeed within the rules.[2]

I. Convictions and death sentences at the first three trials were all reversed for prosecutorial misconduct.

The prosecution gained the upper hand during Flowers' first three trials by conscious resort to a set of tactics the Mississippi Supreme Court would later condemn as reversible misconduct. The first such tactic – employed at the first and second trials – was to ostensibly go forward against Flowers for only one of the four homicides while introducing (or simply referring to) extensive facts about the other homicides to inflame the jurors. While this strategy offered prosecutors the benefit of holding the other charges in reserve in case a jury proved unwilling to convict, the state supreme court found it "egregious," *Flowers v. State*, 773 So.2d 309, 321 (Miss. 2000) (*Flowers I*), and "improperly prejudic[ial]," *Flowers v. State*, 842 So.2d 531, 538 (Miss. 2003) (*Flowers II*), and reversed both judgments.

The first two trials also featured other underhanded tactics, some adjudicated during the direct appeals, some not. In the first trial, for example, the prosecutors were found to have acted "in bad faith" during improper cross-examination of a defense witness. *Flowers I*, 773 So.2d at 328-30. And in the second trial, the prosecution was caught having "repeatedly argued facts not in evidence" while attempting to repair damaging holes in its proof. *Flowers II*, 842 So.2d at

[2]The closest case is that of Curtis Kyles, who was tried five times by the State of Louisiana. After the fifth attempt ended in a mistrial, the prosecution gave up. *See* J. Gill, *Murder Trial's Inglorious End*, The New Orleans Times-Picayune, February 20, 1998, B7; *see also Kyles v. Whitley*, 514 U.S 419 (1995) (granting federal habeas corpus relief from conviction returned at Kyles' second trial due to prosecutorial misconduct).

555-56. Moreover, although not reached or decided in either case, in both trials the prosecutors had used peremptory strikes against literally every African-American venireperson tendered for a seat on the juries.[3]

Rebuked but undeterred, the prosecution pressed ahead with a third trial, and once again did its best to ensure that the African-American defendant would be tried by an all-white jury. This time, however, that effort was more conspicuous than it had been before, as the prosecutors used all fifteen of their peremptory strikes against African-Americans, which yielded a jury of eleven whites and one African-American (seated only after prosecutors had run out of strikes). While this tactic produced the desired result at trial – another conviction and death sentence – the victory was again short-lived. On direct appeal the Mississippi Supreme Court declared that the jury selection record presented "as strong a *prima facie* case of racial discrimination as [it] ha[d] ever seen in the context of a *Batson* challenge," *Flowers v. State*, 947 So.2d 910, 935 (Miss. 2007) (*Flowers III*), and went on to hold that the record "evince[d] an effort by the State to exclude African-Americans from jury service," *id.* at 937. Before reversing the convictions and death sentence against Flowers for the third time, the state court justices further warned that the magnitude of the prosecutors' misconduct had left them "inclined to consider" "abolishing the peremptory challenge system as a means to ensure the integrity of our criminal trials." *Id.* at 939.

[3]Between them, the first two trials saw the prosecution peremptorily remove all ten African-Americans who survived qualification and came up for seats on the jury. In the first trial this tactic resulted in an all-white jury. *See* Clerk's Papers 1656. In the second trial the judge disallowed one of the prosecution's strikes after finding it had been racially motivated; the resulting jury was made up of eleven whites desired by the prosecutors plus the lone African-American they had been judicially prevented from removing. *See* Clerk's Papers 1662.

II. The fourth and fifth trials ended with hung juries on the question of guilt or innocence.

The fourth trial saw a partial change in prosecution tactics. In contrast to the earlier proceedings, and for reasons not disclosed on the record, this time the prosecutors elected to try the case non-capitally. Among other things, this eliminated the step of "death-qualifying" prospective jurors, and with it the opportunity to remove a disproportionate number of African-Americans for "cause." While the prosecutors sought to compensate by using all eleven of the peremptory strikes they exercised against African-Americans, the resulting jury – seven whites and five African-Americans – was far more reflective of the community than prior juries had been. *See* Clerk's Papers 1667-68. After hearing the evidence, the jurors were unable to reach consensus on the question of Flowers' guilt and a mistrial was declared.[4] While the available record concerning the fifth trial is sparse, that one also ended in a mistrial when the jury was unable to reach a unanimous verdict at the guilt-or-innocence phase. *See* Clerk's Papers 1891.

III. The sixth trial and the judgment underlying this petition.

Having already endured five trials, three appellate reversals, and two hung juries, Flowers moved the trial court to bar a sixth trial on the ground that it would violate the Double Jeopardy Clause of the Fifth Amendment, the Due Process Clause of the Fourteenth Amendment, and an analogous provision of the Mississippi Constitution. *See* Clerk's Papers 1889-1905. After hearing oral argument the trial court denied the motion. Tr. 452; 454.

[4]Had the fourth jury returned a conviction, the direct appeal likely would have featured yet another claim of prosecutorial misconduct, this one involving false testimony by a prosecution expert witness whose own notes contradicted what she said under oath about a contested issue concerning the appearance of an automobile. *See* Clerk's Papers 1903.

The ensuing trial, like all but the fourth trial, proceeded as a capital case and largely marked a return to prosecution tactics that had been successful (albeit never in a lasting way) in earlier trials. For example, while the prosecutors did adjust their jury selection tactics to lessen their vulnerability to a *Batson* objection – *e.g.*, by aggressively questioning African-Americans to generate challenges for cause and facially plausible bases for peremptory challenges – they still exercised strikes against five of the six African-Americans tendered for consideration, and managed to seat a jury containing eleven whites out of an original venire that was 42% African-American. Similarly, although they had been specifically condemned in *Flowers II*, *supra*, for misrepresenting key evidentiary matters during summation, they engaged in the same brand of misconduct – even going so far as to misrepresent some of the very same facts concerning the same gaps in their evidence – at the sixth trial. *Compare* Tr. 3188-89 *with Flowers II*, 842 So.2d at 555-56. The revival of the prosecution's strategy from the first three trials brought a familiar result: Flowers was once again convicted and sentenced to death.

Flowers appealed, contending, *inter alia*, that forcing him to a sixth trial violated the Double Jeopardy and Due Process Clauses, and that the prosecution had once again violated *Batson v. Kentucky*, 476 U.S. 79 (1986), by exercising its peremptory strikes on the basis of race. A divided Mississippi Supreme Court affirmed. With regard to the double jeopardy / due process claim, the court denied relief on the grounds that this case does not meet the specific criteria this Court has thus far identified as triggering double jeopardy protection, *see Flowers VI*, 158 So.3d at 1069 ("Flowers has not been acquitted, his convictions have not been upheld on appeal, and he has not received multiple punishments. Therefore, the Double Jeopardy Clause has not been implicated."), and that this Court "has held that the Due Process Clause does not

provide greater protection against double jeopardy than the Double Jeopardy Clause itself," *id.* (citing *Sattazahn v. Pennsylvania*, 537 U.S. 101, 116 (2003)).

The court split 6-3 over Flowers' *Batson* challenge. As detailed more fully *infra*, although the prosecutor had long since distinguished himself – in this very case – as an especially willful and recalcitrant *Batson* violator, the Mississippi Supreme Court majority failed even to acknowledge, let alone consider, that well-documented history. Instead, the majority confined itself to a narrow, mechanistic evaluation of the disparities in the prosecutor's approach to black and white veniremen, afforded him the benefit of the doubt where the evidence was ambiguous, and credited his claims of race neutrality without hesitation.[6] Three justices dissented, criticizing the majority for ignoring the compelling facts of the prosecutor's history of race discrimination in the same case, *Flowers VI*, 158 So.3d at 1089 (King, J., dissenting), and countering the majority's "robotic" acceptance of the prosecution's account with their own detailed comparative analysis – informed by history and other probative circumstances – demonstrating that the prosecutor had once again, in fact, discriminated on the basis of race, *id.* at 1100.

[6] The majority's accommodating approach toward the prosecution was not limited to its treatment of the *Batson* issue. As the dissent noted, the majority also turned a blind eye toward the prosecution's repetition of some of the same closing argument misconduct that had led to reversal in *Flowers II*. *See Flowers VI*, 158 So.3d at 1084 (King, J., dissenting) ("The Majority in today's case, by endorsing the prosecutor's misstatements — the same misstatements which warranted reversal in *Flowers II* — takes Mississippi one step closer to having misrepresentation of the facts presented at trial commonplace in our trial courts."); *see also id.* at 1083 ("Despite the same errors occurring in today's case, the Majority, in a stark departure from this Court's previous *Flowers* opinions, finds that Flowers's conviction and death sentence should be affirmed.").

REASONS THE WRIT SHOULD BE GRANTED

I. COMPELLING A DEFENDANT TO STAND TRIAL SIX TIMES ON THE SAME CHARGES, WHERE THREE JUDGMENTS WERE REVERSED DUE TO PROSECUTORIAL MISCONDUCT AND TWO OTHER TRIALS ENDED WITH HUNG JURIES, SHOULD BE PROHIBITED BY THE DOUBLE JEOPARDY CLAUSE OF THE FIFTH AMENDMENT OR THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT.

Curtis Flowers bears the distinction of having been forced to trial six times, all but one of them capital, in thirteen years. Responsibility for this extraordinary series of confrontations lies exclusively with the State of Mississippi, whose agents disregarded basic rules of fairness in pursuit of undue advantage through three trials and failed to persuade all twelve jurors of Flowers' guilt through two more. Whether double jeopardy or due process should have, at some point, prevented the state courts from continuing to accommodate the prosecution's trial-and-error campaign against Flowers is a question not clearly answered by this Court's jurisprudence. Lower courts around the country have determined that the prerogative of the government to try and re-try must not be unlimited, as its costs to the administration of justice, fundamental fairness, and the accused himself eventually outweigh any benefit to be derived from a conviction secured through practice and attrition. That conclusion rests on core principles embodied in the Double Jeopardy and Due Process Clauses, and this case presents an ideal vehicle through which to resolve whether one or both of those provisions of the federal Constitution impose some reasonable limit on the number of opportunities to convict and punish that a government – particularly one whose hands are manifestly unclean – may be afforded.

A. Excessive retrials caused by the government implicate core double jeopardy principles.

The Double Jeopardy Clause of the Fifth Amendment prohibits the state from putting any

person "twice ... in jeopardy of life or limb," thus protecting individuals from "the hazards of trial more than once for an alleged offense." *Green v. United States*, 355 U.S. 184, 187 (1957). Justice Black summarized the rationale behind the prohibition:

> The underlying idea, one that is deeply ingrained in at least the Anglo-American system of jurisprudence, is that the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent he may be found guilty.

Id.; *see also Benton v. Maryland*, 395 U.S. 794, 796 (1969) (quoting *Duncan v. Louisiana*, 391 U.S. 145, 149 (1968)) ("This underlying notion has from the very beginning been part of our constitutional tradition. Like the right to trial by jury, it is clearly 'fundamental to the American scheme of justice.'").

To date, this Court's decisions have reserved double jeopardy protection for cases involving either formal acquittal at a prior trial or termination of such a trial against the defendant's will, *e.g.*, declaration of a mistrial over defense objection, or in absence of manifest necessity, or by defense request in response to inducement by the prosecution. *See, e.g.*, *Richardson v. United States*, 468 U.S. 317, 325 (1984) (observing that double jeopardy bar "applies only if there has been some event, such as an acquittal, which terminates the original jeopardy"); *United States v. Dinitz*, 424 U.S. 600, 606-07 (1976) ("[T]he question whether under the Double Jeopardy Clause there can be a new trial after a mistrial has been declared without the defendant's request or consent depends on whether there is a manifest necessity for the (mistrial), or the ends of public justice would otherwise be defeated.") (internal quotation

marks and additional citations omitted); *United States v. Jorn*, 400 U.S. 470, 481 (1971) (retrial permitted after mistrial only when, "taking all the circumstances into consideration, there is a manifest necessity for the act, or the ends of public justice would otherwise be defeated"). These rules are sufficient for the vast majority of cases in which double jeopardy may be implicated. They do not, however, speak adequately to the extraordinary cases, like this one, in which the government's conduct poses all of the dangers long associated with multiple prosecutions, yet the proceeding does not to produce an outright acquittal or qualifying mistrial.

In *Wade v. Hunter*, 336 U.S. 684 (1949), this Court rejected the proposition that the Double Jeopardy Clause bars a further proceeding "every time" a "trial fails to end in a final judgment." *Id.* at 688. "Such a rule," the Court explained, "would create an insuperable obstacle to the administration of justice in many cases in which there is no semblance of the type of oppressive practices at which the double-jeopardy prohibition is aimed." *Id.* at 688-89. It does not follow, however, that the mere absence of a "final judgment" of acquittal forecloses the possibility of "oppressive practices" warranting constitutional protection. As the number of chances afforded to the government continues to mount, so does the danger of unfairness and unreliability. Apart from the "embarrassment, expense[,] ... anxiety and insecurity" visited upon the accused, *Green*, *supra*, "[r]epeated prosecutorial sallies ... create a risk of conviction through sheer governmental perseverance," *Tibbs v. Florida*, 457 U.S. 31 (1982).[5] And at least where

[5]*See also Grady v. Corbin*, 495 U.S. 508, 518 (1990), *overruled on other grounds, United States v. Dixon*, 509 U.S. 688 (1993) ("Multiple prosecutions ... give the state an opportunity to rehearse its presentation of proof, thus increasing the risk of an erroneous conviction for one or more of the offenses charged."); *Arizona v. Washington*, 434 U.S. 497, 503-04 (1978) ("Even if the first trial is not completed, a second prosecution may be grossly unfair. It increases the financial and emotional burden on the accused, prolongs the period in which he is stigmatized by an unresolved accusation of wrongdoing, and may even enhance the risk that an innocent

the necessity of such "sallies" comes as a consequence of intentional, repetitious prosecutorial misconduct requiring reversal of multiple ill-gotten judgments of conviction, tolerance for that risk must give way to recognition that permitting yet further trials "threatens the '[h]arassment of the accused ... so as to afford the prosecution a more favorable opportunity to convict[,]'" and in so doing offends the Double Jeopardy Clause. *Dinitz*, 424 U.S. at 611 (quoting *Downum v. United States*, 372 U.S. 734, 736 (1963)).

B. Other courts have long acknowledged the necessity of limiting the government's opportunities to compel retrial.

While this Court has yet to squarely address whether the Constitution imposes some limit on the number of opportunities a government should be afforded as it seeks to deprive a citizen of his life or liberty, some lower courts have determined that retrials may not go on indefinitely. In *Preston v. Blackledge*, 332 F.Supp. 681 (E.D.N.C. 1971), for example, the district judge acknowledged this Court's settled double jeopardy rules, but found that they could not be read to authorize the five trials to which the habeas petitioners had been subjected:

> While this court is aware of the need for the proper administration of justice and recognizes and agrees with the principles set forth in [*United States v.*] *Perez*[, 22 U.S. (9 Wheat.) 256, 6 L.Ed. 165 (1824),] that there can be a retrial of an accused after a jury has failed to reach a verdict, it does not support the *Perez* principle to the point at which it has been expounded in this particular instance. There is no doubt that such a practice is oppressive, that it creates undue anxiety and insecurity, and that it enhances the possibility that an innocent man may be found guilty. Furthermore, this court feels that to try the petitioners five times is far beyond the allowed exceptions set forth in *Perez*, and also exceeds the limitations on the right to retry an accused subsequently set forth by our Supreme Court.

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defendant may be convicted.").

Preston, 332 F.Supp. at 687-88. Other courts have expressed similar sentiments. *See, e.g., State v. Moriwake*, 65 Haw. 47, 54 n.12 (1982) ("[W]e cannot believe that an infinite number of retrials, whatever the reasons, are consistent with double jeopardy principles."); *United States v. Gunter*, 546 F.2d 861, 866 (10th Cir. 1976) (rejecting double jeopardy challenge to conviction at third trial following hung juries in two prior trials but observing that, "[t]here indeed may be a breaking point ...").

Cognizant of this Court's jurisprudence applying the Double Jeopardy Clause only in cases involving prior acquittals or qualifying mistrials, other courts have addressed the problem of oppressive retrials using principles of due process and fundamental fairness. *See, e.g., State v. Martinez*, 86 P.3d 1210, 1217 (Wash. App. 2004) (affirming decision barring retrial while observing that, "[g]overnment conduct may be so outrageous that it exceeds the bounds of fundamental fairness, violates due process, and bars a subsequent prosecution"); *Sivels v. State*, 741 N.E.2d 1197, 1201 (Ind. 2001) ("We agree with the many jurisdictions that hold trial courts have inherent power to dismiss an information with prejudice following mistrials attributable to repeated jury deadlocks, where necessary to uphold guarantees of fundamental fairness and substantial justice."); *United States v. Rossoff*, 806 F.Supp. 200, 203 (D.C. Ill. 1992) ("[T]he court, in its discretion, may dismiss the indictment with prejudice if it determines that a retrial is against the concept of fundamental fairness."); *State v. Abbati*, 493 A.2d 513, 519 (N.J. 1985) ("The anxiety, vexation, embarrassment, and expense to the defendant of continual reprosecution where no new evidence exists is a proper subject for the application of traditional notions of fundamental fairness and substantial justice."); *People v. Thompson*, 379 N.W.2d 49, 55 (Mich. 1985) (acknowledging that, "there may be cases in which repeated retrials after repeated jury

deadlock might be so fundamentally unfair as to violate the due process guaranteed by [state law] or the Fourteenth Amendment to the United States Constitution"); *United States v. Ingram*, 412 F. Supp. 384, 385–386 (D.D.C. 1976) (denying reconsideration of order dismissing indictment after two hung juries, and remarking that, "This is, of course, not a case of double jeopardy. It is simply a matter of fair play.") (citation omitted).

Whether they have approached the problem as a species of double jeopardy violation this Court has thus far had no occasion to address or as a fundamental fairness concern implicating due process, the principle underlying these courts' determinations is the same: at least under some circumstances – *e.g.*, repeated hung juries, prosecutorial misconduct, or both – unlimited retrials become oppressive and offend the Constitution. That principle is overdue for recognition by this Court, and this case represents an ideal vehicle through which to address it.

C. The retrials of Curtis Flowers have become "oppressive."

Flowers' half-dozen trials are a study in the tactics and circumstances this Court's double jeopardy cases classify as "oppressive." The first two trials, in which the prosecution insisted upon going forward under only one of the four separate murder indictments but proceeded to rely heavily upon inadmissible evidence and argument concerning all four victims, were as naked an attempt to secure "a more favorable opportunity to convict" as this Court is likely to encounter. *Dinitz*, *supra*; *see also Flowers I*, 773 So.2d at 318 (noting prosecutor's opposition to defense motion to consolidate all four cases for trial); *id.* at 325 ("The cumulative pattern of overkill by the prosecutor in repeatedly mentioning the other killings unnecessarily during the guilt phase in our view is far more egregious than that [found to require reversal in another case]."). The third

trial was tainted by race discrimination so obvious, intense, and egregious that it drove the Mississippi Supreme Court to the extraordinary step of threatening to eliminate the peremptory strike. *Flowers III*, 947 So.2d at 939. And the fourth and fifth trials, at which the State lacked the benefits of misconduct committed in earlier proceedings, ended when juries could not unanimously accept the prosecution's by then well-rehearsed case for guilt.[7] The sense of anxiety, harassment, and sheer exhaustion experienced by Flowers as he repeatedly ran the gauntlet of unfair trials before juries carefully selected to omit members of his own race can scarcely be imagined.

Finally – and importantly – the passage of time and the accumulation of trials has done nothing to inspire confidence in the accuracy of the verdict reached at the sixth trial. The evidence against Flowers has not grown stronger; the same lack of hard proof that tempted the prosecution to break rules in the earlier trials persists today; key witnesses have died, *see, e.g.*, *Flowers VI*, 158 So.3d at 1043; and memories of living witnesses have naturally faded. At the same time, the small community in which the trials have occurred has been continuously reminded of – and repeatedly confronted with – this high profile and contentious case. Having lived in its shadow for so long, it is as likely as not that the jurors drawn from that community for Flowers' latest trial delivered a verdict influenced more by local partisanship and fatigue than by the probative force of evidence that was thin when it was fresh and has fared poorly over

[7] In addition to rehearsal, the succession of trials also afforded the prosecution the opportunity to adjust its presentation as witnesses lost their utility. For example, in earlier trials, the State's only ostensibly "direct" evidence of guilt came from two jailhouse informants who claimed Flowers had confessed to them. When those witnesses admitted they had been lying, however, the prosecution filled the hole by co-opting defense witness Odell Hallman, who had previously testified that a key government witness – his sister – fabricated her story against Flowers, before switching sides to claim that Flowers had confessed to him in prison. *See* Tr.

time. When considered alongside the extraordinary ordeal he has been made to endure, this deterioration of both the proof against Flowers and the capacity of the local tribunal to reliably evaluate that proof strongly underscores the necessity of a constitutional rule mandating that this case be brought to a close once and for all. For the benefit of the lower courts in this case and that of other courts called upon to determine when the prosecution has been afforded enough opportunities to secure a valid conviction against a beleaguered defendant, this Court should grant the writ of certiorari and resolve this open constitutional question.

II. A PROSECUTOR'S HISTORY OF ADJUDICATED PURPOSEFUL RACE DISCRIMINATION MUST BE CONSIDERED WHEN ASSESSING THE CREDIBILITY OF HIS PROFFERED EXPLANATIONS FOR PEREMPTORY STRIKES AGAINST MINORITY PROSPECTIVE JURORS.

The second time District Attorney Doug Evans tried Curtis Flowers, the trial court found he had discriminated in the exercise of his peremptory challenges, and remedied that discrimination by seating an African-American juror that Evans had struck on account of race. This correction did not diminish Evans' determination to discriminate.[8] In the next retrial of this case, *Flowers III*, the State exercised all fifteen of its peremptory strikes against African-Americans. This time the discrimination was so blatant that the Mississippi Supreme Court not only reversed, but characterized the case as presenting "as strong a *prima facie* case of racial discrimination as we have ever seen in the context of a *Batson* challenge." *Flowers III*, 947 So.2d at 935. In *Flowers VI*,[9] Evans toned it down a bit, accepting the first black juror and

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[8]Recall that the prosecution had also removed every African-American from the jury in *Flowers I*.

[9] Recall further that Evans used all eleven of his peremptory strikes against African-Americans at *Flowers IV*.

then striking the remaining five; he also utilized wildly disparate questioning in an attempt to thwart the kind of comparative juror analysis that had led to reversal in *Flowers III*. Nonetheless, in evaluating the evidence of purposeful racial discrimination in this retrial by the same prosecutor, the Mississippi Supreme Court refused to even *acknowledge* the very proximate history of discrimination. As the three dissenting justices objected, "To not consider this history is to rebuff *Batson*'s direction that 'all relevant circumstances' must be considered." *Flowers VI*, 158 So.3d at 1088 (King, J., dissenting) (internal citations omitted).

A. Contrary to this Court's precedents, the state court refused to consider the prior history of discrimination.

1. This Court's relevant precedent.

The Equal Protection Clause of the Fourteenth Amendment limits the State's privilege to strike individual jurors through peremptory challenges, compelling prosecutors to abjure racial discrimination in the exercise of the challenge. *Batson v. Kentucky*, 476 U.S. 79, 89 (1986). Each juror must be evaluated on his or her own merits, rather than upon stereotypes, and if even a single juror is struck based upon race, the Fourteenth Amendment is violated. *Id.* at 95.

In lodging a *Batson* claim, the party objecting to the peremptory strike "must first make a *prima facie* showing that race was the criteria for the exercise of the peremptory strike." *Batson*, 476 U.S. at 96-97). "Once the defendant makes a *prima facie* showing, the burden shifts to the State to come forward with a neutral explanation for challenging black jurors." *Id*. at 97. Finally, the trial court must determine whether the race neutral explanation is a pretext for racial discrimination. *Id.*

With regard to determining whether to credit a prosecutor's facially neutral reasons, this

Court has made plain that "all of the circumstances that bear upon the issue of racial animosity must be consulted." *Snyder v. Louisiana*, 552 U.S. 472, 476 (2008) (citing *Miller-El v. Dretke*, 545 U.S. 231, 239 (2005) (*Miller-El II*)). Among the factors this Court has found to "bear upon the issue of racial animosity" are the strength of the *prima facie* case, *Miller-El II*, 545 U.S. at 240; "side-by-side comparisons of some black venire panelists who were struck and white panelists allowed to serve," *id.* at 541; "contrasting *voir dire* questions posed respectively to black and nonblack panel members," *id.* at 255; and mischaracterization of the evidence, *id*. at 244.

Finally, and most pertinently here, this Court has also determined that a history of racial discrimination by the prosecuting office is probative. *Miller-El II*, 545 U.S. at 263. As the three dissenters below pointed out,

> In *Miller-El*, [this] Court considered the "widely known evidence of the general policy of the Dallas County District Attorney's Office to exclude black venire members from juries at the time [the defendant's] jury was selected." If the history of discrimination by a district attorney's office is a permissible consideration under Batson, surely the history of the same prosecutor in the retrial of the same case is a legitimate consideration.

Flowers VI, 158 So.3d at 1088 (King, J., dissenting) (internal citations omitted).

The object of this multi-factor inquiry is to evaluate the prosecutor's credibility, *i.e.*, to determine whether his proffered justifications "should be believed." *Hernandez v. New York*, 500 U.S. 352, 365 (1991); *see also Snyder*, 552 U.S. at 477 (citing *Batson*, 476 U.S. at 98, n. 21). To that end, there is surely no better predictor of willingness to deceive than a documented history of dishonesty. Indeed, reams of impeachment law rest upon the firmly established proposition that propensity to lie matters. It follows that consideration of the history of the

same prosecutor in prior trials of the same case is mandated both by *Miller-El*'s specific directive that a history of racial discrimination by the prosecuting office is probative, and by *Batson's* broader insistence that the trial judge must evaluate the credibility of the prosecutor.

2. The state court's nonconforming approach.

In this case, Evans' propensity to discriminate and his willingness to falsely deny his discriminatory intent are beyond argument; he has been adjudicated to be both an egregious violator of *Batson*'s command, and a repeat offender.[10] Despite the indisputable, judicially-determined fact of prior discrimination and deception, and despite the clarity of this Court's instructions since *Batson* itself, the Mississippi Supreme Court steered its own course and ignored Evans's prior record. At no point in its *Batson* discussion did the state court mention the historical facts surrounding the claim of racial discrimination in the third trial, its own emphatic characterization of those facts as constituting "as strong a *prima facie* case of racial discrimination as we have ever seen in the context of a *Batson* challenge," *Flowers III*, 947 So.2d at 935, or its own determination that Evans' racial discrimination in jury selection compelled reversal of the conviction.[11] At no point in its evaluation of the evidence of

[10] As noted *supra*, in *Flowers III*, the State exercised all fifteen of its peremptory challenges against African-Americans, twelve against potential jurors, and three against potential alternates, *Flowers III*, 947 So.2d at 916. The Mississippi Supreme Court found two clear *Batson* violations, and three more highly suspicious strikes where, in each case, the State offered multiple explanations, some of which were contradicted by the record, while others could not be rebutted. *Flowers III*, 947 So.2d at 936 ("While there was sufficient evidence to uphold the individual strikes of Golden, Reed, and Alexander Robinson under a 'clearly erroneous' or 'against the overwhelming weight of the evidence' standard, these strikes are also suspect, as an undertone of disparate treatment exists in the State's *voir dire* of these individuals.").

[11] The majority opinion contains only one reference to the outcome of *Flowers III*. It appears in the section entitled "Factual Background and Procedural History," and precedes discussion of any claims. *Flowers VI*, 947 So.2d at 1022 ("Finding that the State had engaged in racial discrimination during jury selection, the Court once again reversed and remanded the

discrimination did the majority assign any weight to Evans' history of racial discrimination, consider the way in which that history should influence interpretation of the other evidence of discrimination, or in any other way consider the probative value of that history.

Even the state court's recitation of the factors for determining of pretext was silent concerning prior history. According to the majority, five indicia of pretext should be considered when analyzing the race-neutral reasons for a peremptory strike: (1) disparate treatment, that is, the presence of unchallenged jurors of the opposite race who share the characteristic given as the basis for the challenge; (2) the failure to *voir dire* as to the challenged characteristic cited; (3) the characteristic cited is unrelated to the facts of the case; (4) lack of record support for the stated reason; and (5) group-based traits. *Flowers VI*, 158 So.3d at 1046. Although the state court's list overlaps with some of the criteria this Court recognized as probative in *Miller-El*, it omits both the strength of the *prima facie* case and the prior history of discrimination.

These omissions could not have been accidental. The Mississippi Supreme Court's own prior adjudication of discrimination should have made the history salient; if it did not, Flowers' briefing of the *Batson* issue identified "the very proximate history of discrimination" as the first indicium of discrimination to be considered; and if that still were not enough, the three dissenters specifically protested that the majority's failure to take account of history in this case was contrary to *Batson*'s direction that "all relevant circumstances" must be considered, *Flowers VI*, 158 So.3d at 1088 (King, J., dissenting) (internal citations omitted). The majority, however, neither disputed the charge that it had disregarded probative history, nor attempted to defend its deviation from this Court's precedents.

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case for a new trial.").

B. The state court's refusal to consider the prior history of discrimination was outcome determinative.

As the dissenters carefully noted, "On its own, [Evans' prior history of discrimination] is not dispositive of a finding of racial discrimination." *Flowers VI*, 158 So. 3d 1009, 1088 (2014) (King, J., dissenting) (internal citations omitted). Evans could have – and *should* have – learned the constitutional mandate of racial neutrality from the Mississippi's Supreme Court's rebuke in *Flowers III*, even though he clearly had not learned it from the trial court's finding of discrimination in *Flowers II*. Another prosecutor might have. But Evans did not.

The opinion in *Flowers III* neither rehabilitated nor deterred Evans. Instead, the Mississippi Supreme Court's opinion taught him the limited lesson he wanted to learn: how to avoid the most obvious markers of racial motivation. In Flowers' sixth trial, Evans accepted the first African-American juror who survived for-cause challenges – then struck the remaining five. This time he asked enough questions and gave enough reasons for each juror he struck to avoid making it *blatantly* obvious which of his reasons were pretextual. Close examination, however, shows greater cunning, but the same purposeful discrimination on the basis of race. Evans' questioning of African-American jurors was grossly disparate; his responses to similar *voir dire* answers varied with the juror's race; at several points he mischaracterized the responses of African-American jurors; and he even resorted to out-of-court investigation of an African-American juror in a desperate effort to generate a reason to strike her. *See Flowers VI*, 158 So.3d at 1095 (King, J., dissenting). When this other evidence of pretext is considered *alongside Evans' history of discrimination* – as mandated by *Miller-El* and as faithfully undertaken by the dissenters – the Mississippi Supreme Court's interpretation of these other

indicia of discrimination becomes untenable.

1. The strength of the *prima facie* case.

The majority failed to consider the strength of the *prima facie* case at all.[12] In contrast, after noting the necessity of considering the history of discrimination, the three dissenting justices made the following detailed observations about 22the significance of the strength of the *prima facie* case:

> Like the history of today's case, a review of the statistics relating to the prosecutor's use of peremptory strikes is not, standing alone, dispositive of the *Batson* inquiry. These numbers, however, reveal a clear pattern of disparate treatment between white and African–American venire members. In today's case, a special venire of 600 citizens was drawn. The original venire consisted of forty-two percent African Americans. After the jury qualification and initial for-cause challenges, the venire consisted of twenty-eight percent African Americans. Ultimately, one African American served as a juror and one African American served as an alternate juror. Despite the initial venire consisting of forty-two percent African Americans, the jury that convicted and sentenced Flowers consisted of eight percent African Americans.
>
> The original venire was composed of 42 percent African American jurors, and after for- cause challenges, 28 percent remained. Evans accepted the first African American juror, Alexander Robinson, Jr., but even this decision was suggestive of racial bias; the State's treatment of Robinson suggests it was attempting to insulate subsequent challenges by accepting a token black juror. The *voir dire* was brief. Moreover, although Robinson raised his hand during group *voir dire* to indicate he knew [a relative of Flowers] he was not further questioned by the State on this relationship. In contrast, when Evans offered race-neutral reasons for striking African-American juror Dianne Copper, he pointed to the fact Copper indicated she knew [Petitioner's relative]. This is suspicious, even though standing alone, it proves little.

[12]In one respect, this omission was more surprising than the majority's disregard of Evans's personal history of discrimination: In *Flowers III*, the Mississippi Supreme Court *had* commented on the strength of the prima facie case, and offered no reason for its failure to consider that factor in *Flowers VI*.

> The State then struck all of the remaining five African American potential jurors. ... (Indeed, looked at another way, the State struck all of the African American *women* potentially available for selection as jurors.).

Flowers VI, 158 So.3d at 1090 (King, J., dissenting) (transcript citations omitted).

2. Disparate questioning.

The disagreement between the majority and dissent over whether Evans' history of discrimination was relevant also affected the scrutiny each afforded the evidence of disparate questioning. The majority seemed most focused upon disparaging the probative value of disparate questioning evidence, insisting not once but three times that disparate questioning "alone" cannot establish racial motivation. *Flowers VI*, 158 So,3d at 1047; 1049; 1057. This statement is likely an erroneous characterization of the law; a case with no questioning of any white jurors and extensive questioning of all black jurors might without more establish purposeful discrimination. But more importantly, the premise was obviously erroneous; Evans' disparate questioning did not stand "alone," but at the very least, was accompanied by a strong *prima facie* case and a distinctive history of prior discrimination.

Moreover, the majority's view of the evidence of disparate questioning was unduly deferential toward the state's contentions:

> The State's assertion that elaboration and followup questions were needed with more of the African-American jurors is supported by the record. Most of the followup questions pertained to the potential juror's knowledge of the case, whether they could impose the death penalty, and whether certain relationships would influence their decision or prevent them from being fair and impartial. The jurors who had heard little about the case, who said they would not be influenced by what they had heard, and who said they would not be influenced by relationships were asked the fewest questions. The jurors who knew more about the case, who had personal relationships with Flowers's family members, who

> said they could not be impartial, or who said they could not impose the death penalty were asked more questions.

Flowers VI, 158 So.3d at 1048. Although these generalizations are largely true – *more* African-American jurors knew the parties, *most* of the follow-up questions pertained to relevant matters, *more* questions were asked of jurors who had personal relationships about the case, or qualms about the death penalty – this trusting reliance on reassuring generalizations was not appropriate given Evans' history. On the contrary, in light of that history, it was incumbent upon a reviewing court to probe whether those generalizations provided a full explanation for the disparities.

When the dissent approached the matter of disparate questioning, it did so with appropriately greater skepticism:

> An analysis of the number and type of questions asked by the prosecutor further reveals a pattern of disparate treatment. During individual *voir dire*, the prosecutor asked white jurors an average of approximately three questions. African-American jurors, however, were asked approximately ten questions each by the prosecutor.
>
> Further, in what appears to be mere lip service to the *voir dire* process, when questioning most white jurors during individual *voir dire*, the prosecutor essentially repeated questions that the trial court had just asked. The trial court asked each juror standard death-penalty-qualification questions. The prosecutor would then—in substance—ask the same questions and then hand the juror off to be questioned by the defense. The prosecutor asked only nine percent of white jurors something beyond these duplicated questions.
>
> In a stark contrast, the prosecution asked sixty-three percent of African-Americans questions outside of the standard death-penalty-qualification questions. As an example, fifty-five percent of African-American jurors who had some kind of connection to the Flowers family (through work, the community, or family) were asked questions by the prosecutor about this connection. Although five white jurors had similar connections to the Flowers family (through work and the community), the

> prosecutor failed to ask any questions about these connections.
>
> As noted in *Miller-El v. Cockrell*, 537 U.S. 322 (2003), statistical analysis can raise a question as to whether race influenced the jury selection process. The numbers described above are too disparate to be explained away or categorized as mere happenstance.

Flowers VI, 158 So.3d at 1090 (King, J., dissenting).

In addition, when an apparently acceptable African-American juror was in the box, the State asked highly leading questions, plainly trolling for an excuse for a strike.[13] Careful parsing of questioning is important, for absent vigilance – vigilance which was particularly appropriate given Evans's prior history of discrimination – disparate questioning can obstruct comparative juror analysis. Had the majority inclined toward vigilance, it would have been primed to conclude that "the use of disparate questioning is determined by race at the outset, it is likely a justification for a strike based on the resulting divergent views would be pretextual." *Miller-El v. Cockrell*, 537 U.S 322, 344 (2003) (*Miller-El I*). Instead, given its disregard of

[13] For example, when African-American prospective juror Diane Copper stated she previously worked at Shoe World at the same time Cora Flowers was employed there, Tr. 772, Evans attempted to lead her into saying that the relationship was a close one:

> EVANS: How long did you work with Cora?
> COPPER: I can't remember the exact – probably about a year or something like that.
> EVANS: Okay. Were y'all pretty close?
> COPPER: It was more like a working relationship, you know.
> EVANS: Did you ever visit with each other?
> COPPER: No, sir.

Tr. 973. Later, Evans again tried to lead Copper into admitting that her relationships with defense witnesses "would be something that would be entering into your mind if you were on the jury, wouldn't it?" Tr. 1407. In contrast, the State accepted without any inquiry similar assurances of relationships being purely "working" when white jurors Pamela Chesteen and Bobby Lester volunteered them during the trial court's *voir dire*. Tr. 986; 799.

Evans' history, it accepted the State's explanation for disparate questioning at face value.

3. Comparisons of struck black jurors and seated white jurors.

A comparison of the majority's and dissent's approaches to individual struck African-American jurors reveals the further impact of their divided views on the significance of history. The majority and dissent agree that the strike of one of the African-American jurors was supported by race neutral reasons, but their analyses of each of the other four African-American jurors diverge. For each of those four jurors, the majority recited the reasons Evans gave for each strike, and finding some record support for at least one of the reasons he proffered, concluded that the strike was not pretextual. In contrast, the dissent did not stop with the stated reason, but went on to consider proffered evidence of prevarication.

A full appreciation of the difference between the approaches of the majority and dissent requires a side by side reading of their respective opinions. However, their views on the strike of Carolyn Wright are illustrative. The majority's conclusion is unequivocal: "Flowers's claim that the State provided 'no convincing reasons' for striking Wright is simply unfounded. Wright had worked with Flowers's father, she knew thirty-two of the potential witnesses, and she had been sued by Tardy Furniture."[14] *Flowers VI*, 158 So.3d at 1049. Problems with each of these

[14]The owner of Tardy Furniture was one of the four homicide victims. The majority also "note[d]" that "on her juror questionnaire, Wright wrote that she had previously served as a juror in a criminal case involving the "Tardy Furniture trial." Evans, however, had not mentioned this fact in his stated reasons for striking Wright, and it therefore cannot legitimate the strike. *See Miller-El II*, 545 U.S. at 252 ("But when illegitimate grounds like race are in issue, a prosecutor simply has got to state his reasons as best he can and stand or fall on the plausibility of the reasons he gives. A *Batson* challenge does not call for a mere exercise in thinking up any rational basis. If the stated reason does not hold up, its pretextual significance does not fade because a trial judge, or an appeals court, can imagine a reason that might not have been shown up as false.").

reasons, however, were pointed out by the dissent. Regarding the "working relationship" with Flowers' father, the dissent noted:

> Although the State cited Wright's working relationship with Archie Flowers as a basis for its strike, the State made no effort during *voir dire* to question Wright about the working relationship beyond a general question as to whether the relationship would affect her ability to serve as a juror. One could easily assume that the two worked in different departments and during different shifts. Further, Wright stated during group *voir dire* that she was unaware of whether Archie Flowers still worked at Wal-Mart or if he had retired. This supports an inference that Wright and Flowers did not have a close working relationship. The lack of questioning related to this basis is suspect.

158 So.3d at 1092 (King, J., dissenting).

Regarding the second cited reason, Wright's acquaintance with potential witnesses, the dissent cited to dispositive facts about comparable white jurors: accepted white juror Chesteen "knew thirty-one people involved in Flowers's case;" accepted white juror Waller "knew eighteen people involved in the case;" and accepted white juror Lester "knew twenty-seven people involved in the case." *Flowers VI*, 158 So.3d at 1091 (King, J., dissenting).[15]

Finally, with respect to the prosecution's stated reason that Wright had both been sued and had her wages garnished by Tardy's furniture store, the dissent found that reason also suspicious, both because Wright had stated that the litigation was "paid off" and would not affect her as a juror, and because "[t]here is nothing in the record supporting the contention that

[15]At an earlier point, the majority had acknowledged the existence of accepted white jurors who also knew many of the witnesses, but rationalized that "the number of acquaintances was not the sole reason given by the State, so the basis is not an automatic showing of pretext." *Flowers VI,* 158 So.3d at 1049. However, this statement hardly explains why the majority would later in the opinion list the number of acquaintances as a "convincing reason" for her strike. Nor does it explain why the court did not count the comparison as evidence of pretext, even if not dispositive of the question.

Wright's wages were garnished."[16]

The two opinions' treatment of the other three struck jurors is similarly discordant. The majority is correct that for each struck juror Evans cited at least one reason with record support that did not precisely apply to a white juror he had accepted. But given the backdrop of Mississippi Supreme Court's opinion in *Flowers III*, only the most unsophisticated prosecutor would not have had such a reason at hand. And given that backdrop, the dissent was correct that a facile inquiry was insufficient.

> Although the move from *Swain* to *Batson* left a defendant free to challenge the prosecution without having to cast *Swain*'s wide net, the net was not entirely consigned to history, for *Batson*'s individualized focus came with a weakness of its own owing to its very emphasis on the particular reasons a prosecutor might give. If any facially neutral reason sufficed to answer a *Batson* challenge, then *Batson* would not amount to much more than *Swain*. Some stated reasons are false, and although some false reasons are shown up within the four corners of a given case, sometimes a court may

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[16]The majority acknowledged that the record did not support the contention that Wright's wages had been garnished, but dismissed it as irrelevant because "that does not change the fact that being sued by Tardy Furniture was a race-neutral reason for striking Wright." *Flowers VI*, 158 So. 3d at 1050. In the dissent's view, however, his mischaracterization was significant:

> The State did mischaracterize its basis for the peremptory strike. Further, unlike [another factual misstatement by Evans regarding juror Wright, one that alleged her acquaintance with one of Petitioner's relatives], the statement that Wright had her wages garnished seems to go directly to reasoning for the State's strike—that Wright would have some sort of ill will toward Tardy's as a result of her wages being garnished. It is easy to imagine that litigation which ends in friendly terms—for example, a settlement—might result in the parties having different feelings toward one another as opposed to a suit which results in garnished wages. As such, the State's unsupported characterization of the lawsuit is problematic.

Flowers VI, 158 So.3d at 1091 (King, J., dissenting).

> not be sure unless it looks beyond the case at hand. Hence *Batson*'s explanation that a defendant may rely on "all relevant circumstances" to raise an inference of purposeful discrimination.

Flowers VI, 158 So.3d at 1088 (King, J., dissenting) (quoting *Miller-El II*, 545 U.S. at 239-40 (citing *Batson*, 476 U.S. at 96-97)).

C. This Court should grant certiorari to ensure that lower courts consider all facts bearing on the credibility of the State's asserted reasons for a strike.

"[T]he very integrity of the courts is jeopardized when a prosecutor's discrimination 'invites cynicism respecting the jury's neutrality,' and undermines public confidence in adjudication. *Miller-El II*, 545 U.S. at 238 (quoting *Powers v. Ohio*, 499 U.S. 400, 412 (1991), and citing *Georgia v. McCollum*, 505 U.S. 42, 49 (1992); *Edmonson v. Leesville Concrete Co.*, 500 U.S. 614, 628 (1991); *Batson*, 476 U.S. at 87)). Here, the specter of cynicism has two faces. Not only did Evans' discrimination in jury selection threaten public confidence in jury neutrality, his avoidance of the rule of law by thinly veiled pretext threatens public confidence in the willingness of the courts to enforce the law.

While disputes over the weight that should be accorded to various indicia of racial motivation are not uncommon, Flowers is aware of no other case in which a lower court has refused to *consider* any of the factors that this Court has deemed relevant. Moreover, the factor ignored by the state court majority in this case is not only one of those recognized by this Court in *Miller-El*, but one that is inextricably connected with the question of pretext. Certainly, as *Miller-El* recognized, the prior history of the prosecuting office is relevant for its value in establishing *propensity to discriminate*. But the prior history of the prosecutor himself is also relevant in another way: his propensity to lie (or, at the very least, his vulnerability to

self-delusion), which, in turn, is closely related to the central issue of the credibility of his purported reasons for his strikes. *Snyder*, 552 U.S. at 477 (citing *Batson,* 476 U.S. at 98, n. 21) (observing that step three of the inquiry required evaluating the prosecutor's credibility); *Hernandez*, 500 U.S. at 365 (question at *Batson*'s third step is whether prosecutor's proffered reasons "should be believed"). For a court to ignore the unreliability of a prosecutor's prior statements on a *very closely related matter* is such a gross deviation from ordinary fact-finding that it displays a lack of appreciation for importance of the inquiry. Such indifference to enforcement of the Equal Protection Clause of the Fourteenth Amendment must be corrected.

Here, failure to consider the adjudicated discrimination by the same prosecutor in a retrial of the same case blinded the Mississippi Supreme Court majority to the prosecutor's deliberate evasion of *Batson's* command. In contrast, the three dissenters who did consider all of the relevant circumstances, including the prosecutor's proximate personal history, concluded that taken together, those circumstances establish racial motivation. This Court should grant certiorari to make plain to the lower courts that they may not ignore any indicium of discrimination, and to make plain to prosecutors who are caught disobeying the command of the Equal Protection Clause – or who contemplate such disobedience – that flaunting the Constitution has consequences.

CONCLUSION

WHEREFORE, for the foregoing reasons, this Court should grant certiorari

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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 2014

No. 14-

CURTIS GIOVANNI FLOWERS,

Petitioner,

-vs.-

STATE OF MISSISSIPPI,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Petition for Writ of Certiorari in the above matter has been served on opposing counsel by depositing one copy of same in the United States Mail, first class postage pre-paid, addressed as follows:

Jim Hood
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P.O. Box 220
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This the 23rd day of June, 2015.

_____
Keir M. Weyble