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U.S. COURT OF APPEALS

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JAIME HOYOS,

Petitioner-Appellant,

v.

RONALD DAVIS, Warden, California  
State Prison at San Quentin,

Respondent-Appellee.

No. 17-99009

D.C. No.  
3:09-cv-00388-L-NLS

ORDER AND  
AMENDED OPINION

Appeal from the United States District Court  
for the Southern District of California  
M. James Lorenz, District Judge, Presiding

Argued and Submitted March 23, 2022  
Pasadena, California

Before: Sandra S. Ikuta, Morgan Christen, and Patrick J. Bumatay, Circuit Judges.

Order;

Opinion by Judge Christen;

Concurrence by Judge Ikuta

## SUMMARY\*

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### Habeas Corpus/Death Penalty

The panel affirmed the district court's denial of a habeas corpus petition brought by Jaime Hoyos, who was sentenced to death in 1994 after a state jury convicted him of first-degree murder and other offenses.

In the opinion, the panel affirmed the district court's denial of Hoyos's certified claim that the prosecutor's use of peremptory challenges violated his Fourteenth Amendment right to equal protection pursuant to *Batson v. Kentucky*, 476 U.S. 79 (1986).

*Batson* established a three-step framework for trial courts to evaluate claims that a prosecutor's peremptory strikes were racially discriminatory. Step One: the defendant must make out a prima facie case by showing that the totality of the relevant facts gives rise to an inference of discriminatory purpose. Step Two: once the defendant has made out a prima facie case, the burden shifts to the State to explain adequately the racial exclusion by offering permissible race-neutral justifications for the strikes. Step Three: if a race-neutral explanation is tendered, the trial court must then decide whether the opponent of the strike has proved purposeful racial discrimination.

Hoyos argued the California Supreme Court's decision was an unreasonable application of *Johnson v. California*, 545 U.S. 162 (2005), under 28 U.S.C. § 2254(d)(1) because the state court "engaged in the prohibited exercise of reviewing the trial court record regarding the struck jurors and identifying colorable reasons why the prosecutor might have legitimately struck the three jurors." The panel held that the California Supreme Court unreasonably applied *Johnson* by doing exactly what this court has explained *Johnson* forbids: the court scanned the record, articulated its own race-neutral reasons why the prosecutor may have exercised his peremptory strikes, and denied Hoyos's claim at Step One. Noting that the Hoyos cited no Supreme Court authority requiring a state court to conduct a comparative juror analysis at Step One, the panel held that the California Supreme Court did not

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\* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

violate clearly established federal law by failing to do so.

Because the California Supreme Court unreasonably applied *Johnson*, the panel reviewed de novo Hoyos's *Batson* claim to determine whether he raised an inference of racial bias at Step One. To establish a prima facie case at Step One, Hoyos bore the burden to show: (1) he is a member of a cognizable group; (2) the prosecutor removed members of that group; and (3) the totality of the circumstances gives rise to an inference that the prosecutor excluded jurors based on race. The parties did not dispute that Hoyos—who argued that his equal protection rights were violated because the prosecutor struck “all three Hispanic female prospective jurors”—met his burden as to the first two elements: it is undisputed that Hoyos is a member of a cognizable group (i.e., Hispanic individuals) and that the prosecutor peremptorily removed members of that group. The panel noted that trial courts are often well-situated to decide the Step One question without conducting a formal comparative juror analysis, but wrote that when an appellate court must decide whether the trial court had denied a *Batson* motion should instead have drawn an inference that discrimination occurred, *Batson* supports the use of comparative juror analysis. Engaging in such an analysis, the panel concluded that a comparison of the struck jurors to the seated jurors undermines any inference of racial bias. Accordingly, pursuant to *Batson*'s three-step framework, the panel could not say the California Supreme Court erred by ruling that Hoyos did not make a prima facie showing to shift the burden to the prosecutor to explain the actual motivation for the peremptory challenges.

The panel addressed Hoyos's six other certified claims in a simultaneously filed memorandum disposition and affirmed the district court's rulings on those claims. The panel declined to reach Hoyos's uncertified claims.

Judge Ikuta, joined by Judge Bumatay, concurred. Judge Ikuta wrote that the majority's holding—that the California Supreme Court's rejection of Hoyos's *Batson* claim was an unreasonable application of clearly established Supreme Court precedent, which relieves this court of deference to the state court's opinion under the Antiterrorism and Effective Death Penalty Act of 1996—is untrue because there is, in fact, no Supreme Court case squarely on point. She wrote that there is, instead, a Ninth Circuit opinion, *Currie v. McDowell*, 825 F.3d 603 (9th Cir. 2016), that merely *claims* this circuit's rule—that a trial court may not deny a *Batson* motion at step one based on evidence supporting race-neutral reasons for the challenges—is clearly established Supreme Court precedent. She joined the opinion's analysis in full because the panel is bound by *Currie* to the extent it holds that a rule has been clearly established by Federal law as determined by the Supreme Court, even if that

precedent was plainly wrong.

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## COUNSEL

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Mark F. Adams (argued), San Diego, California; Eric S. Multhaup (argued), Law Office of Eric Multhaup, Mill Valley, California; for Petitioner-Appellant.

Anthony Da Silva (argued) and Lise S. Jacobson, Deputy Attorney General; James William Bilderback II, Senior Assistant Attorney General; Rob Bonta, Attorney General; Attorney General's Office, California Department of Justice, San Diego, California; for Respondent-Appellee.

## ORDER

The opinion filed on September 2, 2022, is amended as follows: on slip opinion page 25, lines 15–16, replace <to include gender> with <to include combined race-gender groups>.

The Petitions for Rehearing and Rehearing En Banc are otherwise DENIED; no further petitions for rehearing will be accepted.

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