No. 22-4262(L)

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JOSE JOYA PARADA,

Defendant-Appellant.

On Appeal from the United States District Court
for the District of Maryland at Baltimore

BRIEF FOR THE AMERICAN IMMIGRATION COUNCIL AND THE NATIONAL IMMIGRATION PROJECT OF THE NATIONAL LAWYERS GUILD (d/b/a NATIONAL IMMIGRATION PROJECT) AS *AMICI CURIAE* SUPPORTING APPELLANT

Kathryn Ali
Meghan Palmer
ALI & LOCKWOOD LLP
300 New Jersey Avenue NW, Suite 900
Washington, D.C. 20001
(202) 651-2475
katie.ali@alilockwood.com
meghan.palmer@alilockwood.com

Counsel for Amici Curiae the American Immigration Council and the National Immigration Project

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INTEREST OF THE *AMICI CURIAE*[1]

Amici Curiae are two organizations working to achieve justice and fairness for immigrants in the United States. The American Immigration Council is a non-profit organization that works to advance positive public attitudes toward immigrants and create a more welcoming America, where immigrants are embraced and everyone is afforded an equal opportunity to thrive. The National Immigration Project is a non-profit membership organization of immigration attorneys, legal workers, jailhouse lawyers, grassroots advocates, and others working to defend immigrants' rights and secure equality and justice within the immigration system. Both organizations carry out their missions through a mix of litigation, advocacy, and research and education initiatives.

Through this work, both organizations are acutely aware of pervasive problems of discrimination against immigrants on the basis of racial characteristics such as accent. Moreover, both organizations dedicate significant work and resources to addressing the many barriers to achieving an inclusive immigration system that embraces immigrants—including naturalized citizens—and provides them equal opportunity to participate in American political, economic, and social

[1] All parties have consented to the filing of this brief. No party or party's counsel authored this brief in whole or in part. No person—other than the *Amici Curiae*, their members, or their counsel—contributed money that was intended to fund preparing or submitting this brief.

life. As a result, these organizations have an interest in safeguarding the rights of naturalized citizens to participate in one of the most important privileges and responsibilities of American citizenship—jury service—free from discrimination on the basis of accent.

INTRODUCTION

The jury system is a pillar of the American justice system and system of democracy. "The jury acts as a vital check against the wrongful exercise of power by the State and its prosecutors." *Powers v. Ohio*, 499 U.S. 400, 411 (1991). It is crucial to public confidence in the courts: "The purpose of the jury system is to impress upon the criminal defendant and the community as a whole that a verdict . . . is given in accordance with the law by persons who are fair." *Id.* at 413. Given the jury's vital function, serving as a juror is a profound privilege and duty of citizenship. "Other than voting, serving on a jury is the most substantial opportunity that most citizens have to participate in the democratic process." *Flowers v. Mississippi*, 588 U.S. 284, 293 (2019) (citing *Powers*, 499 U.S. at 407).

These principles are threatened when discrimination infects the jury selection process. The exclusion of otherwise qualified groups from jury service "is at war with our basic concepts of a democratic society and a representative government." *Smith v. Texas*, 311 U.S. 128, 130 (1940). "For more than a century, th[e Supreme] Court consistently and repeatedly has reaffirmed that racial discrimination by the

State in jury selection offends the Equal Protection Clause." *Georgia v. McCollum*, 505 U.S. 42, 44 (1992). And yet, discrimination "remains a problem." *Miller-El v. Dretke*, 545 U.S. 231, 268 (2005) (Breyer, J., concurring).

One form of racial discrimination that persists in jury selection is accent discrimination. An accent is a salient marker of a person's race and national origin, a trait by which people are racially categorized and subjected to adverse treatment. Exclusion from jury service on this ground is antithetical to the Constitution and calls into question the impartiality of the jury, the fairness of trials, and the integrity of the court system overall.

Accent discrimination is particularly incongruous with the principles of the American immigration system. The right to serve on a jury is as integral to full participation in our democracy as the right to vote, and it is a duty and privilege that is extolled to immigrants seeking to become citizens. As the Supreme Court has said, quoting Alexis de Tocqueville, "[t]he institution of the jury raises the people itself . . . to the bench of judicial authority and invests the people . . . with the direction of society." *Powers*, 499 U.S. at 407. To then exclude naturalized citizens from juries on the basis of the way they speak the English language flies in the face of these core democratic principles.

ARGUMENT

I. Exclusion From Jury Service Based on Accent Is Exclusion Based on Race and National Origin.

Civil rights law has long recognized that accent discrimination can be a form of race and national origin discrimination. That is because accent is an external marker of those characteristics, a trait as inextricably linked to a person's race and ethnicity as skin color or phenotype. It is also a trait by which people are commonly racially categorized and subjected to discrimination. Accent discrimination is therefore properly treated as discrimination based on race and national origin.

The trial court in this case acknowledged that excluding a juror based on accent would be "perilously close" to national origin discrimination. JA1416. And yet it accepted, as a legitimate, race-neutral basis for a juror strike, the government's professed concern that the juror would have difficulty communicating—an allegation that the court disagreed with and that was flatly contradicted by the record on voir dire. *See* JA1418–19. Juror 217 was a native English speaker, JA560, who had lived and worked in the United States for 25 years, JA553–54; the court "didn't detect a hint of a problem" with his communication ability, and defense counsel had "zero difficulty in understanding him." JA1415–16. And yet, he was excluded for the way he spoke. This reason should be recognized for what it is: a pretext for accent discrimination.

In fact, what happened here is the sort of easy side-step that has hamstrung *Batson* since its inception—the prosecution can offer what amounts to a different way of saying the same thing, the *Batson* challenge fails, a juror is excluded, and discrimination goes unchecked.

A. Rejecting Pretextual Justifications For Accent Discrimination Is Crucial to Upholding *Batson*'s Constitutional Protections.

The *Batson* framework for challenging discriminatory peremptory jury strikes is a crucial tool for enforcing the constitutional protections of trial by an impartial, representative jury, and equal protection under the law. *See generally Batson v. Kentucky*, 476 U.S. 79 (1896). But even as it was decided, Justice Marshall warned that it "w[ould] not end the illegitimate use of the peremptory challenge." *Id.* at 105 (Marshall, J., concurring). Why? Because it is easy to "assert facially neutral reasons for striking a juror," and if mere facial neutrality suffices to discharge the prosecution's burden, *Batson*'s "protection . . . may be illusory." *Id.* at 106. In the decades since *Batson*, legal scholars and members of the Supreme Court have catalogued reams of evidence that "the discriminatory use of peremptory challenges remains a problem." *Miller-El*, 545 U.S. at 268 (Breyer, J., concurring); *see id.* at 267–69 (collecting studies and evidence of the persistence of discriminatory peremptory strikes).

This is largely because it is easy to fabricate a facially neutral—but pretextual—explanation for a strike, and courts have been reluctant to rigorously

enforce *Batson*. 476 U.S. at 106 (Marshall, J., concurring). As Justice Marshall warned, "[i]f such easily generated explanations are sufficient to discharge the prosecutor's obligation to justify his strikes on nonracial grounds, then the protection erected by the Court today may be illusory." *Id.* at 106. Indeed, one reason that *Batson* is failing to sufficiently protect criminal defendants is how easy it is to check this box: "almost any reason that is not explicitly about race will suffice." Nancy S. Marder, *Batson Revisited*, 97 IOWA L. REV. 1585, 1590–91 (2012).

On top of that, judges may be reluctant to reject proffered justifications as pretextual because that "implies that the lawyer is a deceptive racist." Brooks Holland, *Confronting the Bias Dichotomy in Jury Selection*, 81 LA. L. REV. 165, 188 (2020). Scholars have observed that "trial judges are reluctant to undertake too searching an inquiry because they do not want to impugn the integrity of the prosecutor, an officer of the court." Marder, *supra*, at 1592.

These barriers to finding *Batson* violations are deeply entrenched and baked into the system. If *Batson* is to have any meaning, courts must continue to adhere to the Supreme Court's command in *Norris v. Alabama*, 294 U.S. 587 (1935), to examine "not merely whether [rights were] denied in express terms but also whether [they were] denied in substance and effect." *Id.* at 590. Here, that means acknowledging that exclusion on the basis of accent—where there was no actual communication barrier—amounts to racial and ethnic discrimination, and the

government's asserted justification was a thinly veiled pretext for the same impermissible discrimination.

B. Discrimination on the Basis of Accent Is Discrimination on the Basis of Race and National Origin.

As courts have recognized, "accent and national origin are obviously inextricably intertwined." *Raad v. Fairbanks North Star Borough Sch. Dist.*, 323 F.3d 1185, 1195 (9th Cir. 2003) (quoting *Fragante v. City & Cnty. of Honolulu*, 888 F.2d 591, 596 (9th Cir. 1989)). In light of the tight link between those characteristics, civil rights law recognizes that accent discrimination can be national origin and race discrimination. The Equal Employment Opportunity Commission ("EEOC") states that discrimination based on "linguistic characteristics of a national origin group" constitutes national origin discrimination. 29 C.F.R. § 1606.1; *see also* § 1606.7(a) ("[T]he primary language of an individual is often an essential national origin characteristic."). Under Title VII, a person may be denied a position based on his accent only if that accent impedes his ability to perform his duties; otherwise, concerns about communication ability are construed, properly, as pretexts for discrimination. *See Fragante*, 888 F.2d at 596. Regulations further state that "[t]o prove a national origin claim, it is enough to show that the complainant was treated differently than others because of his or her *foreign accent*, appearance or physical characteristics." Guidelines on Discrimination Because of National Origin, 45 Fed. Reg. 85,633 (Dec. 29, 1980) (emphasis added).

Courts adjudicating these claims have properly held that accent discrimination constitutes direct evidence of national origin discrimination. *See In re Rodriguez*, 487 F.3d 1001, 1006, 1008–09 (6th Cir. 2007) (holding employer's comments on an applicant's accent, including that the applicant was "difficult to understand," qualified as direct evidence of national origin discrimination); *Carino v. Univ. of Okla. Bd. of Regents*, 750 F.2d 815, 819 (10th Cir. 1984) (affirming judgment for employee on Title VII claim and holding that "[a] foreign accent that does not interfere with a Title VII claimant's ability to perform duties of the position he has been denied is not a legitimate justification for adverse employment decisions"); *Odima v. Westin Tucson Hotel Co.*, 991 F.2d 595, 597, 601 (9th Cir. 1993) (holding that decisions based on a Black, Nigerian-born applicant's accent, where it "did not interfere with his ability to communicate," would be "illegitimate and discriminatory."); *see also People v. Morales*, 719 N.E.2d 261, 271 (Ill. App. Ct. 1999) ("[I]f the State struck Calderon from the venire because he had a Spanish accent, then we can only conclude that he was challenged because he was Hispanic."); *Hernandez v. New York*, 500 U.S. 352, 371 (1991) (plurality opinion) ("It may well be . . . that proficiency in a particular language, like skin color, should be treated as a surrogate for race under an equal protection analysis.").

This makes sense. Accent is not a race-neutral or national origin-neutral trait. It rather is an instantly recognizable, immutable characteristic, inextricably

connected to race and national origin. *See* Jasmine B. Gonzales Rose, *Color-Blind But Not Color-Deaf: Accent Discrimination in Jury Selection*, 44 N.Y.U. REV. L. & SOC. CHANGE 309, 320 (2020) (noting that accent is an "external marker of race"); Mari J. Matsuda, *Voices of America: Accent, Antidiscrimination Law, and a Jurisprudence for the Last Reconstruction*, 100 YALE L.J. 1329, 1348–49 (1991) ("[I]t is nearly impossible for an adult to eliminate their natural accent.").

Accent is a "salient feature[] by which people are racially categorized." Gonzales Rose, *supra*, at 320. "Studies have demonstrated that listeners can identify a speaker's socially assigned race within seconds by merely hearing them speak." *Id.* at 320–21 (collecting citations); *see also* Thomas Purnell, William Idsardi & John Baugh, *Perceptual and Phonetic Experiments on American English Dialect Identification*, 18 J. LANGUAGE & SOC. PSYCH. 10, 10–14 (1999); Julie H. Walton & Robert F. Orlikoff, *Speaker Race Identification from Acoustic Cues in the Vocal Signal*, 37 J. SPEECH & HEARING RES. 738, 738–45 (1994).

Accent is therefore one trait that is used to identify an individual as belonging to a racialized group, and then to subject that individual to adverse treatment. Scholars recognize that "[a]ccents associated with people of color who are perceived as foreign are associated with negative evaluations of the speakers' intelligence, competence, ambition, education, and social class." Gonzales Rose, *supra*, at 319. Many studies bear this out. Researchers have found that using a "non-standard

accent"—that is, an accent considered "foreign" or "used by a minority or lower socioeconomic group"—is associated with a "very strong" negative effect on a listener's social evaluation of the speaker. Jairo N. Fuertes, William H. Gottdiener, Helena Martin, Tracey C. Gilbert & Howard Giles, *A Meta-Analysis of the Effects of Speakers' Accents on Interpersonal Evaluations*, 42 EUR. J. SOC. PSYCH. 120, 128 (2012). In a 1978 study, researchers concluded that African Americans speaking "Black English" were rated 17-18% lower on perceived job competence than "standard-accented" Black individuals, and 24-39% lower than white individuals who spoke with a standard accent. Larry M. Blair and Hugh S. Conner, *Black and Rural Accents Found to Lessen Job Opportunities*, 101 MONTHLY LAB. REV. 35, 35–36 (1978). Another study found that hiring managers conducting telephone-based interviews select employees according to a "hierarchy of accents," with "the English and American voices clustered at the top, the Chinese and Mexican voices clustered at the bottom, and Indian voices hovering in the middle." Andrew R. Timming, *The Effect of Foreign Accent on Employability: A Study of the Aural Dimensions of Aesthetic Labour in Customer-Facing & Non-Customer-Facing Jobs*, 31 WORK, EMP. & SOC'Y 409, 423 (2017). These studies reinforce that accent is a racial and ethnic trait, by which speakers are judged according to entrenched racial and ethnic stereotypes in our society. Juror 217 was vulnerable to this form of discrimination:

He is a Black man from Nigeria—a foreign-born member of a racialized minority, singled out for his manner of speaking.

Excluding jurors based on accent thus perpetrates the very evil *Batson* is designed to prevent: singling out and denying potential jurors a seat on a jury on racial or ethnic grounds. *See Batson*, 476 U.S. at 85–86 ("[T]he defendant does have the right to be tried by a jury whose members are selected pursuant to nondiscriminatory criteria.").

This is abhorrent to the American system of justice. "Jury selection is the primary means by which a court may enforce a defendant's right to be tried by a jury free from ethnic, racial, or political prejudice." *Powers*, 499 U.S. at 411. Exclusion based on accent, a characteristic that is a stand-in for race and national origin, infects the trial with those prejudices. This does grave harm to "the integrity of the courts," and "condones violations of the United States Constitution within the very institution entrusted with its enforcement." *Id.* at 412.

C. Courts Should Not Immunize Accent Discrimination by Crediting Baseless Claims of Communication Difficulty.

In this case, the court accepted, as a race- and national origin-neutral reason, that Juror 217 would have difficulty "deliberat[ing] and confer[ring] with his colleagues" on the jury. JA1418–19. It was error to credit this reason, which is both a pretext, and a racialized justification in its own right.

As the court recognized, the record contradicts the government's assertion of a communication barrier. Juror 217, a *native* English speaker, did not have difficulty communicating in the English language. He has lived in the United States for 25 years and had his own customer-facing business. His speech was comprehensible, as stated several times by the court. During voir dire, the court acknowledged that "with some patience and clarification," it was able to understand everything the juror said. JA560. The court later reiterated the same point: "I didn't detect a hint of a problem with his actual use of the language once I could penetrate the accent and understand it," and, "I didn't find that he had any, you know, difficulties whatsoever in that regard." JA1416. Defense counsel had "zero difficulty in understanding him." JA1415.

A claim of communication difficulty that is contradicted by the voir dire record, as in this case, is a pretext for accent discrimination. It is simply a different way of saying the same thing: the juror should be excluded for the way they speak the English language. Indeed, this is often the form that accent discrimination takes: a listener asserting difficulty understanding a speaker. Given how subjective the ability to understand a speaker is, courts have properly recognized such justifications as pretext where the record fails to corroborate actual communication difficulty. *See Morales*, 719 N.E.2d at 271 (finding the "the State's explanation for its challenge of Calderon"—his "heavy accent, potentially a language problem"—was "not

supported by the record," and was therefore "either pretextual or implausible"); *State v. Gould*, 109 A.3d 968, 975–76 (Conn. App. Ct. 2015) (rejecting state's argument that juror would have problems communicating in English because it was not supported by the court's "careful review of the record"); *Raad*, 323 F.3d at 1195 (explaining how fact-finder can infer accent was a pretext for national origin discrimination where the record showed plaintiff's accent did not impair her performance).

What's more, a listener's perception of the comprehensibility of a particular accent is often influenced by the speaker's racial and ethnic traits, and how foreign the speaker is perceived to be. Research bears out that a listener's biases toward the speaker's race and national origin are in fact determinative of whether they can understand the speaker. In particular, judgments about the intelligibility of accents track ethnic stereotypes. "Low-status accents will sound foreign and unintelligible. High status accents will sound clear and competent." Matsuda, *supra*, at 1355. Confronted with racial difference, the listener may even perceive an accent where one does not exist. Gonzales Rose, *supra*, at 326 (citing Donald L. Rubin, *Nonlanguage Factors Affecting Undergraduates' Judgments of Nonnative English-Speaking Teaching Assistants*, 33 RES. HIGHER EDUC. 511, 527 (1992)). For that reason, as scholars have recognized, "an unintelligibility claim often masks a preference claim." Matsuda, *supra*, at 1379; *see also Gould*, 109 A.3d at 975 n.5

(quoting B. Nguyen, *Accent Discrimination and the Test of Spoken English: A Call for an Objective Assessment of the Comprehensibility of Nonnative Speakers*, 81 CALIF. L. REV. 1325, 1325 (1993)) ("Determining the comprehensibility of nonnative speakers is a '[process that is] subjective and highly vulnerable to the sways of prejudice.'").

Additionally, whether a person can understand a particular accent may be a product of whether they *try* to understand. And research shows that, when confronted with foreign accents, many people don't try. "Native speakers of U.S. English often feel perfectly empowered to reject their communicative responsibility." Gonzales Rose, *supra*, at 328 (quoting ROSINA LIPPI-GREEN, ENGLISH WITH AN ACCENT: LANGUAGE, IDEOLOGY AND DISCRIMINATION IN THE UNITED STATES 72 (2d ed. 2012)). "For instance, one study showed that 'if listeners merely thought that a person might be from a different language background, they understood less of what was said.'" *Id.* (quoting Tracey M. Derwing & Murray Munro, *Putting Accent in its Place: Rethinking Obstacles to Communication*, 42 LANGUAGE TEACHING 476, 486 (2009)). "[B]reakdown of communication is due not so much to accent as it is to negative social evaluation of the accent in question, and a rejection of the communicative burden." *Id.* at 328–29 (quoting LIPPI-GREEN, *supra*, at 73). This case exemplifies the connection between understanding another person's speech and effort. As the trial judge here stated, "I didn't find [the prospective juror's] accent so

strong and so powerful as to interfere with my ability to understand him, *particularly if I was prepared to make an effort to really try hard to listen to him*." JA1418 (emphasis added).

For all those reasons, courts should be suspicious of a claim that a particular accent is unintelligible, as that subjective judgment likely reflects listener prejudice and failure to carry their communicative burden. And where the assertion is not born out in the voir dire transcript, as here, the justification should be rejected as pretext.

This case exemplifies the challenges of *Batson* and the reason that racial discrimination persists in the jury system: it demonstrates how easy it is to substitute a justification that is a surrogate for impermissible discrimination and survive a *Batson* challenge. Here, the court rejected outright the proffered basis for the strike and acknowledged that excluding a juror on the basis of their accent is "perilously close" to unconstitutional national origin discrimination. JA1416. There was also ample evidence that the government's reasons were pretext, given that Juror 217 is a native English speaker and was determined by the court to be fully able to communicate during voir dire. Despite all of this, the court still refused to find a *Batson* violation, and accepted a government explanation that was refuted by the record and was a thinly veiled pretext for discrimination on the basis of a racial and ethnic characteristic.

This is a grave failure. "When the government's choice of jurors is tainted with racial bias, that 'overt wrong . . . casts doubt over the obligation of the parties, the jury, and indeed the court to adhere to the law throughout the trial.'" *Miller-El v. Dretke*, 545 U.S. 231, 238 (2005) (quoting *Powers*, 499 U.S. at 412) (alteration in original). In order to safeguard the integrity of the jury system, courts must closely scrutinize and reject pretextual justifications and keep accent discrimination out of the courtroom.

II. Accent Discrimination Disenfranchises Naturalized Citizens and Is Particularly Incongruous with the Values of our Immigration System.

Accent discrimination in jury service inflicts particular harm on naturalized citizens. "Other than voting, serving on a jury is the most substantial opportunity that most citizens have to participate in the democratic process." *Flowers v. Mississippi*, 588 U.S. 284, 293 (2019) (citing *Powers*, 499 U.S. at 407). Being one of the core pillars of our system of justice, jury participation is touted throughout the naturalization process as one of the most important responsibilities for our country's new citizens. These individuals go to great lengths in order to become citizens. To then be unfairly deprived of the opportunity to participate—an opportunity they've been assured is fundamental to the legal system's ability to deliver justice—is not only a personal degradation, but also a community-wide harm and a scourge on the country's democratic values.

A. Serving on a Jury Is a Citizen's Opportunity to Participate in the Administration of Justice.

A fundamental feature of American democracy is the opportunity for ordinary citizens to participate in the justice system. *See Powers*, 499 U.S. at 406 (citing *Duncan v. Louisiana*, 391 U.S. 145, 147–58 (1968)) ("The opportunity for ordinary citizens to participate in the administration of justice has long been recognized as one of the principal justifications for retaining the jury system."). It is one of the pillars of our democratic system of government: citizens serve as a check on the power of the state to punish. *See Balzac v. Porto Rico*, 258 U.S. 298, 310 (1922) ("One of [the jury system's] greatest benefits is in the security it gives the people that they, as jurors, actual or possible, being part of the judicial system of the country, can prevent its arbitrary use or abuse."). "Just as suffrage ensures the people's ultimate control in the legislative and executive branches, jury trial is meant to ensure their control in the judiciary." *Blakely v. Washington*, 542 U.S. 296, 306 (2004). The jury does not just protect the defendant; it "preserves in the hands of the people that share which they ought to have in the administration of public justice." 3 William Blackstone, *Commentaries on the Laws of England* 380 (Phila., J.B. Lippincott Co., 1893). At its best, this quintessentially democratic institution is a critical bulwark "against the arbitrary exercise of power[,]" *Batson*, 476 U.S. at 86, that "guards the rights of the parties" and "ensures continued acceptance of the laws by all of the people[,]" *Powers*, 499 U.S. at 407.

Because the jury helps sustain our democracy, nondiscriminatory access to this institution is no less a part of full citizenship than suffrage. "It not only furthers the goals of the jury system. It reaffirms the promise of equality under the law—that all citizens, regardless of race, ethnicity, or gender, have the chance to take part directly in our democracy." *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127, 145–46 (1994). Opportunities to participate directly in the legal system and the democratic process are rare, especially for minority groups who may have their voices discounted elsewhere. For these groups, the opportunity to partake in and influence the justice system through jury service is an important vehicle to build the trust our system relies on.

For that reason, *Batson* and its progeny recognize that discriminatory juror strikes harm not only the criminal defendant, but also the juror. Persons "excluded from juries because of their race are as much aggrieved as those indicted and tried by juries chosen under a system of racial exclusion." *Carter v. Jury Comm'n of Greene Cnty.*, 396 U.S. 320, 329 (1970).

B. Discrimination In Jury Selection Is Particularly Insidious Where Strikes Involve Naturalized Citizens.

Fulfilling the promise enshrined on the Statue of Liberty ("From her beacon-hand glows world-wide welcome"), the United States welcomes nearly one million naturalized citizens each year. *Naturalization Statistics*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, https://www.uscis.gov/citizenship-resource-

center/naturalization-statistics (last visited June 18, 2024). The U.S. immigration system—and the official processes by which new citizens become naturalized in particular—emphasize the gravity and significance of jury service at nearly every stage of the process of becoming a citizen.

These sources communicate jury service as a profound duty of citizenship. On the USCIS webpage titled "Should I Consider U.S. Citizenship?," the second reason listed for becoming a U.S. citizen, after the right to vote, is the ability to serve on a jury. *Should I Consider U.S. Citizenship?*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, https://www.uscis.gov/citizenship/learn-about-citizenship/should-i-consider-us-citizenship (last visited June 18, 2024). Applicants for citizenship are then tested on the importance of jury service on their naturalization test. *See* U.S. CITIZENSHIP AND IMMIGRATION SERVICES, CIVICS QUESTIONS AND ANSWERS (2008 VERSION) 5 (perm. ed., rev. 2021) (Question #49: "What is one responsibility that is only for United States citizens? A: either "serve on a jury" or "vote in a federal election"). During naturalization ceremonies, federal officials again remind new citizens of their mandate. "[Y]ou can vote . . . you can serve on a jury, you can hold public office, you can hold a U.S. passport, you can work for the U.S. government . . .," explained Senator Mazie Hirono at a Constitution Day Naturalization Ceremony in 2016. *See* United States Courts, *Constitution Day & Citizenship Day 2016*, YOUTUBE (Oct. 7, 2016), https://www.youtube.com/watch?v=3pswyEcw56Y..

Officials stress that jury service is more than a privilege; it is a responsibility, a "profound duty." *See* Press Release, Senator Kirsten Gillibrand, Gillibrand Delivers Keynote Speech At Memorial Day Naturalization Ceremony, (June 1, 2022), https://www.gillibrand.senate.gov/news/press/release/gillibrand-delivers-keynote-speech-at-memorial-day-naturalization-ceremony ("So even for those of us who are civilians, we share a profound duty to be active in our communities, to participate in jury duty, and to vote in our elections."). The Honorable Emmet G. Sullivan, former Chief Judge for the U.S. District Court for the District of Columbia, referred to jury service as "an obligation to your family, to your community, to the country considered yours when summoned to appear and you should freely accept that responsibility." U.S. National Archives, *Naturalization Ceremony at National Archives – 2014 Highlights*, YOUTUBE (Dec. 17, 2014).

Government officials also emphasize that fulfilling this responsibility is vital to the proper functioning of the American justice system. The USCIS *Citizen's Almanac*, a resource given to new citizens after they are naturalized, explains that the jury system is crucial to achieving "just, fair results" in the courtroom:

> For U.S. citizens, serving on a jury is a very important service to the community. The Constitution guarantees that all persons accused of a crime have the right to a 'speedy and public trial by an impartial jury.' Jury service gives U.S. citizens the opportunity to participate in the vital task of achieving just, fair results in matters that come before the court.

U.S. CITIZENSHIP AND IMMIGRATION SERVICES, THE CITIZEN'S ALMANAC 7 (rev. ed. 2014), https://www.uscis.gov/sites/default/files/document/guides/M-76.pdf. Stepping up to serve as a juror is touted as indispensable to "making America the best that it can be." *See* Gillibrand, *supra* ("America is a nation that is defined not only by what we are, but also by what we can become. Which is why we need every one of you to contribute to our future and continue making America the best that it can be."). In his naturalization ceremony remarks, Judge Sullivan drew the connection between this vital task of jury service and trust in the criminal legal system, warning, "If you do not [appear when summoned], you should be reluctant to criticize our system of justice." U.S. National Archives, *supra*. New citizens are often reminded that their participation is also part of the larger projects of American democracy and freedom. The messaging could not be clearer: new citizens have a duty to serve as jurors, and this service is a crucial opportunity to engage in the democratic process.

Naturalized citizens make great personal sacrifices to reach the milestone of citizenship. Once citizens, they are told that their participation as jurors is integral to the American justice system. Their non-participation is criminalized. For that new citizen to then be disqualified from jury service on the basis of their accent, an immutable trait present throughout their naturalization journey, is an egregiously harmful disconnect. It is also a degrading experience. "A venireperson excluded

from jury service because of race suffers a profound personal humiliation heightened by its public character. The rejected juror may lose confidence in the court and its verdict, as may the defendant if his or her objections cannot be heard." *Powers*, 499 U.S. at 413–14; *id.* at 410 (recognizing the "stigma or dishonor" to the juror when a prosecutor uses the raw fact of skin color to exclude a potential juror).

Juror 217 exemplifies the disconnect. He is a native English speaker who has lived and worked in the United States for 25 years and is perfectly qualified for jury service. JA556–57. Indeed, the judge rejected the only race-neutral reason offered for his strike—that his accent would interfere with his ability to deliberate. JA560. Moreover, Juror 217 indicated he was ready and willing to serve. He responded to the summons and appeared in the Baltimore courthouse on four separate occasions, including on days he was never questioned. Though his commute from Cecil County to Baltimore spanned over two hours each day, he arrived early every day to be screened for COVID-19. Still, the district court denied Juror 217 his chance to participate, on the basis of the Nigerian accent he has carried since childhood, and since immigrating to the United States over 25 years ago.

As this case makes stark, accent discrimination in jury selection is not only unconstitutional discrimination on the basis of protected characteristics, it is also hypocritical and deeply harmful to the American justice system and naturalization process.

CONCLUSION

This Court should reverse the district court's ruling that the juror strikes in this case did not violate the Equal Protection Clause and remand for a new trial.

Dated: June 21, 2024

Respectfully submitted,

/s/ *Kathryn Ali*

Kathryn Ali
Meghan Palmer
ALI & LOCKWOOD LLP
300 New Jersey Avenue NW, Suite 900
Washington, D.C. 20001
(202) 651-2475
katie.ali@alilockwood.com
meghan.palmer@alilockwood.com

Counsel for Amici Curiae the American Immigration Council and the National Immigration Project

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rules of Appellate Procedure 29(a)(4) and 32(g)(1), I hereby certify that the foregoing Brief for the American Immigration Council and the National Immigration Project of the National Lawyers Guild (d/b/a National Immigration Project) as *Amici Curiae* Supporting Appellant complies with the type-volume limitations of Federal Rules of Appellate Procedure 29(a)(5). According to the word count feature of Microsoft Word, the word-processing system used to prepare the brief, the brief contains 5,301 words.

I further certify that the foregoing brief complies with the typeface and type style requirements of Federal Rule of Appellate Procedure 32(a)(5) and (6) because it has been prepared in 14-point Times New Roman font, a proportionally spaced typeface.

Dated: June 21, 2024

/s/ *Kathryn Ali*
Kathryn Ali

CERTIFICATE OF SERVICE

I hereby certify that on June 21, 2024, I electronically filed the foregoing document with the United States Court of Appeals for the Fourth Circuit by using the CM/ECF system.

I certify that all participants in the case are registered CM/ECF users, and that service will be accomplished by the appellate CM/ECF system.

/s/ *Kathryn Ali*
Kathryn Ali