No. __________

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2023

MICHAEL IERVOLINO, Petitioner,

v.

STATE OF ALABAMA, Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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August 16, 2024

CAPITAL CASE

QUESTION PRESENTED

In this capital case, where the victim was the son of the District Attorney and the case generated highly prejudicial media coverage across a small community, was the Alabama courts' refusal to change the venue of the trial directly contrary to this Court's precedent?

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PETITION FOR WRIT OF CERTIORARI

Michael Iervolino respectfully petitions for a writ of certiorari to review the judgment of the Alabama Court of Criminal Appeals in this case.

OPINIONS BELOW

The opinion of the Alabama Court of Criminal Appeals affirming Mr. Iervolino's conviction and death sentence, Iervolino v. State, No. CR-21-0283, 2023 WL 5316682 (Ala. Crim. App. Aug. 18, 2023), is not yet reported and is attached at Appendix A, along with that court's order denying rehearing. The order of the Alabama Supreme Court denying Mr. Iervolino's petition for a writ of certiorari, Ex parte Iervolino, No. SC-2023-0827 (Ala. Apr. 19, 2024), is unreported and attached at Appendix B.

JURISDICTION

The Alabama Court of Criminal Appeals affirmed Mr. Iervolino's conviction and death sentence on August 18, 2023. Iervolino v. State, No. CR-21-0283, 2023 WL 5316682 (Ala. Crim. App. Aug. 18, 2023). On October 27, 2023, the Court of Criminal Appeals denied rehearing. The Alabama Supreme Court denied Mr. Iervolino's petition for a writ of certiorari on April 19, 2024. Ex parte Iervolino, No. SC-2023-0827 (Ala. Apr. 19, 2024). Jurisdiction is invoked pursuant to 28 U.S.C. § 1257(a).

RELEVANT CONSTITUTIONAL PROVISIONS

The Fifth Amendment to the United States Constitution provides in pertinent part:

> No person shall . . . be deprived of life, liberty, or property, without due process of law . . .

The Sixth Amendment to the United States Constitution provides in pertinent part:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury . . . .

The Eighth Amendment to the United States Constitution provides:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

The Fourteenth Amendment to the United States Constitution provides in pertinent part:

> 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

On the evening of November 5, 2019, a police officer investigating a power outage in St. Clair County discovered a black Mazda sedan. (R. 759-64.)[1] The occupant of the vehicle had been shot in the neck and killed. (R. 1070.) There was a single bullet in the car, and the back driver's side window was shattered. (R. 804.) The victim was the son of the District Attorney of St. Clair County. (C. 93.)

That same evening, Mr. Iervolino was arrested for possession of a stolen white truck. (R. 668.) He was later charged with two counts of capital murder - for causing

[1]"C." refers to the clerk's record; "R." to the trial record; "S." to the supplemental record; and "Sx." to the State's exhibits.

death by firing from a vehicle while the victim was in a vehicle - as well as theft and breaking and entering a vehicle. (C. 12-13.) He pleaded guilty to theft and breaking and entering, and not guilty to capital murder. (R. 1142-45; S. 161-62.)

The St. Clair County District Attorney and all of the judges in the county recused from the case. (C. 23; S. 72-73.) The Talladega County District Attorney's Office was assigned to prosecute the case (S. 72-73), and a circuit court judge from Talladega County was assigned to preside over the trial (C. 23). Defense counsel moved for a change of venue in light of the fact that the victim was the District Attorney's son and, as a result of that relationship, the case had received widespread and prejudicial publicity. (C. 93-95; S. 167-68, 194.) The trial court denied the motion but noted that he might reconsider following jury selection. (C. 131-35.)

The entire process of selecting the jury lasted less than one day. (R. 118, 136-37, 428-30.) Several veniremembers spoke of the "extensive coverage" of the case on television, in the newspapers, on the radio, and on social media. (R. 366, 373; see also R. 369.) The voir dire responses indicated that, in addition to being covered extensively by the media, the case was a topic of discussion in the offices, schools, and churches, and around the dinner tables, of the St. Clair County community. (R. 356-57, 360, 367, 384, 397.) After the jury was selected, the trial court once again denied the defense's motion to change venue (R. 415).[2]

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[2]The trial court also denied Mr. Iervolino's Batson motion. (R. 427.) During voir dire, the prosecutor asked veniremembers about their criminal histories but stated that she was not interested in traffic offenses and directed veniremembers not to share information about speeding offenses:

At trial, the State's theory was that the shooting was the result of a random road rage incident. (R. 1231, 1245, 1255-56.) The State introduced surveillance videos showing a white truck speeding around a black car as the car turned right and the truck continued straight. (Sx. 62.) The State argued that in that split second, Mr. Iervolino fired a single shot out of the passenger window of the truck, through the back driver's side window of the car, and into the neck of the driver of that car. (R. 465-66, 1232.) The State argued that Mr. Iervolino appeared to be upset that the victim was driving too slowly. (R. 1231.) There was no evidence that Mr. Iervolino and the victim had any history prior to interacting on the roadway for a few seconds.

The State also presented video and witnesses placing Mr. Iervolino in the vicinity of the white truck before it was stolen, Global Positioning System (GPS) readings from the stolen truck, and testimony from police officers who chased the truck and apprehended Mr. Iervolino. (R. 494-505, 524-37, 573, 581-82, 596-671.) The State

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> You, family member, or friend -- we're going to lump that together -- ever been charged with a crime? Now traffic tickets are crimes, but we're not going to go there. We're not going to speeding or any of that stuff, but we will go DUI.

(R. 294.) Later that same day, the prosecutor struck all five qualified Black veniremembers. (R. 420-21.) When required to explain her peremptory strikes of the Black veniremembers, the prosecutor's most commonly offered justification was their history of speeding. (R. 422-23.) When asked whether any of the white jurors had histories of speeding, the prosecutor assured the court that they did not (R. 426), even though records demonstrated that this was not true. See Iervolino v. State, No. CR-21-0283, 2023 WL 5316682, at *15 (Ala. Crim. App. Aug. 18, 2023) (refusing to consider court records showing white jurors with histories of speeding because records not in record on appeal and "not presented to the trial court"). As a result, Mr. Iervolino was tried before an all-white jury. (R. 420-21.)

then presented witnesses who testified that, on the night of the offense, Mr. Iervolino obtained drugs and a gun and then stole a white truck (R. 896, 899-900, 972-73); that he responded affirmatively when asked if he was firing guns in the truck (R. 1026); and that he stated that he had shot someone (R. 906).

At the close of the culpability phase, the prosecutor argued that "[t]his case is about two men that made completely different decisions in their lives" (R. 1225), and referenced Mr. Iervolino's drug use and theft (R. 1226). The prosecutor told the jury about his own considerable experience as a district attorney (R. 1268, 1272-73), and used an unrelated case of the molestation of a six-year-old girl to argue that the jury should find Mr. Iervolino guilty (R. 1270-71). Then, at the conclusion of his rebuttal closing argument, the prosecutor told the jury that "[t]he law is what you say it is" (R. 1277), and that the law "is what you want the law to be in your county" (R. 1278).[3] The jury returned a verdict finding Mr. Iervolino guilty of two counts of capital murder. (C. 159-60; R. 1315-16.)

The next day, at the penalty phase, the State presented one aggravating circumstance: "that the defendant had a previous crime involving violence" based on a second-degree assault conviction from 2007. (R. 1352, 1368-70, 1455.) Defense counsel presented evidence that Mr. Iervolino grew up amidst rampant drug use and domestic violence, and that his mother was addicted to drugs and was in and out of jail

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[3]See Iervolino, 2023 WL 5316682, at *25 (Ala. Crim. App. Aug. 18, 2023) (finding that "[t]he prosecutor misstated the law when he said that the jury determined what the law was" but trial court's instruction cured any error).

and prison. (R. 1380-81, 1383-84, 1386.) When Mr. Iervolino was less than a year old, he was found on the floor of a drug house where his mother had taken him, covered in dirt and his own excrement. (R. 1380-81.) When he was removed from the drug house, his mother did not even notice that he was gone. (R. 1381.) Starting at the age of five, his mother used him and his sister to steal from stores and people's homes. (R. 1381-82.) She also used drugs with Mr. Iervolino and his sister when they were still children. (R. 1383.)

As a teenager, Mr. Iervolino was picked up on a drug charge and sent to a juvenile facility known for physical and psychological abuse (R. 1385),[4] while his sister became addicted to heroine and worked as a prostitute (R. 1380). When Mr. Iervolino was 23 years old, he was the victim of a robbery during which someone he considered a friend tied him up, hit his hands with a hammer, and then shot him in the leg with an assault rifle, causing him to lose his leg. (R. 1396-97.) A year later, he was incarcerated[5] and diagnosed with depression and post-traumatic stress disorder

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[4]Evan Mealins, *Podcast exposes horrors of Mt. Meigs reform school*, MONTGOMERY ADVERTISER (Feb. 15, 2023), https://www.montgomeryadvertiser.com/story/news/2023/02/15/podcast-exposes-horrors-of-mt-meigs-reform-school-in-alabama/69857854007/; Mary Retta, *Josie Duffy Rice on the Unreformed Podcast and Racism in American Schools*, TEEN VOGUE (Feb. 20, 2023), https://www.teenvogue.com/story/josie-duffy-rice-unreformed-podcast ("There's a long-held belief in the United States that juvenile reform centers are better for kids than adult prisons, which is true. But these are still hellish institutions that often operate by the same values that they did 200 years ago.").

[5]The Alabama prisons are infamous for their horrific conditions. See, e.g., United States Department of Justice, Civil Rights Division, INVESTIGATION OF ALABAMA'S STATE PRISONS FOR MEN, p. 2 (2019) ("Our investigation revealed that an excessive amount of violence, sexual abuse, and prisoner deaths occur within Alabama's prisons

(PTSD). (R. 1404-05.) Prison records showed that he experienced paranoia, anxiety, flashbacks, and auditory hallucinations and was prescribed medication for his PTSD. (R. 1402, 1404.) Upon his release from prison, he received no treatment for his mental health issues. (R. 1407.) Instead, he used alcohol and drugs in an attempt to self-medicate. (R. 1404.)

At the close of the penalty phase, the prosecutor contrasted the lives of Mr. Iervolino and the victim, and told the jury that finding mitigating factors would be like "punishing Sloan Harmon twice." (R. 1442.) The defense argued that Mr. Iervolino had been exposed to drugs and neglected "from the very, very, very earliest age" (R. 1446-47), and that he later developed PTSD (R. 1448). On the same day that the penalty phase began, the jury voted 10 to 2 for the death penalty. (R. 1492.) At a subsequent hearing, the trial court vacated the conviction for firing into a vehicle (C. 172), and sentenced Mr. Iervolino to death on the conviction for firing from a vehicle (C. 169; R. 1556).

On appeal, defense counsel contended that the trial court erred in denying Mr. Iervolino's motion to change the venue of his trial. Iervolino v. State, No. CR-21-0283, 2023 WL 5316682, at *6 (Ala. Crim. App. Aug. 18, 2023). On August 18, 2023, the Court of Criminal Appeals affirmed the trial court's venue ruling and Mr. Iervolino's conviction and death sentence. Id. at *9, 37. On October 27, 2023, the Court of Criminal Appeals denied Mr. Iervolino's application for rehearing. The Alabama

on a regular basis.").

Supreme Court then denied Mr. Iervolino's petition for a writ of certiorari. Ex parte Iervolino, No. SC-2023-0827 (Ala. Apr. 19, 2024). Mr. Iervolino now respectfully petitions this Court for a Writ of Certiorari to review the judgment of the Alabama Court of Criminal Appeals in this case.

REASONS FOR GRANTING THE WRIT

I. THIS COURT SHOULD GRANT CERTIORARI AND REVERSE THE JUDGMENT BELOW BECAUSE THE LOWER COURT'S ANALYSIS CONFLICTS WITH THIS COURT'S LONG-STANDING PRECEDENT AND BECAUSE THE FAILURE TO CHANGE VENUE WAS UNCONSTITUTIONAL.

Mr. Iervolino was indicted for the murder of the son of the St. Clair County District Attorney. (C. 12-13, 93.) The District Attorney and all of the judges in St. Clair County recused themselves from the case. (C. 23, S. 72-73.) However, the trial court refused to change the venue, and Mr. Iervolino was tried in St. Clair County by a jury selected from the citizens of St. Clair County. (C. 131-35; R. 415.) He then was convicted of capital murder and sentenced to death for a shooting that the prosecution characterized as the result of a brief, random road rage incident. (C. 159-61; R. 1231, 1245, 1255-56.)

The failure to provide a fair hearing by a panel of impartial, indifferent jurors violates the most basic requirement of due process. Morgan v. Illinois, 504 U.S. 719, 727 (1992); Irvin v. Dowd, 366 U.S. 717, 722 (1961). "Both the appearance and reality of impartial justice are necessary to the public legitimacy of judicial pronouncements and thus to the rule of law itself." Williams v. Pennsylvania, 579 U.S. 1, 16 (2016) (finding that process endangering appearance of neutrality violated due process).

"The[re] are circumstances 'in which experience teaches that the probability of actual bias . . . is too high to be constitutionally tolerable.'" Caperton v. A.T. Massey Coal Co., 556 U.S. 868, 877 (2009) (quoting Withrow v. Larkin, 421 U.S. 35, 47 (1975)). This is one of those circumstances.

Defense counsel filed a motion to move Mr. Iervolino's capital trial out of St. Clair County because the victim was the son of the county's District Attorney and because, as a result of that relationship, the case had received widespread and prejudicial coverage on the news and on social media. (C. 93-95.) In considering whether to move the case "across the bridge" to Talladega County and to select a jury there (S. 265), the judge noted the impact such a move could have:

> Lyle Harmon is not nor has ever been the DA of Talladega County. He's never appeared, to my knowledge, as the assigned DA for a case in Talladega and certainly not in recent memory. The fact that he's the DA in St. Clair County bears no significance of any other county outside of St. Clair County if that is the premise we're traveling.

(S. 260.) The judge denied the motion for a change of venue (C. 131-35), and then denied the motion again following voir dire (R. 415), which lasted less than one day.[6]

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[6]Compare (R. 118, 136-37, 428-30) (entire jury selection lasted less than one day with no questionnaires in trial for capital murder resulting in death sentence) with Skilling v. United States, 561 U.S. 358, 384, 389 (2010) ("extensive screening questionnaire" and individual voir dire of each veniremember in trial for securities fraud resulting in 24-year prison sentence); id. at 427 (Sotomayor, J., concurring in part and dissenting in part) ("The District Court's inquiry lacked the necessary thoroughness and left serious doubts about whether the jury empaneled to decide Skilling's case was capable of rendering an impartial decision based solely on the evidence presented in the courtroom."); id. at 426 (Alito, J., concurring in part and concurring in the judgment) ("I share some of Justice SOTOMAYOR's concerns about the adequacy of the voir dire in this case and the trial judge's findings that certain jurors could be impartial.").

On appeal, the Alabama Court of Criminal Appeals' analysis focused exclusively on the media coverage of the case. Iervolino v. State, No. CR-21-0283, 2023 WL 5316682, at *9 (Ala. Crim. App. Aug. 18, 2023). The lower court found that the coverage was not as extensive as the coverage in Luong v. State, 199 So. 3d 139 (Ala. 2014), where the Alabama Supreme Court held that no change of venue was required. Iervolino, 2023 WL 5316682, at *9. The lower court also noted veniremembers' responses regarding the media coverage, and held that Mr. Iervolino's "case is not one of those rare cases where a change of venue was warranted." Id.

According to this Court's precedent, an appellate court must assess "the totality of circumstances" to determine whether there exists an unconstitutional "probability of unfairness." Sheppard v. Maxwell, 384 U.S. 333, 352 (1966) (citation omitted); see also Murphy v. Florida, 421 U.S. 794, 799 (1975) ("To resolve this case, we must turn, therefore, to any indications in the totality of circumstances that petitioner's trial was not fundamentally fair."). Those circumstances include the size and characteristics of the community, the content of any news stories, the time between the crime and the trial, the outcome of the trial, the exposure of the venire to pretrial publicity, and any other relevant factors. See Skilling v. United States, 561 U.S. 358, 382-84 (2010); Sheppard, 384 U.S. at 352-55; Rideau v. Louisiana., 373 U.S. 723, 724-26 (1963); see also State v. Stubbs, 123 P.3d 407, 412 (Utah 2005) (finding change of venue warranted in light of victim's standing in community and connections to jurors); People v. Williams, 774 P.2d 146, 157 (Cal. 1989) (en banc) (finding change of venue warranted in light of multiple factors, including "the relative status of the victim and defendant

in the community"); Johnson v. State, 476 So. 2d 1195, 1209, 1217 (Miss. 1985) (considering whether victims "members of prominent, influential families" or "public officials" and finding defendant entitled to change of venue); Oxereok v. State, 611 P.2d 913, 918-19 (Alaska 1980) (finding change of venue necessary where victim judge's legal secretary).

Here, the Alabama Court of Criminal Appeals failed to consider any circumstances other than the extensiveness of the media coverage. Iervolino, 2023 WL 5316682, at *9. In its analysis of this issue, the lower court never mentioned the size of St. Clair County, the content of the news coverage, the time between the crime and the trial, or the outcome of the trial. Id. at *6-9. In fact, the lower court only mentioned the relationship of the victim to the District Attorney, a critical and highly relevant circumstance, in its summary of the arguments made by the defense prior to trial. Id.

Based on the totality of the circumstances, Mr. Iervolino's case most closely resembles Rideau, where this Court held that the failure to change venue was unconstitutional. 373 U.S. at 727. With less than 100,000 residents,[7] St. Clair County is even smaller than the "small rural community" of 150,000 residents in Rideau. See Skilling, 561 U.S. at 392; see also id. at 382. The time between the crime and Mr. Iervolino's trial, which was two years, was longer than in Rideau but significantly shorter than the four years in Skilling. See Skilling, 561 U.S. at 383 (finding denial of change of venue complied with due process). And the outcome of Mr. Iervolino's trial,

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[7]U.S. Census Bureau, *Quick Facts: St. Clair County, Alabama*, available at https://www.census.gov/quickfacts/fact/table/stclaircountyalabama/PST045221.

a death sentence, was the same as the outcome in Rideau. Compare Skilling, 561 U.S. at 383 (noting prejudice less probable where jury acquitted defendant on nine counts) with Rideau, 373 U.S. at 727 (finding trial court erred in denying change of venue where defendant convicted and sentenced to death).

As for the content of the news coverage, like in Rideau, the articles here contained blatantly prejudicial information. Compare Skilling, 561 U.S. at 382 (noting news coverage contained no confession or other blatantly prejudicial information) with Rideau, 373 U.S. at 725 (presuming prejudice where news coverage included videotaped confession); see also State v. Harris, 716 A.2d 458, 468 (N.J. 1998) (contrasting articles that "simply report that charges have been made and include an outline of facts alleged in the indictment" with "inherently prejudicial publicity" such as "emotionally charged editorials" and "accounts of the defendant's criminal history" (citation omitted)). The headline of every news article about the case included some variation of "St. Clair County DA's Son Killed" (C. 227, 230, 234; see also C. 221, 225, 239, 241, 243, 245, 248, 250, 252, 255, 257, 259, 261, 263, 266, 267), and many of the articles included Mr. Iervolino's mugshot (C. 225, 251, 252, 255, 257, 259, 261). See also, e.g., United States v. Hines, 955 F.2d 1449, 1455, 1457 (11th Cir. 1992) (reversing conviction due to introduction of mugshots, which created "clear implication of [prior] criminal activity").

The news articles also discussed how Mr. Iervolino "was well known to law enforcement" (C. 246; see also C. 241), and noted that he had "numerous arrests" (C. 223, 253); "a lengthy criminal history in multiple Alabama counties" (C. 235); and "at

least 15 prior felony convictions" (C. 264), including assault and drug possession (C. 223, 253). Several articles reported that Mr. Iervolino was released from jail two days before the crime. (C. 223, 253); see also Irvin, 366 U.S. at 725, 728 (reversing due to extensive pretrial publicity, including references to defendant's criminal history). In addition to Mr. Iervolino's prior bad acts, one article reported that he "has pleaded the Fifth Amendment, refusing to speak to prevent self-incrimination."[8] (C. 262); see also Sheppard, 384 U.S. at 338, 363 (finding change of venue required where pretrial publicity stressed defendant's lack of cooperation with police and other officials); Griffin v. California, 380 U.S. 609, 614 (1965) (noting that "the inference of guilt for failure to testify as to facts peculiarly within the accused's knowledge is in any event natural and irresistible").

The news coverage also contained atypical victim impact information. Several articles quoted the town's police chief as saying that the victim "was a good man, a great citizen of St. Clair County and a great serviceman of his country." (C. 225, 228, 259.) Several other articles quoted the St. Clair County Sheriff, who referred to the victim by his nickname and described the aftermath of the crime as some of the most difficult hours of his 27 years in law enforcement. (C. 222, 225, 228, 253, 259.) The sheriff also stated:

> This is the son of a co-worker and dear friend to all of us that was tragically killed. This was a very good person, a very good man that was headed to a good life. And the world is going to be a bit worse off without

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[8] In fact, Mr. Iervolino twice voluntarily agreed to speak with the police. (R. 53-68; S. 266-67.)

> Sloan, or as we affectionately call him 'Boo,' who celebrated his 20th birthday Oct[ober] 31 this year.

(C. 227; see also C. 222, 230, 253, 256.) While emotional statements can be found in the news coverage of other cases, these statements came from the community's top law enforcement officials based upon their personal relationships with the victim and his father.

The news coverage reflected the profound impact of the crime not only on community leaders but also on the St. Clair County community as a whole. One news article reported that the victim's "death affected many in St. Clair County." (C. 225.) Another news article about the victim and his father closed with the following statement: "[District Attorney] Lyle Harmon is well known by all the senior staff at the Alabama Political Reporter and we have deep sadness at this loss for Lyle and the whole Harmon family." (C. 246.)

The people who reported for jury service consumed this prejudicial pretrial publicity. But see Rideau, 373 U.S. at 727 (finding change of venue required "without pausing to examine a particularized transcript of the voir dire examination of the members of the jury"). While only one veniremember acknowledged recognizing the case based upon a reading of the indictment (R. 231-32), as soon as the venire was informed that the victim was the son of their District Attorney, 17 more veniremembers came forward to say that they had seen pretrial publicity. (R. 335-39.) Veniremembers spoke of the "extensive coverage" of the case on television, in the newspapers, and on the radio (R. 366, 373); of following the case on Facebook (R. 369,

401); and of the case being "all over [] social media" (R. 369). The voir dire responses also indicate that the case was a topic of discussion around the dinner tables and in the offices and schools across St. Clair County. (R. 356-57, 360, 367, 384, 397); see also Irvin, 366 U.S. at 728 ("No doubt each juror was sincere when he said that he would be fair and impartial to petitioner, but psychological impact requiring such a declaration before one's fellows is often its father.").

Further, the need for a change of venue in this case was rooted in circumstances particular to St. Clair County. See Stubbs, 123 P.3d at 412 (finding change of venue warranted in light of victim's standing in community); Williams, 774 P.2d at 157 (same)[9]; Oxereok, 611 P.2d at 918-19 (same). The victim was the son of the District Attorney in St. Clair County. (C. 93; R. 335.) Prior to denying the motion for a change of venue, the trial court recognized that changing the venue to a neighboring county would negate much of the potential for bias. (S. 192.) And yet the jury in Mr. Iervolino's capital case, which had the power to convict and the ultimate power to sentence him to the death penalty, see Ala. Code § 13A-5-47, was drawn from the very citizens over which the victim's father presided as District Attorney. See Young v. U.S. ex rel. Vuitton et Fils S.A., 481 U.S. 787, 803 (1987) (noting that prosecutor "has the power

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[9] "[T]he juror may consider himself honored and fortunate to be selected to culminate a community's anger against a stranger accused of killing a respected member of that community, and returning anything less than a death verdict for first degree murder might be viewed as a betrayal of both his trust as a juror and his friendship with witnesses or the prosecution. When a juror might reasonably fear that the cost of a mitigated verdict might be the alienation of an entire community, there is a danger that such fears will play a part in his deliberations." Williams, 774 P.2d at 155 (cleaned up and citation omitted).

to employ the full machinery of the state in scrutinizing any given individual" in his community); Robert H. Jackson, The Federal Prosecutor, 24 J. Am Jud. Soc. 18 (1940) ("The prosecutor has more control over life, liberty, and reputation than any other person in America.").

"[I]t would be blinking reality not to recognize the extreme prejudice inherent in" trying this case in the same small county where the victim's father served as District Attorney. Turner v. Louisiana, 379 U.S. 466, 473 (1965). "Due process of law, preserved for all by our Constitution, commands that no such practice as that disclosed by this record shall send any accused to his death." Rideau, 373 U.S. at 727 (citation omitted); see also Estes v. Texas, 381 U.S. 532, 542–43 (1965) (recognizing that "at times a procedure employed by the State involves such a probability that prejudice will result that it is deemed inherently lacking in due process"); Irvin, 366 U.S. at 727–28 ("Where one's life is at stake—and accounting for the frailties of human nature—we can only say that in the light of the circumstances here the finding of impartiality does not meet constitutional standards."). In light of the unique circumstances of this case, the failure to change the venue of Mr. Iervolino's capital trial was unconstitutional.

CONCLUSION

For the foregoing reasons, Mr. Iervolino prays that this Court grant a writ of certiorari to the Alabama Court of Criminal Appeals.

Respectfully submitted,

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