

No. 08-987

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IN THE  
**Supreme Court of the United States**

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

v.

UNITED STATES OF AMERICA,  
*Respondent.*

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**On Petition for a Writ of Certiorari to the  
United States Court of Appeals  
for the Eleventh Circuit**

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**BRIEF OF THE CIVIL RIGHTS CLINIC AT  
HOWARD UNIVERSITY SCHOOL OF LAW AS  
*AMICUS CURIAE* IN SUPPORT OF THE  
PETITION FOR A WRIT OF CERTIORARI**

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**STATEMENT OF INTEREST**

*Amici curiae* are the Dean and the Civil Rights Clinic of Howard University School of Law. We submit this brief in support of the petitioners' request for a writ of certiorari in order to respectfully urge this Honorable Court to reverse the decision of the Eleventh Circuit that the petitioners did not establish a right to a change of venue.

For one hundred and forty years Howard University School of Law has trained lawyers to be public

servants and social engineers. In pursuit of that mission the school places the defense of human rights at the heart of its educational practice. When more than seventy years ago Charles Hamilton Houston, a former Howard Law Professor and Dean, and the late Justice Thurgood Marshall, a former Howard student, developed the winning legal strategy challenging the pernicious separate but equal racial segregation doctrine of *Plessy v. Ferguson*, 163 U.S. 537 (1896), their fight was not only against racial subordination, but also against all forms of injustice that would deny human beings the full due process and equal protection promise of the United States Constitution.

By refusing petitioners' request for a change of venue a mere thirty miles away from Miami, Florida, the Eleventh Circuit ordered five agents of the government of Fidel Castro to stand trial at the epicenter of the anti-Castro movement in the United States. In so doing, the court guaranteed that jurors would be drawn from a cross section of a community inflamed by passion, warped by prejudice, awed by violence, and menaced by the virulence of public opinion. In that poisoned atmosphere, petitioners had no more of a fair chance of impartial justice than black defendants before all-white juries during the Jim Crow era.

#### **SUMMARY OF REASONS FOR GRANTING THE WRIT**

Under the Sixth Amendment to the Constitution, criminal defendants have the right to be tried by an impartial jury selected from a fair cross section of the community. *Taylor v. Louisiana*, 419 U.S. 522, 530 (1975). At the heart of the fair cross section doctrine is the principle that a defendant's fellow citizens will

judge a case fairly and neutrally when they represent the entire community and not simply one segment of it. *Taylor*, at 530. But a jury made up of a cross section of the community can never be fair when that community is so inflamed by passion and so warped by prejudice that the jury becomes the very thing for which it was intended as a corrective: the arbitrary application of government power, the expression of irrational bias, and a threat to individual liberty. See *Groppi v. Wisconsin*, 400 U.S. 505, 511 (1971).

The 2001 trial of the petitioners in Miami, Florida took place in a historical, social and political milieu in which the community perceived petitioners as the embodiment of an evil regime. In Miami Florida, circa 2001, being an agent of the Castro government in effect meant being a member of a minority group, despised by broad cross sections of the population, subjected to violence by radical fringe groups, and removed from the consideration of mainstream society and the protection of law enforcement. In other words, agents of the Castro government standing trial in Miami, Florida in 2001 had no more of a chance of impartial justice than black defendants before all white juries during the Jim Crow era.

In arguing that petitioners were no more likely to obtain a fair trial in Miami Florida than black defendants in the Jim Crow South, *amici* do not claim that present day Miami, Florida society is the contemporary reiteration or moral equivalent of Jim Crow society. We merely aim to show that the same conditions that made it impossible for Jim Crow jurors to see beyond the race of defendants also made it impossible for Miami jurors to see beyond petitioners' Castro connection.

## REASONS FOR GRANTING THE WRIT

As far back as the 1940's, this Court identified the fair cross section doctrine as calling for a jury "truly representative of the community." *Smith v. Texas*, 311 U.S. 128, 130 (1940); *see also Glasser v. United States*, 315 U.S. 60, 86 (1942). Thirty years later, the Court elevated that doctrine to a constitutional requirement when it held, in *Taylor v. Louisiana*, that a jury is more likely to be impartial if it is composed of representatives of all segments and groups of the community, who together create a body capable of exercising "the commonsense judgment of the community." 419 U.S. 522, 530 (1975). The *Taylor* Court explained that in the context of a federal criminal case and the Sixth Amendment's jury trial requirement, "our 'notions of what a proper jury is have developed in harmony with our basic concepts of a democratic system and representative government.'" *Id.* (quoting *Glasser v. United States*, 315 U.S. 360 (1942)). As part of the democratic system and as an expression of representative government, "the purpose of a jury is to guard against the exercise of arbitrary power-to make available the commonsense judgment of the community as a hedge against the overzealous or mistaken prosecutor and in preference to the professional or perhaps overconditioned or biased response of a judge." *Taylor*, 419 U.S. at 530, (citing *Duncan v. Louisiana*, 391 U.S. 145, 155-56 (1968)).

However, the fair cross section doctrine is a means, not an end. In the words of the Court, "[t]he Sixth Amendment requirement of a fair cross section on the venire is a means of assuring, not a *representative* jury (which the Constitution does not demand), but an *impartial* one (which it does)." *Holland v. Illinois*,

493 U.S. 474, 480 (1980). Thus, the fact that a jury is drawn from a cross section of the community does not necessarily guarantee a fair trial when the community itself is so fundamentally hostile to the defendants that the very environing atmosphere of the trial becomes irredeemably poisoned:

There can be no justice in a trial by jurors inflamed by passion, warped by prejudice, awed by violence, menaced by the virulence of public opinion or manifestly biased by any influences operating either openly or insidiously to such an extent as to poison the judgment and prevent the freedom of fair action.

*Groppi v. Wisconsin*, 400 U.S. 505, 511 (1971).

We do not lack for examples from our recent past of criminal trials by jurors too inflamed by passion, too warped by prejudice, too awed by violence, and too menaced by the virulence of public opinion to render a fair verdict. See *Moore v. Dempsey*, 261 U.S. 86 (1923); *Powell v. Alabama*, 287 U.S. 45 (1936); *Brown v. Mississippi*, 297 U.S. 278 (1936); *Shepard v. Florida*, 341 U.S. 50 (1951); *Rideau v. Louisiana*, 373 U.S. 723 (1963); *Downer v. Dunaway*, 1 F. Supp. 1001 (D. Ga. 1932); *State v. Wilson*, 158 So. 621 (La. 1935); *Browder v. Commonwealth*, 123 S.W. 328 (Ky. Ct. App. 1909); *Ex Parte Hollins*, 14 P.2d 243 (Okla. Crim. App. 1932). The common denominator in virtually all of these cases is a set of historical, social and political conditions that make it virtually impossible for the jury to serve its proper functions of safeguarding liberty, protecting citizens from arbitrary government power, and determining guilt or innocence. These conditions, which used to be present in the Jim Crow era and are sadly prevalent in present-day Miami, Florida are: 1) the presence of

a universally despised minority group; 2) the use of violence by radical fringe groups; 3) the toleration of that violence by mainstream society; and 4) the suppression of any dissenting voices.

**I. THE PASSIONS OF THE ANTI-CASTRO MOVEMENT POISONED THE ENVIRONING ATMOSPHERE OF PETITIONERS' TRIAL AND SERVED AS AN INSURMOUNTABLE IMPEDIMENT TO DUE PROCESS**

To be exiled from one's homeland, Dante wrote in the *Divine Comedy*, is to "leave everything you love most."<sup>1</sup> For nearly half a century, Cuban life in the United States has often sounded like an echo of the poet Ovid's lament upon his expulsion from Rome: "exile is death."<sup>2</sup> For many Cuban-Americans, living at the epicenter of the Anti-Castro movement in Miami, Florida, the passage of time seems to have done little to dampen their passionate hatred of a regime they believe banished them into exile. *Amici* respectfully submit that it is neither a sign of indifference toward the sincerity of that sentiment, nor even a point of disagreement with the politics of their cause to conclude, as the Eleventh Circuit should have done, that jurors drawn from a cross section of that community can never render a fair and impartial judgment on the criminal guilt or innocence of the very people they believe are keeping them from returning home.

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<sup>1</sup> Dante Alighieri, *The Divine Comedy of Dante Alighieri: Paradiso*, 148 (trans. Allen Mandelbaum University of California Press 1982).

<sup>2</sup> See Joe Marie Claassen, *Displaced Persons: The Literature of Exile from Cicero to Boethius* 160 (1999).

Shortly after the triumph of the Cuban Revolution, relations between Cuba and the United States began to sour. See Hernando Calvo & Katlijn Declercq, *The Cuban Exile Movement: Dissidents or Mercenaries* 1 (2000). Many Cubans who supported the Revolution felt betrayed when Castro's nationalist campaign turned into a Communist regime. Richard R. Fagen, et. al. *Cubans in Exile* 34 (1968). Once in power, Castro seized and nationalized private industries, imposed limits on the size and quantity of land holdings, and set up a revolutionary tribunal which sentenced thousands of Cubans to either prison or death by fire squad. Robert M. Levine, *Secret Missions to Cuba* 29, 31-33 (2001).

Soon thereafter, the island experienced a mass exodus of Cubans to the United States. Levine, *supra* at 33. These exiles, mainly consisting of upper and middle class educated and affluent whites opposed to Castro's revolution, had been rendered virtually destitute with the communist takeover. *Id.* at 42-3. Miami became the central hub for an exile community, whose members shared an abiding desire to overthrow the Castro government and regain the life they had lost when Cuba became a communist country. See generally *Miami Now* 83 (Guillermo J. Grenier & Alex Stepick III eds. 1992).

One of the first such anti-Castro movements in Miami was the Pedro (Peter) Pan airlift of Cuban children to Miami. Levine, *supra*, at 43-44. With funding from the CIA and other government agencies, children from Cuba were airlifted to the United States and separated from their parents based on rumors that the Castro regime planned to ship them to Soviet education camps for indoctrination. *Id.* Some of the Pedro Pan youths later became