

03-9659      **MILLER-EL V. DRETKE, DIR., TX DCJ**

Decision Below:    361 F.3d 849 (5<sup>th</sup> Cir. 2004)

QUESTION PRESENTED

Whether the Court of Appeals — in reinstating on remand from this Court its prior rejection of petitioner's claim that the prosecution has purposefully excluded African-Americans from his capital jury in violation of *Batson v. Kentucky*, 476 U.S. 79 (1986) — so contravened this Court's decision and analysis of the evidence in *Miller-El v. Cockrell*, 537 U.S. 322 (2003), that "an exercise of this Court's supervisory powers" under Supreme Court Rule 10(a) is required to sustain the protections against invidious discrimination set forth in *Batson* and *Miller-El* and the safeguards against arbitrary fact-finding set forth in 28 U.S.C. §§ 2254(d)(2) and (e)(1).

Certiorari Granted 6/28/04