

IN THE SUPREME COURT OF THE UNITED STATES

No. 24-7351

TERRY PITCHFORD, PETITIONER

v.

BURL CAIN, COMMISSIONER,
MISSISSIPPI DEPARTMENT OF CORRECTIONS, ET AL.

(CAPITAL CASE)

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

MOTION OF THE UNITED STATES FOR LEAVE TO
PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE
AND FOR DIVIDED ARGUMENT

Pursuant to Rules 28.4 and 28.7 of the Rules of this Court, the Solicitor General, on behalf of the United States, respectfully moves for leave to participate in the oral argument in this case as amicus curiae supporting respondents and requests that the United States be allowed ten minutes of argument time. Respondents consent to this motion and have agreed to cede ten minutes of argument time to the United States. Accordingly, if this motion is granted, the argument time would be divided as follows: 30 minutes for petitioner, 20 minutes for respondents, and 10 minutes for the United States.

This case concerns whether appellate courts are required to consider pretext arguments that were not presented to the trial court in considering a defendant's claim under Batson v. Kentucky, 476 U.S. 79 (1986). The United States has filed a brief supporting respondents, contending that appellate courts may properly decline to consider unpreserved pretext arguments, and that the Mississippi Supreme Court's decision doing so was not contrary to or an unreasonable application of federal law nor an unreasonable determination of fact.

The United States has a substantial interest in the application of preservation rules in the Batson context, because Batson challenges are available in federal prosecutions. The United States has previously presented oral argument as amicus curiae in cases concerning the use of peremptory challenges in jury selection. See, e.g., Rivera v. Illinois, 556 U.S. 148 (2009); J.E.B. v. Alabama ex rel. T.B., 511 U.S. 127 (1994). The government therefore believes that participation by the United States in oral argument in this case would be of material assistance to the Court.

Respectfully submitted.

D. JOHN SAUER
Solicitor General
Counsel of Record

MARCH 2026