No. 25-5789

In the Supreme Court of the United States

JOSEPH ANTHONY BARRETT,

Petitioner,

v.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE CALIFORNIA SUPREME COURT

BRIEF IN OPPOSITION

ROB BONTA
Attorney General of California
SAMUEL T. HARBOURT
Solicitor General
JAMES WILLIAM BILDERBACK II
Senior Assistant Attorney General
JOSHUA KLEIN
Deputy Solicitor General
HOLLY D. WILKENS
Supervising Deputy Attorney General
ANNE SPITZBERG*
Deputy Attorney General

STATE OF CALIFORNIA
DEPARTMENT OF JUSTICE
600 West Broadway, Suite 1800
San Diego, CA 92101
(619) 738-9561
Anne.Spitzberg@doj.ca.gov
**Counsel of Record*

December 3, 2025

CAPITAL CASE
QUESTION PRESENTED

Whether the petitioner's right to a fair and impartial jury was violated by the trial court's denial of his motion to automatically exclude for cause all employees of the State's department of corrections and rehabilitation.

DIRECTLY RELATED PROCEEDINGS

California Supreme Court:

People. v. Barrett, No. S124131 (judgment entered June 23, 2025) (this case below)

In re Barrett on Habeas Corpus, No. S290481 (pending)

Imperial County Superior Court:

People v. Barrett, No. CF5733 (judgment entered April 5, 2004) (this case below)

TABLE OF CONTENTS

Page

Statement 1
Argument 5
Conclusion 13

TABLE OF AUTHORITIES

Page

CASES

Coleman v. Thompson
501 U.S. 722 (1991) 11

Crawford v . United States
212 U.S. 183 (1909) 8

Dennis v. United States
339 U.S. 162 (1950) 7, 8

Dyer v. Calderon
151 F.3d 970 (9th Cir. 1998) (en banc) 9

Fields v. Brown
503 F.3d 755 (9th Cir. 2007) (en banc) 9

Frazier v. United States
335 U.S. 497 (1948) 8

Hovey v. Superior Court
28 Cal. 3d 1 (1980) 2

Irvin v. Dowd
366 U.S. 717 (1961) 5

Michigan v. Long
463 U.S. 1032 (1983) 11

Patton v. Yount
467 U.S. 1025 (1984) 7

People v. Crittenden
9 Cal. 4th 83 (1994) 11

People v. Morris
53 Cal. 3d 152 (1991) 11

TABLE OF AUTHORITIES
(continued)

Page

People v. Terry
30 Cal. App. 4th 97 (1994) 10

Richter v. Romero
2025 WL 1122328 (9th Cir. Apr. 16, 2025) 9

Ross v. Oklahoma
487 U.S. 81 (1988) 12

Skilling v. United States
561 U.S. 358 (2010) 5

Smith v. Phillips
455 U.S. 209 (1982) 6

Sochor v. Florida
504 U.S. 527 (1992) 11

Tinsley v. Borg
895 F.2d 520 (9th Cir. 1990) 9

United States v. Allsup
566 F.2d 68 (9th Cir. 1977) 8, 9

United States v. Gonzalez
214 F.3d 1109 (9th Cir. 2000) 9

United States v. Kechedzian
902 F.3d 1023 (9th Cir. 2018) 9

United States v. Medina
430 F.3d 869 (7th Cir. 2005) 10

United States v. Polichemi
219 F.3d 698 (7th Cir. 2000) 10

United States v. Wood
299 U.S. 123 (1936) 7, 8

TABLE OF AUTHORITIES
(continued)

Page

Walker v. Martin
562 U.S. 307 (2011) 12

Zacchini v. Scripps-Howard Broad. Co.
433 U.S. 562 (1977) 12

STATEMENT

1. a. In 1996, petitioner Joseph William Barrett was confined at Calipatria State Prison, where he was serving a life sentence for first degree murder. Pet. App. A 3, 18. On April 9, around 4:00 a.m., two correctional officers noticed the light was on in the cell that Barrett shared with Thomas Richmond. *Id.* at 3-4. Richmond had been stabbed, and later died. *Id.* at 4, 7-8. Barrett admitted to stabbing him but claimed it was in self-defense. *Id.* at 1-2, 10-12. Other evidence established that Barrett murdered Richmond because Richmond was a "snitch." *Id.* at 2, 14-16.

Barrett was charged with aggravated assault by a life prisoner and first degree murder with special circumstances. Pet. App. A 1-2. The jury convicted Barrett of all charges and found true the special circumstances. *Id.* at 1. After penalty-phase evidence, the jury reached a verdict of death. *Id.*

b. The petition for certiorari concerns an aspect of jury selection. *See* Pet. 6-19. The county where Barrett was tried contains two state prisons. *See id.* at 4. Several months before trial, Barrett's counsel requested that the court exclude from the jury pool all employees of the state agency that runs California's prison system, the California Department of Corrections and Rehabilitation (CDCR). Pet. App. A 22. The court responded that it would not automatically exclude CDCR employees, because "[t]hey all have their own mind" and "[y]ou can't decide which way these people will go." *Id.* at 22-23. The court said it would not exclude them from the jury panel but would give counsel "'leeway on voir dire.'" *Id.* at 23.

At trial, during jury selection, defense counsel asked the trial court to remove all CDCR personnel as prospective jurors. Pet. App. A 23. The court denied the request, stating that it would instead examine prospective jurors "'one at a time'": "'I want to talk to them, see what they say.'" *Id.* During special voir dire proceedings to determine bias for or against the death penalty, the trial court excused for cause several CDCR employees whom it concluded would not be impartial. *Id.* at 23; *see Hovey v. Superior Court*, 28 Cal. 3d 1, 80 (1980). Afterward, there remained at least 17 CDCR employees in the prospective jury pool. Pet. App. A 23.

Before general voir dire began, Barrett filed a motion contending that his right to a fair and impartial jury required dismissing all remaining CDCR personnel for cause based on implicit bias. Pet. App. A 23-24. He argued that CDCR employees would be implicitly biased because CDCR personnel had "'investigated the incident'" and would "'comprise a very substantial number'" of the prosecution's witnesses. *Id.* at 24. In addition, he argued, CDCR employees "could" be aware of "'security procedures in the court room that are hidden from other jurors,'" and were at greater risk of exposure to outside information. *Id.* Finally, Barrett argued that CDCR employees would be "'likely'" to believe that prisons are dangerous and to have opinions about prisoner assaults, "'may have'" submitted information in the past about inmate gang activities, "'could possibly'" end up working on death row in the future and were "'likely'" to be biased. *Id.* The trial court denied the motion, noting

that it had individually excused various CDCR employees because of "'witnesses that they have known'" or because of "'bias.'" *Id.* In further voir dire, the court dismissed one more CDCR employee for cause, and Barrett exercised peremptory challenges against seven other CDCR employees. *Id.* at 26, 28.

In the end, the jury included one CDCR employee, Juror No. 12. Pet. App. A 25. That juror was a correctional officer from a different prison than the one where the crime occurred. *Id.* Barrett had not raised an individual for-cause challenge to Juror No. 12. *Id.* at 26-27. Barrett also did not exercise a peremptory strike against her, even though he concluded jury selection with six unused strikes. *Id.* at 26. And when jury selection ended, Barrett did not express dissatisfaction with the jury as ultimately constituted. *Id.*

2. The California Supreme Court affirmed. Pet. App. A 1-214. With respect to Barrett's claim about the presence of a CDCR employee on his jury, the Court concluded, as an initial matter, that the claim was forfeited. The Court pointed to its "repeated" holdings that, "'[t]o preserve a contention that the court erred in denying a challenge for cause to a prospective juror,'" a defendant must do three things: "'(1) exercise a peremptory challenge to remove that prospective juror, (2) exhaust all peremptory challenges or somehow justify the failure to do so, and (3) express dissatisfaction with the jury that is ultimately selected.'" *Id.* at 25-26; *see also id.* at 26 (citing cases). Here, the court noted, Barrett did none of those things. He "did not challenge

Juror No. 12 individually for cause and he did not use a peremptory challenge to remove her," even though he concluded jury selection with six of his 20 peremptory challenges unused. *Id.* at 26. Nor did he "express dissatisfaction with the jury as ultimately constituted." *Id.* Although Barrett argued that an individual for-cause challenge or peremptory challenge to Juror No. 12 could have subjected him to less desirable jurors whom he would not have the ability to challenge, he offered only "speculation" to support the point. *Id.* at 28. It was "unclear from the record that the trial court would have rejected a cause challenge against Juror No. 12, had defendant attempted to raise one, or how many peremptory challenges defendant would have expended had he raised (potentially successful) additional cause challenges based on prospective jurors' individual characteristics." *Id.* As a result, Barrett's claim was forfeited. *Id.* at 29.

The Court further concluded that Barrett's claim would also fail on the merits. Pet. App. A 29-34. Petitioner's argument was that "*all* CDCR employees had to be *automatically* removed from the jury pool for implied bias." *Id.* at 33. But "the roles and locations of CDCR personnel who remained in the jury pool at the time of defendant's motion varied." *Id.* "For instance, the jury pool included CDCR employees who worked in accounting offices and at a prison other than Calipatria." *Id.*; *see id.* at 32 ("Based upon defendant's reasoning, even a CDCR accountant or janitor would have to be removed because, inter alia, they 'may be familiar with prison codes' and are 'likely to

be biased.' That cannot be."). The court found no fault in the trial judge's conclusion that instead of granting a blanket dismissal of all CDCR employees, any bias concerns about CDCR personnel were "better assessed on a 'case-by-case basis.'" *Id.* at 34.

ARGUMENT

1. The decision below was correct under this Court's precedents. The Sixth Amendment "secures to criminal defendants the right to trial by an impartial jury." *Skilling v. United States*, 561 U.S. 358, 377 (2010). "It is not required, however, that the jurors be totally ignorant of the facts and issues involved." *Irvin v. Dowd*, 366 U.S. 717, 722 (1961). Constitutional requirements are met if "the juror can lay aside his impression or opinion and render a verdict based on the evidence presented in court. *Id.* at 723. And the burden is "upon the challenger" to show the existence of juror partiality. *Id.*

Barrett does not attempt to show that Juror No. 12 was in fact biased. He does not identify any particular experience, knowledge, or outlook that indicated that juror's partiality. Nor does Barrett identify any aspect of her voir dire that would lead to skepticism about her ability to reach a verdict based solely on the evidence presented in court. To the contrary, Juror No. 12 stated that her job as a juror was "to listen to all the evidence before [making] a judgment." 46 RT 5490.[1] She said she would "make room for the possibility that this was a case of self-defense." *Id.* at 5477. And she said she would "have

[1] RT refers to the Reporter's Transcript.

to listen to all the evidence. What is his past is his past. It doesn't accuse him of what he's being allegedly accused of . . . ." *Id.* at 5489.

Instead of identifying anything particular to Juror No. 12, Barrett argues that all employees of CDCR, regardless of their specific job or location, should have been dismissed for "implied bias." Pet. 18. This Court has not spoken with perfect clarity as to whether the Constitution may sometimes require a verdict to be reversed on grounds of implied bias where a defendant has been given the opportunity to show actual bias and failed to do so. *Compare Smith v. Phillips,* 455 U.S. 209, 215 (1982) ("This Court has long held that the remedy for allegations of juror partiality is a hearing in which the defendant has the opportunity to prove actual bias."), *with id.* at 221 (O'Connor, J., concurring) ("I concur in the Court's opinion, but write separately to express my view that the opinion does not foreclose the use of 'implied bias' in appropriate circumstances."). That question, however, is not at issue in this case, because the lower courts did not rule against Barrett based on any theory that the doctrine of implied bias does not exist.

Instead, the California Supreme Court took as a given that jurors can be dismissed for implied bias. *See supra* pp. 4-5. The trial court likewise did not rule that implied bias would not be considered. *See* Pet. App. A 24 (recounting trial court's comment about dismissing jurors because of "the number of witnesses that they have known or because of the evidence"). Each court concluded, however, that Barrett had not shown that such bias automatically

existed for all CDCR employees of all types—a conclusion that made sense, given how dramatically the "roles and locations of CDCR personnel" in the jury pool "varied." *Id.* at 33; *see, e.g., id.* (jury pool included "CDCR employees who worked in accounting offices and at a prison other than Calipatria"). Barrett's observation that some CDCR employees made statements that led to their for-cause dismissal, Pet. 12-15 & nn.7-11, simply reinforces that if Barrett had identified a basis for implied or actual bias on the part of Juror No. 12 in particular, the trial court would have carefully evaluated the request and struck her if warranted. *See Patton v. Yount*, 467 U.S. 1025, 1039 (1984) ("it is [the trial] judge who is best situated to determine competency to serve impartially").

In contrast, as Barrett acknowledges (Pet. 8) this Court has long held that government employees are not excluded by virtue of their employment alone from serving as jurors on a criminal case. *See United States v. Wood*, 299 U.S. 123, 148-149 (1936); *Dennis v. United States*, 339 U.S. 162, 167-168 (1950). Barrett argues that a CDCR employee's potential bias in a case involving prisons constitutes the sort of "exceptional situation[]" recognized by *Wood*'s statement that "'it is said that particular crimes might be of special interest to employees in certain governmental departments, as, for example, the crime of counterfeiting, to employees of the treasury.'" Pet. 9 (quoting *Wood*, 299 U.S. at 149-150). But the words "[i]t is said" indicate that the Court was restating a contention from others, not providing the Court's own view. And as the

following sentences make clear, this Court viewed such "exceptional" instances as best addressed not by a rule of automatic exclusion but rather by appropriate voir dire: "The law permits full inquiry as to actual bias in any such instances." *Wood,* 299 at 150. Here, the trial court granted Barrett's counsel "'leeway'" in voir dire, Pet. App. A 23, and the voir dire yielded nothing concerning. *See supra* pp. 5-6.[2]

2. Barrett is incorrect to assert a conflict between the decision below and other lower court decisions. To the extent that the Ninth Circuit has "acknowledged the continuing validity of the federal constitutional implied bias doctrine," Pet. 7; *see id.* at 7-8 (citing cases), that implicates no conflict. The California Supreme Court did not deny that jurors could be struck for implied bias. *See supra* p. 6. Instead it held that the requirements for such a claim were not met for the defendant's challenge here. *See supra* pp. 6-7.

Barrett is incorrect to imply (Pet. 16) that the Ninth Circuit would have granted him relief under *United States v. Allsup*, 566 F.2d 68 (9th Cir. 1977). That case held that two jurors should have been dismissed where they were

---

[2] Nor did the seating of Juror No. 12 violate *Crawford v. United States,* 212 U.S. 183 (1909); *see* Pet. 9-10. In *Crawford*, the defendant was charged with defrauding the U.S. Postal Service, *see* 212 U.S. at 184, and the Court held that it was error to seat as a juror a druggist whose store was paid to serve as a postal substation, *id.* at 192-197. The decision rested not on constitutional grounds, but on a common law rule which, at that time, applied in federal court. *Id.* at 194; *see Frazier v. United States*, 335 U.S. 497, 508 (1948) (discussing *Crawford*); *see also Dennis v. United States*, 339 U.S. at 166 (noting that the common-law rule in *Crawford* was later superseded by a congressional statute whose "constitutionality . . . was sustained" in *Wood*).

employed by the victim of the charged crime. *See id*. at 71-72 (jurors worked at different branches of the bank defendant was charged with robbing). But the victim here was not the juror's employer, but the prisoner Barrett attacked. The decision in *Allsup* does not by its own terms cover such cases, and the Ninth Circuit would not likely extend it in that manner. *See Fields v. Brown*, 503 F.3d 755, 772 (9th Cir. 2007) (en banc) (courts "should hesitate before formulating categories of relationships which bar jurors from serving in certain types of trials").[3]

Some Ninth Circuit cases Barrett cites rejected defendants' claims of jurors' implied bias.[4] And in the two exceptions, the court based its conclusion of implied bias on the juror's statements in individual voir dire. *See Dyer v. Calderon*, 151 F.3d 970, 981 (9th Cir. 1998) (en banc) (juror "lied repeatedly" to the court about the facts underlying the implied bias claim); *United States v. Gonzalez*, 214 F.3d 1109, 1114 (9th Cir. 2000) (juror repeatedly responded equivocally when asked whether she could be fair, and "[n]ot once did she affirmatively state that she could or would serve fairly or impartially"). Those

---

[3] *See, e.g., Richter v. Romero*, 2025 WL 1122328, at *1 (9th Cir. Apr. 16, 2025) (holding, in inmate's civil case against correctional officers at the Arizona Department of Corrections, that there was no error in seating juror who had previously worked for the Arizona Department of Corrections and currently worked as a detention officer at a private detention facility).

[4] *See United States v. Kechedzian*, 902 F.3d 1023, 1028-1031 (9th Cir. 2018) (rejecting implied bias claim but determining that juror was actually biased based on voir dire statements); *Tinsley v. Borg*, 895 F.2d 520, 529 (9th Cir. 1990) (rejecting claim of implied bias, where defendant was on trial for a sexual assault and juror worked as counselor for rape victims).

cases have no relevance here, since Barrett points to nothing problematic in Juror No. 12's voir dire.

Barrett has also failed to establish any conflict with decisions of courts beyond the Ninth Circuit. As explained above, the assertion that various decisions "acknowledge" the "implied bias doctrine" (Pet. 7-8), does not suggest a conflict, since the California Supreme Court recognized that doctrine as well. *See supra* p. 6. As Barrett notes (Pet. 9), *United States v. Polichemi*, 219 F.3d 698 (7th Cir. 2000), held that it was error for a district court to deny a defendant's for-cause objection to a juror who was employed by "precisely the same" U.S. Attorney's Office that was prosecuting the defendant. *Id.* at 703-704. But that case did not suggest that automatic disqualification would be required for a juror employed at an agency that was *not* prosecuting the defendant but was otherwise involved in the case. *See generally United States v. Medina*, 430 F.3d 869, 878 (7th Cir. 2005) ("'the "implied bias" test should rarely apply'"). And conversely nothing in the California Supreme Court's decision here indicates that that court would have allowed potential jurors to serve if they worked for the Imperial County District Attorney's Office, which prosecuted Barrett. *See* Pet. App. A 22-34, 50; *see generally People v. Terry*, 30 Cal. App. 4th 97, 101 (1994) (assistant district attorney may not serve as juror in case being prosecuted by his office).

3. In any event, certiorari review would be inappropriate for Barrett because this Court "will not review a question of federal law decided by a state

court if the decision of that court rests on a state law ground that is independent of the federal question and adequate to support the judgment." *Coleman v. Thompson*, 501 U.S. 722, 729 (1991); *see Michigan v. Long*, 463 U.S. 1032, 1041-1042 (1983) (noting the "jurisdictional concern" that "if the same judgment would be rendered by the state court after we corrected its views of federal laws, our review could amount to nothing more than an advisory opinion"). Here, the California Supreme Court held with perfect clarity that, under California's longstanding procedural test, Barrett had forfeited his claim. Pet. App. A 25-26; *see, e.g.*, *People v. Crittenden*, 9 Cal. 4th 83, 121 (1994); *People v. Morris*, 53 Cal. 3d 152, 184 (1991). Although the court also ruled in the alternative that Barrett's claim failed on the merits, the state-law forfeiture holding bars this Court's review. *See, e.g., Sochor v. Florida,* 504 U.S. 527, 534 (1992) (review of state court's federal law holding barred where court had "indicate[d] with requisite clarity that the rejection of Sochor's claim was based on the alternative state ground that the claim was 'not preserved for appeal'").

Barrett, who acknowledges the forfeiture holding only in a footnote, asserts that "the finding of forfeiture cannot stand." Pet. 6 n.3. But he does not cite this Court's precedents on the subject, and his contention would fail under this Court's tests. The procedural holding was independent of the federal claim, because it did not result from the state court's feeling "compelled by what it understood to be federal constitutional considerations to construe

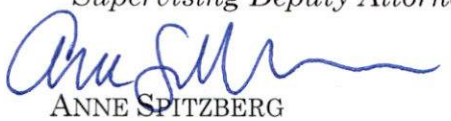
and apply its own law in the manner it did." *Zacchini v. Scripps-Howard Broad. Co.*, 433 U.S. 562, 568 (1977). And the rule was adequate, in the sense of being "firmly established and regularly followed . . . even if the appropriate exercise of discretion may permit consideration of a federal claim in some cases but not others." *Walker v. Martin*, 562 U.S. 307, 316 (2011); *see* Pet. App. A 25 (citing "repeated[]" holdings on the prerequisites to preserve challenges to denials of for-cause objections); *supra* p. 11 (additional cases). And although Barrett attempts to "justif[y]" his failures (Pet. 6 n.3), he had the opportunity to address his present concerns about Juror No. 12 simply by exercising one of his many unused peremptory strikes against her. As this Court has noted, "there is nothing arbitrary or irrational" about a state law "requirement that the defendant must use [his peremptory] challenges to cure" any "erroneous refusals by the trial court to excuse jurors for cause." *Ross v. Oklahoma*, 487 U.S. 81, 90 (1988). Barrett's failure to follow California's procedures precludes review of his claim.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

ROB BONTA
Attorney General of California
SAMUEL T. HARBOURT
Solicitor General
JAMES WILLIAM BILDERBACK II
Senior Assistant Attorney General
JOSHUA KLEIN
Deputy Solicitor General
HOLLY D. WILKENS
Supervising Deputy Attorney General



ANNE SPITZBERG
Deputy Attorney General

December 3, 2025