

No. _____

In the Supreme Court of the United States

STATE OF ALABAMA,

Applicant,

v.

MICHAEL ANTHONY POWELL,

Respondent.

**UNOPPOSED APPLICATION FOR 60-DAY EXTENSION OF TIME IN
WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE
ALABAMA COURT OF CRIMINAL APPEALS**

TO THE HONORABLE CLARENCE THOMAS, ASSOCIATE JUSTICE OF THE SUPREME
COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE ELEVENTH CIRCUIT:

Pursuant to 28 U.S.C. §2101(c) and Supreme Court Rule 13.5, Applicant State of Alabama respectfully moves for a 60-day extension of time, to and including February 9, 2026, in which to file a petition for a writ of certiorari in this Court. Respondent Michael Anthony Powell does not oppose this request.

1. The Alabama Court of Criminal Appeals rendered its 3-2 decision on May 3, 2024, reversing Powell’s capital murder convictions and sentence of death (Exhibit A). Following the denial of its rehearing petition (Exhibit B), the State petitioned the Alabama Supreme Court for certiorari review, which that Court denied on September 12, 2025 (Exhibit C). This Court’s jurisdiction would be invoked under 28 U.S.C. §1257(a).

2. Unless an extension is granted, the deadline for filing the petition is December 11, 2025. This application is timely because it is being filed “at least 10

days before the date the petition is due.” S. Ct. R. 13.5. No prior application has been made in this case.

3. Powell was convicted of capital murder for killing Tracy Algar during a first-degree robbery of a gas station where Algar worked. Surveillance video captured images of the assailant: a man wearing a white shirt, black pants, and a fedora hat who had walked to the gas station from a nearby apartment complex. When law enforcement released photos of this person of interest, multiple people identified him as Powell. And when police searched Powell’s apartment at the complex near the gas station, they found black pants, white shirts, and a fedora hat. Police also found the same brand and .380 caliber ammunition at Powell’s girlfriend’s house as had been used to murder Algar. Ex. A at 4-5.

4. After Powell was arrested, he convinced another inmate—David Jackson—to write a “confession” letter from someone purporting to be involved in Algar’s murder. Ex. A at 6-9. Powell told Jackson what to write, and Jackson wrote it, leaving the name of the purported confessor blank. The letter included details of the murder—including the kind of gun that was used and where exactly Algar had been shot—and stated that Powell was innocent and that the author told Powell where to find the gun. *Id.* After Jackson wrote the letter and gave it to Powell, Jackson’s name was filled in as the confessor. Ex. A at 9.

5. During closing arguments at trial, Powell’s counsel argued that the jury should not find Powell guilty because the murder weapon had not been recovered and neither the spent shell found at the gas station nor the ammunition found at Powell’s

girlfriend's house had Powell's fingerprints on them. Ex. A at 12-13. In response, the prosecutor argued:

“There is one man in this courtroom who knows where that gun is, one man and he is sitting right over there next to that jury box. You remember that letter from David Jackson?... This letter, I am on page three for reference, “I apologize to Mr. Powell for him wrongly – for him being wrongly accused for something that I was involved in, I also told him where to find [the] gun.’ That is what David Jackson said. That is what David Jackson copied from the defendant's letter. Do you remember him telling us about that?”

Ex. A at 14.

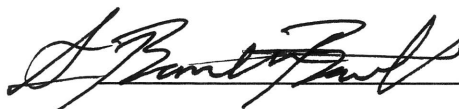
6. The jury found Powell guilty and recommended that he be sentenced to death, which the trial court did. Ex. A at 15. The Alabama Court of Criminal Appeals reversed. Viewing the prosecutor's comment in isolation, the court compared it to isolated comments in other cases, reasoned that the comment was a “direct reference” to Powell's decision not to testify, and held that any “direct” reference “is precisely the type of comment that is forbidden under the Constitution” and “requires this Court to reverse Powell's capital-murder conviction and death sentence.” Ex. A at 22-25. That was error twice over. First, this Court has never interpreted the Fifth Amendment as imposing a “these words look like those words” test. Just the opposite: It has instructed courts that “prosecutorial comment[s] must be examined in context” to determine whether they were a “fair response” to a “claim made by [the] defendant or his counsel” or, instead, were comments the prosecutor made “on his own initiative” suggesting that the jury “draw an adverse inference from a defendant's silence.” *United v. Robinson*, 485 U.S. 25, 32-33 (1988) (discussing *Griffin v. California*, 380 U.S. 609 (1965)). And second, this Court has held that harmless-error analysis applies

to *Griffin* violations. See *Chapman v. California*, 386 U.S. 18, 22 (1967); *United States v. Hastings*, 461 U.S. 499, 508 (1983). Unfortunately, other courts are also confused about how exactly to apply this Court's decisions when a prosecutor's comments could be viewed as commenting on a defendant's decision not to take the stand.

7. The State of Alabama thus respectfully requests an extension of 60 days to file a petition for a writ of certiorari. Undersigned counsel was not involved in the case in the state courts and has significant personal and professional obligations in the coming weeks. In addition, the State intends to seek review in a companion case—*Alabama v. Sykes*—that raises the same issues; an extension would help the State streamline those petitions and make this Court's review more efficient. And, as noted, the respondent does not oppose the request and will not be prejudiced if it is granted.

Respectfully submitted,

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