No. _____

Supreme Court of the United States

JOHN Q. HAMM,
COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS,
Applicant,

v.

MICHAEL SOCKWELL,
Respondent.

EMERGENCY APPLICATION TO STAY THE ELEVENTH CIRCUIT'S MANDATE PENDING PETITION FOR WRIT OF CERTIORARI

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SEPTEMBER 25, 2025

CAPITAL CASE

PARTIES AND RELATED PROCEEDINGS

Applicant (Respondent-Appellee below) is John Q. Hamm, in his official capacity as Commissioner of the Alabama Department of Corrections.

Respondent (Petitioner-Appellant below) is Michael Sockwell.

The proceedings below are:

1. *Sockwell v. Hamm*, No. 23-13321 (11th Cir.). The panel majority reversed and remanded, instructing the district court to issue the writ of habeas corpus, on June 30, 2025. App.1a-62a. The panel majority denied Applicant's motion to stay the mandate on September 23, 2025. App.63a-68a.

2. *Sockwell v. Hamm*, No. 2:13-cv-913 (M.D. Ala.). The Middle District of Alabama issued a memorandum opinion and order (App.69a-196a) dismissing Sockwell's petition for writ of habeas corpus on September 29, 2023.

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

Michael Sockwell is a death-row inmate who ambushed and shot a deputy sheriff in the face with a shotgun for $100. He confessed in a videotaped recording. He challenges his 1990 conviction for capital murder on the ground that the prosecution struck a juror in violation of *Batson*. Every court to review his claim had rejected it until the Eleventh Circuit's June 30, 2025, decision, which plainly violated AEDPA and *Batson*'s progeny by reinterpreting a 35-year-old trial transcript in the light most *un*favorable to the prosecutor and to the state courts. The crux of Sockwell's claim—indeed his "only evidence" (App.106)—is a *single sentence* in the transcript, which had no significance to anyone in the courtroom at the time, not even to the defense while they *examined* the prosecutor pursuant to their *Batson* motion. To vacate Sockwell's conviction, the court below supplanted state-court findings that turned on the credibility of the prosecutor and the struck juror. It takes "exceptional circumstances" to justify that result in an *ordinary* appeal. *Snyder v. Louisiana*, 552 U.S. 472, 477 (2008). Not only are these circumstances unexceptional, but the claim is governed by AEDPA, which demands "far more than … 'even clear error.'" *Shinn v. Kayer*, 592 U.S. 111, 118 (2020). Applicant has a fair prospect of reversal.

If the writ issues and the state court vacates Sockwell's conviction, this case may be moot, irreparably harming Applicant's right to seek certiorari. App.66-68 (Luck, J., dissenting). The State would be forced to retry Sockwell for a 1988 murder. Even if this case would remain live despite vacatur, the equities still disfavor the release of a capital murderer. The mandate will issue **September 30, 2025**.

OPINIONS BELOW

The Eleventh Circuit's opinion is reported at 141 F.4th 359 and reproduced at App.1-62. The Eleventh Circuit's order denying Applicant's motion to stay the mandate is reproduced at App.63-68. The Middle District of Alabama's order dismissing Sockwell's petition for writ of habeas corpus is available at 2023 WL 6377645 and reproduced at App.69-196.

JURISDICTION

The Circuit Justice may consider an application for a stay of the mandate under Supreme Court Rules 22 and 23, and this Court has jurisdiction over such an application under 28 U.S.C. §2101(f) and 28 U.S.C. §1651(a). Because this Court will have jurisdiction over Applicant's forthcoming certiorari petition, it can protect its appellate jurisdiction by staying a judgment that might otherwise moot the case.

STATEMENT OF THE CASE

Michael Sockwell is on Alabama's death row because on March 10, 1988, he murdered Montgomery County Deputy Sheriff Isaiah Harris with a shotgun in exchange for $100. *See Sockwell v. State*, 675 So. 2d 4, 12-13 (Ala. Crim. App. 1993). The next day, Sockwell was arrested and twice admitted to the murder. App.71. He was convicted and sentenced to death for "murder done for a pecuniary gain or other valuable consideration or pursuant to a contract for hire." Ala. Code §13A-5-40(7).

I. Trial and Direct Appeal. At his 1990 trial, Sockwell raised a *Batson* claim, and the court ordered the prosecutor Ellen Brooks to give her reasons for each of the State's strikes. App.95-98. After permitting examination of the prosecutor by the

defense team, the trial court denied the *Batson* motion, defense counsel later renewed it, and the court denied the motion again. App.99-100.

Sockwell then raised *Batson* in the Alabama Court of Criminal Appeals (CCA). He claimed that Brooks had violated *Batson* when she struck black venireman Eric Davis (and others no longer at issue). The following was Davis's voir dire testimony:

> THE COURT: Have you heard or read from any source anything about these circumstances that we're here today on?
>
> [DAVIS]: I've heard a little something.
>
> THE COURT: Okay. Have you heard or read or from any other source gained any information as to whether or not this defendant was guilty or not?
>
> [DAVIS]: Now, I had heard something.
>
> THE COURT: You haven't?
>
> [DAVIS]: I had heard something.
>
> THE COURT: What did you hear and where was it from?
>
> [DAVIS]: Oh, I just, um, it was something in the newspaper or something.
>
> THE COURT: Well, what did you hear in the newspaper or read in the newspaper?
>
> [DAVIS]: Well, I just, you know, just heard talk about what they had heard in the newspaper or something like that. I didn't read it for myself.
>
> THE COURT: From somebody you heard?
>
> [DAVIS]: Um-hum, yes.
>
> THE COURT: When did you hear that?
>
> [DAVIS]: It's been a while back.
>
> THE COURT: About how long ago?
>
> [DAVIS]: Several months ago.
>
> THE COURT: Several months ago. Did you hear specifically about this defendant right here?
>
> [DAVIS]: No.

> THE COURT: Okay. Do you remember what you heard?
>
> [DAVIS]: Not exactly.
>
> THE COURT: Can you remember it for me the best you can?
>
> [DAVIS]: Um, the only thing I recall is just, you know, um, listening at some of the guys, you know, that said they had read about it, you know, the incident out on Troy Highway, stuff like that, you know, what had happened and so forth, you know.
>
> THE COURT: Okay. Do you feel like you'd be able to put aside whatever you had heard …?
>
> [DAVIS]: Yes, I can.
>
> THE COURT: … Are you opposed to the death penalty under any circumstances?
>
> [DAVIS]: No.
>
> THE COURT: Okay. Are you for the death penalty under all circumstances?
>
> [DAVIS]: Well, it could go either way.
>
> THE COURT: Okay. You think you could follow your oath and listen to the instructions of the Court and –
>
> [DAVIS]: Yes sir. Fair enough to listen to the trial and then come up with a verdict.

App.93-94. The CCA reviewed a record that included explanations for every strike, articulated by the prosecutor live in open court. When recounting the strikes, Brooks first "noted the race and gender of every veniremember struck" and then "articulated the reasons" for the State's strikes. App.96. Regarding Davis, she said:

> We then struck number one twelve, Eric Davis, was a black male, according to our records twenty-three years old. He was extremely vague to the Court's questions about what he had heard. You might remember he said well, I just heard a little something and he kept -- well what did you hear? Where did you hear it? He said well, in the paper or something. The Court asked him again. He was unclear and then finally he said well, some people were talking about it. I never really read the paper. He could not remember what he heard. He said that he could go either way but he was not pro death penalty, and personal observations of the attorneys.

Id. Brooks further explained how the prosecution's strikes were based on "a compilation of information," including each prospective juror's demeanor and background. App.96-97. Defense counsel then examined Brooks "at length" about her strikes, and the following exchange occurred:

> Q. Your reasons again for striking Mr. Davis?
>
> A. You want me to repeat them?
>
> Q. Yes, ma'am.
>
> A. Okay. Mr. Davis, according to my notes, is a black male, approximately twenty-three years of age, *which would put him very close to the same race, sex, and age of the defendant.* He had said to the Court he had heard a little something. The Court questioned him further and he finally said well, I heard it from the paper or something. The Court questioned him further. He was very vague and unclear in his answer. The Court asked him more about it and he said well, some people were talking about it. I didn't actually read it. He could not remember what had been said nor anything about -- anything further about those. His answers to the death penalty did not give me a lot of clues either way as to how he felt. In fact, I think the words he used were I could go either way.
>
> Q. Well, was the fact he said he could go either way a reason you struck him, or was it because of the other reasons he gave, such as well, he was vague as to what he had read or where he had heard it from or what it was?
>
> A. Well, Mr. Wise, I didn't just analyze it by one factor. The fact that he did not appear as convincing and as if he'd given it a lot of thought and was sure of how he felt was definitely a consideration, but he wasn't struck because of his death penalty views although that was a factor. His vagueness and -- I don't know if he didn't understand the Judge or if he just didn't want to talk about it or wasn't interested, I didn't know what it was, but I did not think that he was very clear on where he stood about the publicity.
>
> Q. Ms. Brooks, isn't it true that a substantial number of white people stated in chambers that they had heard something about it, didn't really

> know exactly where they had heard it, really didn't remember what they had heard. Isn't that true?
>
> A. I would not characterize it that way, no, sir. I don't recall any other juror, though, who changed his mind about where he had heard it. He said he read it in the paper and then further questioning said well, I didn't read it in the paper, I heard it from some friends.

App.97-98 (emphasis added by the court). On appeal (and for the next thirty years), Sockwell would argue that the prosecutor's statement that Eric Davis was "close to the same race, sex, and age of the defendant" (*id.*) was an admission in open court that she had violated *Batson*—that race was the reason for the strike.

Although the CCA agreed with Sockwell that race seemed to be "part of the reason for striking" Eric Davis, the court rejected Sockwell's *Batson* claim after finding "sufficiently race-neutral" reasons for the strike, including that (1) Davis had given "vague responses," (2) he "may have gained information from pretrial publicity," and (3) he "appeared to be less than candid." *Sockwell*, 675 So. 2d at 20.

The Alabama Supreme Court (ASC) affirmed, *Ex parte Sockwell*, 675 So. 2d 38, 39-42 (Ala. 1995), but disagreed with the CCA's reasoning in two respects. First, as to the law, the ASC held that strikes may not be "based [even] *partly* on race." *Id.* at 40. But second, as to the facts, the court "did not agree with the [CCA] that the prosecutor's opening remark identifying [Davis] as a black man was given as a *reason for striking him* from the venire; on the contrary, given the context of the entire exchange, … this was merely a descriptive identification." *Id.* "When the prosecutor gave the reasons for striking [each] veniremember, either white or black, she first prefaced her remarks by stating the veniremember's race and sex, as she did with [Davis]. The only *reasons* the prosecutor gave for striking [Davis] were his vagueness

and lack of candor …, and whether he could be willing to recommend the death penalty." *Id.* These were valid race-neutral reasons supported by the record. *Id.*

II. Federal Habeas. Sockwell raised the same claim about the same juror in a federal habeas petition, which the district court rejected in a thorough opinion by Judge Watkins. App.90-130. Armed with only "the trial transcript, the very evidence that was reviewed and interpreted by the ASC," Sockwell could not carry his burden under AEDPA. App.106. The ASC had drawn a reasonable conclusion from the record, reviewing the prosecutor's remark not "in isolation" but in light of several key factors. *Id.* First, "[b]y the time Brooks made the subject remark, she had already plainly articulated a race-neutral reason for her strike … without drawing the racial comparison that would later become the crux of [Sockwell's] *Batson* claim." *Id.* She "repeated th[e] same justification and expanded on it further when questioned." *Id.* Second, it was not unreasonable to find that the prosecutor did not make "an unambiguous declaration of racial animus that she had manage[] to conceal until questioned by defense counsel," especially given that "apparently no one, including the defense, believed that Brooks" had done so, despite the defense being "highly attuned to *Batson* issues." App.107-08. In sum, the district court explained, fair-minded jurists could conclude "that Brooks's racial comparison was incidental, surplusage, or simply an extemporaneous, if ill-advised, descriptive observation that Davis and petitioner were of the same race, sex, *and* age, but that this observation conveyed no particular animus." App.114-15.

The district court also held that even if the prosecutor had "some untoward racial consciousness in her strike of Davis," the state courts could still conclude that the prosecution "still would have struck Davis absent any consideration of his race." App.115-16. It was not clearly established federal law in 1995 that a prosecutor would violate *Batson* for striking (arguendo) with a "dual motivation"—*i.e.*, for race-based *and* race-neutral reasons. App.116-17 (citing *Wallace v. Morrison*, 87 F.3d 1271, 1274 (11th Cir. 1996)).

The district court examined the prosecutor's reasons for striking Davis and found them "amply supported by the transcript." App.128. The court rejected Sockwell's comparisons between Davis and other jurors who were not struck, App.128-30, and discounted the alleged disparities in the prosecution's use of strikes and history of *Batson* violations in the first few years following *Batson*, App.123-25. In all, the "ASC did not unreasonably apply *Batson*, and its decision … was not based upon an unreasonable determination of fact." App.130.

The Eleventh Circuit reversed and remanded. It identified "the decisive question" as whether the prosecutor Ellen Brooks "should be believed." App.16. Based on its re-reading of the voir dire transcript, the panel majority determined that she should not be believed. While deeming the state-court findings "not … unreasonable" (App.14), and without identifying clear and convincing evidence to the contrary, the court ultimately accepted Sockwell's version of the facts: that the prosecutor had "state[d] that she struck [Davis] for being the same race as the defendant." App.28 n.13. The court also conceded that one of Brooks's reasons—the juror's vagueness in

answering questions—was supported by the record. App.31 ("Davis may have been a little vaguer…"). The court did not analyze all of the prosecutor's stated reasons, nor many of the district court's findings, but instead devoted pages of its opinion to "relevant circumstances," App.19a, such as *Batson* violations in other cases (App.19-24) and an alleged racially disparate "pattern" of strikes (App.24-25). Concluding that Sockwell had presented an "abundance" of "strong evidence," App.28, the panel majority proceeded to conduct a de novo review and granted relief on largely the same grounds that it refused to accord AEDPA deference, App.29-32.

After determining that the prosecution had violated *Batson*, the court rejected the State's argument that "'law and justice'" do not "require relief." App.32 (quoting *Brown v. Davenport*, 596 U.S. 118, 134 (2022) (quoting 28 U.S.C. §2243)). The State had argued that habeas is a discretionary remedy, that the equities should be sensitive to the guilt or innocence of the petitioner, and that Sockwell is guilty of capital murder. DE28:52-57 (citing, *inter alia*, *Crawford v. Cain*, 68 F.4th 273, 287 (5th Cir. 2023) (Oldham, J.), *reh'g granted, op. vacated*, 72 F.4th 109 (5th Cir. 2023)). But the majority held that *Batson* violations always demand federal habeas relief—even if the violation was "harmless" to the petitioner. App.32-33.

Judge Luck dissented: "Stripped of deference, the majority opinion reviews the cold record de novo, conducts its own *Batson* analysis thirty-five years removed from the courtroom, rejects the state court's no-purposeful-discrimination finding, and orders the district court to grant the habeas writ so the state can figure out a way to retry Sockwell almost four decades after the murder." App.36. Each of the majority's

"premises is flawed," he wrote, and "a fairminded jurist could conclude that striking Juror Davis from the jury was not based on purposeful discrimination. A fairminded jurist already has." App.37. He explained that the state court's interpretation of the trial transcript was a "finding [that] is presumed correct" under AEDPA. App.59 n.2. And, citing a plethora of Eleventh Circuit cases denying *Batson* claims under "the same circumstances," Judge Luck concluded that "the Alabama Supreme Court could make the same finding" here. App.58-59. Only by "refus[ing] to give AEDPA deference" and erring on both "the facts and the law" could the panel majority conclude otherwise. App.62.

The State moved for a stay of the mandate on August 12, 2025. The panel majority denied the motion on September 23, 2025. App.63-65. As the majority saw it, the State faces no irreparable harm because even if Sockwell were retried before this Court rules on the State's forthcoming certiorari petition, the Court could still "undo" the writ of habeas corpus, reinstating Sockwell's prior conviction and death sentence. App.64-65. Judge Luck dissented from this procedurally "abnormal" panel ruling. App.66 (explaining that whether stay to the mandate is a single-judge decision under circuit rules). In his view, the writ would require vacatur of Sockwell's conviction, and vacatur would moot the case. App.66 (citing U.S. Const. art. III; *Brown v. Vanihel*, 7 F.4th 666 (7th Cir. 2021)). To ensure the State's right to "seek certiorari review from [this] Court," Judge Luck would have granted a stay. App.68.

ARGUMENT

The State intends to file a petition for writ of certiorari and respectfully requests a stay of the mandate pending this Court's review.

While "the traditional stay factors" govern this application, the Court has distilled more specific principles for staying an order directing the release of a habeas petitioner from state custody. *Hilton v. Braunskill*, 481 U.S. 770, 777 (1987). Sockwell has been adjudged guilty of capital murder beyond a reasonable doubt, and his conviction was upheld on appeal. That puts him "in a considerably less favorable position than a pretrial arrestee." *Id.* at 779. Capital murderers present a unique "danger" and risk of "flight" such that "continued custody is permissible" as long as the State has "a substantial case on the merits." *See id.* at 777-78.

This application satisfies both the *Hilton* standard and the traditional test. The State's petition will raise at least two important issues on which there is a fair prospect of reversal:

1. Whether the Eleventh Circuit complied with AEDPA and *Batson*'s progeny when it relied on a cold record to second-guess a trial court's credibility finding and firsthand observations of demeanor.

2. Whether the Eleventh Circuit abused its equitable discretion by vacating a guilty murderer's conviction for a single-strike *Batson* violation without determining that "law and justice" require relief.

Because the State presents "a substantial case" for reversal on either ground, a stay should issue to avoid the chance that mootness bars effective relief for the State and the inherent risks that attend the release of a capital murderer.

I. The Eleventh Circuit flouted AEDPA, granting habeas relief under *Batson* based on its re-reading of a 35-year-old trial transcript.

On application for stay, the Court may consider its "treatment of other cases presenting similar issues," *Books v. City of Elkhart*, 239 F.3d 826, 828 (7th Cir. 2001) (Ripple, J., in chambers), and this Court regularly reverses decisions granting habeas relief, especially when they involve errors applying AEDPA. *See, e.g.*, *Davis v. Smith*, 145 S. Ct. 93, 97 (2025) (Thomas, J., dissenting from denial of certiorari) (collecting cases); *Cash v. Maxwell*, 132 S. Ct. 611, 616 (2012) (Scalia, J., dissenting from denial of certiorari) ("The only way this Court can ensure observance of Congress's abridgment of the[] habeas power is to perform the unaccustomed task of reviewing utterly fact-bound decisions that present no disputed issues of law. We have often not shrunk from that task…"); *id.* at 616-17 (collecting cases). In recent years, the Court has vacated Eleventh Circuit decisions granting habeas relief in cases such as *Hamm v. Smith*, 604 U.S. 1 (2024), and *Alabama v. Williams*, 144 S. Ct. 2627 (2024) (Mem.). And the Court summarily reversed in *Dunn v. Reeves*, 594 U.S. 731 (2021).

The Court's active hand in habeas reflects the "special costs on our federal system" when federal courts override the State's "core power to enforce criminal law." *Shinn v. Ramirez*, 596 U.S. 366, 376 (2022). Federal habeas relief "disturbs the State's significant interest in repose, denies society the right to punish some admitted offenders, and intrudes on state sovereignty to a degree matched by few exercises of federal judicial authority." *Harrington v. Richter*, 562 U.S. 86, 103 (2011).

Sockwell's *Batson* claim is not difficult under AEDPA. Thirteen fairminded jurists had rejected it before Sockwell's 2–1 victory in the Eleventh Circuit. Deference

was owed both to the state judiciary under AEDPA and to the trial court under this Court's *Batson* precedents. But nothing in the majority opinion suggests that it applied a "doubly" deferential standard of review. *Cf. Richter*, 562 U.S. at 105. The court thus freed itself to supplant state-court factual findings with its own, *contra* 28 U.S.C. §2254(e)(1), reinterpreting the trial transcript to find a racial purpose and ignoring race-neutral reasons for the strike that are well supported by the record. Even if that were proper under AEDPA, the majority erred by failing to identify a conflict with clearly established law in 1995, *see* 28 U.S.C. §2554(d)(1); the CCA's reasoning that Brooks could strike based on a "dual motivation" was not only reasonable and available under this Court's precedents but affirmatively *endorsed* by the Eleventh Circuit at the time of the state-court decision.

A. Most glaringly, the panel majority took a frozen cold voir dire transcript, read twenty words of it in the least charitable light, and reached a different factual conclusion about the prosecutor's motives and credibility than either the district court or the state high court. That's not how review should be conducted under AEDPA or this Court's *Batson* cases.

The trial court's "pivotal role" in evaluating Sockwell's *Batson* claim is entirely absent from the majority opinion. *Snyder v. Louisiana*, 552 U.S. 472, 477 (2008). *Batson* is all about "the prosecutor's credibility," *id.*, which is a "pure issue of fact" where "the best evidence often will be the demeanor of the attorney" exercising the strike, *Hernandez v. New York*, 500 U.S. 352, 364-65 (1991) (plurality).

If "the decisive question" was whether the prosecutor "should be believed" (App.16) then the decisive answer was given by the trial court thirty years ago. The trial judge, who had "firsthand observations" of the alleged discrimination, rejected Sockwell's claim. *Snyder,* 552 U.S. at 477. Disturbing that credibility determination, the decision below implies that no reasonable factfinder could have believed the prosecutor. *See Hernandez*, 500 U.S. at 366 ("The reasons justifying a deferential standard of review in other contexts … apply with equal force to our review of a state trial court's findings of fact made in connection with a [*Batson*] claim."). But re-reading one line in the trial transcript decades later is no basis to reverse a credibility determination, especially without grappling with *any* of the facts and context that the federal district court found salient.

In particular, the majority erred in rejecting the state-court finding that the prosecutor's reference to race was "a descriptive identification," App.14, while accepting Sockwell's contention that the remark was an admission "that she struck [the juror] for being the same race as the defendant," App.28 n.13. Sockwell did not prove the ASC wrong with "clear and convincing evidence," 28 U.S.C. §2254(e)(1), and the Eleventh Circuit cited none. The majority was apparently ambivalent about its own reasoning, deeming the state-court finding "unpersuasive" (App.14) and a "factual error" (App.15), yet simultaneously "not … unreasonable" (App.14). If the finding that Brooks referenced race merely to describe Davis was not unreasonable, then the court should have accepted it under AEDPA. Instead, the majority contradicted itself by rejecting the not-unreasonable finding in other parts of its

opinion, *see* App.26-27, 28 n.13, 30, without first determining that Sockwell had satisfied 28 U.S.C. §2254(d)(2) and §2254(e)(1).[1]

The state-court finding that Brooks did not give race as a reason for her strike was not unreasonable. The district court identified several "compelling circumstances" in support of the ASC's reading of the trial transcript. App.106. Any one of these points should have been enough in a *Batson* case governed by AEDPA. *First*, the ASC's finding was "bolstered" by the record because at the time of trial, "*apparently no one, including the defense, believed that Brooks had just … admitt[ed] that she struck a juror because of the juror's race*," despite that "counsel were highly attuned to *Batson* issues" and gave a "determined argument at the *Batson* hearing." App.107-08. The district court rightly found it "implausible" that a "declaration of [] racial animus" and "naked violation" occurred in open court yet "somehow went unnoticed." *Id.*

Second, Brooks was asked to give her reasons twice, and before she ever compared Davis to Sockwell, she "had already plainly articulated a race-neutral reason … without drawing the racial comparison." App.106. "Brooks's mention of Davis's race and her comparison of the race of Davis and [Sockwell] plainly had

[1] The panel majority seemed to treat Sockwell's appeal as a §2254(d)(1) case alleging an unreasonable application of law, despite that "the decisive question" was factual: whether to "believe[]" "the prosecutor's race neutral explanation." App.16. The majority even described this case as "akin" to one in which "specific proffered reasons … were incorrect and/or contradicted by the record," App.18 n.3. But if the argument is that the Alabama courts were wrong to credit certain reasons or wrong about the record, those are factual disputes that cannot be relitigated unless both §2254(d)(2) and §2254(e)(1) are satisfied. *See* App.59 n.2 (Luck, J., dissenting).

nothing to do with the proffered reasons for her strike. Brooks did not offer Davis's race … as 'underpinning' for her concern that Davis was unduly vague" or lacked candor. App.113.

Third, the "crux" of Sockwell's claim relies "only" on "the very evidence that was reviewed and interpreted by the ASC in its opinion." App.106. The district court found that "twenty words" in the transcript do "not clearly and convincingly establish that the ASC erred in its factfinding," App.106 (applying 28 U.S.C. §2254(e)(1)), "much less that its decision was based upon an unreasonable finding of fact," *id.* (applying 28 U.S.C. §2254(d)(2)).

The Eleventh Circuit did not engage with those reasons. The opinion does not suggest that the court applied the usual appellate standard for credibility findings, let alone a standard more deferential to the peculiar province of the trial judge in *Batson* cases. *See, e.g.*, *Hernandez*, 500 U.S. at 365. The court seemingly gave no weight to the "best evidence," which is courtroom "demeanor," (*id.*) and no deference to the person in the best position to evaluate it, the trial judge. Instead, the panel overrode a state-court factual finding based on the court's interpretation of twenty words in a thirty-five year-old transcript.

The Eleventh Circuit then relied on its version of the facts—*viz.*, that the prosecutor had given an expressly racial reason—to find purposeful discrimination. That conclusion also transgressed AEDPA because it meant deeming the prosecutor's other, race-neutral reasons to be pretextual, but the state courts found them valid. The testimony of venireman Eric Davis amply supports the prosecution's

characterization of his responses as vague, contradictory, and potentially dishonest. *Supra* Statement §I. When a "juror's demeanor" is at issue, "the trial court's firsthand observations [have] even greater importance." *Snyder*, 552 U.S. at 477. And even from the cold transcript, the panel majority had to concede that Davis was "a little vaguer" than the other veniremen Sockwell offered as comparators. App.31; *see also* App.46 (Luck, J., dissenting) ("Juror Davis's answers about pretrial publicity were not the same" as those of the other jurors, who "were clear from the get-go about where they heard information on the case."). Reviewing the same transcript, the state courts identified not only vagueness on the part of the juror but a "lack of candor" too. *Ex parte Sockwell*, 675 So. 2d at 40.[2] In contrast to Davis, the others "did not flip-flop their answers when asked about what they knew about Sockwell's involvement in the murder." App.46-47 (Luck, J., dissenting). The ASC reasonably found that "lack of candor" was a race-neutral reason for the strike, *Ex parte Sockwell*, 675 So. 2d at 40.

The trial court's ruling on Sockwell's *Batson* motion undoubtedly relied on the court's examination and observation of Davis. During the *Batson* hearing, the prosecutor invited the judge to recall how the struck venireman could not provide a straightforward answer regarding pretrial publicity. App.96 ("You might

[2] "Unlike other veniremembers, [he] appeared to be less than candid." *Sockwell*, 675 So. 2d at 20. "Specifically, [Davis] first stated that he had *read* about the case and then stated that he had *heard* about the case. Nevertheless, [he] did not state what he had heard, although he was [asked]." *Id.* (emphasis added). And then when asked whether he had "any information as to whether or not this defendant was guilty," Davis answered, "I had heard something." App.4. He was asked again, "Did you hear specifically about this defendant right here?" But the second time, he answered, "No." App.5.

remember…"). And when defense counsel examined the prosecution, she disputed the defense's "characteriz[ation]" of what transpired, stating, "I don't recall any other juror, though, who *changed his mind* about where he had heard" information bearing on the defendant's guilt. App.98 (emphasis added). The judge's ruling on Sockwell's *Batson* motion necessarily decided that Davis's "demeanor … exhibited the basis for the strike." *Snyder*, 552 U.S. at 477.

What other observations by the trial judge might have supported its ruling were unknown to the Eleventh Circuit, which is precisely why "a trial court's ruling on the issue of discriminatory intent *must be sustained* unless it is clearly erroneous." *Snyder*, 552 U.S. at 477 (emphasis added). "[I]n the absence of exceptional circumstances, [this Court] would defer to the trial court." *Id.* (cleaned up) (quoting *Hernandez*, 500 U.S. at 336). Sockwell's case is not exceptional, and he did not prove "far more than … 'even clear error.'" *Kayer*, 592 U.S. at 118. On petition for writ of habeas corpus, a federal court simply has "no license to redetermine credibility of witnesses whose demeanor has been observed by the state trial court." *Marshall v. Lonberger*, 459 U.S. 422, 434 (1983).

Without once mentioning candor, credibility, demeanor, sincerity, or the like, the panel majority focused on circumstantial evidence, which Judge Luck picked apart in dissent. App.37-40. For example, the majority focused on cases involving the same district attorney's office in the wake of *Batson*'s "revolution[] [in] day-to-day jury selection," *Edwards v. Vannoy*, 593 U.S. 255, 270 (2021), which if anything demonstrated the Alabama Supreme Court's commitment to enforcing *Batson*. The

majority also emphasized a racial disparity in the jurors struck by the prosecution in Sockwell's case. Whatever the weight of these circumstances on *de novo* review, the court should have weighed them against the best and most direct evidence of motive: the trial judge's perceptions of the prosecutor and the juror. And then, even if the court were skeptical or suspicious of some reasons for the strike, the court still should have deferred, as other panels of the Eleventh Circuit have well appreciated.[3] Deference is owed to any trial court's *Batson* ruling; deference is owed *a fortiori* under AEDPA. Collateral review is a guard against "extreme malfunctions …, not a substitute for ordinary error correction through appeal." *Richter*, 672 U.S. at 102-03. The panel majority did not find any extreme malfunction, and its urge to re-litigate the same issues resolved by the ASC decades ago illustrates why "'the more general the rule[,] … the more leeway [state] courts have in reaching outcomes in case-by-case determinations' before their decisions can be fairly labeled unreasonable." *Davenport*, 596 U.S. at 144; *see also White v. Woodall*, 572 U.S. 415, 426 (2014).

B. Independent of its errors under §2254(d)(2) and §2254(e)(1), the panel majority should have affirmed on the alternative ground that clearly established federal law in 1995 did not preclude the CCA's "dual motivation analysis." Even if there had been a racial motive for the strike, the court erred because the state courts

[3] *See, e.g.*, *King v. Warden, Ga. Diagnostic Prison*, 69 F.4th 856 (2023) (W. Pryor, J.); *see* App.57 (Luck, J. dissenting) ("Perhaps the closest case to this one is *King*."); *id.* at 57-58 (detailing how *King* thoroughly rejected Judge Wilson's arguments in dissent, the same arguments the majority below has now adopted in a published decision two years later).

could have reasonably rejected Sockwell's *Batson* claim on the ground that the prosecution had "more than one reason." *Wallace,* 87 F.3d at 1274.

"When the motives for striking a prospective juror are both racial and legitimate, *Batson* error arises only if the legitimate reasons were not in themselves sufficient reason for striking the juror." *King v. Moore*, 196 F.3d 1327, 1335 (11th Cir. 1999); *see also United States v. Tokars*, 95 F.3d 1520 (11th Cir. 1996). In other words, if "the strike would have been exercised" anyway—*i.e.*, "solely for race-neutral reasons," then the presence of a superfluous race-conscious reason as a "part of the prosecutor's motivation" is not unconstitutional. *Wallace*, 87 F.3d at 1274-75.

The ASC stated otherwise in *dicta*—it thought that race could play no role at all, *see Ex parte Sockwell*, 675 So. 2d at 40—but what matters for AEDPA purposes is what *this Court* had "determined" to be "clearly established Federal law," 28 U.S.C. §2254(d)(1). Whatever their validity today, cases like *Wallace* reflect the law at the time Sockwell's claim was resolved in state court. *See Wallace*, 87 F.3d at 1274 (citing decisions of the 2nd, 4th, and 8th Circuits); *Tokars*, 95 F.3d at 1533 (same). And the fact that the Eleventh Circuit endorsed a dual-motivation approach to *Batson* is no surprise because this Court had long applied "a test of causation which distinguishes between a result caused by a constitutional violation and one not so caused." *Mt. Healthy v. Doyle*, 429 U.S. 274, 285 (1977). If the government "would have reached the same decision" anyway, there could be no "constitutional violation justifying remedial action." *Id.* at 285, 287. Applied to *Batson*, a juror struck for multiple reasons would not be struck "simply because" of race. App.28 n.13 (quoting *Batson v.*

Kentucky, 476 U.S. 79, 97 (1986)); *accord Wilkerson v. Texas*, 493 U.S. 924 (1989) (Marshall, J., dissenting from denial of certiorari).

Here, the prosecutor offered five or six reasons for striking Davis,[4] and applying AEDPA deference, the Eleventh Circuit could not (and did not) reject every one of them as a likely motivation. Even on *de novo* review, the court did not hold definitively that racial animus was the sole motive. App.32 ("a substantial likelihood of race-based considerations"). Thus, as the district court held, "even if Brooks considered Davis's race while striking him, Brooks did not violate *Batson* because Davis's race was not a substantial motivation, much less the 'sole' reason, for her strike." App.118. This argument was briefed and argued in the Eleventh Circuit, but the court's opinion did not address it (either under AEDPA or *de novo*). It proves that the state-court process did not "result[] in a decision" that violated "clearly established Federal law." 28 U.S.C. §2254 (d)(1).

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[4] In addition to vagueness, exposure to pretrial publicity, and candor, the prosecution also struck Davis for being equivocal on the death penalty. The court below erroneously dismissed this reason as "not addressed by the [ASC]," App.26 n.11, which is both irrelevant and wrong. The ASC *did* address it, writing that one of the "reasons the prosecutor gave [was] … whether he could be willing to recommend the death penalty." *Ex parte Sockwell*, 675 So. 2d at 40. Davis had said "it could go either way," App.94, which Brooks accurately recalled and restated as a reason for the strike: "His answer to the death penalty did not give me a lot of clues either way as to how he felt. I think the words he used were I could go either way." App.96.

The majority ignored another race-neutral reason for the strike too. Assuming that the prosecutor's comparison of Davis and Sockwell based on race, sex, and age was not a description but a reason for the strike, then "their similarity in age" was another "legitimate, non-discriminatory reason for exercising [the] strike." App.115 n.7 (citing *McNair v. Campbell*, 307 F. Supp. 2d 1277 (M.D. Ala. 2004)).

II. The Eleventh Circuit abused its equitable discretion by granting habeas relief without determining that "law and justice" require it.

Habeas relief has always been discretionary. *See Davenport*, 596 U.S. at 127-28 (citing early statutes confining habeas to "certain circumstances" and using "permissive rather than mandatory language"). AEDPA left that discretion intact, empowering courts to "adjust the scope of the writ in accordance with equitable and prudential considerations." *Danforth v. Minnesota*, 552 U.S. 264, 278 (2008). AEDPA's text provides that courts "'may' (not must) grant writs of habeas corpus and should do so only as 'law and justice require.'" *Davenport*, 596 U.S. at 132 (quoting 28 U.S.C. §§2241, 2243). Thus, "even if a prisoner overcomes all of [AEDPA's] limits, he is never entitled to habeas relief." *Ramirez*, 596 U.S. at 377. Rather, he must show "that 'law and justice require' relief." *Davenport*, 596 U.S. at 134.

The State has a reasonable chance of persuading this Court that the equitable and prudential considerations that inform federal habeas should be sensitive to the prisoner's guilt or innocence. Sockwell is guilty of capital murder; that fact should matter, but the lower court ignored it—deciding that any *Batson* violation, even if the strike was "harmless" to the habeas petitioner, is a ground to vacate. App.32-33. But it is a bedrock rule of equity that just because "a court *can* award [some] relief" does not mean "it *should*." *Trump v. CASA, Inc.*, 606 U.S. 831, 853-54 (2025).

The "powerful and legitimate interest in punishing the guilty" should be "[f]oremost" among the equities that inform "the scope of the writ." *Davenport*, 596 U.S. at 132. When a federal court grants relief, it "inflict[s] a profound injury" on "the State and the victims of crime alike." *Ramirez*, 596 U.S. at 376 (quoting *Calderon v.*

Thompson, 523 U.S. 538, 556 (1998)); *see Bowles v. DeSantis*, 934 F.3d 1230, 1247 (11th Cir. 2019). That injury is aggravated by the risk that a court granting habeas relief decades after a crime might allow violent convicts to "go free merely because the evidence needed to conduct a retrial has become stale or is no longer available." *Edwards*, 593 U.S. at 263. Before imposing these "significant costs" on States, federal courts must identify an "extreme malfunction[]" in state court. *Ramirez*, 596 U.S. at 377. The State's capital-murder conviction of a man guilty of capital murder should count against the conclusion that the alleged malfunction was "extreme."

A rule requiring factual innocence—or at least making guilt or innocence count for *something*—would reduce the "trivialization of the writ," by which "floods of stale, frivolous and repetitious petitions inundate the docket." *Brown v. Allen*, 344 U.S. 443, 536 (1953) (Jackson, J., concurring). Courts face backlogs of habeas cases in part because they lack a doctrine to inform the equities. Decades of litigation often yield nothing but "waste and futility" when "every lawyer, every judge and every juror was fully convinced of the defendant's guilt from the beginning to the end." Hon. Henry J. Friendly, *Is Innocence Irrelevant? Collateral Attack on Criminal Judgments*, 38 U. Chi. L. Rev. 142, 145 n.12 (1970); *id.* at 148-49.

Beyond the enormous strain on judicial resources, it "prejudice[s] the occasional meritorious application to be buried in a flood." *Brown*, 344 U.S. at 537; *see also* Friendly, *supra* at 150. Rules like exhaustion and procedural bars can "reduc[e] opportunities for abuse," *Thompson v. Wainwright*, 714 F.2d 1495, 1506 n.8 (11th Cir. 1983), but an innocence requirement would be a far more straightforward

way to "return[] the Great Writ closer to its historic office." *Davenport*, 596 U.S. at 132. The question should be "not whether the error could have affected the result but whether it could have caused the punishment of an innocent man." *Crawford*, 68 F.4th at 287 (quoting Friendly, *supra* at 157 n.81); *accord Kaufman v. United States*, 394 U.S. 217, 242 (1969) (Black, J., dissenting).

III. The mandate poses a risk of irreparable harm.

Absent a stay, the mandate will ultimately require vacatur of Sockwell's conviction for capital murder and his release from custody, barring retrial and denial of bail. App.64 n.1; App.66 (Luck, J., dissenting). Each threatens irreparable harm.

First, vacatur of Sockwell's death sentence could moot the case. Although "[r]eversal undoes what the habeas corpus court did and makes lawful a resumption of the custody," *Eagles v. U.S. ex rel. Samuels*, 329 U.S. 304, 307-08 (1946), as a practical matter, if the state courts vacate Sockwell's conviction, it is not obvious that there would be "subject matter on which the judgment of this Court could operate," *St. Pierre v. United States*, 319 U.S. 41, 42-43 (1943) (concerning mootness where there was no more sentence to be served); *see Kernan v. Cuero*, 583 U.S. 1, 6 (2017) (resentencing did not render appeal moot); *Calderon v. Moore*, 518 U.S. 149, 150 (1996) (appeal not moot where new trial had not started); *Adair v. Dretke*, 150 F. App'x 329, 332 (5th Cir. 2005) (dismissing as moot where petitioner had been released); *Cumbo v. Eyman*, 409 F.2d 400, 400 (9th Cir. 1969) (dismissing as moot where state court reversed conviction during habeas proceedings). This mootness question has divided the circuits, *compare Brown v. Vanihel*, 7 F.4th 666, 670-73 (7th Cir. 2021), *with Garding v. Montana Dep't of Corr.*, 105 F.4th 1247, 1255-56 (9th Cir.

2024), *cert. denied*, 145 S. Ct. 1951 (2025), and it divided the panel below, *compare* App.63-65, *with* App.66-68 (Luck, J., dissenting) (citing *Brown* and *Garding*). This uncertainty calls for a stay, or at the very least, clarification from this Court.

If the State loses its "right to appeal," *Camreta v. Greene*, 563 U.S. 692, 698 (2011), it will be irreparably harmed. Sockwell has already received a three-decade "commutation of [his] death sentence," every day of which has "impose[d] a cost on the State and the family and friends of the murder victim," *Bowles*, 934 F.3d at 1248. Retrying Sockwell would "inflict a profound injury" on "the State and the victims." *Ramirez*, 596 U.S. at 377. For that to be the result just because the Eleventh Circuit's misapplication of AEDPA escaped review would be a travesty.

Second, capital defendants "pose a danger to the public" and "the possibility of flight," and the State's interest in "continuing custody" is at its peak when "the remaining portion of the sentence to be served is long." *Hilton*, 481 U.S. at 777. All of the *Hilton* factors favor the State in this capital case. A jury found beyond a reasonable doubt that Sockwell murdered a police officer for cash. *See Ex parte Sockwell*, 675 So. 2d at 12-13. Thirty-five years and three rounds of judicial review later, no court has seriously questioned his guilt. Sockwell confessed to the police, he confessed to a friend, and later an accomplice confessed, implicating Sockwell. *Id.*; App.35 (Luck, J., dissenting).

Federal habeas courts should not speculate about whether a capital murderer would pose a danger or a flight risk. Yet the panel majority announced that Sockwell is not "the same man" who murdered a deputy sheriff in 1988. App.64. Citing a

declaration attached to Sockwell's stay opposition, the panel found that Sockwell has "significant health issues" and "reside[s] in the prison infirmary." *Id.* But his current health condition is legally *irrelevant* in Alabama, where the people have deemed defendants charged with capital murder not "bailable" by default. *See* Ala. Const. art. I §16; Ala. Code §15-13-3(a); Ala. R. Crim. P. 7.2(a)(1). And Sockwell has not been merely charged or indicted but *convicted* of capital murder by overwhelming evidence. He may face retrial and execution, and "it has been the considered *presumption* of generations of judges that a defendant in danger of execution has an extremely strong incentive to flee." *United States v. Salerno*, 481 U.S. 739, 765 n.6 (1987) (Marshall, J., dissenting) (emphasis added). Issuing the writ could forever foreclose the possibility that Sockwell is justly punished for his crime. Whatever the state of his health, the federal courts should not gamble with that risk, nor with the danger that any capital murderer poses to public safety. Here, the equities, the public interest, and the *Hilton* factors favor a stay.

CONCLUSION

The Court should stay the mandate pending a petition for writ of certiorari.

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