No. 25A347

In the Supreme Court of the United States

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

v.

MICHAEL SOCKWELL,
Respondent.

SOCKWELL'S OPPOSITION TO THE GOVERNMENT'S EMERGENCY APPLICATION FOR STAY PENDING PETITION FOR WRIT OF CERTIORARI

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TO THE HONORABLE CLARENCE THOMAS, ASSOCIATE JUSTICE OF THE SUPREME COURT AND CIRCUIT JUSTICE FOR THE ELEVENTH CIRCUIT.

INTRODUCTION

Michael Sockwell has been on death row for 35 years. He is 62 years old, he is suffering from horrific physical and mental disabilities, and—according to the Eleventh Circuit's decision below—he has never received a trial free from constitutional error. Yet the government wants Sockwell to remain on death row while it pursues an entirely case-specific petition for writ of certiorari. The government does not attempt to satisfy this Court's test for a stay. It instead offers a series of critiques of the Eleventh Circuit's decision, a novel habeas requirement that this Court has never adopted, and a mootness concern that the Court has long rejected. The Court should deny the government's application for a stay.

In this AEDPA habeas case, the Eleventh Circuit held that the prosecutor at Sockwell's trial violated his "equal protection rights under *Batson v. Kentucky*, 476 U.S. 79 (1986), by using its peremptory strikes in a discriminatory manner." A2. The court found "overwhelming evidence in the record" that the prosecutor's strikes were motivated by race discrimination. A32. That evidence was unique to this case. It included the prosecutor's own "pattern of *Batson* violations" in other

cases (A24); "statistical evidence" about the racial makeup of the venire (A24-25); the state's "pretextual" reasons for striking a juror (A26); and the prosecutor's "explicit racial statements" about that juror (A27). *Compare* Gov't App. at 1 (falsely asserting that the panel's opinion turns on "a single sentence in the transcript"). The court held that "a reasonable and fair-minded jurist could not have concluded that *Batson* was not violated" (A27), and directed the district court to "issue a writ of habeas corpus conditioned on Alabama's right to retry Sockwell" (A2).

The government moved for panel rehearing (it did not move for rehearing en banc) and then for a stay of the mandate. The Eleventh Circuit denied both motions. It disagreed with the government that Sockwell "was a flight risk or a danger to the public," particularly because the court's "opinion did not vacate Sockwell's criminal charge"—meaning any decisions about Sockwell's release would "be made by the Alabama trial court." A64 & n.1. The court then rejected the government's claim that its petition might become "moot" if Sockwell's conviction is vacated, finding that claim irreconcilable with this Court's precedents. A64-65.

The government has now moved again to stay the mandate, arguing (i) that its petition will present two "important issues on which there is a

fair prospect of reversal," and (ii) that "irreparable harm" will result absent a stay. Gov't App. at 11, 24. The government has not come close to satisfying either of these two independently necessary requirements.

First, the government has not shown a "reasonable probability that four Justices" will vote "to grant certiorari" or a "fair prospect" that this Court will "reverse the judgment below." *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam). It does not identify any circuit conflict, it does not suggest that the decision below will have broad implications, and it does not argue that this case presents a recurring question of law. The government's arguments all turn on the specific facts of Sockwell's case. This Court almost never grants certiorari in a situation like that.

Second, the government has not shown "a likelihood that irreparable harm will result from the denial of a stay." *Id.* It argues that the "vacatur of Sockwell's death sentence could moot the case." Gov't App. at 24. But this Court has repeatedly held that "neither the losing party's failure to obtain a stay preventing the mandate of the Court of Appeals from issuing nor the trial court's action in light of that mandate makes [a] case moot." *Kernan v. Cuero*, 138 S. Ct. 4, 7 (2017); *see also Caldaron v. Moore*, 518 U.S. 149, 150 (1996) (holding that an appeal was

"clearly not moot" despite the vacatur of a habeas petitioner's conviction). Regardless, the mere issuance of the mandate will not moot any appeal. The government is free to make its mootness argument after the remand.

The government also repeats its claim below that Sockwell would "pose a danger to the public and the possibility of flight." Gov't App. at 25 (quotation marks omitted). Again, there is no guarantee that Sockwell will be released pending his retrial. And the government's claim is provably false. As detailed in a declaration submitted below, Sockwell's health has declined dramatically. SA2. He is bedridden, one of his legs has been amputated, he has suffered a stroke, he cannot move his fingers, he cannot feed himself, and he has extreme difficulty communicating verbally. SA2-3. Sockwell is simply not capable of either harm or flight.

The government has every right to file its petition, but Sockwell's case should move forward. That is not a lot to ask after 35 years in prison without a fair trial. The Court should deny the government's application.

STATEMENT OF THE CASE

A. The state's charges and Sockwell's defense

In 1988, the state of Alabama indicted Sockwell for capital murder, alleging that he shot and killed Isaiah Harris for pecuniary gain. A71. The state's theory was that Louise Harris (Isaiah's wife) and Lorenzo

McCarter (Louise's boyfriend) paid Sockwell and his codefendant $100 for the murder. A70-71. According to the state, Sockwell, McCarter, and the codefendant waited in a car near the Harris residence until Isaiah left, at which point Louise signaled her husband's departure with a pager. *Id.* The state claimed that Sockwell then shot Isaiah Harris while he paused his car near the Troy Highway in Montgomery. *Id.*

Sockwell pleaded not guilty, and his trial began in January 1990. Sockwell testified that McCarter shot Isaiah Harris, that he did not know in advance that McCarter planned to kill Harris, and that he had been given $50 merely to fix a car. A3. Sockwell also testified that he later confessed to the shooting because of coercion by the police. A169.

B. The prosecutor's history of *Batson* violations

The lead prosecutor at Sockwell's trial was Assistant District Attorney Ellen Brooks. A95. As the Eleventh Circuit's opinion explains in detail, Brooks "had a significant history of striking jurors in a racially discriminatory manner right before and during Sockwell's trial in 1990." A19; *see also* A19-24. "Both the [Alabama Court of Criminal Appeals] and Alabama Supreme Court found several instances of Brooks striking Black jurors in violation of *Batson* starting in 1988." A19.

In *Ex Parte Bird*, 594 So. 2d 676 (Ala. 1991), for example, the Alabama Supreme Court vacated the defendants' convictions where Brooks used "85% of her peremptory challenges . . . to eliminate 89% of the black veniremembers." *Id.* at 681. The court noted "a systematic practice of discrimination" "in the use of peremptory strikes by the Montgomery County District Attorney's office," and that "[a] number of those cases . . . were prosecuted by . . . Ellen Brooks." *Id.*

Brooks was still consistently using these practices in January 1990, when—a mere week before Sockwell's trial—she tried *Sims v. State*. After that trial, the appellate court held that Brooks had violated *Batson* by striking 14 of the 16 black jurors for pretextual reasons, including that some jurors "lived in high crime areas," that one juror "wore darkly tinted glasses," and that another juror "was chewing gum and was very soft-spoken." *Sims v. State*, 587 So. 2d 1271, 1275-75 (Ala. Crim. 1991); *see also Williams v. State*, 548 So. 2d 501, 504-08 (Ala. Crim. 1988) (reversing where Brooks struck all of the black veniremembers using "far-fetched" explanations, including that one juror was "docile").

C. Sockwell's *Batson* challenge

When Sockwell's trial began, there were 55 potential jurors in the venire. A92. The trial court questioned the full venire and then conducted individual voir dire, mainly on whether the jurors had heard about the case and whether they could impose the death penalty. *Id.* One of the jurors was Eric Davis, a black member of the panel. A92-95.

The court began by asking Davis whether he had heard about the case. A93. Davis responded that he had "heard a little something" from "the newspaper" "[s]everal months ago." A93. He had not "read" the article himself, but he had "heard talk about what [others] had heard in the newspaper." *Id.* When pressed for specifics, Davis clarified that he had not heard about "this defendant right here," and that he could "[n]ot exactly" remember when he heard. A93-94. He explained: "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." A94. The court asked Davis whether he could "put aside whatever [he] had heard" and "make a fair, honest impartial decision . . . based on th[e] facts and the law." *Id.* Davis responded: "Yes, I can." *Id.*

The trial court then turned to capital punishment. It asked Davis whether he was "opposed to the death penalty under any circumstances"; Davis said "No." *Id.* And the court asked whether Davis was "for the death penalty under all circumstances"; Davis said, "Well, it could go either way." *Id.* Davis then confirmed again that he would "follow [his] oath," "listen to the trial," and "come up with a verdict" based on the facts presented and the instructions from the court. *Id.*

After voir dire, 13 potential jurors were struck for cause, not including Davis. A95. That left 42 members of the venire, 10 of whom were black. *Id.* Each side had 15 peremptory strikes. *Id.* Brooks struck 7 of the 32 white qualified jurors (21%) and 8 of the 10 black qualified jurors (80%). *Id.* Davis was the 12th of Brooks's strikes. *Id.*

Sockwell raised a *Batson* challenge to the composition of the jury, arguing that the state had disproportionately used its strikes against black jurors. *Id.* The trial court required Brooks to provide her reasons for each peremptory strike. A95-96. It then permitted Sockwell's counsel to question Brooks about her explanations for the strikes. *Id.*

When Brooks was asked about Davis, she said that Davis's race—and that it was the "*same race*" as Sockwell's—were "reasons" for the strike, after which she offered two additional explanations:

> 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.

A97-98 (emphases added).

So Brooks did not just say that Davis's race was one of her "reasons" for the strike ("black male"); she said that this mattered to her because Sockwell, too, is black ("same race . . . of the defendant"). Sockwell moved to quash the jury under *Batson*. A98. The trial court denied the motion without explanation: "Motion denied. Recess till eight." *Id*. Sockwell

renewed the challenge the next morning, pointing out that Brooks had a history of disproportionately striking black jurors, including in the *Sims* case one week earlier. A99. The trial court issued another summary ruling: "Motion denied. Are we ready now?" *Id.*

The parties then proceeded to opening statements. The trial court never offered an explanation for upholding the strike of Davis.

D. The jury's verdict and the trial judge's death sentence

On February 1, 1990, the jury found Sockwell guilty and recommended a sentence of life imprisonment. A72. Under then-existing Alabama law (abolished in 2017), a jury's sentencing decision was not binding on the court. The trial judge overrode the jury's recommendation and sentenced Sockwell to death. *Id.*

E. The state courts' decisions on direct appeal

Sockwell appealed to the Alabama Court of Criminal Appeals ("ACCA"), which affirmed his conviction. A9. The ACCA found that Brooks had given an explicitly racial reason for striking Davis, explaining that Davis's "race was part of the reason for striking him." *Id.* But because the ACCA found that Brooks had also given a "sufficiently race-neutral reason" for the strike—Davis's "vague responses" to the trial court's questions—it held that the trial court did not clearly err. *Id.*

The Alabama Supreme Court ("ASC") affirmed in a 5-3 decision. *Ex Parte Sockwell*, 675 So. 2d 38, 39 (Ala. 1995). It agreed with the ACCA's conclusion about Sockwell's *Batson* claim, but disagreed with "its rationale." *Id.* at 41. Specifically, the ASC determined that Brooks's reference to Davis's race was not a "a reason for striking him," but "merely a descriptive identification of the veniremember based on the prosecutor's notes"—and that the "only *reasons* the prosecutor gave for striking [Davis] were his vagueness and lack of candor." *Id.* at 40. The ASC went on to "emphasize [its] disagreement with the [ACCA's] inference that a peremptory strike may be upheld if it is based only *partly* on race." *Id.* That is, "a non-race neutral *reason* given for a peremptory strike" could not "'cancel out' a race-based reason." *Id.* at 41. But the ASC reversed on the ground that Brooks's strike "was race-neutral." *Id.*

The ASC did not conduct an analysis under *Batson*'s third step. It did not consider (at least expressly) the other evidence of discriminatory intent that Sockwell had submitted, including Brooks's history of *Batson* violations; his comparison of Brooks's rationales for striking Davis with the circumstances of the white jurors she did not strike; or the disparity between Brooks's strikes of black and white jurors. *See, e.g.*, A122-24.

Three Justices dissented, explaining that the "prosecutor's blatant comparison of [Davis's] race with that of the defendant as a reason for peremptorily challenging [Davis] violates the very premise of *Batson*." *Id.* at 43 (Kennedy, J., dissenting). "When cross-examined, the first thing the prosecutor stated was that one of her reasons for striking [Davis] was that he is of the same race as the defendant." *Id.* The dissent would therefore have found that "the crux of the prosecutor's reason was that the juror's race influenced her decision to strike him from the jury." *Id.*

F. The district court's denial of habeas

In December 2013, after exhausting his remaining appeals and collateral proceedings, Sockwell filed a habeas petition under 28 U.S.C. § 2254 in the Middle District of Alabama. Among other things, Sockwell argued that the ASC's adjudication of his *Batson* claim was based on both an unreasonable determination of the facts and an unreasonable application of this Court's clearly established precedents. A73-74.

Nearly ten years later, the district court denied Sockwell's petition. A69-196. The court found that the strike of Davis was "problematic" and "concerning," and that the ASC's rationale was "not persuasive," particularly because the Davis strike was "the only time [Brooks]

compared the race of a juror with that of [Sockwell]." A113-14. The court held, however, that "[t]he record does not render unreasonable a conclusion that Brooks's racial comparison was incidental, surplusage, or simply an extemporaneous, if ill-advised, descriptive observation." A114. The court also recognized that "Brooks disproportionately struck black veniremembers" at Sockwell's trial, and that she had a history of "discriminatory exclusion of black veniremembers," but concluded that these "troubling" facts did not "carry the day" in light of the other explanations Brooks provided—namely, "Davis's vagueness." A123-25. The court granted Sockwell a certificate of appealability. A195-96.

G. The Eleventh Circuit's reversal

The Eleventh Circuit reversed in a 2-1 decision, instructing the district court "to issue a writ of habeas corpus conditioned on Alabama's right to retry Sockwell." A2. The court held that that "Alabama violated Sockwell's Fourteenth Amendment equal protection rights under *Batson*," and that "the Alabama Supreme Court unreasonably applied clearly established federal law as determined by the Supreme Court." *Id.*

The Eleventh Circuit's holding was narrow; it disagreed with the majority of Sockwell's arguments. It held that the ASC did not make an

"unreasonable determination of fact" at *Batson*'s second step by finding that Brooks's comments about race were "merely descriptive." A13-15.[1] The court then rejected Sockwell's argument that the ASC "unreasonably applied clearly established Supreme Court precedent by failing to explicitly perform [a] step three analysis and determine whether he established purposeful discrimination." A15-16. The Eleventh Circuit held, instead, that the ASC's "implicit application of *Batson*'s third step was an unreasonable application of clearly established law." A16. It based that conclusion primarily on "four relevant factors." A27; *see also* A18 (noting that the court must "consider all relevant circumstances").

First, as discussed above, the court explained that Brooks "had a significant history of striking jurors in a racially discriminatory manner right before and during Sockwell's trial in 1990." A19; *see also Flowers*

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[1] There are three steps in a *Batson* inquiry: (i) "a defendant must make a prima facie showing that a peremptory challenge has been exercised on the basis of race"; (ii) "the prosecution must offer a race-neutral basis for striking the juror in question"; and (iii) "the trial court must determine whether the defendant has shown purposeful discrimination." *Miller-El v. Cockrell*, 537 U.S. 322, 328-29 (2003). Here, the trial court implicitly found that Sockwell satisfied step one by prompting Brooks to respond to the *Batson* challenge. *See Hernandez v. New York*, 500 U.S. 352, 359 (1991). So Sockwell's appeal focused on steps two and three.

v. Mississippi, 588 U.S. 284, 315 (2019) ("We must examine [a peremptory] strike in light of the history of the State's use of peremptory strikes in other trials."). The Eleventh Circuit walked through five Alabama opinions—addressing trials starting in 1988 and ending a week before Sockwell's trial—where Brooks had violated *Batson*, including an ASC opinion criticizing her "systemic practice of discrimination" "in the use of peremptory strikes." *Bird*, 594 So. 2d at 681; *see* A19-24.

Second, the court highlighted "statistical information" about Sockwell's venire showing that Brooks struck "qualified Black jurors far more often than qualified white jurors." A25; *see also Flowers*, 588 U.S. at 302 (courts must consider "statistical evidence about the prosecutor's use of peremptory strikes against black prospective jurors as compared to white perspective jurors"). The court explained that "Brooks struck 80% of the qualified Black jurors while striking only 23% of the qualified white jurors"—resulting in a "challenge rate" for black jurors (223%) that was nearly quadruple the rate for white jurors (61%). A25 & n.10.

Third, the court "compare[d] Davis with two white jurors—Lisa Burch and Peggy McFarlin—who were not struck." A26; *see also Flowers*, 588 U.S. at 302 (courts must consider "side-by-side comparisons of black

prospective jurors who were struck and white prospective jurors in the case"). Although Brooks supposedly struck Davis because of his "vague" description of what he had heard about Sockwell's case, "[b]oth Burch and McFarlin also did not remember in detail what they had heard," suggesting "that the vagueness of Davis's answer was only pretextual." A26; *see also* A30-31 (detailing the responses of Davis, Burch, and McFarlin, and finding that "there were two white jurors who were not struck despite being vague about what they heard about the case").

Fourth, "Brooks compared Davis to Sockwell for no legitimate reason" when she said that Davis was "very close to the same race, sex, and age of the defendant." A26-27, 30. This confirmed "that Brooks felt as if Davis 'would be partial to [Sockwell] because of their shared race.'" A27 (quoting *Batson*, 476 U.S. at 97); *see also Flowers*, 588 U.S. at 299 (a state "may not rebut a claim of discrimination" by pointing to "an assumption or belief that [a] black juror would favor a black defendant").

Judge Luck dissented. A35-62. His main disagreements related to (i) the majority's factual interpretation of the record and (ii) its analysis of Eleventh Circuit precedent. Judge Luck's view was that "the four circumstances" identified by the majority were not "as relevant as the

majority says they are." A36-50. He also conducted a careful review of the Eleventh Circuit cases applying *Batson* in the AEDPA context, and concluded that Sockwell's claim was no stronger than those in the prior cases. A53-62. Judge Luck's opinion does not contend that the majority's decision conflicts with a precedent of this Court or that of another Circuit. In fact, with the exception of *Batson* and a predecessor case (A38), Judge Luck's opinion does not cite any decision outside the Eleventh Circuit.

H. The government's first motion to stay

The government did not move for rehearing en banc. It filed a motion for panel rehearing, which was unanimously denied, and then moved for a stay of the mandate pending its intended certiorari petition. The Eleventh Circuit denied the motion, finding that the government failed to show "a likelihood of irreparable harm if the judgment is not stayed." A63-64. Importantly, the court noted that its "opinion did not vacate Sockwell's criminal charge," and that "[w]hether Sockwell is to be released pending retrial is a state law determination that needs to be made by the Alabama trial court." A64. Judge Luck dissented. A66-68. The rationale of both opinions is addressed in the argument section.

I. Sockwell's deteriorated health

As the Eleventh Circuit found in its order denying the stay, "Sockwell is not the same man from thirty-five years ago"; he "has experienced significant health issues that require him to reside in the prison infirmary permanently." A64. This finding was based on an unrebutted declaration that Sockwell submitted in opposition to the stay, which explains that his "physical and mental condition has deteriorated substantially." SA2. By the early 2000s, Sockwell had suffered a stroke. *Id.* By 2022, he was confined to a wheelchair that he was unable to operate without assistance. *Id.* In 2023, Sockwell's left leg was amputated and he began living in the prison's infirmary. *Id.*

Currently (as of August 20, 2025), Sockwell is bedridden and unable to sit up, roll himself over, or turn his head without assistance. SA2-3. He cannot move his fingers, feed himself, or clean himself. SA3. He has extreme difficulty speaking—often falling asleep from exhaustion when he tries to hold a conversation—and is unable to describe his condition or needs beyond one-word responses like "hungry" and "pain." *Id.*

In short, Sockwell is incapable of unassisted motion or dialogue.

LEGAL STANDARD

This Court has imposed three independent requirements for a stay of the proceedings below pending certiorari review:

> To obtain a stay pending the filing and disposition of a petition for a writ of certiorari, an applicant must show (1) a reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari; (2) a fair prospect that the majority of the Court will vote to reverse the judgment below; and (3) a likelihood that irreparable harm will result from the denial of a stay.

Hollingsworth v. Perry, 558 U.S. 183, 190 (2010) (per curiam).

Unless all three elements are satisfied, a stay should be denied. *See Griffin v. HM Florida-ORL, LLC*, 144 S. Ct. 1, 2 (2023) (statement of Kavanagh, J.) (denying stay because the Court was "not likely to grant certiorari"); *Rubin v. United States*, 524 U.S. 1301, 1302 (1998) (Rehnquist, C.J., in chambers) (assuming that four Justices would grant certiorari, but denying stay because applicant failed to show "a likelihood that this Court . . . would reverse"); *Teva Pharms. USA, Inc. v. Sandoz, Inc.*, 572 U.S. 1301, 1301-02 (2014) (Roberts, C.J., in chambers) ("Teva has shown a fair prospect of success on the merits. I am not convinced, however, that it has shown likelihood of irreparable harm."); *see also Nara v. Frank*, 494 F.3d 1132, 1133 (3d Cir. 2007) (explaining that the

test for a stay is satisfied only in "exceptional cases"); *White v. Plappert*, 137 F.4th 579, 581 (6th Cir. 2025) (describing the test as "daunting").

The government does not mention the three-prong test. Although it acknowledges that the "traditional stay factors govern this application," it argues that this Court has "distilled more specific principles for staying an order directing the release of a habeas petitioner from state custody." Gov't App. at 11 (quotation marks omitted) (citing *Hilton v. Baunskill*, 481 U.S. 770, 777 (1987)). But *Hilton* did not articulate a special test for stays in the habeas context; it only confirmed that when a district court decides whether to release a successful habeas petitioner, it should consider "the dangerousness of [the] petitioner." 481 U.S. at 779. The government also quotes *Hilton* for the proposition that Sockwell is "in a considerably less favorable position than a pretrial arrestee." Gov't App. at 11 (quoting 481 U.S. at 779). This quote is misleading. The fuller quote is that "a successful habeas petitioner is in a considerably less favorable position than a pretrial arrestee . . . to *challenge his continued detention* pending appeal." 481 U.S. at 779 (emphasis added). Sockwell's "detention" is not before this Court.

ARGUMENT

I. The government has not attempted to show a reasonable probability that four Justices will vote for certiorari.

The government intends to present two questions in its petition for writ of certiorari:

> 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.

Gov't App. at 11.

The government has not tried to show a "reasonable probability that four Justices" will vote to grant certiorari on either question. *Hollingsworth*, 558 U.S. at 190. And that is no surprise: This Court's rules provide that "a writ of certiorari will be granted only for compelling reasons." U.S. Sup. Ct. R. 10. These include cases where "a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals," or where such a court "has so far departed from the accepted and usual course of judicial proceedings . . . as to call for an exercise of this Court's supervisory power." *Id.* By

contrast, a "writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." *Id.* This Court "almost never review[s]" such decisions. *Taylor v. Riojas*, 592 U.S. 7, 11 (2020) (Alito, J., concurring); *see also Stanley v. City of Sanford, Florida*, 145 S. Ct. 2058, 2075 (2025) (Thomas, J., concurring) ("I doubt that we would have agreed to review the factbound application of uncontested Eleventh Circuit precedents").

The government's proposed questions both fall within the latter category. That is easy to see from the questions themselves, which accuse the Eleventh Circuit of "second-guess[ing] a trial court's credibility finding" and "vacating a guilty murderer's conviction." Gov't App. at 11. More broadly, the government does not identify any circuit conflict. It does not argue that the Eleventh Circuit "departed from the accepted and usual course of judicial proceedings." It does not even suggest that the decision below will have implications outside of this particular case.

Nor could it, because the decision was fact-bound. It was based on a prosecutor's personal history of discrimination, statistical evidence from Sockwell's venire, the specific rationales the prosecutor gave for striking a black juror, and whether those rationales applied equally to

two white jurors. The main disputes between the majority and dissent were, likewise, about facts or Circuit precedent. *See* pp. 16-17 *supra*; *e.g.*, A28 n.13 ("[N]one of [the] cases [cited by the dissent] involved a direct comparison of the defendant to a stricken Juror *and* a state supreme court calling out the prosecutor by name . . . for serial *Batson* violations.").

The government does not contest any of this. It argues that "this Court regularly reverses decisions granting habeas relief, especially when they involve errors applying AEDPA." Gov't App. at 12. But it attempts to support that proposition with two non-*Batson* cases where certiorari was *denied*. *Davis v. Smith*, 145 S. Ct. 93 (2025); *Cash v. Maxwell*, 132 S. Ct. 611 (2012). Indeed, Justice Sotomayor wrote separately in *Cash* to emphasize that "[m]ere disagreement with the Ninth Circuit's highly factbound conclusion [about AEDPA] is . . . an insufficient basis for granting certiorari." 132 S. Ct. at 613 (Sotomayor, J., respecting the denial of certiorari). Two Justices dissented from the denial in both cases, but those dissents were based on the view that certiorari was necessary to prevent extreme malfunctions in the AEDPA jurisprudence of the Sixth and Ninth Circuits. *See Davis*, 145 S. Ct. at 97 (Thomas, J., dissenting) ("This Court has reversed the Sixth Circuit

at least two dozen times for misapplying AEDPA. And, these reversals only scratch the surface of the Sixth Circuit's defiance." (citation omitted)); *Cash*, 132 S. Ct. at 616-17 (Scalia, J., dissenting) (citing cases indicating that the Court had found it "particularly needful" to exercise its supervisory power for AEDPA "decisions of the Ninth Circuit").

The Eleventh Circuit does not have any comparable history. To the contrary, as Judge Luck's dissent explains, the Eleventh Circuit has very rarely granted habeas relief in AEDPA *Batson* cases. *See* A53-62. To be sure, the government believes that this case is out of step with those precedents. But tellingly, it did not move for rehearing en banc—apparently recognizing that the Eleventh Circuit's opinion was narrow.

The government also notes that, "[i]n recent years, the Court has vacated Eleventh Circuit decisions granting habeas relief." Gov't App. at 12. If anything, these cases illustrate the types of situations where this Court's intervention *is* warranted in the habeas context. The cited cases involved either a legal question that needed the Court's clarification, an intervening precedent warranting reconsideration of the decision below, or an opinion that the Court viewed as facially flawed. *See Hamm v. Smith*, 604 U.S. 1, 2 (2024) ("This Court has not specified how courts

should evaluate multiple IQ scores [when applying *Atkins v. Virginia*, 536 U.S. 304 (2002)]."); *Alabama v. Williams*, 144 S. Ct. 2627, 2627 (2024) (remanding "for further consideration in light of [the Court's intervening decision in] *Thornell v. Jones*"); *Dunn v. Reeves*, 594 U.S. 731, 733 (2021) (reversing "an unpublished, *per curiam* opinion that drew heavily on a dissent from denial of certiorari" in a case claiming ineffective counsel).

The government has not shown that this case is worthy of certiorari. It disagrees with Eleventh Circuit's decision—nothing more. The Court can stop there.

II. The government has not shown a fair prospect that this Court would reverse the Eleventh Circuit's decision.

A. The Eleventh Circuit's *Batson* analysis is correct.

The government spends much of its application relitigating the decision below, asserting every argument it made at the merits stage and some that it did not raise until after the opinion was issued. Gov't App. at 12-22. Boiled to its essence, the application makes four main points.

First, the government contends that the "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 . . . the high state court." Gov't App. at 13. The

Eleventh Circuit's analysis was by no means limited to "twenty words"—it was based on the full voir dire, statistical evidence about the venire, and the multiple years of discriminatory practices by Brooks. *See* pp. 14-16 *supra*. The government faults the panel for considering Brooks's race-based comments without finding the ASC's analysis unreasonable under 28 U.S.C. § 2254(d)(2) and (e)(1). Gov't App. at 14-15. But as the panel explained, even though "Sockwell did not meet his burden" at "*Batson*'s second step," Brooks's remarks had to be "considered with all the relevant circumstances" when deciding "'the persuasiveness of [Sockwell's] constitutional claim' at *Batson*'s third step." A15, 26 n.12 (quoting *Johnson v. California*, 545 U.S. 162, 171 (2005)). That was not a factual finding; it was part of the court's conclusion that the ASC had unreasonably applied "clearly established *law*." A16 (emphasis added).

Second, the government argues that the Eleventh Circuit ignored the "trial court's 'pivotal role' in evaluating Sockwell's *Batson* claim"—and particularly, that it failed to give "deference" to the trial court's assessment of "the prosecutor's credibility" and "demeanor." Gov't App. at 13, 16 (quoting *Snyder v. Louisiana*, 552 U.S. 472, 477 (2008), and *Hernandez v. New York*, 500 U.S. 352, 364-65 (1991)). The government

made the same argument in its post-opinion motions, and it remains puzzling. The Eleventh Circuit applied AEDPA deference to the ASC's opinion on direct appeal—"the last state court to decide [Sockwell's] claim." *Wilson v. Sellers*, 584 U.S. 122, 125 (2018); *see, e.g.*, A19. And its opinion discusses every aspect of the trial court's ruling. A3-9. It is unclear what more the court could have done, because the trial court did not *make* any finding about "the prosecutor's credibility" and "demeanor"; it denied Sockwell's *Batson* challenge without analysis. A98 ("Motion denied. Recess till eight."); A99 ("Motion denied. Are we ready now?"). The Eleventh Circuit could not have deferred to the trial court's assessment of "demeanor"; the trial court made no such assessment.

Third, the government argues that "at the time of trial, apparently no one, including the defense, believed that Brooks had just admitted that she struck a juror because of the juror's race." Gov't App. at 15 (quotation marks, alterations, and italics omitted). This speculative assertion is based entirely on the fact that Sockwell's trial counsel raised a *Batson* claim without *repeating* Brooks's race-based quote and focusing instead on her pretextual explanations. The First Circuit has rejected a nearly identical argument in a *Batson* habeas case governed by AEDPA:

> [T]he respondent notes that defense counsel's on-the-spot *Batson* objection did not specifically highlight the prosecutor's racial remark as evidence that his explanation was other than race-neutral. This omission, the respondent suggests, indicates that even defense counsel did not attach particular significance to the prosecutor's comment. This is little more than whistling past the graveyard. Defense counsel's *Batson* objection was swift and unequivocal . . . .

Porter v. Coyne Fague, 35 F.4th 68, 80 n.5 (1st Cir. 2022).

Fourth, the government contends that the Eleventh Circuit should have conducted a "dual motivation analysis" to determine whether race was only "part of the prosecutor's motivation." Gov't App. at 19-20. The government made this argument below, and no panelist adopted it. With good reason: The ASC "disagree[d] with the [ACCA's] inference that a peremptory strike may be upheld if it is based only *partly* on race." *Sockwell*, 675 So. 2d at 40. The government cites no case holding that AEDPA deference applies to rationales that a state court has expressly disavowed; this Court has held the opposite. *See Wiggins v. Smith*, 539 U.S. 510, 529-30 (2003) (when a state court has "clearly assumed" a fact, a different potential "interpretation . . . has no bearing on whether the [state court's] decision" is "unreasonable"). Regardless, the Eleventh Circuit held that Brooks's strikes were "motivated in substantial part by

discriminatory intent" (A24)—the test used in dual-motivation cases. *See, e.g.*, *Wallace v. Morrison*, 87 F.3d 1271, 1274 (11th Cir. 1996).[2]

B. The Eleventh Circuit did not abuse its discretion by rejecting the government's "law and justice" argument.

The government's second proposed question is "[w]hether 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." Gov't App. at 11.[3] The government believes that even if Sockwell has "overcome[] all of AEDPA's limits," and even if there was a *Batson* violation, the Eleventh Circuit abused its discretion by ordering habeas relief. *Id.* at 22 (brackets omitted). So far as we are aware, no court has adopted such a theory.

To be sure, 28 U.S.C. § 2243 gives courts "equitable discretion" to deny habeas petitions if they cannot conclude "that 'law and justice require' relief." *Brown v. Davenport*, 596 U.S. 118, 134 (2022). But this Court has never taken that extraordinary step in a case where *AEDPA is*

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[2] *But see Snyder*, 552 U.S. at 485 ("We have not previously applied [the dual motivation] rule in a *Batson* case.").

[3] Contrary to the language of this question, the Eleventh Circuit "did not vacate Sockwell's criminal charge." A64 n.1.

satisfied. *Cf. id.* at 134 (petitioner failed to satisfy AEDPA); *Shinn v. Ramirez*, 596 U.S. 366, 377 (2022) (same); *see* A33 n.14 ("*Brown* does not impose a *new* harmless error requirement in habeas cases."). That makes sense, because all of the "equities" discussed by the government—like promoting finality and reducing backlog—are built into AEDPA itself.[4]

Just as importantly, the government's argument is based on a false premise: that Sockwell's guilt is beyond dispute. *See* Gov't App. at 22 ("Sockwell is guilty of capital murder; that fact should matter."). Sockwell's guilt has never been tested in a fair trial. And it is very much in dispute: Sockwell testified at his trial that he was not involved in the alleged murder and that the police coerced him into confessing. A3, 169. He has never departed from this position. So if this Court were to entertain an "innocence" rule, it would have to make factual findings

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[4] The only opinion that adopts a version of the government's position was vacated en banc. *See Crawford v. Cain*, 68 F.4th 273, 279, 287 (5th Cir. 2023) (affirming denial of habeas where petitioner failed to satisfy AEDPA, and noting in dicta that "[l]aw and justice do not require habeas relief . . . when the prisoner is factually guilty"), *vacated*, 72 F.4th 109 (5th Cir. 2023), *opinion on rehearing*, 122 F.4th 158 (5th Cir. 2024 (en banc) (affirming denial of habeas without "law and justice" rationale).

about Sockwell's guilt or innocence based on (in the government's words) "a cold record." That is something the Court avoids. *See* Part I *supra*.

The government also worries that habeas relief might allow Sockwell to "go free merely because the evidence needed to conduct a retrial has become stale or is no longer available." Gov't App. at 23. The reason this case is so old is that the state courts took 23 years to resolve Sockwell's direct appeal and collateral proceedings, after which the district court took another 10 years to rule on his habeas petition. There is nothing "just" about holding that delay against Sockwell. In fact, if the government is correct that the passage of time has made its underlying case weaker, this would only undermine its argument that Sockwell should remain in custody pending appeal. *Hilton*, 481 U.S. at 777-78.

The government has not shown either a "reasonable probability" of certiorari or a "fair prospect" of reversal. *Hollingsworth*, 558 U.S. at 190. At most, it has shown that it disagrees with the decision below and believes strongly that Sockwell is guilty. That does not justify a stay.

III. The government has not shown a likelihood that irreparable harm will result from the denial of a stay.

Setting aside the prospects of its petition, the government has failed to satisfy an independent prerequisite for a stay: "a likelihood that

irreparable harm will result" if a stay is denied. *Hollingsworth*, 558 U.S. at 190. The government makes just two cursory arguments on this front.

A. There is no meaningful risk that the mandate will moot the government's petition.

The government argues first that "if the state courts vacate Sockwell's conviction," that "could moot the case" and deprive this Court of review. Gov't App. at 24. As an initial matter, this argument is premature. The government does not contend that the issuance of the *mandate* would moot its petition. To the contrary, the Eleventh Circuit has made clear that it "did not vacate Sockwell's criminal charge" and that it would be up to the state trial court to decide whether to release him pending retrial in the event that the government seeks one. A64.

If the government is concerned that a vacatur will moot its petition, it can ask the state court for a stay and, if that request is denied, seek a stay from this Court when that time comes. By contrast, if the Court stays the mandate now, this would do little but postpone the matters that will *precede* vacatur and retrial, including (i) the issuance of the writ by the district court and (ii) the preliminary hearings in state court. Given his health, that delay could very well cause irreparable harm to Sockwell.

In any event, a vacatur of Sockwell's conviction would not moot the case. This Court has repeatedly rejected similar arguments. In *Calderon v. Moore*, 518 U.S. 149 (1996), for example, the district court granted habeas relief to a prisoner convicted of murder, and ordered the state to release him unless it held a new trial within 60 days. *Id.* at 149. The state was denied a stay of that decision, and went forward with the retrial while also pursuing an appeal in the Ninth Circuit. *Id.* at 149-50. The Ninth Circuit dismissed the appeal as moot because the prisoner's conviction had been vacated and he was granted a new trial. *Id.* at 150.

This Court reversed, explaining that:

> While the administrative machinery necessary for a new trial has been set in motion, that trial has not yet even begun, let alone reached a point where the court could no longer award any relief in the State's favor. Because a decision in the State's favor would release it from the burden of the new trial itself, the Court of Appeals is not prevented from granting [relief] in the State's favor, and the case is clearly not moot.

Id. at 150 (citing *Mills v. Green*, 159 U.S. 651, 653 (1895)).[5]

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[5] In his dissent from the Eleventh Circuit's order denying a stay, Judge Luck suggested that *Calderon* is distinguishable because the "trial ha[d] not yet even begun." A68. The key point, however, is that the vacatur of the conviction did not moot the appeal. And Sockwell's retrial likewise has not yet begun; he has not yet even received habeas relief, nor has any court ordered his release (conditionally or otherwise).

More recently, in *Kernan v. Cuero*, 583 U.S. 1 (2017), an AEDPA petitioner prevailed in the Ninth Circuit on a sentencing issue. *Id.* at 5. The Ninth Circuit "issued its mandate," and the state court resentenced the petitioner "in light of that mandate." *Id.* at 6. After this Court granted certiorari, the petitioner argued that the resentencing made "this controversy moot." *Id.* The Court disagreed: "neither the losing party's failure to obtain a stay preventing the mandate of the Court of Appeals from issuing nor the trial court's action in light of that mandate makes the case moot." *Id.* A "[r]eversal would simply 'und[o] what the *habeas corpus* court did,' namely, permit the state courts to determine in the first instance the lawfulness of a longer sentence not yet served." *Id.* (quoting *Eagles v. U.S. ex rel. Samuels*, 329 U.S. 304, 308 (1946)).[6]

The cases cited by the government (Gov't App. at 24-25) do not support its position. This Court's decision in *St. Pierre v. United States*, 319 U.S. 41 (1943), did not involve the vacatur of a conviction following a

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[6] Judge Luck found *Kernen* distinguishable because "the state court did not vacate the defendant's conviction—only his sentence." A67. Again, we believe that misses the point. This Court held that the vacatur of the sentence did not moot the state's appeal even though the validity of the sentence was the *subject* of the appeal. The same logic would apply to the vacatur of a conviction, as it did in *Calderon*.

habeas grant; that case was moot because the petitioner was asking for relief from a sentence he had already "fully served." *Id.* at 42; *compare id.* ("reversal of the judgment below cannot operate to undo what has been done"), *with Kernan*, 583 U.S. at 6 ("Reversal would simply 'und[o] what the *habeas corpus* court did.'"). The government also cites Fifth and Ninth Circuit cases with easily distinguishable facts. *See Adair v. Dretke*, 150 F. App'x 329, 332 (5th Cir. 2005) (petitioner's release mooted his appeal seeking reinstatement of "good time credits" that would have reduced his time in custody); *Cumbo v. Eyman*, 409 F.2d 400, 400 (9th Cir. 1969) (holding that a habeas case was moot because the petitioner had not exhausted state court remedies, and because the Arizona Supreme Court reversed his conviction while the case was pending).

The government cites only one opinion holding that the vacatur of a conviction mooted a habeas appeal. *See Brown v. Vanihel*, 7 F.4th 666, 668 (7th Cir. 2021). *Brown* did not, however, address this Court's holding in *Calderon*, and it distinguished *Kernan* on the same unpersuasive ground that Judge Luck did. *See id.* at 672; p. 34 n.6 *supra.* The Ninth Circuit has rejected *Brown*'s rationale for these reasons and others. *See Garding v. Mont. Dep't of Corr.*, 105 F.4th 1247, 1255 (9th Cir. 2024)

(disagreeing with the petitioner that "the state trial court's release of her from custody and the vacatur of her conviction deprives this court of jurisdiction over her habeas appeal," and explaining "*Brown* conflicts with [*Calderon v.*] *Moore* and did not consider *Moore*"); *see also id.* at 1256 ("*Brown* also conflicts with the Supreme Court's holding in *Eagles*.").

In sum, there is no risk that the issuance of the mandate will moot the government's petition. The mandate itself cannot possibly moot anything. This Court has held that the vacatur of a habeas petitioner's conviction does not moot an appeal. And there is no reason to believe that Sockwell's case will reach an advanced stage before the Court has the chance to rule on the government's petition. A stay of the mandate would only prejudice Sockwell, adding further to his unlawful custody.

B. Sockwell lacks the physical and mental capacity for harm or flight.

Finally, the government contends that Sockwell "would pose a danger" and a "flight risk" if he is released from custody. Gov't App. at 25. That is a bold stance to take about a man who is permanently confined to a bed, missing one of his legs, and unable to move his fingers, turn his head, feed himself, clean himself, or communicate with more

than one-word responses. *See* p. 18 *supra*. And again, the argument is premature; no court has suggested that Sockwell will soon be released.

The government insists that Sockwell's "current health condition is legally *irrelevant* in Alabama, where the people have deemed defendants not 'bailable' by default." Gov't App. at 26; *see also* Ala. Code § 15-13-3 ("A defendant is not eligible for bail when he or she is charged with capital murder . . . if the court is of the opinion, on the evidence adduced, that he or she is guilty of the offense."). If it is true that Sockwell will have difficulty getting bail, that only undermines the government's position on irreparable harm. But more to the point, the reason Sockwell's health is relevant is not that it would help him obtain bail; it is because the government believes that Sockwell is a danger to the public and a flight risk. The unrebutted evidence demonstrates that he is not.

It bears repeating: Sockwell has spent 35 years in prison without a fair trial. The government calls this "a three-decade commutation of his death sentence." Gov't App. at 25 (quotation marks and brackets omitted). That comment is a good illustration of the respect the state has shown for Sockwell's constitutional rights. The Court should allow his case to proceed while the government pursues its request for certiorari.

CONCLUSION

This Court should deny the government's motion to stay and instruct the Eleventh Circuit to issue the mandate.

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Respectfully submitted,

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