

Supreme Court of the United States

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

v.

MICHAEL SOCKWELL,
Respondent.

**REPLY IN SUPPORT OF EMERGENCY APPLICATION
TO STAY THE ELEVENTH CIRCUIT'S MANDATE**

Steve Marshall
Attorney General
Edmund G. LaCour Jr.
Solicitor General
Counsel of Record
Robert M. Overing
Deputy Solicitor General

OFFICE OF THE ATTORNEY GENERAL
STATE OF ALABAMA
501 Washington Avenue
P.O. Box 300152
Montgomery, AL 36130-0152
(334) 353-2196
Edmund.LaCour@AlabamaAG.gov

Counsel for Applicant

OCTOBER 6, 2025

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
REPLY	1
I. The Eleventh Circuit violated AEDPA twice over.....	2
A. The “crux” of Sockwell’s claim was a factual challenge, yet he concedes the court below did not apply §2254(d)(2) or §2254(e)(1) or the clear error standard for <i>Batson</i> claims.....	2
B. Even if the panel could find its own facts, race was not determinative, which is all the State needed to win in 1995.	5
II. If equity is flexible and confined to history and tradition, there can be no automatic vacatur rule.....	6
III. A stay would avoid the risk of irreparable harm.....	8
CONCLUSION	10

TABLE OF AUTHORITIES

Cases

<i>Batson v. Kentucky</i> , 476 U.S. 79 (1986)	1-4, 6
<i>Bravo-Fernandez v. United States</i> , 580 U.S. 5 (2016)	9
<i>Brown v. Davenport</i> , 596 U.S. 118 (2022)	6-7
Order, No. 20A116 (Feb. 1, 2021)	8
<i>Brown v. Vanihel</i> , 7 F.4th 666 (7th Cir. 2021).....	1, 8-9
<i>Calderon v. Moore</i> , 518 U.S. 149 (1996)	9
<i>Danforth v. Minnesota</i> , 552 U.S. 264 (2008)	7
<i>Flowers v. Mississippi</i> , 588 U.S. 284 (2019)	5
<i>Foster v. Chatman</i> , 578 U.S. 488 (2016)	3, 7
<i>Garding v. Montana Dep’t of Corr.</i> , 105 F.4th 1247 (9th Cir. 2024).....	1
<i>Garrison v. Hudson</i> , 468 U.S. 1301 (1984)	8
<i>Grupo Mexicano de Desarrollo, S. A. v. All. Bond Fund, Inc.</i> , 527 U.S. 308 (1999)	7
<i>Harrington v. Richter</i> , 562 U.S. 86 (2011)	5
<i>Hilton v. Baunskill</i> , 481 U.S. 770 (1987)	10
<i>Hernandez v. New York</i> , 500 U.S. 352 (1991)	4
<i>Kernan v. Cuero</i> , 583 U.S. 1 (2017)	9
<i>King v. Warden, Ga. Diagnostic Prison</i> , 69 F.4th 856 (2023).....	3

<i>Shinn v. Ramirez</i> , 596 U.S. 366 (2022)	6-7
<i>Shoop v. Hill</i> , 586 U.S. 45 (2019)	5
<i>Snyder v. Louisiana</i> , 552 U.S. 472 (2008)	4-5
<i>Stanley v. City of Sanford</i> , 145 S. Ct. 2058 (2025)	5-6
<i>Trump v. CASA, Inc.</i> , 606 U.S. 831 (2025)	7
<i>United States v. Salerno</i> , 481 U.S. 739 (1987)	10

Statutes

28 U.S.C. §2254(d)(1)	5
28 U.S.C. §2254(d)(2)	2
28 U.S.C. §2254(e)(1)	2
Antiterrorism and Effective Death Penalty Act of 1996	1-4, 6

REPLY

The majority below brazenly violated AEDPA when it vacated Sockwell's conviction based on its own findings of fact, a re-reading of "the trial transcript, the very evidence that was reviewed and interpreted" by the state courts. App.106. The majority then abused its equitable discretion by holding that any successful *Batson* claim in federal habeas automatically warrants vacatur regardless of the equities and regardless of whether "law and justice" require relief.

The State deserves the chance to challenge those rulings and defend its criminal judgment. But that opportunity may be lost forever without a stay, for the Eleventh Circuit ordered the writ to be issued not in 60 days, 180 days, or a year, but immediately. That "will result in the state court's vacating Sockwell's conviction." App.66 (Luck, J., dissenting). Whether vacatur would moot this case is unsettled. Judge Luck and the Seventh Circuit think it would because reversal could not reinstate the state conviction. App.66-68 (Luck, J., dissenting); *Brown v. Vanihel*, 7 F.4th 666, 669-72 (7th Cir. 2021). But the Eleventh and Ninth Circuits think it would not. App.64-65; *Garding v. Mont. Dep't of Corr.*, 105 F. 4th 1247, 1254-56 (9th Cir. 2024). The risk that this appeal becomes moot once Sockwell's conviction is undone is a risk of irreparable harm to the State's appellate rights.

Accordingly, the State seeks a stay of the mandate or in the alternative, clarification from this Court that it would retain jurisdiction in the event that Alabama vacates Sockwell's conviction and retries or releases him from custody pursuant to the writ of habeas corpus.

I. The Eleventh Circuit violated AEDPA twice over.

A. The “crux” of Sockwell’s claim was a factual challenge, yet he concedes the court below did not apply §2254(d)(2) or §2254(e)(1) or the clear error standard for *Batson* claims.

1. Sockwell admits the contradiction at the heart of the opinion below. On the one hand, the panel majority “held that the ASC did not make an ‘unreasonable determination of fact’” when “finding that Brooks’s comments about race were ‘merely descriptive.’” Opp.13-14. But on the other hand, the same comment “confirmed [to the majority] ‘that Brooks felt as if Davis would be partial to [Sockwell] because of their shared race.’” Opp.16. It cannot be both. The court could not accept the ASC’s finding at *Batson* step two (App.14) and then reject it at *Batson* step three (App.26-27) and use its *own* factual finding to distinguish “several Eleventh Circuit cases” (App.28 n.13) unless Sockwell had satisfied AEDPA’s bars for relitigating facts. *See* 28 U.S.C. §§2254(d)(2), (e)(1). He concedes that he did not.

Instead, Sockwell claims that when the panel majority offered its view on how “Brooks felt” about the venireman, that “was not a factual finding.” Opp.26. Of course it was. What the prosecutor *felt* is not a legal conclusion. The panel admitted as much when it first refused to disturb the “not ... unreasonable” findings that (1) Davis’s race was not “given as a *reason for striking* him” and (2) the reasons actually given were “race-neutral.” App.14. As Judge Luck explained, the finding that the prosecution’s remark was “merely a descriptive identification” must be “presumed correct.” App.26; *see* 28 U.S.C. §2254(e)(1). The panel majority did not defer.

2. Sockwell argues that none of this matters because the judgment below did not “turn[]” on the majority’s reading of the trial transcript. Opp.2. But it’s too late to

change horses now. Those twenty words in the transcript were “the crux” of Sockwell’s argument on direct appeal, App.97, and “the crux” of his federal habeas claim, App.106. And as Judge Luck explained thoroughly in dissent, reinterpreting what was said in *voir dire* was the only way for the majority to distinguish this case from any other *Batson* claim. See Opp.16 (conceding that Judge Luck dissented in the “main” because of “the majority’s factual interpretation of the record”). The reason the majority would not “dive[] through ... Eleventh Circuit cases” was that “none of those cases” had a prosecutor “stating she struck him for being the same race as the defendant.” App.28 n.13. The majority thus distinguished key precedent with its own version of the facts. That’s forbidden under AEDPA.

The remainder of the majority’s analysis would not support a *Batson* violation on its own, especially not under AEDPA. First, Sockwell claims there were five cases “where Brooks had violated *Batson*” (Opp.15; see Op.26), but he completely ignores the dissent’s observation that two of those trials preceded *Batson* and a third involved a different prosecutor, App.38-39; see *id.* at 39 n.1 (citing other “reasons to be skeptical” of the list “borrowed from ... Sockwell’s brief”). Second, Sockwell claims support from a bare “statistical” disparity in strike rates (Opp.26) that pales in comparison to the one in *Flowers v. Mississippi*, 588 U.S. 284 (2019), and to those in many cases finding no violation, see, e.g., *King v. Warden, Ga. Diagnostic Prison*, 69 F.4th 856 (11th Cir. 2023) (W. Pryor, J.). Third, Sockwell claims that two other veniremen were vague in *voir dire* yet not struck (Op.15-16; see Op.26), but he ignores that Davis was “vaguer” still (App.31) and lacked candor (Stay.17), among other race-

neutral reasons for the strike. In sum, there was no way for the panel majority to find “strong evidence of racial discrimination,” “explicit racial statements,” and “strong evidence of discriminatory purpose” (App.27) unless it had first supplanted the state court’s factual findings in violation of AEDPA.

3. The need for deference is even greater in a *Batson* case. This Court has recognized the trial judge’s pivotal role in assessing the credibility and demeanor of both prosecutor and juror. Stay.12-14 (citing *Snyder v. Louisiana*, 552 U.S. 472, 477 (2008); *Hernandez v. New York*, 500 U.S. 352, 369 (1991) (plurality)). Because both AEDPA and *Batson*’s progeny mandate deference, when they apply in tandem, review ought to be “doubly” deferential. Stay.13. To this, Sockwell concedes that the court below did not apply the clear-error standard described in *Snyder* and *Hernandez*. Opp.26. He concedes that the Eleventh Circuit did not defer to the state trial judge at all, arguing that it “could not” because the trial court did not “*make any finding*” on the record. Opp.27. The fact that defending the court below drives Sockwell to invent a novel exception to the standard for all *Batson* claims on appeal tells all.

Sockwell is correct that this would be the first *Batson* case under AEDPA for the Court to review in some time (Opp.22-23), which strengthens the case for certiorari. The Court has adopted a “double deference” standard for *Strickland* claims under AEDPA; it has not done so explicitly in a *Batson* case. Sockwell responds that this is the “very rare[]” case where a *Batson* claim survived AEDPA. Opp.24. But this is not an extraordinary set of facts, the panel’s decision will loosen the reins in every *Batson* case in the circuit, and the result below will not remain “very rare” for long.

B. Even if the panel could find its own facts, race was not determinative, which is all the State needed to win in 1995.

Sockwell does not dispute that the prosecution had sufficient motives other than race to strike Eric Davis. *Compare* Stay.16-18, 21 n.4 *with* Opp.28. In 2025, this Court has left open whether the government can defend a strike by showing that race was not outcome-determinative. *See Snyder*, 552 U.S. at 485; *Foster v. Chatman*, 578 U.S. 488, 513 n.6 (2016). If “clearly established Federal law, as determined by [this Court]” may not foreclose that defense today, 28 U.S.C. §2254(d)(1), it certainly did not foreclose it in 1995 when the state courts finally adjudicated Sockwell’s claim. At least four federal circuits in the mid-1990s had adopted the “dual motivation” rationale the Court of Criminal Appeals applied here. *See* Stay.19-21; App.116-18.

Sockwell’s sole rejoinder is that the state high court rejected the dual-motive rationale (in *dicta* because it found no racial motive), but that fact makes no difference to whether the state proceedings “resulted in a decision” at odds with this Court’s caselaw. 28 U.S.C. §2254(d)(1). If the State is correct that Sockwell’s entitlement to relief was not clearly established “at the time of the adjudication,” then he had no right to relitigate it. *Shoop v. Hill*, 586 U.S. 45, 48 (2019). Sockwell should not get a windfall because the ASC gave a different reason for rejecting his claim when a better one was available. That would penalize state courts for giving reasons when no reasons are required. *Harrington v. Richter*, 562 U.S. 86, 98-100 (2011).

* * *

The State does not challenge something so trivial as the “factbound application” of a lower court’s issue-preservation rules. Opp.22 (quoting *Stanley v.*

City of Sanford, 145 S. Ct. 2058, 2075 (2025) (Thomas, J., concurring)). The State challenges an open refusal to accord AEDPA deference, which has “implications outside of this particular case.” Opp.22. Sockwell concedes that multiple Justices have expressed the need for certiorari “to prevent extreme malfunctions in the AEDPA jurisprudence of the Sixth and Ninth Circuits.” Opp.23. In recent years, Alabama has endured very similar malfunctions, requiring this Court’s intervention (*i.e.*, at least five votes to grant certiorari) in three habeas cases in four years. App.12.

Every federal habeas case disturbs significant interests in repose, punishment, and the sovereign power to enforce criminal laws. In this one, decades of litigation, including four courts rejecting Sockwell’s *Batson* claim, amounted to four “‘tryout[s] on the road’ to federal habeas relief,” *Shinn v. Ramirez*, 596 U.S. 366, 377 (2022).

II. If equity is flexible and confined to history and tradition, there can be no automatic vacatur rule.

Sockwell concedes that federal habeas involves the exercise of “equitable discretion” and that AEDPA directs courts to dispose of a petition as “law and justice require.” Opp.29 (quoting *Brown v. Davenport*, 596 U.S. 118, 134 (2022)). But he says that “all of the ‘equities’ ... are built into AEDPA itself.” Opp.30. That is exactly the opposite of what this Court held in *Davenport*—that “even a petitioner who prevails under AEDPA must still today persuade a federal habeas court that ‘law and justice require’ relief.” 596 U.S. at 134. He must “clear[] both tests.” *Id.* Sockwell did not, nor did the Eleventh Circuit conduct *any* equitable analysis. On its rule, a “violation of *Batson*” found by a federal court warrants vacatur “no matter” what. App.33.

Sockwell does not attempt to prove that automatic vacatur for *any* constitutional violation (let alone one premised on third-party standing) “was available from a court of equity at the time of our country’s inception.” *Trump v. CASA, Inc.*, 606 U.S. 846-47 (2025). He does not attempt to explain how the Eleventh Circuit’s rule is consistent with the axiom that “equity is flexible.” *Id.* (quoting *Grupo Mexicano de Desarrollo, S. A. v. All. Bond Fund, Inc.*, 527 U.S. 308, 319 (1999)).

If equity is flexible, if courts must “adjust the scope of the writ” accordingly, *Danforth v. Minnesota*, 552 U.S. 264, 278 (2008), and if the “[f]oremost” equitable consideration is the “interest in punishing the guilty,” *Davenport*, 596 U.S. at 132, then it should matter that Sockwell is guilty and deserves punishment. Sockwell complains that his guilt has not “been tested in a fair trial” (at 30) as if the Eleventh Circuit’s eleventh-hour rescue mission had anything to do with innocence. The only panel member who opined on guilt was Judge Luck, who wrote:

Michael Sockwell blew ‘half of’ Montgomery County Deputy Sheriff Isaiah Harris’s ‘face off’ with a shotgun as the deputy was driving to his shift at the police station. Sockwell murdered Deputy Harris for money. He confessed in a recorded statement to the police. He confessed to his friend. And his coconspirator confessed and implicated him.

App.35. In what sense would vacating this man’s conviction be equitable? Sockwell’s victory below does nothing to change the facts of his crime. It would not compensate him for any injury, for he “suffered no injury,” nor would it “redress[]” any injury of the struck juror. *Flowers*, 588 U.S. at 351 (Thomas, J., dissenting). All it would do is “inflict a profound injury” on the public “and the victims alike” while “impos[ing] significant costs” on the government, *Ramirez*, 596 U.S. at 377.

III. A stay would avoid the risk of irreparable harm.

A. The habeas writ would irreparably damage the State's appellate rights if the case becomes moot once Sockwell's conviction is vacated. In *Brown v. Vanihel*, the Seventh Circuit identified two mootness issues. First, it said, the State's appeal is moot where it "attacks an order directed to a judgment that no longer exists." 7 F.4th at 669. The court held that federal habeas proceedings depend on a prisoner being in custody pursuant to a state judgment; vacating that judgment "end[s] federal jurisdiction ... under the terms of §2254." *Id.* at 670. Second, because federal courts cannot "reinstate state convictions," the panel held it could not provide "meaningful relief," rendering the State's appeal moot under Article III. *Id.* at 670-71.

The State does not endorse either rationale, but it cannot ignore that without a stay, Indiana lost its right to appeal guilt-phase habeas relief in a murder case because it complied with a writ of habeas corpus. For this reason, "[d]istrict and appellate courts regularly grant such stays." *Id.* at 671; *see also Garrison v. Hudson*, 468 U.S. 1301 (1984) (Burger, C.J., in chambers) (granting North Carolina's stay application where retrial following writ of habeas corpus "might" cause mootness); Order in *Brown v. Davenport*, No. 20A116 (Feb. 1, 2021) (granting stay).

The State's concern is not "premature." Opp.32. Sockwell opposes a stay because it would "postpone ... the writ" and "add further to his [allegedly] unlawful custody," *id.* at 32, 36, which is true only if the mandate would directly cause a change to his custody. The idea that the State could seek a stay from the state court, despite a federal-court order to release or retry Sockwell, is speculative and unsupported.

It is also no answer that the State can retry Sockwell. Opp.32; App.64 n.1. The possibility of retrial might mitigate the harm to its interests in criminal justice, and pretrial detention (if permitted) would reduce any risk to the public. But retrial would not alleviate the mootness concern because retrial generally requires vacatur; the absence of a final judgment is why double jeopardy “does not bar reprosecution.” *Bravo-Fernandez v. United States*, 580 U.S. 5, 18 (2016).

Calderon v. Moore does not answer the mootness question because there, the retrial proceedings had not “reached a point where [the federal courts] could no longer award any relief in the State’s favor.” 518 U.S. 149, 150 (1996). That sentence is meaningless unless there *is* some point at which a federal habeas appeal becomes moot. And in that case, the Circuit Justice ultimately *did* grant a stay, which allowed the Court to review the State’s certiorari petition before retrial. *Calderon v. Moore*, 519 U.S. 1144 (1997). And *Kernan v. Cuero* stated the obvious—that reversal would “und[o] what the *habeas corpus* court did”—but that could undo what the *state courts* did is another matter entirely. 583 U.S. 1, 6 (2017). Plus, the Seventh Circuit’s argument for mootness in *Brown* distinguished *Cuero* on the ground that it involved only sentencing, so the inmate remained in state custody, which is the predicate for federal habeas proceedings. 7 F.4th at 672-73; *see* App.67-68 (Luck, J., dissenting).

This Court has never stated at what point a State’s appeal from grant of federal habeas relief becomes moot due to the progression of state-court proceedings. If vacatur is that point, as the Seventh Circuit held, then a stay is the State’s best option to preserve its appeal. *Brown*, 7 F.4th at 671 (“The State could have sought a stay[.]”).

B. There is a risk of irreparable harm whenever the State is ordered by a lower court to release or retry a capital murderer. *Cf. Hilton v. Baunskill*, 481 U.S. 770, 777-78 (1987). If a capital *charge* establishes a “presumption” of danger and a flight risk, *United States v. Salerno*, 481 U.S. 739, 765 n.6 (1987) (Marshall, J., dissenting), that presumption should be insurmountable for a man *convicted* of capital murder. Any interest he may have is “considerably” weaker than that of a pretrial detainee, who would be denied bond in almost every case in Alabama. *Hilton*, 481 U.S. at 779. On Sockwell’s rule, an untested affidavit of a prisoner’s friend describing his ill health is enough for a court of appeals to spring a capital murderer immediately. That is an incredible gamble with public safety and the ability to secure justice. Every *Hilton* factor favors a stay, especially the significant “remaining portion” of the sentence, which puts the State’s interest on the “strongest” possible footing. 481 U.S. at 777. Sockwell bizarrely says he does not “challenge his continued detention pending appeal,” Opp.20, which is exactly how the Court characterized a successful habeas petitioner’s opposition to stay in *Hilton*. Because the decision below “may be overturned on appeal before the State must retry” him, 481 U.S. at 779, Sockwell is not entitled to immediate release, and the Court should err on the side of caution.

CONCLUSION

The Court should stay the mandate pending a petition for writ of certiorari, or, in the alternative, issue a precedential opinion clarifying that this federal habeas appeal would not become moot if the state courts proceed to act on the writ of habeas corpus and vacate Sockwell’s conviction for capital murder.

Respectfully submitted,

Steve Marshall

Attorney General

Edmund G. LaCour Jr.

Solicitor General

Counsel of Record

Robert M. Overing

Deputy Solicitor General

OFFICE OF THE ATTORNEY GENERAL

STATE OF ALABAMA

501 Washington Avenue

P.O. Box 300152

Montgomery, AL 36130-0152

(334) 353-2196

Edmund.LaCour@AlabamaAG.gov

Counsel for Applicant

OCTOBER 6, 2025