No. 24-7351

IN THE

Supreme Court of the United States

TERRY PITCHFORD,

Petitioner,

v.

BURL CAIN, COMMISSIONER,
MISSISSIPPI DEPARTMENT OF CORRECTIONS, *et al.*,

Respondents.

On Writ of Certiorari to the U.S. Court of Appeals for the Fifth Circuit

BRIEF OF CONSTITUTIONAL ACCOUNTABILITY CENTER AND NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF *AMICI CURIAE*[1]

Constitutional Accountability Center (CAC) is a think tank and public interest law firm dedicated to fulfilling the progressive promise of the Constitution's text and history. CAC works in our courts, through our government, and with legal scholars to improve understanding of the Constitution and to preserve the rights and freedoms it guarantees. CAC also has a strong interest in ensuring that important federal statutes are interpreted in a manner consistent with their text and history.

The National Association of Criminal Defense Lawyers (NACDL) is a nonprofit voluntary professional bar association that works on behalf of criminal-defense attorneys to ensure justice and due process for those accused of crime or misconduct. NACDL was founded in 1958. It has a nationwide membership of many thousands of direct members, and up to 40,000 with affiliates. NACDL's members include private criminal-defense lawyers, public defenders, military defense counsel, law professors, and judges. It is the only nationwide professional bar association for public defenders and private criminal-defense lawyers. NACDL is dedicated to advancing the proper, efficient, and just administration of justice. NACDL files numerous *amicus* briefs each year in this Court and other federal and state courts, seeking to provide *amicus* assistance in cases that present issues of broad importance to criminal defendants, criminal defense-

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[1] No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund its preparation or submission. No person other than *amici* or their counsel made a monetary contribution to its preparation or submission.

lawyers, and the criminal-justice system as a whole.

Amici CAC and NACDL both have strong interests in the proper interpretation of the Antiterrorism and Effective Death Penalty Act and in the implications of that statute for criminal defendants' ability to vindicate their federal rights. They accordingly have an interest in this case.

INTRODUCTION AND SUMMARY OF ARGUMENT

When Congress passed the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214 (AEDPA), it recalibrated the statutory framework governing federal habeas review of state-court decisions and "changed the standards for granting federal habeas relief." *Schriro v. Landrigan*, 550 U.S. 465, 473 (2007). But "Congress did not wash away everything that came before." *Brown v. Davenport*, 596 U.S. 118, 134 (2022). Although AEDPA imposed new limitations on habeas relief for applicants in state custody, it also maintained a critical role for federal courts in reviewing state-court decisions on the merits and awarding habeas relief when certain conditions are met.

I. The text of 28 U.S.C. § 2254(d) preserves an important role for federal courts by establishing three carveouts to AEDPA's restriction on habeas for claims adjudicated in state court. *See* 28 U.S.C. § 2254(d)(1), (2) (permitting habeas relief when a state-court decision "was [1] contrary to, or [2] involved an unreasonable application of, clearly established Federal law" or "was [3] based on an unreasonable determination of the facts"). On its face, each carveout requires a federal court to review the state-court decision on the merits. After all, it is not possible to determine whether a state-court decision is contrary to

"clearly established Federal law" without identifying that decision's legal reasoning and assessing it against the reviewing court's own understanding of federal law. *Id.* § 2254(d)(1). So too when the question is whether a decision unreasonably applies federal law; a federal court must examine the legal analysis of the state-court decision, compare that to its own view of how the relevant law applies, and evaluate any divergence. And for the final carveout, AEDPA specifies that federal courts must assess a state-court decision's factual determination "in light of the evidence presented in the State court proceeding," requiring them to examine the trial-court record and to assess independently the state court's evaluation of the evidence. *Id.* § 2254(d)(2).

AEDPA's structure confirms that federal courts are meant to exercise substantive review over state-court decisions. The Act includes a range of provisions that presume federal courts' review of state-court decisions on the merits, both within § 2254, *see* Antiterrorism and Effective Death Penalty Act § 103 (substantive factual and legal inquiry on collateral appeal), and elsewhere within AEDPA, *see id.* §§ 102, 106 (substantive legal inquiry in sections on appeal and successive petitions). If AEDPA's recalibration of federal habeas law had foreclosed federal courts' substantive review of state-court decisions, these provisions would be nonsensical—as would the prescriptions in § 2254(d) itself, which set evaluative standards for federal review of, and potential relief from, state-court decisions.

AEDPA's history further underscores § 2254(d)'s role in preserving federal courts' habeas review of state-court decisions. For decades, some advocates of federal habeas reform had proposed a model of review that would restrict federal courts to an examination of

state-court procedures. On that approach, a federal court could grant habeas relief only if it determined that a state-court decision had not resulted from "full and fair" judicial processes. *See infra* Section I.B (discussing the rise of "full and fair" reform proposals). The "full and fair" model would have precluded habeas relief even for a state-court decision based on significant legal or factual errors, so long as it was procedurally sound; prominent from the 1960s onward, this procedural model influenced reform efforts for decades. Section 2254(d), however, was developed in contrast to that "full and fair" approach. *See* Larry W. Yackle, *A Primer on the New Habeas Corpus Statute*, 44 Buff. L. Rev. 381, 402 (1996) (explaining that the "failure" of that approach "provides the backdrop for understanding" AEDPA and its authorization for federal courts to go beyond procedural review and substantively evaluate state-court decisions on the merits).

Although lawmakers disagreed about certain aspects of § 2254(d), there was remarkable alignment about two aspects of its provisions for federal habeas, each of which coheres with the statute's textual prescriptions. First, § 2254(d) requires federal courts to conduct a substantive review of state-court decisions to determine whether they are factually unreasonable, contrary to clearly established federal law, or an unreasonable application of such law. And second, lawmakers agreed that the statute authorizes federal courts to grant habeas relief in some subset of wrongly decided state-court cases.

II. When such wrongly decided state-court cases arise in federal court on collateral appeal, AEDPA serves as a crucial backstop to protect important federal rights, like the Fourteenth Amendment's guarantee of equal protection.

After the Civil War, Southern states failed to address ongoing "acts of cruelty, oppression and murder" committed against both formerly enslaved Black Americans and their allies. *Report of the Joint Committee on Reconstruction*, 39th Cong., 1st Sess. at xvii (1866). When perpetrators were brought to trial, they encountered all-white juries that "refus[ed] to punish violence by whites . . . against blacks and Republicans." James Forman, Jr., *Juries and Race in the Nineteenth Century*, 113 Yale L.J. 895, 909-10 (2004). With the ratification of the Fourteenth Amendment, the Constitution newly guaranteed to all people the "equal protection of the laws," U.S. Const. amend. XIV, which this Court has recognized for over a century safeguards the right to jury selection free of race-based discrimination, *see infra* Section II.

If Pitchford is barred from bringing his habeas claim based on the Mississippi Supreme Court's determination that he waived his pretext rebuttal, that result would extinguish his right under the Equal Protection Clause to be free from racial discrimination in the selection of his jury. The nineteenth-century Framers of the Fourteenth Amendment squarely contemplated such discrimination when crafting that Amendment's equal-protection guarantee. Indeed, the "[e]xclusion of black citizens from service as jurors constitutes a primary example of the evil the Fourteenth Amendment was designed to cure." *Batson v. Kentucky*, 476 U.S. 79, 85 (1986).

III. The Mississippi Supreme Court's decision in this case rests on exactly the sort of unreasonable factual determination that, pursuant to AEDPA, allows a reviewing federal court to grant habeas relief to applicants in state custody. *See* 28 U.S.C. § 2254(d)(2).

At his Mississippi trial, Pitchford objected to the prosecution's use of peremptory strikes, arguing that the strikes targeted Black veniremembers and so were unlawful under this Court's decision in *Batson*. Pet. App. 212-16, 221-22. On appeal, the Mississippi Supreme Court held that Pitchford had waived his right to rebut as pretextual the race-neutral reasons proffered by the prosecution in response to his objection. *See id.* at 5. The trial-court transcript, however, records Pitchford's counsel attempting to rebut the race-neutral reasons immediately after they were given—but being "thwarted" from arguing pretext, as the federal district court later found, by the trial court's "abrupt conclusion" that there had been no *Batson* violation. *Id.* at 23. The Mississippi Supreme Court's decision that Pitchford waived his pretext rebuttal was thus "an unreasonable determination of the facts" that permits a federal court to grant habeas relief under AEDPA. 28 U.S.C. § 2254(d)(2). The Fifth Circuit's decision to the contrary ignores one key part of the transcript and misreads another. *See infra* at 19-20.

In short, AEDPA's text and history make clear that its statutory scheme serves as a backstop, ensuring that federal courts can review state-court decisions on the merits and grant habeas relief when warranted, including to uphold criminal defendants' federal rights. Because the Mississippi Supreme Court's factual determination of waiver as to Pitchford's *Batson* challenge was unreasonable, the Fifth Circuit's judgment should be reversed.

ARGUMENT

I. AEDPA's Text and History Show that Section 2254(d) Preserves an Important Role for Federal Courts' Habeas Review of State-Court Decisions.

In the Judiciary Act of 1789, Congress granted the country's nascent federal courts the "power to issue writs of . . . *habeas corpus*" to those held "in custody, under or by colour of the authority of the United States." Judiciary Act of 1789, ch. 20, § 14, 1 Stat. 73, 81-82. Following the Civil War, Congress extended that statutory authority to include "issu[ing] habeas writs to state custodians," *Brown*, 596 U.S. at 128 (citing Act of Feb. 5, 1867, ch. 28, § 1, 14 Stat. 385), and people in state custody began seeking habeas relief in federal courts.

By the twentieth century, federal courts' "caseload of habeas petitions from state prisoners" had grown, *id.* at 131, and, in a series of cases, this Court "develop[ed] doctrines" restricting the availability of habeas relief for applicants in state custody, *id.* at 132-33 (collecting cases). Against this backdrop, Congress considered various proposals to reform and streamline federal habeas, enacting some and abandoning others. *See infra.*

Decades in the making, AEDPA's passage in 1996 recalibrated the statutory framework governing federal habeas review of state-court decisions and "changed the standards for granting federal habeas relief." *Schriro*, 550 U.S. at 473. Those standards, codified in part at 28 U.S.C. § 2254, authorize federal courts to grant habeas applications where a state court's adjudication is premised upon an unreasonable factual determination.

A. Although § 2254(d) provides that habeas relief is not generally accessible for "claim[s] . . . adjudicated on the merits in State court proceedings," 28 U.S.C. § 2254(d), the text of that Section expressly specifies three situations in which habeas relief is available. *See Harrington v. Richter*, 562 U.S. 86, 100 (2011).

Two of those situations, identified in § 2254(d)(1), arise when state-court decisions are either "contrary to" or an "unreasonable application of" "clearly established Federal law." 28 U.S.C. § 2254(d)(1). The third, set out in § 2254(d)(2), exists when a state court's "determination of the facts" is "unreasonable." *Id.* § 2254(d)(2). Together, these pathways carve out three discrete statutory exceptions to the general limitation on habeas relief in § 2254(d), providing avenues for federal courts to examine state-court decisions and, when the Section's conditions for relief are met, to grant applications for the habeas writ. *See* Josiah Rutledge, Richter*'s Scale: Proving Unreasonableness under AEDPA*, 32 Geo. Mason L. Rev. 357, 399-400 (2025) (describing these pathways as "qualifying errors" that permit federal habeas review).

Importantly, each of these pathways authorizes federal courts' substantive inquiry into the merits of state-court decisions.

Both pathways to habeas relief under § 2254(d)(1) require federal courts to review the substance of a state court's legal reasoning and to compare that reasoning with their own assessment of the relevant legal standard under "clearly established Federal law." 28 U.S.C. § 2254(d)(1). To determine if a state-court decision "is contrary to . . . clearly established Federal law," *id.*, for example, a reviewing court must first identify that decision's legal rationale and then independently evaluate whether the state court's

articulation of that rationale is "in conflict with" its own understanding of the relevant federal law, *Contrary*, *Black's Law Dictionary* (6th ed. 1990). Similarly, to decide if a state-court decision "involve[s] an unreasonable application of . . . clearly established Federal law," 28 U.S.C. § 2254(d)(1), a federal court must first examine how the state court interpreted the relevant federal law in the case at bar and then substantively assess the reasonableness of that legal interpretation as compared to its own view of the relevant body of law.

Subsection 2254(d)(2) makes particularly clear that the statute prescribes on-the-merits review. In cases under that provision, federal courts must assess whether "the adjudication of [a] claim" in state court "resulted in a decision that was based on an unreasonable determination of the facts." *Id.* § 2254(d)(2). To do so, the Subsection instructs that a federal court must conduct its own independent reevaluation "of the evidence presented in the State court proceeding" to assess whether a state-court decision rests on "an unreasonable determination of the facts." *Id.*; *cf. Unreasonable decision*, *Black's Law Dictionary* (6th ed. 1990) (noting that, in administrative-law contexts, a decision can be deemed "unreasonable" only after a "determin[ation]" based on a separate reconsideration of the "evidence presented" below).

Although § 2254(d)(2) does not specify the content of its unreasonableness standard, *see* 28 U.S.C. § 2254(d)(2); *see also* Brandon L. Garrett & Kaitlin Phillips, *AEDPA Repeal*, 107 Cornell L. Rev. 1739, 1751 (2022), the structure of the review it contemplates is clear: federal courts conducting habeas review must compare a state-court's factual determination against "the evidence presented in the

State court proceeding"—and may grant relief when such independent review reveals that the state court's determination was unreasonable. 28 U.S.C. § 2254(d)(2); *see, e.g.*, *Brumfield v. Cain*, 576 U.S. 305, 313-14, 319 (2015) ("Here, our examination of the record before the state court compels us to conclude that . . . its critical factual determinations were unreasonable.").

AEDPA's broader structure is instructive as well. Specifically, its overarching slate of changes to federal habeas presumed federal courts' review of state-court decisions on the merits. Other provisions within § 2254, for example, rest on federal courts considering "factual issue[s]" determined by state courts, Antiterrorism and Effective Death Penalty Act § 103 (codified at 28 U.S.C. § 2254(e)(1)), and assessing whether a "reasonable factfinder would have found the applicant guilty of the underlying offense," *id.* (§ 2254(e)(2)(B))—both forms of substantive, rather than procedural, review. Elsewhere in AEDPA, other sections contemplate federal courts exercising substantive review in different contexts, including for second or successive petitions, *see id.* § 106 (§ 2244(b)(2)(B)(ii)) (determining whether "but for constitutional error, no reasonable factfinder would have found the applicant guilty"), and on federal appeal, *see id.* § 102 (§ 2253(c)(2)) (conditioning appeals on a "substantial showing of the denial of a constitutional right"). This suite of provisions would be "unintelligible" if § 2254(d) had, through its statutory recalibration of habeas law, foreclosed federal courts' ability to review the merits of state-court decisions. Yackle, *supra*, at 384. Moreover, if AEDPA were designed "to compel the federal courts to defer to state court decisions on the merits reached after adequate state process, there would have been no

need for a separate provision like § 2254(d)" to prescribe detailed evaluative standards to guide federal habeas review of, and potential relief from, state adjudications. *Id.* at 401.

B. The history of the provision underscores what its text makes clear: § 2254(d) was designed to preserve federal habeas review of state-court decisions on the merits.

To start, the history that informed AEDPA's statutory design confirms that federal courts' review of state-court decisions is substantive—it inquires into the legal and factual merits underlying a state-court adjudication. Prior to AEDPA, individuals held in state custody generally had access to substantive federal habeas review. *See* Yackle, *supra*, at 383 (discussing the previous habeas regime). AEDPA's passage marked the culmination of a decades-long effort to reform and narrow the scope of federal habeas. *See* Lee Kovarsky, *AEDPA's Wrecks: Comity, Finality, and Federalism*, 82 Tul. L. Rev. 443, 459, 471 (2007). But the pathways to habeas relief specified in § 2254(d) expressly maintained a role for federal courts in reviewing and, when necessary, granting relief from, state-court adjudications.

In the 1960s, some scholars and judicial policymakers articulated a procedural model for habeas reform. Under Professor Paul Bator's "full and fair" approach, federal courts would be precluded from granting habeas on any claim a state court had already considered so long as the state judicial process was "full and fair." Paul M. Bator, *Finality in Criminal Law and Federal Habeas Corpus for State Prisoners*, 76 Harv. L. Rev. 441, 455-60 (1963). On this model, a reviewing court's inquiry would be trained "not at the question whether substantive error of fact or law occurred, but at whether the processes previously

employed for determination of questions of fact and law were fairly and rationally adapted to that task." *Id.* at 455-56 (describing a form of review that "test[s] . . . whether the processes furnished by the previous tribunal were meaningful and rational"). That approach precludes a federal court from issuing relief as long as there had been a "full and fair" state decision-making process, even if the resulting decision were significantly wrong on the merits.

This paradigm of procedural federal review was endorsed by a Judicial Conference committee, which proposed new legislation limiting federal habeas relief to situations in which there was "no fair and adequate opportunity . . . to raise" the relevant claim in state proceedings. *Applications for Writs of Habeas Corpus and Post Conviction Review of Sentences in the United States Courts*, 33 F.R.D. 365, 367-70 (1964). Bills adopting a procedural model were introduced in Congress but were not enacted. *See, e.g.*, Habeas Corpus Act Amendments, S. 567, 93d Cong., 1st Sess. (1973). Later reform bills in the 1980s and 1990s retained language codifying a "full and fair" procedural standard—*see, e.g.*, Habeas Corpus Reform Act of 1982, S. 2216, 97th Cong., 2d Sess. (1982) ("An application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that has been fully and fairly adjudicated in State proceedings."); Reform of Federal Intervention in State Proceedings Act S. 1763, 98th Cong., 1st Sess. (1984) (same); Comprehensive Violent Crime Control Act, S. 635, 102d Cong., 1st Sess. (1991) (same)—though some stakeholders began urging interpretations of that standard that authorized some degree of substantive review, *see, e.g.*, *The Habeas Corpus Reform Act of 1982: Hearing Before the Comm.*

on the Judiciary, 97th Cong., 2d Sess. 89-98 (1982) (defining "full and fair," in a bill analysis by the Department of Justice, to include "the factual determination of the state court, the disposition resulting from its application of the law to the facts, and its view of the applicable rule of federal law [being] reasonable").

AEDPA's provisions were developed in contrast to these longstanding proposals for habeas reform that would have restricted federal courts to reviewing state-court decisions for procedural regularity alone. *See* Kovarsky, *supra*, at 463-65 (detailing the rise and fall of "full and fair" habeas reform efforts); Yackle, *supra*, at 401-02, 424-36 ("Congress deliberately rejected the very notion that federal habeas corpus should be governed by a process model, under which a federal court would be restricted to evaluating the adequacy of the procedures employed in state court."). The "failure of the full-and-fair program provides the backdrop for understanding" AEDPA, *id.* at 402, and that older model was repeatedly referenced during AEDPA's statutory development and passage, *see, e.g.*, 141 Cong. Rec. H1425-26 (daily ed. Feb. 8, 1995) (Rep. Conyers) (opposing a proposed amendment with changes to § 2254 because "[w]hat we have here in this full and fair concept is a throwback to an outmoded idea first advanced in the other body that would effectively end all rights of habeas corpus, if minimal State guarantees are satisfied"); 142 Cong. Rec. S3441 (daily ed. Apr. 17, 1996) (recording two letters, each from four former U.S. Attorneys General, discussing the "full and fair" standard). Had Congress sought to restrict habeas review of state-court decisions to an inquiry into procedural adequacy, it had model statutory language readily available to do so. It did not use that language.

Debates about AEDPA further underscore that it preserved an important role for federal courts' review of state-court decisions, as lawmakers in both the Senate and the House of Representatives acknowledged the role that federal courts would continue to play in reviewing state-court decisions under the three carveouts. *See, e.g.*, 141 Cong. Rec. S7847 (daily ed. June 7, 1995) (Sen. Specter) ("[T]he Federal judge will still have latitude to alter the State court decision in any case in which the Federal judge determines that it was contrary to or involved an unreasonable application of clearly established Federal law . . . or resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceedings."); 142 Cong. Rec. H3602, H3604 (daily ed. Apr. 18, 1996) (Rep. Hyde) ("[T]he Federal judge always reviews the State court decision to see if it is in conformity with established Supreme Court preceden[ts], or if it has been misapplied. So it is not a blank, total deference . . . . The Federal judge still has to look at the work product of the State court to decide if they got it right.").

To be sure, federal legislators diverged in their interpretations of § 2254(d)'s contrary-to and unreasonability standards. But even Senators who believed that the federal courts should generally defer to state-court action recognized that there would be some circumstances in which deference would not be warranted and habeas relief should be granted. *Compare, e.g.*, 142 Cong. Rec. S3465 (daily ed. Apr. 17, 1996) (Sen. Levin) ("[I]f the State court's interpretation is wrong, this standard authorizes the Federal courts to overturn that interpretation."), *with* 142 Cong. Rec. S3362 (daily ed. Apr. 16, 1996) (Sen. Hatch) ("This bill requires deference to [State] court

action unless there is some very good reason not to defer."); *id.* at S3446 (daily ed. Apr. 17, 1996) (Sen. Hatch) ("It enables the Federal court to overturn State court decisions that clearly contravene Federal law.").

* * *

Section 2254(d)'s text and history, as described above, make clear that AEDPA cements federal courts' ability to exercise substantive review of state-court decisions—and to award habeas relief when certain conditions are met. That review ensures that federal courts can vindicate important federal rights. One such right is the Equal Protection Clause's guarantee of jury selection free from racial discrimination, as the next Section discusses.

II. AEDPA Is a Critical Backstop to Protect Federal Rights, Including the Fourteenth Amendment's Guarantee of Jury Selection Free from Racial Discrimination.

AEDPA's provisions for federal habeas review serve as a critical backstop for people held in state custody, affording a pathway to relief from unlawful or unreasonable state-court adjudications—and a tool to vindicate such individuals' federal rights. *See, e.g.*, 142 Cong. Rec. S3465 (daily ed. Apr. 17, 1996) (Sen. Warner) (stating that, "in the exceptional case where Federal rights have been violated [in state court], defendants retain very reasonable access to Federal courts" under AEDPA). Here, the federal right at stake stems directly from the Fourteenth Amendment's guarantee that "[n]o state shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV.

The Framers of the Fourteenth Amendment were deeply concerned about racial discrimination in the criminal legal system. Following the Civil War,

Southern states turned a blind eye to "acts of cruelty, oppression and murder" carried out against both Black Americans recently freed from slavery and their allies. *Report of the Joint Committee*, *supra*, at xvii. "Witness after witness spoke of beatings and woundings, burnings and killings, as well as deprivations of property and earnings and interference with family relations—and the impossibility of redress or protection." Jacobus tenBroek, *Equal Under Law* 203-04 (1965).

A central problem was juror bias. Witnesses testified before the Joint Committee on Reconstruction—which drafted the Fourteenth Amendment—that, "since the surrender and coming home of the rebels, there is less chance for getting a jury who will act justly." *Report of the Joint Committee*, *supra*, at 33. More specifically, "[a]ll-white juries punished black defendants particularly harshly, while simultaneously refusing to punish violence by whites . . . against blacks and Republicans." Forman, *supra*, at 909-10. According to the testimony of one Southern judge, "[i]n nine cases out of ten the men who commit the crimes constitute or sit on the grand jury, either they themselves or their near relatives or friends, sympathizers, aiders, or abettors; and if a bill is found it is next to impossible to secure a conviction upon a trial at the bar." Cong. Globe, 42d Cong., 1st Sess. 158 (1871) (Sen. Sherman) (quoting Judge Daniel Russell) (internal quotation marks omitted).

The "[e]xclusion of black citizens from service as jurors constitutes a primary example of the evil the Fourteenth Amendment was designed to cure," *Batson*, 476 U.S. at 85, and the Framers of the Amendment were aware that its broad promise of equal protection could address the documented barriers Black Americans faced in accessing the jury

box, *see* Forman, *supra*, at 929 (noting that, for Senator Morton, "it was the recently passed Fourteenth Amendment's equal protection mandate, combined with the reality of racial prejudice, that required blacks to serve on juries"). This Court soon recognized the new constitutional landscape, holding that a West Virginia law barring Black Americans from jury service violated the Equal Protection Clause. *See Strauder v. West Virginia*, 100 U.S. 303, 309 (1879) ("Is not protection of life and liberty against race or color prejudice a right, a legal right, under the constitutional amendment? And how can it be maintained that compelling a colored man to submit to a trial for his life by a jury drawn from a panel from which the State has expressly excluded every man of his race, because of color alone . . . is not a denial to him of equal legal protection?").

Over the following century, this Court has consistently reaffirmed *Strauder*, confirming in *Batson* and its progeny that the Equal Protection Clause "forbids the prosecutor to challenge potential jurors solely on account of their race." *Batson*, 476 U.S. at 89; *see, e.g.*, *Georgia v. McCollum*, 505 U.S. 42, 59 (1992); *Powers v. Ohio*, 499 U.S. 400, 409 (1991) ("[T]he Equal Protection Clause prohibits a prosecutor from using the State's peremptory challenges to exclude otherwise qualified and unbiased persons from the petit jury solely by reason of their race.").

Here, the Mississippi Supreme Court decided that Pitchford waived his opportunity to fully develop his *Batson* challenge to the prosecution's use of peremptory strikes against Black veniremembers—despite his counsel's efforts to argue pretext and the trial court's abrupt truncation of that argument. That decision was factually unreasonable and so satisfies

one of AEDPA's pathways to federal habeas relief, as the next Section discusses.

III. The Mississippi Supreme Court's Decision that Pitchford Waived Rebuttal During His *Batson* Challenge Is Factually Unreasonable Under AEDPA.

The Mississippi Supreme Court determined that Pitchford waived a pretext argument as part of his *Batson* challenge in the state trial court. *See* Pet. App. 5. The trial-court transcript, however, shows that Pitchford's counsel immediately attempted to rebut as pretextual the prosecution's race-neutral reasons for its strikes. During a bench conference just after those reasons were given, Pitchford's counsel reiterated and "reserve[d] . . . its *Batson* objection" and began describing the county's racial demographics as compared to the jury's in an effort to demonstrate that racial bias had influenced juror selection. *Id.* at 221-22 (recording Pitchford's counsel "stat[ing] into the record [that] there is one of 12—of fourteen jurors, are non-white, whereas this county is approximately, what 40 percent?" and that "[t]he county is 40 percent black"). The trial court nonetheless ended its *Batson* analysis and neither allowed Pitchford's counsel to develop the arguments about pretext in full nor conducted its own pretext inquiry. *See id.* at 221 (concluding summarily that there was "no *Batson* violation").

On collateral appeal, the federal district court correctly determined that "the trial court failed to provide Pitchford an opportunity to rebut the State's explanations" for its peremptory strikes against Black veniremembers "at the time they were made." *Id.* at 22. Instead of "turning to Pitchford and allowing him the opportunity to rebut the [race-neutral] reasons articulated by the State, the trial court immediately

continued with the juror selection conference." *Id.* at 21. As a result, the bench-conference colloquy held "[j]ust seconds after" juror selection "evinces an attempt by Pitchford's counsel to argue pretext that was thwarted . . . by the trial court's abrupt conclusion that there had been no *Batson* violation." *Id.* at 22-23. Indeed, "Pitchford was seemingly given no chance to rebut the State's explanations" and to provide evidence to "prove purposeful discrimination." *Id.* at 23.

Under these circumstances, the federal district court recognized that "Pitchford *did* object to the [race-neutral] explanations provided when he raised the issue again and confirmed it was on the record" and so did not fail to pursue the pretext portion of his *Batson* challenge. *Id.* at 24. Because "there was no waiver by Pitchford" of his right to rebut the state's proffered race-neutral reasons as pretextual, the Mississippi Supreme Court's factual determination otherwise was unreasonable. *Id.*

On appeal, the Fifth Circuit read the state trial-court transcript to reach a contrary conclusion. The panel noted that "Pitchford objected, not on the basis of pretext or comparative juror analysis, but only on the ground that the county was 40% black," which it held was not "sufficient to raise an objection to the State's race-neutral reasons." *Id.* at 8.

But that holding erred on two fronts. First, the panel did not reckon with—much less find error in—the district court's conclusion that the state trial court had "thwarted" Pitchford's ability to rebut the state's reasons for its strikes by "immediately continu[ing] with the juror selection conference" and had thereby precluded him from offering a full pretext argument. *Id.* at 21, 23. Second, and relatedly, the panel overread Pitchford's thwarted objection. It framed Pitchford's

claim "that the county was 40% black" as inherently contrary to an objection "on the basis of pretext." *Id.* at 8. But that reading is unwarranted. A capable defense counsel may well mention the demographics of the area from which veniremembers are drawn while rebutting a prosecutor's proffered race-neutral reasons as pretextual. Pitchford's objection was in fact more nuanced than the Fifth Circuit's gloss suggests: his counsel twice referenced the racial makeup of the jury itself, *see id.* at 221 ("[O]ne of 12—of fourteen jurors, are non-white."); *id.* at 222 ("And only one."), consistent with this Court's recognition that comparative statistics about the jury's racial makeup can be probative of pretext, *see Miller-El v. Dretke*, 545 U.S. 231, 240-41, 266 (2005). Pitchford's counsel's reference to county demographics, while not strongly probative on its own, is compatible with, and certainly not contrary to, a more robust pretext objection—especially where the trial court stymied his articulation of a fuller argument.

Subsection 2254(d)(2)'s unreasonability standard "is demanding but not insatiable." *Id.* at 240. Viewed "in light of the evidence presented in the State court proceeding," the Mississippi Supreme Court's conclusion that Pitchford waived his right to rebut the state's race-neutral reasons was "an unreasonable determination of the facts" concerning his *Batson* challenge at trial. 28 U.S.C. § 2254(d)(2). Under AEDPA's scheme, as the federal district court rightly recognized, Pitchford's "application for a writ of habeas corpus" on his *Batson* claim falls within one of the § 2254(d) carveouts for relief and should be granted. *Id.* § 2254(d).

* * *

The text of § 2254(d)(2) is straightforward: a federal court may grant habeas relief where a state's

adjudication of a claim "resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." *Id.* § 2254(d)(2). That provision obliges federal courts to conduct a substantive review of a state-court decision, comparing it against the underlying evidentiary record.

The Fifth Circuit failed to do that. If it had, it would have recognized that the Mississippi Supreme Court unreasonably determined, in the face of a contrary trial record, that Pitchford waived his ability to rebut under *Batson*. Subsection 2254(d)(2) ensures that, in this situation, federal courts remain open to him to review the merits of that state-court decision and, as authorized by AEDPA's broader scheme, to grant his application for habeas relief. If the federal courts are not available to Pitchford, he will be wholly unable to vindicate his constitutional right against racial discrimination in the selection of his jury, even though such discrimination "mars the integrity of the judicial system," *Edmonson v. Leesville Concrete Co., Inc.*, 500 U.S. 614, 628 (1991), and "places the fairness of a criminal proceeding in doubt," *Powers*, 499 U.S. at 411.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be reversed.

Respectfully submitted,

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