No. 19-

IN THE
SUPREME COURT OF THE UNITED STATES

MICHAEL BRANDON SAMRA,
Petitioner
- vs -
STATE OF ALABAMA,
Respondent.

MICHAEL BRANDON SAMRA,
Petitioner
- vs -
CHRISTOPHER GORDY, Warden, Donaldson Correctional Facility,
and
CYNTHIA STEWART, Warden, Holman Correctional Facility,
Respondents.

On Petition for Writ of Certiorari to the Alabama Supreme Court

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APPLICATION FOR STAY OF EXECUTION PENDING CONSIDERATION OF THE PETITION FOR A WRIT OF CERTIORARI AND THE PETITION FOR AN ORIGINAL WRIT OF HABEAS CORPUS

THIS IS A CAPITAL CASE:
MR. SAMRA IS SCHEDULED TO BE EXECUTED ON MAY 16, 2019

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Michael Brandon Samra hereby applies, pursuant to Supreme Court Rule 23, for a stay of his impending execution, currently scheduled for May 16, 2019. Samra's petition for a writ of certiorari and petition for an original writ of habeas corpus were filed in this Court on April 29, 2019. It would be a grave injustice to execute Samra before this Court considers the meritorious Eighth Amendment claim in these petitions. Accordingly, Samra respectfully requests that this Court stay his execution.

STATEMENT OF THE CASE

A. Procedural History

On March 20, 2019, the State moved in the Alabama Supreme Court to set an execution date. On March 26, 2019, Samra filed an objection to the State's motion, arguing that it would violate the Eighth Amendment to execute Samra because society's evolving standards of decency prohibit the imposition of the death penalty of offenders up to the age of 21. On the same day, Samra filed a second successor Rule 32 petition for post-conviction relief, also raising the Eighth Amendment claim.

On April 1, 2019, the State responded to Samra's objection in the Alabama Supreme Court, arguing, in part, that Samra was not entitled to relief on his Eighth Amendment claim. The State relied on *Roper v. Simmons*, 543 U.S. 551 (2005), in which the United States Supreme Court drew the line of death eligibility at 18 years old. Samra filed a reply to the State's response on April 2, 2019.

On April 10, 2019, the Shelby County Circuit court summarily dismissed Samra's Rule 32 petition. On April 11, 2019, the Alabama Supreme Court ordered that Samra be executed on May 16, 2019. Samra filed motions for a stay of execution in the Alabama Supreme Court and the Shelby County Circuit court on April 29, 2019.

Also on April 29, 2019, Samra filed a petition for a writ of certiorari, requesting that this Court consider the Alabama Supreme Court's execution order as a denial on the merits of Samra's Eighth Amendment claim. On the same day, Samra filed a petition for an original writ of habeas corpus, based on the same Eighth Amendment claim. If this Court finds that the claim has not been exhausted, Samra urges this Court to grant the original writ.

REASONS FOR GRANTING THE STAY OF EXECUTION

A stay of execution is warranted where there is a "presence of substantial grounds upon which relief might be granted." *Barefoot v. Estelle*, 463 U.S. 880, 895 (1983). Courts consider a number of factors, including whether there is a reasonable probability that four members of the Court would grant certiorari; whether there is a significant possibility of reversal of the lower court's decision; and whether there is a likelihood that irreparable harm will result if that decision is not stayed. *Id.*; *see also Warner v. Gross*, 135 S. Ct. 824, 826 (2015) (Sotomayor, J., dissenting from application from stay of execution). Samra's case meets these standards.

First, there is a reasonable probability that Samra will prevail on the merits of his claim. For the reasons set forth in Samra's petition for a writ of certiorari, the

Eighth Amendment prohibits the execution of offenders who were under the age of 21 at the time of their offense. The reasoning that justified this Court's ban on executing offenders under 18 extends to offenders through the age of 21.

This Court in *Roper v. Simmons*, 543 U.S. 551 (2005), found that scientific and psychological research showed that juveniles have a diminished culpability, even with regard to capital crimes. This Court found that juveniles (1) have a "lack of maturity and an underdeveloped sense of responsibility" that "often result in impetuous and ill-considered actions and decisions"; (2) are "more vulnerable or susceptible to negative influences and outside pressures, including peer pressure"; and (3) have characters that are "not as well formed" and personalities that are "more transitory, less fixed" than those of adults. *Id.* at 569-70. Given these differences, the penological objectives of the death penalty apply to juveniles with lesser force than to adults. *Id.* at 570-71.

The mitigating qualities of youth do not dissipate the day a youthful offender turns 18 years old. Since *Roper*, scientific studies have shown that during a person's late teens and early 20's, the brain continues growing and undergoes rapid changes in self-regulation and higher-order cognition. See Blume, et al., Death by Numbers: Why Evolving Standards Compel Extending Roper's Categorical Ban Against Executing Juveniles From 18 to 21, Texas L. Rev. at 14 (forthcoming 2019) (electronic copy available at: https://ssrn.com/abstract=3341438) (compiling scientific studies). Also, there is a burgeoning national consensus against executing young adult offenders. Since *Roper* was decided, only 13 states have handed down

new death sentences to offenders under 21, and a majority of states, 30, would not permit the execution of a youthful offender. *Id.* at 23. Notably, one Kentucky court, surveying the scientific research and national consensus, has concluded that Eighth Amendment line drawn in *Roper* must now be drawn at 21. *Commonwealth v. Efrain Diaz*, 15 CR 584-001 (Fayette Cir. Ct. Order Sept. 6, 2017) (transfer granted, 2017-SC-000536).

In the 14 years since this Court decided *Roper*, society's standards have evolved rapidly to the point that the line drawn in *Roper* can no longer be justified. Accordingly, Samra has shown a reasonable likelihood that he will prevail on his Eighth Amendment claim.

A stay of execution is also warranted because Samra would suffer irreparable injury. The finality of the death penalty would render any subsequent decision in his favor moot. Before it is too late, this Court should ensure that the Eighth Amendment does not categorically preclude him from receiving the law's most severe and irreversible penalty.

Further, a stay of execution is proper where there has been no undue delay in Samra's raising his claim. The Eighth Amendment question of whether a punishment is cruel and unusual, by definition, involves an assessment of standards that are evolving. *See Trop v. Dulles*, 356 U.S. 86, 100-101 (1958) (plurality opinion) (analyzing the "the evolving standards of decency that mark the progress of a maturing society" to determine which punishments are so disproportionate as to be cruel and unusual). A punishment that was once deemed

valid under the Eighth Amendment can soon become invalid in light of society's changing standards. The 14 years since *Roper* was decided is a typical time frame for this Court to reassess the constitutional limits of death penalty eligibility. *See, e.g., Roper*, 543 U.S. at 555 (observing that it was addressing the death penalty's age restrictions "for the second time in a decade and a half"); *Atkins v. Virginia*, 536 U.S. 304 (2002) (finding that "[m]uch has changed" in the 13 years since it last considered whether mentally retarded offenders may be executed). There has therefore been no undue delay in raising this claim.

Finally, this Court should grant a stay of execution pending this Court's decision in *Mathena* v. *Malvo*, 18-217 (cert. granted March 18, 2019). In *Mathena*, this Court is set to shed light on the core Eighth Amendment concerns about the sentencing of young people.[1] This Court should not allow the State of Alabama to proceed with Samra's execution until *Mathena* is decided.

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[1] The question presented in that case is:

> In *Miller v. Alabama*, 567 U.S. 460 (2012), this Court held that "mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition on 'cruel and unusual punishments.'" *Id.* at 465. Four years later, in *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016), the Court held that "*Miller* announced a substantive rule of constitutional law" that, under *Teague v. Lane*, 489 U.S. 288 (1989), must be given "retroactive effect" in cases where direct review was complete when Miller was decided. *Montgomery*, 136 S. Ct. at 736.
>
> The question presented is:
>
> Did the Fourth Circuit err in concluding—in direct conflict with Virginia's highest court and other courts—that a decision of this Court (*Montgomery*) addressing whether a new constitutional rule announced in an earlier decision (*Miller*) applies retroactively on collateral review may properly be interpreted as modifying and

CONCLUSION

Michael Brandon Samra respectfully requests the Court issue an order staying his impending execution until this Court can consider and resolve the issues raised by the petition for a writ of certiorari or alternatively, the petition for an original writ of habeas corpus, as well as the issue raised in *Mathena v. Malvo*.

Respectfully submitted,

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April 29, 2019

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substantively expanding the very rule whose retroactivity was in question?