

No. \_\_\_\_\_

**IN THE SUPREME COURT OF THE UNITED STATES**

---

**LOUIS B. GASKIN,  
PETITIONER,**

**VS.**

**STATE OF FLORIDA,  
RESPONDENT.**

---

---

*On Petition for a Writ of Certiorari to the Supreme Court of Florida*

---

**APPLICATION FOR STAY OF EXECUTION**

---

**THIS IS A CAPITAL CASE  
WITH AN EXECUTION SCHEDULED FOR  
WEDNESDAY, APRIL 12, 2023, AT 6:00 PM**

---

Eric C. Pinkard\*  
Florida Bar No. 651443  
Law Office of the Capital Collateral Regional  
Counsel – Middle Region  
12973 N. Telecom Parkway  
Temple Terrace, Florida 33637  
Phone No. (813)558-1600 Ext 603  
Fax No. (813) 558-1601  
Email: Pinkard@ccmr.state.fl.us  
\*COUNSEL OF RECORD

To the Honorable Clarence Thomas, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Eleventh Circuit:

The State of Florida has scheduled the execution of Petitioner Louis Bernard Gaskin for **April 12, 2023, at 6:00 p.m.** The Florida Supreme Court denied state court relief as well as Mr. Gaskin's request for stay on April 6, 2023. Mr. Gaskin respectfully requests that this Court stay his execution, pursuant to Supreme Court Rule 23 and 28 U.S.C. § 2101(f), pending consideration of his concurrently filed petition for writ of certiorari.

### **STANDARDS FOR A STAY OF EXECUTION**

The standards for granting a stay of execution are well-established. *Barefoot v. Estelle*, 463 U.S. 880, 895 (1983). There “must be a reasonable probability that four members of the Court would consider the underlying issue sufficiently meritorious for the grant of certiorari or the notation of probable jurisdiction; there must be a significant possibility of reversal of the lower court’s decision; and there must be a likelihood that irreparable harm will result if that decision is not stayed.” *Id.* (internal quotations omitted).

### **PETITIONER SHOULD BE GRANTED A STAY OF EXECUTION**

The questions raised in Mr. Gaskin's petition are sufficiently meritorious for a grant of certiorari. The underlying issues present significant questions of constitutional law and are not subject to any legitimate procedural impediments.

As explained in Mr. Gaskin's underlying petition, the totality of the evidence that was adduced in this case at trial and during postconviction makes it clear that

Mr. Gaskin is not included in the class of defendants who are subject to the death penalty in that his case is not one of the most aggravated and least mitigated. To include Mr. Gaskin in the class of defendants who are subject to the death penalty not only violates the Eighth Amendment prohibition against cruel and unusual punishment, it also violates the Equal Protection Clause of the Fourteenth Amendment. In addition, in light of a clear, contemporary national consensus, and with consideration of the original public meaning, the Eighth Amendment prohibits the execution of those, like Mr. Gaskin, who were sentenced to death by a non-unanimous jury.

Should this Court grant Mr. Gaskin's request for a stay and grant review of the underlying petition, there is a significant possibility of the lower court's reversal. Mr. Gaskin was sentenced to death by a jury that was never presented with profound, compelling mitigating evidence which would exclude him from the class of persons subject to the death penalty. In fact, four jurors voted for life even without hearing the weighty mitigation regarding Mr. Gaskin's abusive childhood and significant mental health disorders. This Court has made clear that the consideration of mitigation by the sentencer, is at the heart of the constitutionality of the death penalty. Because the trial judge and the recommending jury were denied the mitigation that was extant in Mr. Gaskin's case, the recommending jury and the trial court never focused on the unique circumstances of Mr. Gaskin. His deprivation, mental illness, and trauma he suffered was never heard, thus falling to meet the minimum constitutional requirements. The evolving standards of decency insist upon

consideration of mitigation. The lack of consideration of Mr. Gaskin's mitigation, at trial and now, shows that his execution violates his rights under the Eighth Amendment because his case has never been narrowed to the most aggravated and least mitigated. Mr. Gaskin must be allowed the opportunity to have the courts consider all of the matters relevant to his sentence.

Regarding Mr. Gaskin's right to a unanimous jury, there is an indisputable national consensus in favor of the notion that if a death sentence is to pass constitutional muster, the jury must unanimously vote for the death penalty. This consensus has manifested itself in sentencing and execution processes as well as statutes. This Court's own judgment has further reinforced the consensus established by the courts and supported by the population at large. In *Ramos v. Louisiana*, this Court decided that a unanimous jury vote is required to convict a defendant of a "serious offense" under the Sixth Amendment. 140 S. Ct. 1390 (2020). Further, this Court has a "longstanding view that the Sixth Amendment includes a protection against nonunanimous felony guilty verdicts." *Id.*, at 1421 (Thomas, J., concurring). If a felony guilty verdict is required under the Sixth Amendment, it stands to reason that the taking of a life in the State's name should be subject to the same requirement.

Mr. Gaskin's claims are not subject to any legitimate procedural impediments. In this case, the state courts have foreclosed adequate and substantive review. However, given the final nature of the death penalty there should be no point at which these considerations are foreclosed. "[E]xecution is the most irremediable and unfathomable of penalties . . . death is different." *Ford v. Wainwright*, 477 U.S. 399,

411 (1986) (citing *Woodson v. North Carolina*, 428 U.S. 280, 305 (1976) (opinion of Stewart, Powell, and Stevens, J.J.)).

At every post-trial opportunity, Mr. Gaskin has raised the claim that he is excluded from the class of defendants subject to the death penalty because his case is not one of the most aggravated and least mitigated. He has also raised the claim regarding the unconstitutionality of a non-unanimous jury recommendation of the death penalty at every possible opportunity. Evolving standards of decency have progressed to the point where each of these claims should bear no timeliness concern.

The irreparable harm to Mr. Gaskin is clear. *Wainwright v. Booker*, 473 U.S. 935, 937 n.1 (1985) (Powell, J., concurring) (finding the requirement of irreparable harm as “necessarily present in capital cases”). Additionally, the Florida Supreme Court’s refusal to grant Eighth Amendment protections is not just a matter of life and death for Mr. Gaskin. The Eighth Amendment not only protects the individual from cruel and unusual punishment, it safeguards the public’s interest in living in a humane society. See, e.g., *Ford*, *supra*, at 409-10 (Eighth Amendment restriction protects not only the individual, but “the dignity of society itself from the barbarity of exacting mindless vengeance[.]”).

While the rest of society’s standards of decency are evolving, the Florida courts have continued and will continue to foreclose relief in other similar cases and return Florida to its outlier status as regards the death penalty. This creates an unacceptable risk that other similarly situated individuals will also be denied their crucial Sixth, Eighth, and Fourteenth Amendment protections.

This Court's intervention is urgently needed to prevent the imminent execution of Mr. Gaskin, who is undoubtedly deserving of the protections from the death penalty provided by the Eighth and Fourteenth Amendments. The Florida Supreme Court refuses to apply these constitutional protections; as a result, this Court should grant a stay of execution and grant a writ of certiorari.

### CONCLUSION

For the foregoing reasons, Mr. Gaskin respectfully requests that this Court grant his application for a stay of execution to address the important constitutional questions in this case.

Respectfully submitted,

/s/ Eric C. Pinkard

Eric C. Pinkard\*

Florida Bar No. 651443

Law Office of the Capital Collateral  
Regional Counsel – Middle Region

12973 N. Telecom Parkway

Temple Terrace, Florida 33637

Phone No. (813)558-1600 Ext 603

Fax No. (813) 558-1601

Email: Pinkard@ccmr.state.fl.us