

No.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2017

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VERNON MADISON, Petitioner,

v.

STATE OF ALABAMA, Respondent.

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ON PETITION FOR A WRIT OF CERTIORARI  
TO THE ALABAMA SUPREME COURT

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APPLICATION FOR A STAY OF EXECUTION

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*THIS IS A CAPITAL CASE  
WITH AN EXECUTION SCHEDULED  
FOR THURSDAY, JANUARY 25, 2018*

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

Tomorrow, **January 25, 2018**, the State of Alabama seeks for the second time to execute Vernon Madison, a 67-year-old man who has been on Alabama's death row for over 30 years. On January 24, 2018, the Alabama Supreme Court denied Mr. Madison's petition for relief from his unconstitutional sentence and stay of execution. Mr. Madison therefore moves this Court to stay his execution and grant his petition for certiorari to address the substantial question of

whether the execution of a prisoner who was sentenced to life by a jury in a State that has now abolished judicial override violates the Eighth and Fourteenth Amendments to the United States Constitution? In support of this motion, Mr. Madison states as follows:

In 2017, the State of Alabama repealed its judicial override statute, thus joining the rest of the country in abolishing the practice of judicial override. Since that time Alabama has not sought to execute an individual whose sentence of death was the result of judicial override. Given that no state currently allows a judge to override a jury's capital sentencing verdict, there is not merely a "national consensus," see Kennedy v. Louisiana, 554 U.S. 407, 426 (2008), but unanimous agreement that a sentence of death imposed by a judge contrary to a jury's life verdict does not comport with our evolving standards of decency and the Eighth Amendment.

Moreover, the standardless practice of judicial override has frequently led to arbitrary and freakish results, which is evident in the racial and geographic disparities in override cases. For example, Alabama circuit judges overrode "jury life verdicts in cases involving white victims much more frequently than in cases involving victims who are black." See Equal Justice Initiative, The Death Penalty in Alabama: Judge Override 5 (2011), [http://eji.org/eji/files/Override\\_Report.pdf](http://eji.org/eji/files/Override_Report.pdf). Indeed, "[s]eventy-five percent of all

death sentences imposed by override involve[d] white victims, even though less than 35% of all homicide victims in Alabama are white.” Id. Second, defendants who stand trial in certain counties are uniquely vulnerable to a judge overturning a jury verdict for life. This is because some Alabama counties have highly disproportionate rates of death sentences imposed by judicial override as compared to other counties. Significantly, just three of Alabama’s 67 counties account for nearly 50% of the life-to-death overrides across the state. Id. At 17. Finally, the disproportionate use of judicial override can largely be attributed to the “tough on crime” politics of certain judges who are especially willing to overturn jury verdicts for life without parole. For these reasons, the judicial override in this case resulted in a death sentence that is arbitrary, disproportionate, and unconstitutional, and allowing Mr. Madison’s sentence to stand would violate the Eighth and Fourteenth Amendment guarantees of reliable capital sentencing.

Given the abolition of judicial override in Alabama, the execution of Mr. Madison would also violate the Fourteenth Amendment’s guarantee of equal protection of the laws and due process, as well as Mr. Madison’s fundamental rights against the arbitrary and capricious imposition of death. As a result of the 2017 legislative abolition of judicial override, no person tried today can be given the sentence Mr. Madison received, death where the jury has voted for life,

and no person sentenced today can eventually be executed where the jury does not vote for death. There is simply no legitimate basis for distinguishing between someone like Mr. Madison, who is scheduled to be executed despite a jury's life verdict, and a person sentenced to death now, who by law cannot be sentenced to death if a jury does not will it.

Additionally, Mr. Madison's right to be free of the arbitrary and capricious imposition of death is a fundamental right, infringement of which requires satisfaction of strict scrutiny. Carrying out the death penalty in a case like Mr. Madison's where the jury voted for life, despite the abolition of judicial override must overcome strict scrutiny. Massachusetts Bd. of Retirement v. Murgia, 427 U.S. 307, 312 (1976) ("equal protection analysis requires strict scrutiny" where fundamental rights infringed). Here, the State of Alabama's plan to execute Vernon Madison violates his fundamental right by treating him in a way that no person now be treated, by carrying out execution where a jury voted for life, and cannot withstand any constitutional scrutiny.

Lastly, in Hurst v. Florida, 136 S. Ct. 616 (2016), the United States Supreme Court held that the Sixth Amendment requires that every fact necessary to impose a sentence of death must be proven to a jury beyond a reasonable doubt. 136 S. Ct. at 621-22. In so holding, Hurst invalidated death penalty sentencing schemes, such as Alabama's superseded law, that allowed for

judicial override of a jury's sentencing verdict specifying life without parole. Because the findings necessary for the imposition of a sentence of death in Mr. Madison's case were never made by the jury, but were instead made by the judge, Mr. Madison's sentence of death is unconstitutional.

This Court is empowered to grant petitioner a stay of execution in order to adjudicate his constitutional claims. As this Court held in Barefoot v. Estelle, 463 U.S. 880, 895 (1983), superseded on other grounds by 28 U.S.C. § 2253(c), a stay may be granted when there is “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; . . . a significant possibility of reversal of the lower court's decision; and . . . a likelihood that irreparable harm will result if that decision is not stayed.” Further, a stay should be granted when necessary to “give non-frivolous claims on constitutional error the careful attention that they deserve” and when a court cannot “resolve the merits [of a claim] before the scheduled date of execution to permit due consideration of the merits.” Id. at 888-89.

Mr. Madison respectfully requests that this Court grant certiorari and stay his scheduled execution in order to address the critical question of whether executing Mr. Madison, who was sentenced to life by a jury in a State that has now abolished the practice of judicial override renders his execution arbitrary

and capricious in violation of the Eighth and Fourteenth Amendments to the United States Constitution.

Respectfully Submitted,

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