

No. 20-697

IN THE
Supreme Court of the United States

ORLANDO CORDIA HALL,

Petitioner,

-versus-

T.J. WATSON, IN HIS OFFICIAL CAPACITY AS COMPLEX WARDEN OF U.S.P. FEDERAL
CORRECTIONAL COMPLEX (FCC) TERRE HAUTE,

Respondent.

EMERGENCY APPLICATION FOR A STAY OF EXECUTION

**MOTION OF NAACP LEGAL DEFENSE & EDUCATIONAL FUND, INC. FOR
LEAVE TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF PETITIONER'S
EMERGENCY APPLICATION FOR A STAY OF EXECUTION**

The NAACP Legal Defense & Educational Fund, Inc. (“LDF”) respectfully moves for leave to file the enclosed brief as *amicus curiae* in support of Petitioner Orlando Cordia Hall’s Emergency Application for a Stay of Execution, filed November 19, 2020 (i) without 10 days’ advance notice to the parties as ordinarily required by Sup. Ct. R. 37.2(a), and (ii) in an unbound format on 8 1/2-by-11-inch paper rather than in booklet form.

Petitioner, who is scheduled to be executed by the United States at 6 PM CST today, filed his Emergency Application for a Stay of Execution this afternoon, shortly after the denial of such relief by the United States Court of Appeals for the Seventh Circuit. In light of this expedited schedule, it was not feasible for LDF to provide 10 days’ notice to the parties of its intention to file an *amicus curiae* brief. In addition,

the compressed time frame prevented LDF from finalizing its brief with sufficient time to allow for it to be printed and filed in booklet form.

As set forth in the enclosed brief, LDF has a strong interest in the outcome of Petitioner's Emergency Application for a Stay of Execution. LDF is the nation's first and foremost civil rights law organization. Through litigation, advocacy, public education, and outreach, LDF strives to secure equal justice under the law for all Americans and to break down barriers that prevent African Americans from realizing their basic civil and human rights.

LDF has long been concerned about the persistent and pernicious influence of race on the administration of the criminal justice system in general, and on jury selection in particular. We have represented defendants in *Swain v. Alabama*, 380 U.S. 202 (1965), *Alexander v. Louisiana*, 405 U.S. 625 (1972), and *Ham v. South Carolina*, 409 U.S. 524 (1973); pioneered the affirmative use of civil actions to end jury discrimination, *Carter v. Jury Commission of Greene County*, 396 U.S. 320 (1970), *Turner v. Fouche*, 396 U.S. 346 (1970); and appeared as amicus curiae in myriad jury discrimination cases, including *Batson v. Kentucky*, 476 U.S. 79 (1986), *Edmonson v. Leesville Concrete Co.*, 500 U.S. 614 (1991), *Georgia v. McCollum*, 505 U.S. 42 (1992), *Miller-El v. Cockrel*, 537 U.S. 322 (2003), *Johnson v. California*, 545 U.S. 162 (2005), *Miller-El v. Dretke*, 545 U.S. 231 (2005), and *Flowers v. Mississippi*, 139 S. Ct. 2228 (2019).

LDF thus has a distinct perspective on the issues presented in this matter, and its *amicus* brief includes relevant material not brought to the attention of the Court by the parties that may be of considerable assistance to the Court. *See* Sup. Ct. R.

37.1. LDF's brief argues that Mr. Hall's important constitutional claims can only proceed under § 2241, which provides a remedy where other means of challenging confinement, *i.e.*, § 2255, are unavailable. LDF's brief also argues that claims that racial discrimination has infected a death sentence are different in kind than other constitutional harms. "Defendants are harmed, of course, when racial discrimination in jury selection compromises the right of trial by impartial jury." *Miller-El v. Dretke*, 545 U.S. 231, 237 (2005) (internal citations omitted). But, as this Court stressed in another capital case involving such discrimination, the harm is not limited to the defendant. "[R]acial minorities are harmed more generally, for prosecutors drawing racial lines in picking juries establish 'state-sponsored group stereotypes rooted in, and reflective of, historical prejudice.'" *Id.* at 237–38 (internal citation omitted). And, more broadly, there is a serious injury to the rule of law itself: "the very integrity of the courts is jeopardized when a prosecutor's discrimination invites cynicism respecting the jury's neutrality." *Id.* at 237 (internal citations omitted). Similarly, where a petitioner presents evidence that an entire system of capital sentencing is tainted by racial discrimination, the harm extends beyond the defendant by establishing state-sponsored prejudices that undermine the rule of law.

In light of these unique harms, this Court has emphasized the need to "engage[] in 'unceasing efforts' to eradicate racial prejudice from our criminal justice system." *McCleskey v. Kemp*, 481 U.S. 279, 309 (1987) (internal citation omitted). Of particular significance here, the Government's ordinary interest in finality should not be accorded the same weight when the petitioner raises a substantial claim that his sentence of death is tainted by racial discrimination. As the Court recently explained,

the “the State’s interest in finality deserves little weight” when a petitioner demonstrates (even years after the denial of an initial habeas petition) that his death sentence was affected by such discrimination, because states “lack an interest in enforcing a capital sentence obtained on so flawed a basis.” *Buck v. Davis*, 137 S. Ct. 759, 779 (2017). The United States here similarly lacks an interest in enforcing a death sentence obtained based on racial discrimination, and it would be a miscarriage of justice for Mr. Hall to be executed without any court considering the significant evidence he has presented that his death sentence was “obtained on so flawed a basis.” *Id.*

Mr. Hall’s habeas petition implicates the odious effects of race discrimination in both the jury selection and capital punishment contexts. Accordingly, LDF respectfully urges this Court to stay Mr. Hall’s execution so that his claims may be adjudicated and respectfully requests that this Court grant leave to file the accompanying *amicus curiae* brief.

Dated: November 19, 2020

Respectfully submitted,

/s/ Samuel Spital

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