

No. _____

IN THE
Supreme Court of the United States

LORAN COLE,

Petitioner,

v.

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
THURSDAY, AUGUST 29, 2024, AT 6:00 P.M.***

ALI A. SHAKOOR*

FLORIDA BAR No.: 0669830

EMAIL: SHAKOOR@CCMR.STATE.FL.US

ADRIENNE JOY SHEPHERD

FLORIDA BAR No.: 1000532

EMAIL: SHEPHERD@CCMR.STATE.FL.US

LAW OFFICE OF THE CAPITAL COLLATERAL
REGIONAL COUNSEL - MIDDLE REGION
12973 NORTH TELECOM PARKWAY
TEMPLE TERRACE, FLORIDA 33637
PHONE: (813) 558-1600
SECONDARY EMAIL: SUPPORT@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, Loran Cole, for **August 29, 2024, at 6:00 p.m.** The Florida Supreme Court denied relief on August 23, 2024. Cole 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 a 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 Cole’s petition are sufficiently meritorious for a grant of a writ of certiorari. The underlying issues present significant, compelling questions of constitutional law and a stay is necessary to avoid Cole being executed in violation of the Eighth Amendment to the United States Constitution. *Panetti v. Quarterman*, 551 U.S. 930 (2007), *Ford v. Wainwright*, 477 U.S. 399 (1986), and *Madison v. Alabama*, 139 S. Ct. 718 (2019).

It is indisputable Cole will be irreparably harmed if his execution is allowed to go forward, and the balance of equities weighs heavily in favor of a stay. Florida's interest in the timely enforcement of judgments handed down by its courts must be weighed against Cole's continued interest in his life. *See Ohio Adult Parole Auth. v. Woodard*, 523 U.S. 272, 289 (1998) (“[I]t is incorrect . . . to say that a prisoner has been deprived of all interest in his life before his execution.”) (O'Connor, J., plurality opinion). Florida has a minimal interest in finality and efficient enforcement of judgments, but Cole has a right in ensuring that his execution comports with the Constitution. In addition, the irreversible nature of the death penalty frequently supports in favor of granting a stay. “[A] death sentence cannot begin to be carried out by the State while substantial legal issues remain outstanding.” *Barefoot*, 463 U.S. at 888. Should this Court grant the request for a stay and review of the underlying petition, Cole submits there is a significant possibility of the lower court's reversal. This Court's intervention is urgently needed to prevent Cole's imminent execution despite the protections from the death penalty provided by the Eighth Amendment.

Lethal Injection

Cole's case presents important constitutional issues which should be fully addressed by this Court free from the extreme time constraints set by the warrant signed on July 29, 2024. Cole's execution is set for August 29, 2024, which is only **four days** away from the filing of this application. Cole respectfully requests that this Court enter a stay of execution and also relinquish jurisdiction to the state circuit

court with instructions to hold a full and fair evidentiary hearing on the claims raised in Cole's August 3, 2024 Successive Motion and timely filed initial brief. It is particularly necessary that the state circuit court hold an evidentiary hearing on Cole's as-applied challenge to Florida's lethal injection procedures raised under *Glossip v. Gross*, 576 U.S. 863 (2015) and *Baze v. Rees*, 553 U.S. 35 (2008).

As further detailed in Cole's contemporaneous petition for writ of certiorari, Cole is arguing that Florida's current lethal injection procedures are unconstitutional as specifically applied to him because executing Cole under those procedures will very likely cause him needless pain and suffering due to the unique symptoms that he experiences caused by his Parkinson's disease. *Glossip v. Gross*, 576 U.S. 863 (2015); *Baze v. Rees*, 553 U.S. 35 (2008).

Cole's as-applied challenge to Florida's lethal injection procedures is substantial grounds upon which relief from the ultimate sanction of execution very likely could be granted. The state courts summarily denied Cole's as-applied challenge without holding an evidentiary hearing on the matter. However, the Florida Supreme Court's ("FSC") prior precedent recognizes the need for evidentiary hearings on as-applied challenges to execution procedures, and the FSC has relinquished jurisdiction to the lower court on at least **four** separate occasions so that an evidentiary hearing may be held on such claims. Cole should be given the same opportunity to an evidentiary hearing as those prior defendants who also raised an as-applied challenge while under an active death warrant. Florida is violating Cole's

due process and equal protection rights pursuant to the Fourteenth Amendment to the United States Constitution.

In 2014, the FSC relinquished jurisdiction to the lower court to hold an evidentiary hearing on Paul Howell's as-applied challenge to Florida's previous use of midazolam in executions, explaining that "because Howell raised factual as-applied challenges and relied on new evidence not yet considered by this Court ... this Court relinquished jurisdiction for an evidentiary hearing." *Howell v. State*, 133 So. 3d 511, 515 (Fla. 2014). Cole raises a factual as-applied challenge based on evidence of his Parkinson's disease that has not been considered by the FSC, previously. Cole should be afforded the same opportunity for an evidentiary hearing as Howell.

Again in 2014, the FSC relinquished jurisdiction to the lower court to hold an evidentiary hearing on Robert Henry's as-applied challenge to Florida's lethal injection protocol related to his hypertension, high cholesterol level, and coronary artery disease. *Henry v. State*, 134 So. 3d 938, 943 (Fla. 2014). The state circuit court held an evidentiary hearing during which both sides called medical experts to testify concerning Henry's unique medical conditions. *See id.* at 944. Cole should be afforded the same opportunity for an evidentiary hearing as Henry.

A third time in 2014, the FSC relinquished jurisdiction to the lower court to hold an evidentiary hearing on Eddie Wayne Davis's as-applied challenge to Florida's execution procedures based on his diagnosis of porphyria. *Davis v. State*, 142 So. 3d 867, 870 (Fla. 2014). The FSC explained the relinquished jurisdiction based, in part, on the "constitutional obligation to ensure that the method of lethal injection in this

state comports with the Eighth Amendment.” *Id.* The FSC has the same constitutional obligation in Cole’s case that was recognized by the FSC in Davis’s case, and Cole should be afforded the same opportunity for an evidentiary hearing as Davis.

Finally, in 2015 the FSC relinquished jurisdiction to the lower court to hold an evidentiary hearing on Jerry Correll’s as-applied challenge to Florida’s execution procedures based on his alleged brain damage and history of alcohol and substance use. *Correll v. State*, 184 So. 3d 478, 483 (Fla. 2015). Prior to the evidentiary hearing, the FSC granted Correll’s motion for stay of proceedings and stay of execution which was filed with his appeal of the lower court’s summary denial of his claims, which subsequently allowed for enough time to hold the evidentiary hearing on Correll’s as-applied challenge. *See id.* at 482. An evidentiary hearing with multiple witnesses was subsequently held on Correll’s as-applied claim. *Id.* at 484. Cole should be afforded the same opportunity as Correll for an evidentiary hearing, and he must be granted a stay of execution so that a full and fair evidentiary hearing can be conducted.

Cole should be afforded the same opportunity for an evidentiary hearing on his as-applied claim that was given to Howell, Henry, Davis, and Correll at the state level. These capital defendants were similarly situated to Cole in that they all raised as-applied challenges to Florida’s execution procedures while under an active death warrant. To treat Cole differently by denying him an evidentiary hearing when these defendants received one violates Cole’s Fourteenth Amendment rights to equal protection and due process.

Cole is a Necessary Witness in Another Jurisdiction

Another reason a stay of execution is essential for Cole's case, is the fact that Cole is a necessary witness in ongoing postconviction proceedings for a case in Pottawattamie County, Iowa: *Daniel Brian Harris v. State of Iowa*, No.: PCC117436, 436 N.W. 364 (1987). In 1986, Cole testified against Harris in Pottawattamie County, Iowa as a "jailhouse snitch." Cole was instrumental in Iowa securing a conviction against Harris for first-degree murder. However, since that time, Cole has recanted his testimony which led to Harris' conviction on multiple occasions. He recanted while he was in the Marion County, Florida jail for the case at bar, and he also recanted during a recorded statement for Harris' attorney last year in May of 2023.

Most recently, Cole took part in a deposition for the Harris case at the Union County Correctional Institution on June 18, 2024. Counsel for Harris was present, along with an assistant Pottawattamie County attorney on behalf of Iowa. Counsel for Harris, Thomas P. Frerich's, Esq., explained the essential need for Cole's testimony in a written correspondence to undersigned counsel dated August 21, 2024, as follows:

Forgot to mention that our trial is scheduled for 15 days beginning on August 4, 2025. Loran, even though deposed, is still a necessary witness. His testimony is not only relevant to the fact that he recanted, he can also to testify about the circumstances that brought about his testimony in the first place. The former police chief and the former prosecutors are at odds at how his testimony came about. Loran's testimony that he was pre-advised that he would be placed in a jail cell with a "murderer" before our client, Daniel Harris was ever even arrested. The retired police chief who allegedly first spoke with him, now denies ever talking to him. There are a litany of issues arising out of his testimony at the murder case other than his incarceration. If Loran is executed, it will dramatically prejudice my client whom I believe has been wrongly

incarcerated now for 38 years. Please let me know if there is any other information you need.

Cole's presence is required so that justice may be served in another jurisdiction, on behalf of Daniel Harris and the citizens of Iowa.

CONCLUSION

"The fundamental requirement of due process is the opportunity to be heard **'at a meaningful time and in a meaningful manner.'**" *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965) (emphasis added). Cole's meritorious issues cannot possibly be heard in a meaningful manner with only **four days** left until his execution. The important constitutional issues presented by Cole's case require a full appellate review that is not truncated by the exigencies of an imminent execution.

For the foregoing reasons, Cole respectfully requests that this Court grant his application for a stay of his August 29, 2024 execution to address the compelling constitutional questions in his case on the merits.

Respectfully submitted,

/s/ Ali A. Shakoor

Ali A. Shakoor*

**Counsel of Record*

Assistant CCRC

Florida Bar Number: 0669830

Email: shakoor@ccmr.state.fl.us

/s/ Adrienne Joy Shepherd

Adrienne Joy Shepherd

Assistant CCRC

Florida Bar Number: 1000532

Email: shepherd@ccmr.state.fl.us

Law Office of the Capital Collateral
Regional Counsel - Middle Region
12973 N. Telecom Parkway
Temple Terrace, Florida 33637
Tel: (813) 558-1600
Fax: (813) 558-1601
Secondary Email: support@ccmr.state.fl.us

August 25, 2024

Dated