No. _____

IN THE

Supreme Court of the United States

KAYLE BARRINGTON BATES,

Petitioner,

v.

GOVERNOR OF FLORIDA,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

THIS IS A CAPITAL CASE WITH AN EXECUTION SCHEDULED FOR TUESDAY, AUGUST 19, 2025, AT 6:00 P.M.

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A1
Eleventh Circuit Order Denying
Emergency Motion for Stay of Execution
August 15, 2025

In the

United States Court of Appeals

For the Eleventh Circuit

No. 25-12762

KAYLE BARRINGTON BATES,

Plaintiff-Appellant,

versus

GOVERNOR, STATE OF FLORIDA,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Florida
D.C. Docket No. 5:25-cv-00192-MCR-MJF

Before WILLIAM PRYOR, Chief Judge, and NEWSOM and GRANT, Circuit Judges.

BY THE COURT:

Kayle Barrington Bates is a Florida inmate scheduled to be executed on August 19, 2025 for a first-degree murder, kidnapping, attempted sexual battery, and armed robbery that he committed nearly 45 years ago, in 1982. In the district court, Bates sued Florida Governor Ron DeSantis under 42 U.S.C. § 1983, alleging that the Governor selects execution warrants in a racially discriminatory manner in violation of the Eighth and Fourteenth Amendments. The Governor filed a motion to dismiss Bates's complaint for failure to state a plausible claim, which the district court granted. Bates has appealed the district court's dismissal and moved for a stay of execution pending the resolution of his appeal. Because Bates has not established that he is substantially likely to succeed on the merits of his appeal, we deny the motion to stay.

I

Florida death-row inmate Kayle Barrington Bates "abducted a woman from her office, took her into some woods behind the building, attempted to rape her, stabbed her to death, and tore a diamond ring from one of her fingers." *Bates v. State*, 465 So. 2d 490, 491 (Fla. 1985). A jury found Bates guilty of first-degree murder, kidnapping, attempted sexual battery, and armed robbery, and Bates was sentenced to death. *Id.* He is scheduled to be executed at 6:00 p.m. on August 19, 2025.

On July 29, 2025, Bates filed a 42 U.S.C. § 1983 action. He alleged that Florida Governor Ron DeSantis selects execution warrants in a racially discriminatory manner in violation of Eighth

Amendment's prohibition on cruel and unusual punishments and the Fourteenth Amendment's guarantee of equal protection of the laws. Specifically, Bates argues that the Governor discriminatorily over-selects the execution warrants of black defendants who killed white victims. The Governor moved to dismiss Bates's complaint for failure to state a plausible claim. The district court granted this motion, on the ground that the statistical evidence provided by Bates was insufficient to support his constitutional claims.

Bates appealed the district court's dismissal of his complaint to this Court. He has also filed two related motions: a motion to stay his execution in the light of his pending appeal and a motion to expedite briefing. We take up Bates's request for a stay pending appeal. And after careful review, we deny his request for a stay.

II

"A court may grant a stay of execution only if the movant establishes that he is substantially likely to succeed on the merits, he will suffer irreparable injury absent the stay, and the stay would not substantially harm the opposing party or the public interest." *Mills v. Hamm*, 102 F.4th 1245, 1248 (11th Cir. 2024). A movant "must satisfy all of the requirements for a stay, including a showing of a significant possibility of success on the merits." *Hill v. McDonough*, 547 U.S. 573, 584 (2006). So if the movant fails to show substantial likelihood of success on the merits, we must deny the stay request. *See DeYoung v. Owens*, 646 F.3d 1319, 1324 (11th Cir. 2011) (denying a stay of execution for this reason). We conclude that Bates is not entitled to a stay because he has not demonstrated

a substantial likelihood that he will succeed on the merits of his claims.

We agree with the district court that Bates's claims are foreclosed by the Supreme Court's decision in *McCleskey v. Kemp*, 481 U.S. 279 (1987). There, the Supreme Court rejected an inmate's constitutional challenges to Georgia's capital sentencing scheme. *Id.* at 291–319. The challenges were based on the Baldus study, a sophisticated statistical study showing that race—both the race of the defendant and the race of the victim—had a statistically significant impact on the defendant's likelihood of receiving the death penalty. *Id.* at 286.

The Court assumed the accuracy of the study but nevertheless held that, to prevail under the Equal Protection Clause, a defendant "must prove that the decisionmakers in *his* case acted with discriminatory purpose." *Id.* at 292. And because McCleskey relied solely on the Baldus study, the Court ruled that he offered "no evidence specific to his own case that would support an inference that racial considerations played a part in his sentence." *Id.* at 292–93.

Just so here. In his complaint, Bates has not alleged that the decisionmakers in his particular case acted with discriminatory purpose. Instead, he relies solely on statistical evidence that the Governor implemented his warrant-selection process in a racially discriminatory fashion. And this evidence does not present a "stark" enough "pattern to be accepted as the sole proof of discriminatory intent under the Constitution." *Id.* at 293 (citation modified). In order for statistical evidence to demonstrate a sufficiently stark

pattern of discrimination, the discriminatory impact presented must be "virtually 100 percent." *Jones v. White*, 992 F.2d 1548, 1573 (11th Cir. 1993) (citing *McCleskey,* 481 U.S. at 293 n.12). In *McCleskey*, the Court cited two examples of "those rare cases in which a statistical pattern of discriminatory impact demonstrated a constitutional violation." 481 U.S. at 293 n.12. In the first, *Gomillion v. Lightfoot,* 364 U.S. 339 (1960), a boundary alteration "excluded 395 of 400 black voters without excluding a single white voter." *McCleskey*, 481 U.S. at 293 n.12. In the second, *Yick Wo v. Hopkins,* 118 U.S. 356 (1886), as the result of a permitting scheme, "all but one of the white applicants received permits, but none of the over 200 Chinese applicants were successful." *McCleskey*, 481 U.S. at 293 n.12.

Unlike the statistical evidence analyzed in *Gomillion* and *Yick Wo*, Bates's evidence does not "warrant and require a conclusion that [is] irresistible, tantamount for all practical purposes to a mathematical demonstration that the State acted with a discriminatory purpose." *Id.* (citation modified). Of the twenty-one inmates who have been selected by the Governor for execution, four are black. And two of these inmates murdered non-white victims. Moreover, the data's relatively small sample size—twenty-one inmates—further limits its evidentiary value. *Compare with id.* at 286 ("The Baldus study is actually two sophisticated statistical studies that examine over 2,000 murder cases that occurred in Georgia during the 1970's.").

For largely the same reasons, *McCleskey* also forecloses his Eighth Amendment claim. Just as Bates does here, McCleskey contended that Georgia's capital-punishment system violated the Eighth Amendment by operating in an arbitrary and capricious—specifically, a racially discriminatory—manner. *Id.* at 308. In evaluating his claim, the Court stressed that statistical evidence cannot "*prove* that race enters into any capital sentencing decisions or that race was a factor in [a defendant]'s particular case." *Id.* "At most," it explained, "the Baldus study indicates a discrepancy that appears to correlate with race." *Id.* at 312. And the Court ultimately concluded that any discrepancy indicated by the Baldus study did not "demonstrate a constitutionally significant risk of racial bias," reasoning that "[a]pparent disparities in sentencing are an inevitable part of our criminal justice system." *Id.* at 312–313. The Court explained that such disparities stem in large part from the inherent discretion given to jurors and the inevitable variability in how different individuals, each with their own perspectives and decision-making styles, evaluate a case. *Id.* at 310–312. That variability, combined with the distinct facts and personal circumstances of each criminal defendant, produces outcomes that may differ without necessarily indicating a constitutional violation. *Id.*

Bates has not shown why his statistical evidence would be any more effective than the Baldus study at proving unconstitutional arbitrariness. Moreover, as already explained in connection with Bates's equal-protection claim, Bates's statistical evidence isn't "tantamount for all practical purposes to a mathematical demonstration that the State acted with a discriminatory purpose." *Id.* at

293 n.12 (citation modified). Bates has therefore failed to sufficiently "demonstrate a constitutionally significant risk of racial bias." *Id.* at 313.

⋆ ⋆ ⋆

Accordingly, we hold that Bates has not demonstrated a substantial likelihood that he will succeed on the merits of his claims.

III

Because Bates has not demonstrated a substantial likelihood that he will succeed on the merits of his claims, we **DENY** his motion for stay of execution.

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

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August 15, 2025

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Appeal Number: 25-12762-P
Case Style: Kayle Barrington Bates v. Governor, State of Florida
District Court Docket No: 5:25-cv-00192-MCR-MJF

The enclosed order has been ENTERED.

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MOT-2 Notice of Court Action

A2
District Court Order
Dismissing 42 U.S.C § 1983 Complaint
August 12, 2025

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PANAMA CITY DIVISION

KAYLE BARRINGTON BATES,

Plaintiff,

v.

RON DESANTIS, Governor,

Defendant.

Case No. 5:25-CV-00192-MCR
CAPITAL CASE
Execution Scheduled for August 19, 2025, at 6:00 p.m.

ORDER

In January 1983, a Florida jury convicted Plaintiff Kayle Barrington Bates of kidnapping, attempted sexual battery, first-degree murder, and armed robbery, and he was sentenced to death. On direct appeal, the Florida Supreme Court succinctly described the facts of the case as follows: "Bates abducted a woman from her office, took her into some woods behind the building, attempted to rape her, stabbed her to death, and tore a diamond ring from one of her fingers." *Bates v. State*, 465 So. 2d 490, 491 (Fla. 1985). Forty-two years later, on July 18, 2025, Defendant Governor Ron DeSantis signed Bates's death warrant. His execution is scheduled for August 19, 2025, at 6:00 p.m.

On July 29, 2025, Bates filed this § 1983 action against Governor DeSantis, ECF No. 1, with a memorandum of law in support, ECF No. 2, alleging that the death warrant selection process under the DeSantis administration is discriminatorily and arbitrarily applied to him based on the race of the perpetrator and victim—he is black; she was white—in violation of his Fourteenth and Eighth Amendment rights to equal protection and freedom from cruel and unusual punishment.

There are two interrelated motions pending before the Court. First, Bates has filed an emergency motion to stay his execution, ECF No. 3, "so that this Court may consider the arguments in his complaint and memorandum without the exigencies of an active death warrant." *Id.* at 1. The Governor has filed a response in opposition, ECF No. 12, and Bates has filed a reply, ECF No. 16. Next, Governor DeSantis has filed a motion to dismiss the complaint under Fed. R. Civ. P. 12(b)(6), ECF No. 11 (which repeats certain of the arguments he made in his response to Bates's motion to stay), and Bates has filed a response in opposition, ECF No. 14.

I. Standards of Review

A prisoner on death row may challenge the constitutionality of his execution through a civil action, but a stay of execution "is not available as a matter of right," even if his execution is imminent. *Hill v. McDonough*, 547 U.S. 573, 584 (2006).

A stay of execution is equitable relief, and "equity must be sensitive to the State's strong interest in enforcing its criminal judgments without undue interference from the federal courts." *Id.*; *see also Thompson v. Wainwright*, 714 F.2d 1495, 1506 (11th Cir. 1983) ("Each delay, for its span, is a commutation of a death sentence to one of imprisonment."). "Both the State and the victims of crime have an important interest in the timely enforcement of a sentence." *Hill*, 547 U.S. at 584.

A stay of execution is thus available "only if the prisoner 'establishes that (1) he has a substantial likelihood of success on the merits, (2) he will suffer irreparable injury unless the injunction issues, (3) the injunction would not substantially harm the other litigant, and (4) if issued, the injunction would not be adverse to the public interest.'" *Barwick v. Governor of Fla.*, 66 F.4th 896, 900 (11th Cir. 2023) (quoting *Bowles v. DeSantis*, 934 F.3d 1230, 1238 (11th Cir. 2019)); *see also, e.g., Tanzi v. DeSantis*, Case No. 4:25-CV-0144-TKW, 2025 WL 1006585, at *1 (N.D. Fla. Apr. 3, 2025). The prisoner must, "by a clear showing," carry the burden of persuasion on all four requirements. *Hill*, 547 U.S. at 584; *see also Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997). The "first and most important" of the four requirements asks if the prisoner has shown a substantial likelihood of success on the merits; if not, the analysis can begin and end there. *Barwick,* 66 F.4th at 902.

A motion to dismiss pursuant to Rule 12(b)(6) tests the legal sufficiency of a complaint. In considering a Rule 12(b)(6) motion, the Court must accept the factual allegations in the complaint as true and determine whether those factual allegations "'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). When evaluating a complaint, the Court must not only accept the alleged facts as true, but it must construe all reasonable inferences from those facts in the plaintiff's favor. *Randall v. Scott*, 610 F.3d 701, 705 (11th Cir. 2010). However, the Court is not required to accept the plaintiff's legal conclusions. *Iqbal*, 556 U.S. at 678.

Importantly for this case, the standards for a Rule 12(b)(6) motion to dismiss and the first element required to show entitlement to a stay of execution—that the plaintiff has a substantial likelihood of success on the merits—"essentially overlap and operate to reach the same conclusion." *Sahara Health Care, Inc. v. Azar*, 349 F. Supp. 3d 555, 566 (S.D. Tex. 2018), *aff'd*, 975 F.3d 523 (5th Cir. 2020); *see also Klay v. United Healthgroup, Inc.*, 376 F.3d 1092, 1097 (11th Cir. 2004) (noting that to be entitled to injunctive relief "a plaintiff must be able to articulate a basis for relief that would withstand scrutiny under Fed. R. Civ. P. 12(b)(6)") (citing *Paisey v. Vitale*, 807 F.2d 889, 892 (11th Cir. 1986) ("[T]he district court did not err in

denying [plaintiff's] motion for preliminary injunction and dismissing the injunctive count of [his] complaint because [he] has failed to state a claim for relief cognizable under Section 1983.")). In other words, a ruling that the plaintiff's complaint failed to state a claim for relief necessarily means the plaintiff cannot show a substantial likelihood of success on the merits.

II. Background

In affirming the denial of Bates's federal habeas petition, the Eleventh Circuit provided a more detailed description of the facts of his criminal case:

> On the afternoon of June 14, 1982, Janet White, a State Farm Insurance clerk, returned from lunch around 1:00 p.m., as was her normal practice. As she came into the office, she answered the phone. Unknown to her, she was not alone. She knew that Kayle Barrington Bates had stopped by the office earlier that day, talked with her, and left. She did not know that, having seen that she was alone in the office, Bates had returned to the area and parked his truck in the woods some distance behind the building where it could not be seen and waited. She did not know that while she was out at lunch he had broken into the office and was there waiting for her to return. When Bates surprised White she let out a "bone-chilling scream" and fought for her life. He overpowered her and forcibly took her from the office building to the woods where he savagely beat, strangled, and attempted to rape her, leaving approximately 30 contusions, abrasions, and lacerations on various parts of her face and body.

> The state trial judge in his sentencing order found that during the attack Bates had stolen White's diamond ring "by tearing it from her left ring finger" and in the process severely injured her. "While being attacked, robbed, bruised, lacerated, strangled and stabbed [she] was still alive." Death resulted from the stab wounds but was not immediate; it "came only some five to ten minutes after this brutal and senseless attack."

Bates v. Sec'y, Fla. Dep't of Corr., 768 F.3d 1278, 1283 (11th Cir. 2014).

As earlier noted, Bates was sentenced to death for these crimes and Governor DeSantis recently signed his death warrant. In his § 1983 complaint, Bates claims that imposition of the death penalty nationally—and the warrant selection process as applied by the Governor specifically—discriminates against black defendants with white victims. ECF No. 1 at ¶¶ 1-2, 7-10, 20-28; *see also* ECF No. 2 at 1-4 (citing various data purporting to show that the death penalty is imposed disproportionally based on race across the country, but alleging "Florida is markedly worse than this already-disparate statistic"). Bates contends that:

- Since reinstatement of the death penalty in 1976, 76% of all executions in the United States have involved white victims, even though whites account for less than 41% of homicide victims overall;

- A black defendant is ten times more likely to be executed when the victim is white than when the victim is black, and a black defendant is more than twice as likely as a white defendant to be executed for killing a white victim (and, conversely, white defendants are over two-and-a-half times less likely to be executed for killing a black victim than a white victim);

- When demographics are compared for the 1,633 individuals executed since 1976, a black death-sentenced individual is approximately fifteen times more likely to be executed for killing a white person than a white defendant with exclusively black victims;

- In Florida specifically, of the 14 executions since 1976 that did not involve a white victim, only two had a white defendant; therefore, less than 2% of these executions were for white individuals who killed non-whites—and none were for a white person killing a black person;

- 88% of modern executions in Florida have involved white victims, and that number has increased to 95% under the DeSantis administration.

ECF No. 1 at ¶¶ 7-10; *see also* ECF No. 2 at 1-4 (discussing the above statistics and averring "the numbers unequivocally demonstrate that the preference for executing those who have killed white victims is inextricably interwoven with a bias toward executing black individuals—particularly in Florida").

III. Discussion

In his opposition to Bates's motion to stay and in support of his Rule 12(b)(6) motion to dismiss the § 1983 complaint, Governor DeSantis contends that Bates's complaint fails to state a plausible claim for relief in light of *McCleskey v. Kemp*, 481 U.S. 279 (1987), and maintains the complaint should be dismissed "for being

nothing more than attack on [that] settled precedent." Given its significance to this case, the Court will begin by discussing *McCleskey* at some length.[1]

McCleskey confronted a question similar to the one raised here, specifically, "whether a complex statistical study that indicates a risk that racial considerations enter into capital sentencing determinations proves that [a black inmate's] capital sentence is unconstitutional under the Eighth or Fourteenth Amendment." 481 U.S. at 282-83. The statistical analysis in *McCleskey* was known as "the Baldus study," and it analyzed over 2,000 murder cases that occurred in Georgia during the 1970s. *Id.* at 286. The raw numbers indicated that defendants charged with killing white individuals received the death penalty in 11% of the cases, while defendants charged with killing black individuals received the death penalty in just 1% of the cases. *Id.* After dividing those cases according to the race of both the defendant and victim—and taking 230 variables into account that could explain any disparities on nonracial grounds and then plugging the data into a model—the Baldus study concluded that:

> [D]efendants charged with killing white victims were 4.3 times as likely to receive a death sentence as defendants charged with killing blacks. According to this model, black defendants were 1.1 times as likely to receive a death sentence as other defendants. Thus, the Baldus study

[1] The undersigned finds no need to discuss the Governor's remaining argument based on *Heck v. Humphrey*, 512 U.S. 477 (1994).

> indicates that black defendants, such as McCleskey, who kill white victims have the greatest likelihood of receiving the death penalty.

Id. at 286-87.

McCleskey originally raised his claims via a petition for writ of habeas corpus in the Northern District of Georgia. *McCleskey v. Zant*, 580 F. Supp. 338 (N.D. Ga. 1984). As for the Fourteenth Amendment claim, the district court found that the methodology of the Baldus study was flawed and "fail[ed] to contribute anything of value." *Id.* at 372. As for the Eighth Amendment claim, the court ruled that the "statistics do not demonstrate a prima facie case in support of the contention that the death penalty was imposed upon [McCleskey] because of his race, because of the race of the victim, or because of any Eighth Amendment concern." *Id.* at 379.

On appeal, the Eleventh Circuit, sitting en banc, assumed the validity of the Baldus study and accepted its conclusion that "systematic and substantial disparities existed in the penalties imposed upon homicide defendants in Georgia based on race of the homicide victim, that the disparities existed at a less substantial rate in death sentencing based on race of defendants, and that the factors of race of the victim and defendant were at work in Fulton County." *McCleskey v. Kemp*, 753 F.2d 877, 895 (11th Cir. 1985). Nevertheless, the Court of Appeals held that the Baldus study was

insufficient to show discriminatory intent or unconstitutional discrimination under the Fourteenth Amendment, and insufficient to show irrationality, arbitrariness, and capriciousness under the Eighth Amendment. *Id.* at 891. As the court explained:

> The very exercise of discretion means that persons exercising discretion may reach different results from exact duplicates. Assuming each result is within the range of discretion, all are correct in the eyes of the law. It would not make sense for the system to require the exercise of discretion in order to be facially constitutional, and at the same time hold a system unconstitutional in application where that discretion achieved different results for what appear to be exact duplicates, absent the state showing the reasons for the difference. . . .
>
> The Baldus approach . . . would take the cases with different results on what are contended to be duplicate facts, where the differences could not be otherwise explained, and conclude that the different result was based on race alone. . . . This approach ignores the realities. . . . There are, in fact, no exact duplicates in capital crimes and capital defendants. The type of research submitted here tends to show which of the directed factors were effective, but is of restricted use in showing what undirected factors control the exercise of constitutionally required discretion.

Id. at 898-99. McCleskey filed a petition for certiorari and the Supreme Court granted review. Like the Eleventh Circuit, the Court assumed for purposes of its analysis that the Baldus study was statistically valid. 481 U.S. at 291 n.7.[2]

[2] Although the study's validity was assumed, the Supreme Court noted that assumption

The Court began with McCleskey's Fourteenth Amendment argument, which was based on the assertion that "persons who murder whites are more likely to be sentenced to death than persons who murder blacks, and black murderers are more likely to be sentenced to death than white murderers." *Id.* at 291. After noting the "basic principle" that the person alleging a violation of equal protection must show "purposeful discrimination," the Supreme Court explained "McCleskey must prove that the decisionmakers in *his* case acted with discriminatory purpose." *Id.* at 292 (emphasis in the original). However, he provided no evidence that race played any part in his individual sentence. *Id.* at 292-93. "Instead, he relie[d] solely on the Baldus study." *Id.* at 293. The Court rejected the argument because "McCleskey's claim that these statistics are sufficient proof of discrimination, without regard to the facts of a particular case, would extend to *all* capital cases in Georgia, at least where the victim was white and the defendant is black." *Id*. (emphasis added).

The Court acknowledged that statistical analyses had been permitted in other cases, but it cautioned "statistical proof normally must present a 'stark' pattern to be

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had necessary and practical limits: "Our assumption that the Baldus study is statistically valid does not include the assumption that the study shows that racial considerations actually enter into any sentencing decisions in Georgia. Even a sophisticated multiple-regression analysis such as the Baldus study can only demonstrate a *risk* that [race] entered into some capital sentencing decisions and a necessarily lesser risk that race entered into any particular sentencing decision." 481 U.S. at 291 n.7 (emphasis in the original).

accepted as the sole proof of discriminatory intent under the Constitution." *Id.* at 293. The Court then cited two cases as "examples of those rare cases in which a statistical pattern of discriminatory impact demonstrated a constitutional violation." *Id.* at 293 n.12. The first case was *Gomillion v. Lightfoot*, 364 U.S. 339 (1960), where a state legislature altered the boundaries of a particular city "from a square to an uncouth twenty-eight-sided figure" and, in so doing, excluded 395 of 400 black voters without excluding a single white voter. 481 U.S. at 293 n.12. The second case was *Yick Wo v. Hopkins*, 118 U.S. 356 (1886), where an ordinance prohibited the operation of over 300 laundries housed in wooden buildings unless the operator obtained a permit from the government, and all but one white applicant received a permit whereas not one of more than 200 Chinese applicants did. 481 U.S. at 293 n.12. In those two cases—and again, those were the only two "rare cases" that the *McCleskey* Court cited—the inference was "irresistible, tantamount for all practical purposes to a mathematical demonstration, that the State acted with a discriminatory purpose." *Id.* (internal citation omitted).

By contrast, in explaining why capital sentencing decisions do not easily lend themselves to such statistical analysis, *McCleskey* noted they "rest on consideration of innumerable factors that vary according to the characteristics of the individual

defendant and the facts of the particular capital offense." *See id.* at 294. There is simply "no common standard by which to evaluate all defendants who have or have not received the death penalty." *Id.* at 295 n.14.

The Court concluded the Equal Protection analysis portion of its opinion by noting that McCleskey's argument "challenges decisions at the heart of the State's criminal justice system." *Id.* at 297. Because "one of society's most basic tasks is that of protecting the lives of its citizens . . . through criminal laws against murder"—and because imposition of those laws necessarily requires discretionary judgment, which is essential to criminal justice—"we would demand exceptionally clear proof before we would infer that the discretion has been abused." *Id.* The statistics in the Baldus study were "clearly insufficient to support an inference that any of the decisionmakers in McCleskey's case acted with discriminatory purpose." *Id.*

As for the Eighth Amendment claim, the Court stated that "'where discretion is afforded a sentencing body on a matter so grave as the determination of whether a human life should be taken or spared, that discretion must be suitably directed and limited so as to minimize the risk of wholly arbitrary and capricious action.'" *Id.* at 302 (quoting *Gregg v. Georgia*, 428 U.S. 153, 189 (1976)). Relying solely on the Baldus study, McCleskey argued that the capital punishment system in Georgia was

arbitrary and capricious in application (and, therefore, his sentence was excessive) because the statistics showed that racial considerations influenced capital sentencing decisions in the state. *Id.* at 308.

In rejecting this argument, the Court explained that the statistics did not—and indeed could not—"prove that race enters into any capital sentencing decisions or that race was a factor in McCleskey's particular case." *Id.* at 308; *accord id.* at 312. At most, the numbers "may show only a likelihood that a particular factor entered into some decisions." *Id.*; *accord id.* at 312. However, the Court went on, there is *always* a risk that racial prejudice may influence a sentencing decision, just as "there are similar risks that other kinds of prejudice will influence other criminal trials." *Id.*; *see also id.* at 312-13 (noting that "disparities in sentencing are an inevitable part of our criminal justice system"). "The question 'is at what point that risk becomes constitutionally unacceptable.'" *Id.* at 308-09 (quoting *Turner v. Murray*, 476 U.S. 28, 36 n.8 (1986)). Ultimately, the Court rejected the argument that statistics of the sort in the Baldus study were "the constitutional measure of an unacceptable risk of racial prejudice influencing capital sentencing decisions." *Id.* at 309.

In so ruling, the Court emphasized that a trial by jury is a criminal defendant's most fundamental "'protection of life and liberty against race or color prejudice.'"

Id. at 310 (quoting *Strauder v. West Virginia*, 100 U.S. (10 Otto) 303, 309 (1880)). Jurors are required to focus "on the unique characteristics of a particular criminal defendant," and even though their verdicts "often are difficult to explain" and "defy codification," the lack of predictability "does not justify their condemnation." *Id*. To the contrary, the unpredictability in a system that allows for the death penalty in one case—but leniency in a superficially similar one—is a feature not a bug:

> McCleskey's argument that the Constitution condemns the discretion allowed decisionmakers in the Georgia capital sentencing system is antithetical to the fundamental role of discretion in our criminal justice system. . . . Of course, the power to be lenient also is the power to discriminate, but a capital punishment system that did not allow for discretionary acts of leniency would be totally alien to our notions of criminal justice. . . . .
>
> [A]ny mode for determining guilt or punishment has its weaknesses and the potential for misuse. Specifically, there can be no perfect procedure for deciding in which cases governmental authority should be used to impose death. Despite these imperfections, our consistent rule has been that constitutional guarantees are met when the mode for determining guilt or punishment itself has been surrounded with safeguards to make it as fair as possible. Where the discretion that is fundamental to our criminal process is involved, we decline to assume that what is unexplained is invidious. In light of the safeguards designed to minimize racial bias in the process, the fundamental value of jury trial in our criminal justice system, and the benefits that discretion provides to criminal defendants, we hold that the Baldus study does

> not demonstrate a constitutionally significant risk of racial bias affecting the Georgia capital sentencing process [for Eighth Amendment purposes].

Id. at 311-13 (cleaned up).

The Supreme Court closed its majority opinion by highlighting an additional concern that helped "inform" its decision. *Id.* at 314. It noted that, "taken to its logical conclusion," the Baldus study argument would "throw[] into serious question the principles that underlie our entire criminal justice system." *Id.* at 314-15. If statistical disparities were enough to challenge the death penalty, they could be used to challenge "all penalties," and courts would "soon be faced with similar claims as to other types of penalty" as well. *Id.* at 315. There is "no limiting principle" to the types of challenges that could be brought as it could "easily . . . be extended" to apply to all claims based on unexplained discrepancies, including gender and other minority groups. *Id.* at 315-18. The Court noted that the latter, in particular, would present challenges because "in our heterogenous society . . . the boundaries of race and ethnicity [are] increasingly difficult to determine," and "the ethnic composition of the Nation is ever-shifting," so there would appear to be "no reason why a white defendant . . . could not make a claim similar to McCleskey's." *Id.* at 316 n.39.[3]

[3] In fact, that appears to have happened in at least one "reverse *McCleskey*" case to date.

Nor would such arguments be limited to the race or sex of the defendants and victims but, rather, "[they] could apply with equally logical force to statistical disparities that correlate with the race or sex of other actors in the criminal justice system, such as defense attorneys, or judges." *Id.* at 317. Similar claims could indeed be based on *any* arbitrary variable, "such as the defendant's facial characteristics, or the physical attractiveness of the defendant or the victim, that some statistical study indicates may be influential in jury decisionmaking." *Id.* at 317-18. The Court concluded: "The Constitution does not require that a State eliminate any demonstrable disparity that correlates with a potentially irrelevant factor in order to operate a criminal justice system that includes capital punishment," nor does it "place totally unrealistic conditions on its use." *Id.* at 319.

In issuing its ruling, the Court stated "[w]e agree with the Court of Appeals, and every other court that has considered such a challenge, that this claim must fail." *Id.* at 292 & n.9 (collecting cases). One of the cases the Supreme Court explicitly agreed with, *Spinkellink v. Wainwright*, 578 F.2d 582 (5th Cir. 1978), *overruled on*

See Freeman v. Attorney Gen., 536 F.3d 1225, 1226-28 (11th Cir. 2008) (where death row inmate argued via § 2254 that the State of Florida "impermissibly chose to pursue a capital sentence not because of the severity of his crimes, but because he is white and the victims of his crime were black," and the State "wanted to 'get the numbers up' on seeking the death penalty in homicides involving white defendants and black victims").

other grounds as recognized in Proffitt v. Wainwright, 685 F.2d 1227, 1261 n.52 (11th Cir. 1982), warrants additional discussion.[4]

The defendant in *Spinkellink* argued (as Bates does here) that the death penalty in Florida "is being applied in a discriminatory fashion against defendants convicted of murdering whites, as opposed to blacks, in violation of the prohibition under the Eighth and Fourteenth Amendments[.]" 578 F.2d at 612. He produced statistics that the overall number of black and white felony murder victims was the same, but 92% of the inmates on Florida's death row had murdered white victims, while only 8% had murdered black victims. *Id.*

The former Fifth Circuit noted "[t]here are, of course, many reasons which could explain the decision to sentence one defendant to death and another to life imprisonment," *id.* at 614 n.39—and it cited "credible evidence . . . that murders involving black victims generally have been qualitatively different from murders involving white victims," *id.* at 612 & n.37, 615—but it assumed for sake of analysis that the statistics were accurate and that they exhibited a "racially disproportionate impact with respect to the race of first degree murder victims." *Id.* at 613, 615.

[4] In *Bonner v. City of Prichard*, 661 F.2d 1206 (11th Cir. 1981) (en banc), the Eleventh Circuit adopted as precedent all of the decisions of the former Fifth Circuit decided prior to October 1, 1981.

Nevertheless, the Court of Appeals rejected both constitutional claims after finding that in order to ascertain if the death penalty had been discriminatorily imposed upon a prisoner whose murder victim was white, reviewing courts would have to compare the facts and circumstances of the defendant's case with the facts and circumstances of other Florida death penalty cases involving black victims "in order to determine if the first degree murderers in those cases were equally or more deserving to die." *Id.* at 613. Such a "case-by-case comparison" would be demonstrably impractical and unworkable and would constitute a "federal court intrusion into the substantive decision making of the sentencing process which is reserved to the Florida state courts." *Id.* The court made a point to emphasize, however, that it was not saying federal courts should never consider whether the death penalty was being imposed in an arbitrary and capricious manner, but it expected that would be a rare event:

> If a petitioner can show some specific act or acts evidencing intentional or purposeful racial discrimination against him, either because of his own race or the race of his victim, the federal district court should intervene and review substantively the sentencing decision. We emphasize . . . that this Court anticipates that such intervention will be infrequent and only for the most compelling reasons. Mere conclusory allegations, as the petition makes here, such as that the death penalty is being "administered arbitrarily and discriminatorily to punish the killing of white persons as opposed to black persons," do not constitute such reasons and would not warrant an

> evidentiary hearing. This is so on Eighth Amendment grounds as well as on Fourteenth Amendment equal protection grounds, because the intrusionary effect would be the same.

Id. at 614 n.40. Insofar as this Court can tell, every federal court to confront this issue since *McCleskey* and *Spinkellink* has likewise rejected it and held similarly. *See, e.g., Griffin v. Dugger*, 874 F.2d 1397, 1400-402 (11th Cir. 1989) (rejecting due process and equal protection claims in the face of statistics showing "that a defendant convicted in Florida of murdering a white person is nearly five times more likely to receive the death penalty than one convicted of murdering a black victim"); *Knight v. Dugger*, 863 F.2d 705, 743-44 (11th Cir. 1988) (holding same despite statistical analysis indicating disparate application of the death penalty in Florida; expressing "serious doubt over the question whether statistical studies alone are ever conclusive enough to show evidence of requisite intent or motive in an Eighth or Fourteenth Amendment claim" as they cannot capture subjective factors, including "problems arising from the discretion with which a sentence is invested, not only will no two defendants be seen identical by the sentencers, but no two sentencers will see a single case precisely the same").

McCleskey is important and provides the analytical framework for resolving Bates's case. However, it differs from this case in one notable way: as will be

seen, the relevant statistics here pertain to a single decisionmaker, Governor DeSantis, whereas the Baldus study was a generalized analysis implicating every participant in Georgia's death penalty scheme, including prosecutors, jurors, and judges. The *McCleskey* Court questioned whether a state "policy" of race discrimination could be inferred from the combined effects of numerous different decisionmakers. *Cf. McCleskey*, 481 U.S. at 294-96, 310-12 (describing how capital prosecution decisions are made by individual prosecutors with "wide discretion," and the cases are decided by petit juries selected from venires, with "[e]ach jury . . . unique in its composition;" further noting that a jury is the defendant's protection against racial prejudice and ensures "diffused impartiality"). By contrast, the Court suggested in a footnote that statistics showing disparate racial treatment by a single person or entity over a period of time might raise an inference of unlawful discrimination. *Id.* at 295 n.15. With the foregoing in mind, the Court will now turn to whether Bates has plausibly alleged facts supporting such an inference.[5]

[5] Although *McCleskey* rejected a statistical claim implicating the entire state death penalty scheme, and left the door open for a statistical claim against a single decision-maker, much of what the Court said is relevant to the analysis here, *e.g.,* the importance of discretion in deciding death cases; each case must be judged on its own facts and no two cases are alike; there is "no common standard by which to evaluate all defendants who have or have not received the death penalty;" statistical evidence must be "stark" and constitute "exceptionally clear proof" of discrimination in

It is necessary to begin by clarifying the evidentiary basis for Bates's claims of disparate treatment. Although he has cited a number of statistics in his filings—some national, some historical—it appears the basis for the claims against Governor DeSantis is that 95% of his death warrants have involved white victims. *See, e.g.,* ECF No. 1 at ¶ 8; ECF No. 2 at 2, 27; ECF No. 3 at 4; ECF No. 14 at 15-17; ECF No. 16 at 6. There are a number of problems with this statistical evidence.

First, according to the Death Penalty Information Center, Governor DeSantis has signed 20 death warrants since taking office in 2019. This is a small sampling that could exaggerate racial disparities, so it is not necessarily telling that 95% of the 20 warrants involved "white victims." *See McCleskey*, 481 U.S. at 295 n.15 (noting that even assuming statistical validity, "the weight to be given the results gleaned from [a] small sample is limited").

Second, it is not clear that all of the identified victims necessarily were white. For example, to support his claim, Bates highlights the recent execution of Edward Zakrzewski, a white man whose death warrant Governor DeSantis allegedly signed because he had murdered "white victims." ECF No. 3 at 4 n.3. In fact, Zakrzewski

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order to be actionable, etc.

murdered his Korean wife and their half-Korean minor children. Whether and to what extent his child victims were "white" (Bates says they were and suggests it might be racist to suggest otherwise, *see* ECF No. 14 at 15), it highlights the concern *McCleskey* noted that "in our heterogenous society . . . the boundaries of race and ethnicity [are] increasingly difficult to determine." *Id.* at 316 n.39.

Third, even if it is accepted that 95% of the Governor's death warrants have involved "white victims," that statistical disparity does not necessarily suggest (let alone prove) anything discriminatory. As previously noted, the former Fifth Circuit addressed a similar issue—*and almost the same numbers*—in *Spinkellink*, where a death row inmate produced statistics showing that 92% of the inmates on Florida's death row had murdered white victims, while only 8% had murdered black victims. 578 F.2d at 612. The court rejected the argument and noted "[t]here are, of course, many reasons which could explain the decision to sentence one defendant to death and another to life imprisonment." *Id.* at 614 n.39. Similarly, there could be many reasons why the Governor might choose to sign a death warrant for one defendant over another.

Fourth, and interrelatedly, *McCleskey* made clear that any statistical evidence of discrimination had to be "stark," "exceptionally clear proof," and "irresistible,

tantamount for all practical purposes to a mathematical demonstration, that the State acted with a discriminatory purpose." 481 U.S. at 293 & n.12, 297. The only two cases that the Supreme Court cited—*Gomillion* and *Yick Wo*—involved facts and statistics that are not comparable to what Bates alleges here. *See, e.g., Jones v. White*, 992 F.2d 1548, 1573 (11th Cir. 1993) ("The instances in which the Court has recognized constitutionally impermissible discrimination evidenced by statistical data showing discriminatory impact are rare and blatant. We note that [*McCleskey*] cited two exemplary cases, [*Gomillion* v. *Yick Wo*], wherein the analyses showed that the discriminatory impact was virtually 100 percent").

In closing, one more case warrants mention. Although it is not a death case, it is instructive. In *Fuller v. Georgia State Bd. of Pardons and Paroles*, 851 F.2d 1307 (11th Cir. 1988), the defendant was serving a life sentence for rape, and he filed a civil rights action against the parole board, alleging that he had been denied the opportunity for parole because he was black. *Id.* at 1308. To support his claim, he produced evidence that for a 15-year period between 1971 to 1986 almost two and one-half times more blacks were incarcerated for rape than whites. *Id.* at 1311 (Johnson, J., dissenting). Yet, during the same period, twice as many white rapists received parole on their initial consideration than did convicted black rapists. *Id.*

He also had evidence that from 1976 to 1977, eight white convicted rapists were paroled on their initial parole consideration, but no blacks were paroled on their initial consideration; and from 1981 to 1982, four convicted white rapists were paroled on their initial consideration, but no black rapists were paroled on their *third* consideration for parole. *Id.* He even had evidence that white *murderers* were paroled more frequently than black *rapists*. *Id.* at 1310. Applying *McCleskey* and the "decisions of a single entity" distinction from the case, the Eleventh Circuit held that the defendant "failed to provide the 'exceptionally clear proof' of discrimination which is required because he did not show that he was similarly situated with white inmates who were paroled." Id. "Thus," the Court of Appeals continued, "the statistical evidence is ambiguous at best and is 'clearly insufficient to support an inference that any of the decisionmakers . . . acted with discriminatory purpose.'" *Id.* (quoting *McCleskey*, 481 U.S. at 297).

In the absence of evidence to support the inference that Governor DeSantis acted with discriminatory purpose—and the cited statistics do not qualify under the governing law—Bates has failed to state a claim for relief and, necessarily, failed to show a likelihood of success on the merits of his claim.[6]

[6] In his opposition to the motion to dismiss, Bates tries to provide additional evidence that

IV. Conclusion

For the above reasons, Governor DeSantis's Rule 12(b)(6) motion, ECF No. 11, is **GRANTED**, and Bates's emergency motion for a stay of execution, ECF No. 3, is **DENIED**.

DONE AND ORDERED this 12th day of August, 2025.

s/*M. Casey Rodgers*
M. CASEY RODGERS
UNITED STATES DISTRICT JUDGE

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the Governor acted with discriminatory purpose by citing three pages of media articles discussing, *inter alia*, his support for congressional redistricting; his opposition to critical race theory and DEI initiatives; and a joke he made about alligators attacking immigrants at "Alligator Alcatraz." ECF No. 14 at 11-13. The articles are irrelevant, have no bearing on the outcome of this case, and need not be discussed further.