No. 25A191

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

REPLY IN SUPPORT OF APPLICATION FOR STAY OF EXECUTION

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

Respondent urges this Court to deny a stay of execution because, in his view, Mr. Bates' claims are barred by *Heck v. Humphrey*, 512 U.S. 477 (1994). Response at 3-4. Though Respondent made this argument to the district Court and Eleventh Circuit, both courts disregarded it.[1] Indeed, Respondent's contention that Mr. Bates'

[1] Respondent also inaccurately represents that the Eleventh Circuit affirmed the dismissal of Mr. Bates' 42 U.S.C. § 1983. The Eleventh Circuit did not affirm the district court's ruling, instead only ruling on Mr. Bates' motion to stay.

challenge to the manner in which his execution is carried out necessarily challenges his underlying sentence is clearly contradicted by precedent. In *Heck v. Humphrey*, this Court ruled a claim for damages that as a threshold matter required showing Heck's conviction was invalid could not be brought under § 1983, because despite the requested relief, favorable resolution would necessarily imply the invalidity of his outstanding conviction. 512 U.S. 477, 483-90 (1994). Subsequent cases reaffirmed the distinction between habeas actions and § 1983 actions: "whether a claim challenges the validity of a conviction or sentence." *Nance v. Ward*, 597 U.S. 159, 167 (2022). In *Nance*, this Court went further, holding that even though the State's laws did not provide for an alternative execution method—and thus relief on Nance's lethal injection challenge would functionally prevent the State from executing him—the suit still would not "'*necessarily* prevent' it." *Id*. at 169 (quoting *Nelson v. Campbell*, 541 U.S. 637, 647 (2004)) (emphasis in original). The Court explained that even though "amending a statute may require some more time and effort than changing an agency protocol," "the 'incidental delay' involved in changing a procedure . . . is not relevant to the vehicle question." *Nance*, 597 U.S. at 170 (quoting *Hill v. McDonough*, 547 U.S. 573, 583 (2006)).

Mr. Bates' action is proper under § 1983. He has not challenged the overall constitutionality of Florida's capital punishment system, nor the validity of his death sentence. He simply made a prima facie case that the warrant-selection process— the way in which the State carries out the sentence—is racially discriminatory and arbitrary. Mr. Bates' requested relief "still places his execution in [Florida's] control."

Nance, 597 U.S. at 170. Thus, as in *Nance*, "the claim belongs in § 1983 because—just like [those cases]—it challenges not the validity of a death sentence, but only the State's mode of carrying it out." *Id*. at 172 (citing *Ramirez v. Collier*, 595 U.S. 411 (2022)). Respondent's urging that a stay should not be granted based upon *Heck* is woefully misguided.[2]

Respondent also argues that there is no significant possibility of reversal because *McCleskey v. Kemp*, 481 U.S. 279 (1987), forecloses the issue. Response at 5. This is not the case. In fact, *McCleskey* left open the core questions at issue in Mr. Bates' claim which address the standard for evaluating statistical evidence of disparate racial impact which—when taken in conjunction with circumstantial evidence of a decisionmaker's bias and arbitrariness in the warrant-selection process—sufficiently establishes the intolerably stark pattern of discrimination or arbitrariness in violation of the Constitution.

It further presents questions surrounding the inconsistency between the Eleventh Circuit's requirement that, in a claim asserting racial discrimination or arbitrariness, statistical evidence reach "virtually 100 percent" before a court could address a claim like Mr. Bates' and this Court's clear and unambiguous precedent that "'[r]acial and ethnic distinctions of any sort are inherently suspect,'…and antipathy toward them [is] deeply 'rooted in our Nation's constitutional and

[2] Additionally, Respondent's statement that there "certainly is no conflict with this Court's decision in *Bucklew*" is misplaced. Response at 4. Other than its reaffirmance that § 1983 is a proper vehicle for manner of execution claims, *Bucklew v. Precythe*, 587 U.S. 119 (2019), is wholly irrelevant to Mr. Bates' case.

demographic history.'" *Students for Fair Admissions, Inc., v. President and Fellows of Harvard College*, 600 US. 181, 209 (2023) (quoting *Regents of University of California v. Bakke*, 438 U.S. 265, 291 (1978)).

Respondent also argues that there is no significant possibility of reversal by supplying competing statistics—many of which are irrelevant to Mr. Bates' claim. Response at 5-6. Specifically, Respondent illogically relies on a percentage comparison of the total number of Black victims whose deaths resulted in an execution during the DeSantis administration; the total number of Black men executed by DeSantis; and the total Black population in Florida. While such a mathematical formulation is utterly irrelevant to Mr. Bates' claim, the extent to which Respondent submits the data, including his reliance on his subsequent anomalous action in signing Curtis Windom's death warrant, strongly supports further evidence that DeSantis issued Windom's warrant for the purpose of refuting Mr. Bates' claims. Respondent selected a warrant for the purpose of wielding a racial impact. He is wearing his guilt on his shoulders. The evidence, including Mr. Bates' statistics and other evidence, demonstrates a possibility of reversal.

Finally, Respondent asserts that a stay should be denied on equitable grounds owing to the State's interest in carrying out its sentence. Response at 6-7. But any apparent harm caused by a brief stay of execution to allow this Court to consider Mr. Bates' issues unconstrained by the exigencies of his impending warrant is easily cured: if this Court, after untruncated review, denies the petition, the stay will be dissolved and Mr. Bates' execution will proceed. However, if Mr. Bates is erroneously

executed despite his presentation of a meritorious petition, there is no going back. The balance of the equities clearly favors Mr. Bates.[3]

CONCLUSION

This Court should grant a stay of execution pending certiorari review.

/s/ Christina Mathieson
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[3] Additionally, Respondent contends that a stay should be denied because the "[Bates'] sentence has been final for nearly a quarter century … [his] federal habeas review was final nearly a decade ago." Response at 6. However, waiting to execute Mr. Bates' for nearly a decade after his federal review was final cannot be weighed against Mr. Bates. The timing of Mr. Bates' death warrant is entirely within the control of the Governor, not Mr. Bates; the fact that he did not sign Mr. Bates' death warrant at an earlier time is in no way attributable to Mr. Bates. Similarly, Mr. Bates' request for a stay accompanies an issue that only ripened on the signing of the death warrant and therefore a stay is appropriate, particularly when the Governor set an extremely short warrant period.