No. _____-
IN THE SUPREME COURT OF THE UNITED STATES

KAYLE BARRINGTON BATES,

Petitioner,

v.

RICKY D. DIXON, SECRETARY,
FLORIDA DEPARTMENT OF CORRECTIONS

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE
ELEVENTH CIRCUIT COURT OF APPEALS

CAPITAL CASE
EXECUTION SCHEDULED
FOR
TUESDAY, AUGUST 19, 2025, AT 6:00PM ET

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 Kayle Barrington Bates for Tuesday, August 19, 2025, at 6:00 pm ET. The Eleventh Circuit Court of Appeals denied a certificate of appealability on August 1, 2025. Pursuant to Supreme Court Rule 23 and 28 U.S.C. § 2101(f), Mr. Bates requests a stay of execution pending the disposition of his petition for a writ of certiorari accompanying this application.

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 citations omitted).

Regarding the question of whether the underlying issue is sufficiently meritorious, Mr. Bates' application for certiorari raises a concern regarding the circuit courts' habit of imposing an overly burdensome standard of review for determining COA, precluding review of Mr. Bates' constitutional claims. Mr. Bates' case is not an isolated error. Rather, it is part of a larger, repeated pattern emerging from the Fifth and Eleventh Circuits. *See*, *e.g.*, *Tharpe v. Sellers*, 583 U.S. 33, 34 (2018) (remanding for COA where "[t]he Eleventh Circuit's decision, as we read it, was based solely on its conclusion"); *Buck v. Davis*, 580 U.S. 100, 115 (2017) (remanding where the Fifth Circuit denied COA based on a conclusion that the petitioner would not prevail on a Rule 60(b) motion).

In this case, regardless of any conclusion that one may draw about the underlying merits of Mr. Bates' case, the issue is without doubt "debatable." *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003). Members of the Eleventh Circuit had previously expressed concern about the application of AEDPA deference in Mr. Bates' case. *Bates v. Sec'y, Fla. Dep't of Corr.*, 768 F.3d 1278, 1307-20 (11th Cir. 2014)

(Wilson, J., concurring) ("we figuratively throw up our hands, repeat the refrain that AEPDA requires deference to state courts, and deny habeas relief" . . . "unless or until the Supreme Court tells us otherwise.") Prior to reviewing Mr. Bates' case, the Eleventh Circuit had granted COA to address the question of AEDPA deference in *Washington v. Marshall*, Case No. 24-13905 (11th Cir). And the Sixth and Ninth Circuits had begun questioning the constitutionality of AEDPA deference in response to this Court's opinion in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 410 (2024), which overruled *Chevron* deference. *E.g.*, *Sanders v. Plappert*, Case No. 16-6152 (6th Cir.) (describing 28 U.S.C. §2254(d) as "ambiguous" as the statute being discussed in *Loper Bright* and thus highlighting that the constitutionality of AEDPA is "debatable" during oral arguments); *Smith v. Thornell*, Case No. 25-1964 (9th Cir. ECF 7) (arguing "[t]he same constitutional principles animating *Loper Bright* require courts to eschew applying *Williams* deference, which has a similarly impermissible function as *Chevron* deference . . . It is debatable whether *Loper Bright* unsettles the framework of state-court deference established by the Supreme Court in *Williams* calling for it not to be reexamined. And it is debatable whether *Williams* deference is unconstitutional because it conflicts with the constitutional requirement of an independent federal judiciary.")

The cases that Mr. Bates cited in his Rule 60(b) motion to reopen his case and again in his application for a COA are pending and have been granted extensive briefing to address the complexity surrounding AEDPA deference. *See*, *e.g.*, *Washington v. Marshall*, Case No. 24-13905 (11th Cir.) (granting the State a 30-day

extension in which to file a brief (Doc. 38)); *Sanders v. Plappert*, Case No. 16-6152 (6th Cir.) (permitting additional written litigation after the oral argument (Docs. 196, 197, 198 & 199)); *Mothershead v. Wofford*, Case No. 24-5706 (9th Cir.) (setting oral argument for Sept. 16, 2025 (Doc. 37)); *United States v. Lucidonio*, Case No. 24-1285 (3d Cir.) (granting petitioner's request to file a supplemental appendix (Doc. 83)). The fact that the issue is pending before at least three circuits, including Petitioner's own circuit, alone illustrates that the question of AEDPA deference is "debatable." *See Miller-El*, 537 U.S. at 342 ("The question is the debatability of the underlying constitutional claim, not the resolution of the debate.")

Further, although Mr. Bates is currently facing execution, he filed his Rule 60(b) motion prior to the execution being scheduled. In a matter of weeks, he has been forced to litigate a complex, nuanced issue that has required extended briefing and oral argument in related cases. The issues presented in Mr. Bates' application for certiorari require appellate review that is not truncated by the exigencies of an imminent execution. *See Armstrong v. Manzo*, 380 U.S. 545, 552 (1965) (noting "[t]he fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner") (internal citations omitted). A stay of execution should be granted.

Undeniably, Mr. Bates will be irreparably harmed if his execution is allowed to proceed. The balance of equities weighs heavily in favor of a stay. Florida's interest in the timely enforcement of judgments from its courts must be weighed against both Mr. Bates' continued interest in his life as well as the national significance of the

underlying issue he raises. The people of Florida also have an interest in ensuring that their citizens are subjected to the most severe penalty only after receiving fair process and meaningful review. *See Armstrong*, 380 U.S. at 552. That has not happened in this case. Mr. Bates' claims deserve measured consideration; his litigation should not be arbitrarily accelerated at the State's whim.

The irreversible nature of the death penalty further weighs heavily in 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 the Court grant the request for a stay and review the underlying petition for certiorari, there is a significant possibility of reversal in the Eleventh Circuit. Mr. Bates requires this Court's urgent intervention to prevent his imminent execution in violation of the Fifth, Eighth, and Fourteenth Amendments to the United States Constitution.

CONCLUSION

Based on the foregoing reasons, Mr. Bates respectfully requests that this Court grant his application to stay his August 19, 2025, execution to address the compelling constitutional questions of his case.

Respectfully submitted,

/s/ Christina Mathieson
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