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

APPLICATION FOR STAY OF EXECUTION

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

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 p.m. On August 15, the Eleventh Circuit Court of Appeals denied Mr. Bates' stay motion related to his 42 U.S.C. § 1983 action. Pursuant to Supreme Court Rule 23 and 28 U.S.C. § 2101(f),

Mr. Bates requests a stay of execution pending the disposition of the 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 quotations omitted).

Regarding the first factor, the petition presents questions left open in *McCleskey v. Kemp*, 481 U.S. 279 (1987), including what standard should be used for evaluating statistical evidence of disparate racial impact and when, in conjunction with circumstantial evidence of a decisionmaker's bias and arbitrariness in the warrant-selection process, that evidence sufficiently establishes the intolerably stark pattern of discrimination or arbitrariness in violation of the Constitution. Mr. Bates' claim relied on statistical evidence that since the modern era of the death penalty in Florida, the death warrant selection demonstrates a clear preference for executing those who have killed white victims—inextricably interwoven with a bias toward executing Black individuals. During DeSantis' administration, that warrant selection, or preference for executions of cases with white victims, reached 95% at the time Mr. Bates filed his 42 U.S.C. § 1983 complaint. The statistical data alone implicates the substantial issue left open in *McCleskey*: whether due to racial

discrimination or constitutionally impermissible arbitrariness, DeSantis' execution selection demonstrates the stark pattern sufficient to establish a prima facie case of a constitutional violation—particularly in his procedural posture of a Fed. R. Civ. P. 12(b)(6) motion to dismiss—and merits further meaningful consideration by the courts.

The petition further presents questions surrounding the inconsistency between a 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'. *See* CA11-ECF 16-1 at 4-5. As this Court recently made clear: "'[r]acial and ethnic distinctions of any sort are inherently suspect,'…and antipathy toward them [is] deeply 'rooted in our Nation's constitutional and 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)). "The clear and central purpose of the Fourteenth Amendment was to eliminate **all** official state sources of invidious racial discrimination in the States." *Id*. at 206 (quoting *Loving v. Virginia*, 388 U.S. 1, 10 (1967) (emphasis added)). The disconnect between this Court's mandate and the burden placed on Mr. Bates raises substantial questions, the core of which implicate how the aim of eliminating of invidious racism and arbitrariness based upon race is perpetuated. A stay of execution should be granted.

It is indisputable that Mr. Bates 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 Mr. Bates' continued interest in his life. Particularly where the sole decisionmaker of who is executed and when has injected an intolerable bias or arbitrariness into the selection process and caused the violation of Mr. Bates' rights, the relative harm to the State is minimal.

Additionally, the public has an interest in ensuring that its citizens' axiomatic rights are protected, and that race does not play a part in "any sorting mechanism" that causes discrimination or arbitrariness "based on race to the benefit of some races and the detriment of others." *Students for Fair Admissions, Inc.*, 600 U.S. at 272 n.9. The significance and broad implications of the questions presented warrant close consideration—which cannot be conducted in just a day or two.

In addition, the irreversible nature of the death penalty favors 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 of the underlying petition, there is a significant possibility of the lower court's reversal. This Court's intervention is urgently needed to prevent Mr. Bates' imminent execution in contravention of the Eighth and Fourteenth Amendments.

CONCLUSION

For the foregoing reasons, Mr. Bates respectfully requests that the Court grant his application for a stay of his August 19, 2025, execution to address the compelling constitutional questions in his case on the merits.

/s/ Christina Mathieson
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