

\*\*\* CAPITAL CASE \*\*\*

NO. \_\_\_\_\_

IN THE SUPREME COURT OF THE UNITED STATES

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BILLY LEON KEARSE,

*Petitioner,*

vs.

STATE OF FLORIDA,

*Respondent.*

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**APPLICATION FOR STAY OF EXECUTION**

**DEATH WARRANT SIGNED  
EXECUTION SET MARCH 3, 2026, AT 6:00 P.M.**

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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 Billy Leon Kearse on March 3, 2026, at 6:00 p.m. The Florida Supreme Court denied state court relief, as well as Mr. Kearse's request for a stay of execution on February 25, 2026. Mr. Kearse 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 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.* (quoting *White v. Florida*, 458 U.S. 1301, 1302 (1982) (Powell, J., in chambers)).

### **PETITIONER SHOULD BE GRANTED A STAY OF EXECUTION**

The questions raised in Mr. Kearsé's petition are sufficiently meritorious for a grant of certiorari, present significant questions of constitutional law, and are not subject to any legitimate procedural impediments. As demonstrated in his underlying petition, Mr. Kearsé's death sentence is unreliable and violative of this Court's Sixth, Eighth, and Fourteenth Amendment jurisprudence.

Mr. Kearsé's petition raises questions concerning the lack of meaningful appellate review afforded to him by the Florida Supreme Court in its disposition of two significant federal constitutional claims.

**First**, Mr. Kearsé alleged a violation of the Sixth and Fourteenth Amendment right to a fair and impartial jury in light of a wholly unanticipated voluntary social media post made by a juror at Mr. Kearsé's capital resentencing proceeding. The post was made after Mr. Kearsé's death warrant was signed and revealed that the courtroom at Mr. Kearsé's resentencing proceeding was filled with law enforcement officers from around the state. In her post, the juror also expressed how much she was affected by the law enforcement presence in the courtroom. Accordingly, Mr. Kearsé challenged the reliability of his resentencing because this new evidence, previously undiscoverable even with the exercise of due diligence, established that

the resentencing jury was subjected to improper influences that tended to subvert its purpose, in violation of *Irvin v. Dowd*, 366 U.S. 717 (1961), *Holbrook v. Flynn*, 475 U.S. 560 (1986), and *Woods v. Dugger*, 923 F. 2d 1454 (11th Cir. 1991).

**Second**, Mr. Kearse alleged that new evidence in the form of a full-scale IQ score on the WAIS-5 testing instrument, the most recent and reliable testing instrument for assessing intellectual disability, established, along with his documented and uncontroverted history of adaptive deficits that manifested before the age of 18 (when in fact he was arrested), that Mr. Kearse is intellectually disabled and thus his execution is categorically barred under the Eighth Amendment under this Court's decision in *Atkins v. Virginia*, 536 U.S. 304 (2002), and its progeny.

However, as Mr. Kearse's petition establishes, this Court's intervention is needed because the Florida Supreme Court has abdicated its responsibility to conduct meaningful appellate review in capital postconviction cases, particularly those in a successor posture like Mr. Kearse's, and instead, "in its regular practice . . . has become a rubber stamp for lower court death-penalty determinations." *Barclay v. Florida*, 463 U.S. 939, 973 (1983) (Stevens, J., concurring in the judgment). Its hindsight-driven test for determining that Mr. Kearse lacked diligence in discovering the claims he addresses in his petition finds no support in this Court's jurisprudence. Its indefensible failure to engage with, and its improper contortion of, Mr. Kearse's actual arguments find no support in this Court's jurisprudence. Its automatic instinct to impose procedural bars where none exist finds no support in this Court's jurisprudence. In short, by upending all traditional notions of appellate review and

by eschewing any allegiance to due process, the Florida Supreme Court has transformed the capital postconviction process in Florida to nothing “more than a ‘meaningless ritual.’” *Evitts v. Lucey*, 469 U.S. 387, 394 (1985) (quoting *Douglas v. California*, 372 U.S. 353, 358 (1963)).

Mr. Kearsse’s petition also presents the question whether a state procedural bar, or a finding of a lack of diligence in bringing a claim of intellectual disability, can ever override the Eighth Amendment prohibition against executing the intellectually disabled announced in *Atkins v. Virginia*, 536 U.S. 304 (2002). His petition makes a persuasive argument that the categorical ban on executing the intellectually disabled must yield to any state procedural obstacle or adverse diligence finding, a question that is of nation-wide significance that this Court should address at this time.

Absent this Court’s intervention, the irreparable harm to Mr. Kearsse is clear. *Wainwright v. Booker*, 473 U.S. 935, 937 n.1 (1985) (Powell, J., concurring) (finding the requirement of irreparable harm as “necessarily present in capital cases”). Given the final nature of the death penalty there should be no point at which these considerations are foreclosed. “[E]xecution is the most irremediable and unfathomable of penalties; . . . death is different.” *Ford v. Wainwright*, 477 U.S. 399, 411 (1986) (citing *Woodson v. North Carolina*, 428 U.S. 280, 305 (1976) (opinion of Stewart, Powell, and Stevens, J.J.)). Mr. Kearsse’s petition presents questions of great importance regarding the analysis of a state court’s duty to give full effect to a federal constitutional holding. It is an ideal vehicle for addressing the Florida Supreme Court’s errors, and the questions at issue are of life-or-death importance for Mr.

Kearse and for the other death-row inmates in Florida. Should this Court grant Mr. Kearse's request for a stay and review of the underlying petition, there is a significant possibility of lower court reversal.

### **CONCLUSION**

For the foregoing reasons, Mr. Kearse's respectfully requests that this Court grant his application for a stay of execution to address the important constitutional questions in this case.

Respectfully submitted,

/s/Suzanne Keffer

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