No. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2023

JAMIE MILLS,

Petitioner,

v.

JOHN HAMM,
Commissioner of the
Alabama Department of Corrections,

Respondent.

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

APPLICATION FOR STAY OF EXECUTION

****** Mr. Mills' execution is scheduled from 6:00 p.m. CST on May 30, 2024 until 6:00 a.m. CST on May 31, 2024. ******

To the Honorable Clarence Thomas, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Eleventh Circuit:

Jamie Mills respectfully requests that this Court stay his execution pending the disposition of his petition for writ of certiorari that he is filing contemporaneously with this application.

For seventeen years, Mr. Mills has maintained that the District Attorney made false statements at trial that the State offered nothing to its star witness,

JoAnn Mills, in exchange for her testimony. The State continued to deny the existence of any agreement with JoAnn in exchange for her testimony throughout Mr. Mills' appeals and postconviction processes, including in his habeas corpus proceedings, preventing Mr. Mills from receiving merits-review of this claim.

Newly discovered evidence establishes that the District Attorney's statements at trial, and the State's representations throughout the appeals and postconviction proceedings, were false. The declaration of Attorney Tony Glenn, who represented JoAnn Mills in her capital murder case, establishes that prior to Petitioner's capital trial, Mr. Glenn met with District Attorney Jack Bostick and the family of Vera and Floyd Hill and that during that meeting, he advocated for JoAnn by presenting her life history of mitigating evidence in an effort to obtain a deal that could spare her from the death penalty. DE 42-1. Mr. Glenn was successful: the District Attorney ultimately agreed to a plea to a non-capital offense with a **life with parole** sentence, instead of the death penalty, if she would testify truthfully at Mr. Mills' trial. DE 42-2. Mr. Glenn's affidavit is corroborated by his attorney fee declaration and by the fact that, consistent with the prosecution's plea deal with JoAnn, on September 24, 2007, just ten days after Jamie Mills was sentenced to death, the State dismissed Capital Murder charges against her and she pled to the lesser included offense of straight Murder. DE 42-2. The plea agreement also explains why JoAnn, who was facing capital murder charges and the death penalty, would willingly confess to a capital crime under oath, and on the advice of counsel, at Mr. Mills' trial.

This new evidence means that District Attorney Jack Bostick falsely told the trial court that JoAnn testified without a "nudge, [or] a wink" or even a "suggest[ion]" of a plea. (R1. 830.) It also means that the testimony the District Attorney elicited from JoAnn Mills—that she did not "expect help from the district attorney's office" and that she understood as a result of her testimony that she would "get either life without parole or death by lethal injection" (R1. 721)—was false.

In response to Mr. Glenn's extraordinary affidavit, the State submitted its own affidavits, which establish that the District Attorney sought a plea deal on JoAnn's behalf with the victims' family prior to her testimony at trial and that members of the District Attorney's staff met with JoAnn prior to her testimony, "*about* her testimony," and that the staff "*encouraged* her to testify." DE 44-1, 44-2 (emphasis added). As a result of these meetings, the District Attorney affirms that "Tony Glenn believed it would be in his client's best interest to testify against Jamie Mills." DE 44-1. At a minimum, the State's own affidavits establish that both JoAnn and the District Attorney's statements to the court, defense counsel, and the jury were false.

Because the State's false representations were unquestionably material to critical decisions made by the district court, including whether Mr. Mills was entitled to an evidentiary hearing, discovery, a certificate of appealability and, ultimately, to habeas corpus relief, Mr. Mills filed a Motion for Relief from Judgment pursuant to Federal Rule of Civil Procedure 60, requesting an equitable

procedural remedy so that Mr. Mills could obtain merits review of his habeas petition.

As raised in the accompanying petition for a writ of certiorari, Mr. Mills' case presents significant questions implicating the reliability of his capital conviction and death sentence and whether jurists of reason could debate that he is entitled to Rule 60 process. This Court should utilize its historic ability to stay the State's proceedings against Mr. Mills to ensure he is not executed based on a deeply flawed and unfair process.

> The authority to hold an order in abeyance pending review allows an appellate court to act responsibly. A reviewing court must bring considered judgment to bear on the matter before it, but that cannot always be done quickly enough to afford relief to the party aggrieved by the order under review. The choice for a reviewing court should not be between justice on the fly or participation in what may be an 'idle ceremony.' . . . The ability to grant interim relief is accordingly not simply "[a]n historic procedure for preserving rights during the pendency of an appeal," . . . but also a means of ensuring that appellate courts can responsibly fulfill their role in the judicial process.

Nken v. Holder, 556 U.S. 418, 427 (2009).

In determining whether Mr. Mills is entitled to a stay of execution, this Court considers the following factors:

> (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.

Id. at 434 (quoting Hilton v. Braunskill, 481 U.S. 770, 776 (1987)). The third and fourth factors "merge when the Government is the opposing party." Id. at 435; see also Swain v. Junior, 958 F.3d 1081, 1091 (11th Cir. 2020).

As this Court held in Barefoot v. Estelle, a stay should be granted when necessary to "give non-frivolous claims of constitutional error the careful attention that they deserve." 463 U.S. 880, 888 (1983), superseded on other grounds by 28 U.S.C. § 2253(c). A stay of execution should be issued when a court cannot "resolve the merits [of a claim] before the scheduled date of execution . . . to permit due consideration of the merits." Id. at 889; see also 28 U.S.C. § 2101(f); Sup. Ct. R. 23. Mr. Mills is entitled to a stay of execution so that this Court can consider the important constitutional claims raised in Mr. Mills' petition for writ of certiorari from the Eleventh Circuit Court of Appeals filed in this Court today.

ARGUMENT

I. MR. MILLS IS LIKELY TO PREVAIL ON THE QUESTION OF WHETHER HE IS ENTITLED TO A CERTIFICATE OF APPEALABILITY.

Mr. Mills is likely to succeed on the question of whether he is entitled to a Certificate of Appealability. The standard for a COA is very low. A court should issue one where "reasonable jurists would find the district court's assessment of the constitutional claims debatable. . . ." Slack v. McDaniel, 529 U.S. 473, 484 (2000). In the Rule 60 context, the COA question is "whether a reasonable jurist could conclude that the district court abused its discretion in declining to reopen the judgment." Buck v. Davis, 580 U.S. 100, 123 (2017). This Court has held that a petitioner is *not* required "to prove, before the issuance of a COA, that some jurists would grant the petition for habeas corpus" or grant the Rule 60 Motion. Miller-El v. Cockrell, 537 U.S. 322, 338 (2003). Where judges on the Eleventh Circuit literally

debate whether the district court abused its discretion in opening the case under Rule 60(b), it logically follows that reasonable *jurists* would debate whether Mr. Mills is entitled to a COA. See Doc. 19-1, at 18 (Abudu, J., concurring) ("Mills has sufficiently alleged the denial of a constitutional right"); see also Id., at 15 (Abudu, J., concurring) ("Mills has met the threshold requirement to obtain a COA").

The lower court's denial of a COA was based on the finding that because the circumstances this case presents are so extraordinary, Mr. Glenn's affidavit is implausible: "[N[o reasonable jurist could conclude that the district court abused its discretion in assessing the plausibility of Glenn's affidavit" because it would mean "Glenn witnessed both Bostick and JoAnn repeatedly perjure themselves on August 22, 2007, yet said nothing." Doc. 19-1, at 8.

The egregious misconduct of all the parties involved in concealing the plea agreement, however, is precisely why Mr. Mills' case constitutes the extraordinary circumstances entitled to relief under Rule 60. The lower courts' disregard for Tony Glenn's affidavits—as well as the State's own affidavits and JoAnn's plea days later to life **with parole**, both of which corroborate Mr. Mills' allegations—and the failure to address why JoAnn would have confessed to capital murder on the witness stand without a plea deal, constitutes an erroneous application of the COA standard.

Certainly, reasonable jurists could debate whether these extraordinary circumstances in a death penalty case warrant Rule 60 relief. Buck v. Davis, 580 U.S. 100, 123 (2017) (quoting Liljeberg v. Health Services Acquisition Corp., 486

U.S. 847, 864 (1988)) ("extraordinary circumstances" warranting Rule 60(b)(6) relief "may include 'the risk of injustice to the parties' and 'the risk of undermining the public's confidence in the judicial process.'").

The lower court's finding that Mr. Mills' motion is untimely ignores both the record in this case—which establishes that Mr. Mills has diligently pursued this evidence, in asking the State to comply with state and federal requirements to reveal the existence of a prior plea deal with JoAnn Mills—and clearly established Supreme Court case law, which provides that defendants are not required to "scavenge for hints of undisclosed Brady material when the prosecution represents that all such material has been disclosed." Banks v. Dretke, 540 U.S. 668, 695 (2004).

Since his arrest, Mr. Mills has made fifteen distinct requests for information about a plea offer, and each time the State failed to disclose this information as it is constitutionally obligated to do. See pages 22-25 in accompanying certiorari petition.

Despite Mr. Mills' continued and persistent efforts, the lower courts found that Mr. Mills had a duty to make Mr. Glenn disclose the State's misconduct at an earlier time—to essentially hold the State to its prosecutorial oath—and that any delay must be held against Mr. Mills. Doc. 19-1, at 4 ("Mills did not approach Glenn until 2024 to discuss whether JoAnn struck a secret plea deal"); Doc. 48, at 22 ("Mills' counsel never spoke to him about Mills' case or JoAnn's testimony until February 23, 2024, nearly a month after the State moved for Mills' execution to be

set."). Mr. Mills, however, is definitively not required to "scavenge" for misconduct in the face of representations from the State that "all such material has been disclosed." Banks, 540 U.S. at 695-96 ("A rule thus declaring 'prosecutor may hide, defendant must seek,' is not tenable in a system constitutionally bound to accord defendants due process.").[1] The Eleventh Circuit has followed this precedent in Rule 60 proceedings, finding the fact that the petitioner eventually gained access to withheld evidence through other means, did not "diminish [his] due diligence." In re Glob. Energies, LLC, 763 F.3d 1341, 1349 (11th Cir. 2014) ("the parties, who had the evidence that Wortley needed to substantiate his claims, blocked his access to it and deliberately prevented him from finding it. Wortley eventually obtained the emails from a different attorney as part of another lawsuit, but that does not diminish Wortley's due diligence or his adversaries' apparent malfeasance in the litigation that led to this appeal").

It cannot be that the State may conceal critical evidence throughout all stages of capital proceedings—trial, appeals, state and federal postconviction—and then rely on procedural hurdles and arguments of delay to prevent Mr. Mills from obtaining any process on this claim. *The State* has delayed a substantive review of this issue, not Mr. Mills. Ramirez v. Collier, 595 U.S. 411, 434–35 (2022) (quoting

[1] This Court has granted a stay of execution pending disposition of a petition for writ of certiorari in a case implicating Banks v. Dretke. See Glossip v. Oklahoma, United States Supreme Court, Case Nos. 22-6500, 22-7466, 22A941. This Court should stay and hold Mr. Mills' case in abeyance pending resolution of this case. California v. Velasquez., 445 U.S. 1301 (1980) (granting stay where "issues presented [in separate pending case] are sufficiently related to the issues" presented by death penalty case); see also Mobley v. Head, 306 F.3d 1096, 1097 (11th Cir. 2002) (staying case that raises "same issue" in case pending before the U.S. Supreme Court).

Gildersleeve v. New Mexico Mining Co., 161 U.S. 573, 578 (1896)) ("Respondents argue that Ramirez inequitably delayed this litigation by filing suit just four weeks before his scheduled execution. But this is not a case in which a litigant 'slept upon his rights.' . . . To the contrary, **Ramirez had sought to vindicate his rights for months. . . respondents can hardly complain about the inequities of delay when their own actions were a significant contributing factor**.") (emphasis added).

Mr. Mills requests that he be finally granted process as to this long-pursued claim and that this Court hold the State to its duty to pursue truth and justice, over the finality of an unsound conviction. Giglio v. United States, 405 U.S. 150, 153 (1972); see also United States v. Bagley, 473 U.S. 667, 680 (1985); United States v. Agurs, 427 U.S. 92, 103 (1976); Berger v. United States, 295 U.S. 78, 87-88 (1935); Mooney v. Holohan, 294 U.S. 103, 112 (1935).

II. MR. MILLS WILL BE IRREPARABLY HARMED ABSENT A STAY.

Mr. Mills will be irreparably harmed absent a stay because he will be wrongfully executed on the basis of false evidence—a claim that has never received merits-review. Nken v. Holder, 556 U.S. 418, 435–36 (2009) (recognizing irreparable harm in wrongful deportation context). To allow the State to proceed with an execution predicated on a false representation about a critical question of fact for the jury and the district court—the sole eyewitness's reliability—would be a miscarriage of justice. The district court's dismissal of Mr. Mills' Brady, Giglio, and Napue claim, and decision not to grant merits-based review, was based on the

State's fraudulent assertions in its habeas petition and the District Attorney's knowingly false statements at trial, that no understanding existed with JoAnn Mills prior to her testimony. Mills v. Dunn, No. 6:17-CV-00789-LSC, 2020 WL 7038594, at *60, 77–79 (N.D. Ala. Nov. 30, 2020). Further, this claim is readily distinguishable from a methods-challenge brought at the eleventh hour to challenge policies that had long been in place but calls into question Mr. Mills' conviction and death sentence.

The harm of an execution based on patently unfair and fraudulent proceedings simply cannot be remedied through monetary means. Ramirez, 595 U.S. at 433 (finding irreparable harm where "[c]ompensation paid to his estate would not remedy this harm"). "There is no do-over in this scenario." Smith v. Comm'r, Ala. Dep't of Corr., 844 F. App'x 286, 294 (11th Cir. 2021) (finding irreparable harm to outweigh any allegations of delay where "ADOC will likely execute Smith" without relief on his meritorious claim); see also Dunn v. Smith, 141 S. Ct. 725 (2021) (denying State's application to vacate stay).

III. THE PUBLIC INTEREST IS IN MR. MILLS' FAVOR.

The public interest is unquestionably in Mr. Mills' favor. "[T]he public interest is served when constitutional rights are protected." Melendez v. Sec'y, Fla. Dep't of Corrs., No. 21-13455, 2022 WL 1124753, at *17 (11th Cir. Apr. 15, 2022) (internal quotations and citation omitted); see also Labrador v. Poe by & through Poe, 144 S. Ct. 921, 923 (2024) (Gorsuch, J., concurring, joined by Alito & Thomas, JJ.) (public interest aligns with constitutionality of actions or law); Smith, 844 F.

App'x at 294 (recognizing that "neither Alabama nor the public has any interest in carrying out an execution in a manner that violates . . . the laws of the United States") (internal citation omitted).

The lower courts concluded that the District Attorney cannot be held accountable for this misconduct because the burden was on Mr. Mills to know what the state hid all these years. Insulating prosecutors from accountability for making knowingly false representations would render virtually unenforceable a basic premise of our legal system that the prosecution will refrain from dishonest and illegal conduct. Berger v. United States, 295 U.S. 78, 88 (1935) ("Courts, litigants, and juries properly anticipate that 'obligations . . . plainly rest[ing] upon the prosecuting attorney, will be faithfully observed.").

The issues raised by Mr. Mills directly affect the integrity of the trial process and his conviction and death sentence. Giglio, 405 U.S. at 153 ("deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with rudimentary demands of justice" and requires reversal) (internal quotations omitted); see also United States v. Bagley, 473 U.S. 667, 680 (1985) (quoting Agurs, 427 U.S. at 104) (when prosecutor knowingly lies, it is not only prosecutorial misconduct but involves "a corruption of the truth-seeking function of the trial process," and undermines the integrity of the outcome). To allow Mr. Mills to be executed without a merits review of this critical issue "injures not just [Mr. Mills], but the law as an institution, . . . the community at large, and . . . the democratic ideal reflected in the processes of our courts." Buck, 580 U.S. at 124 (quoting Rose v.

Mitchell, 443 U.S. 545, 556 (1979)) (internal quotations omitted).

CONCLUSION AND PRAYER FOR RELIEF

The Constitution requires a reliability in capital cases that has no parallel in noncapital cases. Woodson v. North Carolina, 428 U.S. 280, 305 (1976) ("[T]he penalty of death is qualitatively different from a sentence of imprisonment, however long . . . . Because of that qualitative difference, there is a corresponding difference in the need for reliability in the determination that death is the appropriate punishment in a specific case."). Accordingly, judicial review of a capital case must be characterized by a "heightened concern for fairness and accuracy." Ford v. Wainwright, 477 U.S. 399, 414 (1986); Spaziano v. Florida, 468 U.S. 447, 456 (1984) (acknowledging need for heightened reliability in capital proceedings).

Mr. Mills respectfully requests that this Court grant this application and stay his execution.

Respectfully submitted,

/s/Charlotte R. Morrison
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