

No. 23-1170

IN THE SUPREME COURT OF THE UNITED STATES

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FRANCK WILLIAM YAO,  
Petitioner,  
v.

TAMARA YAO,  
Respondent.

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**Application for Stay Enforcement of  
Judgment in the Missouri Court of  
Appeals Eastern District**

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To the Honorable Brett M. Kavanaugh, as Circuit Justice for the United States Court of Appeals for the Eighth Circuit:

Applicant and non-prevailing party below, Franck William Yao, respectfully requests that enforcement of the underlying judgment be stayed pending the disposition of this case in this court.

The questions presented are as follows:

1. The Due Process Clause of The Fourteenth Amendment guarantees parental rights.
2. Petitioner's dual citizenship was used against him to strip away his custodial rights.
3. The best interest of the child is a necessary component of a custody expert's testimony and court's determination.
4. Witness testimony challenging the credibility of another witness is inadmissible.

**A. Yao satisfied the procedural prerequisites of Supreme Court Rule 23.**

Yao was denied parental rights of his minor child as the result of the extensive and litigious custody battle. Yao requests stay relief in this Court after being denied such relief in the court below.

On January 30, 2024, Chief Justice Mary R. Russell for the Supreme Court of Missouri denied Yao's application for transfer from the Missouri Court of Appeals.

**B. Yao's parental rights are guaranteed by the Due Process Clause of the Fourteenth Amendment.**

The Due Process Clause of the Fourteenth Amendment provides that no

person shall be deprived of “life, liberty, or property, without due process of law.” U.S. Const. amend XIV, § 1. To determine whether a right falls within one the categories, the right must be “deeply rooted in this Nation's history and tradition” and “implicit in the concept of ordered liberty.” *Dobbs v. Jackson Women's Health Org.*, 213 L. Ed. 2d 545, 142 S. Ct. 2228, 2243 (2022) (citing *Washington v. Glucksberg*, 521 U.S. 702, 721, 117 S.Ct. 2258, 138 L.Ed.2d 772 (1997)). On January 30, 2024, Chief Justice Mary R. Russell for the Supreme Court of Missouri denied Yao’s application for transfer from the Missouri Court of Appeals.

The Supreme Court has long “emphasized the importance of the family.” *Stanley v. Illinois*, 405 U.S. 645, 651, 92 S. Ct. 1208, 31 L. Ed. 2d 551 (1972). For over half a century, the Court has consistently recognized the deeply rooted right of a parent “in the companionship, care, custody, and management of his or her children.” *Id.* at 651. Even though parental rights are “deeply rooted in this Nation's history and tradition” and “implicit in the concept of ordered liberty,” Yao was denied parental rights of his minor child as the result of the extensive and litigious custody battle.

### **C. A stay of enforcement is warranted.**

“[A] party seeking a stay must show (1) that he will likely prevail on the merits of the appeal, (2) that he will suffer irreparable injury if the stay is denied, (3) that other parties will not be substantially harmed by the stay, and (4) that the public interest will be served by granting the stay.” *Long v. Robinson*, 432 F.2d 977, 979 (4th Cir. 1970).

Here, Yao is likely to succeed on the merits. As demonstrated above, the Due

Process Clause of the Fourteenth Amendment guarantees parental rights. However, Yao was denied parental rights of his minor child as the result of the extensive and litigious custody battle. Because Yao's Due Process rights have been infringed, he faces irreparable harm. The court's improper custody decisions have resulted in Yao and his son losing significant time together, which has caused Yao's minor child to experience depression. Respondent will not be harmed by the stay and the public interest is served by protecting Yao's parental rights that are guaranteed by the Due Process Clause of the Fourteenth Amendment.

### CONCLUSION

For the foregoing reasons, Franck William Yao respectfully requests that the Court stay his execution to allow full and fair litigation of his meritorious claims, and to preserve its authority to review those claims after the appeal.

Respectfully submitted,

/s/ Robert Sirianni, Jr.

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## **APPENDIX**

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY  
STATE OF MISSOURI

TAMARA R. YAO,  
Petitioner,

v.

FRANK W. YAO,  
Respondent

11SL-DR03427-02

Div. 4

JUNE 20, 2024

**FILED**

JUN 21 2024

JOAN M. GILMER  
CIRCUIT CLERK, ST. LOUIS COUNTY

**ORDER**

On April 30, 2024, Respondent has filed a Motion to Stay pending resolution of his Petition to the United States Supreme Court. Said Motion was not called up to be heard. On June 18, 2024, Respondent filed his "Motion to Hear and Rule" wherein Respondent asked the court to consider and rule on Respondent's Motion to Stay without a hearing. "Respondent suggests that a hearing is not required to adjudicate the motion to stay."

Therefore, the Court, having considered Respondent's Motion to Stay, hereby DENIES his Motion.

SO ORDERED,

  
Judge Jeffrey P. Medler, Div. 4