No. _____

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IN THE

SUPREME COURT OF THE UNITED STATES

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Marion Bowman, Jr.,

Petitioner,

vs.

Bryan P. Stirling, Commissioner, South Carolina,
Department of Corrections, and The State of South Carolina,

Respondents.

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APPLICATION FOR A STAY OF EXECUTION
PENDING CONSIDERATION AND DISPOSITION
OF THE PETITION FOR A WRIT OF CERTIORARI

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Petitioner, Marion Bowman, Jr., a death-sentenced individual on South Carolina's death row, respectfully requests a stay of his execution, which is **scheduled for January 31, 2025**. Bowman asks this Court to stay his execution pending consideration and disposition of the petition for a writ of certiorari, filed in this Court concurrently with this motion, arising from a judgment of the Supreme Court of South Carolina pursuant to 28 U.S.C. § 1257(a). The issue raised will become moot if Bowman is executed. *See Wainwright v. Booker*, 473 U.S. 935, 936 (1985) (Powell, J., concurring*)*; *see also Murphy v. Collier*, 139 S. Ct. 1475 (2019) (staying the execution pending the timely filing and disposition of a petition for a writ of certiorari). The requested stay may be lawfully granted pursuant to Supreme Court Rule 23 and under the authority of 28 U.S.C. § 2101(f). In support of this application, Petitioner submits the following:

I. STATEMENT OF THE CASE[1]

All confidence in Marion Bowman, Jr.'s convictions and death sentence is undermined by his trial attorney who filtered his professional judgments through a presumption of racial bias by Bowman's jury, only to repeatedly introduce and assign pernicious and prejudicial racial stereotypes to Bowman and the victim in this case. The injection of trial counsel's biases into the proceedings, as well as counsel's failure to adequately represent Bowman in both the trial and sentencing phases, was the result of his own racism and biases, and thereby embedded arbitrary factors into the proceedings in violation of the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution.

Prior to trial, Bowman's attorney pressured him to plead guilty, even before receiving and reviewing significant portions of the discovery and ignoring Bowman's consistent assertions of innocence. As Bowman informed the trial judge, his attorney was pressuring him to plead guilty because—in counsel's prejudiced view—Bowman was black, the victim was white, and white jurors would convict him solely based on the differences in their race as a matter of racial prejudice. Pet. App. E, 15a-16a.

Continuing to maintain his innocence, Bowman declined the prosecution's plea offer, and the case proceeded to trial. However, trial counsel's racial prejudice infected Bowman's trial as well. Counsel conducted no voir dire to even attempt to identify jurors with racial prejudices, despite his clear beliefs that the jurors would be swayed by racial issues. *See Turner v. Murray*, 476 U.S. 28 (1986) (entitling a capital defendant accused of an interracial crime to conduct voir dire on prospective jurors' racial bias). Trial counsel then stood mute during the state's case-in-chief, failing to object to the admission of prejudicial and minimally probative evidence,

[1] The case background is more fully set forth in the pending petition for a Writ of Certiorari.

specifically, failing to object to evidence of Bowman's DNA in seminal fluid taken from the victim's vaginal swabs, despite there being evidence the two were friends and had been seen together hours before her death. Counsel further affirmatively and repeatedly introduced and ratified racial stereotypes before the jury, questioning why the "young, white lady" would not seek the help of white passersby when in the presence of two "black males," and apologizing for the implication that a white woman would have consensual relations with his black client. *See* Pet. App. O, 49a. Finally, trial counsel failed to make use of evidence that would have provided a non-inculpatory explanation for why Bowman was in possession of the victim's watch, because he did not want to attack or slander the young white female victim. *See* Pet. App. R, 114a, 158a.

Trial counsel's ineffective assistance due to his racist beliefs was raised in the Supreme Court of South Carolina. Rather than correct the pernicious racial prejudice in Bowman's case, the state court interpreted this evidence not as trial counsel exhibiting racism, but as trial counsel executing "valid strategic decisions . . . in an attempt to defuse any racial animus the jury may have had against Bowman, [a black man,] who was indicted for murdering a white woman." Pet. App. A, 5a. Per the lower court, this was consistent with counsel's concern "that the jury might view the circumstances of the murder through a racial lens." *Id.* The state court's holding inverts this Court's case law, which requires an effort to identify and eradicate racism rather than simply making racist arguments to counter racism.

Concurrent with this Motion, Bowman filed a petition for writ of certiorari in this Court on the issue of trial counsel's ineffective assistance, *see Strickland v. Washington*, 466 U.S. 668 (1984), decided by the Supreme Court of South Carolina. A petition for a writ of certiorari is Bowman's proper avenue for relief from this Court's denial of his claim. *See* 28 U.S.C. § 1257(a); Supreme Court Rule 13.1. Bowman now respectfully requests this Court stay his execution to

allow for full and timely consideration of his pending petition for a writ of certiorari. A stay of execution is necessary to address and correct the state court's disregard for this Court's precedents.

II. This Court Should Stay Bowman's Execution Because He Has Substantial Constitutional Claims That Cannot Be Adequately Considered by This Court Absent a Stay.

A stay of execution is warranted where there is a "presence of substantial grounds upon which relief might be granted." *Barefoot v. Estelle*, 463 U.S. 880, 895 (1983). To decide whether a stay is warranted, courts consider the petitioner's likelihood of success on the merits, the relative harm to the parties, and the extent to which the prisoner has delayed raising his or her claims. *See Hill v. McDonough*, 547 U.S. 573, 584 (2006); *Nelson v. Campbell*, 541 U.S. 637, 649–50 (2004). In certiorari proceedings, a petitioner must show: (1) a reasonable probability that this Court would vote to grant certiorari; (2) a significant possibility of reversal of the lower court's decision; and (3) a likelihood that irreparable injury will occur if no stay is granted. *See Barefoot*, 463 U.S. at 895. Additionally, "in a close case it may [also] be appropriate to balance the equities,' to assess the relative harms to the parties, 'as well as the interests of the public at large.'" *Indiana State Police Pension Trust v. Chrysler LLC*, 556 U.S. 960, 960 (2009) (per curiam) (quoting *Conkright v. Frommert*, 556 U.S. 1401, 1402 (2009) (Ginsburg, J., in chambers)). All these factors weigh in favor of staying Bowman's execution.

1. There is a reasonable probability that certiorari will be granted

Bowman's petition for a writ of certiorari raises issues similar to those raised in other capital cases infected by race, on which this Court has granted review and ultimately reversed. In *Buck v. Davis*, this Court recognized that the introduction of "powerful racial stereotype[s]" and "particularly noxious strain[s] of racial prejudice" is prejudicial, as "[s]ome toxins can be deadly [even] in small doses." 580 U.S. 100, 121–22 (2017). Here, as in *Buck*, "[w]hen a defendant's own lawyer puts in the offending evidence," "it is in the nature of an admission against interest, more

likely to be taken at face value." *Id.* at 122; *see also Dawson v. Delaware*, 503 U.S. 159, 168 (1992) (holding that admission of racial arguments, specifically that the defendant was a member of a white racist prison gang that was not relevant to any issue before the jury, was improper in a capital sentencing hearing).

This Court has recognized that the dangers of race infecting a capital case are heightened. In *Turner v. Murray*, this Court acknowledged that "[b]ecause of the range of discretion entrusted to a jury in a capital sentencing hearing, there is a unique opportunity for racial prejudice to operate but remain undetected." *Turner*, 476 U.S. at 35. Indeed, "[t]he risk of racial prejudice infecting a capital sentencing proceeding is especially serious in light of the complete finality of the death sentence." *Id.* at 36. *Cf. Pena-Rodriguez v. Colorado*, 580 U.S. 206 (2017) (recognizing evidentiary rules must allow for examination of racial bias in jury deliberations in a criminal case).

The Supreme Court of South Carolina's decision, validating trial counsel's insertion of racial bias as trial "strategy" ignores this Court's precedents, compelling review.

2. There is a substantial likelihood that this Court will overturn the Supreme Court of South Carolina's decision.

The similarities between Bowman's case and *Buck* demonstrate the substantial likelihood that this Court will overturn the Supreme Court of South Carolina's decision. This Court has specifically held that it is improper and amounts to ineffective assistance of counsel for defense counsel in a capital sentencing to present expert evidence and arguments that rely simply on racist stereotypes that a black defendant is "predisposed" to violent conduct simply because of his race. *Buck*, 580 U.S. at 119. While "[i]t would be patently unconstitutional for a State to argue that a defendant is liable to be a future danger because of his race," it is also improper for defense counsel to present such evidence and argument about his own client. *Id.* Indeed, it is more harmful when defense counsel makes the racist arguments because jurors expect to evaluate and question the

state's evidence, but "[w]hen a defendant's own lawyer puts in the offending evidence, it is in the nature of an admission against interest, more likely to be taken at face value." *Id.* at 122. In short, "[n]o competent defense attorney would introduce such evidence about his own client." *Id.* at 119.

The Supreme Court of South Carolina, instead of following this Court's guidance from *Buck*, found that trial counsel had a valid strategy for injecting racial biases into Bowman's capital trial. This holding not only ignored this Court's precedents, it also ignored the evidence Bowman presented that trial counsel provided deficient performance and prejudiced Bowman by relying on his own racial stereotypes to ignore his black client's protestations of innocence, failing to make use of available evidence that would counter the state's theory due to his reluctance to slander the young white female victim, and by injecting his own racial prejudices into the trial by repeatedly comparing the "young, white" victim to his "black man" client (despite the fact that Bowman was younger than the victim). In validating trial counsel's prejudicial actions as "strategy," the Supreme Court of South Carolina clearly disregarded this Court's precedents in denying Bowman's claims.

3. There is a likelihood that irreparable harm will result if no stay is granted.

The risk of irreparable harm is clearly met in Bowman's case. "A prisoner under a death sentence remains a living person and consequently has an interest in his life." *Ohio Adult Parole Authority v. Woodard,* 523 U.S. 272, 288 (1998) (O'Connor, J., concurring in part and concurring in the judgment). Death is the ultimate deprivation, and no State should carry out a death sentence in violation of a prisoner's constitutional rights—rights which cannot be reinstated after an execution is carried out.

4. The balance of equities also weighs in favor of a stay of execution.

The balance of equities weighs in favor of staying Bowman's execution. Obviously, Bowman has a legitimate interest in ensuring that his trial proceedings were constitutional before

South Carolina takes the irreparable step of ending his life. However, Bowman's interests are not the only interests that weigh in favor of granting a stay.

There is public interest in granting a stay of execution to provide for full and proper consideration of Bowman's petition for a writ of certiorari. The harm from discrimination in the criminal justice system "destroys the appearance of justice and thereby casts doubt on the integrity of the judicial process." *Rose*, 443 U.S. at 556; *Buck*, 580 U.S. at 124 ("[Such discrimination] injures not just the defendant, but 'the law as an institution . . . the community at large, and . . . the democratic ideal reflected in the processes of our courts.'") (quoting *Rose*, 443 U.S. at 556). Indeed, "[r]elying on race to impose a criminal sanction poisons public confidence in the judicial process." *Buck*, 580 U.S. at 124 (quoting *Davis v. Ayala*, 576 U.S. 257, 285 (2015)) (internal quotation marks omitted).

The harm to the State is minimal when weighed against the strong interests supporting a stay. At most, the harm to the State would be a slight delay in carrying out Bowman's execution while this Court considers the briefing on the pending petition for a writ of certiorari. Moreover, the State cannot have a legitimate interest in carrying out a sentence that was obtained as the result of an unconstitutional proceeding.

III. CONCLUSION

For the reasons set forth above, Bowman respectfully requests that the Court stay his execution currently scheduled for January 31, 2025, pending the full consideration and disposition of his Petition for Writ of Certiorari.

Respectfully submitted,

LINDSEY S. VANN
Justice 360
900 Elmwood Avenue, Suite 200
Columbia, SC 29201
(803) 765-1044

S. BOYD YOUNG
S.C. Commission on Indigent Defense
Capital Trial Division
1330 Lady Street, Suite 401
Columbia, SC 29201
(803) 734-7818

JOHN G. BAKER
Federal Public Defender
Western District of North Carolina

GERALD W. KING, Jr.
Chief, Capital Habeas Unit
for the Fourth Circuit

/s Teresa L. Norris
TERESA L. NORRIS*
**Counsel of Record*
ELSA OHMAN
Assistant Federal Public Defenders
129 West Trade Street, Suite 300
Charlotte, NC 28202
(980) 378-5105
Teresa_Norris@fd.org

Counsel for Petitioner

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