

No. _____

IN THE
Supreme Court of the United States

JAMES D. FORD,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Florida

APPLICATION FOR STAY OF EXECUTION

***THIS IS A CAPITAL CASE
WITH AN EXECUTION SCHEDULED FOR
THURSDAY, FEBRUARY 13, 2025, 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, James D. Ford, for **February 13, at 6:00 p.m.** The Florida Supreme Court denied relief on February 7, 2025. Ford 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 a 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.* (internal quotations omitted).

PETITIONER SHOULD BE GRANTED A STAY OF EXECUTION

The questions raised in Ford’s petition are sufficiently meritorious for a grant of a writ of certiorari. The underlying issues present significant, compelling questions of constitutional law and a stay is necessary to avoid Ford being executed in violation of the Eighth Amendment to the United States Constitution, *Panetti v. Quarterman*, 551 U.S. 930 (2007), *Ford v. Wainwright*, 477 U.S. 399 (1986), and *Madison v. Alabama*, 139 S. Ct. 718 (2019).

It is indisputable that Ford 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 Ford's continued interest in his life. *See Ohio Adult Parole Auth. v. Woodard*, 523 U.S. 272, 289 (1998) (“[I]t is incorrect . . . to say that a prisoner has been deprived of all interest in his life before his execution.”) (O'Connor, J., plurality opinion). Florida has a minimal interest in finality and efficient enforcement of judgments, but Ford has a right in ensuring that his execution comports with the Constitution. In addition, the irreversible nature of the death penalty frequently supports in favor of 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 this Court grant the request for a stay and review of the underlying petition, Ford submits there is a significant possibility of the lower court's reversal. This Court's intervention is urgently needed to prevent Ford's imminent execution despite the protections from the death penalty provided by the Eighth Amendment.

Ford raises a valid and substantial argument that his execution should be categorically excluded by this Court's opinion in *Roper v. Simmons*, 543 U.S. 551 (2005) because he had a mental and developmental age of no more than fourteen years old at the time of the offense for which he was convicted. Ford raised his *Roper* claim at both the state circuit court and again at the Florida Supreme Court. The state circuit court denied the *Roper* claim without first holding an evidentiary hearing

or considering the actual merits of Ford's argument that this Court's reasoning for the *Roper* exclusion should be extended to include individuals with a mental and developmental age of less than eighteen years old. The Florida Supreme Court ("FSC") affirmed the lower court's decision. As argued in Ford's contemporaneously filed Petition for a Writ of Certiorari, the FSC also failed to render an evaluation of the merits of Ford's *Roper* argument by erroneously relying on the stringent "conformity" clause in the Florida constitution, which the FSC has used to effectively shut off any analysis of evolving standards of decency under the Eighth Amendment.

The opportunity to be heard is a fundamental requirement of due process. *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965) (internal citation omitted). This is an opportunity which must be granted ***at a meaningful time and in a meaningful manner***. *Armstrong*, 380 U.S. at 552 (emphasis added). At a minimum, due process requires that deprivation of life, liberty, or property by adjudication be preceded by notice and opportunity for hearing ***appropriate to the nature of the case***. *Id.* at 550 (emphasis added). This Court has recognized that "execution is the most irremediable and unfathomable of penalties; that death is different." *Ford v. Wainwright*, 477 U.S. 399, 411 (1986) (citing *Woodson v. North Carolina*, 428 U.S. 280, 305 (1976)). The final and extreme nature of the penalty that Ford faces if his current warrant litigation is unsuccessful necessitated that the Florida courts grant him a hearing on the substantial evidence of his mental impairments and actually render an analysis on the merits of his *Roper* claim. The Florida courts failed to provide that due process. Ford respectfully submits that this Court should grant a

stay of execution and relinquish to the lower courts so that he can receive that appropriate due process. An evidentiary hearing must be held in order to put forth the full evidence of Ford's mental impairments, including the fact that recent expert testing indicates that Ford still has a mental and developmental age less than eighteen years old.

Ford argued in Claim One of his January 18, 2025 successive Florida Rule of Criminal Procedure 3.851 motion that his death sentence was unconstitutional under this Court's underlying reasoning in *Roper v. Simmons*, 543 U.S. 551 (2005) because he has a mental and developmental age of below eighteen years old. Ford offered the following evidence to support that his mental and developmental is below age eighteen.

Ford was thirty-six years old at the time the homicides occurred on April 6, 1997. However, his developmental age was much lower. Expert trial testimony from psychologist Dr. William Mosman, who evaluated Ford in 1999, indicated that Ford's mental and developmental age would have been closer to age fourteen when the homicides occurred. Dr. Mosman interviewed, observed, and evaluated Ford on two occasions and administered a variety of tests. R48/4282.¹ There was no suggestion that Ford was malingering. R48/4285. Dr. Mosman also reviewed numerous records for his evaluation, including jail and medical records, school records, trial transcripts, crime scene photos, and autopsy photos. R48/4282-83. Dr. Mosman also reviewed the

¹ The record citations to Dr. Mosman's trial testimony cite to the record on appeal for Ford's direct appeal in Florida Supreme Court Case No: SC-95972, *Ford v. State*, 802 So. 2d 1121 (Fla. 2001).

interview summaries of about twenty lay witnesses, including schoolteachers, principals, friends, and family members of Ford, but did not specifically interview these individuals. R48/4284. Dr. Mosman opined that it was well within a reasonable doubt of clinical certainty that at the time the crime happened Ford was under the influence of extreme mental and also extreme emotional disturbance. R48/4286. Ford's capacity to appreciate the criminality of his conduct or conform his conduct was also substantially impaired when the crimes were committed. R48/4287.

Dr. Mosman opined that, based on Dr. Mosman's testing, Ford's mental and developmental age was about 14 years old. R48/4287. The testing has been consistent that Ford mentally functions from about 11 to 14 years of age. R48/4288. There is no clinical doubt that Ford has a history of being abused and neglected as a child. R48/4288. Dr. Mosman explained that there's clear evidence of a deprived and disadvantaged childhood, which can help us to understand Ford's emotional impairment. R48/4289. Dr. Mosman explained that Ford has a mental intellectual age of 11 to 14. R48/4289. Ford's emotional impairment is a different factor, and emotionally and developmentally Ford is probably in the area of about 9 years old. R48/4289. Dr. Mosman explained that when we look at Ford's entire history, there were systems that knew there were problems. R48/4290. Ford was known to be having troubles for years in school. R48/4290. Ford dealt with withdrawal, embarrassment, humiliation, depression, and drinking. R48/4290. None of the systems jumped in and helped Ford. R48/4290

Dr. Mosman explained that there are indicators for Ford of an inability to plan

ahead because of his low intellectual functioning (“IQ”). R48/4295. Dr. Mosman said that in some areas Ford’s scores reach into the mentally retarded area, and other areas are borderline. R48/4295. There were some indicators of financial irresponsibility in Ford not following through on his child support payments for two reasons- lack of income to some extent and an inability to handle checking accounts and checkbooks. R48/4296. The women in Ford’s life managed the money and the finances because Ford could not add. R48/4296. Dr. Mosman administered the Wechsler Adult Intelligence Scale- Revised Edition (“WAIS-R”), which Ford received a verbal IQ score of 87. R48/4300-01. That score is made up of about six or seven other scores within that, and there are scores that reach much lower than that. R48/4301. Dr. Mosman explained that although he was not opining that Ford was mentally retarded, his ability to reason sequentially, and organize and work things through methodically was at the “retarded level.” R48/4301. Ford has learned through repetition, but he has rarely learned verbally. R48/4301. Ford’s performance score on the WAIS-R was 94, which is the lower area of average. R48/4302. Ford has impairments and problems in all areas, with the verbal area being the most deficit. R48/4302.

Dr. Mosman also administered the Slosson Intelligence Test-Revised (“SIT-R”), which rendered a score of 94. R48/4302. Dr. Mosman explained that he liked to use this test because it can be used to measure how old the person is that he is working with, which explained Ford’s developmental age of 14 years. R48/4302-03. Dr. Mosman explained that he could bring in a 14-year-old kid in seventh grade, and that

person would get along, communication-wise, very well with Ford. R48/4303. There would be a pretty close match between the two, everything else being equal. R48/4303. Dr. Mosman also gave the Wide Range Achievement Test-Revised (“WRAT-R2”) to Ford on January 18, 1999, which indicates Ford could read at about the fifth-grade level, which was the age equivalent to about an 11-year-old child. R48/4303. The WRAT-R2 also indicated that Ford’s ability to spell in 1999 was the age equivalent of about a 10-year-old child and his ability to do mathematics was the age equivalent of about a 12-year-old child. R48/4303.

Dr. Mosman also gave the Bender Gestalt test, which indicates that Ford has some collateral damage in some areas of the brain, which could be an explanation for why Ford has learning disabilities. R48/4304. Ford is also seriously learning disabled and has been all his life. R48/4305. Dr. Mosman also gave the Denman Verbal Memory Scale, and Ford came up with scores that he is seriously disabled in that area. R48/4305. He had scores of three and scores of six. R48/4305. The explanation for Ford’s memory issues is that “he’s got some minimal brain damage.” R48/4306.

Dr. Mosman also administered the Tremel 18A and Tremel 18B- a connect-the-dot processing test, and Ford’s scores on that test showed he was impaired, meaning he has very slow processing speed. R48/4306. Dr. Mosman explained that based on his review of Ford’s DeSoto County public school records, Ford had school testing on IQ at age seven with a score of 65. R48/4309. However, Dr. Mosman explained that he did not think Ford was retarded, but that important areas of his brain functioning since age seven have been in the mentally retarded area. R48/4309. Ford was deeply

embarrassed, humiliated, wanted to avoid school, and was not getting adequate support at home from his parents. R48/4310. Ford was a kid with brain damage and functioning in the retarded area who did not get the understanding he needed for academic development from home or school, which resulted in him dropping out. R48/4310.

Even at the age of 65, Ford's impairments in mental functioning persist, and an evidentiary hearing was needed in the state circuit court to put forth expert testimony concerning Ford's current mental impairments. Neuropsychologist Dr. Hyman Eisenstein conducted neuropsychological testing of Ford on January 16 and 27, 2025, and he is available to testify to the results of his testing and evaluation of Ford. Due to the extreme time constraints caused by the arbitrary warrant timeframe set by the governor of Florida, the state circuit court could only consider the results of Dr. Eisenstein's preliminary evaluation of Ford on January 16th, and was not apprised of the full evaluation results because the court denied Ford's request for a stay.

In the January 18, 2025 Rule 3.851 motion, Ford alleged the following from Dr. Eisenstein's preliminary evaluation. Dr. Eisenstein administered the Delis Kaplan Executive Function System ("D-KEFS"), which is a neuropsychological test used to measure a variety of verbal and nonverbal executive functions for both children and adults. The D-KEFS consists of nine subtests, which includes the Trail Making Test. On the Visual Scanning portion of the Trail Making Test, Ford had a standard score of 4, which is the equivalent of an IQ of 70, placing Ford in the borderline range for

intellectual functioning for that section. On the Letter Sequencing portion of the Trail Making Test, Ford had a standard score of 3, which is the equivalent of an IQ of 65, placing Ford in the intellectually disabled range for that section.

As another example of Ford's current impairments, Dr. Eisenstein administered the Wide Range Achievement Test- 5th Edition, the current version of the same test administered by Dr. Mosman in 1999. The Wide Range Achievement Test measures an individual's ability to read, comprehend sentences, spell, and solve math problems. While some of Ford's results showed improvement, he still scored at grade equivalents corresponding with individuals in elementary or high school. Ford's word reading on the test corresponded with a grade equivalent to tenth grade. Ford's spelling on the test corresponded with a grade equivalent to third grade. Ford's solving of math problems on the test corresponded with a grade equivalent to fourth grade. Ford's sentence comprehension on the test corresponded with a grade equivalent to tenth grade.

After the filing of Ford's January 18, 2025 Rule 3.851 motion, Dr. Eisenstein was able to conduct further evaluation of Ford's mental impairments by evaluating him a second time, administering additional tests, and interviewing members of Ford's family. This additional testing provides both corroborating and completely new evidence than the trial court heard at Ford's 1999 trial. Based on his further evaluation, Dr. Eisenstein can opine to the fact that Ford's performance on the Shipley Institute of Living Scale, which measured Ford's language and abstraction skills, rendered results showing that his age-equivalent is far lower than his

chronological age. Ford scored the age-equivalent of 15.1 years on the vocabulary section and 12 years on the abstraction section. Ford's total on the test rendered an age-equivalent of 13.3 years. Ford is currently 65 years old.

Dr. Eisenstein is further available to opine that additional neuropsychological testing he was able to administer indicates Ford has organic brain impairment/ brain damage based on his impaired test performance. Ford performed in the moderately to severely impaired range on the Tactual Performance Test, a sub-test of the Halstead-Reitan Neuropsychological Test, which assesses the condition and functioning of the brain. Ford also performed in the moderately impaired range on the Wisconsin Card Sorting Test and the mildly to moderately impaired range on the Texas Functional Living Scale. All of these tests indicate that Ford has some level of organic brain impairment, and Dr. Eisenstein suggests that imaging be conducted of Ford's brain to confirm the brain damage he likely suffers.

Finally, Dr. Eisenstein is available to opine that Ford meets the diagnostic criteria for Autism Spectrum Disorder based on Dr. Eisenstein's evaluation of Ford and his interviews with Ford's family members. The diagnostic understanding of Autism has evolved over the past twenty-six years since Dr. Mosman first evaluated Ford in 1999. Ford's current diagnosis of Autism Spectrum Disorder therefore also qualifies as a new diagnosis that could have qualified as a claim of newly discovered evidence that the Florida courts could have considered if a stay had appropriately been granted. The Florida courts failed to do so.

At the time of the offense for which Ford has been convicted and sentenced to

death, his mental and developmental age was closer to that of a fourteen-year-old than a thirty-six-year-old. Ford's execution must therefore be barred as cruel and unusual punishment under the federal Eighth Amendment, federal Fourteenth Amendment, and *Roper v. Simmons*. Ford's execution is set for February 13, 2025, only **five days** away from the date of the filing of this application for a stay. Under our society's evolving standards of decency, his execution must not take place. Ford therefore respectfully requests that this Court grant this application and stay his execution scheduled in only five days' time.

CONCLUSION

"The fundamental requirement of due process is the opportunity to be heard **'at a meaningful time and in a meaningful manner.'**" *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965) (internal citation omitted) (emphasis added). Ford's meritorious issues cannot possibly be heard in a meaningful manner with only **five days** left until his execution. The important constitutional issues presented by Ford's case require a full appellate review that is not truncated by the exigencies of an imminent execution.

For the foregoing reasons, Ford respectfully requests that this Court grant his application for a stay of his February 13, 2025 execution to address the compelling constitutional questions in his case on the merits.

Respectfully submitted,

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February 8, 2025

Dated