In the Supreme Court of the United States

Case No. 24A_____

(CONNECTED CASE 24___)

PROSECUTING ATTORNEY, 21ST JUDICIAL CIRCUIT,
EX REL. MARCELLUS WILLIAMS,

Petitioners,

v.

STATE OF MISSOURI,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSOURI

APPLICATION FOR STAY OF EXECUTION

LATHROP GPM LLP
Matthew A. Jacober, Bar
Alana M. McMullin
Teresa E. Hurla

ASSISTANT PROSECUTING ATTORNEY
Jessica Hathaway

Counsel for Wesley Bell
St. Louis County Prosecuting Attorney

MIDWEST INNOCENCE PROJECT
Tricia J. Rojo Bushnell
Counsel of Record

INNOCENCE PROJECT
Adnan Sultan

BRYAN CAVE LEIGHTON PAISNER, LLP
Jonathan B. Potts
Charles A. Weiss

Counsel for Marcellus Williams, Relator

Counsel for Petitioners

Execution Scheduled for September 24, 2024, 6:00 p.m. Central

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APPLICATION FOR STAY OF EXECUTION

To Associate Justice Brett Kavanaugh of the Supreme Court of the United States, Petitioners Marcellus Williams and the Prosecuting Attorney of the 21st Judicial Circuit of Missouri respectfully request that the Court issue a stay of Williams' execution, which is currently scheduled for September 24, 2024 at 6:00 PM CST.

INTRODUCTION

Marcellus Williams is scheduled to be executed on Tuesday September 24, 2024, even though "the concerns surrounding this case … call into question the fundamental fairness of Williams' proceeding." (Pet. App. 232-33, Order, *Williams v. Vandergriff*, No. 24-2907 at 2-3 (8th Cir. Sep. 21, 2024) (Kelly, J., concurring)). The ever-present undercurrent of residual doubt as to Mr. Williams' innocence plagues this case, even as his execution looms. Mr. Williams' conviction and death sentence were secured through a trial riddled with constitutional errors, racism, and bad faith, much of which only came to light recently. This Court should stay his execution to review these issues, which go to systemic problems bigger than even Mr. Williams' case.

The St. Louis County Prosecuting Attorney, the very prosecution office that sought and secured his conviction and sentence of death, conducted a months-long review and independent investigation of the case. They reviewed the trial proceedings; they inspected the trial and post-conviction forensic evidence—including DNA testing results; they conducted their own DNA testing on evidence; and they

examined witnesses, under oath, at a post-conviction evidentiary hearing. Based on this information, they conceded that the members of their office who prosecuted Williams had violated his constitutional rights, including his due process rights pursuant to *Batson v. Kentucky*, 476 U.S. 79 (1986), and *Arizona v. Youngblood*, 488 U.S. 51 (1988).

The trial prosecutor testified—for the first time under an adversarial process—at the 2024 evidentiary hearing that "part of the reason" he struck a venireperson was because he was Black. (Pet. App. 179). No court that previously considered Williams' *Batson* claim—at trial or on appeal—had heard this evidence. The trial prosecutor also admitted that he repeatedly handled the murder weapon without gloves during pretrial witness preparation sessions, contaminating the evidence and likely removing any biological evidence the true murder may have left on it. (Pet. App.147-54).

The Prosecuting Attorney confessed these constitutional errors following an evidentiary hearing pursuant to Section 547.031 RSMo, a statute designed to empower local prosecutors to investigate and vacate wrongful convictions. *See* § 547.031(1) RSMo (2021) ("A prosecuting or circuit attorney, in the jurisdiction in which charges were filed, may file a motion to vacate or set aside the judgment at any time if he or she has information that the convicted person may be innocent or may have been erroneously convicted."). Yet, the hearing court and the Supreme Court of Missouri failed to give these confessions of constitutional error their due weight in

denying the Prosecuting Attorney's effort to vacate Mr. Williams' wrongful conviction and death sentence.

The issues in this case mirror those this Court granted in *Glossip v. Oklahoma*, No. 22-7466, which it will consider this term.[1] Like Richard Glossip, Marcellus Williams has been sentenced to death and comes before this Court, seeking relief, after the prosecuting authority who prosecuted him—and had previously defended that conviction—conceded constitutional error warranting relief based on previously unknown evidence developed during post-conviction proceedings. Additionally, like *Glossip*, the prosecuting authority not only conceded these errors, but also joins him in petitioning this Court both to stay his execution and grant his writ of certiorari. At minimum, due to the similarities with *Glossip*, this Court should enter a stay and hold this case for *Glossip's* disposition.

The Prosecuting Attorney is not the only source of authority who has expressed concern about the process afforded Williams at trial. Recently, in a concurring opinion affirming the denial of Williams' 60(b) motion on procedural grounds, Eighth Circuit Judge Jane Kelly nevertheless commented that she was "deeply troubled by many aspects of the proceeding that have taken place thus far…" (Pet. App. 235) and that the *Batson* issue "warrants further and careful examination." (Pet. App. 233).

This stay of execution is necessary for the same reasons it was necessary in *Glossip*—to address and correct the state court's failure to uphold this Court's precedents and to accept what the duly elected minister of justice for the prosecuting

[1] Oral arguments are scheduled for October 9, 2024.

jurisdiction recognizes that Marcellus William's conviction is a grave miscarriage of justice and to execute him would be an unthinkable, irreversible travesty. This Court can prevent and remedy this horrifying injustice.

STATEMENT OF THE CASE[2]

The St. Louis County Prosecuting Attorney, relying on his own independent investigation into Mr. Williams's case, filed a motion to set aside Mr. Williams' conviction or sentence under § 547.031, a statute enacted specifically to give prosecutors the power to correct a wrongful conviction. There was evidence that "raises the prospect that racial bias infected his trial from the start." (Pet. App. 233). The trial prosecutor used six of his nine peremptory strikes to eliminate Black jurors, resulting in just one Black member of the jury. And while there was a colloquy with the trial prosecutor after the defense raised a *Batson* challenge, the trial court did not entertain any further inquiry after the prosecutor provided a "race-neutral" reason. Mr. Williams's conviction and sentence were affirmed on direct appeal, including a rejection of a *Batson* challenge. *State v. Williams*, 97 S.W.3d 462 (Mo. banc 2003).

In 2004, the circuit court denied Williams's motion for post-conviction relief, which the Supreme Court of Missouri affirmed. *Williams v. State*, 168 S.W.3d 433 (Mo. banc 2005). The United States for the Eastern District of Missouri initially granted penalty phase relief on Mr. William's federal habeas corpus action for

[2] The case background is more fully set forth in the pending Petition for a Writ of Certiorari. Pet. at 3-15. This statement focuses on the events related specifically to the *Batson* claim and the facts necessary to address the requested stay.

ineffective assistance of counsel Mr. Williams's federal habeas corpus action, butin 2006,the Eighth Circuit the reversed and reinstated Mr. Williams' death sentence.. *Williams v. Roper*, 695 F.2d 825 (8th Cir. 2012).

A. DNA Testing.

In 2016, however, new evidence of Mr. Williams innocence emerged. One year prior, in 2015, Williams filed a habeas petition with the Supreme Court of Missouri to obtain DNA testing on the handle of the murder weapon, a knife left lodged in the victim's neck. The court appointed a special master to supervise DNA testing, but once the testing was complete, and without conducting a hearing or issuing findings, the special master sent the case back to the Supreme Court of Missouri. Without briefing or oral argument to develop a true understanding of what that evidence meant, the court summarily denied Williams's petition. The U.S. Supreme Court denied Williams's petition for certiorari. *Williams v. Steele*, 582 U.S. 937 (2017).

Three DNA experts independently reviewed the results of that test, however, and determined that Mr. Williams was excluded from the male DNA left behind on the murder weapon; he was not the individual who wielded the knife. Nonetheless, the Supreme Court of Missouri set an execution date for August 22, 2017.

On August 22, 2017, based upon the new DNA test results, then-Governor of Missouri Eric Greitens stayed Mr. Williams's execution date a mere hours before he was set to be executed. The Governor convened a Board of Inquiry ("BOI") to investigate Williams's claims, but the BOI was dissolved by Governor Mike Parson

on June 29, 2023, without issuing a report and recommendation as Governor Greitens had instructed them to do. It is believed the BOI never reached a decision.

B. The Prosecuting Attorney files a motion to vacate.

On January 26, 2024, after conducting an extensive review of the record and newly developed evidence, including the DNA evidence, St. Louis County Prosecuting Attorney Wesley Bell filed a motion to vacate Mr. Williams's conviction pursuant to Section 547.031, RSMo. The motion raised four claims, including: (1) new evidence suggests that Mr. Williams is actually innocent; (2) Mr. Williams's trial counsel was ineffective for failing to investigate and present evidence to impeach key trial witnesses; (3) Mr. Williams's trial counsel was ineffective for failing to present mitigation evidence during the sentencing phase; and (4) the prosecution improperly removed qualified jurors for racial reasons during jury selection in violation of *Batson v. Kentucky*.

On June 4, 2024, with the Prosecuting Attorney's motion to vacate still pending, the Supreme Court of Missouri set Williams's execution date for September 24, 2024. On June 5, 2024, the Attorney General filed a Motion to Dismiss the Motion to Vacate or Set Aside. The hearing court denied the Attorney General's motion to dismiss and scheduled an evidentiary hearing on the motion to vacate for August 21, 2024.

C. The Prosecuting Attorney and Williams reach a disposition, with support of the victim's family.

On August 20, 2024, on the eve of the scheduled evidentiary hearing, the Prosecuting Attorney received new DNA results that indicated that the DNA on the

knife handle was consistent with the DNA profiles of the assistant prosecuting attorney who tried Mr. Williams' case and a former investigator for the St. Louis County Prosecuting Attorney's Office. Both men had submitted affidavits claiming that they had handled the knife without gloves before trial, but until August 2024, there was no evidence to support their assertions. These DNA results confirmed that their handling of the knife without gloves contaminated this critical piece of evidence.

Based on these contaminating DNA results, Prosecutor Bell and Mr. Williams reached a consent agreement to resolve the Section 547.031, RSMo proceedings. Mr. Williams agreed to enter a plea to murder in the first degree pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970) ("*Alford* plea") with a sentence of life without the possibility of parole. The Prosecutor discussed this resolution with the victim's widower, Dr. Picus, who "indicated he does not support the application of the death penalty to Mr. Williams." (Pet. App. 110-11). Dr. Picus expressed these sentiments to the hearing court and all counsel. (Pet. App. 111). At this hearing, the Prosecuting Attorney also confessed that the "St. Louis County Prosecuting Attorney determined there were constitutional errors undermining our confidence in the judgement." (Pet. App. 110). The Attorney General objected to Williams' *Alford* plea and pending resentencing, but notably, not to the PA's concession of constitutional error.

Immediately following the August 21, 2024 proceedings, the Attorney General filed a Petition for Writ of Prohibition, or in the Alternative, Mandamus to the Missouri Supreme Court. The Supreme Court of Missouri granted a preliminary writ on August 21, 2024, and on August 22, 2024, the hearing court vacated the consent

judgment and set an evidentiary hearing for August 28, 2024. On August 25, 2024, the Prosecuting Attorney filed a motion for leave to amend the motion to vacate to advance additional claims. The court granted leave to amend the motion to advance a claim of bad-faith evidence destruction under *Arizona v. Youngblood,* 488 U.S. 51 (1998).

D. New evidence emerges in the August 28, 2024 evidentiary hearing.

On August 28, 2024, a hearing on the motion to vacate was held. The Prosecuting Attorney was limited to two hours of time to support its motion, while Mr. Williams and the Attorney General were also given two hours each.

At the hearing, the trial prosecutor was placed under oath for and questioned under an adversarial process for the first time about his process during Mr. Williams' trial. It was only then, when required to answer questions from counsel about his actions, that he admitted that "part of the reason" he struck Venireman 64, a Black juror, was because he was a "young, Black man with glasses" like Mr. Williams. (App. 177-78). Although the fact they were both "young, Black men" was not "necessarily the full reason", (App.178), for his peremptory strike, he thought they looked like "brothers." (App. 179).

The trial prosecutor also testified that he took notes during voir dire but has no idea what happened to them. (Pet. App. 184). Although the trial prosecutor's notes from pre-trial and trial were maintained in the file, there are inexplicably no notes from voir dire. He also acknowledged that a judge in another case he had tried found

that he failed to provide race-neutral reasons for exercising peremptory strikes on three black jurors. (Pet. App. 184-85).

The trial prosecutor also revealed that he handled the murder weapon without gloves at least five times during witness preparation sessions prior to trial. (Pet. App. 147-54)). He justified his handling of the knife without gloves by claiming that, although he was not an eyewitness to the crime, he personally "knew" the murderer wore gloves. (Pet. App. 151), and that he believed the investigation was done and he could begin handling the knife just 10 days (or perhaps even earlier) after the crime was committed. (Pet. App. 160-61). All of this despite the fact that no one was charged in the case until 15 months later, despite his admission that he "always knew" that the defense might want to test the knife. (Pet. App. 141-42).

E. The Prosecuting Attorney confesses constitutional error.

Based upon the trial prosecutor's under oath admissions and the results of the office's lengthy review, at the close of the hearing the Prosecution informed the court that the "St. Louis Prosecuting Attorney's office has conceded the constitutional error of mishandling the evidence in the Marcellus Williams trial." (HT. 280, 11-13). It further asserted that "when all the evidence both in the file and as presented to the Court today, the motion to vacate is well taken. Clear and convincing evidence has been presented to the Court of numerous constitutional errors in the prosecution of Mr. Williams." (HT. 281, 10-15). The Prosecuting Attorney reiterated this confession of constitutional error warranting relief, in the Joint Proposed Findings of Facts and Conclusions of Law submitted to the court. (*See* Joint Proposed Findings of Fact and

Conclusions of Law, *Ex rel Marcellus Williams*, No. 2422-CC000422 (St. Louis Cnty. Cir. Ct., Mo.) at 38 ¶117 ("Finally, the Court notes that the St. Louis County Prosecuting Attorney's Office now concedes bad faith by the prosecutor…")).

F. Missouri Courts deny the motion to vacate.

On September 12, 2024, the hearing court issued a 24-page opinion denying the prosecutor's motion to vacate. The hearing court did not mention the prosecutor's confession of error and gave it no deference or weight in its decision.

The Prosecuting Attorney filed a Notice of Appeal on September 16, 2024. The Missouri Supreme Court issued an order on September 18 ordering Appellant's brief to be filed by September 21 at noon, and the Respondent's brief on September 22 at noon. Oral arguments were held on September 23 at 9am. On September 23, 2024, the Supreme Court of Missouri issued an opinion denying relief on all grounds. (Pet. App. 263).

REASONS FOR GRANTING THE STAY

To obtain a stay of execution pending the disposition of a petition for a writ of certiorari, the applicant must show: (1) a "reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari"; (2) a "fair prospect" that a majority of the Court will overturn the judgment below; and (3) a "likelihood that irreparable harm will result from the denial of a stay." *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010). Furthermore, in "close" cases, the Circuit Justice or the Court will balance the equities and weigh the relative harms to the applicant and the respondent. *Id.* Williams meets all criteria.

I. There is a Substantial Probability the Court Will Grant Certiorari Because this Case Presents the Same Question as that in *Glossip v. Oklahoma,* 22-7466, which the Court Granted Certiorari On.

This case mirrors one of the issues before this Court in *Glossip v. Oklahoma*, 22-7466.[3] That issue considers the amount of deference courts should give a prosecutor's considered judgment that a conviction should be vacated in light of state misconduct. In *Glossip*, also a capital case, the Oklahoma Attorney General conceded error before the Oklahoma Court of Criminal Appeals (OCCA) and asked that Glossip's conviction be reversed because the State had unconstitutionally suppressed exculpatory information and failed to correct false testimony. The Attorney General reached these conclusions after conducting an independent investigation post-conviction that uncovered the suppressed exculpatory information and false testimony. Despite the Attorney General's confessed constitutional errors, the OCCA denied the request. This Court granted certiorari to consider, among other issues, "whether due process of law requires reversal, where a capital conviction is so infected with errors that the State no longer seeks to defend it." *Id.*; *see also Escobar v. Texas*, 143 S.Ct. 557 (2023) (mem.) (remanding for further consideration in light of the confession of error by the State.). Mr. Williams' case compels the same review.

In Mr. Williams' case, the duly-elected St. Louis County Prosecuting Attorney—whose office prosecuted Mr. Williams and sought and secured his death sentence—undertook its own independent investigation, just like Oklahoma Attorney General did in Glossip's case. And like the Oklahoma Attorney General, based upon

[3] This Court will hear oral argument in *Glossip* on October 9, 2024—15 days after Mr. Williams is scheduled to be executed.

that investigation, the prosecutor conceded that his office had committed constitutional error in securing the defendant's conviction and death sentence. The Prosecuting Attorney stands now before this Court and also joins the petition of writ of certiorari and motion for stay of execution. In Williams' case, the prosecutor's office violated Williams' rights when its actions infected the jury selection with racial discrimination and destroyed notes related to the voir dire process. These concessions, made by the office responsible for ensuring "justice shall be done" in the County of St. Louis are supported by the record. The state courts should have considered those explicit concessions.

II. There Is a More than a "Fair" Prospect of Reversal.

There is also a substantial likelihood that the Court will overturn the Supreme Court of Missouri's decision. As this Court has long understood, "[t]he considered judgment of the law enforcement officers that reversible error has been committed is entitled to great weight." *Young v. United States*, 315 U.S. 257, 258 (1942); *see also Sibron v. New York*, 392 U.S. 40, 58 (1968). The Missouri legislature passed § 547.031 RSMo[4] to provide local prosecutors a tool to correct wrongful convictions, however, in

[4] Notably, the Missouri legislature passed this law at the behest of the Missouri Supreme Court's opinion in the case of Lamar Johnson, whose wrongful conviction a prosecutor sought to overturn by filling an untimely motion for new trial. *See State v. Johnson*, 617 S.W.3d 439, 446(Mo.2021) (Draper, J., concurring)("Unless and until the legislature adopts a law authorizing a circuit or prosecuting attorney to file a motion for new trial upon discovery of evidence indicating a wrongful conviction" Missouri prosecutors have no authority to fulfill their duty to correct an injustice). Once passed, however, the state court now seeks ignore a prosecutor's claim and the process provided under the statute. This is sadly not the first time the Missouri Supreme Court has rebuffed its duties under the law. *See Kevin Johnson v. Missouri*, 598 U.S. ___ (20222), No. 22A463, (Jackson, J. and Sotomayor, J., dissenting) ("The Missouri Supreme Court turned this straightforward procedural statute on its head" when it reached a decision on a prosecutor's motion to vacate without a hearing. … this reading of

the hearing court's decision to deny the Prosecuting Attorney's motion to vacate, they gave no discernible weight to the Prosecuting Attorney's concession following an in-depth investigation and evidentiary hearing where new evidence of constitutional violations emerged. As set forth in the Petition for Writ of Certiorari, there is extensive evidence supporting the Prosecuting Attorney's decision to confess error. Yet, the courts ignored the vast majority of the evidence cited by the Prosecuting Attorney and either offered no deference (trial court) or paid lip service to deference (the Supreme Court of Missouri) without acknowledging the gravity of the confession.

One of the underlying constitutional errors the Prosecuting Attorney confessed is also a stain this Court seeks to rid from the judicial process: racial bias. *Pena-Rodriguez v. Colorado,* 580 U.S. 206, 224 (2017) ("Racial bias [is] a familiar and recurring evil that, **if left unaddressed**, would risk systemic injury to the administration of justice.") (emphasis added).

"Permitting racial prejudice in the jury system damages both the fact and the perception of the jury's role as a vital check against the wrongful exercise of power by the State." *Id.* Furthermore, the infiltration of racial animus into a criminal trial "poisons public confidence" in the judicial process. *Davis* v. *Ayala*, 576 U. S. 257, 285 (2015).

The trial prosecutor laid bare his "racial prejudice" when he testified, for the first time subject to an adversarial process, about his jury selection in this case at the

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§547.031 was so fundamentally flawed, and so at odds with basic due process principles, that Johnson was likely to succeed in establishing that the procedures afforded in connection with the §547.031 motion amounted to a Fourteenth Amendment violation.")

August 28, 2024 evidentiary hearing; he finally stated his true reasons for striking a Black venireperson. In addition to declaring that Mr. Williams and the venireperson "looked like they were brothers,"[5] (Pet. App. 179), he admitted that "part of the reason" he struck the venireperson was because he was a young Black man with glasses (Pet. App. 177-78), and that the fact that both Mr. Williams and the venireperson were young, Black men was "not necessarily the full reason" (i.e., but it was part of the reason) he used excluded the venireperson. (Pet. App. 179). The Supreme Court of Missouri attempted to whitewash this damning testimony, asserting that the Prosecuting Attorney "mischaracterized" the testimony and claiming that the trial prosecutor only "stated that 'part of the reason' he struck that particular venireperson was ***because the venireperson looked similar***, had the same glasses, and the same 'piercing eyes' as Williams." (App. __) (emphasis added). In short, the court skipped over the racially motivated aspect entirely. This was error that will result in an execution tomorrow if this Court does not intervene.

The trial prosecutor's admitted race-based reasons for striking venirepersons was corroborated by the sheer number of peremptory challenges used against the few black members of the venire. *See Flowers v. Mississippi*, 588 U.S. 284, 288 (2019) (it was a "critical fact" was that "the State exercised peremptory strikes against five of

[5] Since Mr. Williams is Black, the only way he and the venireperson could look like brothers who "have the same mother" and "have the same father," as the trial prosecutor insisted he meant, (Pet. App. 179), is with an acknowledgement that both men were Black. It follows then, that if the reason the trial prosecutor struck the venireperson because he looked like Mr. Williams' brother, the prosecutor struck him because he was Black. This obvious conclusion is supported by the prosecutor's other statements related to race during his testimony.

the six black prospective jurors"). "Simple math shows … the number of peremptory strikes available to the prosecutor exceeded the number of black prospective jurors." *Flowers*, 588 U.S. at 296. Here, the prosecution had nine peremptory strikes, which it exercised on six of seven black prospective jurors. (TT. 1568, 1569-70). Even the trial prosecutor had trouble believing that he had exercised peremptory strikes on this many black jurors, minimizing the reality and insisting that he only struck three instead of six. (Pet. App. 168-69).

Indeed, the number of Black prospective jurors stricken by the prosecution via peremptory strikes—six of seven, or 86%— speaks for itself. *See Miller-El v. Dretke*, 545 U.S. 231, 241 (2005) ("The prosecutors used their peremptory strikes to exclude 91% of the eligible African-American venire members…. Happenstance is unlikely to produce this disparity."). There were 30 eligible members of the venire at that point, consisting of seven Black members and 23 non-Black members. This means that the prosecution eliminated 86% (6/7) of Black prospective jurors with peremptory strikes, and only 13% (3/23) of non-Black prospective jurors with peremptory strikes. *Cf. Miller-El*, 545 U.S. at 266 ("By the time a jury was chosen, the State had peremptorily challenged 12% of the qualified nonblack panel members, but eliminated 91% of the black ones.").

After reviewing the totality of Mr. Williams' case and the evidence against him (or lack thereof), Eighth Circuit Court of Appeals Judge Kelly noted that "the concerns surrounding this case … call into question the fundamental fairness of Williams' proceedings." (Pet. App. 232-33). She was "deeply troubled by many aspects

of the proceedings that have taken place thus far…." (Pet. App. 235) and believed that "but-for the procedural bars," the *Batson* evidence "warrants further and careful examination." (Pet. App. 233) (citing *Buck v. Davis*, 580 U.S. 100, 124 (2017)). No such procedural bars preventing "further and careful examination" exist here.

There was extensive evidence of racial bias, which led the Prosecuting Attorney to confess error. That evidence, and the confession, was disregarded by the Missouri courts. Accordingly, this Court should intervene.

III. Williams Is at Risk of Irreparable Harm.

The risk of irreparable harm is self-apparent. "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.

As Judge Kelly in the Eighth Circuit noted:

> The threat of irreparable harm to Williams, in contrast, is "necessarily present." *See Wainwright v. Booker*, 473 U.S. 935, 935 n.1 (1985) (Powell, J., concurring) ("The [] requirement [] that irreparable harm will result if a stay is not granted [] is necessarily present in capital cases."). The harshest punishment available in our criminal justice system is at stake here. *Gregg v. Georgia*, 428 U.S. 227, 230 (1976) (Brennan, J., dissenting) ("Death is [] an unusually severe punishment, unusual in its pain, in its finality, and in its enormity[.]"). And I am not convinced that proceeding forthwith properly accounts for the real threat of irreparable harm.

(Pet. App. 235).

IV. The Balance of Equities Weighs in Favor of a Stay of Execution.

The balance of the equities also weighs in Williams' favor. Death is not only irreversible, but the State's position is fractured. (Pet. App. 235) ("These circumstances do not portray a unified State interest."). As described, the St. Louis County Prosecuting Attorney sought to *vacate* Williams' conviction and death sentence on multiple grounds. The Missouri Attorney General, however, opposed that relief.

The St. Louis County Prosecuting Attorney, with the approval of the victim's family, negotiated an *Alford* plea for Williams to accept a life-without-parole sentence in lieu of the looming execution. (Pet. App. 104-129). The Missouri Attorney General and the Supreme Court of Missouri blocked that plea deal.

Here, the St. Louis County Prosecuting Attorney's office, representing not only the interests of St. Louis County but also the State of Missouri, certainly will suffer no harm. That office filed the motion to vacate and initiated proceedings on behalf of Mr. Williams to correct the constitutional violations underpinning his conviction and sentence, including this *Batson* violation. After the circuit court denied the motion to vacate, the Prosecuting Attorney appealed to the Missouri Supreme Court. The office seeks to prevent Mr. Williams from suffering the irreparable injury of death. After presenting the motion to vacate and the supporting evidence at the August 28, 2024 hearing, the Prosecuting Attorney's office, representing the community from which this case originated, still acknowledges the constitutional error the office committed in 2001 in striking Black jurors on account of their race and seeks to correct Mr. Williams' wrongful conviction and sentence. A stay of execution will give time for that

evidence, which the prosecutor wants heard, to be reviewed.

More importantly, there is no harm to the family of the victim, Ms. Gayle, and the Missouri Attorney General cannot claim to have a legitimate interest in serving their interests by seeking Mr. Williams' execution. As the family has expressed to the circuit court, to the St. Louis County Prosecuting Attorney's office, to Mr. Williams' counsel, and to the Missouri Attorney General, they do not want Mr. Williams' execution to be carried out. (Pet. App. 110-111, 125). They expressed a wish for Mr. Williams to be sentenced to life in prison without the possibility of parole and when the St. Louis County Prosecuting Attorney and Mr. Williams reached an agreement for that to happen, expressed satisfaction with that result. (*Id.*) Ms. Gayle's family bears no harm if this Court grants a stay of execution because they do not want an execution at all.

CONCLUSION

Accordingly, the Court should also grant Marcellus Williams a stay of execution pending disposition of the petition for a writ of certiorari and, if granted, pending a disposition on the merits.

Dated: September 23, 2024

Respectfully submitted,

CHARLES A. WEISS
JONATHAN B. POTTS
BRYAN CAVE LEIGHTON PAISNER LLP
211 N. Broadway
Suite 3600
St. Louis, MO 63102
(314) 259-2000
caweiss@bryancave.com
jonathan.potts@bclplaw.com

TRICIA J. ROJO BUSHNELL*
MIDWEST INNOCENCE PROJECT
300 East 39th Street
Kansas City, MO 64111
(816) 931-4929
trojobushnell@themip.org

ADNAN SULTAN
INNOCENCE PROJECT, INC.
40 Worth Street, Suite 701
New York, NY 10013
(212) 364-5340
asultan@innocenceproject.org

Counsel for Marcellus Williams

MATTHEW A. JACOBER
LATHROP GPM LLP
The Plaza at Clayton
190 Carondelet Plaza, Suite 1400
Clayton, MO 63105
(314) 613-2800
matthew.jacober@lathropgpm.com

ALANA M. MCMULLIN
TERESA E. HURLA
LATHROP GPM LLP
2345 Grand Blvd., Suite 2200
Kansas City, MO 64108
(816)292-2000
alana.mcmullin@lathropgpm.com
teresa.hurla@lathropgpm.com

JESSICA HATHAWAY
ASSISTANT PROSECUTING ATTORNEY
OFFICE OF THE ST. LOUIS COUNTY PROSECUTING ATTORNEY
100 South Central Avenue 2nd Floor
Clayton, MO 63105
(314) 615-2600
Jhathaway@stlouiscountymo.gov

Counsel for the St. Louis County Prosecuting Attorney

Counsel for Petitioners

***** Counsel of Record, Member of the Bar of the Supreme Court