UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PANAMA CITY DIVISION

KAYLE BARRINGTON BATES
Plaintiff,

v.

RON DeSANTIS, Governor,
in his official capacity.

_____/

CASE NO. 5:25-cv-192

EMERGENCY
INJUNCTION SOUGHT

EXECUTION OF STATE
DEATH SENTENCE SET:
AUGUST 19, 2025 @ 6:00 P.M.

MEMORANDUM IN SUPPORT OF 42 U.S.C. § 1983 COMPLAINT

I. Introduction

Plaintiff Kayle Barrington Bates, a death-sentenced Florida prisoner with a scheduled execution date of August 19, 2025, filed a 42 U.S.C. § 1983 complaint in this Court, seeking emergency declaratory and injunctive relief preventing his execution from proceeding. This is Mr. Bates' memorandum in support of the complaint.

Although the most recent data from the United States Department of Justice shows that less than 41% of homicide victims are white,[1] since the implementation

[1] Another recent study memorialized by the Council on Criminal Justice found that "[t]he rate of homicide victimization for Black males was more than eight times higher than for White males" and "Black female rates were four times higher than rates for White females[.]" Council on Criminal Justice, *Trends in Homicide: What You Need to Know* (Dec. 2023), available at https://counciloncj.org/homicide-trends-report/ (last visited July 27, 2025).

of the modern death penalty in 1976, over three-quarters of executions in the United States (76%) have been of defendants whose crimes had white victims. *Compare* Bureau of Justice Statistics, *Homicide Victimization in the United States, 2023*, available at https://bjs.ojp.gov/document/hvus23.pdf (last visited July 19, 2025), *with* Death Penalty Policy Project, *Surge in U.S. Executions Exhibits Huge White-Victim Preference*, available at https://dppolicy.substack.com/p/surge-in-us-executions-exhibits-huge (last visited July 21, 2025).[2]

Florida is markedly worse than this already-disparate statistic. Of the 114 executions that have taken place since capital punishment was reinstated in 1976, only 14 did not involve a white victim. In other words, nearly 88% of Florida's modern executions have been for cases with white victims. **Of the executions that have occurred since Governor Ron DeSantis took office, over 94% have been for white victims**. And of the execution warrants signed by Governor DeSantis, the number rises to 95%. *See* Florida Department of Corrections, *Execution List: 1976 – Present*, available at https://www.fdc.myflorida.com/institutions/death-row/execution-list-1976-present (last visited July 20, 2025).[3] These results are even

[2] Calculations in this pleading have been updated to reflect executions postdating June 30, 2025.

[3] In addition to Mr. Bates' case, white victims were also present in the cases of James Dailey, whose 2019 execution date was stayed; and Edward Zakrzewski, whose execution is scheduled for July 31, 2025.

more striking when the cases with non-white victims are examined. Of the 14 Florida executions since 1976 that did not involve a white victim, only two had a white defendant. Put differently, less than 2% of these executions were for white individuals who killed non-white individuals—and **0% were for a white person's killing of a Black person**.

Florida's current prioritization of white lives cannot be viewed independently of its devaluation of Black lives. Nationally, a Black defendant in the United States is well over ten times more likely to be executed when the victim is white than when the victim is Black. A Black defendant is more than twice as likely as a white defendant to be executed for killing a white victim. And, conversely, white defendants are over two-and-a-half times *less* likely to be executed for killing a Black victim than a white victim. *See* Death Penalty Policy Project, *Surge in U.S. Executions Exhibits Huge White-Victim Preference*, available at https://dppolicy.substack.com/p/surge-in-us-executions-exhibits-huge (last visited July 21, 2025).[4] When demographics are compared for the 1,633 individuals who have been executed since 1976, it demonstrates that **a Black death-sentenced**

[4] These calculations do not account for empirically significant intersectional factors, including gender and religion (*i.e.*, a Black Muslim man convicted of killing a white Christian woman); nor do they consider the impact of the jury's racial composition (*i.e.*, a Black defendant who is tried before an all-white jury) on the underlying conviction or death sentence.

individual is approximately fifteen times more likely to be executed for killing a white person than a white defendant with exclusively Black victims.[5] *See* Death Penalty Information Center, *Searchable Execution Database*, available at https://deathpenaltyinfo.org/facts-and-research/data/executions (last visited July 21, 2025). **In Florida, this calculation cannot even be performed, because in the history of the modern death penalty, no white defendant solely convicted of killing a Black victim has ever been executed**.

Taken together, the numbers unequivocally demonstrate that the preference for executing those who have killed white victims is inextricably interwoven with a bias toward executing Black individuals—particularly in Florida. If this result is not due to discrimination on the basis of race, it is due to a constitutionally impermissible degree of arbitrariness on the basis of race. *See Furman v. Georgia*, 408 U.S. 238, 249 (1972) ("the basic theme of equal protection is implicit in 'cruel and unusual' punishments [and a] penalty…should be considered 'unusually' imposed if it is administered arbitrarily or discriminatorily.") (quotation marks omitted). For the reasons below and in Mr. Bates' complaint and accompanying motion for a stay of execution, this Court should (1) grant a preliminary injunction prohibiting Defendant

[5] The disparity is even higher when the victim is a white female as opposed to a Black female. Conversely, the only time modern Florida executions have occurred for the killing of exclusively Black male victims is when the defendant was also a Black male. *Id*.

DeSantis, who is sued in his official capacity, from executing him until this Court has had the opportunity to meaningfully consider his federal constitutional arguments; (2) declare that Defendant DeSantis violated Mr. Bates' federal rights to equal protection and the right to be free from cruel and unusual punishment during the execution warrant selection process; and (3) grant a permanent injunction barring Defendant DeSantis from executing Mr. Bates until the execution warrant selection process is no longer infected with racial discrimination and arbitrariness, and comports with the United States Constitution.

II. § 1983 is the appropriate vehicle to litigate this deprivation of Mr. Bates' constitutional rights

Under Florida's death penalty scheme, the execution warrant selection process is solely within the purview of the Governor. Pursuant to Fla. Stat. 922.052:

> (2)(a) The clerk of the Florida Supreme Court shall inform the Governor in writing certifying that a person convicted and sentenced to death…has:
>
> 1. Completed such person's direct appeal and initial postconviction proceeding in state court and habeas corpus proceeding and appeal therefrom in federal court; or
>
> 2. Allowed the time permitted for filing a habeas corpus petition in federal court to expire.
>
> (2)(b) Within 30 days after receiving the letter of certification from the clerk of the Florida Supreme Court, the Governor shall issue a warrant for execution if the executive clemency process has

> concluded, directing the warden to execute the sentence within 180 days, at a time designated by the warrant.
>
> (2)(c) If, in the Governor's sole discretion, the clerk of the Florida Supreme Court has not complied with the provisions of paragraph (a) with respect to any person sentenced to death, the Governor may sign a warrant of execution for such person where the executive clemency process has concluded.
>
> (3) The sentence shall not be executed until the Governor issues a warrant…directing the warden to execute the sentence at a time designated in the warrant.

Relatedly, the Governor is also responsible for initiating and directing the clemency process, which is indefinite and does not conclude until the Governor either grants clemency[6] or signs an execution warrant. *See* Rules of Executive Clemency, Rule 15(C) (timing of clemency investigation is designated by the Governor, who may reinvestigate cases investigated under a previous administration).[7]

Thus, the timing of a death warrant is dependent on the Governor's discretionary timing of clemency proceedings, which have no limitations other than what the Governor decides. Clemency proceedings and an execution warrant

[6] There has not been a capital clemency grant in over 40 years.

[7] *See also* Rule 4 (providing the Governor with power to "require at any time that an individual matter be treated under other provisions of these rules, whether or not the person satisfies the eligibility requirements of a particular rule."); Rule 15(F) (the Governor "may at any time" set a hearing or agenda regarding a case in which a death sentence has been imposed).

could immediately issue; or an individual could remain on death row for decades, never progressing any closer to an execution date. In other words, once an individual on Florida's death row has concluded their initial state and federal appeals or the time to do so has otherwise expired, their fate is at the whim of the Governor.

"[W]hen a State opts to act in a field where its action has significant discretionary elements, it must nonetheless act in accord with the dictates of the Constitution[.]" *Evitts v. Lucey*, 469 U.S. 387, 389 (1985). This includes death-warrant proceedings. *Tanzi v. State*, -- So. 3d -- 2025 WL 971568 *2 (Fla. 2025). And, where a State actor fails to do so and violates constitutional rights, a § 1983 challenge is appropriate. *Penhurst State School & Hosp. v. Halderman*, 465 U.S. 89, 102 (1984).

The Eleventh Circuit has made clear that jurisdiction to consider the merits of a challenge to a State's pre-execution procedure was appropriate in a § 1983, where that challenge would not constitute an attack on the underlying validity of the conviction or sentence. *See Barwick v. DeSantis*, 66 F.4th 896, 901-02 (11th Cir. 2023); *see also Valle v. Sec'y, Fla. Dept. of Corrs.*, 654 F.3d 1266, 1268 (11th Cir. 2011) (finding constitutional claim about pre-execution clemency procedures "may only be brought under 42 U.S.C. § 1983" because they are collateral to the underlying conviction and sentence); *Nance v. Ward*, 597 U.S. 159, 170 (2022)

(challenge to state method of execution would not fall under habeas even if it prevented plaintiff's execution until change in state law, because the execution was still within state's control and requested relief would thus not "necessarily" invalidate implementation of the death sentence); *Skinner v. Switzer*, 562 U.S. 521, 534 (2011) (suit for DNA testing was properly brought in § 1983 rather than habeas because even though results might prove exculpatory, that outcome is not inevitable and thus would not "necessarily imply" the invalidity of plaintiff's conviction).

Mr. Bates' § 1983 complaint does not challenge his underlying conviction or death sentence on the basis of allegations of systemic racism that *may* have had an impact. *See McCleskey v. Kemp*, 481 U.S. 279 (1987) (raising such a sentencing challenge). Rather, Mr. Bates raises a constitutional challenge to the manner of carrying out that sentence, by alleging a specific and measurable pattern of racial discrimination in the execution warrant selection process that has harmed Mr. Bates as compared to similarly situated individuals. *See, e.g.*, Lee Kovarsky, *The American Execution Queue*, 71 STAN. L. REV. 1163, 1166-67 (2019) (explaining that, in reality, death sentences and executions are "legally and temporally distinct events"). Unlike *McCleskey*, success in Mr. Bates' lawsuit would not necessarily invalidate his conviction or sentence. Thus, Mr. Bates' challenge is properly brought via § 1983.

III. Although federal law permits capital punishment, it may not be implemented in an unconstitutionally arbitrary or discriminatory way

The legal argument underpinning Mr. Bates' § 1983 lawsuit is very simple: there is an extreme racial disparity present in the selection of which of Florida's 267 individuals on death row—approximately half of whom have exhausted all appeals of right—are actually executed. And, although this disparity has been present since the reinstatement of capital punishment in 1976, it is significantly more egregious in the time period of Defendant DeSantis' governorship. If there is any conceivable explanation for this disparity, it is discrimination. If it is not discrimination, the execution process is unusual and arbitrary. *Furman*, 408 U.S. at 249. There is no other explanation for the statistical data. Thus, whatever the cause, Mr. Bates' pending execution—set in motion by Governor DeSantis—results from unconstitutional action and would violate the Eighth and Fourteenth Amendments.

Some historical context (which, although arising from criminal law and habeas, is nevertheless instructive in showing how the contours of the applicable Eighth and Fourteenth Amendment rights have been delineated) is warranted regarding the legal impact of race in the capital sentencing system to explain how § 1983 is the appropriate forum to vindicate Mr. Bates' present claim of racial discrimination.

A. *Furman v. Georgia* (1972): Although capital punishment is constitutional in theory, States' applications constituted cruel and unusual punishment

In *Furman*, the Supreme Court issued a per curiam opinion finding that "the imposition and carrying out of the death penalty in [cases in Georgia and Texas] constituted cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments." 408 U.S. at 239. Although each of the nine justices wrote a separate opinion, a common theme among those writing for the majority judgment was that the most severe penalty not be arbitrarily imposed.

Justice Douglas, for example, looked to the Original meaning of the Eighth Amendment and found evidence that:

> [T]he provision of the English Bill of Rights of 1689, from which the language of the Eighth Amendment was taken, was concerned primarily with selective or irregular application of harsh penalties and that *its aim was to forbid arbitrary and discriminatory penalties of a severe nature*[.]

Furman, 408 U.S. at 242 (Douglas, J., concurring in the judgment) (emphasis added). Explaining that "[o]ne cannot read [] history without realizing that the desire for equality was reflected in the ban against 'cruel and unusual punishments' contained in the Eighth Amendment[,]" Justice Douglas found that "[t]hose who wrote the Eighth Amendment knew what price their forebears had paid for a system based, not on equal justice, but on discrimination." *Id*. at 255. The words of the Amendment, "at least when read in light of the English proscription against selective

and irregular use of penalties, suggest that it is 'cruel and unusual to apply the death penalty—or any other penalty" in a way that is discriminatory against disenfranchised minorities. *Id*. at 245. He cited The President's Commission on Law Enforcement and Administration of Justice's finding that "there is evidence that the imposition of the death sentence *and the exercise of dispensing power by the courts and the executive* follow [racially] discriminatory patterns." *Id*. at 249 (emphasis added). He noted "increasing recognition of the fact that the basic theme of equal protection is implicit in 'cruel and unusual' punishments [and a] penalty…should be considered 'unusually' imposed if it is administered arbitrarily or discriminatorily." *Id*. (quotation marks omitted). This is the case even where discrimination results from discretion. *See, e.g.*, *id*. at 256 ("A law which in the overall view reaches [a racially discriminatory] result in practice has no more sanctity than a law which in terms provides the same"); *id*. at 256-57 (finding discretionary statutes "pregnant with discrimination and discrimination is an ingredient not compatible with the idea of equal protection of the laws that is implicit in the ban on 'cruel and unusual' punishments.")

Writings by the other justices in the majority complement Justice Douglas' perspective. Justice Brennan, who also looked to the "Framers' view of the [Eighth Amendment] Clause[,]" instructed that a State, "even as it punishes, must treat its members with respect for their intrinsic worth as human beings." *Furman*, 408 U.S.

at 268, 270 (Brennan, J., concurring in the judgment). This principle must be taken in tandem with "a second principle inherent in the Clause—that the State must not arbitrarily inflict a severe punishment." *Id*. at 274. Reaffirming Justice Douglas' view of the "English history of the Clause," Justice Brennan concluded that "the State does not respect human dignity when, without reason, it inflicts upon some people a severe punishment that it does not inflict upon others." *Id*.

Justice Marshall, who also traced the Original meaning of the Clause and its subsequent history, concluded that "a look at the bare statistics regarding executions is enough to betray much of the [racial] discrimination." *Id*. at 364 (Marshall, J., concurring in the judgment). In ruling that the death penalty violates the Eighth Amendment, Justice Marshall found that although "we have had to engage in a long and tedious journey [through constitutional history] . . . Yet, I firmly believe that we have not deviated in the slightest from the principles with which we began." *Id.* at 370-71. And Justice Stewart, while noting that "racial discrimination ha[d] not been proved," agreed that "if any basis can be discerned for the selection of [the] few to be sentenced to die, it is the constitutionally impermissible basis of race." *Id*. at 310 (Stewart, J., concurring in the judgment). Consequently, Justice Stewart "conclude[d] that the Eighth and Fourteenth Amendments cannot tolerate the infliction of a sentence of death under legal systems that permit this unique penalty to be [] wantonly and [] freakishly imposed." *Id*.

B. *Gregg v. Georgia* (1976): Capital punishment is constitutional where safeguards protect against arbitrary or prejudiced implementation

Four years after *Furman*, the Supreme Court held that the death penalty "does not invariably violate the Constitution." *Gregg v. Georgia*, 428 U.S. 153, 169 (1976). However, while holding that the death penalty was not unconstitutional *per se*, *id*. at 187, caveats existed. Most critically, *Gregg* retained *Furman*'s mandate that "where discretion is afforded a sentencing body on a matter so grave as the determination of whether a human life should be taken or spared, that discretion must be suitably directed and limited so as to minimize the risk of wholly arbitrary and capricious action." *Id*. at 188. In *Gregg*, this turned on the sufficiency of direction and limitations upon the trial sentencer. The Court found that although discretionary stages still existed in the capital sentencing proceedings (*e.g.*, a prosecutor's decision to charge; a jury's decision to convict of a lesser-included offense; or an executive commutation), this did not itself render the scheme unconstitutional under *Furman*. *Id*. at 199. However, in upholding Gregg's death sentence the Supreme Court neither held that Georgia's new procedures was the only constitutionally permissive capital sentencing scheme; nor that those procedures would necessarily prevent unconstitutionally arbitrary or discriminatory outcomes in other cases. *Id*. at 195, 198.

In finding Georgia's capital punishment process not to violate the Eighth and

Fourteenth Amendments, the majority opinion specifically noted that "[i]n addition to the conventional appellate process available in all criminal cases, provision is made for special expedited direct review" regarding proportionality and "[w]hether the sentence of death was imposed under the influence of passion, prejudice, or any other arbitrary factor" *Gregg*, 428 U.S. at 166-67; *see also id*. at 198, 204-05, 211. In aid of such review, the trial judge is required to prepare a separate report to the Supreme Court of Georgia which tests for arbitrariness—including whether race played a role in the trial. *Id*. at 167. A concurring opinion characterized this stage as "[a]n important aspect of the new Georgia legislative scheme." *Id*. at 211 (White, J., joined by Burger, C.J. and Rehnquist, J., concurring in the judgment).

> [I]t gave the Georgia Supreme Court the power and the obligation to perform precisely the task which three Justices of this Court, whose opinions were necessary to the result, performed in *Furman*: namely, the task of deciding whether *in fact* the death penalty was being administered…in a discriminatory, standardless, or rare fashion.

Id. at 222-23 (emphasis in original). The concurring justices found that "if the Georgia Supreme Court properly performs the task assigned to it…death sentences imposed for discriminatory reasons" would be set aside. *Id*. at 224. As to the potential of disparate outcomes based on discretion, the concurring justices ruled Gregg had simply made general assertions of a lack of faith in the system that were insufficient to warrant intervention. *Id*. at 225-26.

C. *McCleskey v. Kemp* (1987): Death sentence was not rendered unconstitutional based on disparate impact study

Over a decade after *Gregg*, the Supreme Court was asked to determine whether a complex statistical study (the Baldus study) which indicated "a risk that racial considerations enter into capital sentencing determinations" proved that the death sentence of a Black man convicted of killing a white police officer was unconstitutional under the Eighth and Fourteenth Amendments. *McCleskey v. Kemp*, 481 U.S. 279, 282-83 (1987). McCleskey argued that Georgia's capital punishment statute violated the Equal Protection Clause because the Baldus study indicated that "persons who murder whites are more likely to be sentenced to death as persons who murder blacks, and black murderers are more likely to be sentenced to death than white murderers." *Id*. at 291; *see also* Kovarsky, 71 STAN. L. REV. at 1166-67 (noting the differences between death sentences and executions). The Supreme Court described the contours of McCleskey's Equal Protection argument:

> In its broadest form, McCleskey's claim of discrimination extends to every actor in the Georgia capital sentencing process, from the prosecutor who sought the death penalty and the jury that imposed the sentence, to the State itself that enacted the capital punishment statute and allows it to remain in effect despite its allegedly discriminatory application.

Id. at 292.

In deciding the case against McCleskey, the Supreme Court first noted that to prevail on an Equal Protection Claim, a petitioner must prove that the

decisionmakers in his particular case acted with discriminatory purpose, and that there was a resultant discriminatory effect on him. *Id*. Noting that McCleskey had solely relied on the Baldus study results for this proof, the Court acknowledged that it "has accepted statistics as proof of intent to discriminate in certain limited contexts" where the statistical proof of disparities is "stark[.]" *Id*. at 293-94, 294 n.12 (citing *Gomillion v. Lightfoot*, 364 U.S. 339 (1960), and *Yick Wo v. Hopkins*, 118 U.S. 356 (1886)).

The Court noted that it has accepted multiple-regression analysis statistics to prove statutory violations under Title VII of the Civil Rights Act of 1964 and accepted statistical disparities as proof of an Equal Protection violation in the selection of a jury venire, "even when the statistical pattern does not approach [such stark] extremes." *McCleskey*, 481 U.S. at 293-94 (quoting *Arlington Heights Metropolitan Housing Dev. Corp.*, 429 U.S. 252, 266 (1977)). However, the Court found that Title VII and jury venire issues are "simply…not comparable" to the capital sentencing process. *Id*. at 294-95. The Court explained this differentiation. First, it found that the venire-selection and Title VII cases involved "statistics relate[d] to fewer entities, and fewer variables are relevant to the challenged decisions." *Id*. at 295. The Court clarified:

> We refer here…to the number of entities whose decisions necessarily are reflected in a statistical display such as the Baldus study. The decisions of a jury commission or of an employer over time are fairly attributable to the commission or the employer. Therefore, an

> unexplained statistical discrepancy can be said to indicate a consistent policy of the decisionmaker. The Baldus study seeks to deduce a state "policy" by studying the combined effects of the decisions of hundreds of juries that are unique in their composition. It is incomparably more difficult to deduce a consistent policy by studying the decisions of these many unique entities.

Id. Additionally, the Court relied on the fact that in Title VII and venire-selection contexts, unlike the Georgia capital sentencing scheme generally, "the decisionmaker has an opportunity to explain the statistical disparity." *Id*. at 296. And, finally, the Court stated that because "McCleskey challenges decisions at the heart of the State's criminal justice system" and "[b]ecause discretion is essential to the criminal justice process, we would demand exceptionally clear proof before we would infer that the discretion has been abused." *Id*. at 297. Consequently, the Court held that the Baldus study was not sufficient to support an inference of discriminatory purpose. *Id*.

The Court characterized McCleskey's Eighth Amendment claim as a contention "that the Georgia capital punishment is arbitrary and capricious in application, and therefore his sentence is excessive, because racial considerations may influence capital sentencing decisions in Georgia." *Id*. at 308. Ultimately, although the Court recognized that "[a]pparent disparities in sentencing are an inevitable part of our criminal justice system[,]" it found that "[i]n light of the safeguards designed to minimize racial bias in the process," the Baldus study did not demonstrate a constitutionally significant risk of racial bias affecting the Georgia

capital sentencing process." *Id*. at 312-13. In reaching this decision, the Court relied on its own "engage[ment] in 'unceasing efforts' to eradicate racial prejudice from our criminal justice system[,]" *id*. at 309 (citing *Batson v. Kentucky*, 476 U.S. 79, 85 (1986)); the importance of juror discretion in protecting those efforts, *id*. at 310-12; and the testimony of Professor David C. Baldus, that the Baldus study's "[s]tatistics at most show only a likelihood that a particular factor entered into some decisions." *Id*. at 308.

The majority admitted that its decision was informed by another consideration:

> McCleskey's claim, taken to its logical conclusion, throws into serious question the principles that underlie our entire criminal justice system….[I]f we accepted McCleskey's claim that racial bias has impermissibly tainted the capital sentencing decision, we could soon be faced with similar claims as to other types of penalty. Moreover, the claim that his sentence rests on the irrelevant factor of race easily could be extended to apply to claims based on unexplained discrepancies [of other types]….[T]here is no limiting principle to the type of challenge brought by McCleskey.

Id. at 314-19. A vociferous dissent characterized this influence on the Court's holding as "a fear of too much justice" that "does not justify complete abdication of our judicial role" in "preventing the arbitrary administration of punishment." *Id*. at 339 (Brennan, J., joined by Marshall, J., Blackmun, J., and Stevens, J., dissenting).

D. The role of 42 U.S.C. § 1983 in litigating racial discrimination

To establish a § 1983 cause of action, a plaintiff must show two things: (1) that they have been deprived of a federal constitutional or statutory right; and (2) the deprivation was caused by a person acting under color of state law. *Lindke v. Freed*, 601 U.S. 187, 194-95 (2024). "[I]n a § 1983 action brought against a state official, the statutory requirement of action 'under color of state law' and the 'state action' requirement of the Fourteenth Amendment are identical[.]" *Lugar v. Edmondson Oil Co., Inc.*, 457 U.S. 922, 929 (1982).

Initial pleadings under § 1983 "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). The Eleventh Circuit has specified that a plaintiff "allege some factual detail as a basis for a § 1983 claim." *Keating v. City of Miami*, 598 F.3d 753, 762-63 (11th Cir. 2010). What this means is that "a plaintiff must plead that each Government-official defendant, through the official's own individual actions, has violated the Constitution." *Id*. (quoting *Iqbal*, 556 U.S. at 676). The standard is not akin to a probability requirement but simply demands "more than a sheer possibility that a defendant has acted unlawfully." *Iqbal*, 556 U.S. at 678.

A § 1983 action challenging racial discrimination under the Equal Protection Clause requires the same showing as that for disparate treatment under Title VII.

Busby v. City of Orlando, 931 F.2d 764, 777 (11th Cir. 1991). While a prima facie case requires a showing of discriminatory motive, this can be established by inference where supported by stark evidence. *See id*. (prima facie case of discriminatory motive can be established by "proof of actions taken…from which we infer discriminatory animus because experience has proved that in the absence of any other explanation it is more likely than not that those actions were bottomed on impermissible considerations") (quotations omitted); *see also Nash v. Consolidated City of Jacksonville, Duval City, Fla.*, 895 Fed. Supp. 1536, 1541 (M.D. Fla. 1995) (evidence of disparate impact "is relevant to the question of intent since an invidious discriminatory purpose may often be inferred from the totality of the relevant facts"); *Washington v. Davis*, 426 U.S. 229, 242 (1976) ("Disproportionate impact is not irrelevant, but it is not the sole touchstone of an invidious racial discrimination.")

The burden-shifting analysis laid out in in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), applies to this framework. *Koch v. Rugg*, 221 F.3d 1283, 1297 (11th Cir. 2000); *see also Love-Lane v. Martin*, 355 F. 3d 766, 786 (4th Cir. 2004). Initially, the plaintiff is responsible for making a prima facie case by showing discriminatory intent, which can be presumed where data demonstrates such a stark disparity that there is no reasonable explanation other than race. *See In re Flint Water Cases*, 384 F. Supp. 3d at 846 (quoting *Arlington Heights*, 429 U.S.

at 366) ("[D]iscriminatory or disparate impact alone is sufficient in the rarest case where 'a clear pattern, unexplainable on grounds other than race, emerges from the effect of the state action.'")

When a prima facie case is made, the burden shifts to the defendant to provide a "legitimate, non-discriminatory reason for his actions." *Id*. at 1221.[8] If this is done, the plaintiff must then "demonstrate that the defendant's proffered reason was merely a pretext for unlawful discrimination, an obligation that 'merges with the [plaintiff's] ultimate burden of persuading the [factfinder] that [he] has been the victim of intentional discrimination." *Id*. (citing *Tex. Dep't of Cmty. Affairs v. Burdine*, 450 U.S. 248, 253 (1981)).

IV. Defendant DeSantis violated Mr. Bates' constitutional rights in the state-created warrant selection process

A. Mr. Bates' constitutional right to Equal Protection was violated when his execution warrant was signed by Defendant DeSantis as the result of racial discrimination in the warrant selection process

"Equal protection…emphasizes disparity in treatment by a State between classes of individuals whose situations are arguably indistinguishable." *Ross v. Moffitt*, 417 U.S. 600 (1974). Where this occurs, "[a]ny law which is

[8] In an analogous process within the criminal law context, where a prima facie case of discrimination is made by a statistical showing of disparate racial impact, the burden shifts to the State to demonstrate a race-neutral reason beyond simple protestations of good faith or carrying out official duties. *Batson v. Kentucky*, 476 U.S. 79, 92-94 (1986)

nondiscriminatory on its face may be applied in such a way as to violate the Equal Protection Clause of the Fourteenth Amendment." *Furman*, 408 U.S. at 257 (Douglas, J., concurring in the judgment). In particular, "'[r]acial and ethnic distinctions of any sort are inherently suspect,'…and antipathy toward them [is] deeply 'rooted in our Nation's constitutional and demographic history.'" *Students for Fair Admissions, Inc., v. President and Fellows of Harvard College*, 600 US. 181, 209 (2023) (quoting *Regents of University of California v. Bakke*, 438 U.S. 265, 291 (1978)). "The clear and central purpose of the Fourteenth Amendment was to eliminate **all** official state sources of invidious racial discrimination in the States." *Id*. at 206 (quoting *Loving v. Virginia*, 388 U.S. 1, 10 (1967)); *see also Palmore v. Sidoti*, 466 U.S. 429, 432 (1984) (the "core purpose" of the Equal Protection Clause is to "do away with all governmentally imposed discrimination based on race"); *Washington v. Davis*, 426 U.S. 229, 239 (1976) ("central purpose" of Equal Protection Clause is "the prevention of official conduct discriminating on the basis of race"); *McLaughlin v. Florida*, 379 U.S. 184, 192 (1964) (it is "historical fact" that the "central purpose of the Fourteenth Amendment was to eliminate racial discrimination.")

While "official action will not be held unconstitutional solely because it results in a racially disproportionate impact[,]" a plaintiff alleging an Equal Protection violation is not required "to prove that the challenged action rested solely

on racially discriminatory purposes." *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 265 (1977)

1. Mr. Bates' present execution warrant is the product of racial discrimination

Although rare, where a facially race-neutral State action demonstrates a conspicuous pattern of discrimination, a racial purpose may be presumed and the action subject to strict scrutiny. *See Miller v. Johnson*, 515 U.S. 900, 913-14 (1995). "Sometimes a clear pattern, unexplainable on grounds other than race, emerges from the effect of state action even when the governing legislation appears neutral on its face….The evidentiary inquiry is then relatively easy." *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 266 (1977).

Although facially race-neutral, the racial disparity in the Florida execution warrant selection process is so egregious, it constitutes "exceptionally clear proof" of discriminatory intent. *McCleskey*, 481 U.S. at 293, 297. In *McCleskey*, the raw numbers showed that defendants charged with killing white victims were approximately 11 times as likely to receive the death penalty as those killing Black victims. After taking account of 39 nonracial variables such as the aggravation level of the offense, defendants charged with killing white victims were 4.3 times more likely to receive a death sentence as defendants charged with killing Black victims. 481 U.S. at 287. And, Black defendants were 1.1 times more likely to receive a death sentence as other defendants. *Id*.

The present numbers nationally, as well as those in Florida and under the DeSantis' administration specifically, are even worse. Because variables that were of concern in the Baldus study have already been controlled, the raw numbers are reliable. Nationally, they show that a Black defendant convicted of killing a white victim is fifteen times more likely to be executed than a white defendant convicted of killing a Black victim. In Florida, under Governor DeSantis' administration, they show that **a defendant who kills a white victim is over fifteen times more likely to be executed than a defendant whose victims are not white**. And, because Governor DeSantis **has not executed a single white defendant for killing a non-white defendant**, the statistical disparity is incalculable. That incalculability, in and of itself, is an answer. These are the numbers reminiscent of *Gomillion* and *Yick Wo*—so stark as to allow for no other conclusion than discrimination.

When relying on comparative evidence of disparate treatment, "a plaintiff must show that he and his comparators are similarly situated in all material respects." *Lewis v. City of Union City, Georgia*, 918 F.3d 1213, 1218 (11th Cir. 2019). This requires less than a showing that the comparator evidence be "plain-old 'same or similar' nor 'nearly identical[.]'" *Id*. "[P]recisely what sort of similarity the 'in all material respects' standard entails will have to be worked out on a case-by-case basis, in the context of individual circumstances." *Id*. at 1227. However, it is established that the plaintiff "needn't prove…that [he] and [his] comparators are

identical save for their race[.]" *Id*. "[A] valid comparison will not turn on formal labels, but rather on substantive likenesses." *Id*. at 1228. For example, in the adverse employment action context, a similarly situated comparator will have engaged in the same basic conduct or misconduct as the plaintiff; will have been subject to the same rules as the plaintiff; will ordinarily but not invariably have been under the jurisdiction of the same supervisor as the plaintiff; and will share the plaintiff's employment or disciplinary history." *Id*. at 1227-28.

Regarding the Florida execution warrant selection process, not only is there stark racial disparity in the statistical data but also the variables that could account for this disparity are profoundly limited, and there is a sole decisionmaker. Thus, unlike the death penalty system as a whole challenged via habeas in *McCleskey*—discriminatory intent can be inferred from the comparative evidence in Mr. Bates' § 1983 action.

First, unlike *McCleskey*, no meaningful variables exist to explain the racial disparity, so Mr. Bates and "his comparators are similarly situated in all material respects." *Lewis*, 918 F.3d at 1218. Because the claim Mr. Bates raises centers around which individuals are actually being executed, as opposed to sentenced to death, variables from the Baldus study have already been accounted for. For instance, unlike the raw data in the Baldus study, the sample set in Mr. Bates' case is exclusively comprised of individuals already sentenced to death who have

exhausted the appeals process. This means that each individual in the sample has been convicted of an aggravated murder; a sentencing determination has been made that the aggravating factors outweigh any mitigating factors; and the convictions and sentences have been upheld by the state and federal courts. In other words, if Florida's capital sentencing scheme provides sufficient sentencing direction and limitations on discretion to be facially constitutional under *Furman*, everyone in Mr. Bates' sample size must be presumed to be equally "deathworthy" based on the nature of the crime and individual backgrounds of the defendants.

Further, retroactive Eighth Amendment categorical exemptions based on diminished personal moral culpability were implemented prior to Governor DeSantis taking office in 2019. *See Atkins v. Virginia*, 536 U.S. 304 (2002); *Roper v. Simmons*, 543 U.S. 551 (2005). And, although Florida eliminated proportionality review on direct appeal, *Lawrence v. State*, 308 So. 3d 544 (Fla. 2020), all currently warrant-eligible Florida defendants received at least one round of proportionality review. This, again, means that if Florida's sentencing and appellate procedures are facially sufficient to protect against the arbitrary and discriminatory infliction of capital punishment, each warrant-eligible individual Governor DeSantis has chosen from must be presumed to be equally "deathworthy" in terms of personal moral culpability.

Further still, Florida clemency proceedings—a state-imposed legal

prerequisite that must occur prior to the signing of a warrant-eligible individual's death warrant and the initiation and timing of which rest solely in the Governor's discretion—specifically examine whether a particular individual is deserving of mercy. This means that by the time an individual's death warrant is signed, the Governor has already had the opportunity to determine whether any particular circumstances of a given case warrant a discretionary exercise of mercy. As there has not been a single capital clemency grant in over 40 years, it must be presumed that Governor DeSantis views all warrant-eligible individuals in Florida as equally undeserving of mercy.

Second, the sole decisionmaker and absence of any rational process for determining who receives an execution warrant establishes that Governor DeSantis has intentionally chosen which individuals to execute. Those individuals—95% of whom were convicted of killing white victims and not a single white defendant who killed a person of color—clearly exhibits a discriminatory preference for white lives, even though the Governor has been on notice from the beginning of his term that Florida's capital punishment scheme is plagued with racism. *See, e.g.*, CBS News, *Gillum Vows to Suspend, Review Death Penalty in Florida* (Aug. 2, 2018), available at https://www.cbsnews.com/miami/news/gillum-vows-suspend-death-penalty-florida/ (last visited July 23, 2025) (Governor DeSantis' gubernatorial opponent discussing, during campaign, "racial bias when it comes to application of the death

penalty.") Thus, the selections Governor DeSantis makes for this grave outcome are deliberate, not predetermined by any other system. He is the only entity whose decision-making is challenged by this claim, and those decisions cannot fairly be said to be the product of anything other than racial discrimination even though the federal Constitution is clear that discretionary decisions may not be wielded for such a purpose. *See, e.g.*, *Batson v. Kentucky*, 476 U.S. 79 (1986) (peremptory strikes, generally viewed as discretionary, violate the Fourteenth Amendment when they are used to purposefully exclude members of a particular race).

2. Because Mr. Bates can establish a prima facie case of disparate racial treatment, the burden of proof shifts to Defendant

Because the circumstances of discrimination in this case—in which variables and decisionmakers are limited—are more akin to those related to jury-venire challenges than the capital sentencing process as a whole, *see McCleskey*, 481 U.S. at 294-95, Mr. Bates' claim should be evaluated under the disparate-impact framework used in *Batson*. *See Batson*, 476 U.S. at 89, 92-94 (where prima facie case of discrimination is made by a statistical showing of disparate racial impact, the burden shifts to the State to demonstrate a race-neutral reason beyond simple protestations of good faith or carrying out official duties).

However, should this Court find that Mr. Bates must satisfy the stricter standard under which *McCleskey* was decided—and under which he must show

discriminatory intent—he has done so. It is well established that "[t]he clear and central purpose of the Fourteenth Amendment was to eliminate all official state sources of invidious racial discrimination in the States." *See Miller v. Johnson*, 515 U.S. 900, 904 (1995) (quoting *Loving v. Virginia*, 388 U.S. 1, 11 (1967) (the Equal Protection Clause's "central mandate is racial neutrality in governmental decision-making."). And, as the Supreme Court recently held, "[e]liminating racial discrimination means eliminating *all* of it." *Students for Fair Admissions, Inc. vs. President and Fellows of Harvard College*, 600 U.S. 181, 206 (2023) (emphasis added). This includes discrimination in the execution of a death sentence, even if that sentence would be otherwise lawful. *See, e.g.*, *id*. at 272 n.9 ("In a zero-sum game…any sorting mechanism that takes race into account in any way…has discriminated based on race to the benefit of some races and the detriment of others."); *Miller*, 515 U.S. at 904 (*quoting Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989) ("This rule obtains with equal force regardless of 'the race of those burdened or benefited by a particular classification.")

Because Mr. Bates has established disparate racial treatment in the facially race-neutral process of his warrant selection, strict scrutiny applies. *See, e.g.*, *Washington v. Seattle Sch. Dist. No. 1*, 458 U.S. 457, 470 (1982) (finding unconstitutionality where a law did not facially discriminate on the basis of race but "use[d] the racial nature of an issue to define the governmental decisionmaking

structure, and thus imposes substantial and unique burdens on racial minorities"); *Students for Fair Admissions*, 600 U.S. at 206 ("Any exception to the Constitution's demand for equal protection must survive a daunting two-step examination known in our case as 'strict scrutiny.'") Strict scrutiny shifts the burden from Mr. Bates to Defendant to show that the discriminatory action (1) is used to further compelling government interests; and if so, (2) whether the use of race is narrowly tailored to that which is necessary to achieve the compelling interest. *See Students for Fair Admissions*, 600 U.S. at 206-07. Such a burden is exceptionally difficult to satisfy. *See id*. at 207. Defendant cannot do so here, because there can be no compelling interest that is satisfied by race-based killings, including prioritizing the execution of those who kill white versus non-white victims.

B. Mr. Bates' constitutional right to freedom from cruel and unusual punishment was violated when his execution warrant was arbitrarily signed by Defendant DeSantis

The statistics underlying Mr. Bates' claim for relief are so profound that if they are not the product of discrimination, they demonstrate arbitrariness and capriciousness in Florida's warrant-selection process. Mr. Bates' execution warrant is the result of an executive decision-making process that rendered his execution well over ten times more likely than a similarly situated individual whose victim was not white; and more than twice as likely to be executed than an otherwise similarly

situated white individual who killed a white person. The motive does not matter; the imminent punishment will be arbitrary in fact.

> *The generality of a law inflicting capital punishment is one thing. What may be said of the validity of a law on the books and what may be done with the law in its application do, or may, lead to quite different conclusions.*
>
> *It would seem to be incontestable that the death penalty inflicted on one defendant is "unusual" if it discriminates against him by reason of his race…or if it is imposed under a procedure that gives room for the play of such prejudices.*

Furman, 408 U.S. at 242 (Douglas, J., concurring in the judgment); *see also id*. at 256 ("A law which in the overall view reaches that result in practice has no more sanctity than a law which in terms provides the same.")

It is clear from the numbers in Mr. Bates' case that the "safeguards designed to minimize racial bias in the [capital sentencing] process" to which the Supreme Court referred in *McCleskey* are not sufficient when it comes to Florida executions. *McCleskey*, 481 U.S. at 308. A death sentence itself is not a good predictor of whether someone will actually be executed. *See* Kovarsky, *The American Execution Queue*, 71 STAN. L. REV. 1163, 1169 (2019); *see also id*. at 1163 ("Modern executions have become 'scarce' as jurisdictions simply cannot kill all of" their death-sentenced individuals). But race, apparently, is a remarkably strong predictor. Florida is vastly choosing to kill those who have committed crimes against white people—an egregiously racially disparate pattern that has been substantially

exacerbated during Defendant DeSantis' governorship. Thus, regardless of the root cause, there remains "a constitutionally significant risk of racial bias" that renders Mr. Bates' execution unconstitutional under the Eighth Amendment which Governor DeSantis is not only failing to remedy but knowingly perpetuating. *McCleskey*, 481 U.S. at 312-13. It is constitutionally impermissible for Mr. Bates to "live or die depending on the whim of one man[.]" *Furman*, 408 U.S. at 253 (Douglas, J., concurring in the judgment).

V. Defendant acted under color of state law

Defendant DeSantis acted under color of state law when he violated Mr. Bates' federal rights. "In order to be entitled to relief under § 1983, the plaintiff must show (a) that the defendant deprived him of a right secured to him by the Constitution or federal law and (b) that *the deprivation occurred under color of state law*." *Brown v. Miller*, 631 F.2d 408, 411 (5th Cir. 1980) (citations omitted) (emphasis added). "Color of law means 'pretense of law,' and it does not necessarily mean under authority of law." *United States v. Picklo*, 190 F. App'x 887, 888 (11th Cir. 2006) (quoting *United States v. Jones*, 207 F.2d 785, 786-87 (5th Cir. 1953)). Actions that fall into "under color of state law" need not be specifically authorized by law. *See, e.g.*, *Brown*, 631 F.2d at 411 ("Action taken 'under color of' state law is not limited only to that action taken by state officials pursuant to state law.") Even when a defendant acts illegally, it can still be an action under color of state law.

Picklo, 190 F. App'x at 888. "Determining whether a defendant acted under color of law involves an assessment of the totality of the circumstances." *Id.* (citing *Griffin v. City of Opa-Locka*, 261 F.3d 1295, 1303-04 (11th Cir. 2001)).

Defendant DeSantis violated Mr. Bates' federal rights, actually or constructively, through his official position. Governor Ron DeSantis is responsible for the selection, timing, and signing of death warrants in Florida. The state courts "have long recognized the Governor's authority and discretion when signing death warrants." *Tanzi v. State*, 407 So. 3d 385, 393 (Fla. 2025). They "have emphasized not only the executive's authority to exercise discretion, but also the *breadth* of that discretion." *Hutchinson v. State*, 2025 WL 1198037 at *5 (Fla. Apr. 25, 2025) (emphasis in original). Under Florida law, the Governor's freedom of choice regarding whose death warrant to sign is "absolute[.]" *Id*. (citing *Gore v. State*, 91 So. 3d 769, 780 (Fla. 2012)). The choice of which death-sentenced individuals are actually executed, then, rests solely with Governor DeSantis.

Mr. Bates has appropriately sued Defendant in this action in his official capacity. "When the suit is brought only against state officials, a question arises as to whether that suit is a suit against the State itself." *Penhurst State School & Hosp. v. Halderman*, 465 U.S. 89, 101 (1984). The Eleventh Amendment bars suits against state officials where the suit is, in essence, a suit against the State and not the officials, and the officials are only sued nominally. *Id.* However, the Supreme Court

has recognized time and again that there is "an important exception to this general rule: a suit challenging the constitutionality of a state official's action is not one against the State." *Id.* at 102. Likewise, a suit that challenges whether a state official's action violates an individual's constitutional rights is not one against the State. *See, e.g., Doe v. Round Valley Unified School Dist.*, 873 F. Supp. 2d 1124, 1130-31 (D. Ariz. 2012) ("Section 1983 provides no cause of action unless someone acting 'under color of law' violated a constitutional or federal statutory right.")

Defendant's actions were taken with and through the executive authority vested in him through his role as Governor, and those actions violated Mr. Bates' rights. Thus, Defendant DeSantis is sued in his official capacity and is appropriately named as a Defendant in this matter.

VI. Mr. Bates is entitled to injunctive relief

Injunctive relief is permissible and appropriate in this case. Mr. Bates seeks prospective injunctive relief and declaratory relief against Defendant DeSantis, a state official, for his violation of Mr. Bates' federal rights in the execution warrant selection process—which is a necessary precursor and indeed the triggering event under Florida law to carrying out Mr. Bates' death sentence. Mr. Bates asks that Defendant not be allowed to execute him based on constitutionally violative racial discrimination and arbitrariness.

VII. This Court should enter a preliminary and, ultimately, permanent injunction prohibiting Mr. Bates' execution

A stay of execution of a death sentence is a form of injunctive relief, with identical elements. *See Siegel v. LePore*, 234 F.3d 1163, 1176 (11th Cir. 2000) (announcing the elements for injunctive relief). A stay is warranted where four factors are satisfied: "(1) [the applicant] has a substantial likelihood of success on the merits; (2) he will suffer irreparable injury unless the injunction issues; (3) the stay would not substantially harm the other litigant; and (4) if issued, the injunction would not be adverse to the public interest." *Mann v. Palmer*, 713 F.3d 1306, 1310 (11th Cir. 2013) (quoting *Valle v. Singer*, 655 F.3d 1223, 1225 (11th Cir. 2011)); *see also Barwick v. Governor of Fla.*, 66 F.4th 896, 900 (11th Cir. 2023).

As detailed below, and in Mr. Bates' simultaneously filed motion for a stay of execution, Mr. Bates has proffered facts that satisfy each of these elements. This Court should stay Mr. Bates' scheduled August 19, 2025, execution pending the resolution of this action in the ordinary course, without the exigencies of a truncated death warrant.

A. This cause of action has a substantial likelihood of success

The Supreme Court has made crystal clear that "antipathy toward [racial and ethnic distinctions of any sort is] deeply 'rooted in our Nation's constitutional and demographic history.'" *Students for Fair Admissions, Inc., v. President and Fellows of Harvard College*, 600 US. 181, 209 (2023) (quoting *Regents of University of*

California v. Bakke, 438 U.S. 265, 291 (1978)). The Court has also reiterated that the primary purpose of the Fourteenth Amendment is "to eliminate **all** official state sources of invidious racial discrimination in the States." *Id*. at 206 (quoting *Loving v. Virginia*, 388 U.S. 1, 10 (1967)).

Here, the race discrimination is profound and clearly attributable to Defendant. Nearly 88% of Florida's modern executions have been for cases with white victims. Of the 14 Florida executions since 1976 that did not involve a white victim, only two had a white defendant. Put differently, less than 2% of these executions were for white individuals who killed non-white individuals—and 0% were for a white person's killing of a Black person. Although Defendant DeSantis has been on notice of the problems with Florida's vastly disparate implementation of capital punishment, rather than take any steps to remedy it, he instead greatly exacerbated that disparity. Of the executions that have occurred since he took office—each of which has been solely within his discretion in terms of selection and timing—over 94% have been for white victims. That number is even higher when pending executions are taken into account.

This preference for white lives cannot be disentangled from a bias toward executing Black defendants. A Black defendant in the United States is well over ten times more likely to be executed when the victim is white than when the victim is Black. A Black defendant is more than twice as likely as a white defendant to be

executed for killing a white victim. And, conversely, white defendants are over two-and-a-half times *less* likely to be executed for killing a Black victim than a white victim.

These numbers are so stark as to allow for no other conclusion than discrimination or arbitrariness, and there is a substantial likelihood that the courts will agree this manner of imposing executions is constitutionally prohibited. *See Furman*, 408 U.S. at 242 (Douglas, J., concurring in the judgment) ("It would seem to be incontestable that the death penalty is 'unusual' if it discriminates against him by reason of his race…or if it is imposed under a procedure that gives room for the play of such prejudices.").

B. Mr. Bates will suffer irreparable injury—death—if no injunction issues

The injury Mr. Bates faces is clear: he will be executed unless this Court issues an injunction, and that execution will occur as the result of "governmentally imposed discrimination based on race." *Palmore*, 466 U.S. at 432. Irreparable injury is presumptive under warrant. *See, e.g.*, *In re Holladay*, 331 F.3d 1169, 1177 (11th Cir. 2003) ("We consider the irreparability of the injury that petitioner will suffer in the absence of a stay to be self-evident"); *Ferguson v. Warden, Fla. State Prison*, 493 F. Appx 22, 26 (11th Cir. 2012) (Wilson, J., concurring) ("As a general rule, in the circumstance of an imminent execution, this court presumes the existence of

irreparable injury"); *see also Tanzi v. Sec'y, Fla. Dep't of Corr.*, No. 4:25-cv-144, ECF No. 24 at 8 n.4 (N.D. Fla. April 3, 2025).

C. An injunction would not harm Defendant

An injunction would not substantially harm Defendant, who is an arm of the State. While the State has a legitimate interest in the timely enforcement of valid criminal judgments, it does not have a legitimate interest in carrying out an execution that is the product of racial discrimination or a constitutionally impermissible degree of arbitrariness on the basis of race. This is particularly so where Defendant's own actions actively contributed to the unconstitutionality.

D. An injunction would not be adverse to the public interest

Granting an injunction would not be adverse to the public interest. Like the State, the public has a legitimate interest in the timely enforcement of valid criminal judgments. However, the public has an even stronger interest in "eliminat[ing] **all** official state sources of invidious racial discrimination in the States." *Students for Fair Admissions, Inc., v. President and Fellows of Harvard College*, 600 US. 181 at 206 (quoting *Loving v. Virginia*, 388 U.S. 1, 10 (1967)); *see also id*. ("Eliminating racial discrimination means eliminating *all* of it.").

Additionally, Mr. Bates has been on death row for over 40 years and has an exemplary disciplinary record. There is no risk of harm to the public from his

continued life while this Court meaningfully considers the issues presented by this memorandum and the underlying complaint.

E. An injunction would not result in undue delay

Additionally, although the question of delay is not an independent stay factor, it is worth noting that there would be no undue delay associated with staying the proceedings. *See Woods v. Warden*, 952 F.3d 1251 (11th Cir. 2020) (in the context of stays of execution, courts "must be mindful of…unjustified delay" in seeking a stay of execution). Mr. Bates has been on Florida's death row for over 40 years; his warrant was not signed until less than two weeks ago. Any brief delay that would result from a stay would be minimal in comparison. Further, this lawsuit is the result of Defendant's implementation of the execution warrant process in an unconstitutionally discriminatory manner, and the remedy is wholly within Defendant's control. To the extent there is any unwarranted delay, it is attributable to Defendant DeSantis, not Mr. Bates.

Conclusion

For the reasons above and in his accompanying complaint and motion for a stay of execution, Mr. Bates requests that this Court (1) grant a preliminary injunction prohibiting Defendant DeSantis from executing him until this Court has had the opportunity to meaningfully consider his federal constitutional arguments; (2) declare that Defendant DeSantis violated Mr. Bates' federal constitutional rights

to equal protection and to be free of cruel and unusual punishment during the execution warrant selection process; and (3) grant a permanent injunction barring Defendant DeSantis from executing Mr. Bates until the execution warrant selection process is no longer infected with racial discrimination and arbitrariness, and comports with the United States Constitution.

Respectfully submitted,

/s/ Christina Mathieson
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