

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

KENNETH FULTS)
Petitioner)

CASE NO. _____

BRUCE CHATMAN, Warden,)
Georgia Diagnostic Prison)

EXECUTION SCHEDULED
APRIL 12, 2016,
700 PM.

**APPLICATION FOR A STAY OF EXECUTION PENDING
DISPOSITION OF PETITION FOR WRIT OF HABEAS CORPUS**

**TO: THE HONORABLE CLARENCE THOMAS, ASSOCIATE
JUSTICE, UNITED STATES SUPREME COURT**

Petitioner **KENNETH EARL FULTS**, a death-sentenced prisoner in Georgia, respectfully requests that this Court grant a stay of execution in order to permit the disposition of his accompanying Petition for Writ of Habeas Corpus may be considered. Petitioner is presently scheduled to be executed on Tuesday, April 12, 2016.

JURISDICTION

Mr. Fults invokes this Court’s jurisdiction to stay his execution under 28 U.S.C. section 2101(f), and Rule 23 of the Rules of the Supreme Court of the United States.

REASONS FOR GRANTING STAY

For a Justice to grant a stay of execution, a petitioner must show: 1) irreparable injury if no stay is granted; 2) a “reasonable probability that (4) members of the Court will consider the issue [presented] sufficiently meritorious to grant certiorari,” *Graves v. Burnes*, 405 U.S. 1201 (1972) (Powell, Circuit Justice), or a reasonable probability that a plurality of the Court would grant relief on an original habeas petition; and 3) a likelihood of success on the merits. *See Barefoot v. Estelle*, 463 U.S. 880, 893 (1983); *see also Fare v. Michael C.*, 439 U.S. 1310 (1978) (Rehnquist, Circuit Justice). Petitioner meets these standards.

A. Irreparable Injury

On March 23, 2016, the Superior Court of Spalding County (“the Superior Court”) entered an order authorizing Mr. Fults’s execution within a seven-day window opening at noon on April 12, 2015, and closing at noon on April 19, 2016. Thus, a stay is necessary in order to prevent the irreparable injury of Mr. Fults being executed without having had his constitutional rights vindicated.

B. Probability That The Court Will Grant The Writ, and Likelihood of Success

On April 4, 2016, this Court granted Certiorari in *Pena-Rodriguez v. State of Colorado* (case no. 15-606). If this Court ultimately rules in favor of Mr. Pena-Rodriguez, that decision could be decisive to Mr. Fults's case. However, as Mr. Fults is currently scheduled to be executed on April 12, 2016, without this critical stay Mr. Fults would lose the benefit of a favorable ruling for Mr. Pena-Rodriguez.

As detailed in the accompanying Original Petition for writ of habeas corpus, the central issue in Mr. Fults's case and Mr. Rodriguez's case is the same: each man was denied a fair trial because one of the jurors's verdict was infected by racism. This Court will not reach in a decision in Mr. Pena-Rodriguez's case before April 12, 2016, when Mr. Fults is scheduled to be executed. Thus, a stay of execution is critical.

CONCLUSION

For the foregoing reasons, as well as all of those presented in the accompanying Petition for Writ of Habeas Corpus, Mr. Fults respectfully requests that this Court grant of temporary stay of execution until such time as his Petition is granted or until such time as the Court reaches a decision in Pena-Rodriguez v. Colorado.

Respectfully submitted this, the 8 day of April, 2016.

/s/ Lindsay N Bennett

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CERTIFICATE OF SERVICE

I hereby certify that on this date, I served by email notification and by first class mail, notice of such filing to the following attorney of record:

Sabrina D. Graham
Sr. Assistant Attorney
General 40 Capitol
Square, SW Atlanta,
Georgia 30334

Dated: This, the 8th day of April, 2016.

Lindsay N. Bennett
Lindsay Bennett
GA Bar No. (141641)