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APPEAL NO. 20-10873

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

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NATHANIEL WOODS,

Plaintiff-Appellant,

v.

COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS,  
WARDEN, HOLMAN CORRECTIONAL FACILITY, ATTORNEY GENERAL,  
STATE OF ALABAMA,

Defendant-Appellees.

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

Case No. 2:16-cv-01758-LSC

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EMERGENCY MOTION FOR LIMITED STAY OF EXECUTION UNDER  
28 U.S.C. § 2251 (A)(3)  
**EXECUTION SCHEDULED FOR MARCH 5, 2020 AT 6:00 P.M.**

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Alicia K. Haynes  
HAYNES & HAYNES, P.C.  
1600 Woodmere Drive  
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(205) 879-0377

**PETITIONER-APPELLANT'S CERTIFICATE OF INTERESTED PERSONS  
AND CORPORATE DISCLOSURE STATEMENT**

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Pursuant to Rule 26.1, Fed. R. App. Proc. and Eleventh Circuit Rule 26.1-1, the undersigned counsel of record for the Petitioner-Appellant Nathaniel Woods hereby certifies the following as a complete list of the trial judges, attorneys, persons, associations of persons, firms, partnerships, or corporations that have an interest in the outcome of this appeal (including subsidiaries, conglomerates, affiliates, parent corporations, and any publically held corporation that owns 10% or more of a party's stock), and other identifiable legal entities related to a party that have an interest in this case.

1. Briles, Rita – Trial counsel for Appellant;
2. Carroll, John – Counsel for Appellant in state post-conviction proceedings;
3. Collins, Michael – Victim;
4. Coogler, L. Scott – United States District Court Judge;
5. Davis, LaJuana – Counsel for Appellant in state post-conviction proceedings;
6. Dunn, Jefferson – Appellant; Commissioner, Dept. of Corrections;
7. King, Troy – Counsel for State in direct appeal and post-conviction proceedings and former Attorney General of Alabama;

8. LaCour Jr., Edmund G. – Counsel for State in federal habeas appellate proceedings and Alabama Solicitor General;
9. Lloyd, J.D. – Counsel for Appellant in federal habeas proceedings and § 1983 litigation;
10. Marks, Emily C. – United States District Judge;
11. Marshall, Steve – Appellant; Attorney General for the State of Alabama; counsel for State in federal habeas appellate proceedings and § 1983 litigation
12. Matthews, Robert – Counsel for Appellant in federal habeas appellate proceedings; McCammon, Shane – Counsel for Appellant;
13. Nail, Tommy – Trial Judge, Jefferson Circuit Court;
14. Roberts, Jasper B., Jr. – Counsel for State on direct appeal and Assistant Attorney General of Alabama;
15. Reiland, Stephanie E. – Assistant Attorney General and counsel for State in state post-conviction relief proceedings;
16. Shapiro, Marc R. – Counsel for Appellant;
17. Simpson, Lauren A. – Assistant Attorney General of Alabama; counsel for State in state post-conviction relief and federal habeas proceedings; counsel for Appellees in § 1983 litigation;
18. Stewart, Cynthia – Appellee; Warden, Holman Correctional Facility;

19. Strange, Luther – Counsel for State in state post-conviction relief proceedings;
20. Threatt, Glennon Fletcher, Jr. – Counsel for Appellant on direct appeal;
21. Umstead, Cynthia – Trial counsel for Appellant.

Pursuant to Fed. R. App. P. 26.1, counsel also makes the following disclosures:

1. No publically-traded company or corporation has an interest in the outcome of this case of appeal.

Respectfully submitted,

*/s/ Alicia K. Haynes*  
Alicia K. Haynes  
Attorney for Plaintiff-Appellant  
For A Limited Purpose

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**EMERGENCY MOTION FOR LIMITED STAY OF EXECUTION UNDER  
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This Court has discretion to stay Mr. Woods's execution for up to 90 days after the appointment of new federal habeas counsel. *See* 28 U.S.C. § 2251(a)(3);<sup>1</sup> *McFarland v. Scott*, 512 U.S. 849 (1994). “The federal habeas corpus statute grants any federal judge ‘before whom a habeas corpus proceeding is pending’ power to stay a state-court action ‘for any matter involved in the habeas corpus proceeding.’” *McFarland v. Scott*, 512 U.S. 849, 857 (1994). A federal court that would have jurisdiction to entertain a habeas corpus application regarding that sentence “may stay execution of the sentence of death, but such stay shall terminate not later than 90 days after counsel is appointed.” 28 U.S.C. § 2251(a)(3); *see Dailey v. Secretary*, No. 8:07-cv-1897, 2019 WL 5423314, at \*2 (M.D. Fla. Oct. 23, 2019) (In a case in which initial habeas proceedings had concluded, the district court “has jurisdiction to entertain habeas corpus applications” and thus may stay execution for up to 90 days after appointment of counsel under 28 U.S.C. § 2251(a)(3)”).

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<sup>1</sup> Section 2251(a)(3) applies. While section 2251(a)(1) specifies that a court may issue a stay only when “a habeas corpus is pending,” and section 2251(a)(2) clarifies that “a habeas corpus proceeding is not pending until the application is filed,” section 2251 (a)(3) in contrast allows for a ninety-day stay to issue after the appointment of counsel. 28 U.S.C. § 2251(a)(3).

As this Court has recognized, this statute “explicitly authoriz[es] [a federal] court to grant a stay to allow for appointment of counsel under § 3599 (a)(2).” *Bowles v. DeSantis*, 934 F.3d 1230, 1243 (11th Cir. 2019). This Court has the authority to appoint counsel under § 3599(a)(2). Jurisdiction to order a stay under § 2251(c)(3) also applies to this Court, because this Court will have authority to entertain a habeas corpus application regarding Mr. Woods’s sentence, and indeed will have sole authority to authorize a second-or-successive federal habeas petition if Mr. Woods files one with the assistance of new federal habeas counsel. A motion asking this Court to substitute new federal habeas counsel under § 3599(a)(2) is being filed simultaneously with the instant motion.

In cases like Mr. Woods’s where an execution date is set, the statutory right to quality legal representation has at times come into conflict with a State’s interest in carrying out a scheduled execution. The United States Supreme Court and other federal courts have held that the right to counsel trumps the State’s interest in a speedy execution. For example, in *McFarland*, the petitioner sought the appointment of counsel in federal court five days before his scheduled execution, having failed to secure a stay or counsel from the state courts, and the United States Supreme Court issued a stay after it was denied by the lower federal courts. 512 U.S. at 852. The “appointment [of counsel] would have been meaningless unless McFarland’s execution also was stayed.” *Id.* at 857. Likewise, in *Battaglia v. Stephens*, 824 F.3d

470 (5th Cir. 2016), applying McFarland in interpreting the mandate of § 3599, the Fifth Circuit reversed the district court’s denial of Battaglia’s motion for the appointment of counsel and granted him a stay of execution. *Battaglia*, 824 F.3d at 471. Battaglia had filed his motion twenty days before his scheduled execution, seeking counsel to investigate the possibility of a *Ford* claim that he was incompetent to be executed. *Id.* As explained more robustly in the Motion for Substitution of Counsel filed together with this Motion for Stay, these claims were brought before this Court as quickly as practicable after their discovery by clemency counsel.

Circuit courts have similarly upheld stays granted below, recognizing their necessity in making the sought appointment of counsel meaningful. *See, e.g., Gutierrez v. Davis*, Slip Op., No. 18-70028 (5th Cir. 2018) (concluding district court did not abuse its discretion by granting a stay at the time of appointment of counsel, which “serves the purpose of allowing counsel time to determine if an application for habeas corpus relief is appropriate”); *Ramirez v. Davis*, 675 F. App’x 478 (5th Cir. 2017) (“Reviewing the grant of stay for abuse of discretion, we find no reversible error on the part of the district court. Moreover, the district court did not lack jurisdiction under these circumstances to grant a stay.”).

## CONCLUSION AND PRAYER FOR RELIEF

Mr. Woods asks that the Court grant his motion, stay his execution, and grant any other relief that the Court may find just.

Respectfully Submitted,

*/s/ Alicia K. Haynes*  
Alicia K. Haynes (ASB-8327-e23a)  
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For Limited Purpose

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**CERTIFICATE OF COMPLIANCE**

I certify this response complies with the length limitations set forth in Fed. R. App. Proc., Rule 27(d)(2)(a) because it contains 1,501 words, excluding the documents authorized by Fed. R. App. P. 27(a)(2)(B).

I further certify this response complies with the type-style requirements of Fed. R. App. P. 27(d)(1)(E) in that this documents has been prepared using Microsoft Word in 14-point font in Times New Roman.

/s/ Alicia K. Haynes  
Alicia K. Haynes (ASB-8327-e23a)  
Attorney for Plaintiff-Appellant  
For Limited Purpose

## CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of March, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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