

**CAPITAL CASE**  
**EXECUTION DATE: 5/17/06 at 1:00 a.m.**

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IN THE  
SUPREME COURT OF THE UNITED STATES

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SEDLEY ALLEY,

*Petitioner,*

v.

WILLIAM KEY,  
*Defendant-Respondent;*

WILLIAM L. GIBBONS,  
*Intervenor-Respondent*

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ON PETITION FOR WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

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MOTION FOR STAY OF EXECUTION

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Kelley J. Henry  
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\* *Counsel Of Record*

This case presents what Judge Luttig has called “one of the most important criminal law issues of our day,” Harvey v. Horan, 285 F.3d 298, 304 (4<sup>th</sup> Cir. 2002)(Luttig, J., concurring): Whether the Constitution provides a right to post-conviction access to evidence for DNA testing to establish actual innocence. Judge Luttig has concluded that such a right exists. Id. Sedley Alley faces execution on May 17, 2006, despite his actual innocence. He has this day filed an accompanying Petition for Writ of Certiorari asking this Court to review this question of exceptional national importance.

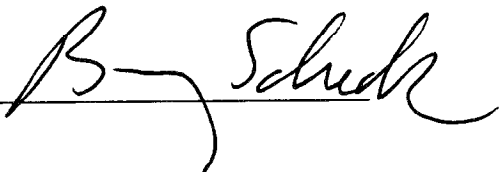
The State has arbitrarily blocked Sedley Alley’s access to evidence containing biological samples from the true perpetrator for more than two years. The Sixth Circuit Court of Appeals is the only Circuit to squarely address the critical question of the federal constitutional right to DNA testing. The lower Courts await the guidance of this Court on this important issue.

This Court has the authority to issue a stay of execution to maintain jurisdiction over this case. If this Court does not act, Mr. Alley will be executed and the cause of action moot. This result is intolerable, where, as Judge Luttig recognizes, there is a clear right under the federal constitution to DNA testing and Mr. Alley has already alleged clear evidence of his actual innocence. An innocent man could die tonight while being deprived of his right to prove his innocence because the State withheld evidence of innocence in a shell game that lasted over nineteen years and then blocked access to the evidence in order to cabin Alley’s claim as eleventh hour. This Court must enter a stay of execution and answer these questions.

Respectfully Submitted,

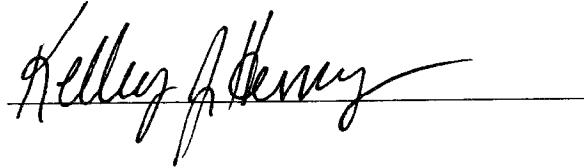
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By: 

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been served via facsimile and email to Leonard Hackel, 301 Washington Avenue, Suite 203, Memphis, Tennessee 38103; and by facsimile and email to Heather Ross and Jennifer Smith, Office of the Attorney General, 425 Fifth Avenue North, Nashville, Tennessee 37202, this the 16th day of May, 2006.

A handwritten signature in cursive script, reading "Kelley A. Henry", is written over a horizontal line.