

IN THE SUPREME COURT OF FLORIDA

ARAMIS AYALA, as State Attorney
for the Ninth Judicial Circuit,

Petitioner,

v.

Case No. SC17-653

RICHARD L. SCOTT, as Governor
of the State of Florida,

Respondent.

**EMERGENCY NON-ROUTINE PETITION TO INVOKE THE COURT'S
ALL WRITS JURISDICTION TO RECOGNIZE AYALA AS
PROSECUTING OFFICER PENDING REVIEW OF THE
PETITION FOR WRIT OF *QUO WARRANTO***

Petitioner Aramis Ayala, the duly elected State Attorney for the Ninth Judicial Circuit, files this emergency, non-routine petition for this Court to issue a writ or other order: (1) recognizing Ayala as the constitutional officer authorized to prosecute all criminal cases in the trial courts of the Ninth Judicial Circuit pending this Court's decision on Ayala's petition for writ of *quo warranto*; or, alternatively, (2) staying the cases in which Ayala has been replaced pending this Court's decision on Ayala's petition for writ of *quo warranto*.

In no scenario here should Brad King, the State Attorney for the Fifth Judicial Circuit, be authorized to take control of Ayala's cases that have been extensively investigated and prosecuted, for years and sometimes decades, by

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Ayala's Office. After this Court decides whether Ayala has discretion to determine whether and how to prosecute capital felonies, Ayala must abide by that ruling. It is unnecessary, disruptive and, possibly, unconstitutional and illegal, for King to be operating in the Ninth Judicial Circuit while this petition is pending.

BASIS FOR INVOKING JURISDICTION

The Florida Constitution grants this Court jurisdiction to issue "all writs necessary to the complete exercise of its jurisdiction." Art. V, § 3(b)(7), Fla. Const. The doctrine of all writs is not an independent basis for this Court's jurisdiction. Instead, this Court has issued constitutional writs to preserve jurisdiction "that has already been invoked or protecting jurisdiction that likely will be invoked in the future." *Roberts v. Brown*, 43 So. 3d 673, 677 (Fla. 2010).

Ayala's petition for writ of *quo warranto* is now pending before this Court. In that petition, Ayala requests that this Court exercise its jurisdiction under Article V, Section 3(b)(8) to preserve the constitutional role of the elected State Attorney as the prosecutor for all criminal cases in her or his judicial circuit.

STATEMENT OF FACTS

Ayala has filed a Petition for Writ of *Quo Warranto* before this Court. The Petition seeks to preserve the constitutional role of the elected state attorney as the prosecuting officer for all criminal cases in his or her judicial circuit and confirm

that the Governor has no power to replace a state attorney based on disagreement with a state attorney's exercise of prosecutorial discretion.

On March 16, 2017, Governor Rick Scott issued Executive Order 17-66 purporting to replace Ayala with King, State Attorney Fifth Judicial Circuit, as the prosecuting officer on the Markeith Loyd case. On April 3, 2017, Scott issued twenty-one more executive orders, purporting to replace Ayala with King on twenty-one additional cases. On April 6, 2017, Scott issued another executive order purporting to do the same with one additional case. These are the cases involved:

Executive Order	Defendant	Case Number(s)
17-66	State of Florida v. Markeith Loyd	2017-CF-000826, 2016-CF-015738
17-76	State of Florida v. Darell Avant	2013-CF-017099
17-77	State of Florida v. DeMorris Hunter	2002-CF-006796
17-78	State of Florida v. David Payne	2015-CF-016393
17-79	State of Florida v. Larry Perry	2013-CF-000612
17-80	State of Florida v. Juan Rosario	2014-CF-014049
17-81	State of Florida v. Sanel Saint-Simon	2014-CF-012661
17-82	State of Florida v. Dolan Darling	1997-CF-007497
17-83	State of Florida v. Steven Evans	1996-CF-005639
17-84	State of Florida v. David Frances	2000-CF-016204
17-85	State of Florida v. Thomas Gudinas	1994-CF-007132
17-86	State of Florida v. John Huggins	1998-CF-007190
17-87	State of Florida v. Sonny Jeffries	1993-CF-009667
17-88	State of Florida v. Jermaine Lebron	1996-CF-002147
17-89	State of Florida v. Derrick McLean	2004-CF-015923
17-90	State of Florida v. Lionel Miller	2006-CF-005222
17-91	State of Florida v. Robert Ira Peede	1983-CF-001682
17-92	State of Florida v. Theodore	2001-CF-002386

	Rodgers, Jr	
17-93	State of Florida v. Henry Sireci	1976-CF-000532
17-94	State of Florida v. Dusty Spencer	1992-CF-000473
17-95	State of Florida v. William White	1978-CF-001840
17-96	State of Florida v. Todd A. Zommer	2005-CF-001200
	State of Florida v. Dane Abdool	2006-CF-002848

While every one of these cases has been investigated and prosecuted by the State Attorney's Office for the Ninth Judicial Circuit, many times for years, these cases are in varying postures. For example, *State of Florida v. Juan Rosario* is set for trial to begin in one week, on April 17, 2017. *State of Florida v. Larry Perry* is set for trial to begin April 24, 2017. Several others are post-conviction cases that have been remanded for re-sentencing.

Based on correspondence from King to Ayala (which includes sensitive case information so it is not being attached), the burden being placed on Ayala and the Assistant State Attorneys and staff of the Ninth Judicial District is considerable. While Ayala has been fully cooperative, the current situation is clearly interfering with day-to-day prosecutorial efforts. King has asked for at least partial control over Assistant State Attorneys of his choosing, investigative staff, victim advocates, case files, offices, conference rooms, IT staff, and building access for whomever he wants to bring in. This is not the best situation for the administration of justice in the 1 percent of cases directly impacted and the 99 percent of other cases being worked by Ayala's Office.

ARGUMENT

The Florida Constitution gives the Florida Supreme Court jurisdiction to issue writs of *quo warranto*. See Art. V, § 3(b)(8), Fla. Const. The dispute regarding a state attorney’s discretion with respect to capital felonies and who lawfully represents the State of Florida in the twenty-three cases in which Scott has purported to replace Ayala will be resolved by this Court’s decision on Ayala’s petition for such a writ.

Pending that decision, the Court should permit all criminal cases in the Ninth Judicial Circuit to proceed with duly elected State Attorney Ayala representing the State. A change in representation now—when the issue of the Governor’s authority remains unresolved—will harm the State, the victims’ families, the accused, and the citizens of the Ninth Judicial Circuit.¹

The Interests of All Parties Favor Ayala Remaining as the Prosecuting Officer Pending *Quo Warranto* Proceedings.

The interests of all stakeholders—the State, the victims’ families, the accused, and the citizens of the Ninth Judicial Circuit—favor maintaining Ayala’s constitutional role as the prosecuting officer in all criminal cases before the Ninth Judicial Circuit pending this Court’s decision on the *quo warranto* writ. Ayala and

¹ To the extent there is concern about the 45 day death notice period expiring, Ayala can be asked to preventively file that notice in appropriate cases. Should her right to prosecutorial discretion be upheld, the law allows that notice to be withdrawn at any time.

her office are best positioned to ensure efficient, fair, and vigorous prosecutions in all of these cases.

Indeed, if King is permitted to prosecute these cases, and this Court ultimately finds Governor Scott's challenged executive orders unconstitutional, then the State's cases will be harmed by the change of prosecuting officer twice in short order: first from Ayala to King, and then from King to Ayala. If, by contrast, this Court endorses Governor Scott's executive orders, then Ayala could prosecute the cases in the manner required by this Court. There is no reason for the cases to ever be transitioned to King, who does not represent the interests of the voters who elected Ayala.

State Attorney Ayala's Office and the Assistant State Attorneys of the Ninth Judicial Circuit have been developing these cases for years (for example, *State of Florida v. Rosario* was filed in 2014 and *State of Florida v. Perry* was filed in 2013), investigating them from the beginning, learning the evidence, filing motions, building relationships with the witnesses and victims' families, and ultimately preparing for trials set to start this month. Even if Ayala's Office provided all case records, evidence, attorney work product, office space, and staff assistance to State Attorney King as he has requested, it would still be insufficient to guarantee an effective prosecution given the time constraints, thereby placing these cases at grave risk. It is contrary to the pursuit of justice for King, a State

Attorney completely unfamiliar with the witnesses and the evidence compiled over the course of years, to try two capital murder cases over a two-week period, with only two to three weeks to prepare.

The citizens of the Ninth Judicial Circuit and particularly the families of the victims have an interest in the effective administration of justice. Changing to a less-prepared prosecutor now—when the legitimacy of those changes is in question and pending before the Florida Supreme Court—harms that interest. Granting the relief sought will not result in prejudice to the Governor, nor will it harm the interests of the people of the Ninth Circuit. Recognizing Ayala as the prosecuting officer pending the decision of this Court, or in the alternative, staying the cases in which Ayala has been removed pending the decision of this Court, will preserve the rights of the State and the citizens of the Ninth Circuit while this Court resolves the dispute over who is the proper prosecuting officer.

NATURE OF THE RELIEF SOUGHT

Ayala respectfully requests that this Court invoke its all writs jurisdiction to issue a constitutional writ or other order recognizing Ayala as the prosecuting officer in all criminal cases before the Ninth Judicial Circuit pending this Court's decision on Ayala's petition for writ of *quo warranto*, or, in the alternative, staying the cases in which Ayala has been replaced pending this Court's decision on Ayala's petition for writ of *quo warranto*.

Dated: April 11, 2017

Respectfully submitted:

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent by email and U.S. mail to Rick Scott (rick.scott@eog.myflorida.com), Executive Office of the Governor, 400 S. Monroe Street, Room 209, Tallahassee, Florida 32399; and Office of the General Counsel (william.spicola@eog.myflorida.com), Executive Office of the Governor, 400 S. Monroe Street, Room 209, Tallahassee, Florida 32399 this 11th day of April 2017.

s/ Marcos E. Hasbun
MARCOS E. HASBUN

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this petition complies with the font requirements of Rule 9.100(1) of the Florida Rules of Appellate Procedure.

s/ Marcos E. Hasbun
MARCOS E. HASBUN