NO. 19-5651 AND 19A203

IN THE SUPREME COURT OF THE UNITED STATES

GARY RAY BOWLES,

Petitioner,

v.

RON DESANTIS, ET AL.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE ELEVENTH CIRCUIT COURT OF APPEALS

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI AND RESPONSE TO MOTION FOR STAY OF EXECUTION

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Capital Case

EXECUTION SCHEDULED FOR
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Question Presented

Whether this Court should grant certiorari review where the Eleventh Circuit's denial of Petitioner's 42 U.S.C. § 1983 claim presents no conflict with this Court's precedent, does not conflict with the decisions of another United States court of appeals, is not a departure from the accepted and usual course of judicial proceedings, and does not present an important or unsettled question of law worthy of this Court's certiorari review.

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Opinion Below

The decision of the Eleventh Circuit Court of Appeals appears as *Bowles v. DeSantis*, No. 19-12929, 2019 WL 3886503 (11th Cir. Aug. 19, 2019).

Jurisdiction

This Court's jurisdiction to review the final judgment of the Eleventh Circuit Court of Appeals is authorized by 28 U.S.C. § 1254(1). However, the Eleventh Circuit's decision is neither in conflict with the decision of another United States court of appeals, nor a departure from the accepted and usual course of judicial proceedings. Sup. Ct. R. 10(a). Petitioner raises no important question of federal law. Sup. Ct. R. 10(c). Because Petitioner is appealing the denial of a certificate of

appealability from the district court order dismissing the case for lack of jurisdiction, there is no basis for federal jurisdiction. Sup. Ct. R. 14(1)(g)(i). No compelling reasons exist in this case and Petitioner's writ of certiorari should be denied. Sup. Ct. R. 10.

Statement of the Case and Facts

Petitioner, Gary Bowles, was convicted of the first-degree murder of Walter Hinton and sentenced to death. *Bowles v. State*, 716 So. 2d 769 (Fla. 1998). The facts demonstrate that:

> On November 22, 1994, police arrested appellant for the murder of Walter Hinton. During subsequent interrogation, appellant gave both oral and written confessions regarding Hinton's murder. Appellant stated that upon returning home from going with Hinton to take a friend to the train station, Hinton went to sleep and appellant kept drinking. Appellant, Hinton, and the friend had drunk beer and smoked marijuana earlier. At some point in the evening, appellant stated that something inside "snapped." He went outside and picked up a concrete block, brought it inside the mobile home, and set it on a table. After thinking for a few minutes, appellant picked up the block, went into Hinton's room, and dropped the brick on Hinton's head. The force of the blow caused a facial fracture that extended from Hinton's right cheek to his jaw. Hinton, now conscious, fell from the bed and appellant began to manually strangle him. Appellant then stuffed toilet paper into Hinton's throat and placed a rag into his mouth. The medical examiner testified that the cause of death was asphyxia.

Id. at 770. Petitioner pled guilty to premediated first-degree murder. *Id.* The trial judge sentenced Petitioner to death after the jury's ten-to-two recommendation. *Id.* On direct appeal, the Florida Supreme Court vacated the death sentence and remanded the case for a new penalty phase. *Id.*

> On remand, the resentencing jury unanimously recommended death. In imposing the death penalty the trial court found the following five

aggravating circumstances: (1) Bowles was convicted of two other capital felonies and two other violent felonies; (2) Bowles was on felony probation in 1994 when he committed the murder as a result of a July 18, 1991, conviction and sentence to four years in prison followed by six years probation for a robbery he committed in Volusia County; (3) the murder was committed during a robbery or an attempted robbery, and the murder was committed for pecuniary gain (merged into one factor); (4) the murder was heinous, atrocious, or cruel (HAC); and (5) the murder was cold, calculated, and premeditated (CCP).

The trial court assigned tremendous weight to the prior violent capital felony convictions. On September 27, 1982, in Hillsborough County, Bowles was convicted of sexual battery and aggravated sexual battery. These offenses involved an extremely high degree of violence. The victim, Bowles' girlfriend at the time, was brutally attacked, suffering contusions to her head, face, neck, and chest, as well as bites to her breasts. The victim also suffered internal injuries including lacerations to her vagina and rectum. On July 18, 1991, Bowles was convicted in Volusia County of unarmed robbery. In this offense, Bowles pushed a woman down and stole her purse. On August 6, 1997, in Volusia County, Bowles was convicted of first-degree murder and armed burglary of a dwelling with a battery. In this crime, a few days after moving into the victim's home, Bowles approached the victim from behind and hit him with a lamp. A struggle ensued during which Bowles strangled the victim and stuffed a rag into his mouth. Bowles then emptied the victim's pockets, took his credit cards, money, keys, and wallet. On October 10, 1996, in Nassau County, Bowles was convicted of first-degree murder. The victim befriended Bowles and allowed Bowles to stay at his home. Bowles and the victim got into an argument and a fight outside of a bar. Bowles hit the victim over the head with a candy dish, and a struggle ensued, resulting in the victim being beaten and shot. Bowles also strangled the victim and tied a towel over his mouth.

The trial court assigned great weight to the HAC and CCP aggravators, significant weight to the robbery-pecuniary gain aggravator, and some weight to the fact that Bowles was on probation for robbery at the time of this murder.

Bowles v. State, 804 So. 2d 1173, 1175-76 (Fla. 2001), *cert. denied*, *Bowles v. Florida*, 536 U.S. 930 (2002). The Florida Supreme Court denied Petitioner's 12

claims and affirmed the convictions and sentence of death. *Id.* at 1184.

In his post-conviction proceedings, Petitioner raised nine claims including:

> The claims were: (1) trial counsel were ineffective for failing to present statutory and nonstatutory mental mitigation, and the trial court erred in finding the two statutory mental mitigators were not proven; (2) the trial court erred in refusing to give the defense's requested jury instructions defining mitigation; (3) the trial court erred in instructing the jury that it could consider victim impact evidence; (4) and (5) Florida's death penalty scheme is unconstitutional under *Ring v. Arizona,* 536 U.S. 584, 122 S.Ct. 2428, 153 L.Ed.2d 556 (2002); (6) *Apprendi v. New Jersey,* 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000), and *Ring* required the elements of the offense necessary to establish capital murder be charged in the indictment; (7) *Apprendi* and *Ring* required the jury recommendation of death be unanimous; (8) trial counsel were ineffective for failing to adequately investigate and present mitigating evidence; and (9) trial counsel were ineffective for failing to discover and present evidence rebutting the State's proof of the HAC aggravating factor.

Bowles v. State, 979 So. 2d 182, 186 n.2 (Fla. 2008). The Florida Supreme Court affirmed the denial of Petitioner's post-conviction claims. *Id.* at 194.

Petitioner filed a petition for writ of habeas corpus in federal court raising 10 claims, which was denied. *Bowles v. Sec'y, Dep't of Corr.*, 608 F.3d 1313, 1315 (11th Cir. 2010), *cert. denied, Bowles v. McNeil*, 562 U.S. 1068 (2010). The district court issued a certificate of appealability on a jury selection issue, which was denied by the Eleventh Circuit. *Id.* at 1315, 1317.

Shortly after the *Hurst* decisions, Petitioner raised a claim asserting that he should be entitled to relief pursuant to *Hurst*. Since Petitioner's case became final on June 17, 2002, which was before the June 24, 2002, decision in *Ring*, the Florida Supreme Court denied Petitioner's claim that *Hurst* should apply retroactively to

him. *Bowles v. State*, 235 So. 3d 292 (Fla. 2018), *cert. denied*, *Bowles v. Florida*, 139 S. Ct. 157 (2018).

On October 19, 2017, Bowles filed a third successive post-conviction motion raising one claim of intellectual disability based on *Atkins v. Virginia*, 536 U.S. 304 (2002), and *Hall v. Florida*, 572 U.S. 701 (2014). While this claim was pending in the post-conviction court, Governor DeSantis signed a death warrant setting execution for Thursday, August 22, 2019, at 6:00 p.m. The Florida Supreme Court affirmed the post-conviction court's denial of this claim and a petition for writ of certiorari is currently pending before this Court, case no. 19-5617. *Bowles v. State*, nos. SC19-1184 and SC19-1264, 2019 WL 3789971 (Fla. Aug. 13, 2019).

On July 11, 2019, Bowles filed a complaint in the United States District Court for the Northern District of Florida, Tallahassee Division, seeking declaratory and injunctive relief under 42 U.S.C. § 1983. *Bowles*, 2019 WL 3886503 at *1. Bowles also moved for an emergency stay of execution, which was denied by the district court on July 19, 2019. *Id.* at * 5. On August 1, 2019, Bowles appealed the district court's order denying a stay to the Eleventh Circuit. *Id.* After briefing, on August 19, 2019, the Eleventh Circuit denied Bowles' motion for a stay of execution. *Id.* at *14. On August 20, 2019, Bowles filed a petition for writ of certiorari in this court. This is Respondents' brief in opposition.

Also pending is a successive federal habeas petition. On August 14, 2019, Bowles filed an Emergency Petition Under 28 U.S.C. § 2254 and 28 U.S.C. § 2241 for Writ of Habeas Corpus in the United States District Court for the Middle

District of Florida, Jacksonville Division, case no. 3:19-cv-936. On August 18, 2019, the district court denied the petition for lack of jurisdiction. On August 19, Bowles filed a notice of appeal to the Eleventh Circuit, case no. 19-13150, as well as an application for leave to file a second or successive habeas petition, case no. 19-13149.

Reasons for Denying the Writ

There is no Basis for Certiorari Review of the Eleventh Circuit's Denial of Petitioner's 42 U.S.C. § 1983 claim

Petitioner seeks certiorari review of the Eleventh Circuit's denial of his motion for stay of execution to litigate a 42 U.S.C. § 1983 action regarding whether Bowles was denied a federal statutory right under 18 U.S.C. § 3599 to representation by the Capital Habeas Unit of the Office of the Federal Public Defender for the Northern District of Florida (CHU-North) during his state clemency proceedings. As the Eleventh Circuit correctly held, Bowles failed to establish the five factors which a Petitioner is required to meet in order to be eligible for the equitable remedy of a stay of execution. Because the Eleventh Circuit's opinion is not in contravention to this Court's holdings, is not in conflict with the decision of another United States court of appeals, is not a departure from the accepted and usual course of judicial proceedings, and this case presents no important question of federal law, certiorari review is not warranted. This Court should deny Bowles' Petition and application for stay of execution.

"Last-minute stays should be the extreme exception, not the norm. . . ." *Bucklew v. Precythe*, 139 S. Ct. 1112, 1134 (2019). In order to demonstrate entitlement to a stay, Bowles must demonstrate five factors: 1) a substantial likelihood of success on the merits; 2) that he will suffer irreparable injury unless the stay issues; 3) that the stay would not substantially harm the other litigant; 4) the stay would not be adverse to public interest; and 5) there was no delay in bringing the action. *Gissendaner v. Comm'r, Ga. Dep't of Corr.*, 779 F.3d 1275, 1280 (11th Cir. 2015) (listing four of the five factors); *Muhammad v. Sec'y, Fla. Dep't of Corr.*, 739 F.3d 683, 688 (11th Cir. 2014); *Nelson v. Campbell*, 541 U.S. 637, 649-50 (2004); *Crowe v. Donald*, 528 F.3d 1290, 1292 (11th Cir. 2008) (observing that before a court grants a stay of execution, it must consider the relative harms to the parties, the likelihood of success on the merits, and the extent to which the inmate has delayed unnecessarily in bringing the claim citing *Nelson*). It is Bowles' burden to establish all these factors. *Gissendaner*, 779 F.3d at 1280 (stating that a stay of execution is "appropriate only" if the inmate establishes all four of these factors); *Mann v. Palmer*, 713 F.3d 1306, 1310 (11th Cir. 2013) (stating that "Mann bears the burden of establishing that he is entitled to a stay of execution" and denying a stay).

Bowles fails to meet any of the five requirements for a stay of execution. Bowles has little to no likelihood of success on the merits as his underlying § 1983 action fails to state a claim for relief because the statute at issue, 18 U.S.C. § 3599, does not create a federal right enforceable in § 1983 actions and the Respondents

are all entitled to qualified immunity. Additionally, the State and the public have an interest in the finality of criminal judgments and granting a stay undermines those interests. Furthermore, the delay in bringing the § 1983 action is an independent reason to deny the stay because even though the CHU-North was denied permission to formally appear as clemency counsel over a year ago, CHU-North waited until a warrant was signed to file the § 1983 action in the district court. Stays should not be granted when the inmate intentionally waits until a warrant is signed to bring the suit. *See Long v. Sec'y, Dep't of Corr.*, 924 F. 3d 1171, 1176-77 (11th Cir. 2019), *cert. denied, Long v. Inch*, 139 S. Ct. 2635 (2019) (recent denial by the Eleventh Circuit of a similar last-minute stay of execution for a § 1983 challenge to Florida's lethal injection protocol). For these reasons, a stay should not be granted.

No Substantial Likelihood of Success on the Merits

Bowles fails to establish that he has a substantial likelihood of success on the merits of his § 1983 claim because contrary to Bowles' arguments, § 3599 does not create an enforceable federal right. The Eleventh Circuit properly denied Petitioner's application for stay of execution. *Bowles*, 2019 WL 3886503 at *14. This Court should deny the application for stay of execution and deny certiorari review.

The federal statute at issue, 18 U.S.C. § 3599, does not create an enforceable federal right under § 1983 for federally funded counsel to represent defendant in

state clemency proceedings when the state has furnished adequate counsel for those proceedings. To be a proper basis for a § 1983 action, the federal statute must "unambiguously" confer the right to sue based on the statute. *Gonzaga Univ. v. Doe*, 536 U.S. 273, 283 (2002) (rejecting the notion that case law permits "anything short of an unambiguously conferred right to support a cause of action brought under § 1983"). "In order to seek redress through § 1983, however, a plaintiff must assert the violation of a federal *right*, not merely a violation of federal *law*." *Blessing v. Freestone*, 520 U.S. 329, 340 (1997) (emphasis in original). All three of the factors in *Blessing* must be established: (1) that Congress intended that the provision benefit the plaintiff; (2) that the right protected by the statute is not "vague and amorphous" such that enforcement would "strain judicial competence;" (3) that the statute unambiguously imposes a binding obligation on the states by the provision being "couched in mandatory, rather than precatory, terms." *Id.* at 340-41. Bowles asserts his right under § 3599 is to have his federal counsel, CHU-North, represent him in state clemency proceedings instead of being "forced . . . to proceed with inadequate counsel." (Petition at 11).

Bowles was not forced to proceed with inadequate counsel. The Clemency Commission denied Petitioner's request to reschedule the clemency interview until after the successive post-conviction litigation intellectual disability claim was resolved. *Bowles*, 2019 WL 3886503 at *4. The Commission also rejected CHU-North's request to appear at the clemency interview. *Id.* However, the Commission reached out to CHU-North and invited them to submit comments and materials,

which they did. *Id.* Twice more, CHU-North were invited to submit additional materials, though they declined. *Id.* at *6 n.6. Bowles does not claim that the Commission did not consider the materials that were submitted, including the six-page letter from CHU-North. *Id.* Clemency counsel also consulted with CHU-North, who assisted in preparing for the interview before the Commission. *Id.* at *4.

The statute at issue here, § 3599, is a funding statute and does not create a federal right enforceable via § 1983. *Gonzaga*, 536 U.S. at 280 ("unless Congress speak[s] with a clear voice and manifests an unambiguous intent to confer individual rights, federal funding provisions provide no basis for private enforcement by § 1983) (quotation omitted). The Eleventh Circuit noted in 2003 that only twice since the decision in *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1 (1981), has this Court held that spending legislation gave rise to rights enforceable via § 1983. *31 Foster Children v. Bush*, 329 F.3d 1255, 1268 (11th Cir. 2003).

Even if § 3599 created an enforceable federal right in general, it does not create any rights when a state provides counsel under the controlling precedent of *Harbison v. Bell*, 556 U.S. 180, 189 (2009) (noting that § 3599 provides for counsel "***only*** when a state petitioner is unable to obtain adequate representation" and "state-furnished representation renders him ***ineligible*** for § 3599 counsel" (emphasis added)). Since Bowles had a state-furnished clemency counsel, he was

not entitled to federally funded counsel under § 3599 for state clemency proceedings. Fla. Stat. § 940.031.

Petitioner claims there is a circuit split on the meaning of *Harbison* and cites to a decision from the Ninth and Sixth Circuits. (Petition at I, 24-27); *Samayoa v. Davis*, 928 F. 3d 1127 (9th Cir. 2019); *Irick v. Bell*, 636 F. 3d 289 (6th Cir. 2011). But as the Eleventh Circuit noted, these cases deal with whether § 3599 counsel "was authorized [by a federal court] to represent the defendant for a particular purpose, but not whether the defendant was entitled as a matter of federal law to have that attorney appear at a particular proceeding." *Bowles*, 2019 WL 3886503 at *7 n.7. Thus, even if this Court believes a circuit split on *Harbison* exists, this case is not the proper vehicle by which to examine the issue.

Even if Bowles could surmount the threshold issues above, Bowles fails to meet the *Blessing* factors. Congress intended for federally funded counsel under § 3599 to be provided to defendants who are "unable to obtain adequate representation." 18 U.S.C. § 3599(a)(2). Because Bowles had adequate representation in the form of state furnished clemency counsel, he did not have a right to federally funded § 3599 counsel for representation in state clemency proceedings. This, combined with the "longstanding public policy against federal court interference with state court proceedings" demonstrates that Congress did not intend for § 3599 to provide federally funded counsel for defendants who are adequately represented by counsel furnished by the state in state proceedings.

Younger v. Harris, 401 U.S. 37, 43 (1971).[1] Nowhere in § 3599 is it stated "that a state death row inmate has an individual right to have his § 3599 counsel, instead of or in addition to some other counsel, represent him in a state clemency proceeding against the State's wishes." *Bowles*, 2019 WL 3886503 at *9.

Certainly, federal and state comity concerns are at their apogee when addressing an executive function that is typically beyond judicial review like clemency. Any constitutional challenge to the clemency procedure conducted by Florida is based on a faulty premise regarding the nature and origin of the clemency process. In Florida, the clemency process is derived solely from the Florida Constitution and is strictly an executive function. *Parole Comm'n v. Lockett*, 620 So. 2d 153, 154-55 (Fla. 1993). As recognized by the Florida Supreme Court, the people of the State of Florida have vested the "sole, unrestricted, unlimited discretion exclusively in the executive in exercising this act of grace." *Sullivan v. Askew*, 348 So. 2d 312, 315 (Fla. 1977); Florida Rules of Executive Clemency 4 (2011) ("The Governor has unfettered discretion to deny clemency at any time, for any reason.").. Indeed, as this Court has recognized, prisoners have no

[1] Appointment of a new attorney for clemency proceedings allows a fresh look at prior representations. *See, e.g., Kimmelman v. Morrison*, 477 U.S. 365, 378 (1986) ("an accused will often not realize that he has a meritorious ineffectiveness claim until he begins collateral review proceedings, particularly if he retained trial counsel on direct appeal"). But, as the Eleventh Circuit noted, there is no constitutional right to effective assistance of counsel in clemency proceedings, so to the extent that Bowles complains about clemency counsel's performance, that is not central to the question of whether § 3599 requires the states to allow § 3599 counsel to participate in clemency proceedings. *Bowles*, 2019 WL 3886503 at *9 n.8.

constitutional right to the commutation of a sentence, *Ohio Adult Parole Auth. v. Woodard*, 523 U.S. 272, 280-81 (1998), and death row inmates have no constitutional right to clemency proceedings. *See Herrera v. Collins*, 506 U.S. 390, 414 (1993); *Woodard*, 523 U.S. at 278 ("Since the Governor retains complete discretion to make the final decision [regarding clemency], . . . the State has not created a protected interest."). Further, clemency is a matter of grace and intervention would only be appropriate "in the face of a scheme whereby a state official flipped a coin" or denied clemency on some other arbitrary basis. *Ohio Adult Parole Auth. v. Woodard*, 523 U.S. 272, 289 (1998) (O'Connor, J., concurring).

However, Bowles' contention does not concern arbitrary denial of his claim, but instead, which attorney should have represented him. Florida followed its well established procedure for the appointment of clemency counsel in Bowles case. Bowles fails to demonstrate that Congress intended that the provision in question benefit a defendant who already had adequate representation. Certainly, Florida's clemency procedures are nowhere near the "coin flip" that might justify federal intervention into the clemency process.

Under the second *Blessing* factor, the "right assertedly protected by the statute" is so "vague and amorphous" that its enforcement would "strain judicial competence." *Blessing*, 520 U.S. at 340-41. Indeed, the "statute says nothing about when and how and under what circumstances the provisions of § 3599 are to override state clemency rules and procedures." *Bowles*, 2019 WL 3886503 at *11; *See Wilder v. Va. Hosp. Ass'n*, 496 U.S. 498, 519 (1990) (holding that an obligation

imposed on the states was not "vague and amorphous" where the statute set out factors for the state to consider). Bowles has not demonstrated that the right he asserts "is sufficiently concrete to be judicially enforceable" since § 3599 provides no guidance to the states to mandate representation by federally funded counsel in state clemency proceedings. *Blessing*, 520 U.S. at 338 (citation omitted).

Bowles also fails to demonstrate the final *Blessing* factor, that the statute is unambiguous in its imposition of a binding obligation on the states. *Blessing*, 520 U.S. at 341. "The statute does not say that clemency officials shall or must allow counsel appointed by a federal court under § 3599 to appear and represent the petitioner in a state clemency proceeding." *Bowles*, 2019 WL 3886503 at *11. Instead, the statute mandates federal funding for counsel to represent indigent defendants who are unable to obtain adequate representation. Bowles' § 3599 counsel were able to provide representation to Bowles pursuant to § 3599 (e) (stating that counsel "shall represent the defendant in . . . proceedings for executive or other clemency") as they were permitted to provide materials to the Commission. *See Holiday v. Stephens*, 136 S. Ct. 387 (2015) (Sotomayor, J.) (noting § 3599 counsel's obligation to represent the defendant in clemency proceedings where defendant has no other counsel, not a state obligation to recognize § 3599 counsel). Nothing in § 3599 imposes a mandatory obligation on the states to allow federally funded counsel to appear in state clemency proceedings.

The Eleventh Circuit correctly found that Bowles cannot show a substantial likelihood of success on the merits of his § 1983 claim. *Bowles*, 2019 WL 3886503 at

*12. Bowles' failure to meet this first prong necessarily means that his entire claim fails as he must prove all five prongs in order to obtain a stay. However, Bowles also fails to meet the remaining four factors. This Court should deny the application for stay and for certiorari review.

Irreparable Injury

Bowles must demonstrate that he will suffer irreparable injury unless the stay issues. Bowles' § 1983 action is a challenge to Florida's process for the appointment of clemency counsel that does not attack the validity of his death sentence in any manner. Bowles is only challenging the way the state clemency proceedings were conducted, not the death sentence itself. Bowles' death sentence will remain in place regardless of the outcome of his § 1983 action; it is only his clemency interview that is at issue. Bowles, at most, will get a new clemency interview, not a new penalty phase. There is a disconnect to granting a stay of the execution when the claim is tangential to the sentence itself.

However, even if Bowles meets this factor, he must also meet the remaining four factors. Since Bowles does not meet the remaining four factors, they certainly outweigh this factor.

Substantial Harm to Other Litigant

Even assuming that Bowles meets the irreparable injury prong, the balance of equities does not weigh in Bowles' favor. This Court has noted that a stay of execution is an equitable remedy and "equity must be sensitive to the State's strong

interest in enforcing its criminal judgments without undue interference from the federal courts." *Hill v. McDonough*, 547 U.S. 573, 584 (2006) (citing *Nelson*, 541 U.S. at 649-50). There is substantial harm to the State when executions are cancelled. "Only with an assurance of real finality can the State execute its moral judgment in a case. Only with real finality can the victims of crime move forward knowing the moral judgment will be carried out. To unsettle these expectations is to inflict a profound injury to the powerful and legitimate interest in punishing the guilty." *Calderon v. Thompson*, 523 U.S. 538, 556 (1998) (citations and quotation marks omitted). As this Court recently observed regarding the protracted litigation in a capital case where the murder occurred in 1996 and the defendant had filed a § 1983 action "just days before his scheduled execution," the people of the state and the surviving victims of the murder "deserve better." *Bucklew*, 139 S. Ct. at 1134. This murder occurred in 1994, which was two years before the murder in *Bucklew*. Here, as in *Bucklew*, the people of Florida and the surviving victims "deserve better" than to have the execution stayed for a § 1983 action with Supreme Court precedent against it. The Eleventh Circuit correctly found that Bowles does not meet this factor. *Bowles*, 2019 WL 3886503 at *13.

Adverse to Public Interest

Bowles also cannot demonstrate that a stay would not be adverse to public interest. As discussed in the previous section, a delay in execution is adverse to the public interest in the finality of criminal judgments. Unwarranted delays

undermine the deterrent effect of the death penalty. As this Court has observed, without finality, "the criminal law is deprived of much of its deterrent effect" and only "with real finality can the victims of crime move forward knowing the moral judgment will be carried out." *Thompson*, 523 U.S. at 555-56 (citation omitted). Both "the State and the victims of crime have an important interest in the timely enforcement of a sentence." *Hill*, 547 U.S. at 584. Here, the victim's family and the families of Bowles' other murder victims have been waiting for nearly 25 years for justice to be done. Again, the people of the state of Florida and the surviving victims "deserve better." *Bucklew*, 139 S. Ct. at 1134. The Eleventh Circuit correctly found that Bowles does not meet this factor. *Bowles*, 2019 WL 3886503 at *13-14

Delay in Bringing the Action

Bowles has spent the last approximately eighteen years unsuccessfully challenging his death sentence arising from his guilty plea to first-degree murder. *Bowles*, 804 So. 2d at 1175. With his execution looming in only a matter of days, Bowles has filed a motion for stay with this Court seeking to delay his scheduled execution based on his § 1983 claims filed in the Eleventh Circuit that could have been raised at an earlier date. Rather than filing his § 1983 action in a timely manner after his request to have CHU-North represent him during his state clemency proceedings was denied in July 2018, Bowles waited until July 11, 2019, just over a month before his scheduled execution to raise these claims in the federal

court. The last-minute nature of this filing is of Bowles' own making, and he should not profit from his dilatory and abusive strategy. This Court has advised that "[f]iling an action that can proceed under § 1983 does not entitle the complainant to an order staying an execution as a matter of course." *Hill*, 547 U.S. at 583-84. "Both the State and the victims of crime have an important interest in the timely enforcement of a sentence." *Id.* at 584 (citing *Thompson*, 523 U.S. at 556). A court considering a stay must also apply "a strong equitable presumption against the grant of a stay where a claim could have been brought at such a time as to allow consideration of the merits without requiring entry of a stay." *Id.* (citing *Nelson*, 541 U.S. at 650; *Gomez v. United States Dist. Court*, 503 U.S. 653, 654 (1992) (noting that the "last-minute nature of an application" or an applicant's "attempt at manipulation" of the judicial process may be grounds for denial of a stay)); *see also Bucklew*, 139 S. Ct. at 1133-34 (stating that last minute stays should be the "extreme exception, not the norm," and federal courts can, and should, invoke their equitable powers to dismiss suits that are pursued in a dilatory fashion or based on speculative theories); *Price v. Dunn*, 139 S. Ct. 1533, 1538 (2019) (Thomas, J., concurring in the denial of certiorari) (noting that seeking a stay shortly before a scheduled execution, after delaying bringing the § 1983 challenge in the first place, "only encourages the proliferation of dilatory litigation strategies that we have recently and repeatedly sought to discourage"). Here, Bowles could have filed this § 1983 action over a year ago, in July 2018, when he was first informed that CHU-North would not be permitted to act as clemency counsel during the state clemency

process.

Since the Eleventh Circuit's decision is not in conflict with the decision of another United States Court of Appeals, is not a departure from the accepted and usual course of judicial proceedings, and this case presents no important question of federal law, certiorari review is not warranted. The federal district court properly denied Petitioner's application for stay of execution for failing to meet the five criteria required to be entitled to a stay of execution. The Eleventh Circuit properly denied Petitioner's application for stay of execution. The Eleventh Circuit's findings were neither in contravention of this Court's precedent, nor in violation of federal law. Thus, certiorari review and for stay of execution should be denied.

Conclusion

Respondents respectfully submit that this Petition for a writ of certiorari should be denied and the request for stay of execution should be denied.

Respectfully submitted,
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