No. 23-7041

IN THE SUPREME COURT OF THE UNITED STATES

WILLIE JAMES PYE,

Petitioner,

v.

TYRONE OLIVER, Commissioner, Georgia Department of Corrections, CHRISTOPHER CARR, in his official capacity as the Attorney General of the State of Georgia, STATE BOARD OF PARDONS AND PAROLES, SHAWN EMMONS, Warden, Georgia Diagnostic & Classification Prison

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

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REPLY IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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ARGUMENT IN REPLY

Much of Respondents' Brief in Opposition ("BIO") addresses an argument never raised by Mr. Pye. *See* BIO at 12 (quoting an assertion never made by Mr. Pye in his petition). And in fact, Respondents do not contest the fact that the Eleventh Circuit's *sua sponte* invocation of res judicata constituted a "radical transformation of this case." *United States v. Sineneng-Smith*, 590 U.S. 371, 140 S. Ct. 1575, 1579 (2020). Accordingly, he need only add the following points:

First, Respondents suggests that the Eleventh Circuit was not wrong to *sua sponte* inject claim preclusion into the case because "the Eleventh Circuit has done so in the past." BIO at 11. As an initial matter, pointing to one case from eleven years ago—where the Court said it "would" have sua sponte raised the issue, but didn't—is not particularly persuasive. But even that one case *proves* Mr. Pye's point. There, the Eleventh Circuit expressly identified *Arizona v. California*, 530 U.S. 392 (2000) as the north star for its analysis. *Akanthos Cap. Mgmt., LLC v. Atlanticus Holdings Corp.*, 734 F.3d 1269, 1272 (11th Cir. 2013). And it noted that it would have *sua sponte* raised the issue because the party had "*already fully and fairly litigated the identical complaint*[,]" and therefore failing to raise res judicata "would threaten the public interest in avoiding judicial waste and inconsistent judgments." *Id.* (emphasis added). That is a far cry from the situation here, where, in a capital case, the Eleventh Circuit ignored the parties' briefing and *sua sponte* found res judicata on the basis of a state superior court ruling, in an emergency posture, on a *state law breach of contract claim* that arose from the same Agreement. None of the "special circumstances" identified in *Arizona* exist here.

Second, Respondents contend that "there is nothing to suggest in the court of appeals' order that it did not first consider whether Pye had made a prima facie showing." BIO at 11. *Except for the order itself*. The Court plainly said: "We conclude that Mr. Pye cannot demonstrate that he is substantially likely to prevail on the

merits of his appeal because has previously litigated a claim arising out of the agreement in state court, and res judicata likely bars his federal complaint." Exhibit B at 4; see also id. at 7 ("Because res judicata likely bars Mr. Pye's claim in this action, we cannot say that he is substantially likely to succeed on the merits of this appeal, and thus he is not entitled to a stay of his execution.").

Third, despite Respondents' assertion that they had argued below that the Supreme Court of Georgia's decision in *State v. Fed. Def. Program, Inc.*, 315 Ga. 319, (2022) should bind the federal courts as to an element of Mr. Pye's equal protection claim, see BIO at 11-12, they did not, ever, assert a res judicata defense.

CONCLUSION

For each of the foregoing reasons and those set forth in Mr. Pye's Petition for Writ of Certiorari, the Court should grant Mr. Pye's petition for a writ of certiorari.

Respectfully Submitted,

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