Nos. 24A1109 & 24-7236
CAPITAL CASE

IN THE
Supreme Court of the United States

BENJAMIN RITCHIE,

Petitioner,

v.

RON NEAL,

Respondent.

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

OPPOSITION TO APPLICATION FOR STAY OF EXECUTION AND PETITION FOR WRIT OF CERTIORARI

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EXECUTION SCHEDULED FOR Midnight to Sunrise, May 20, 2025

QUESTION PRESENTED

Twenty-five years ago, Benjamin Ritchie murdered Beech Grove Police Department Officer William Toney. Ritchie convicted of murder and sentenced to death. In 2014, a federal district court denied habeas relief. The Seventh Circuit upheld the denial of habeas relief, and this Court declined to take up the case.

Twelve days ago, Ritchie sought to reopen the judgment denying federal habeas relief under Federal Rule of Civil Procedure 60(b)(6) so that he could pursue two new claims regarding the performance of his counsel during his trial and sentencing in the early 2000s. The district court denied the motion on timeliness grounds, and the Seventh Circuit affirmed. The question presented is:

Whether the district court abused its discretion when it ruled that Ritchie's Rule 60(b)(6) motion was "extremely belated" and declined to reopen the judgment.

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INTRODUCTION

Eleven years ago, the federal district court in this case denied Benjamin Ritchie's request for federal habeas relief from his state-court conviction and sentence. Thirteen days before his scheduled execution date, Ritchie filed a Rule 60(b)(6) motion to reopen the judgment denying habeas relief so that he could assert two new claims regarding the performance of his trial counsel in the early 2000s. As the Seventh Circuit held, the district court did not abuse its discretion in ruling that Ritchie's "extremely belated" motion was "untimely under any possible starting point"—"even the starting point most favorable to Ritchie." Pet. App. A3. This Court should not permit Ritchie to use a meritless, last-minute motion to delay the execution of a lawful sentence that the State has waited two decades to carry out.

The district court's application of Rule 60 to the facts of this case was entirely correct, and its fact-bound ruling does not warrant this Court's attention. Rule 60(b)(6) motions must be filed within a reasonable time. In Ritchie's case, the district court did not announce any "categorical" rules regarding what constitutes a reasonable time. Rather, it held that Ritchie did not move for relief within a reasonable time because the basis for his motion existed in 2017 (if not earlier) and he waited eight years to seek Rule 60(b)(6) relief. And even if Ritchie were correct that timeliness should be assessed from the time that he obtained new counsel in October 2024, Ritchie's motion was still untimely. As the district court pointed out, in November 2024, Ritchie had raised in state proceedings "essentially the same

arguments" that he seeks to raise through his Rule 60(b)(6) motion. Pet. App. A3. Ritchie's months-long delay in filing that motion rendered it untimely.

Ritchie's delay in filing a Rule 60(b)(6) motion is itself sufficient reason to conclude that he is not likely to succeed on the merits and deny a stay. But it is not the only reason. Although Ritchie labels his filing a Rule 60(b) motion to reopen the judgment, his motion seeks to attack a state-court judgment based on new grounds. That renders it a successive habeas petition. But Ritchie does not meet the requirements for filing a successive habeas petition, and even if he could, the claims he seeks to assert lack merit. Delaying Ritchie's execution would do nothing but delay the execution of a lawful sentence after all grounds for relief have been exhausted, harming the State and the public interest. The Court should reject Ritchie's attempt at continued delay. His petition for a writ of certiorari and a stay should be denied.

STATEMENT OF THE CASE

I. Ritchie's Murder, Conviction, and Sentence

Ritchie murdered Beech Grove Police Department Officer William Toney on September 29, 2000, after Officer Toney caught Ritchie driving a van that Ritchie had stolen from a gas station. *Ritchie v. State*, 809 N.E.2d 258, 261 (Ind. 2004), *reh'g denied* (2004), *cert. denied*, 546 U.S. 828 (2005) (*Ritchie I*). The State charged him with murder and sought the death penalty. *Id.*

At trial, Ritchie was represented by two attorneys appointed by the trial court—both had been counsel in previous death-penalty cases, and one had been counsel in capital cases as both a defense attorney and as a prosecutor. D. Ct. Dkt.

69-11 at 136–37, 142–43, 212–15. To develop the defense's case, counsel hired a mitigation investigator, an additional fact investigator, a ballistics expert, and a clinical neuropsychologist. D. Ct. Dkt. 69-11 at 149–51, 222; D. Ct. Dkt. 69-8 at 420. Counsel also sought neuropsychological experts to investigate the possibility of organic brain damage. D. Ct. Dkt. 69-11 at 226.

After Ritchie was found guilty of murdering Officer Toney, the defense called twelve witnesses during the penalty phase to present mitigation testimony on numerous topics, including Ritchie's prenatal exposure to alcohol and other drugs. D. Ct. Dkt. 69-8 at 235, 251, 316, 332, 375, 394, 420; D. Ct. Dkt. 69-9 at 140, 157, 179, 197, 235. Ritchie's mother, Marion Martin, testified that she drank alcohol and used drugs while she was pregnant with Ritchie. D. Ct. Dkt. 69-8 at 282–83. Martin explained that she drank more alcohol while pregnant with Ritchie than she had while pregnant with Ritchie's two older brothers. D. Ct. Dkt. 69-8 at 282–83.

Martin's ex-husband also testified and confirmed that Martin drank more while pregnant with Ritchie than she had when she was pregnant with Ritchie's older brothers. D. Ct. Dkt. 69-8 at 343–45, 368–69. And Ritchie's adoptive mother testified that she saw Martin drink alcohol "[v]ery often" while pregnant with Ritchie: "I—everyday that I would see her she would be pretty well drunk—and I would tell her don't, stop it but it didn't do any good." D. Ct. Dkt. 69-9 at 238.

To explain how this prenatal substance abuse affected Ritchie, the defense called Dr. Michael Gelbort, a clinical neuropsychologist who had evaluated Ritchie. D. Ct. Dkt. 69-8 at 420. The "question in this case" to him was whether "there was

something wrong with this young man's mind in terms of cognition or thinking skills." D. Ct. Dkt. 69-8 at 434. To answer that question, he administered nine separate neuropsychological tests. D. Ct. Dkt. 69-8 at 456, 463–64, 468, 472, 475, 481. He concluded that Ritchie suffered from a cognitive disorder not otherwise specified. D. Ct. Dkt. 69-8 at 498. And he explained to the jury that his diagnosis was partially, if not primarily, based on "problems [that] date back to probably when he was in utero—in his mom's tummy and she was doing substances—that was probably the beginning." D. Ct. Dkt. 69-9 at 1. At the end of Dr. Gelbort's testimony, he confirmed that Ritchie's cognitive disorder was consistent with fetal alcohol effect and syndrome, and that the disorder was consistent with Martin's prenatal drug and alcohol use. D. Ct. Dkt. 69-9 at 132–33.

Ultimately, the jury found that the aggravating circumstances outweighed the mitigating circumstances and recommended a death sentence, which the trial court imposed. *Ritchie I*, 809 N.E.2d at 261; *see* Ind. Code § 35-50-2-9(e) (2000). The Indiana Supreme Court, rejecting ten claims raised on direct appeal, affirmed Ritchie's convictions and sentence. *Ritchie I*, 809 N.E.2d at 261–71.

II. State and Federal Post-Conviction Proceedings

Ritchie then filed a petition for state post-conviction relief and presented a total of thirty-seven claims, many of which challenged trial counsel's performance. D. Ct. Dkt. 69-14 at 166–79; D. Ct. Dkt. 69-15 at 2–8. Most relevant here, Ritchie claimed that his trial counsel performed deficiently in failing to properly investigate and prepare for the penalty phase of his trial and for failing to use "appropriate expert

witnesses" to explain his "unique and deprived environment and family circumstances." D. Ct. Dkt. 69-14 at 166–79; D. Ct. Dkt. 69-15 at 2–8.

Attorneys Joseph Cleary and Brent Westerfeld represented Ritchie as his post-conviction counsel. D. Ct. Dkt. 69-14 at 147, 153. They filed ten requests for production from non-parties. D. Ct. Dkt. 69-14 at 183–85, 192–93, 197–98, 202–03, 207–16, 233–34. In a motion for an extension of time, they represented that they had obtained "[t]housands of pages of records" and estimated there were "over a hundred possible mitigation witnesses," of which they had interviewed 60. D. Ct. Dkt. 69-14 at 237, 240. And in a response to the State's interrogatories, they listed fifty-nine potential witnesses of which twelve were expert witnesses. D. Ct. Dkt. 69-15 at 45–50.

At a four-day hearing on Ritchie's petition, his counsel called thirty witnesses, including a developmental psychologist, a forensic social worker, a professional engineer specializing in firearms and ballistics, a physicist/engineer specializing in accident reconstruction, a psychotherapist, a child and adolescent psychiatrist, two school psychologists, a clinical and forensic psychologist, a *Strickland* expert, and Dr. Gelbort. D. Ct. Dkt. 69-11 at 2, 32, 70, 78, 83, 91, 99, 107, 136, 212, 241; D. Ct. Dkt. 69-12 at 31–32, 55–56, 124–25, 173, 190, 203–04, 229, 243–44; D. Ct. Dkt. 69-13 at 23, 36–37, 81, 133, 140–51, 212, 219, 224, 229, 237, 243. They also called a litany of lay witnesses including many of Ritchie's elementary and middle school teachers, school principals, a police officer, two of Ritchie's ex-girlfriends, one of those ex-girlfriends' mothers, and the mother of one of Ritchie's childhood friends. D. Ct. Dkt.

69-11 at 2, 41, 71–72, 78, 83, 91, 101; D. Ct. Dkt. 69-12 at 191; D. Ct. Dkt. 69-13 at 23–24, 133, 212, 220, 225–26, 230, 238, 244–45.

After hearing all of this evidence, the state post-conviction court denied relief in a sixty-six-page order. D. Ct. Dkt. 69-15 at 182–247. Then, on a motion to correct error, Westerfeld and Cleary raised a new *Brady* claim, which was denied. D. Ct. Dkt. 69-16 at 2–7, 47–48. The Indiana Supreme Court unanimously affirmed the denial of post-conviction relief in November 2007. *Ritchie v. State*, 875 N.E.2d 706, 712 (Ind. 2007), *reh'g denied* (2008) (*Ritchie II*).

Ritchie then came to federal court and filed a petition for a writ of habeas corpus in July 2008 that raised approximately eleven claims of ineffective assistance of trial counsel. D. Ct. Dkt. 11. That petition contained claims that were procedurally defaulted because they had not been presented to the state courts, including that trial counsel were ineffective for failing to investigate the possibility that Ritchie had been exposed to lead as a child. D. Ct. Dkt. 11, 16, 17. The district court denied his petition in May 2014 and refused to grant a certificate of appealability. D. Ct. Dkt. 32. The Seventh Circuit also denied a certificate of appealability, and this Court denied review. *Ritchie v. Neal*, No. 15-1925, Doc. No. 10 (7th Cir. 2016), *reh'g denied* (2016), *cert. denied*, 581 U.S. 920 (2017). At that point in 2017, Ritchie had fully exhausted direct review, state collateral review, and federal habeas review.

III. Ritchie's Efforts To Delay Execution

The State of Indiana was unable to obtain the necessary drugs to perform lethal injections for many years. *See* Press Release, *Attorney General Todd Rokita*

Seeks Execution Date for Convicted Killer of Beech Grove Cop, Office of the Ind. Attorney Gen. (Sept. 27, 2024), *available at* https://tinyurl.com/mpwk9ydx. After it obtained the necessary drugs, the State moved for its first execution since 2009 on June 26, 2024, seeking an execution date for Joseph Corcoran. *See Corcoran v. State*, 246 N.E.3d 782 (Ind. 2024). On September 27, 2024, the State moved for an execution date for Ritchie. D. Ct. Dkt. 76-5. In response, on November 1, 2024, Ritchie asked the Indiana Supreme Court for permission to file a successive petition for post-conviction relief raising procedurally defaulted claims that trial counsel were ineffective for failing to investigate Ritchie's alleged Fetal Alcohol Spectrum Disorder and potential lead exposure. C.A. Dkt. 76-6. *Ritchie v. State*, 254 N.E.3d 1064, 1065 (Ind. 2025) (mem.), *reh'g denied*, *cert. pending* (*Ritchie III*). An evenly divided court denied Ritchie's motion on April 15, 2025, and a majority of the Indiana Supreme Court voted to set his execution date for May 20, 2025. *Id.*

Meanwhile, on September 17, 2024, and September 18, 2024, respectively, the counsel that had represented Ritchie in federal habeas proceedings, Cleary and Westerfeld, moved to withdraw from that long-closed case. D. Ct. Dkt. 56, 57. On October 4, 2024, approximately a week after the State moved for Ritchie's execution date, Ritchie requested new counsel from the district court, and the district court granted that request on October 10, 2024. D. Ct. Dkt. 60, 61. For the next several months, Ritchie did not file anything in federal court. Then, on May 7, 2025—thirteen days before the execution date—Ritchie filed a motion for relief from judgment under Federal Rule of Civil Procedure 60(b)(6) and sought a stay of his execution. D. Ct.

Dkt. 61, 64, 65. In his Rule 60(b)(6) motion, Ritchie sought to raise the same claims he wished to pursue via a successive state post-conviction petition. D. Ct. Dkt. 64. Recognizing that the claims were procedurally defaulted, Ritchie argued the default should be excused because his prior federal habeas counsel, Westerfeld and Cleary, had also represented Ritchie in state post-conviction proceedings. D. Ct. Dkt. 64. Ritchie alleged that Westerfeld and Cleary operated under a conflict of interest that arose after this Court decided *Martinez v. Ryan*, 566 U.S. 1 (2012), and *Trevino v. Thaler*, 569 U.S. 413 (2013). D. Ct. Dkt. 64.

On May 17, 2025, the district court denied his motion for a stay. Pet. App. A8–A31. It held that Ritchie was unlikely to succeed on the merits and could not proceed or receive more delay of his execution primarily because he did not file his motion within a reasonable time after the district court initially denied his petition in 2014 and all federal review was exhausted in April 2017. Pet. App. A21–A30. It specifically found that Ritchie's motion was "extremely belated" and that his delay in filing it was "unreasonable" Pet. App. A26.

Yesterday, on May 19, 2025, the Seventh Circuit affirmed the district court and denied Ritchie's motion for a stay of his execution. Pet. App. A1–A4. The majority ruled that the district court did not abuse its discretion in determining that Ritchie's "Rule 60(b)(6) motion was unlikely to succeed because it was untimely under any possible starting point for the rule's 'reasonable time' requirement—even the starting point favorable to Ritchie." Pet. App. A3–A4. According to the majority, the district court's ruling "was sound" and the majority had "nothing to add to the district judge's

careful analysis." Pet. App. A3–A4. Judge Jackson-Akiwumi dissented. Pet. App. A5–A6

ARGUMENT

Ritchie seeks review of one of the most case-specific, fact-intensive questions imaginable—whether the district court abused its discretion in denying his Rule 60(b)(6) motion as untimely. This Court's intervention is unwarranted. As the Seventh Circuit held, the district court did not abuse its discretion in determining that the motion was untimely "under any possible starting point." Pet. App. A3–A4.

Nor should this Court grant a stay. Ritchie does not have any chance of succeeding on the merits. His Rule 60(b)(6) motion is untimely in the extreme, and even if it was timely, the motion could not be entertained because it is an unauthorized, successive habeas petition. And Ritchie does not have any chance at success on the underlying habeas claim that he seeks to present.

Ritchie's petition and stay motion represent another attempt at delay. The Court should deny his eleventh-hour request.

I. The District Court Did Not Abuse Its Discretion in Denying Ritchie's "Extremely Belated" Motion under Rule 60(b)(6)

Motions for relief under Rule 60(b)(6) must be filed "within a reasonable time." *Kemp v. United States*, 596 U.S. 538, 531–32 (2022) (citing Fed. R. Civ. P. 60(c)(1)). "What constitutes a reasonable time necessarily depends on the facts in each individual case." *Id.* (quoting 11 C. Wright, A. Miller, & M. Kane, Federal Practice and Procedure § 2866 (3d ed. 2022)). A district court's determination that a Rule

60(b)(6) motion is untimely is "subject to only limited and deferential appellate review." *Gonzalez v. Crosby*, 545 U.S. 524, 535 (2005).

A. Ritchie's years-long delay rendered his motion untimely

The district court did not abuse its discretion in determining that Ritchie's Rule 60(b) motion—to the extent it is a valid Rule 60(b) motion—was "extremely belated" and that his delay in seeking relief from judgment was "unreasonable." Pet. App. A26. Ritchie killed Officer Toney in September 2000—almost a quarter-century ago. Pet. App. A9. He was convicted in 2002, state post-conviction review concluded in 2008, Pet. App. A9–A11, and the district court in this federal habeas proceeding denied his request for habeas relief in 2014, Pet. App. A12. Ritchie's recent Rule 60(b)(6) motion—filed thirteen days before his execution date—to reopen that eleven-year-old judgment is patently unreasonable. Pet. App. A3–A4, A21, A19.

Ritchie seeks to excuse the delay on the theory that his prior federal habeas counsel labored under a conflict of interest that arose after this Court decided *Martinez* and *Trevino*. Pet. at 12–15. That cannot excuse his unreasonable delay. First, as the district court noted, Ritchie has not identified an actual conflict of interest sufficient to "result in the disqualification and substitution of habeas counsel." Pet. App. A24. His prior habeas counsel concluded their substantive work on his federal habeas case years before the putative conflict arose. Counsel finished briefing Ritchie's initial habeas petition on March 25, 2009, C.A. Dkt. 26, more than two years before *Martinez* was decided. Further, even after *Martinez* was decided, it was not clear that Indiana prisoners could invoke *Martinez* and *Trevino* to excuse

claims of procedural default. The Seventh Circuit did not hold that those decisions apply to Indiana prisoners until 2017. *See Brown v. Brown*, 847 F.3d 502, 510 (7th Cir. 2017). Counsel were not conflicted simply because they fail to anticipate possible changes in the law. *See Valenzuela v. United States*, 261 F.3d 694, 700 (7th Cir. 2001) (citing *Lilly v. Gilmore*, 988 F.2d 783, 786 (7th Cir. 1993)). Notably also, the district court's initial denial did not rest on procedural-default grounds. D. Ct. Dkt. 32.

Second, even if one assumes that counsel operated under a conflict after this Court decided *Martinez* and *Trevino*, the delay still was unreasonable. In 2017, the Seventh Circuit held that Indiana prisoners can invoke *Martinez* in attempting to excuse procedural defaults. *See Brown*, 847 F.3d at 510. That put Ritchie on notice regarding the putative conflict he is attempting to invoke now to excuse his delay. *See* Pet. App. A3 (citing *Clark v. Davis*, 850 F.3d 770 (5th Cir. 2017)). Yet Ritchie did not seek new habeas counsel pursuant to 18 U.S.C. § 3599(e) or file a Rule 60(b)(6) motion. He waited nearly another *eight years* to ask the district court for relief.

Third, even if one makes the further assumption that Ritchie could not have filed his Rule 60(b)(6) motion until new federal habeas counsel were appointed, his motion still was not timely. Ritchie obtained new habeas counsel on October 10, 2024, about two weeks after the State requested the Indiana Supreme Court to set an execution date for Ritchie. D. Ct. Dkt. 61, 64-1 at 4. At or shortly after new counsel's appointment, Ritchie was undoubtedly aware that he might have a basis for seeking to reopen his federal habeas proceeding. In November 2024, he asserted the same claims he seeks to raise through his Rule 60(b)(6) in state court. D. Ct. Dkt. 76 at 20.

But Ritchie waited until May 2025—seven months later—to file a Rule 60(b)(6) motion. Pet. App. A27. Little wonder the district court observed that it "cannot discern why a motion to vacate was not filed until one week ago." Pet. App. A27.

Ritchie attempts to excuse his delay by claiming that investigation was necessary. Pet. at 16–19. But he offers no reason why that investigation had to be complete before he could even alert the federal court that an investigation was ongoing and a pleading of some sort might be forthcoming. To the extent that any new investigation was necessary, much of that had already been done or was being done in state court. As the district court noted, nothing precluded simultaneous litigation in both state and federal court, especially considering that the claims raised in both courts were procedurally defaulted and both teams of counsel were trying to excuse those defaults by looking to post-conviction counsel's performance. Pet. App. A27. And in fact, on October 16, 2024, Ritchie's current counsel retained an expert and requested that the expert evaluate Ritchie to determine whether Ritchie's "functional history" was consistent with fetal alcohol spectrum disorder (FASD), whether a diagnosis of FASD would explain his offense conduct, and what trial or post-conviction counsel should have done to investigate whether Ritchie had FASD. D. Ct. Dkt. 64-1 at A329–A330. But instead, Ritchie waited until the eleventh hour to attempt to reopen an eleven-year-old judgment on the same grounds that were known to state counsel months ago. That is the type of delay tactic that courts must "police carefully." *Bucklew*, 587 U.S. at 150. The district court did not abuse its discretion in declining to reopen a long-closed judgment on timing grounds.

B. The lower courts' fact-bound decisions do not establish a categorical rule or create a conflict

Even if members of this Court might have ruled differently on Ritchie's Rule 60(b)(6) motion in the first instance, his petition does not present a legal question warranting this Court's review. The district court did not create, and the Seventh Circuit did not sanction, any "categorical rule[s]" about the timeliness. *Contra* Pet. 11, 21. Instead, both courts recognized that a Rule 60(b)(6) motion must be filed within a reasonable time. Pet. App. A3, A20. The district court stated that there "is no hard and fast rule as to how much time is reasonable," Pet. App. A20, and the Seventh Circuit has repeatedly said the same, *see Shakman v. City of Chicago*, 426 F.3d 925, 932 (7th Cir. 2005) (stating that what constitutes a reasonable amount of time depends on the facts of each case); *Kagan v. Caterpillar Tractor Co.*, 795 F.2d 601, 610 (7th Cir. 1986) (stating that whether a delay is unreasonable is fact specific). The district court merely held that, "[u]nder the circumstances" of this case, Ritchie "unreasonably delayed filing" his motion for Rule 60(b)(6) relief. Pet. App. A27.

In reaching that conclusion, moreover, the lower courts' analysis was specific to the facts of this case. Without foreclosing the possibility that a seventh-month delay could "be reasonable" in *other* cases, the district court concluded that Ritchie's delay was unreasonable because his state-court counsel presented "almost identical" arguments as his new habeas counsel at "the beginning of November 2024" to the Indiana Supreme Court. Pet. App. A27–A28. Ritchie's Rule 60(b)(6) motion thus "could have been filed much earlier." *Id.* Thus, "[u]nder the particular facts and circumstances here," the district court held that approximately seven months was an

unreasonable amount of time between appointment of new counsel and the filing of Ritchie's Rule 60(b)(6) motion. Pet. App. A28. The Seventh Circuit agreed. Pet. App. A3–A4. It held that district court did not abuse its discretion in holding that Ritchie's motion was "untimely under any possible starting point." Pet. App. A3–A4.

The courts' fact-bound rulings do not conflict with the rulings of any other court. *Contra* Pet. at 16, 20. In *In re Johnson*, 935 F.3d 284 (5th Cir. 2019), the Fifth Circuit held no more than that the district court did not abuse its discretion in finding a Rule 60(b) motion timely when the motion filed "within six months after [an attorney's] appointment as co-counsel and very shortly after original habeas counsel was removed." *Id.* at 289. It did not hold that *any* Rule 60(b) motion filed under those circumstances is timely. Similarly, in *Byone v. Baca*, 966 F.3d 972 (9th Cir. 2020), the Ninth Circuit held that a Rule 60(b) motion was timely when filed "seven months" after the Ninth Circuit announced the decision that formed the basis for that motion and "only two months after" the prisoner was appointed counsel. *Id.* at 981–82. Again, however, the court did not establish a categorical rule. And it specifically noted that the delay was not prejudicial. *See id.* at 982. The opposite is true here.

The Seventh Circuit's decision in this case does not conflict with this Court's decision in *Christeson v. Roper*, 574 U.S. 373 (2015), either. *Contra* Pet. at 11. In *Christeson*, this Court addressed the standard to apply when a state death row inmate requests substitute counsel in federal habeas proceedings under 18 U.S.C. § 3599. 574 U.S. at 377. The factors in considering whether substitute counsel should be appointed are: the timeliness of the motion, the adequacy of the district court's

inquiry into the defendant's complaint, and the asserted cause for the complaint. *Id*. The Court held that the motion to substitute should have been granted because it was filed a month after outside counsel became aware of the conflict, "well before the State had set an execution date," and new counsel requested only ninety days to investigate and file a Rule 60(b) motion. *Id*. at 380. The Court went on to say that the defendant still "must demonstrate" that he is entitled to relief under Rule 60(b). *Id.* But the Court did not resolve whether a Rule 60(b) motion should be granted.

Christeson has no application to Ritchie's case. The petition does not raise any question related to the appointment of counsel under 18 U.S.C. § 3599. It asks this Court to decide whether a district court abused its discretion in denying a Rule 60(b)(6) motion as untimely. In *Christeson*, this Court never suggested that the appointment of new counsel to a death row inmate would guarantee that a subsequent Rule 60(b) motion would be granted. Indeed, the Court specifically stated that the defendant would be separately required to show that he was entitled to relief under Rule 60(b)'s guidelines. Nor do the facts here bear any resemblance to those in *Christeson*. Ritchie did not seek relief from the district court a month after the putative conflict arose; he waited nearly eight years to file his Rule 60(b) motion. Nor did Ritchie seek Rule 60(b)(6) relief "well before the State had set an execution date." Ritchie waited until thirteen days before his execution date to raise claims he could have raised much earlier. His motion was untimely.

II. The Application for a Stay Should Be Denied

This Court should deny the motion to stay as well. As an initial matter, it is not clear that Ritchie's motion should be treated as a stay motion. Ritchie has not sought federal habeas review of the Indiana Supreme Court's decision setting an execution date or denying his request to file a successive post-conviction petition. Rather, he is attempting to reopen a final judgment denying federal habeas relief, which means the order before this Court is an order denying a Rule 60(b) motion. Why it makes sense to treat his request as a request for a stay of a state-court judgment is difficult to see. Even if the four-factor test that applies to stays applies here, however, Ritchie's last-minute request for a stay should be denied.

"Last-minute stays should be the extreme exception, not the norm." *Bucklew v. Precythe*, 587 U.S. 119, 150 (2019). Stays are an "intrusion into the ordinary processes of administration and judicial review." *Nken v. Holder*, 556 U.S. 418, 427 (2009) (quoting *Virginia Petroleum Jobbers Assn. v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958)). The issuance of a stay is not "a matter of right" but an equitable remedy, and courts considering a stay "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 v. Campbell*, 541 U.S. 637, 649–50 (2004)). To be granted a stay, Ritchie must make "a strong showing that he is likely to succeed on the merits," that he will be "irreparably injured absent a stay," that the issuance of the stay will not "substantially injure the other parties interested in the

proceeding," and that granting a stay is in "the public interest." *Nken*, 556 U.S. at 434. Ritchie has not made that showing here.

A. Ritchie's delay cuts against a stay

"[L]ast-minute claims arising from long-known facts" can justify "denying equitable relief." *Ramirez v. Collier*, 595 U.S. 411, 434 (2022) (citing *Gomez v. U.S. Dist. Court for Northern Dist. of Cal.*, 503 U.S. 653, 654 (1992) (per curiam)). That "well-worn principle of equity" holds true even "in capital cases." *Id.* And it is fully applicable here.

Almost twenty-five years ago, Ritchie murdered Officer Toney. *Ritchie I*, 809 N.E.2d at 261. Since then, he has received extensive review in the state court on direct appeal and post-conviction review. Pet. App. A8–A15. The district court denied Ritchie's original habeas petition in 2014. Pet. App. A12. The Seventh Circuit issued its mandate affirming the denial of a certificate of appealability, and this Court denied certiorari ending review of Ritchie's case in 2017. Pet. App. A12. Now, eight years after review of Ritchie's case has ended, and less than two weeks before his scheduled execution date, Ritchie filed a motion under Rule 60(b)(6) in his federal habeas case seeking to reopen that closed judgment.

But as the district court rightly acknowledged, "one of AEDPA's purposes is to 'reduce delays in the execution of state and federal criminal sentences, particularly in capital cases.'" Pet. App. A29 (quoting *Woodford v. Garceau*, 538 U.S. 202, 206 (2003)). The district court emphasized that "AEDPA's general one-year limitations period for filing a habeas corpus petition 'quite plainly serves the well-recognized

interest in the finality of state court judgments. … It reduces the potential for delay on the road to finality by restricting the time that a prospective federal habeas petitioner has in which to seek federal habeas review." Pet. App. A29 (quoting *Woodford*, 538 U.S. at 206). The district court properly concluded that granting Ritchie's motion to vacate "would be inconsistent with AEDPA's underlying purposes" and that the "governmental interest in finality, and in recognizing federal courts' limited ability to interfere in state court proceedings under AEDPA, weighs in favor of denying Mr. Ritchie's stay request. Pet. App. A29. *See Ryan v. Gonzales*, 568 U.S. 57, 76 (2013) (quoting *Rhines v. Weber*, 544 U.S. 269, 277 (2005)) ("Staying a federal habeas petition frustrates AEDPA's objective of encouraging finality by allowing a petitioner to delay the resolution of the federal proceedings.").

The factual and legal predicates for Ritchie's claims have long been known. "A court considering a stay [of execution] must … 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.'" *Hill*, 547 U.S. at 584 (2006) (quoting *Nelson*, 541 U.S. at 650). That Ritchie's mother drank and consumed drugs while she was pregnant with him has been known since Ritchie was born, and at a minimum was known by Ritchie's counsel during his trial in 2002 when they presented evidence of her substance abuse and its impact on Ritchie during the penalty phase. And the decisional law Ritchie uses to attempt to overcome procedural default of his ineffective assistance of trial counsel claim existed in 2017, when the

Seventh Circuit confirmed that *Martinez-Trevino* applied in Indiana. *Brown*, 847 F.3d at 512–13.

Even if Ritchie needed new counsel to raise those claims, his new counsel unreasonably delayed. The substance of Ritchie's claims was known to him and his state counsel as early as November 1, 2024, less than a month after new counsel was appointed. D. Ct. Dkt. 64-1 at 37–40. But instead of bringing those claims at any earlier point, Ritchie unjustifiably waited until his execution was imminent to file his Rule 60(b) motion. *See Lambert v. Buss*, 489 F.3d 779, 780 (7th Cir. 2007) (quoting *Calderon v. Thompson*, 523 U.S. 538, 556 (1998)) ("When lengthy federal proceedings have run their course and a mandate denying relief has issued, finality acquires an added moral dimension."). His last-minute claim is exactly the kind of "last-minute claims relied on to forestall an execution" that this Court should "not for a moment countenance." *Nance v. Ward*, 597 U.S. 159, 174 (2022). This Court should "police carefully against attempts … to interpose unjustified delay." *Bucklew*, 587 U.S. at 150.

B. Ritchie is not likely to succeed on the merits for multiple, independent reasons

Ritchie has not made a strong showing that he is likely to succeed on the merits. First, as both the district court and Seventh Circuit held, Ritchie's Rule 60(b)(6) motion was unlikely to succeed "because it was untimely under any possible starting point for the rule's 'reasonable time' requirement—even the starting point most favorable to Ritchie." Pet. App. A3–A4. Ritchie cannot show that this Court would be likely to disturb that fact-bound ruling for the reasons above. Second,

Ritchie cannot succeed for reasons unrelated to timing. His Rule 60(b)(6) motion is, in reality, an unauthorized habeas petition that has no chance of success. And even if Ritchie's motion is a Rule 60(b) motion, he has not established that there are extraordinary circumstances for reopening a long-final judgment.

1. Ritchie's Rule 60(b) motion is an unauthorized habeas petition

Properly understood, Ritchie's Rule 60(b)(6) motion is a successive petition for a writ of habeas corpus. Under AEDPA, habeas petitioners who have already pursued one round of litigation must receive permission to pursue another round of litigation. 28 U.S.C. § 2244(a), (b)(3)(A). Although Rule 60(b) still applies in habeas proceedings, this Court has made clear that any Rule 60(b) motion that is "in substance a successive habeas petition" must be treated as such. *Gonzalez*, 545 U.S. at 531; *see Lindh v. Murphy*, 521 U.S. 320, 338 (1997) (AEDPA's passage was motivated, in part, "because of the characteristically extended pendency of collateral attacks on capital convictions, and because of Congress's concern with the perceived acquiescence in capital defendants' dilatory tactics by some federal courts"). Otherwise, "[u]sing Rule 60(b) to present new claims for relief from a state court's judgment of conviction" would "circumvent[] AEDPA's requirement that a new claim be dismissed unless it relies on either a new rule of constitutional law" that is made retroactive by this Court or "newly discovered facts." *Id.* Thus, this Court has held that a Rule 60(b) motion that "seeks to add a new ground for [habeas] relief" or that "attacks the federal court's previously resolution of a claim *on the merits*" must be treated a successive petition. *Id.* at 532.

Ritchie's Rule 60(b) motion is an unauthorized successive petition in disguise. In the motion, Ritchie seeks to add two new grounds for relief—whether his trial counsel were ineffective for failing to present evidence about his mother's prenatal alcohol consumption (a subject that was extensively presented to the sentencing jury, *Ritchie*, 254 N.E.3d at 1068 (Slaughter, J., concurring)), and his potential lead exposure (a claim that was raised in Ritchie's initial habeas petition). D. Ct. Dkt. 64 at 23–47; C.A. Dkt. 11 at 5–28. Ritchie admits in his brief that his new counsel had to "develop" and investigate these claims for relief from the state-court judgment. Pet. at 15. Additionally, these are the same claims that Ritchie is seeking to pursue in state court through a successive post-conviction petition. *See Ritchie*, 254 N.E.3d at 1065. He fails to explain why he thought he needed permission in state court to raise successive claims but does not need that permission to pursue the same claims in federal court. *See Stronger v. Sorrell*, 776 N.E.2d 353, 355–57 (Ind. 2002) (stating that Federal Rule of Civil Procedure 60(b) is similar to Indiana Trial Rule of Procedure 60(b) and adopting federal authority for analyzing claims under Indiana's Rule 60(b)).

Ritchie argues that he is seeking to attack a procedural issue with his prior federal habeas proceeding because his prior counsel had a conflict. Pet. at 22. Even if counsel had a conflict, however, Ritchie does not argue that he should be granted relief from his state-court judgment on that basis alone. Rather, he invokes the putative conflict as the basis for excusing his failure to raise ineffective-assistance-of-trial-counsel claims. *See* Pet. at 23–24. So his motion is one that "seeks to add a new ground for relief" from the state-court judgment. *Gonzalez*, 545 U.S. at 531.

Ritchie cannot escape that problem by relabeling his request for relief as a Rule 60(b) motion. *See id.* at 533; *Curry v. United States*, 507 F.3d 603, 604 (7th Cir. 2007) ("Critically, it does not matter how the prisoner labels his pleading."). Because Ritchie's motion is an unauthorized successive petition, this Court should not adjudicate its merits, and no stay should be issued to delay his impending execution date.

2. Ritchie has not established extraordinary circumstances

Ritchie has not established extraordinary circumstances to justify reopening the decade-old final judgment. Ritchie offers his death sentence and his counsels' alleged conflict as extraordinary circumstances. C.A. Dkt. 7 at 36–37. Neither suffices. First, it cannot be that the imposition of a lawful sentence automatically creates "extraordinary circumstances" in capital cases. *See Gonzalez*, 545 U.S. at 535 (observing that extraordinary circumstances "will rarely occur in the habeas context"). Nothing could be more ordinary than a constitutional sentence being imposed upon a defendant found guilty of a crime. *See Smith v. Murray*, 477 U.S. 527, 538–39 (1986) (declining to treat procedural-default rules differently in capital cases).

Second, for all the reasons discussed above Ritchie has not established that his attorneys either had a conflict or abandoned him. Notably, Ritchie does not contest the claims that his original habeas counsel raised on his behalf. Ritchie had plenty of time to recognize that counsel was not doing anything on his behalf. Further, the Supreme Court has explicitly stated that new decisional law is not an extraordinary circumstance. *See Gonzalez*, 545 U.S. at 536 (finding that the Supreme

Court's change in the interpretation of the AEDPA statutes of limitations was not an extraordinary circumstance). Ritchie's claim of abandonment or conflict rests entirely on a change in decisional law. That the law regarding excuse of procedural default changed after Ritchie's habeas case was final is not extraordinary. *See Nash v. Hepp*, 740 F.3d 1075, 1078–79 (7th Cir. 2014) (finding that the change in law occasioned by *Maples*, *Martinez*, and *Trevino* did not establish extraordinary circumstances) (citing *Maples v. Thomas*, 565 U.S. 266 (2012)).

Ritchie also faces the insurmountable barrier of establishing that his underlying claims have merit. First, he must prove that Westerfeld and Cleary were ineffective during post-conviction proceedings to excuse his procedural default. Then, if he could accomplish that feat, he would have to prove that his underlying *Strickland* claims were meritorious. He can do neither. Westerfeld and Cleary were not ineffective during state post-conviction proceedings. They filed a post-conviction petition containing dozens of claims. D. Ct. Dkt. 69-14 at 166–79; C.A. Dkt. 69-15 at 2–8. Their investigation uncovered "over a hundred possible mitigation witnesses." D. Ct. Dkt. 69-14 at 237, 240. From that group, they listed fifty-nine potential witnesses, called thirty witnesses at a four-day hearing, and many of those witnesses were experts—eight of them were mental-health professionals. D. Ct. Dkt. 69-11 at 241; D. Ct. Dkt. 69-12 at 32, 56, 125, 173, 204, 229, 244; D. Ct. Dkt. 69-13 at 37, 81, 141. This is not what deficient performance looks like. *Coleman v. Neal*, 990 F.3d 1054, 1056 (7th Cir. 2021) ("*Strickland* says … that it is the full course of representation that matters.").

And Ritchie will not be able to prove prejudice from Westerfeld and Cleary's performance. First, specific to his claim that trial counsel should have investigated potential lead exposure, counsel actually investigated and decided not to pursue it. One of his trial attorneys was asked about it at the post-conviction hearing and testified that they considered it but it "wasn't [their] best argument." D. Ct. Dkt. 69-11 at 231. Reasonable strategic choices are not deficient performance. *Harrington v. Richter*, 562 U.S. 86 (2011) (citing *Strickland v. Washington*, 466 U.S. 668, 689, 691 (1984)).

As for the underlying claim about his mother's prenatal substance abuse that Ritchie says should have been brought, Westerfeld and Cleary would never have been able to prove prejudice because the sentencing jury knew all about Ritchie's mother's drinking. She, herself, admitted to the jury that she drank while pregnant and also that she drank more while pregnant with Ritchie than she had while pregnant with his brothers. D. Ct. Dkt. 69-8 at 282–83. Two other witnesses testified about Ritchie's mother's drinking while pregnant with one of them saying that "everyday I would see her she would be pretty well drunk." D. Ct. Dkt. 69-88 at 343–45, 368–69; D. Ct. Dkt. 69-9 at 238. Not only did the jury receive lay-witness testimony, but neuropsychologist Dr. Gelbort testified that his cognitive-disorder diagnosis was partially, if not primarily, based on "problems [that] date back to probably when he was in utero—in his mom's tummy and she was doing substances—that was probably the beginning." D. Ct. Dkt. 69-9 at 1.

Had Westerfeld and Cleary raised this *Strickland* claim, the post-conviction court would have found that it had no reasonable probability of success given the wealth of evidence already presented to the jury about Ritchie's prenatal exposure to alcohol. *See Ritchie*, 254 N.E.3d at 1068 (Slaughter, J., concurring) ("Ritchie's counsel *did* present evidence to the jury of his mother's alcohol abuse and of his resulting cognitive impairment.") (emphasis in original). Because Ritchie will not be able to prove that either his post-conviction counsel or his trial counsel was ineffective, he should not be given Rule 60(b) relief to litigate meritless claims.

C. The public interest weighs against a stay

The public interest also weighs against a stay. "Both the State and the victims of crime have an important interest in the timely enforcement of a sentence." *Bucklew*, 587 U.S. at 149. Too often, those interests are "frustrated" by "delay through lawsuit after lawsuit." *Id.* This Court has repeatedly recognized that "equity must be sensitive to the State's strong interest in enforcing its criminal judgment without undue interferences from the federal courts." *Hill*, 547 U.S. at 584.

"Both the State and the victims of crime have an important interest in the timely enforcement of a sentence." *Bucklew*, 587 U.S. at 149. This Court has repeatedly recognized that "equity must be sensitive to the State's strong interest in enforcing its criminal judgment without undue interferences from the federal courts." *Hill*, 547 U.S. at 584. Ritchie murdered Officer Toney nearly a quarter of a century ago and was sentenced to death. A 25-year wait is long enough. "Only with real

finality" can we "move forward knowing the moral judgment will be carried out." *Calderon*, 523 U.S. at 556.

The additional delay caused by a stay at this stage would undermine the powerful interest—shared by the State, the public, and the victim's family—in the timely enforcement of his sentence. *See Hill*, 574 U.S. at 584; *Lambert*, 489 F.3d at 781 (quoting *Calderon*, 523 U.S. at 556; *Herrera v. Collins*, 506 U.S. 390, 421 (1993) (O'Connor, J., concurring)). "To unsettle these expectations is to inflict a profound injury to the 'powerful and legitimate interest in punishing the guilty,' an interest shared by the State and the victims of crime alike." *Calderon*, 523 U.S. at 556. This Court should put an end to this dilatory litigation and deny Ritchie the stay he requests to litigate his "extremely belated" Rule 60(b) motion. Pet. App. A3.

CONCLUSION

The petition and application for a stay should be denied.

Respectfully submitted,

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