No. 24A1202
EXECUTION SCHEDULED FOR JUNE 10, 2025, at 6:00 P.M.

In the
United States Supreme Court

ANTHONY FLOYD WAINWRIGHT, *Petitioner*,

v.

STATE OF FLORIDA, *Respondent*.

ON PETITION FOR A WRIT OF CERTIORARI TO THE FLORIDA SUPREME COURT

RESPONSE TO APPLICATION FOR A STAY OF THE EXECUTION

On June 5, 2025, Wainwright, represented solely by second chair state postconviction counsel, Terri Backhus, filed a petition for a writ of certiorari in this Court raising three questions in this active warrant case. Wainwright also filed an application for a stay of the execution for this Court to decide his pending petition. This Court, however, should simply deny the petition and deny the stay.

Stays of executions

Stays of executions are not granted as "a matter of course." *Hill v. McDonough*, 547 U.S. 573, 583-84 (2006). Rather, a stay 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." *Id.* at 584. There is 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." *Nelson v. Campbell*, 541 U.S. 637, 650 (2004). Equity must also consider "an inmate's attempt

at manipulation." *Gomez v. U.S. Dist. Ct. for N. Dist. of Cal.*, 503 U.S. 653, 654 (1992). "Both the State and the victims of crime have an important interest in the timely enforcement of a sentence." *Calderon v. Thompson*, 523 U.S. 538, 556 (1998). This Court has highlighted the State's and the victims' interests in the timely enforcement of the death sentence. *Bucklew v. Precythe*, 587 U.S. 119, 149-151 (2019). The people of Florida, as well as surviving victims and their families, "deserve better" than the "excessive" delays that now typically occur in capital cases. *Id.* at 149. The Court has stated that courts should "police carefully" against last minute claims being used "as tools to interpose unjustified delay" in executions. *Id.* at 150. This Court has also repeatedly stated that last minute stays of execution should be the "extreme exception, not the norm." *Barr v. Lee*, 591 U.S. 979, 981 (2020) (vacating a lower court's grant of a stay of a federal execution, quoting *Bucklew*, 587 U.S. at 151).

Three factors for a stay

To be granted a stay of execution in this Court, Wainwright must establish three factors: (1) a reasonable probability that the Court would vote to grant certiorari; (2) a significant possibility of reversal if review was granted; and (3) a likelihood of irreparable injury to the applicant in the absence of a stay. *Barefoot v. Estelle*, 463 U.S. 880, 895 (1983). He must establish all three factors.

Probability of this Court granting certiorari

As to the first factor, there is little chance that four justices of this Court would vote to grant certiorari review of any of the three questions raised in the petition. As explained in detail in the accompanying brief in opposition, none of the questions are worthy of certiorari review.

Regarding the first question involving a claim of newly discovered evidence of a violation of *Brady v. Maryland*, 373 U.S. 83 (1963), for not disclosing that a State's witness expected a benefit from his testimony. The Florida Supreme Court found the impeachment of Murphy was not material. *Wainwright v. State*, 2025 WL 1561151, *9

(Fla. June 3, 2025). None of the most damning evidence against Wainwright, such as the DNA evidence of the rape and Wainwright's confession to law enforcement to premediated murder, depended in any way on Murphy's testimony. Additionally, another inmate testified to much the same information as Murphy. The cumulative impeachment of Murphy is simply "too little" and "too weak" under *Turner v. United States*, 582 U.S. 313, 326 (2017). The petition does not attack the Florida Supreme Court's conclusion regarding materiality. Rather, the petition attacks the Florida Supreme Court's requirement of diligence and conclusion that the impeachment was not suppressed because it became a matter of public record shortly after the trial. But regardless of those matters, the conclusion that the impeachment was not material would remain. For that reason, the question raised in the petition is purely academic and this Court does not grant review of purely academic questions.

Regarding the second question, it is a matter of state law. Claims of newly discovered evidence of mitigation raised pursuant to *Jones v. State*, 709 So. 2d 512 (Fla. 1998), are state law claims with no federal constitutional equivalent. This Court does not review matters of state law. *Foster v. Chatman*, 578 U.S. 488, 497 (2016) (citing *Harris v. Reed* 489 U.S. 255, 260 (1989)). There is no Eighth Amendment right to present new mitigation, discovered years after the death sentence was final, in the postconviction stage, much less in the successive postconviction stage under an active death warrant.

Regarding the third question asserting there should be no procedural hurdles to Eighth Amendment execution-related claims, Wainwright did not even raise this issue in either the state lower court or in the Florida Supreme Court. This Court does not grant review of questions raised for the first time in this Court. *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005); *Adarand Constructors, Inc. v. Mineta*, 534 U.S. 103, 110 (2001); *City of Austin, Texas v. Reagan Nat'l Advert. Of Austin, LLC*, 596 U.S. 61, 76 (2022); *Babcock v. Kijakazi*, 595 U.S. 77, 82, n.3 (2022)).

There is a low probability of this Court granting certiorari review of any of the three questions presented.

Wainwright fails the first factor which alone is sufficient reason to deny his request for a stay because he is required to establish all three factors.

Probability of this Court granting relief on the merits

As to the second factor, there is little possibility of Wainwright prevailing on the merits of any of the three questions if this Court were to grant review.

Wainwright would not prevail on the *Brady* claim in a case with a confession to premediated murder and DNA evidence of the rape. The cumulative impeachment of Murphy is simply "too little" and "too weak" under *Turner v. United States*, 582 U.S. 313, 326 (2017), to be material.

There is also little possibility of Wainwright obtaining a new penalty phase based on the second question involving newly discovered evidence of mitigation, even if this Court granted review, much less a "significant" possibility. If this Court were to grant review, it would most likely hold the Eighth Amendment right to present mitigation, announced in *Lockett v. Ohio*, 438 U.S. 586 (1978) (plurality opinion), and *Eddings v. Oklahoma*, 455 U.S. 104 (1982), is limited to the original penalty phase and does not extend to new mitigation discovered for the first time at the postconviction stage.

Wainwright would not prevail on the third question either. There is no prohibition on imposing procedural hurdles to Eighth Amendment execution-related claims. *Stewart v. LaGrand*, 526 U.S. 115, 117-120 (1999) (holding Eighth Amendment execution claims can be waived). This Court would have to recede from *LaGrand* for Wainwright to prevail.

Wainwright does not have a "significant" possibility of prevailing in this Court on the merits, if this Court were to grant review. Wainwright also fails the second factor.

Irreparable injury

As to the third factor of irreparable injury, none is identified. While the execution will result in Wainwright's death, that is the inherent nature of a death sentence. The factors for granting a stay are taken from the standard for granting a stay for normal civil litigation, which is not a natural fit in capital cases. *Barefoot*, 463 U.S. at 895-96 (citing *Times-Picayune Pub. Corp. v. Schulingkamp*, 419 U.S. 1301, 1305 (1974) (Powell, J., in chambers)). In the capital context, more should be required to establish irreparable injury than the execution itself. Otherwise, this factor would automatically be satisfied in every capital case. Wainwright has identified no irreparable harm that is not a direct consequence of his valid, constitutional, and long-final death sentences for the kidnapping, rape, and murder of a young mother.

Moreover, this Court has stated in the capital context that "the relative harms to the parties" must still be considered, including "the State's significant interest in enforcing its criminal judgments." *Nelson*, 541 U.S. at 649-50 (emphasis added). Without finality, "the criminal law is deprived of much of its deterrent effect." *Calderon v. Thompson*, 523 U.S. 538, 555-56 (1998). And finality in a capital case is the execution. This murder occurred in 1994 and Wainwright's convictions and death sentence has been final since 1998. Wainwright fails the third factor as well.

Accordingly, this Court should deny the motion to stay.

Respectfully submitted,

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