

No. \_\_\_\_\_

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IN THE  
**Supreme Court of the United States**

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GLEN EDWARD ROGERS,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

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*On Petition for a Writ of Certiorari to the Supreme Court of Florida*

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**APPLICATION FOR STAY OF EXECUTION**

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***THIS IS A CAPITAL CASE  
WITH AN EXECUTION SCHEDULED FOR  
THURSDAY, MAY 15, 2025, AT 6:00 P.M.***

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To the Honorable Clarence Thomas, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Eleventh Circuit:

The State of Florida has scheduled the execution of Petitioner, Glen Edward Rogers, for **May 15, 2025 at 6:00 p.m.** The Florida Supreme Court denied relief on May 8, 2025. *See Rogers v. State*, No. SC2025-0585, 2025 WL 1341642, (Fla. May 8, 2025). Rogers respectfully requests that this Court stay his execution, pursuant to Supreme Court Rule 23 and 28 U.S.C. § 2101(f), pending consideration of his concurrently filed petition for a writ of certiorari.

### **STANDARDS FOR A STAY OF EXECUTION**

The standards for granting a stay of execution are well-established. *Barefoot v. Estelle*, 463 U.S. 880, 895 (1983). There “must be a reasonable probability that four members of the Court would consider the underlying issue sufficiently meritorious for the grant of certiorari or the notation of probable jurisdiction; there must be a significant possibility of reversal of the lower court's decision; and there must be a likelihood that irreparable harm will result if that decision is not stayed.” *Id.* (internal quotations omitted).

### **PETITIONER SHOULD BE GRANTED A STAY OF EXECUTION**

The questions raised in Rogers’s petition are sufficiently meritorious for a grant of a writ of certiorari. The underlying issues present significant, compelling questions of constitutional law, and a stay is necessary to avoid Rogers being executed in violation of the Eighth Amendment to the United States Constitution, the Fourteenth Amendment to the United States Constitution, *Glossip v. Gross*, 576 U.S.

863 (2015), and *Baze v. Rees*, 553 U.S. 35 (2008).

It is indisputable that Rogers will be irreparably harmed if his execution is allowed to go forward, and the balance of equities weighs heavily in favor of a stay. Florida's interest in the timely enforcement of judgments handed down by its courts must be weighed against Rogers's continued interest in his life. *See Ohio Adult Parole Auth. v. Woodard*, 523 U.S. 272, 289 (1998) ("[I]t is incorrect . . . to say that a prisoner has been deprived of all interest in his life before his execution.") (O'Connor, J., plurality opinion). Florida has a minimal interest in finality and efficient enforcement of judgments, but Rogers has a right in ensuring that his execution comports with the Constitution. In addition, the irreversible nature of the death penalty frequently supports in favor of granting a stay. "[A] death sentence cannot begin to be carried out by the State while substantial legal issues remain outstanding." *Barefoot*, 463 U.S. at 888. Should this Court grant the request for a stay and review of the underlying petition, Rogers submits there is a significant possibility of the lower court's reversal. This Court's intervention is urgently needed to prevent Rogers's imminent execution despite the protections from the death penalty provided by the Eighth Amendment.

Rogers's case presents important constitutional issues which should be fully addressed by this Court free from the extreme time constraints set by the warrant signed on April 15, 2025. Rogers's execution is set for May 15, 2025, which is only **six days** away from the filing of this application. Rogers respectfully requests that this Court enter a stay of execution and also relinquish jurisdiction to the state circuit

court with instructions to hold a full and fair evidentiary hearing on the claims raised in Rogers's April 20, 2025 Defendant's Successive Motion to Vacate Judgment of Conviction and Sentence of Death, and for CCRC-Middle to Withdraw, for the Appointment of Conflict-Free Counsel and his timely filed April 30, 2025 Initial Brief of the Appellant. It is particularly necessary that the state circuit court hold an evidentiary hearing on Rogers's as-applied challenge to Florida's lethal injection procedures raised under *Glossip v. Gross*, 576 U.S. 863 (2015) and *Baze v. Rees*, 553 U.S. 35 (2008).

As further detailed in Rogers's contemporaneous petition for a writ of certiorari, Rogers is arguing that Florida's current lethal injection procedures are unconstitutional as specifically applied to him because executing Rogers under those procedures will very likely cause him needless pain and suffering due to the interaction of Florida's use of the drug etomidate and Rogers's Porphyria. *Glossip v. Gross*, 576 U.S. 863 (2015); *Baze v. Rees*, 553 U.S. 35 (2008).

Rogers's as-applied challenge to Florida's lethal injection procedures is substantial grounds upon which relief from the ultimate sanction of execution very likely could be granted. The state circuit court summarily denied Rogers' as-applied challenge without holding an evidentiary hearing on the matter. However, the Florida Supreme Court's ("FSC") prior precedent recognizes the need for evidentiary hearings on as-applied challenges to execution procedures, and the FSC has relinquished jurisdiction to the lower state court on at least **four** separate occasions so that an evidentiary hearing may be held on such claims. Rogers should be given

the same opportunity to an evidentiary hearing as those prior defendants who also raised an as-applied challenge while under an active death warrant. Florida is violating Rogers's due process and equal protection rights pursuant to the Fourteenth Amendment to the United States Constitution.

In 2014, the FSC relinquished jurisdiction to the lower court to hold an evidentiary hearing on Paul Howell's as-applied challenge to Florida's previous use of midazolam in executions, explaining that "because Howell raised factual as-applied challenges and relied on new evidence not yet considered by this Court ... this Court relinquished jurisdiction for an evidentiary hearing." *Howell v. State*, 133 So. 3d 511, 515 (Fla. 2014). Rogers raises a factual as-applied challenge based on evidence of his Porphyria diagnosis that has not been considered by the FSC previously. Rogers should be afforded the same opportunity for an evidentiary hearing as Howell.

Again in 2014, the FSC relinquished jurisdiction to the lower court to hold an evidentiary hearing on Robert Henry's as-applied challenge to Florida's lethal injection protocol related to his hypertension, high cholesterol level, and coronary artery disease. *Henry v. State*, 134 So. 3d 938, 943 (Fla. 2014). The circuit court held an evidentiary hearing during which both sides called medical experts to testify concerning Henry's unique medical conditions. *See id.* at 944. Rogers should be afforded the same opportunity for an evidentiary hearing as Henry.

A third time in 2014, the FSC relinquished jurisdiction to the lower court to hold an evidentiary hearing on Eddie Wayne Davis's as-applied challenge to Florida's execution procedures based on his diagnosis of Porphyria. *Davis v. State*, 142 So. 3d

867, 870 (Fla. 2014). The FSC explained that the court relinquished jurisdiction based, in part, on the “constitutional obligation to ensure that the method of lethal injection in this state comports with the Eighth Amendment.” *Id.* The FSC has the same constitutional obligation in Rogers’s case that was recognized by the court in Davis’s case, and Rogers should be afforded the same opportunity for an evidentiary hearing as Davis. Notably, Rogers raises an as-applied challenge to Florida’s lethal injection procedures based on the same diagnosis of Porphyria that Davis raised in 2014.

Davis raised an as-applied challenge based on the interaction between his Porphyria and Florida’s previous use of midazolam as the first drug in the lethal injection protocol. *Davis*, 142 So. 3d at 871. The FSC eventually affirmed the lower court’s denial of Davis’s as-applied challenge, but only after the court had previously relinquished jurisdiction to the lower court so that an evidentiary hearing could be held on the claim. *Id.* at 870. An evidentiary hearing was held where Davis’s qualified expert testified concerning the effect that Florida’s use of midazolam could have on Davis, considering his Porphyria diagnosis. The FSC determined Davis’s as-applied challenge based on a complete picture following expert testimony concerning Porphyria, and Rogers requests that he be given the same benefit of an evidentiary hearing concerning his Porphyria diagnosis that the FSC previously gave to Davis.

As discussed in the contemporaneous petition for a writ of certiorari, Rogers retained anesthesiologist Dr. Joel Zivot to opine on the interaction of Florida’s current use of the drug etomidate with his Porphyria. Dr. Zivot’s general opinions and

expected testimony were presented to the state circuit court in Roger's April 20, 2025 Florida Rule of Criminal Procedure 3.851 Motion. The state circuit court erroneously failed to hold an evidentiary hearing so that Dr. Zivot's full testimony could be presented. Dr. Zivot's signed and notarized affidavit detailing his opinions in Rogers's case is available at Appendix C to the contemporaneously filed petition for a writ of certiorari.

Finally, in 2015 the FSC relinquished jurisdiction to the lower court to hold an evidentiary hearing on Jerry Correll's as-applied challenge to Florida's execution procedures based on his alleged brain damage and history of alcohol and substance use. *Correll v. State*, 184 So. 3d 478, 483 (Fla. 2015). Prior to the evidentiary hearing, the FSC granted Correll's motion for stay of proceedings and stay of execution which was filed with his appeal of the lower court's summary denial of his claims, which subsequently allowed for enough time to hold the evidentiary hearing on Correll's as-applied challenge. *See id.* at 482. An evidentiary hearing with multiple witnesses was subsequently held on Correll's as-applied claim. *Id.* at 484. Same as Correll, Rogers also filed a motion to stay his proceedings and execution with the FSC so that a full and fair evidentiary hearing could be held on his as-applied challenge to Florida's execution procedures. Rogers should be afforded the same opportunity as Correll for an evidentiary hearing, and he must be granted a stay of execution so that a full and fair evidentiary hearing can be conducted.

Rogers should be afforded the same opportunity for an evidentiary hearing on his as-applied claim that was given to Howell, Henry, Davis, and Correll at the state

level. These capital defendants were similarly situated to Rogers in that they all raised as-applied challenges to Florida's execution procedures while under an active death warrant. To treat Rogers differently by denying him an evidentiary hearing when these defendants received one violates Rogers's Fourteenth Amendment rights to equal protection and due process.

### CONCLUSION

"The fundamental requirement of due process is the opportunity to be heard **'at a meaningful time and in a meaningful manner.'**" *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965) (emphasis added). Rogers's meritorious issues cannot possibly be heard in a meaningful manner with only **six days** left until his execution. The important constitutional issues presented by Rogers's case require a full appellate review that is not truncated by the exigencies of an imminent execution.

For the foregoing reasons, Rogers respectfully requests that this Court grant his application for a stay of his May 15, 2025 execution to address the compelling constitutional questions in his case on the merits.

Respectfully submitted,

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May 9, 2025  
Dated