

No. 24A1087
CAPITAL CASE

EXECUTION SCHEDULED FOR
THURSDAY, MAY 15, 2025, AT 6:00 P.M.

**In the
Supreme Court of the United States**

GLEN EDWARD ROGERS,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

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

RESPONSE TO APPLICATION FOR STAY OF EXECUTION

On May 9, 2025, Glen Edward Rogers, represented by state postconviction counsel Ali Shakoor and Adrienne Shepherd of the Capital Collateral Regional Counsel – Middle Region (“CCRC-M”), filed, in this Court, a petition for writ of certiorari seeking review of a decision from the Florida Supreme Court rendered May 8, 2025, in this active death warrant case. The petition raised two issues: (1) whether Florida’s successive pleading requirements under Florida Rule of Criminal Procedure 3.851(d) violate a capital defendant’s due process rights, when applied in a post-warrant context; and (2) whether Florida courts violated Rogers’ Fourteenth Amendment Due Process and Equal Protection rights by failing to hold an evidentiary hearing on his as-applied challenge to lethal injection. He also filed an application for

a stay of execution based on that petition. This Court, however, should simply deny the petition and then deny the stay.

Stays of Execution

Stays of executions are not granted as “a matter of course.” *Hill v. McDonough*, 547 U.S. 573, 583-84 (2006). 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.” *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 stated that last-minute stays of execution should be the “extreme exception, not the norm.” *Id.*

To be granted a stay of execution, Rogers 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). Rogers 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 on the issues raised here. This Court's Rule 10 states that certiorari will be granted "only for compelling reasons," which include the existence of conflicting decisions on issues of law among federal courts of appeals, among state courts of last resort, or between federal courts of appeals and state courts of last resort. No such situation exists here. Rogers has cited no conflict or unsettled question of law warranting this Court's review. In state court, Rogers raised a claim that Florida's lethal injection procedures as applied to Rogers constitute cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments. The Florida Supreme Court found this claim both untimely and meritless under Florida law. *Rogers v. State*, SC2025-0585, 2025 WL 1341642, at *7-8 (Fla. May 8, 2025). The time bar applied in state court below is reason enough to deny review. This Court does not grant review of issues that are matters of state law. *Michigan v. Long*, 463 U.S. 1032 (1983); *Foster v. Chatman*, 578 U.S. 488, 497 (2016).

Rogers contends that prior Florida Supreme Court precedent requires an evidentiary hearing on as-applied challenges and notes that the Florida Supreme

Court relinquished jurisdiction previously for hearings to be held in four different as-applied cases. (Motion at 4). Yet Rogers cites no state case that says an evidentiary hearing is *always* required when an as-applied method-of-execution challenge is raised. Indeed, the Florida Supreme Court rejected Rogers' assertion that the cited cases stood for that proposition. *Rogers*, 2025 WL 1341642, at *7 n.12. Rogers also ignores the fact that in the four state cases he discusses, no court found that the defendant filed untimely postconviction motions for relief. And his allegations in this case in support of his lethal injection claim were entirely speculative and legally insufficient to set forth an Eighth Amendment challenge.

Rogers argues that this Court should stay the execution because it presents constitutional issues which this Court should be free of time constraint to properly consider. He laments that the Court only has several days to consider the issue. However, this supposed conundrum is one created by Rogers' own doing. Rogers has known of his porphyria diagnosis for decades, but he delayed bringing any claim challenging the lethal injection protocol as applied to him until his death warrant was signed. The Florida Supreme Court has previously rejected the argument that a claim of this nature is not ripe until a death warrant is signed. *See Ferguson v. State*, 101 So. 3d 362, 365 (Fla. 2012) (rejecting an argument that a method-of-execution claim is not ripe until a death warrant is signed).

Moreover, there is no conflict between the Florida Supreme Court's opinion and any decision of this Court regarding the federal constitutional arguments raised in the petition, which is a major consideration with regard to this Court's decision to

exercise certiorari review. Nor is there any conflict with the decision of another state court of last resort or a United States court of appeals on any important question of federal law. There is little probability that the Court would vote to grant certiorari review on the questions presented in the petition. Rogers fails the first factor, which is alone sufficient to deny the motion for a stay.

Significant Possibility of Reversal

As to the second factor, there is not a significant possibility of reversal on either of the two issues raised by Rogers. In his application for a stay, Rogers does not even address the first question presented in his petition for writ of certiorari. The Florida Supreme Court rejected Rogers' challenge to the time limitations contained in Florida Rule of Criminal Procedure 3.851(d) because Rogers failed to present the claim to the lower court and improperly raised it for the first time on appeal. *See Rogers*, 2025 WL 2025 WL 1341642, at *6. Furthermore, the Florida Supreme Court noted that it had previously rejected the same claim in *Ford v. State*, 402 So. 3d 973, 977 (Fla. 2025), *cert. denied*, 145 S. Ct. 1161 (2025). *Id.*

Similarly, Rogers has not shown a significant possibility of reversal based on the Florida courts denying him an evidentiary hearing on his lethal injection claim. Under Florida law, the state courts may not consider a motion that is untimely. Rogers admitted that he has been aware of his porphyria diagnosis since at least 1997 and yet, he failed to raise the claim until after his death warrant was issued. Rogers' lethal injection challenge is little more than an attack on settled precedent and does not warrant certiorari review, particularly when he was dilatory in bringing this

claim. *Bucklew*, 587 U.S. at 150 (stating that courts “can and should protect settled state judgments from undue interference by invoking their equitable powers to dismiss or curtail suits that are pursued in a dilatory fashion or based on speculative theories”). Because this Court does not grant review where the decision below rests on independent and adequate state law, Rogers fails this factor as well.

Irreparable Injury

As to the third factor of irreparable injury, none is identified. While the execution will result in Rogers’ 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 as applied to 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)). Finality in a capital case is the execution, so some additional showing should be required in a capital case to satisfy this factor. Rogers has identified no irreparable harm that is not a direct consequence of the valid, constitutional, and long-final death sentence that was imposed in 1997 for his brutal murder of Tina Marie Cribbs.

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). Again, finality in a capital case is the execution. The murder for which Rogers was sentenced to death occurred in

1995, and his death sentence has been final since 2001. Rogers fails this factor as well. Accordingly, this Court should deny the motion to stay.

Respectfully submitted,

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