OCTOBER TERM 2024

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

BENJAMIN RITCHIE,
Petitioner,

v.

RON NEAL, Superintendent Indiana State Prison,
Respondent.

APPLICATION FOR STAY OF EXECUTION

--- CAPITAL CASE ---

EXECUTION SCHEDULED FOR 12:00 A.M. ON TUESDAY, MAY 20, 2025

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To the Honorable Amy Coney Barrett, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Seventh Circuit:

The State of Indiana has scheduled the execution of Benjamin Ritchie for after midnight tonight, May 20, 2025. Mr. Ritchie respectfully requests a stay of execution pending consideration and disposition of the petition for a writ of certiorari that is being filed along with this application.

STANDARDS FOR A STAY OF EXECUTION

Mr. Ritchie 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. A petitioner is entitled to a stay of execution if he can establish: (1) a substantial likelihood of success on the merits; (2) irreparable harm in the absence of the stay; (3) the balance of equities tips in his favor; and, (4) that public interest supports a stay. *Nken v. Holder*, 556 U.S. 418, 434 (2009); *Hill v. McDonough*, 547 U.S. 573, 584 (2006); *Nelson v. Campbell*, 541 U.S. 637, 649-50 (2004). The first two factors are the "most critical." *Nken*, 556 U.S. at 434. All four factors weigh strongly in Mr. Ritchie's favor.

PETITIONER SHOULD BE GRANTED A STAY OF EXECUTION

A. Mr. Ritchie is likely to succeed on the merits.

Mr. Ritchie did not receive a fair opportunity to petition for federal habeas relief. Mr. Ritchie's habeas attorneys labored under a conflict of interest that prevented them from advocating on his behalf. After habeas proceedings concluded, they constructively abandoned Mr. Ritchie—despite assuring him they would still advocate for his interests—and did not withdraw until the State announced it would

seek an execution date for Mr. Ritchie. Within seven months of the appointment of conflict-free counsel, Mr. Ritchie moved to reopen the judgment based on his prior attorneys' conflict under Federal Rule of Civil Procedure 60(b)(6) and to stay his execution. The district court issued an order denying the stay motion, finding, in relevant part, that Mr. Ritchie's Rule 60(b) motion was not filed within a reasonable time—and that he therefore had a low likelihood of success on the merits—because he could have sought such relief while represented by conflicted counsel or more quickly with conflict-free counsel. The Seventh Circuit, over a dissent, affirmed the denial of a stay solely on the timeliness ground "because [the Rule 60(b) motion] was untimely under any possible starting point for the rule's 'reasonable time' requirement." Mr. Ritchie is likely to succeed in his argument that his Rule 60(b) motion was not categorically untimely such that he cannot even meet the substantial likelihood standard. Because all of the remaining Rule 60(b) standards are also met, Mr. Ritchie has established this stay factor.

1. Timeliness

As the dissent below recognized, the Seventh Circuit's decision in this case created a standard in which "Rule 60(b) would never be available to [federal habeas] petitioners with conflicted counsel, so long as the conflict lasts long enough." *Ritchie v. Neal* (*Ritchie II*), No. 25-1852, at 5 (7th Cir. May 18, 2025). The decision below also sets the timeliness bar so high under Rule 60(b) that such a motion filed seven months after the appointment of conflict-free counsel cannot even meet the threshold stay-of-execution showing that it is substantially likely to be reasonably timely. The decision squarely conflicts with this Court's holding in *Christeson v. Roper*, 574 U.S. 373

(2015) and decisions of other lower courts, and this Court is likely to grant certiorari to give guidance to these courts.

In *Christeson*, this Court held that a habeas petitioner represented by conflicted counsel is "entitled" to the opportunity to move for Rule 60(b) relief based on that conflict with "the assistance of substitute counsel in doing so." *Id.* at 380-81. As the dissent below recognized, Mr. Ritchie's federal habeas counsel labored under a conflict of interest because they had failed to raise substantial claims of trial counsel ineffectiveness during state postconviction proceedings and could not attack their own performance—which counsel admitted was ineffective—during federal habeas proceedings. Investigating and raising a claim under *Martinez*/*Trevino* would have required Mr. Ritchie's federal habeas counsel to plead the ineffectiveness of state postconviction counsel—something they could not do because they represented Mr. Ritchie in both forums. This created an "obvious conflict of interest" because it would have required them to "denigrate their own performance." *Christeson*, 574 U.S. at 378-79.

However, after Mr. Ritchie's habeas case concluded, prior counsel remained on the case on paper despite constructively abandoning Mr. Ritchie. In fact, prior counsel explicitly led Mr. Ritchie to believe that they were still actively representing him by assuring him they "would not abandon him and would continue to protect his interests." DCt. No. 64-1, at 307 ¶ 5. Neither moved to withdraw from either the district court or state court until just before the State of Indiana moved to set an

execution date for Mr. Ritchie, both noting that they had not represented Mr. Ritchie in years. DCt. Nos. 57, 58.

Despite the conflict and constructive abandonment, the district court found that the Rule 60(b) motion was likely not reasonably timely because Mr. Ritchie ostensibly could have navigated the federal habeas waters alone in the face of his attorneys' assurances that they still represented him. The district court's finding, affirmed by the majority below, ignored both the circumstances of this case—which include the conflict of and abandonment by Mr. Ritchie's attorneys and his severe cognitive impairments—and this Court's holding in *Christeson*.

Within seven months of conflict-free counsel's appointment, Mr. Ritchie moved for Rule 60(b) relief. Under *Christeson*, Mr. Ritchie's "mandatory right to qualified legal counsel" entitled him not only to conflict-free counsel, but also to a reasonable time period for his conflict-free counsel to investigate the conflict and the case and to develop substantial claims for relief. 574 U.S. at 377. Here, new counsel accomplished these tasks in less than seven months, well under the presumptive one-year time period that Rule 60 establishes for motions to reopen judgment. *See* Fed. R. Civ. P. 60(c). But the district court wrongly believed, in reasoning adopted by the panel majority, that a Rule 60(b) motion should have been filed a few weeks after conflict-free counsel's appointment. The lower courts "committed factual and legal error in determining that Ritchie's new counsel was not reasonably timely in filing Ritchie's Rule 60(b)(6) motion." *Ritchie II* at 6 (Jackson-Akiwumi, J., dissenting).

As explained in Mr. Ritchie's certiorari petition, the panel majority's ruling is directly at odds with both the precedent of this Court and the decisions of other lower federal courts. Therefore, this Court is likely to grant certiorari and rule in Mr. Ritchie's favor.

2. Mr. Ritchie has established by a substantial likelihood all other Rule 60(b)(6) factors.

Apart from determining that Mr. Ritchie has not made a substantial showing that his Rule 60(b) motion was reasonably timely, neither federal court below questioned whether Mr. Ritchie is substantially likely to succeed on the merits. Mr. Ritchie's federal habeas proceeding was rendered defective by prior counsel's conflict of interest, which prevented them from advancing his interests before the district court. Because Mr. Ritchie has proffered substantial constitutional claims he could raise upon reopening the judgment and established that the extraordinary circumstances of this case justify such relief, Mr. Ritchie is substantially likely to succeed in reopening the judgment.

Mr. Ritchie is seeking to attack a "defect in the integrity of the federal habeas proceeding." *Gonzalez v. Crosby*, 545 U.S. 524, 532 (2005). *Martinez v. Ryan*, 566 U.S. 1 (2012) and *Trevino v. Thaler*, 569 U.S. 413 (2013), decided while Mr. Ritchie's initial habeas proceeding was still before the district court, created an "obvious conflict of interest" because investigating and raising a claim under *Martinez/Trevino* would have required prior counsel to "denigrate their own performance." *Christeson*, 574 U.S. at 378-79. Indeed, counsel were specifically alerted by the State that they had defaulted the ineffectiveness claim with respect to Mr. Ritchie's lead poisoning, DCt.

No. 17, at 31, but they failed to take any action to excuse the default. DCt. No. 64-1, at 306 ¶¶ 2-4, 307 ¶¶ 3–4. The conflict of interest "precluded a merits determination" of procedurally defaulted claims of ineffective assistance of trial counsel. *Gonzalez*, 545 U.S. at 532.

"Given the obvious conflict of interest," Cleary and Westerfeld could not function as Mr. Ritchie's counsel during his initial federal habeas proceeding, and Mr. Ritchie was effectively left with no counsel at all. *Christeson,* 574 U.S. at 379. Instead of apprising the district court or Mr. Ritchie of the conflict, withdrawing from the case, or seeking the appointment of conflict-free counsel to review their state court performance, both attorneys abandoned him in turn. Because of this abandonment, Mr. Ritchie was unknowingly left without attorneys working on his behalf. Therefore, Mr. Ritchie is seeking to attack a defect in his habeas proceedings.

Mr. Ritchie has proffered two "good claim[s]" that he would be able to raise upon reopening of the judgment. *Buck v. Davis*, 580 U.S. 100, 126 (2017). First, despite arguing that Mr. Ritchie was prenatally exposed to alcohol, trial counsel failed to investigate and present evidence of Mr. Ritchie's Fetal Alcohol Spectrum Disorder (FASD), the "clear" cause of his severe brain damage and impairments. DCt. No. 64-1, at 159. *See* DCt. No. 64, at 28-45; DCt. No. 74, at 16-24. This claim was denied on procedural grounds by an evenly divided 2-2 Indiana Supreme Court over the dissents of two justices who recognized its compelling nature. *Ritchie*, 254 N.E.3d at 1069-70 (Goff, J., dissenting in part, concurring in result); *id*. at 1070-71 (Rush, C.J., dissenting). Second, trial counsel likewise failed to investigate and present

evidence of Mr. Ritchie's early childhood lead poisoning, which added to and compounded the debilitating impairments Mr. Ritchie suffered as a result of FASD. *See* DCt. No. 64, at 46-52; DCt. No. 74, at 24-25.[1]

Although Proffered Claims 1 and 2 have been procedurally defaulted, Mr. Ritchie can satisfy *Martinez* and *Trevino* upon reopening the judgment. *See Buck*, 580 U.S. at 126-27 (finding that petitioner has "good claim" because *Martinez*/*Trevino* provide potential excuse for procedural default of ineffective assistance claims). Prior counsel performed deficiently in failing to present these claims during postconviction, and that deficient performance prejudiced Mr. Ritchie because each of these proffered claims of trial counsel's ineffectiveness is "a substantial one, which is to say that . . . the claim has some merit." *Martinez*, 566 U.S. at 14. The district court essentially already found as much given that the court found that these claims are "substantial" in granting a Certificate of Appealability—the same standard that governs *Martinez* prejudice. DCt. No. 76, at 23-24 (quoting *Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000).

Finally, the extraordinary circumstances present in this case warrant reopening the judgment. "In determining whether extraordinary circumstances are

[1] Prior counsel raised this claim in Mr. Ritchie's initial habeas petition but abandoned it after the State asserted procedural default. As a result, the claim never received a merits ruling. DCt. No. 64, at 46. That this is not a "new" claim is further reason why the Rule 60(b) is not second or successive. Additionally, the State's assertion of default regarding this substantial trial counsel ineffectiveness claim means that the conflict of interest ripened when this Court decided *Martinez*, given that counsel could have—but did not—seek to excuse the default through a plausible procedural gateway or move for the appointment of conflict-free counsel who could have.

present, a court may consider a wide range of factors. These may include, in an appropriate case, the risk of injustice to the parties and the risk of undermining the public's confidence in the judicial process." *Buck*, 580 U.S. at 123 (cleaned up). The injustice to Mr. Ritchie is grave: without intervention, Mr. Ritchie will be executed without having received a fair opportunity to petition for federal habeas relief and raise the substantial proffered claims because his attorneys labored under a conflict of interest that prevented them from advancing his interests. Prior counsel's conflict and abandonment were each a direct violation of the federal statute specifically designed to protect death sentenced inmates during federal habeas, depriving Mr. Ritchie of his statutory right to counsel twice over. *See* DCt. No. 64, at 52–57. *Cf. McFarland* 512 U.S. at 858 ("Where [the right to quality legal representation in preparing a federal habeas petition] is not afforded, 'approving the execution of a defendant before his [petition] is decided on the merits would clearly be improper.'").

It is extraordinary that Mr. Ritchie will be executed despite his simple request for the opportunity to have his substantial constitutional claims—one of which was denied by an equally divided 2-2 vote in state court on procedural grounds—tested on the merits by at least one court before his sentence is carried out. As Judge Jackson-Akiwumi stated in her dissent below, "[w]hen an execution is imminent, [a Court] owe[s] a 'correspondingly greater degree of scrutiny' to the condemned, the victims, and the public to ensure an error-free round of federal habeas review." *Ritchie II* at 5 (Jackson-Akiwumi, J., dissenting) (citing *California v. Ramos*, 463 U.S. 992, 998–99 (1983); *cf. Lonchar v. Thomas*, 517 U.S. 314, 324 (1996)). Therefore, the only

determinative question truly before this Court is whether Mr. Ritchie has established by a substantial likelihood that his Rule 60(b) motion is reasonably timely.

B. Mr. Ritchie will be irreparably harmed if a stay is not granted.

Irreparable injury "is necessarily present in capital cases." *Wainwright v. Booker*, 473 U.S. 935, 935 n.1 (1985). *See also Evans v. Bennett*, 440 U.S. 1301, 1306 (1979) (Rehnquist, C.J., in chambers) (recognizing "the obviously irreversible nature of the death penalty"). Without intervention, Mr. Ritchie will be executed. *See Ritchie v. Neal (Ritchie I)*, No. 1:08-cv-0503, ECF No. 76, at 21 (S.D. Ind. May 17, 2025) ("The court does not accept the State's argument that Mr. Ritchie has not adequately shown he would suffer irreparable injury in the absence of a stay. Death most assuredly is irreparable injury.").

C. The balance of equities tips in Mr. Ritchie's favor.

Although the State and victims generally have a strong interest in the enforcement of a criminal judgment that is relevant to issuing temporary relief, "this is not a case in which [the prisoner] slept upon his rights." *Ramirez v. Collier*, 595 U.S. 411, 435 (2022). Despite prior counsel's conflict of interest, they stayed on the case before eventually abandoning Mr. Ritchie. In 2012, Cleary took a new job that precluded him from representing Mr. Ritchie, *Maples*, 565 U.S. at 284, and, in 2024, admitted that he has not "substantively" represented Mr. Ritchie in years. DCt. No. 64-1, at 307. In 2016, Westerfeld stopped working on the case entirely after losing on appeal. DCt. No. 64-1, at 306. Therefore, by some point in 2016, Mr. Ritchie, without his knowledge, was constructively abandoned by both attorneys who still ostensibly represented him. Mr. Ritchie had no reason to believe that he had been constructively

abandoned—his attorneys explicitly led him to believe otherwise, DCt. No. 64-1, at 307 ¶ 5, and they had been appointed under a statute that required them to continue to represent him indefinitely, § 3599(e) ("Unless replaced by similarly qualified counsel . . . or upon motion, each attorney so appointed shall represent the defendant throughout every subsequent [stage of proceedings]"); *cf*. *Battaglia v. Stephens*, 824 F.3d 470, 472 (5th Cir. 2016) (finding substitution appropriate because prior counsel abandoned the client despite the statutory duty "to represent a capital defendant . . .until a court of competent jurisdiction grants a motion to withdraw"). It was not until ten days before the State moved to execute Mr. Ritchie that prior counsel moved to withdraw as his counsel in the district court. Only at this point could Mr. Ritchie seek Rule 60(b)(6) relief through conflict-free counsel, which he has done with utmost dispatch. *Christeson*, 574 U.S. at 380-81.

On the other side of the scale, this Court must consider the State's role in creating the circumstances that warrant a stay. *See Ramirez*, 595 U.S. at 435 ("[R]espondents can hardly complain about the inequities of delay when their own actions were a significant contributing factor."). This Court denied certiorari off of the federal habeas proceedings in April 2017. *Ritchie v. Neal*, 581 U.S. 920 (2017). Thereafter, the State did not seek an execution date for Mr. Ritchie for more than seven years, during which time Mr. Ritchie remained represented by conflicted counsel. After the State announced a desire to seek an execution—but a week before it actually moved to set the date—Mr. Ritchie's prior attorneys withdrew as counsel and told the Court that they had "not substantively represented Mr. Ritchie since

2016." Doc. Nos. 57, 58. The State did not object to the motion to withdraw, or otherwise let it impact their intention to move for execution. Yet, now fully aware that (1) Mr. Ritchie's attorneys had just admitted to abandoning him up to the eve of his execution warrant and (2) that Mr. Ritchie would now be represented by new counsel the State sought, and ultimately received, a warrant setting an execution date in just over 30 days. Doc. No. 64-1, at 7. Both the extended period after Mr. Ritchie's certiorari was denied and the sudden rush to execute him are the State's doing, not Mr. Ritchie's.

Mr. Ritchie, like all death-sentenced prisoners, is entitled to one round of defect-free federal habeas review. *See Lonchar*, 517 U.S. at 324. He has yet to receive such review. Therefore, Mr. Ritchie's irreparable harm—that he will be executed without having received a fair chance to petition for federal habeas relief due to prior counsel's conflict of interest—outweighs the State's temporary injury. *See Ritchie v. Neal*, No. 25-1852, at 6 (7th Cir. May 18, 2025) (Jackson-Akiwumi, J., dissenting) ("[T]his was not, as the State proposes, an eleventh-hour attempt to delay execution. After all, the Indiana Supreme Court did not set Ritchie's execution date until mid-April. Seeing how divided that court was, Ritchie is simply requesting that at least one court review the merits of his claims before he is killed.").

D. The public interest weighs in favor of granting a stay.

Staying Mr. Ritchie's execution is necessary to vindicate the federal statutory right to conflict-free counsel in federal habeas. The public interest supports equitable relief that will prevent the frustration of a statutory right. *See Ramirez*, 595 U.S. at 433 ("By passing RLUIPA, Congress determined that prisoners like Ramirez have a

strong interest in avoiding substantial burdens on their religious exercise, even while confined."). "The fact that Congress has indicated its purpose . . . is in itself a declaration of public interest and policy which should be persuasive in inducing courts to give relief." *Virginian Ry. Co. v. Sys. Fed'n No. 40*, 300 U.S. 515, 552 (1937). As such, "[i]n considering the propriety of the equitable relief, [courts] cannot ignore the judgment of Congress, deliberately expressed in legislation." *Id*.

Congress enacted 18 U.S.C. § 3599 to ensure the "mandatory right to qualified legal counsel in [federal habeas] proceedings" for death-sentenced inmates. *Christeson*, 574 U.S. at 377 (quoting *McFarland v. Scott*, 512 U.S. at 859).[2] "By providing indigent capital defendants with a mandatory right to qualified legal counsel in these proceedings, Congress has recognized that federal habeas corpus has a particularly important role to play in promoting fundamental fairness in the imposition of the death penalty." *McFarland*, 512 U.S. at 859. In light of Congress's policy decision, this Court has repeatedly recognized that the denial of federal capital habeas counsel, whether actual or constructive, is grounds for equitable relief. *See*, *e.g.*, *Christeson*, 574 U.S. at 381 (staying execution and allowing petitioner opportunity to pursue Rule 60(b)(6) relief based on initial federal habeas counsel's conflict of interest); *McFarland* 512 U.S. at 858 ("Where [the right to quality legal

[2] Although *McFarland* dealt with a prior iteration of the statute, Congress's recodification under § 3599 actually "enhanced" capital petitioners' "rights of representation" in light of "the seriousness of the possible penalty and the unique and complex nature of the litigation." *Martel v. Clair*, 565 U.S. 648, 659 (2012) ("[T]he statute aims in multiple ways to improve the quality of representation afforded to capital petitioners.") (cleaned up).

representation in preparing a federal habeas petition] is not afforded, approving the execution of a defendant before his [petition] is decided on the merits would clearly be improper.") (cleaned up).

This Court must take the public interest arising from Congress's determinations in § 3599 into account in weighing Mr. Ritchie's stay request. Mr. Ritchie was constructively denied counsel during federal habeas proceedings because they developed a conflict of interest. *Christeson*, 574 U.S. at 379 (when counsel develops a conflict, the petitioner "effectively has no counsel at all") (cleaned up). This violation of § 3599 was compounded when both attorneys abandoned Mr. Ritchie, despite their statutory obligation to remain on the case and advocate on his behalf. *See* 18 U.S.C. § 3599(e). *See also Battaglia*, 824 F.3d at 472 ("[A] lawyer appointed to represent a capital defendant is obligated to continue representing his client until a court of competent jurisdiction grants a motion to withdraw[.]").

Moreover, the public interest also supports procedures that ensure accuracy, trustworthiness, and fairness in the criminal justice system, especially in death penalty cases. The "risk of undermining the public's confidence in the judicial process" by allowing Mr. Ritchie's execution to proceed without his substantial constitutional claims having been heard on the merits is grave and irreversible. *Buck*, 580 U.S. at 123. "[T]he public legitimacy of our justice system relies on procedures that are 'neutral, accurate, consistent, trustworthy, and fair,' and that 'provide opportunities for error correction.'" *Rosales-Mireles v. United States*, 585 U.S. 129, 141 (2018) (citation omitted). "Likewise, regardless of its ultimate reasonableness, a sentence

that lacks reliability because of unjust procedures may well undermine public perception of the proceedings." *Id*. at 144 (citation omitted). Therefore, in *Rosales-Mireles*, the Court explained that the "risk of unnecessary deprivation of liberty particularly undermines the fairness, integrity, or public reputation of judicial proceedings." *Id*. at 130.

But Mr. Ritchie is not just facing a loss of liberty; his life is on the line. The death penalty "requires a greater degree of accuracy" than noncapital cases. *Gilmore v. Taylor*, 508 U.S. 333, 342 (1993). *See also Ramos*, 463 U.S. at 998–99. Due to prior counsel's conflict, Mr. Ritchie was "denie[d] . . . the protections of the Great Writ." *Lonchar*, 517 U.S. at 324 (citing *Ex parte Yerger,* 8 Wall. 85, 95 (1869) for the proposition that "the writ 'has been for centuries esteemed the best and only sufficient defence of personal freedom'"). Without this Court's intervention, Mr. Ritchie's death sentence will never receive the full scrutiny that the death penalty demands, risking the potential and irrevocable deprivation of Mr. Ritchie's constitutional rights and the public's confidence that this was a just result. "Such a risk cannot be tolerated in a case in which the defendant's life is at stake." *Beck v. Alabama*, 447 U.S. 625, 637 (1980).

Finally, it cannot be ignored that Mr. Ritchie is pursuing Rule 60(b) relief so that he may have the opportunity to vindicate his Sixth Amendment right to counsel. *See Fellowship of Christian Athletes v. San Jose Unified Sch. Dist. Bd. of Educ.*, 82 F.4th 664, 695 (9th Cir. 2023) ("[I]t is always in the public interest to prevent the violation of a party's constitutional rights.") (cleaned up). Because of prior counsel's

conflict of interest during initial federal habeas proceedings, Mr. Ritchie will otherwise never have the opportunity to raise the substantial constitutional claims he was prevented from raising given his federal habeas counsel's conflict of interest. *Christeson*, 574 U.S. at 380-81.

CONCLUSION

For the foregoing reasons, Mr. Ritchie respectfully requests that his application for a stay of execution be granted.

Respectfully submitted,

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Dated: May 19, 2025