No. 25A_
No. 24-959 (CONNECTED CASE)

IN THE
Supreme Court of the United States

RICHARD GERALD JORDAN,
Petitioner,

v.

THE STATE OF MISSISSIPPI,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Mississippi

RESPONSE IN OPPOSITION TO EMERGENCY APPLICATION FOR STAY OF EXECUTION

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EXECUTION SCHEDULED WEDNESDAY, JUNE 25, 2025, AT 7:00 P.M. EDT

Petitioner Richard Gerald Jordan is scheduled to be executed on Wednesday, June 25, 2025, at 7:00 p.m. EDT. He was sentenced to death for kidnapping and murdering a young mother, Edwina Marter, in 1976. There is not, and never has been, any question about petitioner's guilt. He confessed to killing Mrs. Marter, led police to her body, and told police where he disposed of the murder weapon and where he hid the ransom money that he extorted from Mrs. Marter's husband after lying about her death.

Yet petitioner has managed to avoid having his sentence carried out for almost *fifty years*. His latest attempt to forestall his execution involves a petition for certiorari, pending before this Court and set for conference on May 29, in which he claims that his sentencing proceedings violated his due-process rights under *Ake v. Oklahoma*, 470 U.S. 68 (1985). As the State explained in its brief in opposition, that claim is procedurally barred and meritless, and it does not present any recurring legal question that requires this Court's intervention. *See* Brief In Opposition, *Jordan v. Mississippi*, No. 24-959 (May 7, 2025) (BIO). So this Court is likely to deny certiorari.

Far from showing that he is entitled to a stay of execution under this Court's well-settled precedent, petitioner's emergency application repeats the same baseless arguments from his pending petition for certiorari. The application should be denied or otherwise rejected as moot once the Court denies the petition for certiorari.

BACKGROUND

In 1976, petitioner murdered Edwina Marter after kidnapping her to extort money from her husband. As the State detailed in its brief in opposition, petitioner kidnapped Mrs. Marter at gunpoint in front of her 3-year-old son. BIO 2. He forced Mrs. Marter to leave her son and took her to a remote area where he executed her with a gunshot to the back of the head. BIO 2. Petitioner then called Mrs. Marter's husband and demanded that he pay a ransom in exchange for her safe return—even though she was already dead. BIO 2. A jury convicted petitioner of capital murder and sentenced him to death. BIO 3. After his conviction and/or sentence were vacated on now-irrelevant technical grounds three times, petitioner was sentenced to death for a fourth and final time in 1998. BIO 6. That sentence was affirmed on direct appeal, and this Court denied certiorari. *Jordan v. State,* 786 So. 2d 987 (2001), *cert. denied, Jordan v. Mississippi,* 534 U.S. 1085 (2002) (Mem.).

Over the following decades, the Mississippi courts rejected numerous state post-conviction challenges to petitioner's conviction and/or sentence, and federal courts denied him habeas relief. Several of those decisions rejected iterations of petitioner's claim that the state trial court violated his due-process rights under *Ake v. Oklahoma*, 470 U.S. 68 (1985), by allegedly failing to provide him access to an independent mental-health expert at the 1998 sentencing proceeding. Petitioner sought that assistance "to explore the

possibility that he suffered from Post Traumatic Stress Disorder" for purposes of mitigation. *Jordan v. Epps*, 740 F. Supp. 2d 802, 868 (S.D. Miss. 2010) (emphasis added); *e.g.*, *Jordan v. Epps*, 756 F.3d 395, 402-03, 412 (5th Cir. 2014); *Jordan v. State*, 912 So. 2d 800, 815-18 (Miss. 2005); *Jordan v. State*, 786 So. 2d 987, 1006-10 (Miss. 2001); BIO 6-11. Before sentencing, however, a court-appointed psychiatrist determined that petitioner had no "symptoms" of PTSD and instead had an "antisocial personality disorder." 740 F. Supp. 2d at 814, 857. That echoed the findings of a different court-appointed psychiatrist who evaluated petitioner prior to his initial trial in 1976. That expert concluded that petitioner "had an antisocial personality" and "was competent to stand trial" (*id.* at 809) and was "capable of distinguishing right and wrong" at the time of his crimes (*Jordan v. State*, 365 So. 2d 1198, 1203 (Miss. 1978)).

In 2022, petitioner filed his fourth petition for post-conviction relief in state court. *See* Appendix to Petition for a Writ of Certiorari 1a, *Jordan v. Mississippi*, No. 24-959 (Mar. 4, 2025) (Pet.App.). Recognizing that his due-process claim under *Ake* was procedurally barred as successive and untimely, petitioner claimed that this Court's decision in *McWilliams v. Dunn*, 582 U.S. 183 (2017), served as an "intervening decision" under a state-law exception to those bars. Pet.App.2a. Petitioner claimed in this Court that he "promptly" filed his fourth petition for post-conviction relief "[a]fter this Court decided *McWilliams*." Petition for a Writ of Certiorari 13, *Jordan v. Mississippi*, No.

24-959 (Mar. 4, 2025) (Pet.). In fact, petitioner waited more than *five years* after *McWilliams* was decided to seek relief.

The Mississippi Supreme Court held unanimously that petitioner's latest *Ake*/due-process claim was procedurally barred under the Mississippi Uniform Post-Conviction Collateral Relief Act's (UPCCRA) one-year time bar (Miss. Code Ann. § 99-39-5(2)), successive-writ bar (Miss. Code Ann. § 99-39-27(9)), and res judicata bar (Miss. Code Ann. § 99-39-21(3)). Pet.App.2a; *see* BIO 12. And the court rejected petitioner's argument that his claim was excepted from those statutory bars based on the UPCCRA's "intervening decision" exception (Miss. Code Ann. §§ 99-39-5(2)(a)(i), 99-39-27(9)). *Ibid*. Under state law, the court explained, an "intervening decision" is a decision that "'create[s] new intervening rules, rights, or claims that did not exist at the time of the prisoner's conviction.'" Pet.App.3a (quoting *Patterson v. State*, 594 So. 2d 606, 608 (Miss. 1992)). And "*McWilliams*," the court said, "did not create a new rule of law." *Ibid.* "Instead, it merely clarified and reinforced *Ake*" (*ibid.*)—as petitioner himself has repeatedly conceded (*e.g.*, Pet. ii, 2, 3, 13, 19 n.6, 22, 23, 26, 30). The court thus denied relief. Pet.App.3a-4a.

Before filing the petition for certiorari at issue here, petitioner filed yet another petition for post-conviction relief in state court—his fifth—raising claims that are not relevant to the *Ake*/due-process claim at issue here. The Mississippi Supreme Court denied that petition on May 1, 2025, because it too

was time- and successive-writ-barred and because the intervening-decision exception did not apply. En Banc Order, *Jordan v. State*, No. 2024-DR-01272-SCT (Miss. May 1, 2025). That same day, the Mississippi Supreme Court set petitioner's execution for Wednesday, June 25, 2025, at 7:00 pm EDT. En Banc Order, *Jordan v. State*, No. 1998-DP-00901-SCT (Miss. May 1, 2025). The court stressed that petitioner had "exhausted all state and federal remedies for purposes of setting an execution date." *Id.* at 1.

On May 7, the State filed its brief in opposition to petitioner's pending petition for certiorari. Petitioner's emergency application followed.

REASONS FOR DENYING A STAY OF EXECUTION

"Last-minute stays should be the extreme exception, not the norm[.]" *Bucklew v. Precythe*, 587 U.S. 119, 150 (2019). This Court's well-settled precedent recognizes that "a stay of execution is an equitable remedy. It is not available as a matter of right." *Hill v. McDonough*, 547 U.S. 573, 584 (2006); *see also In re Blodgett*, 502 U.S. 236, 239-240 (1992) (per curiam); *Delo v. Stokes*, 495 U.S. 320, 323 (1990) (Kennedy, J., concurring). This Court considers the following factors in assessing whether a stay of execution is warranted: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceedings; and (4) where the public

interest lies." *Nken v. Holder*, 556 U.S. 418, 434 (2009). The "party requesting a stay bears the burden of showing that the circumstances justify an exercise of [judicial] discretion." *Id.* at 433-34.

The first two factors are the most critical. *Id.* at 434. If an "applicant satisfies the first two factors, the traditional inquiry calls for assessing the harm to the opposing party and weighing the public interest." *Id.* at 435. The third and fourth factors "merge when the [State] is the opposing party" and "courts must be mindful that the [State's] role as the respondent in every … proceeding does not make the public interest in each individual one negligible." *Ibid.* Because the State and the victims of the crimes "have an important interest in the timely enforcement of a sentence," this Court "must be sensitive to the State's strong interest in enforcing its criminal judgments without undue interference from the federal courts." *Hill*, 547 U.S. at 584. To that end, "[a] court considering a stay must also apply 'a strong equitable presumption against the grant of a stay where a claim could have been brought at such a time to allow consideration of the merits without requiring entry of a stay.'" *Ibid.* (quoting *Nelson v. Campbell*, 541 U.S. 637, 650 (2004)). "The federal courts can and should protect states from dilatory or speculative suits." *Id.* at 585.

All four factors favor denying a stay of execution in this case. Petitioner has failed to show that he is entitled to relief.

I. This Court Is Unlikely To Grant Certiorari To Review The Mississippi Supreme Court's Rejection Of Petitioner's Procedurally Barred And Meritless Due-Process Claim.

Petitioner's petition for certiorari is unlikely to succeed. "It is not enough that the chance of success on the merits be better than negligible." *Nken*, 556 U.S. at 434 (quotation omitted). On the contrary, petitioner must show "a reasonable probability that four Justices will consider the issue sufficiently meritorious and grant certiorari" and "a fair prospect that a majority of the Court will vote to reverse the judgment below." *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam). Petitioner cannot make that showing.

As thoroughly set forth in the State's brief in opposition, petitioner's due-process claim under *Ake* and *McWilliams* is procedurally barred and meritless (BIO 14-24, 24-30), and the petition does not satisfy any traditional certiorari criteria (BIO 30-32). None of petitioner's recycled arguments in the stay application changes that.

First, this Court is unlikely to grant the petition for certiorari because it lacks jurisdiction to review the Mississippi Supreme Court's decision below. This Court "will not review judgments of state courts that rest on adequate and independent state grounds." *Herb v. Pitcairn*, 324 U.S. 117, 125 (1945). As the State has explained, the Mississippi Supreme Court's latest denial of petitioner's due-process claim rests on such adequate and independent state grounds. BIO 14-16; *see* BIO 16-24. The state supreme court ruled that

petitioner's claim was barred (at least) by the Mississippi Uniform Post-Conviction Collateral Relief Act's one-year time bar (Miss. Code Ann. § 99-39-5(2)) and successive-writ bar (Miss. Code Ann. § 99-39-27(9)). Those state law grounds are "independent of federal law" because each applies without regard to any "federal constitutional ruling on the merits." *Stewart v. Smith*, 536 U.S. 856, 860 (2002) (per curiam). And they are "adequate to foreclose review" of a "federal claim" because they are "firmly established and regularly followed." *Lee v. Kenna*, 534 U.S. 362, 376 (2002). Longstanding precedent confirms this. *See* BIO 15-16 (collecting cases).

Petitioner repeats his arguments that this Court's 2017 decision in *McWilliams v. Dunn* was an "intervening decision" for purposes of a state-law exception to the UPCCRA's time and successive-writ bars. *See* Appl. 6-8. But the Mississippi Supreme Court rightly rejected those arguments. *See* BIO 16-24. Under longstanding state precedent, that court explained, an "intervening decision" is a decision that "create[s] new intervening rules, rights, or claims that did not exist at the time of the prisoner's conviction"—"not an application of existing law." Pet.App.3a (quoting *Patterson v. State*, 594 So. 2d 606, 608 (Miss. 1992), then *Powers v. State*, 371 So. 3d 629, 689 (Miss. 2023)). And "*McWilliams*," the court ruled, "did not create a new rule of law" but instead "merely clarified and reinforced" this Court's 1985 decision in *Ake*. *Ibid.* The Mississippi Supreme Court's ruling is sound. Indeed, petitioner himself has

repeatedly acknowledged that *McWilliams* created nothing new and instead simply "clarified" or "reaffirmed" *Ake*. *E.g.*, Pet. ii, 2, 3, 13, 19 n.6, 22, 23, 26, 30.

The Mississippi Supreme Court's decision that *McWilliams* is not an "intervening decision" under the UPCCRA also comports with that court's precedent. The state supreme court has consistently ruled that a decision that merely reinforces or clarifies existing law does not trigger the intervening-decision exception. *See* BIO 19 (collecting cases). Petitioner again cites to state cases that he claims show that the Mississippi Supreme Court did not follow its intervening-decision precedent in this case. Appl. 7-8 (citing, *e.g.*, *Gilliard v. State*, 614 So. 2d 370 (Miss. 1992)). But as the State has explained (BIO 19-22), those cases show precisely the opposite. In the precedent petitioner invokes, the Mississippi Supreme Court ruled that certain decisions of this Court were intervening decisions for purposes of the UPCCRA because they sufficiently changed the legal landscape in Mississippi and "would have 'actually adversely affected' the outcome of [the defendant's] sentence" at issue. *Gilliard*, 614 So. 2d at 374 (quoting Miss. Code Ann. § 99-39-27(9)); *see id.* at 374-76. That was true even though the decisions did not constitute "new rules" of federal constitutional law "under *Teague v. Lane*, [489 U.S. 288 (1989)]." *Irving v. State*, 618 So. 2d 58, 61 (Miss. 1992); *see Gilliard*, 614 So. 2d at 374; BIO 21-22.

In this case, by contrast, the Mississippi Supreme Court correctly determined that *McWilliams did not* sufficiently change the legal landscape in Mississippi to have affected the outcome of petitioner's case. *See* Pet.App.3a. And the state supreme court's determination that *McWilliams* "did not create a new rule of law" for purposes of the UPCCRA's intervening-decision exception (*ibid.*) was "a matter of state law" that is separate and distinct from the question whether the decision announced a new rule of *federal* constitutional law under *Teague* (*Gilliard*, 614 So. 2d at 375). *See* BIO 21-22. And so—as petitioner's application itself makes clear—there is no risk of a "Catch-22" in Mississippi (Appl. 8): Decisions that qualify as new rules of federal constitutional under *Teague* have no retroactive effect in state post-conviction proceedings, but the UPCCRA's intervening-decision exception can (and does) apply to decisions that do not trigger *Teague*. *See* Appl. 7-8 (describing that very result in *Gilliard*). So post-conviction petitioners remain able to rely on the exception for decisions that (unlike *McWilliams* here) "would have actually adversely affected" their convictions or sentences under state law. *Irving*, 618 So. 2d at 62 (cleaned up); *see Gilliard*, 614 So. 2d at 374-75.

Petitioner again repeatedly invokes this Court's recent decision in *Cruz* v. *Arizona*, 598 U.S. 17 (2023). *E.g.*, Appl. 1, 6-8, 10. But as the State has explained, this case is distinct from *Cruz* on every score. BIO 22-23, 31. The Arizona Supreme Court in *Cruz*, for example, "abruptly departed" from its

longstanding interpretation of that State's intervening-decision exception and thereby created the "[C]atch-22" that petitioner warns about here. 598 U.S. at 29, 32. But as noted above, the Mississippi Supreme Court correctly applied its longstanding precedent in petitioner's case and the State's regime here does not present the risk of a Catch-22 as seen in *Cruz*.

The Mississippi Supreme Court properly applied the State's adequate and independent time and successive-writ bars to reject petitioner's recycled *Ake* claim. This Court therefore lacks jurisdiction to review the decision below and is likely to deny certiorari on that basis.

Second, even if this Court had jurisdiction to review petitioner's procedurally barred due-process claim, that claim is meritless. Petitioner's due-process claim rests on his view that the state trial court violated this Court's decision in *Ake* by improperly "refusing to provide" him with an "independent" expert "to assist" with presenting a "mental condition-related" mitigation "defense." Appl.7; *see* Pet. 17-22. But even assuming that petitioner's view of *Ake* is correct, that claim fails. As the State has explained, petitioner never demonstrated to the trial court that he was entitled to expert assistance under *Ake* in the first place. BIO 24-30.

Ake held that an indigent defendant is entitled to a state-funded mental-health expert to assist the defense in two circumstances: (1) expert assistance is warranted if the defendant "demonstrates to the trial judge" that "his sanity

at the time of the offense is seriously in question" and "likely to be a significant factor at trial" (470 U.S. at 70, 74); and (2) in capital cases, expert assistance is warranted during the "sentencing proceeding" if "the State presents psychiatric evidence of the defendant's future dangerousness" (*id.* at 83). Neither applies here.

One: Petitioner's sanity at the time of the murder was never in doubt. He admitted to his heinous crimes (*e.g.*, *Jordan v. State*, 786 So. 2d 987, 997-98 (Miss. 2001)); his "defense" at the guilt stage was that he killed Mrs. Marter while "attempt[ing] to fire a warning shot" when she "tried to run away" (*id.* at 997); and examinations by two court-appointed psychiatrists determined that there were no issues with petitioner's ability to "distinguish[ ] right and wrong" at the time of his offense (*Jordan v. State*, 365 So. 2d 1198, 1203 (Miss. 1978); *see* Pet.App.89a-90a. Before the 1998 resentencing, petitioner only "vague[ly]" "assert[ed]" that he *may* suffer from PTSD and "requested the appointment of a psychiatrist to *explore th[at] possibility*" for purposes of mitigation. *Jordan v. Epps*, 740 F. Supp. 2d 802, 868 (S.D. Miss. 2010) (emphasis added); *see* Pet. 8 (admitting that petitioner "moved for a 'psychiatric evaluation and examination'" before the 1998 resentencing "to determine *whether* he suffered from PTSD") (emphasis added). But *Ake* did not hold that a defendant is entitled to expert assistance based merely on request or supposition. The "defendant" must "demonstrate[ ]" entitlement to assistance (*Ake*, 470 U.S. at

83) by, for example, "mak[ing] a factual showing" with "specific evidence" demonstrating "that his sanity at the time of the offense is truly at issue" (*Williams v. Collins*, 989 F.2d 841, 845 (5th Cir. 1993)). *See* BIO 27-28 (collecting cases on this point). As the district court held in petitioner's prior habeas proceedings, petitioner failed to "produce[ ] any evidence of the sort of behavioral issues commonly associated with PTSD." 740 F. Supp. 2d at 862. And so petitioner failed to "demonstrate[ ] to the trial judge" that his "sanity" was "seriously in question" under *Ake*. 470 U.S. at 70, 83; *see* BIO 25-26, 27-29.

Two: the prosecution did not introduce any evidence of petitioner's "future dangerousness" at his 1998 sentencing proceeding; that topic was simply "not [at] issue." 740 F. Supp. 2d at 858. Petitioner does not claim otherwise. Indeed, as the State explained, the only testimony on dangerousness was from one of *petitioner's* character witnesses, who claimed that petitioner was not a danger to himself or to others. *Id.* at 815; *see* BIO 6, 26-27. Petitioner failed to show that the prosecution "made" his "mental condition relevant to his criminal culpability [or] to the punishment he might suffer" under *Ake*. 470 U.S. at 80; *see* BIO 26-27, 30.

Because petitioner did not meet *Ake*'s threshold criteria for appointment of a state-funded expert, his due-process claim that he was improperly denied

an "independent" expert lacks merit and this Court is likely to deny review on that basis as well.

Last, nothing that petitioner says in the application changes the fact that his petition for certiorari does not satisfy any traditional certiorari criteria. BIO 30-32. Petitioner does not identify any lower-court conflict. Nor does he identify any recurring legal issue for this Court's review beyond a fact-bound application of prior precedent. The Court (again) is likely to deny certiorari.

II. Petitioner Is Unlikely To Be Irreparably Injured Absent A Stay.

Petitioner cannot show that he will likely be "irreparably injured absent a stay." *Nken*, 556 U.S. at 434. His guilt is not in question—petitioner no doubt committed the crime that sent him to death row. Petitioner was sentenced to death by a Mississippi jury in 1998. 740 F. Supp. 2d at 816. Three decades of litigation have not demonstrated constitutional errors at that sentencing, in his state post-conviction proceedings, or in the method of his execution. The Mississippi Supreme Court has upheld his conviction and sentence six times, and lower federal courts have denied him habeas relief. This Court has denied certiorari review at every turn. The claims presented in his petition for certiorari do nothing to undermine those prior determinations. Petitioner has received the process he was due, his punishment is just, and his execution will be constitutional. In short, petitioner has identified no irreparable harm that is not a direct consequence of the valid, constitutional, and long-final death

sentence the jury imposed in 1998 for his brutal murder of Edwina Marter. Any "irreparable injury" will be because his lawful death sentence was finally carried out—not because this Court denies a stay.

III. The Equities Favor The State.

As noted above, "[b]oth the State and the victims of crimes have an important interest in the timely enforcement of a sentence." *Hill*, 547 U.S. at 584. "Only with real finality can the victims of crime move forward knowing the moral judgment will be carried out." *Calderon v. Thompson*, 523 U.S. 538, 556 (1998). "To unsettle these expectations is to inflict a profound injury to the 'powerful and legitimate interest in punishing the guilty.'" *Ibid.* (quoting *Herrera v. Collins*, 506 U.S. 390, 421 (1993) (O'Connor, J., concurring)). According to this Court, "[t]here is always a public interest in prompt" enforcement of the law absent a showing of its unconstitutionality. *Nken*, 556 U.S. at 436. "[T]he State is entitled to an assurance of finality." *Calderon*, 523 U.S. at 556.

Petitioner psychologically tortured Mrs. Marter before executing her. He kidnapped her at gunpoint from her home, in front of her 3-year-old son. BIO 2. He forced her—at gunpoint—to leave her son home alone and took her to a remote area. *Ibid.* There, petitioner executed Mrs. Marter with a bullet to the back of the head. *Ibid.* Petitioner then acted like Mrs. Marter was still alive while he promised her husband that she would be safely returned if he paid a

ransom. *Ibid.* Weak claims that this Court has no jurisdiction to consider do not justify delaying petitioner's execution any longer. *See Martel v. Clair*, 565 U.S. 648, 662 (2012) ("Protecting against abusive delay *is* an interest of justice.").

And, again, "[a] court considering a stay must also 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 (quoting *Nelson*, 541 U.S. at 650). Over the last thirty years, petitioner has repeatedly engaged in meritless litigation to stall his execution. *See* BIO 6-13. That is especially true over the last few years. Yet despite his clear ability and willingness to file serial petitions for state post-conviction review, petitioner did not diligently pursue his *Ake* claim relevant here. As discussed, petitioner maintains that this Court's 2017 decision in *McWilliams* was an intervening decision that excepted his *Ake* claim from state procedural bars. But as he admits (*see* Appl. 11 n.1), he filed a (third) post-conviction petition in state court in July 2017—after *McWilliams* was decided—that entirely failed to raise an *Ake* claim. Petitioner notes that that petition concerned "unrelated issue[s]" on Mississippi's drug protocol. Appl. 11 n.1. But even if that were somehow an excuse for not also timely raising the *Ake/McWilliams* claim, petitioner has no explanation for why he then waited an additional *five years* after *McWilliams* was decided to

press that claim in a fourth post-conviction petition. *See* BIO 11-12. Petitioner's representations that he "could not have ... presented" a claim that "rests on this Court's 2017 decision in *McWilliams*" *until 2022*, and that he "exercised diligence in presenting [that] claim" (Appl. 10), defies credulity. And it lays bare that petitioner's efforts here are merely intended to forestall the execution of his lawful punishment.

CONCLUSION

The Emergency Application for Stay of Execution should be denied.

Respectfully submitted.

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