

No. 24A1211
IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 2024

ANTHONY FLOYD WAINWRIGHT,

Petitioner,

v.

GOVERNOR OF FLORIDA, ET AL.,

Respondent.

*On Petition for a Writ of Certiorari
to the Eleventh Circuit Court of Appeals*

**REPLY IN SUPPORT OF
APPLICATION FOR STAY OF EXECUTION**

***THIS IS A CAPITAL CASE
WITH AN EXECUTION SCHEDULED FOR
TUESDAY, JUNE 10, 2025, AT 6:00 P.M.***

Respondent urges this Court to deny a stay of execution because, in his view, Mr. Wainwright “delayed asserting a right to counsel of choice until after his warrant was signed, it is unlikely this Court would grant certiorari . . . and there is no irreparable harm when the claims he wished to pursue in state-court would have failed.” Response at 2. These arguments are both legally and factually erroneous. This Court should therefore grant Mr. Wainwright a stay in order to permit untruncated review of his meritorious constitutional issues that touch at the very heart of our criminal justice system.

Respondent asserts that a stay should be denied on equitable grounds owing to the State's interest in carrying out its sentence. Response at 3. But any apparent harm caused by a brief stay of execution to allow this Court to consider Mr. Wainwright's habeas corpus petition unconstrained by the exigencies of his impending warrant is easily cured: if this Court, after untruncated review, denies the petition, the stay will be dissolved and Mr. Wainwright's execution will proceed. However, if Mr. Wainwright is erroneously executed despite his presentation of a meritorious petition, there is no going back. The balance of the equities clearly favors Mr. Wainwright.¹

Defendants claim that Wainwright "has pursued relief in dilatory fashion" because "he could have raised his postconviction counsel of choice arguments long before now." Response at 4-5. This argument is flawed for two reasons: (1) it ignores the fact that Wainwright did, in fact, make multiple attempts to discharge his postconviction counsel prior to the warrant; and (2) any ensuing delay or disruption in the proceedings was caused by Defendants, not by Wainwright.

Regarding the first point, Defendants' assertion that "Wainwright's complaint alleges that he has been unhappy with . . . counsel for eleven years, yet only obtained

¹ Additionally, Respondent's contention that a stay should be denied because the "victim[] [has] waited almost three decades for justice and should not be deprived of it any longer," cannot be weighed against Mr. Wainwright. Response at 2. The timing of Mr. Wainwright's death warrant is entirely within the control of Defendant DeSantis, not Mr. Wainwright; the fact that he did not sign Mr. Wainwright's death warrant at an earlier time is in no way attributable to Mr. Wainwright." Similarly, Mr. Wainwright's request for a stay comes on "the day of his execution" because the Eleventh Circuit Court of Appeals did not deny Mr. Wainwright's motion for a stay until the night of June 9. Response at 2.

pro bono counsel [after] his warrant was signed,” Response at 4, ignores Wainwright’s repeated attempts to express his concerns with registry counsel’s representation, beginning less than a month after he was appointed to Wainwright’s case. *See, e.g., State v. Wainwright*, Case No. 1994-CF-00150A-A (Letter, Mar. 3, 2014); *id.* (Motion, Apr. 14, 2014); *id.* (Motions, Apr. 23, 2014 and May 12, 2014); *id.* (Letter, Mar. 6, 2015).

These efforts continued throughout 2022, when registry counsel filed the last postconviction motion in Wainwright’s case before the death warrant was signed. Wainwright unsuccessfully sought to appeal the circuit court’s denial of his successive postconviction motion and moved to substitute postconviction counsel. *Wainwright v. State*, No. SC22-1187 (Notice of Appeal, Sept. 8, 2022; Motions, Sept. 21, 2022 and Nov. 4, 2022). Thus, Wainwright had repeatedly attempted to raise this issue in the state courts prior to his warrant.²

Once Wainwright’s warrant had been signed, he obtained Ms. Backhus as *pro bono* counsel and attempted to substitute her for registry counsel within days. Critically, the pleadings Ms. Backhus sought to file on Wainwright’s behalf were all submitted timely—indeed, ahead of time—in accordance with the state courts’ scheduling order. And, as Wainwright noted, Ms. Backhus was qualified to represent capital clients and, in fact, had previously represented Wainwright as his federal counsel. Her substitution for registry counsel would have created no delay or

² Notably, there was no state-court litigation between the denial of the 2022 postconviction motion and Wainwright’s death warrant. Thus, Wainwright had no reason to renew his efforts to discharge registry counsel until the warrant was signed.

disruption; instead, it is the Defendants' efforts to strip Wainwright of his constitutional rights that have created needless disruption and delay. Such gamesmanship cannot be held against Wainwright in the calculus for granting a stay.

Second, the petition presents questions concerning the due process and equal protection violations that occurred as a result of the state courts' arbitrary refusal to permit Mr. Wainwright to proceed with his choice of qualified *pro bono* counsel to litigate his death warrant claims, where no delay or prejudice would have ensued. It further presents questions surrounding the deprivation of access to the courts that flowed from the deprivation of chosen counsel. And, it presents the issue of the Eleventh Circuit's erroneous and unnoticed speculation regarding the arcane *Rooker-Feldman* doctrine—which is disfavored by this Court—to avoid engaging with the merits of Mr. Wainwright's underlying claims. These are substantial questions that concern the foundational pillars of our legal system and its fundamental fairness for *all* individuals, whether indigent or wealthy. Such questions are of national importance and likely to obtain review and a favorable decision by this Court.

Finally, it is indisputable that Mr. Wainwright 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 Mr. Wainwright's continued interest in his life. Particularly where it is Florida's statutorily-created capital postconviction system that has caused the violation of Mr. Wainwright's rights, the relative harm to the State is minimal. Respondent's arguments that *he*, and not Mr. Wainwright, will

suffer irreparable injury if a stay is granted, Response at 10, is contrary to this Court's conclusion that irreparable injury is inherent in capital cases and should be rejected.

CONCLUSION

For the foregoing reasons, Mr. Wainwright respectfully requests that the Court grant his application for a stay of his June 10, 2025, execution to address the compelling constitutional questions in his case on the merits.

Respectfully submitted,

/s/ Katherine A. Blair
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