CAPITAL CASE
EXECUTION SCHEDULED AUGUST 5, 2025, AT 10:00 A.M.

No.

IN THE
Supreme Court of the United States

IN RE: BYRON LEWIS BLACK

APPLICATION FOR A STAY OF EXECUTION

OFFICE OF THE FEDERAL PUBLIC DEFENDER
FOR THE MIDDLE DIST. OF TENNESSEE
CAPITAL HABEAS UNIT

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To the Honorable Brett M. Kavanaugh, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Sixth Circuit:

Byron Black is scheduled to be executed on **August 5, 2025, at 10:00 AM**. Mr. Black respectfully requests a stay of his execution pending this Court's disposition of his petition for a writ of certiorari.

I. JURISDICTION

The United States District Court for the Middle District of Tennessee transferred this case to the Sixth Circuit Court of Appeals on July 29, 2025. Mr. Black filed his motion to remand on July 30. On July 31, Mr. Black filed an application to file a second or successive habeas petition. Mr. Black expressly stated in that motion he was filing that motion in the alternative and that he averred that the petition was not second or successive. Mr. Black has not sought certiorari regarding the Sixth Circuit's denial of his motion to file a second or successive habeas petition. *See* 28 U.S.C. § 2244(b)(3)(E). Rather, he seeks certiorari on the denial of his motion to remand his habeas corpus to the district court because that petition was not a second or successive petition within the meaning of 28 U.S.C. § 2244. As such, this Court has jurisdiction to entertain Mr. Black's petition for certiorari and application for a stay of execution under 28 U.S.C. §§ 1254, 1651(a), and 2251.

II. BACKGROUND

Mr. Black was convicted in 1989 and sentenced to death. *State v. Black*, 815 S.W.2d 166, 170 (Tenn. 1991). He completed the standard three-tier criminal appellate process. *Black v. Carpenter*, 866 F.3d 734 (6th Cir. 2017); *Black v. Bell*, 664

F.3d 81 (6th Cir. 2011); *Black v. State*, No. M2004-01345-CCA-R3PD, 2005 WL 2662577 (Tenn. Crim. App. Oct. 19, 2005); *Black v. State*, No. 01C01-9709-CR-00422, 1999 WL 195299 (Tenn. Crim. App. Apr. 8, 1999); *Black*, 815 S.W.2d at 170. When Mr. Black filed his amended petition for a writ of habeas corpus in 2001, he raised a claim under *Ford v. Wainwright*.[1] Consistent with precedent, the district court dismissed Mr. Black's *Ford* claim as unripe.

On March 3, 2025, the Tennessee Supreme Court set Mr. Black's execution for August 5, 2025. Pursuant to the Tennessee Supreme Court's order and the procedures established in *Van Tran v. State*, 6 S.W.3d 257 (Tenn. 1999), Mr. Black initiated competency to be executed proceedings on May 29, 2025, by filing a petition in the trial court to declare him incompetent to be executed. That court denied relief on June 5. The Tennessee Supreme Court denied Mr. Black relief on July 8. Mr. Black filed a petition for certiorari and an application for a stay of execution with this Court on July 15, which remains pending.

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[1] The claim, in its entirety, stated:

> In violation of the Eighth and Fourteenth Amendments, Byron Black is not competent to be executed. *Ford v. Wainwright*, 477 U.S. 399 (1986). Petitioner acknowledges that such [a] claim is not ripe, as execution is not imminent, but he raises this claim in accordance with the United States Supreme Court's decision in *Stewart v. Martinez-Villareal*, 523 U.S. 637 (1998), which holds that it is proper to raise the claim in the initial habeas petition and then to litigate the claim if it ever becomes ripe, i.e., once an execution date is imminent.

On July 18, Mr. Black filed a petition for a writ of habeas corpus in the United States District Court for the Middle District of Tennessee. That court ruled that Mr. Black's petition constituted a second or successive petition and transferred the case to the Sixth Circuit Court of Appeals on July 29. Mr. Black filed a motion to remand that case to the district court on July 30. The Sixth Circuit denied relief on August 1, 2025. Mr. Black filed this instant petition on August 1.

III. REASONS FOR GRANTING THE STAY

An application for a stay of execution is evaluated under the familiar four factor test that analyzes:

> (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 proceeding; and (4) where the public interest lies.

Nken v. Holder, 556 U.S. 418, 434 (2009).

A. Mr. Black has shown a reasonable likelihood of success on the merits of his claim.

In *Panetti v. Quarterman*, this Court held that competency to be executed claims did not constitute a second or successive habeas petition. 551 U.S. 930, 945 (2007). "We conclude, in accord with this precedent, that Congress did not intend the provisions of AEDPA addressing 'second or successive' petitions to govern a filing in the unusual posture presented here: a § 2254 application raising a *Ford*-based incompetency claim filed as soon as that claim is ripe." *Id.* Mr. Black's case is indistinguishable from *Panetti*. Like Mr. Panetti, Mr. Black brought a competency claim in state court once his execution date was set. *Id.* at 937–38. Like Mr. Panetti, Mr. Black previously brought a writ of habeas corpus that was denied. *Id.* at 937.

Like Mr. Panetti, Mr. Black supported his claim of incompetency with substantial mental health evidence that emerged only a few weeks ago. Mr. Black has contended that this evidence, coupled with other mental impairments, renders his current mental functioning at a level that disqualifies him from execution under the common law.

The courts below, however, reasoned that because Mr. Black's intellectual deficits—one portion of the evidence presented in support of the claims—stem from birth or early life, his incompetency to be executed claim needed to brought at the time of his initial petition. This holding is plainly inconsistent with this Court's decision in *Panetti*. As is detailed in Mr. Black's petition, the rule announced in *Panetti* applies with equal force to Mr. Black's claim.

Mr. Black argues the Eighth Amendment codified the legal prohibitions that existed at the time of the Founding. Among those prohibitions was that "idiots" were not competent to be executed. The central characteristic of "idiocy" at common law was intellectual functioning. Mr. Black argues that he meets this requisite because he is intellectually disabled. As Mr. Black's habeas petition makes clear, however, at the time of the Founding three other characteristics were central to "idiocy": the existence of unsound memory, the existence of brain malformations, and an inability to manage one's affairs. The key question in this case is whether these characteristics of "idiocy" were sufficiently apparent at the time Mr. Black filed his initial petition. They were not.

Mr. Black's intellectual disability, necessarily, manifested in the developmental period. Am. Psych. Ass'n, *DSM-5-TR* 37 (2022). Furthermore, Mr. Black's brain damage is the result of numerous insults to his brain that were inflicted early in life. As his petition recounts, Mr. Black was exposed to alcohol in utero, suffered lead poisoning as a child, and experienced numerous traumatic head injuries as a minor. In the parlance of the common law, these conditions stemmed from nativity. In spite of the early origin of these conditions, their *effects* were not fully apparent until execution was imminent.

1. Unsound Memory

At common law, memory was considered a constituent part of sanity. Although low intellectual functioning is at the core of "idiocy," the common law used "unsound memory" or "non-sane memory" interchangeably with "idiocy." *See, e.g.* Joseph Chitty, *A Practical Treatise on Medical Jurisprudence* 329 (1835) ("So essential is the power of memory to the perfect mind, that in some of our older statutes the expression 'unsound memory' or 'non-sane memory' was used to denote as well an idiot and lunatic as every person incapable of managing his own affairs."). Thus, the existence of unsound memory was a key characteristic of "idiocy."

Mr. Black was not diagnosed with dementia until 2025. In 2019 when Dr. Martell conducted his first evaluation of Mr. Black, he was not yet afflicted with that condition. His decline has been precipitous and presently 99 out of 100 individuals Mr. Black's age and education level have a better memory than Mr. Black. This condition clearly could not have been used to support an "idiocy" claim in 2000 when

Mr. Black's first habeas petition was filed, even though the likely etiology of the condition is from birth or early childhood.

2. Brain Malformation

As is detailed in Mr. Black's habeas petition, the existence of brain "malformations" was considered conclusive evidence of "idiocy." Francis Wharton & Moreton Stille, *Wharton and Stille's Medical Jurisprudence* 858 (1905); Chitty, *supra*, at 270; J.A. Paris & J.S.M. Fonblanque, Medical Jurisprudence 308 (1823). Common law sources noted specifically that malformations "lessen the volume or capacity of the brain." Chitty, *supra*, at 270.

Between 2001 and 2022, Mr. Black's overall brain volume shrunk by a full standard deviation and surely continues to do so. When brain tissue dies, it is replaced by pockets of fluid. Mr. Black's brain imaging objectively shows wide-spread atrophy that resulted in large, abnormal deposits of fluid where brain tissue once was. Like Mr. Black's unsound memory, the cause for these "malformations" likely stems from exposure to toxins and traumatic injuries as a child. But their full consequence for Mr. Black's comprehension and functioning was not fully clear until his execution was imminent. This is because this condition is following a worsening course and Mr. Black's brain volume continues to decline.

3. Inability to manage his own affairs

As an intellectually disabled individual, Mr. Black exhibited deficits in adaptive functioning as a child. These deficits are more fully described in Mr. Black's petition for certiorari and his petition for a writ of habeas corpus filed below. In this sense, Mr. Black has always been incapable of managing his own affairs. But as a

consequence of his existing low intellectual functioning and his worsening dementia and brain atrophy, his abilities to function independently have declined. Neuropsychological testing shows that Mr. Black's functional abilities are so poor that he cannot live safely without supervision.

4. Implications for the case

As is readily apparent from these descriptions, bringing Mr. Black's competency claim 25 years before his execution would have been an exercise in futility. Mr. Black was set on this declining course by events in childhood. But because these conditions involve prolonged deterioration, no meaningful assessment of Mr. Black's competency for execution could occur decades before his execution.

As *Panetti* notes, the course envisioned by the lower courts would require filing "unripe (and, often, factually unsupported) claims to be raised as a mere formality, to the benefit of no party." *Panetti*, 551 U.S. at 947. It is, moreover, impractical and inconsistent with the principles embodied in AEDPA to require Mr. Black to engage in the "empty formality" of filing an unripe claim long before execution when evidence of his competency is incomplete at best. *Panetti*, 551 U.S. at 946.

The lower courts reached a facile conclusion that because "idiocy" originates in nativity, it is "virtually impossible that the kinds of characteristics that make an offender an 'idiot' could somehow remain unrecognized until the offender is old enough to reach the federal habeas phase of a capital case." As demonstrated above, however, the characteristics that make an offender an "idiot" do in fact change over time, generally for the worse. This is why the legally correct answer was to treat Mr. Black's claim like any other competency to be executed claim. This Court established,

consistent with the text and purpose of the statute, that competency to be executed claims were not subject to the second or successive bar. The courts below disregarded this clear instruction and created their own paradigm for adjudicating Mr. Black's claim.

For these reasons, Mr. Black is likely to succeed on the merits of his claim that his habeas corpus petition was not second or successive. Mr. Black has, moreover, presented uncontroverted proof that he meets the criteria for "idiocy" and that the protection of "idiots" from execution was incorporated into the Eighth Amendment at the time of the Founding. *See Black v. Tennessee*, 25-5129/25A65 (U.S. July 15, 2025) (petition for certiorari and application for a stay of execution outlining the merits of Mr. Black's underlying claim).

B. There can be no fairminded disagreement that Mr. Black will suffer irreparable harm absent a stay.

Mr. Black will plainly suffer irreparable harm unless this Court stays his execution pending disposition of his petition for certiorari. Absent a stay, Mr. Black will be unlawfully executed and, as this Court has made clear, an "execution is the most irremediable and unfathomable of penalties." *Ford*, 477 U.S. at 411.

C. A stay of execution will not substantially injure the interest of the State of Tennessee, and the public interest lies in prohibiting an unconstitutional execution.

When assessing the traditional equitable factors of the harm to the opposing party and the public interest, "[t]hese factors merge when the Government is the opposing party." *Nken*, 556 U.S. at 435.

28 U.S.C. Section 2251(a)(1) provides that any "justice or judge of the United States before whom a habeas corpus proceeding is pending, may . . . stay any proceeding against the person detained in any State court or by or under the authority of any State for any matter involved in the habeas corpus proceeding." This statute exists for a simple reason. If a court "cannot dismiss the petition on the merits before the scheduled execution, it is obligated to address the merits and must issue a stay to prevent the case from becoming moot." *Lonchar v. Thomas*, 517 U.S. 314, 320 (1996). Although the prohibition upon executing "idiots" is as old as the common law, this Court's jurisprudence while recognizing the existence of such a prohibition has never defined with precision the definition of "idiocy," let alone when such a claim is properly presented. But as an issue of competency to be executed, these claims will necessarily be brought close in time to execution. Such claims—to borrow a term—are "capable of repetition, yet evading review." *United States v. Sanchez-Gomez*, 584 U.S. 381, 383 (2018). Without granting a stay to resolve the merits of the issues presented in Mr. Black's petition, meritorious challenges will simply be mooted by execution. Mr. Black submits that the public interest is served by this Court settling "an important question of federal law that has not been, but should be, settled by this Court." S. Ct. R. 10(c).

Undoubtedly, the State of Tennessee has an interest in the enforcement of criminal judgments. *Hill v. McDonough*, 547 U.S. 573, 584 (2006). The State's interest in executing Mr. Black, however, is premised upon the enforcement of that judgment being lawful. When, as here, a litigant demonstrates that the enforcement of such a

judgment would be unconstitutional, the public interest weighs in favor of the party whose constitutional rights will be violated. *United States v. Raines*, 362 U.S. 17, 27 (1960) ("[T]here is the highest public interest in the due observance of all the constitutional guarantees . . . ."); *Brandt by & through Brandt v. Rutledge*, 47 F.4th 661, 672 (8th Cir. 2022) ("[I]t is 'always in the public interest to prevent the violation of a party's constitutional rights.'") (quoting *D.M. by Bao Xiong v. Minnesota State High Sch. League*, 917 F.3d 994, 1004 (8th Cir. 2019)); *Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005) ("Generally, public interest concerns are implicated when a constitutional right has been violated, because all citizens have a stake in upholding the Constitution."); *Chabad of S. Ohio & Congregation Lubavitch v. City of Cincinnati*, 363 F.3d 427, 436 (6th Cir. 2004) ("[T]he public interest is served by preventing the violation of constitutional rights."); *Deja Vu of Nashville, Inc. v. Metro. Gov't of Nashville & Davidson Cnty., Tennessee*, 274 F.3d 377, 400 (6th Cir. 2001) ("[I] t is always in the public interest to prevent violation of a party's constitutional rights."); *Mintz v. Chiumento*, 724 F. Supp. 3d 40, 66 (N.D.N.Y. 2024) ("There is also a public interest in avoiding violations of constitutional rights, as the 'Government does not have an interest in the enforcement of an unconstitutional law.'") (quoting *New York Progress & Prot. PAC v. Walsh*, 733 F.3d 483, 488 (2d Cir. 2013)); *Willey v. Sweetwater Cnty. Sch. Dist. No. 1 Bd. of Trs.*, 680 F. Supp. 3d 1250, 1290 (D. Wyo. 2023) ("It is always in the public interest to prevent the violation of a party's constitutional rights."); *see also Labrador v. Poe by & through Poe*, 144 S. Ct. 921, 923 (2024) (holding a judgment should be enforced in normal course "absent a showing of

its unconstitutionality") (Gorsuch, J., concurring). Likewise, "[n]o substantial harm can be shown in the enjoinment of an unconstitutional policy." *Chabad of S. Ohio v. City of Cincinnati*, 233 F. Supp. 2d 975, 987 (S.D. Ohio 2002), *aff'd sub nom. Chabad of S. Ohio & Congregation Lubavitch v. City of Cincinnati*, 363 F.3d 427 (6th Cir. 2004).

Here, Mr. Black has shown that the execution of an individual with Mr. Black's conditions—low intellectual functioning, "unsound memory," an incapability of managing his own affairs, and brain "malformations"—violates the Constitution. Accordingly, such an execution would be outlawed by the common law at the time of the Founding. Mr. Black has not only shown a strong likelihood of success on the merits but has also shown that the public interest weighs in favor of a stay of execution. Anything less will permit the execution of an individual that would have constituted "a miserable spectacle" at common law. *Ford*, 477 U.S. at 407 (quoting Edward Coke, 3 *Institutes of Laws of England* 6 (1680)).

D. Mr. Black has not delayed in bringing his claim.

This entire case is about when it was legally required for Mr. Black to bring his competency claim. As a competency to be executed claim, Mr. Black's position is that the claim was only ripe once execution was imminent. Consistent with the principles of comity in AEDPA, Mr. Black first presented his claim to the Tennessee courts. He did so pursuant to the procedures outlined in the Tennessee Supreme Court's decision *Van Tran v. State*, 6 S.W.3d 257 (Tenn. 1999) and its order in Mr. Black's case remanding the case back to the criminal court for *Ford* proceedings.

Under Tennessee state law, these proceedings must occur immediately prior to execution on an extremely short timeline. *Id.* at 266–72 (outlining an extremely rapid timeline that is initiated only once "execution is imminent").

Pursuant to the Tennessee Supreme Court's order, Mr. Black's competency proceedings commenced on May 29, 2025. The trial court concluded proceedings on June 5, 2025, and forwarded the record to the Tennessee Supreme Court on June 16, 2025. The Tennessee Supreme Court denied relief on July 8, 2025. Mr. Black's petition for certiorari and application for a stay of execution were filed on July 15, three weeks prior to his execution. Those matters remain pending with this Court.

On July 18, Mr. Black filed his habeas petition, which is the subject of this case. Respondent answered on July 23 and Mr. Black replied two days later. The district court transferred jurisdiction on July 29. Mr. Black filed his motion to remand the case on July 30 and his motion to authorize a second or successive petition the following day. The Sixth Circuit ruled on August 1 and Mr. Black filed the instant petition for certiorari the same day.

This timeline indicates two things. First, this claim is being presented close in time to Mr. Black's execution because it is a competency to be executed claim. The timeline for filing and adjudicating his claim in state court was entirely dictated by the Tennessee Supreme Court. Second, at every subsequent phase of these proceedings, Mr. Black has moved at an extremely rapid pace and has not delayed in presenting his claims to the courts. Indeed, he first brought the attention of this Court to the matter on July 15, weeks before Mr. Black's execution. Under these

circumstances, Mr. Black has not delayed. *See Dunn v. Ray*, 586 U.S. 1138, 1138 (2019) (noting that the "last-minute nature" of a stay application may weigh against granting a stay).

IV. CONCLUSION AND PRAYER FOR RELIEF

The equities of this case weigh in favor of Mr. Black because his case presents a strong likelihood of success on the merits, there is a grievous risk of executing an individual in violation of the constitution, and Mr. Black has not acted with undue delay. Mr. Black respectfully requests that the Court grant this application, stay his execution, and grant any other relief that the Court may find just.

Respectfully submitted this 1st day of August, 2025,

FEDERAL PUBLIC DEFENDER FOR
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BY: /s/ Kelley J. Henry

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of this Response has been served via the electronic filing system to Assistant Attorneys John Bledsoe and General Sarah Stone of the Tennessee Attorney General, P.O. Box 20207, Nashville, Tennessee 37202 on this 1st day of August, 2025.

/s/ Kelley J. Henry