

No. 17-8564

**IN THE
SUPREME COURT OF THE UNITED STATES**

WALTER LEROY MOODY, JR., Petitioner, v. WARDEN HOLMAN CF, Respondent.	WALTER LEROY MOODY, JR., Petitioner, v. JEFF SESSIONS, ATTORNEY GENERAL OF THE UNITED STATES, Respondent.
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On Petition for a Writ of Certiorari to the United
States Court of Appeals for the Eleventh Circuit

**APPLICATION FOR STAY OF EXECUTION
SCHEDULED FOR APRIL 19, 2018 AT 6 PM CDT**

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April 19, 2018

**CAPITAL CASE
EXECUTION SCHEDULED
FOR APRIL 19, 2018 AT 6 PM CDT**

To the Honorable Clarence Thomas, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Eleventh Circuit:

Petitioner Walter Leroy Moody, Jr., respectfully requests a stay of his execution, which is scheduled for April 19, 2018 at 6 p.m. CDT.

Petitioner asks this Court to stay his execution to permit this Court to consider his Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit. Mr. Moody filed his Petition for Writ of Certiorari concurrently with this Application for Stay of Execution. Pursuant to Supreme Court Rules 23.1, 23.2, and 28 U.S.C. § 2101(f), the stay may lawfully be granted.

In the accompanying Petition for Writ of Certiorari, Mr. Moody asks this Court to review the Eleventh Circuit's decisions in two cases involving closely related questions.

In the first, he argues that the Eleventh Circuit's opinion decides an important federal question and is conflict with this Court's decisions in *I.N.S. v. Chadha*, 462 U.S. 919 (1983), and *Marbury v. Madison*, 5 U.S. 137 (1803), and involves an attempt by the Executive Branch to usurp both the judicial power (by disturbing a final judgment of an Article III court) and the legislative power (by nullifying a law eliminating executive discretion to disturb federal sentences). As to the first, he also argues that the Eleventh Circuit's opinion has decided an important question of federal law that has not been, but should be, settled by this

Court, arising out of this Court’s decision in *Ponzi v. Fessenden*, 258 U.S. 254 (1927).

In the second, he argues that the Eleventh Circuit has decided an important question of federal law that conflicts with this Court’s decision in *Ohio Adult Parole Auth. v. Woodard*, 523 U.S. 272 (1998). That issue concerns what process is due to a federal inmate over whom the federal government holds primary jurisdiction when the Attorney General of the United States decides to relinquish custody—but not primary jurisdiction—of the inmate to permit him to be executed by a state pursuant to its later judgment. The Eleventh Circuit held that, “absent allegations of unconstitutional motive . . . (i.e., on the basis of race, gender, religion, etc.),” Pet. App. A at 6a, such a decision is one of total discretion, subject to no process or judicial review.

This Court is empowered to grant Mr. Moody a stay of execution in order to adjudicate his claims. As this Court held in *Barefoot v. Estelle*, 463 U.S. 880 (1983), *superseded on other grounds by* 28 U.S.C. § 2253(c), a stay may be granted when there is “a reasonable probability that four members of the Court would consider the underlying issue sufficiently meritorious for the grant of certiorari or the notation of probable jurisdiction; ... a significant possibility of reversal of the lower court’s decision; and ... a likelihood that irreparable harm will result if that decision is not stayed.” *Barefoot*, 463 U.S. at 895. Further, a stay should be granted when necessary to “give non-frivolous claims on constitutional error the careful attention that they deserve” and when a court cannot “resolve the merits [of a claim] before

the scheduled date of execution to permit due consideration of the merits.” *Id.* at 888-89.

The questions presented in the Petition for Writ of Certiorari involve substantial issues concerning decisions that conflict with opinions of this Court that span centuries. In addition, the first question presented involves an attempt by the executive branch to usurp—in a single act—the powers of the other two branches.

Mr. Moody asserts that there is a reasonable probability that, given sufficient time to give the claims the attention they deserve, four members of this Court are likely to vote to grant certiorari. When this is combined with the significant possibility that this Court will reverse one (or both) of the Eleventh Circuit’s decisions and the irreparable harm Mr. Moody will suffer if a stay is not granted, this Court should grant a stay to permit due consideration of the Petition for Writ of Certiorari.

Respectfully submitted,

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