Capital Case No. 24A1211

In the

Supreme Court of the United States

ANTHONY FLOYD WAINWRIGHT, *Petitioner*,

v.

GOVERNOR OF FLORIDA, ET. AL, *Respondents*.

ON PETITION FOR A WRIT OF CERTIORARI TO THE ELEVENTH CIRCUIT COURT OF APPEALS

RESPONSE TO APPLICATION FOR STAY OF EXECUTION EXECUTION SCHEDULED FOR JUNE 10, 2025, AT 6:00 P.M.

INTRODUCTION

Wainwright escaped from prison in 1994 and used that stolen freedom to rob, kidnap, rape, and execute a young mother of two. Florida's Governor signed his death warrant on May 9, 2025, and Wainwright pursued state-court litigation through his lead state postconviction counsel of over a decade. After lead postconviction counsel filed a postconviction motion, new counsel invaded state postconviction proceedings and filed a competing postconviction motion. Invading counsel was warned by the court that she could not file anything without lead counsel.

But then she filed a meritless state habeas petition, which the Florida Supreme Court struck because lead counsel explicitly refused to adopt it. Wainwright's federal counsel subsequently sued a host of state officials under 42 U.S.C. § 1983 alleging the

failure to let invading counsel usurp active post-warrant state postconviction proceedings violated to due process and equal protection. The crux of these claims was a constitutional right to switch appointed lead state postconviction counsel with the postconviction counsel Wainwright preferred in post-warrant state postconviction proceedings. The district court dismissed the suit, and the Eleventh Circuit affirmed.

Now, the day of his execution, Wainwright asks this Court to let him escape from his long-final death sentence so he can receive another round of review. This Court should decline. Wainwright delayed asserting a right to counsel of choice until after his warrant was signed, it is unlikely this Court would grant certiorari, even more unlikely that it would reverse, and there is no irreparable harm when the claims he wished to pursue in state-court would have failed.

ARGUMENT OPPOSING STAY OF EXECUTION

The Respondents (State) unequivocally opposes Wainwright's application to prolong execution of his long-finalized death sentence so he can further litigate a speculative § 1983 suit seeking to establish a right to switch state-appointed lead postconviction counsel with his preferred counsel, who only tried to invade state postconviction proceedings after a death warrant was signed. His victims have waited almost three decades for justice and should not be deprived of it any longer. *See Bucklew v. Precythe*, 139 S. Ct. 1112, 1134 (2019).

A stay of execution is not granted as "a matter of course." *Hill v. McDonough*, 547 U.S. 573, 583-84 (2006). Instead, a stay is "an equitable remedy" and "equity must be sensitive to the State's strong interest in enforcing its criminal judgments

without undue interference from the federal courts." *Id.* at 584. There is 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." *Nelson v. Campbell*, 541 U.S. 637, 650 (2004). Equity must also consider "an inmate's attempt at manipulation." *Gomez v. U.S. Dist. Ct. for N. Dist. of Cal.*, 503 U.S. 653, 654 (1992).

The People of Florida, as well as the surviving victims, "deserve better" than the "excessive" delays that now typically occur in capital cases, including this one. *Bucklew v. Precythe*, 587 U.S. 119, 149 (2019). "Both the State and the victims of crime have an important interest in the timely enforcement of a sentence." *Calderon v. Thompson*, 523 U.S. 538, 556 (1998). And where, as here, federal habeas "proceedings have run their course and a mandate denying relief has issued, finality acquires an added moral dimension." *Id.*

Courts must "police carefully" against last-minute claims used "to interpose unjustified delay." *Id* at 150. Last-minute stays of execution should be "the extreme exception, not the norm." *Barr v. Lee*, 591 U.S. 979, 981 (2020) (quoting *Bucklew*, 587 U.S. at 150 and vacating a stay of execution).

Wainwright must establish *at least* three elements to receive a stay of execution on his long-finalized sentence from this Court: (1) a reasonable probability that the Court would vote to grant certiorari; (2) a significant possibility of reversal; and (3) a likelihood of irreparable injury to the applicant in the absence of a stay. *Barefoot v. Estelle,* 463 U.S. 880, 895 (1983). This Court's opinion in *Bucklew*

effectively modified this test and requires Wainwright to show an additional two elements: (4) that he has not pursued this relief in dilatory fashion and (5) his underlying suit is not based on a speculative theory and simply designed to stall for time. *Bucklew*, 139 S. Ct. at 1134 ("Federal courts can and should" protect settled state judgments from undue interference by invoking their equitable powers to dismiss or curtail suits that are pursued in a dilatory fashion *or* based on speculative theories.") (Cleaned up; emphases added). Wainwright must establish all of these elements to receive a stay. *See Hill v. McDonough*, 547 U.S. 573, 583-84 (2006).

This Court should refuse to stay execution of Wainwright's death sentence for four independent reasons. First, Wainwright delayed invoking any assumed right to counsel of choice until after his warrant was signed. Second, there is no reasonable probability four Justices would vote to grant certiorari. Third, there is no significant possibility of reversal. Fourth, there is no likelihood of irreparable injury in the absence of a stay.

A. Wainwright Delayed Invoking His Supposed Right to Counsel of Choice Until after the Governor Signed His Death Warrant.

Wainwright fails the first *Bucklew*-added element because he never tried invoke his supposed right to change postconviction counsel with counsel he preferred until after his warrant was signed. He alleged below that he has had issued with lead state postconviction counsel for *eleven* years but did not invoke a right to counsel of choice until after his warrant was signed and managed to find his preferred counsel within a week. An entire civil lawsuit that has been manufactured to delay a long-final death sentence and provides no reason for a stay. *Cf. Gomez*, 503 U.S. at 654

("Equity must take into consideration" a defendant's "obvious attempt at manipulation.").

There can be little doubt delay is the ultimate objective here because Wainwright has never even tried to establish striking, instead of providing him merits review, of his meritless state habeas petition would have resulted in a different outcome. Nor could he even if he tried; his claims were meritless under well-settled state law.

This Court should not permit a state capital defendant to withhold a right he claims to have for over a decade and then only assert it after his execution is scheduled. *Cf. Bucklew*, 139 S. Ct. at 1134.

B. No Reasonable Probability Four Justices Would Vote for Certiorari.

Wainwright also fails the first *Barefoot* element because there is no reasonable probability four Justices would vote to grant certiorari on Wainwright's related due process claim. "A petition for a writ of certiorari will be granted only for compelling reasons." *See* Sup. Ct. R. 10. Wainwright does not even attempt to meet this Court's normal certiorari standard and has effectively filed a merits' brief instead. It is unlikely four justices would vote to grant review of a merits brief that does not explain why any of these issues deal with lower-court conflicts or important and unsettled questions that demand immediate resolution instead of following the normal course of letting issues develop below before this Court wades in.

Four justices would not likely vote to grant certiorari of any of Wainwright's questions based on the posture of this case where granting him the full relief he seeks

would only give him yet another chance for a state postconviction review after he has availed himself of more than ten. Wainwright delayed invoking his supposed right to counsel of choice until after his warrant was signed and the Eleventh Circuit's stay decision did not reach any definitive holding. It is not binding precedent and it is not clear even a reversal would change the underlying stay decision since the court below addressed only one element out of four, and this Court would be inhibited from making broad pronouncements of law given that only the Eleventh Circuit stay decision is before this Court. Given those threshold issues, which apply to all of Wainwright's questions, it is unlikely four justices would vote to grant a stay.

Even without those threshold issues, however, it is unlikely certiorari would be granted. Wainwright's first question boils down to a dispute over how his complaint should be read and not the actual *Rooker-Feldman* analysis.

His second due process and access-to-courts questions have not percolated virtually at all in the lower courts, this Court would have to address *Rooker-Feldman* before reaching them, the due-process question was not addressed in any reasoned opinion by either the Florida Supreme Court or Eleventh Circuit, and Wainwright throws in a kitchen-sink of due process issues that are better addressed after determining whether there is a due-process right to postconviction counsel of choice at all before addressing other circumstances where the right could exist.

Wainwright's third equal protection question does not warrant review either. His equal-protection arguments are not clear and seem different from those asserted below and he, indisputably, is not similarly situated with criminal defendants at trial

or civil litigants. Florida's postconviction counsel appointment system does not distinguish between indigent and non-indigent capital litigants; in both cases the limitations on changing postconviction counsel apply. Wainwright's attempt to utilize a string cite of cases without elaborating on them and how they show inconsistency fails to establish an equal protection violation under this Court's longstanding precedent. Moreover, this Court is without the benefit of the Eleventh Circuit's view on the equal protection issue because the court decided only *Rooker-Feldman*.

For these reasons, it is unlikely certiorari would be granted on any of Wainwright's questions presented.

C. No Significant Possibility of Reversal.

Wainwright fails the second *Barefoot* element too. There is no significant possibility this Court would reverse the Eleventh Circuit's denial of a post-warrant stay pending Wainwright's appeal from the dismissal of a post-warrant § 1983 suit.

The Eleventh Circuit was correct to hold *Rooker-Feldman* likely barred Wainwright's § 1983 suit. Wainwright's amended complaint did not challenge the constitutionality of Florida's strict limitations on changing postconviction counsel; he sought review of the Florida Supreme Court's decision to strike his habeas petition on equal protection, due process, and access to courts ground. That *likely*—which is all the Eleventh Circuit needed to determine Wainwright did not have a substantial likelihood of success and deny him a stay—brought his suit within *Rooker-Feldman*'s limited application. *See Johnson v. De Grandy*, 512 U.S. 997, 1005-06 (1994). Given *Rooker-Feldman* likely applied, there is no likelihood of reversal.

Nor is there a likelihood of reversal on Wainwright's access-to-courts issue. With no obligation to do so, Florida provided Wainwright with state-appointed lead counsel to access the courts. Lead state counsel's affirmative decision not to access a particular court with particular claims is not an access-to-courts violation given Wainwright has no control over what claims counsel raises. *See Jones v. Barnes*, 463 U.S. 745, 750-54 (1983).

Given the Eleventh Circuit did not address any of the other issues raised in Wainwright's questions presented, it is unlikely he would actually receive reversal on them. This Court would likely only address the *Rooker-Feldman* and access-to-courts issues and then remand for further consideration instead of addressing them. *See Cutter v. Wilkinson*, 544 U.S. 709, 719 n.7 (2005) ("Because these" issues "were not addressed by the Court of Appeals, and mindful that we are a court of review, not of first view, we do not consider them here.").

D. No Irreparable Injury.

Finally, Wainwright has failed to establish the third *Barefoot* element of irreparable injury. Neither reversing the decision below, nor even granting Wainwright the full relief he seeks in his underlying § 1983 suit, would likely preclude Wainwright's execution.

It is worth pausing for a moment and considering Wainwright's irreparable harm arguments thus far. In the district court, he claimed he was irreparably harmed by the failure to consider his § 1983 suit, which argued the mere failure to obtain merits review of a successive state habeas petition filed by unauthorized pro bono

counsel of choice, before his execution. In the Eleventh Circuit, he claimed he was irreparably harmed by the failure to consider his appeal of the district court's dismissal before his execution. And now he claims that he is irreparably harmed by the failure to grant certiorari review of the Eleventh Circuit's decision before his execution. But he has not, and indeed cannot, argue that he would obtain state habeas relief if he fully prevailed in his § 1983 suit.[1]

Wainwright is now four layers deep into arguing he is irreparably harmed by the *mere* failure to give him *more* review of judgment that has been final for almost thirty years and withstood numerous state and federal challenges. The absolute most he can hope to receive from this federal litigation is an opportunity to obtain merits review of his successive, abusive, and meritless state habeas claims in state court. Preventing him from doing so cannot be irreparable harm.

The irreparable-harm problem is his habeas claims were meritless and abusive and his Eighth Amendment claim was rejected on the merits. *See Gaskin v. State*, 361 So. 3d 300, 309 (Fla. 2023) ("Habeas corpus is not to be used to litigate or relitigate issues which could have been, should have been, or were previously raised."); *Barwick v. State*, 361 So. 3d 785, 790 (Fla. 2023) (postconviction counsel's

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[1] Habeas relief has not been granted in any recent capital warrant case. *See Hutchinson v. State*, No. SC2025-0517, 2025 WL 1198037, at *1 (Fla. Apr. 25, 2025) (rejecting habeas claims); *Tanzi v. State*, 2025 WL 971568, at *5-6 (Fla. Apr. 1, 2025) (rejecting habeas claims); *James v. State*, 2025 WL 798376, at *9 (Fla. Mar. 13, 2025) (rejecting habeas claims); *Dillbeck v. State*, 357 So. 3d 94, 104 (Fla. 2023) (rejecting habeas claims); *Dailey v. State*, 283 So. 3d 782, 793 (Fla. 2019) (rejecting habeas claims); *Bowles v. State*, 276 So. 3d 791, 796 (Fla. 2019) (rejecting habeas claims).

ineffectiveness is not cognizable); *Wainwright*, 2025 WL 1561151, at *7 n.16. The failure to give him an opportunity to file a state habeas petition with no objective likelihood of success simply cannot be the irreparable harm warranting a stay in a capital case. Inability to litigate claims that would ultimately be rejected after merits review is not an irreparable injury. Holding otherwise elevates delay, the chief evil in capital litigation, to a virtue.

A looming execution alone is not enough to establish irreparable harm when granting a capital defendant the full relief he seeks. It would only give the State an execution rain check. Instead, the irreparable *injury* analysis should focus on whether Wainwright would likely succeed in obtaining substantive relief and vacating his sentence.

Wainwright's inability to fully litigate his state habeas claims should not be considered an irreparable injury because his chance of obtaining anything other than a delay rests on sheer speculation. *Cf. Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008) (rejecting the Ninth Circuit's mere "possibility" standard as too lenient to establish irreparable harm); *Koninklijke Philips N.V. v. Thales DIS AIS USA LLC*, 39 F.4th 1377, 1380 (Fed. Cir. 2022) (explaining the "party seeking a preliminary injunction must establish it is likely to suffer irreparable harm without an injunction" and the "mere possibility or speculation of harm is insufficient").

Mere failure to obtain state habeas review is not irreparable harm when there is no showing a capital defendant would likely obtain relief. *See Ferguson v. Warden, Fla. State Prison*, 493 F.App'x 22, 26 (11th Cir. 2012) (Carnes, J., concurring)

("Obviously, executing a defendant who should not be executed inflicts irreparable injury. That is not the claim we have here."). To establish irreparable injury, this Court should require Wainwright to establish that he, more likely than not, would actually obtain state habeas relief. *Cf. In re Lewis*, 212 F.3d 980, 983 (7th Cir. 2000) (Easterbrook, J.) (holding harmless errors cannot amount to irreparable harm).

This Court should permit execution of Wainwright's long-finalized death sentence rather than reward his obvious attempt to achieve delay alone by asserting he was denied a proceeding where he would not have obtained relief. Merely putting off a long-finalized death sentence for another day is neither enough to establish irreparable harm nor an interest that equity should recognize. Mere inability to delay an execution is not irreparable harm. And equity does not favor delay for delay's sake alone. Since Wainwright offers nothing, save perhaps speculation, that this litigation could result in anything other than mere delay of his sentence execution, he has failed to establish irreparable harm.

This Court should deny Wainwright's motion to stay.

CONCLUSION

This Court should deny Wainwright's application for stay of execution and bring true finality to the victims, the State of Florida, and Anthony Floyd Wainwright.

Respectfully submitted,

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