No. 25-5370

IN THE SUPREME COURT OF THE UNITED STATES

Kayle Barrington Bates,
Petitioner,

v.

State of Florida,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE FLORIDA SUPREME COURT

REPLY TO RESPONDENT'S BRIEF IN OPPOSITION AND RESPONSE TO STAY APPLICATION

CAPITAL CASE

DEATH WARRANT SIGNED
Execution Scheduled: August 19, 2025, at 6:00 p.m.

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The State asks this Court to apply a "strong equitable presumption against the grant of a stay" that is applicable "where a claim could have been brought at such a time as to allow consideration of the merits without requiring entry of a stay." (Resp. to Stay App., 1-2) (quoting *Nelson v. Campbell*, 541 U.S. 637, 650 (2004)). This equitable presumption should not apply. Florida's continued use of surprise death warrants—signed without notice years or decades after finality—turns many pre-warrant claims into speculative exercises. Likewise, the State decries "the 'excessive' delays that now typically occur in capital cases, including this one," suggesting that Mr. Bates or his counsel are somehow culpable for the length of these proceedings. This is absurd. First, responsibility for the first decade of "delay" in this case lies firmly with Florida for failing to provide constitutional sentencing proceedings the first three times around and appointing the ineffective counsel that ultimately required reversal on collateral review. In the ensuing years, Mr. Bates timely litigated his postconviction claims as they arose. Then, as far as Florida law is concerned, he became eligible for a death warrant in late 2015. Mr. Bates was not responsible for the delay. He continued to raise claims as they became available and then when the warrant was issued because his execution remained unconstitutional.

REPLY

Mr. Bates's Petition for Writ of Certiorari presents discrete questions of law in accordance with this Court's rules and customary practice. But a far more foundational question pervades: whether the Constitution codified rights or empty promises. Clearly, the former stands true. *See District Attorney's Office for Third*

Judicial Dist. v. Osborne, 557 U.S. 52, 67 (2009) (describing scope of federal procedural due process begotten by state law liberty interest in presenting new evidence of innocence in postconviction); *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974) (same as to revocation of inmate's good-time credits).

The question becomes: whether and how those rights are enforceable. Federal and state law both impose extraconstitutional limitations on postconviction review. Throughout this country, the condemned face numerous obstacles to obtain relief on federal constitutional claims. Of course, after a valid conviction and sentence, "States have substantial discretion to develop and implement programs to aid prisoners seeking to secure postconviction review . . . without requiring the full panoply of procedural protections the Constitution requires" at trial and on direct appeal. *Pennsylvania v. Finley*, 481 U.S. 551, 559 (1987) (finding due process in state postconviction not governed by *Anders v. California*, 386 U.S. 738 (1967)). Nonetheless, the Due Process Clause of the Fourteenth Amendment prohibits state "procedures for postconviction relief [that] 'offend[] some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental,' or 'transgress any recognized principle of fundamental fairness in operation.'" *Osborne*, 557 U.S. at 69 (quoting *Medina v. California*, 505 U.S. 437, 448 (1992)).

Here, the Florida Supreme Court erected obstacles to deprive Mr. Bates of a meaningful opportunity to enforce his constitutional rights. The State hides behind these obstacles to escape substantive review of its unconstitutionally secured sentences. It should not be forgotten that the Florida Supreme Court was duty-bound

to fully enforce Mr. Bates's federal constitutional rights. Mr. Bates laid out the path for it to do so and clearly showed the possibility. The Florida Supreme Court volitionally allowed its own mistakes to linger unremedied.

No independent and adequate state grounds preclude this Court's review of the questions presented. As to Arguments I and II, the Florida Supreme Court possessed the authority to overcome any procedural bars or prior decisions in avoidance of manifest injustice. It should have done so. Regardless, because those claims were intertwined with questions of federal constitutional law, this Court can and should review them.

I. The Florida Supreme Court Refused To Correct Pervasive Constitutional Error, Allowing Mr. Bates's Execution Without Full Consideration Of Mitigating Circumstances That Show His Case Is Not Among The Most Aggravated And Least Mitigated.

The jury was denied evidence showing that Mr. Bates's case truly did not belong in the category of cases punishable by death. Mr. Bates has profound neuropsychological impairments about which neither the jury nor the resentencing court heard. Had either heard this evidence, the result would inevitably have been different.

The jury at Mr. Bates's resentencing heard some mitigation. It heard that he suffered from some form of mental illness. It also heard about how Mr. Bates led a decent and responsible life. He managed to start a family and support them through a steady job. He joined the National Guard to serve his country and state. He had no history of violence, arrest or misconduct. In other words, Mr. Bates was doing exactly what he was supposed to, when he was supposed to. Although Mr. Bates was able to

fulfill his duties as a father, a soldier, and a citizen, it was never easy. Along the way, he experienced routine setbacks and struggled to function in society because of his neuropsychological impairments. Nevertheless, he persevered—until he did not.

The jury that recommended death would have reached this point with one lingering question: How could this have happened? Mr. Bates had the answer to this central question. Not a defense or excuse, but serious neuropsychological evidence that provided a concrete, scientific explanation for his conviction and compelling grounds for life over death. Through neuropsychological evidence, the jury would have found that Mr. Bates's ability to choose a better outcome was limited by his neuropsychological impairment. The cause of this impairment is not definite, but its existence was definitively established before the operative resentencing. Tragically, Mr. Bates's counsel did not understand that the State's MRI could not refute the testimony of his neuropsychologist and, resultantly, succumbed to the State's gamesmanship by omitting Dr. Crown. Thus, the jury recommended death without considering the key factor explaining Mr. Bates's actions and reducing his moral culpability to the point that his case was excluded from the most aggravated and least mitigated.

a. No Retroactivity Issue Is Present.

The State asks this Court to "decline review because Bates has failed to address retroactivity, and the answer to his first question does not retroactively apply to him." (BIO-18). Neither point is relevant. First, this case is here on petition for writ of certiorari to a state court of last resort, not a federal habeas court. See *Graham v. Collins*, 506 U.S. 461, 466-67 (1993) (quoting *Penry v. Lynaugh*, 492 U.S. 302, 313

(1989) (finding "[b]ecause this case is before us on . . . petition for a writ of federal habeas corpus, 'we must determine, as a threshold matter, whether granting . . . relief . . . would create a "new rule"' of constitutional law"); *Edwards v. Vannoy*, 593 U.S. 255, 262 (2021) (noting "a new rule of criminal procedure ordinarily does not apply retroactively to overturn final convictions on federal collateral review"). Second, in any case, Mr. Bates was not required to preemptively raise retroactivity in his petition. That would be the State's prerogative. See *Caspari v. Bohlen*, 510 U.S. 383, 389 (1994) (holding "a federal court may, but need not, decline to apply Teague if the State does not argue it").

And third, Mr. Bates does not ask this Court to announce any new law. His entitlement to relief is "dictated by precedent existing at the time [his] conviction became final." See *Graham*, 506 U.S. at 467 (quoting *Teague v. Lane*, 489 U.S. 288, 301 (1989)). Specifically, Mr. Bates is entitled to relief under the foundational principle upon which this Court built its post-*Furman* caselaw: "[W]here discretion is afforded a sentencing body on a matter so grave as the determination of whether a human life should be taken or spared, that discretion must be suitably directed and limited so as to minimize the risk of wholly arbitrary and capricious action." *Gregg v. Georgia*, 428 U.S. 153, 189 (1976) (citing *Furman v. Georgia*, 408 U.S. 238 (1972)). Since *Furman* and *Gregg*, this principle has required state capital sentencing schemes to: "(1) rationally narrow the class of death-eligible defendants; and (2) permit a jury to render a reasoned, individualized sentencing determination based on a death-eligible defendant's record, personal characteristics, and the circumstances

of his crime." *Accord*. *Kansas v. Marsh*, 548 U.S. 163, 174 (2006). In practical application of these federal requirements "[Florida] law reserves the death penalty only for the most aggravated and least mitigated murders." *Kramer v. State*, 619 So.2d 274, 278 (Fla. 1993).

The State's retroactivity argument is premised on an exceedingly narrow conception of this Court's holdings that limits the binding effect of each to the precise facts of the case. That is not how judicial review works. Even in the restrictive federal habeas context, "a general constitutional rule already identified in the decisional law may apply with obvious clarity to the specific conduct in question." *Andrew v. White*, 604 U.S. __, 145 S.Ct. 75, 82 (2025) (quoting *Taylor v. Riojas*, 592 U.S. 7, 9 (2020)). Here, Mr. Bates is entitled to relief under the constitutional principles that this Court applied in *Furman* and *Gregg*. Both decisions came more than 20 years before his sentence was final, by which time they were already firmly rooted in the "thicket of Eighth Amendment jurisprudence." 145 S.Ct. at 82 (quoting *Lockyer v. Andrade*, 538 U.S. 63, 72 (2003)). To grant Mr. Bates the relief he is due, this Court need only apply longstanding precedent, no "new rule" is required.

II. The State Obtained Mr. Bates's Death Sentence In Violation Of The Eighth Amendment And Due Process Clause Of The Fourteenth Amendment Because The Jury Was Misled To Believe Mr. Bates Could Be Released On Parole In Twelve Years Unless Sentenced To Death Further Denying Mr. Bates A Constitutional Narrowing.

The jury voted to recommend death while operating under a fundamental untruth: that Mr. Bates would be released on parole after serving only 25 years in prison. The State, the resentencing court, and trial counsel all knew that Mr. Bates would never leave the four walls of a prison. The jury did not. So, Mr. Bates tried to

tell the jury about the two consecutive life sentences he would serve even if he were paroled after serving 25 years for the murder conviction. He even formally offered to waive parole eligibility. The resentencing court, however, denied the jury this information and refused Mr. Bates's waiver based on a purported ex post facto issue raised by the State. Mr. Bates could have waived this too, of course. Nevertheless, while everyone of Mr. Bates's arguments in rebuttal was foreclosed, the State argued to the jury that he could receive parole if the jury recommended life over death.

The issue of Mr. Bates's future dangerousness was essential to the jury's death recommendation. Any thoughtful juror would have considered that if Mr. Bates were released 25 years after his 1982 crime, he could still endanger the community. But future dangerousness forms only part of Mr. Bates's claim. The Eighth Amendment required that the jury be presented with meaningful sentencing alternatives to choose between. 25 years, with 12 years already served, would hardly seem appropriate. The jury's question clearly evinced the desire to sentence Mr. Bates to life imprisonment—just not with the opportunity for parole.

a. No Retroactivity Issue Is Present.

Rather than address the fundamental injustice presented here, the State argues: "Bates' second question runs into the same retroactivity problem as his first" because "[n]o controlling law in 2000 . . . required allowing him to waive parole and then tell the jury he was parole ineligible or tell the jury his consecutive sentences amounted to a functional life sentence." (BIO-27). As argued supra, the State's argument relies on the improper extension of the rules governing federal habeas actions.

But further, the State relies on federal habeas cases unsupportive of its position. The State says Ramdass "held there was no entitlement to tell capital juries about functional life sentences even when the state inserts future dangerousness into the capital penalty phase." (BIO-27) (citing *Ramdass v. Angelone*, 530 U.S. 156, 169 (2000)). It stands for no such proposition. The petitioner in Ramdass was prevented from telling the jury that he was ineligible for parole based on a verdict rendered in a separate case in which judgement was not yet entered. *Id*. at 175-76 (holding state court "was reasonable to reject a parole-ineligibility instruction for a defendant who would become ineligible only the event a trial judge in a different county entered final judgment in an unrelated criminal case"). Next, the State points to *O'Dell* to show the non-retroactivity of *Simmons v. South Carolina*, 512 U.S. 154 (1994). (BIO-28) (citing *O'Dell v. Netherland*, 521 U.S. 151, 157-68 (1997)). Retroactivity was clearly a threshold issue in *O'Dell*, where the petitioner's conviction "became final on October 3, 1988," and "*Simmons*, the rule of which [he sought] to avail himself, was decided in 1994." 521 U.S. at 157. It is unclear how the same retroactivity issue applies here. Every case Mr. Bates offered in support of this claim was decided before his sentence became final.

As to the remainder of the State's arguments, Mr. Bates stands on his previous filings. This Court should grant certiorari.

III. The Rote Denial Of Discovery Violates The Due Process Clause Of The Fourteenth Amendment.

If, as the state courts held, no colorable claim lies in an Eighth Amendment challenge to state lethal injection protocols, then every word of *Bucklew v. Precythe*

was extraneous. 587 U.S. 119 (2019) (articulating standard for as-applied method-of-execution claims and applying to Missouri's lethal injection protocol). This Court has neither foreclosed lethal execution claims nor granted the states blanket authority to execute people without regard for their individualized risk of torturous death. Yet the Florida Supreme Court has effectively done both.

The Florida Supreme Court has a history of simply denying relief on sufficiently-pleaded federal constitutional claims over which bona fide factual disputes exist. See *Cash v. Culver*, 358 U.S. 633 (1959); *McNeal v. Culver*, 365 U.S. 109 (1961); *Carnley v. Cochran*, 369 U.S. 506 (1962). A corresponding tendency to require factual development before claims are even ripe is also evident. For instance, even though the State decries dilatoriness, Mr. Bates actually raised a method-of-execution claim years ago in a state postconviction motion. *Bates v. State*, 3 So. 3d 1091, 1106 (Fla. 2009). He was much younger man and could not predict or present any physical ailments that would affect his execution today. Nor could he challenge Florida's lethal injection protocol, as it exists now because he could not know how, or how many times, the protocol would change in the interim. Nevertheless, the Florida Supreme Court denied Mr. Bates's lethal injection claim based, presumably, on his physical condition in 2009 and the now-abrogated lethal injection protocol effective at that time. The court gave Mr. Bates's claim all the consideration of one footnote, stating:

> Bates' general attack on Florida's lethal injection protocol is meritless. This Court recently upheld the current lethal injection protocols. *See Lightbourne v. McCollum,* 969 So.2d 326 (Fla.2007); *see also*, *Ventura v. State,* 2 So.3d 194

> (Fla.2009); *Tompkins v. State,* 994 So.2d 1072 (Fla.2008); *Henyard v. State,* 992 So.2d 120 (Fla.2008). Bates has not alleged any specific deficiencies in the protocols, and accordingly, this claim was appropriately denied.

3 So. 3d at 1106, n. 18.

To avoid procedural default, Mr. Bates would have to engage in vexatious and frivolous litigation strategies, challenging every change to the lethal injection protocol without any clue as to whether it would ever apply to him. Rather than seeking only the most probative execution records (those from the immediately preceding execution), Mr. Bates would have to routinely pester agencies for records that may, ultimately, bear no relation to his execution.

Florida shows no sign of slowing down its executions or its development of new execution methods. To the contrary, Florida law now authorizes execution "by a method not deemed unconstitutional." § 922.105(3), Fla. Stat. (2025). No one knows now how this new provision will be implemented. It is necessary for this Court to grant certiorari and effectuate the principle that the condemned should be able to test the constitutionality of their executions. To avoid a cruel and unusual death at the hands of the State, Mr. Bates asks that he be given the information necessary make his case.

As to the remainder of the State's arguments, Mr. Bates stands on his previous filings. This Court should grant certiorari.

CONCLUSION

For the above reasons, Petitioner respectfully requests that this Court grant his Petition for Writ of Certiorari.

Respectfully submitted,

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