No. 25A191

IN THE
SUPREME COURT OF THE UNITED STATES

KAYLE BARRINGTON BATES, *Petitioner*,

v.

RICKY D. DIXON, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, *Respondent*.

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

EXECUTION SCHEDULED FOR AUGUST 19, 2025, AT 6:00 P.M.

RESPONSE TO APPLICATION FOR A STAY OF EXECUTION

On August 17, 2025, Bates, represented by the Capital Habeas Unit of the Office of the Federal Public Defender of the Northern District of Florida (CHU-N) filed a Petition for a Writ of Certiorari in this Court seeking review of the Eleventh Circuit's decision affirming the dismissal of the 42 U.S.C. § 1983 suit for failure to state a claim for relief. Bates filed a § 1983 suit in the district court raising an equal protection claim and an Eighth Amendment arbitrariness claim regarding Governor DeSantis' warrant selections which the district court dismissed. The Eleventh Circuit affirmed the dismissal and denied a motion to stay, concluding that Bates did not have a substantial likelihood of success on the merits of his appeal.

Bates also filed an application for stay of the execution in this Court along with his Petition. Bates contends that a stay is warranted because legal issues remain

outstanding. Application at 4. But this Court should simply deny the Petition for the reasons given in the brief in opposition and then deny the application for a stay.

Stays of Execution

Stays of executions are not granted as "a matter of course." *Hill v. McDonough*, 547 U.S. 573, 583-84 (2006). Rather, 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 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). "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).

This Court has highlighted the State's and the victims' interests in the timely enforcement of the death sentence. *Bucklew v. Precythe*, 587 U.S. 119, 149-151 (2019). The people of Florida, as well as surviving victims and their families, "deserve better" than the "excessive" delays that now typically occur in capital cases. *Id.* at 149. The Court has stated that courts should "police carefully" against last minute claims being used "as tools to interpose unjustified delay" in executions. *Id.* at 150. This Court has also repeatedly stated that last minute stays of execution should be the "extreme exception, not the norm." *Barr v. Lee*, 591 U.S. 979, 981 (2020) (vacating a lower court's grant of a stay of a federal execution quoting *Bucklew*, 587 U.S. at 151).

To be granted a stay of execution in this Court, the petitioner must establish three factors: (1) a reasonable probability that the Court would vote to grant certiorari; (2) a significant possibility of reversal if review was granted; and (3) a likelihood of irreparable injury in the absence of a stay. *Barefoot v. Estelle*, 463 U.S. 880, 895 (1983). The petitioner must establish all three factors. *Hill v. McDonough*, 547 U.S. 573, 584 (2006). Bates must establish all three of the factors but he has established none.

Probability this Court will Grant Certiorari Review

First, there is little chance that this Court would grant review of the question raised in the Petition. As the brief in opposition explains, there is a significant threshold issue of whether the two claims are barred by *Heck v. Humphrey*, 512 U.S. 477 (1994). Bates is not raising a manner or method of execution claim; he is raising a warrant selection claim, which, according to his own complaint, would prevent the State from executing him. *Nance v. Ward*, 597 U.S. 159, 168 (2022) (stating that a "claim should go to habeas," if granting the prisoner relief would "necessarily prevent the State from carrying out its execution"). Allowing claims to be raised as improper § 1983 claims rather than as habeas claims has the effect of undermining the AEDPA and its numerous limitations on habeas review as well as this Court's precedent interpreting that statute. *See e.g.*, *Shoop v. Twyford*, 596 U.S. 811 (2022) (explaining the strict limitations on discovery in federal habeas review under the habeas statute).

And, as explained in the brief in opposition, there is a circuit split regarding whether a *Heck* bar is jurisdictional. So, that aspect of the *Heck* bar would have to be

addressed first by this Court. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 93-94 (1998) (rejecting the concept of "hypothetical jurisdiction").

This Court typically does not grant review in cases with threshold issues, much less grant review of cases with threshold jurisdictional issues. *Izumi Seimitsu Kogyo Kabushiki Kaisha v. U.S. Phillips Corp.*, 510 U.S. 27 (1993) (dismissing a writ of certiorari as improvidently granted because there was a threshold issue); *N.C.P. Mktg. Group, Inc. v. BG Star Productions, Inc.*, 556 U.S. 1145 (2009) (statement of Kennedy, J., respecting the denial of certiorari) (explaining that the petition for writ of certiorari was properly denied by the Court, despite the question being presented being a significant one that was worthy of review, because the case might require the Court to first resolve antecedent questions). The threshold issue of the *Heck* bars alone is sufficient reason for this Court to deny the Petition.

Additionally, there is no conflict between this Court's decisions in *McCleskey v. Kemp*, 481 U.S. 279 (1987), and *Bucklew v. Precythe*, 587 U.S. 119 (2019), and the Eleventh Circuit's decision. The Eleventh Circuit properly concluded both claims were "foreclosed" by this Court decision in *McCleskey*. And the district court by dismissing the § 1983 suit, followed this Court's admonishment in *Bucklew* to curtail § 1983 litigation in capital cases that is nothing more than an attack on settled precedent or is speculative. Nor is there any conflict with the other circuit courts or state courts of last resort and the Eleventh Circuit's decision concluding both claims were "foreclosed" by *McCleskey*. This Court typically does not grant review in the absence of such conflicts.

Bates fails the first factor. Based on this factor alone, the stay should be denied.

Significant Possibility of Reversal

Second, if review was granted, there is not a significant possibility that this Court would reverse the dismissal of the § 1983 claims for failure to state a claim under this Court's decision in *McCleskey*. Because the claims involve a single decisionmaker involved in the warrant selections and Bates even distinguishes *McCleskey* on the basis of there being a single decisionmaker regarding warrants in Florida, the statistics he may use to prove racial discrimination are limited to the 21 warrants that Governor DeSantis signed. 19% of the 21 warrants signed by Governor DeSantis have been for black inmates and 26% of the victims involved in those warrants were non-white victims. These statistics totally rebut any claim of racial discrimination in the Governor's warrant selections. Such statistics certainly fail to establish a "stark" pattern of discrimination, as required by this Court in *McCleskey*. *McCleskey*, 481 U.S. at 293-94 (stating that "statistical proof normally must present a 'stark' pattern to be accepted as the sole proof of discriminatory intent" citing *Arlington Heights v. Metropolitan Housing Dev. Corp*., 429 U.S. 252, 266 (1977)).

As the Eleventh Circuit noted, of the 21 inmates selected for a warrant by Governor DeSantis, four were black inmates and two of those inmates had murdered non-white victims. The Eleventh Circuit also noted the "small sample size" of 21 warrants which limited "its evidentiary value" and compared the sample size of the 21 warrants to the sample size of the 2,000 murder cases involved in the Baldus study at issue in *McCleskey*. McCleskey, 481 U.S. at 286 (noting the Baldus study examined

"over 2,000 murder cases that occurred in Georgia during the 1970's").

There is no possibility that Bates would prevail in this Court on the merits of his two claims regarding the Governor's warrant selections under *McCleskey*. Bates fails the second factor as well.

Irreparable Harm

Third, there is no irreparable harm. Bates points to the execution itself as establishing irreparable harm. But the factors for granting a stay are taken from those applied to normal civil litigation, which are not a natural fit in capital cases. *Barefoot*, 463 U.S. at 895-96 (citing *Times-Picayune Pub. Corp. v. Schulingkamp*, 419 U.S. 1301, 1305 (1974) (Powell, J., in chambers)). There is no irreparable harm, other than the execution itself, which is inherent in the death sentence. Finality in a capital case is the execution, so some additional showing should be required in a capital case to satisfy this factor. Bates has not identified any irreparable harm that is not a direct consequence of his valid, constitutional, and long-final death sentence. Bates also fails the third factor.

Alternatively, even if this Court views this one factor as being established, Bates must establish all three factors but he has, at most, only established this one factor. Bates fails at least two of the three *Barefoot* factors.

Additionally, *Barefoot*, which was decided in 1983, is not this Court's last word on the matter of stays in capital cases. This Court has stated in the capital context that "the *relative* harms to the parties" must still be considered, including "the State's significant interest in enforcing its criminal judgments." *Nelson v. Campbell*, 541 U.S.

637, 649-50 (2004). Without finality, "the criminal law is deprived of much of its deterrent effect." *Calderon v. Thompson*, 523 U.S. 538, 555-56 (1998).

Contrary to Bates' argument, the balance of the equities are not in his favor. The murder in this case occurred over 40 years ago and the death sentence has been final for nearly a quarter of a century. *Bates v. Florida*, 531 U.S. 835 (2000). When a prisoner has already had "extensive review of his claims in federal and state courts," absent a strong showing of actual innocence, "the State's interests in actual finality outweigh the prisoner's interest in obtaining yet another opportunity for review." *Calderon*, 523 U.S. at 557. Bates' federal habeas review was final nearly a decade ago. *Bates v. Sec'y, Fla. Dep't of Corr.*, 768 F.3d 1278 (11th Cir. 2014), *cert. denied*, *Bates v. Jones*, 577 U.S. 839 (2015). So, the State's interest in finality at this point is "paramount." The equities are all in the State's favor. For these reasons, a stay should be denied.

Accordingly, this Court should deny the Petition and the application for stay of execution.

Respectfully submitted,

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