Nos. 25-5926 and 25A451
CAPITAL CASE

In the
Supreme Court of the United States

ANTHONY BOYD,
Petitioner,
v.
KAY IVEY, Governor of Alabama,
Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Eleventh Circuit

OPPOSITION TO APPLICATION FOR STAY OF EXECUTION AND PETITION FOR WRIT OF CERTIORARI

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EXECUTION SCHEDULED OCTOBER 23, 2025

CAPITAL CASE

QUESTIONS PRESENTED

(Restated)

On January 12, 2023, the Alabama Supreme Court's amendment of Rule 8(d)(1) of the Alabama Rules of Appellate Procedure took effect. In relevant part, while the court maintained the responsibility of authorizing executions, it gave the governor of Alabama the task of choosing execution time frames once duly authorized by the court. The statute of limitations for 42 U.S.C. § 1983 claims in Alabama is two years. ALA. CODE § 6-2-38; *see, e.g.*, *Brooks v. Warden*, 810 F.3d 812, 822 (11th Cir. 2016) (looking to state's statute of limitations for personal injury actions).

The questions presented are:

1. Whether the Eleventh Circuit abused its discretion in denying a stay of execution where Boyd's state-law claim did not sound in § 1983.

2. Whether the district court abused its discretion in denying a preliminary injunction where Boyd's claim was brought eight months after the statute of limitations expired.

3. Whether the district court abused its discretion in finding that the equities weighed against a preliminary injunction where Boyd waited until one month before his execution to initiate the present matter, his ***second*** execution § 1983 action.

4. Whether the district court erred in dismissing the attorney general as a defendant where Boyd failed to establish Article III standing.

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INTRODUCTION

Anthony Boyd will be executed **Thursday, October 23, 2025**, for the savage murder of Gregory Huguley thirty-two years ago.

Boyd's claims would require this Court to identify clear error in the district court's factual findings and an abuse of discretion in denying relief. This Court does not typically grant review in such cases, SUP. CT. R. 10, so no stay should issue.

I. Boyd alleges that his Fourteenth Amendment rights were violated when Governor Ivey, acting pursuant to Rule 8(d)(1) of the Alabama Rules of Appellate Procedure and an order of the Alabama Supreme Court, scheduled his execution. The Eleventh Circuit did not err in denying a stay of execution because Boyd's claim was not a proper § 1983 claim, but rather a challenge to an alleged violation of state law with a "general invo[cation of] due process." App'x 209. Boyd contended that an Alabama statute mandated that a court schedule his execution date, that an Alabama court rule allowed the governor to schedule it instead, and that this violated a provision of the Alabama Constitution. The court therefore held that this claim "is not cognizable under § 1983." *Id.* This finding was not an abuse of discretion.

II. Assuming arguendo that the claim was cognizable in § 1983, the district court correctly held that Boyd's claim accrued on January 12, 2023, when Rule 8(d)(1) was amended to put calendaring executions in the hands of the governor after the Alabama Supreme Court authorizes them. Boyd's § 1983 claim, raised in September 2025, was brought eight months past the statute of limitations, and so he had no likelihood of success on the merits. App'x 96-98. This finding was not an abuse of discretion.

III. The district court also did not abuse its discretion in denying equitable relief where Boyd waited until September 23, 2025—one month prior to his execution—to initiate this lawsuit, after having filed a counseled § 1983 action, a pro se third state postconviction petition, a pro se state civil action, and a pro se state mandamus petition in the months since the State moved for his execution. The court correctly noted that "[t]he timing of this lawsuit and Boyd's other recent litigation conduct smack of gamesmanship, and the Court has little trouble concluding that this action is an effort to delay his lawfully imposed death sentence as opposed to a bona fide effort to effectuate a change to execution procedures." App'x 95-96. Further, the court considered the interests of the State and the victims of Boyd's crime and did not abuse its discretion in finding that the equities weighed against Boyd. App'x 96.

IV. Nor did the district court err in dismissing the attorney general as a defendant where Boyd failed to establish Article III standing. The alleged "injury" Boyd suffered was the governor scheduling his execution, and the attorney general had no part in or control over that decision. *See* App'x 93.

V. Boyd asks this Court to grant relief a claim he brought just one month ago, after having first tried his hand at several other avenues for judicial relief. Because "Boyd's delay in filing suit and seeking a preliminary injunction or stay of execution was 'unreasonable, unnecessary, and inexcusable,'" App'x 95, his conduct disqualifies him from equitable relief here. Other equitable factors favor the State, including the public interest in justice after three decades. Boyd faces no irreparable harm where the State carries out a lawful and just sentence.

STATEMENT OF THE CASE

Boyd is scheduled to be executed on October 23 for the kidnapping-murder of Gregory Huguley, which the Alabama Court of Criminal Appeals (ACCA) stated was "especially heinous, atrocious, and cruel, in that it was unnecessarily torturous, pitiless, conscienceless, extremely wicked, and shockingly evil." *Boyd v. State*, 715 So. 2d 825, 852 (Ala. Crim. App. 1997).

In the interest of brevity, Respondent opts not to set out Boyd's full legal history here.[1] Rather, Respondent begins with the change to Rule 8(d)(1) that is the crux of this litigation.

A. The Alabama Supreme Court amends Rule 8(d)(1).

When it was adopted in 1985, Rule 8(d)(1) of the Alabama Rules of Appellate Procedure stated:

> (1) Death. When pronouncing a sentence of death, the trial court shall not set an execution date, but it may make such orders concerning the transfer of the inmate to the prison system as are necessary and proper. ***The supreme court shall at the appropriate time enter an order fixing a date of execution, not less than 30 days from the date of the order, and it may make other appropriate orders upon disposition of the appeal or other review.*** The supreme court order fixing the execution date shall constitute the execution warrant.

(Emphasis added.) Under the rule, an execution date was just that—twenty-four hours, beginning and ending at midnight. But the Alabama Department of Corrections (ADOC) began experiencing difficulty when it ran up against the midnight deadline on execution nights, which caused multiple executions to be

1. Boyd's procedural history will be set forth in Respondents' brief in opposition to Boyd's motion for stay of execution and petition for certiorari arising from his counseled § 1983 action (2:25-cv-00529 (M.D. Ala.), 25-13545 (11th Cir.)).

scuttled.[2]

On December 12, 2022, Governor Kay Ivey sent a letter to the Alabama Supreme Court asking the court to amend Rule 8(d)(1). In part, she wrote:

> In several recent executions, last-minute gamesmanship by death row inmates and their lawyers have consumed a lot of valuable time, preventing the Department from carrying out its execution protocol between the conclusion of all legal challenges in the federal courts and the expiration of the death warrant issued by your court.…
>
> But perhaps the most significant aspect of this problem is a longstanding court rule limiting the execution warrants you issue to a single "execution date"—that is, a single 24-hour period. This court rule is what requires Department of Corrections officials to stop all execution attempts at midnight of the scheduled execution day.[3]

The rule was swiftly amended, effective January 12, 2023, and presently reads:

> (1) Death. When pronouncing a sentence of death, the trial court shall not set an execution date, but it may make such orders concerning the transfer of the inmate to the prison system as are necessary and proper. ***The supreme court shall at the appropriate time enter an order authorizing the Commissioner of the Department of Corrections to carry out the inmate's sentence of death within a time frame set by the governor, which time frame shall not begin less than 30 days from the date of the order, and it may make other appropriate orders upon disposition of the appeal or other review.*** The supreme court's order authorizing the Commissioner of the Department of Corrections to carry out the inmate's sentence of death shall constitute the execution warrant.

(Emphasis added.) The change to the rule is essentially who calendars an execution.

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2. For example, Christopher Price was scheduled to be executed on April 11, 2019, but his application for a stay of execution did not reach this Court until early that afternoon. The Court cleared the execution to proceed around 2:30 a.m. on April 12, but by then, the warrant had expired.

   A more recent example is Kenneth Smith, who was scheduled to be executed on November 17, 2022. The Court vacated his stay with about four hours to go, but ADOC was unsuccessful in timely establishing IV access.

3. *See* Jacob Holmes, *Ivey Asks Alabama Supreme Court for More Time to Carry Out Executions*, ALA. POL. REP. (Dec. 13, 2022, 7:40 AM), https://www.alreporter.com/2022/12/13/ivey-asks-ala-supreme-court-for-more-time-to-carry-out-executions.

The Alabama Supreme Court must authorize an execution, but as of January 2023, once that court decides that the time is proper for an inmate to be executed, it passes the matter to the governor to select a "time frame" for the execution, which is now longer than twenty-four hours.

Alabama courts have not yet issued orders concerning this change to Rule 8(d)(1). However, when Geoffrey West claimed that the present rule is unconstitutional under the Alabama constitution in his response to the State's motion to set his execution date, the Alabama Supreme Court granted the State's motion, tacitly finding West's claim meritless. *See* Response to the State of Alabama's Motion to Set an Execution Date, *Ex parte West*, No. 1000231 (Ala. June 5, 2025) (motion granted June 25, 2025).

B. Boyd's execution litigation commences in July 2025.

The State moved for Boyd's execution (for the second time[4]) on June 11, 2025. On July 16, Boyd initiated a counseled § 1983 action, *Boyd v. Hamm*, 2:25-cv-00529 (M.D. Ala. Oct. 9, 2025). Two weeks later, on July 30, the Alabama Supreme Court authorized Boyd's execution, ordered the ADOC Commissioner to carry it out "within a time frame set by the Governor of the State of Alabama," and ordered Governor Ivey to set the time frame. App'x 69. On August 18, Governor Ivey informed ADOC Commissioner Hamm that she had chosen the thirty-hour window from 12 a.m. on

4. The State first moved for Boyd's execution in September 2014, as his conventional appeals had concluded in June 2013. However, in March 2015, while the motion was still pending, the State asked the Alabama Supreme Court to hold it in abeyance pending a decision in *Glossip v. Gross*, 576 U.S. 863 (2015). In the interim, Boyd litigated a § 1983 method-of-execution challenge to ADOC's lethal injection protocol and ultimately elected nitrogen hypoxia in June 2018. ADOC did not announce a hypoxia protocol until August 2023.

October 23 to 6 a.m. on October 24 for Boyd's execution. She added, "Although I have no current plans to grant clemency in this case, I retain my authority under the Constitution of the State of Alabama to grant a reprieve or commutation, if necessary, at any time before the execution is carried out." App'x 72.

In the meantime, while his counseled § 1983 action was pending in the district court, Boyd launched a series of pro se lawsuits: a third Rule 32 (state postconviction) petition on August 4, a state civil action on August 5, and then an emergency pro se petition for writ of mandamus and motion to stay his execution in the Alabama Supreme Court on August 25, claiming it was a violation of due process for Governor Ivey to set his execution date. App'x 74-77. The Alabama Supreme Court denied the petition on September 10. Order, *Ex parte Boyd*, SC-2025-0624 (Ala. Sept. 10, 2025).

Boyd waited ***nearly another two weeks*** to initiate the present litigation. His complaint against Governor Ivey and Attorney General Marshall was filed on September 23, App'x 7-13, as were an emergency motion for preliminary injunction and stay of execution, App'x 14-16, and a memorandum of law in support of the motion, App'x 17-23. Boyd raised two claims, both arising from the January 2023 amendment to Rule 8(d)(1). First, he claimed that his right to procedural due process was violated because Governor Ivey scheduled his execution, which he contended was a violation of section 15-18-82(a) of the Code of Alabama. He argued that because Governor Ivey also considered clemency petitions, this created a conflict of interest. Second, he claimed that allowing Governor Ivey to schedule an execution violated the Alabama Constitution's provisions on the separation of powers and further violated

the Fourteenth Amendment. *See* App'x 91.

On September 24, Chief Judge Emily C. Marks, who also had Boyd's counseled § 1983 action before her, ordered undersigned counsel (who are counsel of record in the other § 1983 action) to respond to the motion by October 1. App'x 24-26. Counsel did so on September 30, moving the court to dismiss Boyd's complaint and deny preliminary injunctive relief. App'x 27-67. The district court afforded Boyd an opportunity to reply, *see* App'x 5 (DE9), and he did so on October 7, App'x 79-87.

On October 9, the district court entered memorandum opinions in both § 1983 actions. As for the present matter, the court denied relief as follows.

First, Boyd lacked standing to sue the attorney general "because he fails to show that any alleged injury is 'traceable' to Marshall." App'x 93. The alleged injury came from Governor Ivey's conduct and the Alabama Rules of Appellate Procedure, nothing the attorney general had done. *Id.* Thus, the case against Attorney General Marshall was dismissed without prejudice. App'x 98.

Second, Boyd was not entitled to relief because he failed to show a substantial likelihood of success on the merits. The court correctly held that "the inquiry begins and ends with the statute of limitations" in Boyd's case because both of his claims were brought outside the two-year statute of limitations for § 1983 actions. App'x 97. The facts supporting Boyd's claim arose on January 12, 2023, when Rule 8(d)(1) was amended, yet Boyd waited to file until September 28, 2025. *Id.* Boyd's argument that his claim did not accrue until Governor Ivey set his execution on August 18 was unavailing; "[t]he setting of Boyd's execution in August 2025 does not change the

reality that Rule 8(d)(1) has been in place for well more than two years." App'x 98.

Third, the equities weighed against Boyd, particularly because of the "egregiousness of [his] delay" in filing this action. App'x 95. There was no reason that he could not have brought suit earlier than one month before his execution. *Id.* Moreover, the court found that the State and the victims' interest in the timely enforcement of Boyd's sentence, which has been pending for more than three decades now, weighed against him. App'x 96.

C. The Eleventh Circuit denies relief on different grounds.

Boyd appealed the district court's decision. His brief and emergency motion for stay of execution were docketed in the Eleventh Circuit on October 14,[5] App'x 123-41, and Governor Ivey responded to both on the morning of October 16, App'x 143-85. Boyd's reply and supplemental authority were received on the morning of October 20. App'x 186-205.

That evening, the Eleventh Circuit issued a per curiam order denying a stay of execution. App'x 206-10. The court did so for two different reasons than those given by the district court. ***First***, Boyd currently had counsel, who were representing him in his other § 1983 appeal in the Eleventh Circuit. Pursuant to Eleventh Circuit Rule

5. Notice of appeal was loaded into PACER by the district court around 4 p.m. Central on Friday, October 10, just prior to the three-day weekend. Undersigned counsel contacted the Eleventh Circuit to inform them of the appeal, which was docketed that afternoon.

On the morning of October 14, the district court docketed Boyd's Eleventh Circuit brief and emergency motion, which he had mailed to both courts—not from Holman Correctional Facility in Atmore, Alabama, but rather from a UPS Store in Anniston, nearly four hours away. Undersigned counsel again informed the Eleventh Circuit of the filings. On the afternoon of October 14, the district court denied Boyd's emergency motion "[t]o the extent Boyd intended to file the motion in this Court[.]" Order, *Boyd v. Ivey*, 2:25-cv-00764 (M.D. Ala. Oct. 14, 2025), DE18. Boyd's filings were received in the Eleventh Circuit and docketed later that day. The court agreed to allow Boyd's reply to be emailed directly to the clerk's office; instead, a packet with his final three filings was mailed from the UPS Store in Anniston on the evening of October 17.

25-1, Boyd could not engage in hybrid representation by having counsel represent him in one appeal and representing himself in another. App'x 208. ***Second***, the panel held that Boyd failed to show a substantial likelihood of success on the merits because his claim was not a proper § 1983 claim, but rather a state-law claim with "due process" dressing. App'x 208-10.

STANDARD OF REVIEW

For Boyd "[t]o obtain a stay pending the filing and disposition of a petition for a writ of certiorari," he "must show (1) a reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari; (2) a fair prospect that a majority of the Court will vote to reverse the judgment below; and (3) a likelihood that irreparable harm will result from the denial of a stay." *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010).

On this posture, the Court gives "considerable weight" to the decisions below. *Barefoot v. Estelle*, 463 U.S. 880, 896 (1983); *see also Respect Maine PAC v. McKee*, 562 U.S. 996 (2010) (Kennedy, J., in chambers) (requiring significant justification for "judicial intervention that has been withheld by lower courts" (quoting *Ohio Citizens for Responsible Energy, Inc. v. NRC*, 479 U.S. 1312, 1313 (1986) (Scalia, J., in chambers)); *cf. Bateman v. Arizona*, 329 U.S. 1302, 1304 (1976) ("In all cases, the fact weighs heavily 'that the lower court refused to stay its order pending appeal.'") (quoting *Graves v. Barnes*, 405 U.S. 1201, 1203 (1972) (Powell, J., in chambers)). Because the district court and appellate panel denied injunctive relief, Boyd has "an especially heavy burden." *Edwards v. Hope Medical Group for Women*, 512 U.S. 1301 (1994) (Scalia, J., in chambers).

REASONS CERTIORARI AND A STAY OF EXECUTION SHOULD BE DENIED

I. Boyd has no chance of success on his Fourteenth Amendment claims.

The district court correctly found that Boyd failed to show a substantial likelihood of success on the merits, and the Eleventh Circuit correctly affirmed, albeit for different reasons. This Court should do likewise for four reasons: the claims do not sound in § 1983, were filed outside the statute of limitations, are barred by sovereign immunity, and failed to state a claim.

A. Not proper § 1983 claims.

The Eleventh Circuit found that Boyd failed to show a substantial likelihood of success on the merits because his claims did not sound in § 1983. As the panel explained:

> Mr. Boyd sued under § 1983, which protects against the "deprivation of any rights, privileges, or immunities secured by the Constitution and laws" of the United States. Although he generally invokes due process, it seems to us that his challenge to Alabama Rule of Appellate Procedure 8(d)(1) is at bottom based on the assertion that it violates an Alabama statute and a provision of the Alabama Constitution. And a violation of state law is not cognizable under § 1983. *See Collins v. City of Harker Heights*, 503 U.S. 115, 119 (1992) ("Although the statute provides the citizen with an effective remedy against those abuses of state power that violate federal law, it does not provide a remedy for abuses that do not violate federal law[.]"); *United Housing Foundation, Inc. v. Forman*, 421 U.S. 837, 860 n.27 (1975) ("The remaining counts in the complaint were all predicated on alleged violations of state law not independently cognizable in federal court [under § 1983]."); *Knight v. Jacobson*, 300 F.3d 1272, 1276 (11th Cir. 2002) (noting that § 1983 "does not create a remedy for every wrong committed under the color of state law, but only for those that deprive a plaintiff of a federal right"); *Wideman v. Shallowford Comm. Hospital, Inc.*, 826 F.2d 1030, 1032 (11th Cir. 1981) (explaining that § 1983 "imposes liability only 'for violations of rights protected by the Constitution, not for violations of duties of care arising out of tort law'") (citation omitted). Mr. Boyd has not identified any federal due process right that shows that Alabama Rule of Appellate Procedure 8(d)(1) is unconstitutional. *Cf. Johnson v. Collier*, 137 F.4th

> 376, 383 (5th Cir. 2025) (explaining that a capital inmate challenging the procedure used to set his execution in Texas could not "identify any federal or state law that clearly creates a right to only be executed if the district attorney seeks the setting of an execution date").

App'x 208-10 (footnote omitted).[6]

The court was correct in its analysis. Boyd's district court filings alleged:

- Section 15-18-82(a) of the Code of Alabama mandates that a court set the execution date. App'x 7.
- Rule 8(d)(1) of the Alabama Rules of Appellate Procedure was amended in 2023, allowing the governor to schedule executions. App'x 8.
- Article V, section 124 of the Alabama Constitution provides that the governor has exclusive power over clemency in capital cases. *Id.*
- Article III, section 43 of the Alabama Constitutes provides for the separation of powers. *Id.*

In sum, the only federal provision named was the Fourteenth Amendment and Boyd's alleged deprivation of due process rights.

Boyd contends that the Eleventh Circuit misapprehended his claim, arguing, "Boyd's claim is not that Alabama failed to comply with a mere statute—it is that

6. Boyd takes issue with several of the cases the Eleventh Circuit cited in this string cite for the principle that "a violation of state law is not cognizable under § 1983." App'x 209; *see* Mot. 5-6. His arguments are unavailing; that the context of those cases differed from the present matter does not invalidate their authority.

Respondent does, however, note that Boyd argues about a nonexistent decision. The Eleventh Circuit cited *Wideman v. Shallowford Community Hospital, Inc.*, 826 F.2d 1030 (11th Cir. 1981), in the string cite. App'x 209. Boyd instead purports to discuss *Widemon v. Shulman*, 2009 WL 1873658 (11th Cir. June 30, 2009). Mot. 6. There is no such decision; the Westlaw citation goes to *Andre v. United States*, a district court case out of Florida, which suggests that Boyd is the victim of an AI hallucination. *Wideman* had nothing to do with "a state agency's alleged mishandling of procedural rules in an employment context," Mot. 6, but rather concerned "whether a county government's alleged practice of using its emergency medical vehicles only to transport patients to certain county hospitals which guarantee the payment of the county's medical bills violates a right protected by the federal constitution," 826 F.2d at 1030-31.

Further, *Johnson v. Collier* is a 2025 decision from the Fifth Circuit. Boyd gives the wrong citation for *Johnson*—929 F.3d 944 (11th Cir. 2019), Mot. 7—which is incorrect. 929 F.3d 944 goes to *United States v. Hamilton*, an Eighth Circuit decision from 2019. Boyd's alleged quotation from this decision, Mot. 7 (citing 929 F.3d at 951), is fabricated, indicative of another AI hallucination.

state officials, acting under color of state law, have stripped courts of their judicial role and thereby deprived him of federal due process." Mot. 5. But that's not what has happened in Alabama. As discussed below, *see infra* § I.D, the Alabama Supreme Court retains the exclusive power to determine that it is time for an inmate to be executed. All that the January 2023 amendment to Rule 8(d)(1) did was allow the governor to choose a date for an authorized execution—which Governor Ivey did here at the order of the Alabama Supreme Court. *See* App'x 69 (execution order), 72 (Governor Ivey's letter to Commissioner Hamm). The power to substantively affect Boyd's rights remains where it has always been: ***with the judiciary***. Boyd had the same due process right as any other inmate before or after January 2023 to file an objection to the State's motion for to authorize his execution, and he did so. That the governor now puts an execution on the calendar after the Alabama Supreme Court decides the time is proper for it to be carried out does not constitute a deprivation of due process. Thus, the panel correctly held that Boyd failed to "identif[y] any federal due process right that shows that Alabama Rule of Appellate Procedure 8(d)(1) is unconstitutional," App'x 209.

The Eleventh Circuit pointed to *Johnson v. Collier*, 137 F.4th 376 (5th Cir. 2005), which is instructive. *See* App'x 209-10. In that case, Texas death-row inmate Matthew Johnson (who, in a twist of fate, also set his victim on fire) filed a § 1983 complaint alleging that the process by which his execution date was set violated his Fourteenth Amendment rights: the attorney general (instead of the district attorney) had alerted the trial court that Johnson's appeals were exhausted, and Johnson

claimed that the trial court failed to follow the scheduling procedures in Article 43.141 of the Texas Code of Criminal Procedure. *Id.* at 381. The district court denied a stay, *id.*, and the Fifth Circuit affirmed:

> As a federal court, we do not review whether state courts have followed state procedural rules unless their failure to do so presents a federal constitutional issue. *Cf. Jordan v. Fisher*, 823 F.3d 805, 809 (5th Cir. 2016) ("Plaintiffs' claims seeking enforcement of [a state statute] may only proceed in federal court if a provision of federal law or the United States Constitution creates a right to the enforcement of [the statute]."); *Pruett v. Choate*, 711 F. App'x 203, 206 n.10 (5th Cir. 2017) ("Unless Pruett's due-process rights were violated, he has no avenue to relief except through a command for Texas courts properly to enforce Texas law. But…federal courts lack a 'general power to issue writs of mandamus to direct state courts and their judicial officers in the performance of their duties where mandamus is the only relief sought.'" (quotation omitted)). Even if the state trial court's actions did not conform to Article 43.141, "a mere error of state law is not a denial of due process." *See Jordan*, 823 F.3d at 811 (quoting *Swarthout v. Cooke*, 562 U.S. 216, 222 (2011)). The same reasoning applies to Johnson's contentions about the roles of the district attorney and attorney general pursuant to the Texas Constitution's separation of powers. Johnson's argument that the state trial court's execution-setting procedure was an unlawful deviation from Texas law was properly brought in Texas courts. *See id.* at 812. He cannot now come to the federal courts for the relief that the Texas Court of Criminal Appeals denied him.

Id. at 382 (citation edited). So, too, with Boyd, though unlike Johnson, Boyd presented his claims to the Alabama Supreme Court in an August 25 mandamus petition. App'x 74-78. The court denied the petition on September 10. Order, *Ex parte Boyd*, SC-2025-0624 (Ala. Sept. 10, 2025). In other words, Boyd has had the process he is due and an opportunity for his state-law claims to be heard in a state forum. Boyd's claim that *Johnson* is distinguishable because the question here is "whether the Governor and Attorney General have any constitutional authority at all to exercise a judicial function," Mot. 7, is meritless. As discussed below, *see infra* § I.D, the executive has

not usurped a judicial function, but rather has been tasked with putting executions on the calendar ***at the order of the Alabama Supreme Court***.

Therefore, this Court should affirm the Eleventh Circuit's denial of relief.[7]

B. Statute of limitations.

Assuming arguendo that Boyd's claims sound in § 1983, the basis of those claims before the district court was that the change in Rule 8(d)(1) of the Alabama Rules of Appellate Procedure that authorizes the governor instead of a court to calendar an execution gives rise to a violation of due process. That change was effective as of January 12, 2023.

"[Section] 1983 claims should borrow the general or residual statute for personal injury actions." *Owens v. Okure*, 488 U.S. 235, 250 (1989); *see McNair v. Allen*, 515 F.3d 1168, 1173 (11th Cir. 2008) ("All constitutional claims brought under § 1983 are tort actions, subject to the statute of limitations governing personal injury actions in the state where the § 1983 action has been brought."). In Alabama, "the governing limitations period is two years." *McNair*, 515 F.3d at 1173 (citing ALA. CODE § 6-2-38). Here, where Boyd waited until September 23, 2025, to bring his claims concerning Rule 8(d)(1), these claims were outside the statute of limitations.

7. While the Eleventh Circuit also denied relied based upon the ban on hybrid representation and Rule 25-1 of the Eleventh Circuit rules, App'x 208, that holding is not dispositive in this case, and the Court need not decide whether Boyd's is a true "hybrid representation" scenario to deny relief because Boyd failed to show a substantial likelihood of success on the merits. *See Relford v. Commandant*, 401 U.S. 355, 370 (1971) ("[T]he issue is better resolved in other litigation where, perhaps, it would be solely dispositive of the case."). Nor has Boyd shown that certiorari is appropriate in this case, as the Court seldom grants it merely to review the propriety of the local rules of a Court of Appeals. *Cf. Stanley v. City of Sanford, Fla.*, 145 S. Ct. 2058, 2075 (2025) (Thomas, J., concurring ("I doubt that we would have agreed to review the factbound application of uncontested Eleventh Circuit precedents.").

As the district court correctly found:

> Boyd knew or reasonably should have known of the facts supporting his claims on January 12, 2023, when Rule 8(d)(1) was amended. But he did not file this action until September 28, 2025—more than eight months after the two-year statute of limitations expired. That Governor Ivey did not set his execution timeframe until August 18, 2025, does not make Boyd's claims timely. It is the amendment to Rule 8(d)(1) which he challenges and which gives rise to his claims. *See Mills v. Hamm*, 734 F. Supp. 3d 1226, 1256 (M.D. Ala. 2024) (reaching a similar conclusion regarding an inmate's claim that his counsel should be permitted to be present in the execution chamber with a phone during the inmate's execution where the policy prohibiting counsel's presence in the execution chamber had been in effect for more than two years), *aff'd*, 102 F.4th 1245 (11th Cir. 2024). The setting of Boyd's execution in August 2025 does not change the reality that Rule 8(d)(1) has been in place for well more than two years. *See id.* Thus, Counts I and II are time-barred because they accrued more than two years before Boyd filed this lawsuit. For this reason alone, Boyd is not substantially likely to succeed on the merits. *See Brooks* [*v. Warden*, 810 F.3d 812, 822 (11th Cir. 2016)].

App'x 97-98 (footnote omitted). Boyd offers nothing in his present filings to call that decision into question. This Court should affirm.

C. Sovereign immunity.

While neither the district court nor the Eleventh Circuit addressed the Defendants' claim of sovereign immunity, that provides an equally valid ground for affirmance.

i. Count I

In Count I of his complaint, Boyd alleged that his Fourteenth Amendment due process rights were violated because Defendants "employ[ed] a procedure that allows the Governor—not a court—to set his execution date." App'x 8. He claimed that section 15-18-82(a) of the Code of Alabama requires that a court, not the governor, select the date, and that the change to Rule 8(d)(1) contravenes the statute. *Id.*

While Boyd titled Count I "Violation of Fourteenth Amendment," he cited only state-law grounds for relief, such as his reading of the Alabama Code, his reading of the Alabama Rules of Appellate Procedure, and the Alabama Constitution's provision for the separation of powers. *Id.* Thus, the "'gravamen of [his] complaint appears to be that the State has improperly interpreted and failed to adhere to a statute,' and *Pennhurst* bars such claims." *S&M Brands, Inc. v. Georgia ex rel. Carr*, 925 F.3d 1198, 1205 (11th Cir. 2019) (quoting *DeKalb Cnty. Sch. Dist. v. Schrenko*¸ 109 F.3d 680, 688 (11th Cir. 1997)). Defendants had sovereign immunity against such claims, *id.* at 1204, as federal courts cannot "instruct[] state officials on how to conform their conduct to state law," *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 106 (1984).[8]

Moreover, the *Ex parte Young*, 209 U.S. 123 (1908), exception to Eleventh Amendment immunity is inapplicable, as Boyd does not "alleg[e] a violation of the federal constitution against a state official in [her] official capacity for injunctive relief on a prospective basis." *Grizzle v. Kemp*, 634 F.3d 1314, 1319 (11th Cir. 2011). The *Ex parte Young* exception does not allow a plaintiff "to adjudicate the legality of past conduct"; thus, a plaintiff must allege "an ongoing and continuous violation of federal law." *Summit Med. Assocs. v. Pryor*, 180 F.3d 1326, 1337-38 (11th Cir. 1999). And because the *Ex parte Young* exception cannot "operate as an exception

8. Boyd writes, "The Eleventh Circuit's reliance on *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89 (1984), is misplaced." Mot. 8. He made the same claim of the district court. App'x 104. Neither court mentioned *Pennhurst*; rather, ***Defendants*** raised the claim presented here in the lower courts, and Boyd has copied his objection to this argument in his later filings. *See* App'x 81 (same statement, but "Defendants' reliance").

to…sovereign immunity where no defendant has any connection to the enforcement of the challenged law at issue," the "state officer [named as a defendant in her official capacity must have] the authority to enforce an unconstitutional act in the name of the state." *Id.* at 1341. Governor Ivey's setting of Boyd's execution time frame was a single act that has already occurred and is complete, and this is not a case about obtaining prospective relief. *Contra* Mot. 9. Because Boyd identified no ongoing violation of federal law, sovereign immunity applied to bar this claim.

ii. Count II

Like Count I, Count II mentioned the Fourteenth Amendment, App'x 8-9, but in essence demanded relief for a violation of "Article III, § 43 of the Alabama Constitution," App'x 9. Following allegations about how Boyd believed the rules of appellate procedure are adopted in Alabama, he stated that "[t]his process was not followed" when the Alabama Supreme Court amended Rule 8(d)(1). *Id.* This is a state-law claim barred by sovereign immunity. *Pennhurst*, 465 U.S. at 106.

D. Failure to state a claim.

As with sovereign immunity, although the lower courts made no ruling on the merits of Boyd's claims, Governor Ivey addresses the merits here because Boyd's failure to state a claim stands as an alternative ground supporting the finding that Boyd failed to prove a substantial likelihood of success on the merits.

i. Count I

In the district court, Boyd contended that allowing the governor to schedule executions was a violation of the separation of powers; he alleged that only a court may set the date under section 15-18-82 of the Code of Alabama and that the

delegation of this function from the Alabama Supreme Court to the governor "has altered the fundamental procedural protections surrounding capital punishment without legislative authorization." App'x 8. Moreover, Boyd claimed below that the governor has a conflict of interest, as she now both calendars executions and may grant clemency. *Id.*; App'x 137-38.

Section 15-18-82(a) provides in relevant part:

> Where the sentence of death is pronounced against a convict, the sentence shall be executed at any hour on the day set for the execution, not less than 30 nor more than 100 days from the date of sentence, as the court may adjudge, by lethal injection unless the convict elects execution by electrocution or nitrogen hypoxia as provided by law.

If Boyd insisted upon the purest reading of the statute, he would have been executed decades ago. Instead, the statute is read in conjunction with Rule 8(d)(1) of the Alabama Rules of Appellate Procedure, which provides that the trial court does ***not*** set an execution date, but rather transfers the inmate to the custody of ADOC to carry out the sentence at a later date. Rule 8(d)(1) does not delegate judicial power, the core of which is "the power to declare finally the rights of the parties, in a particular case or controversy, based on the law." *Ex parte Jenkins*, 723 So. 2d 649, 656 (Ala. 1998). Rather, the rule ***preserves*** judicial power by ensuring a capital defendant's automatic appeal does not become moot. It reflects that the highest court is "best position[ed]" to decide whether a stay pending appeal has expired. ALA. R. APP. P. 8(d)(1), cmt. (1985).

When the Alabama Supreme Court authorizes an execution, its warrant is a judicial declaration of rights. The defendant loses his right to enforce any prior stay,

and the executive is empowered to carry out the sentence. Rule 8(d)(1)'s amendment in January 2023 did not disturb the core judicial power to effect this alteration of rights once the Alabama Supreme Court decides it is an "appropriate time" to do so. That power resides where it has for a century: with the judiciary.

Rule 8(d)(1) touches another aspect of timing that is not judicial. Once a warrant issues, the governor now exercises discretion to set the precise execution time frame. The propriety of any stay having been adjudicated, the rights of the parties are settled; the governor merely selects a convenient date for the execution once ordered to do so by the Alabama Supreme Court.

Boyd offered no authority for his proposition that "Alabama has altered the fundamental procedural protections surrounding capital punishment without legislative authorization." App'x 8. As it has since 1985, the ***Alabama Supreme Court*** decides that the proper time has come for an inmate to be executed and delegates power to the executive branch (ADOC) in order to carry out that order. The only difference between the 1985 rule and the 2023 amendment is that the court now also delegates responsibility to the governor to put the execution on the calendar.

As for Boyd's claim that there was a conflict of interest because the governor both schedules executions and may grant clemency, *id.*, this was baseless. The governor's responsibility of following the Alabama Supreme Court's order to set a date, *see* App'x 69-70, has no bearing upon her right to grant clemency, *see* App'x 72 ("Although I have no current plans to grant clemency in this case, I retain my authority under the Constitution of the State of Alabama to grant a reprieve or

commutation, if necessary, at any time before the execution is carried out."). Scheduling and commuting are separate functions, and Boyd pleaded no facts showing that an actual conflict existed.

ii. Count II

In the district court, Boyd alleged that "[t]he Governor's exercise of judicial power contrary to Article III, § 43 of the Alabama Constitution"—that is, choosing dates for executions—"is ultra vires, and when carried out under color of state law, it deprives Plaintiff of liberty without due process in violation of the Fourteenth Amendment." App'x 9.

Article III, section 43 of the Alabama Constitution provides:

> In the government of this state, except in the instances in this Constitution hereinafter expressly directed or permitted, the legislative department shall never exercise the executive and judicial powers, or either of them; ***the executive shall never exercise the legislative and judicial powers, or either of them***; the judicial shall never exercise the legislative and executive powers, or either of them; to the end that it may be a government of laws and not of men.

(Emphasis added.) But as was discussed above, the Governor has not exercised judicial power in setting Boyd's execution date. Rather, the judicial power to determine that "the appropriate time" for an inmate to be executed has come, ALA. R. APP. P. 8(d)(1), remains where it has been since the rule's promulgation in 1985: with the Alabama Supreme Court. Once that court determines that an inmate has exhausted his appeals and that no further stay is warranted, it delegates the authority to carry out the execution to ADOC, and as of 2023, it delegates the task of calendaring the execution to the governor. Boyd pleaded no facts showing how this arrangement is violative of the Alabama Constitution's non-delegation provision or

of the Fourteenth Amendment.

Indeed, it seemed that Boyd was attempting to convert noncompliance with state law into a federal due process claim, which, as discussed above, *see supra* § I.A is impermissible. Boyd has had sufficient process for federal constitutional purposes, i.e., notice and an opportunity to be heard.

Boyd also took issue with how Rule 8(d)(1) was amended, claiming that the usual review process was not followed. Had it been followed, he claims,

> [D]efendants would have seen the separation of powers issue, the conflicting interest of the only person with clemency authority being tasked with setting the date, as well as the fact that the practical effect of allowing an execution to be carried out during an undefined "time frame" instead of a specific date is that the State could continuously attempt to execute condemned prisoners for hours or days.

App'x 9. As has been discussed, there was no separation of powers issue, nor was there a conflict of interest in the governor choosing the date and considering clemency petitions. Moreover, a change in how the Alabama Supreme Court amends the Rules of Appellate Procedure does not give rise to a cause of action for Boyd. Concerning Boyd's claim about the "time frame" and his contention that the State could theoretically "attempt to execute condemned prisoners for hours or days," *id.*, the time frame for all executions since the rule was changed—including Boyd's—has been thirty hours, from midnight on the first day to 6 a.m. on the second. Specifically, Boyd's execution warrant runs from 12 a.m. on October 23, 2025, until 6 a.m. on October 24, 2025. App'x 72.

Boyd pleaded no facts showing a violation of the Alabama or United States constitutions, and so he failed to state a claim. Even if Boyd could succeed on any of his claims, he would not be entitled to a stay of execution, but rather to an execution date set by the Alabama Supreme Court. This Court should affirm the denial of injunctive relief.

II. Boyd's delay was "unreasonable, unnecessary, and inexcusable."

A. The district court correctly held that Boyd's filing was untimely.

Because "[e]quity strongly disfavors inexcusable delay," *Woods v. Comm'r, Ala. Dep't of Corr.*, 951 F.3d 1288, 1293 (11th Cir. 2020), "last-minute claims arising from long-known facts" can justify "denying equitable relief," *Ramirez v. Collier*, 595 U.S. 411, 434 (2022). That "well-worn principle[] of equity" holds true even "in capital cases," *id.*, and applies equally to preliminary injunctions and stays of executions, *see id.* (preliminary injunction); *Hill v. McDonough*, 547 U.S. 573, 584 (2006) (stay). Undue delay, whether for "a few months," *Wreal, LLC v. Amazon.com*, 840 F. 3d 1244, 1248 (11th Cir. 2016), or "years," *Benisek v. Lamone*, 585 U.S. 155, 160 (2018) (per curiam), is strongly disfavored. The reason is plain: Failure to act with "urgency" suggests that instead of needing an "extraordinary and drastic remedy," *Wreal*, 840 F. 3d at 1247-48, a plaintiff is engaged in "manipulation," *Gomez*, 503 U.S. at 654.

The district court did not abuse its discretion in finding that Boyd's untimeliness weighed heavily against him. This is not a novel stance in the Middle District; Chief Judge Marks, who presided over Boyd's case, has warned against dilatory execution litigation, citing binding precedent. *Mills*, 734 F. Supp. 3d at 1244-48; *Frazier*, 2025 WL 361172, at *15-17; *see, e.g.*, *Hill*, 547 U.S. at 584 (court must

"apply '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'"); *Bucklew*, 587 U.S. at 150 ("Last-minute stays should be the extreme exception, not the norm, and 'the last-minute nature of an application' that 'could have been brought' earlier, or 'an applicant's attempt at manipulation,' 'may be grounds for denial of a stay.'"); *id.* at 151 ("[F]ederal 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."); *Jones v. Allen*, 485 F.3d 635, 638 (11th Cir. 2007) ("When considering a motion to stay an execution, we must apply '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,' given the State's significant interest in the enforcement of its criminal judgments.") (quoting *Nelson v. Campbell*, 541 U.S. 637, 650 (2004)); *Woods*, 951 F.3d at 1293 (quoting *Bucklew* and *Jones*).

Here, the court explained that Boyd's claims "unquestionably could have been brought over two years ago…yet he waited until less than one month before his execution date to file this lawsuit and seek injunctive relief." App'x 95. While Boyd argued that he could not have pursued federal remedies without first exhausting his state remedies—that is, the Alabama Supreme Court's denial of his mandamus petition on September 10—the district court doubted his reasoning but noted that even if he were correct, he could have pursued state remedies "well before August

2025." *Id.* And "[c]ompounding the egregiousness" of the delay, in the court's view, was the fact that Boyd had another §1983 action pending ***in that court*** since July. *Id.* The court continued:

> On this record, the Court concludes that Boyd's delay in filing suit and seeking a preliminary injunction or stay of execution was "unreasonable, unnecessary, and inexcusable." *See Brooks v. Warden*, 810 F.3d 812, 824 (11th Cir. 2016) (citation omitted). Boyd knew or should have known of the facts giving rise to his challenges to Rule 8(d)(1) "well before he filed suit." *See Jones v. Allen*, 485 F.3d 635, 640 n.3 (11th Cir. 2007). The timing of this lawsuit and Boyd's other recent litigation conduct smack of gamesmanship, and the Court has little trouble concluding that this action is an effort to delay his lawfully imposed death sentence as opposed to a bona fide effort to effectuate a change to execution procedures. *See id.* at 640. "While each death case is very important and deserves [the Court's] most careful consideration," Boyd's last-minute request for a preliminary injunction or stay of execution, "without adequate explanation," supports a finding that the equities do not weigh in his favor. *See Jones v. Comm'r, Ga. Dep't of Corr.,* 811 F.3d 1288, 1297-98 (11th Cir. 2016).

App'x 95-96.

Boyd argued below that this was not a "last-minute" lawsuit because his claim did not arise until August 18, when Governor Ivey set his execution. App'x 132, DE4-1:2, 136. He also alleged that his counsel refused to file this claim in his other § 1983 action, leaving him "with no option but to act pro se to preserve this distinct and urgent constitutional claim," App'x 124—a claim so urgent that he did not pursue it until ***September***, after initiating three state lawsuits in August. Boyd's excuses do not make his filing timely.

The district court also correctly found that the other equitable factors were not in Boyd's favor:

"Equity also weighs against granting the [preliminary injunction or]

> stay because 'the State and the victims of crime have an important interest in the timely enforcement of a sentence.'" *See Woods* [*v. Comm'r, Ala. Dep't of Corr.*, 951 F.3d 1288, 1293 (11th Cir. 2020)] (quoting *Hill*, 547 U.S. at 584). Boyd's involvement in Gregory Huguley's gruesome murder occurred in 1993, and Boyd was convicted and sentenced to death in 1995—over thirty years ago. The State and Huguley's family have a compelling interest in seeing Boyd's punishment carried out. *See Brooks*, 810 F.3d at 825; *Jones*, 485 F.3d at 641. Indeed, they have already waited thirty years. Because Boyd inexcusably delayed bringing this action, and because the State and the victim's family have a strong interest in the timely enforcement of his sentence, Boyd has failed to show that equity favors entry of a preliminary injunction or stay of execution, and his motion is due to be denied for this reason alone.

App'x 96. The district court did not abuse its discretion.

B. A stay would undermine the public interest in justice.

A stay or any other injunctive relief that might delay Thursday's execution would undermine the powerful interest—shared by the State, the public, and the victims of Boyd's crime—in the timely enforcement of his sentence. *Hill,* 547 U.S. at 584. An unpunished murder is an intrinsic and ongoing harm to those interests and to the rule of law. Thirty-two years is decades too long. "Only with real finality" can we "move forward knowing the moral judgment will be carried out." *Calderon v. Thompson*, 523 U.S. 538, 556 (1998). "To unsettle these expectations," especially at the eleventh hour, "is to inflict a profound injury to…the State and the victims of crime alike." *Id.*

While the Eleventh Circuit declined to discuss the other equitable factors because Boyd failed to show a substantial likelihood of success on the merits, the district court correctly found these factors to be salient in this case. App'x 96 ("Boyd's involvement in Gregory Huguley's gruesome murder occurred in 1993, and Boyd was convicted and sentenced to death in 1995—over thirty years ago. The State and

Huguley's family have a compelling interest in seeing Boyd's punishment carried out.…Indeed, they have already waited thirty years.").

C. Boyd faces no threat of irreparable harm.

The district court did not reach the irreparable-harm factor. If the Court reaches irreparable harm, it should deny relief. Boyd's claims in this case do not challenge his eligibility for capital punishment, so the execution itself cannot suffice for irreparability here. The fact that "[e]xecution is irreversible," Mot. 9, should not, without more, entitle Boyd to a stay.

D. Boyd's *Nken* argument is meritless.

Boyd now argues that the Eleventh Circuit's decision conflicts with *Nken v. Holder*, 556 U.S. 418 (2009), and *Hilton v. Braunskill*, 481 U.S. 770 (1987), because the panel did not apply "the four-factor analysis" these cases require. Mot. 8. Here, the Eleventh Circuit, citing *Barwick v. Commissioner*, 66 F.4th 896, 900 (11th Cir. 2023), noted that Boyd

> can obtain a stay of execution only if he shows that he has a substantial likelihood of success on the merits, that he will suffer irreparable harm unless the stay issues, that the stay would not substantially harm the other party, and that the stay would not be adverse to the public interest.

App'x 208. These are the stay factors discussed in *Nken*. *See* 556 U.S. at 434. As the *Nken* Court noted:

> The first two factors of the traditional standard are the most critical. It is not enough that the chance of success on the merits be "better than negligible." Even petitioner acknowledges that "[m]ore than a mere 'possibility' of relief is required." By the same token, simply showing some "possibility of irreparable injury" fails to satisfy the second factor. As the Court pointed out earlier this Term, the "'possibility' standard is too lenient."

Id. at 434-35 (citations omitted). Here, the Eleventh Circuit held that Boyd failed to make that critical showing of the first factor. App'x 208. That the panel did not discuss the remaining three factors when Boyd failed to establish the first does not constitute a conflict with *Nken* or a circuit splfit, *see* Mot. 8-9.

* * *

Applying precedent, the district court correctly found that Boyd's delay was inexcusable and that the equities weighed against him, and rejected his "last-minute attempt[] to manipulate the judicial process." *Nelson*, 541 U.S. at 649. The Eleventh Circuit likewise found that Boyd failed to establish a substantial likelihood of success on the merits and denied relief. App'x 208-10. "Last-minute stays should be the extreme exception, not the norm," *Bucklew* 587 U.S. at 150, and this case is not exceptional.

CONCLUSION

Boyd and his friends set Gregory Huguley on fire and watched him burn to death. Now he would have this Court grant an emergency stay on his claim that it is a violation of his right to due process for the governor, acting on the order of the Alabama Supreme Court, to choose a date for his execution.

This Court should respect the findings of the lower courts and deny Boyd's cert petition and stay application. And because of Boyd's dilatory tactics, his stay application should be denied on equitable grounds as well.

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