

IN THE SUPREME COURT OF THE UNITED STATES

Anthony Boyd, Petitioner,

v.

Governor Kay Ivey, et al., Respondents.

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I. Introduction

Respondents' opposition mischaracterizes both the nature of this case and the law governing it. Petitioner does not seek to enforce Alabama's statutory or constitutional provisions in isolation. He seeks to prevent ongoing violations of the Fourteenth Amendment caused by the State's delegation of judicial power to the executive branch—a structural breakdown that directly implicates federal due process and the Privileges and Immunities Clause.

II. Respondents Misconstrue the Federal Question

The State repeatedly asserts that Boyd's claim "sounds in state law."

That is false. The violation alleged is federal in nature: Alabama officials are executing a judicial function without lawful authority, depriving Boyd of life without due process of law. This Court has long held that a violation of state procedure can rise to a federal due process violation when the State itself disregards the rules it established to protect liberty.

See *Hicks v. Oklahoma*, 447 U.S. 343, 346 (1980) ("The State may not disregard its own laws in a manner that results in arbitrary deprivations of liberty."); *Ford v. Wainwright*, 477 U.S. 399 (1986); *Panetti v. Quarterman*, 551 U.S. 930 (2007).

The claim here is not that Alabama misapplied its law—it is that the State's highest court rewrote it in a way that destroyed a fundamental structural safeguard, in violation of the Fourteenth Amendment's command that no State "deprive any person of life... without due process of law."

III. Hybrid Representation Is Not the Issue—Access to Justice Is

The State's reliance on *Lee v. Alabama*, 406 F.2d 466 (5th Cir. 1968), is misplaced. *Lee* stands for the unremarkable proposition that a defendant cannot act as cocounsel in the same proceeding.

Boyd's situation is categorically different. He does not seek "hybrid representation" in the same case—he filed a separate pro se action raising a distinct constitutional claim that his appointed counsel refused to file. Denying his ability to do so effectively bars him from any avenue of redress, violating both Article I, § 13 of the Alabama Constitution (guaranteeing access to courts

“by oneself, by counsel, or by both”) and the Privileges and Immunities Clause of Article IV, § 2 of the U.S. Constitution, which protects the right to seek judicial relief.

Federal courts have long recognized that “the right to proceed pro se is a fundamental component of access to the courts.” *Faretta v. California*, 422 U.S. 806 (1975).

By denying Boyd access simply because separate counsel exists in unrelated litigation, Alabama enforces a rule that arbitrarily extinguishes that right.

IV. The State’s “No Federal Violation” Argument Misreads § 1983

The state’s reliance on *Collins v. City of Harker Heights*, 503 U.S. 115 (1992), is entirely misplaced. *Collins* rejected an attempt to constitutionalize a workplace safety claim, not a due process challenge to structural usurpation of power. This case implicates the core federal interests that § 1983 was designed to protect—individuals’ right to be free from unconstitutional exercises of state authority.

When state officials act ultra vires, they are not enforcing state law; they are violating the Constitution. See *Ex parte Young*, 209 U.S. 123, 159–60 (1908); *Luckey v. Harris*, 860 F.2d 1012 (11th Cir. 1988).

V. The State’s Assertion That This Is Not a Cognizable § 1983 Claim Is Incorrect

Respondents argue that Boyd’s challenge is “not cognizable under § 1983” because it concerns a violation of state law. That argument fails for at least three reasons.

First, § 1983 expressly provides a federal cause of action for “the deprivation of any rights, privileges, or immunities secured by the Constitution.” 42 U.S.C. § 1983.

Boyd’s claim falls squarely within that language: he alleges a deprivation of life without due process by state officials acting outside their lawful authority. That is the core of what § 1983 was enacted to remedy—abuse of state power under color of law. See *Monroe v. Pape*, 365 U.S. 167, 171 (1961) (“Section 1983 was intended to give a remedy to parties deprived of constitutional rights by officials acting under color of state law.”).

Second, when state officials act ultra vires—that is, beyond the limits of their statutory or constitutional power—their conduct is not “state action” protected by sovereign immunity but personal unconstitutional conduct under color of law, which is precisely what § 1983 reaches. *Ex parte Young*, 209 U.S. 123, 159–60 (1908); *Hafer v. Melo*, 502 U.S. 21, 27 (1991). The Governor and Attorney General here are enforcing a judicial function the Constitution and statute reserve to the courts. That exercise of judicial power by executive actors is not “state law enforcement”—it is an ongoing constitutional violation.

Third, the State’s reliance on *Collins v. City of Harker Heights*, 503 U.S. 115 (1992), is misplaced. *Collins* held only that § 1983 does not constitutionalize every state law duty of care. It did not limit § 1983 to exclude structural or procedural due process claims, particularly those involving the state’s disregard of its own fundamental separation of powers.

This Court has repeatedly recognized § 1983 suits as appropriate vehicles for challenging systemic or structural due process violations—see, e.g., *Tumey v. Ohio*, 273 U.S. 510 (1927) (due process violated where judge had conflicting role); *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009) (same); *Skinner v. Switzer*, 562 U.S. 521, 530 (2011) (method of execution challenge proper under § 1983).

In *Skinner*, the Court rejected the same line of argument the State now makes, holding that “a state prisoner may use § 1983 to challenge a State’s refusal to provide access to procedures essential to the fairness of his execution process.” *Id.* at 530–31. *Boyd*’s case is even more compelling: the challenge is not to a procedural detail, but to the constitutional validity of the process itself—the State’s reallocation of judicial authority to the executive branch.

Thus, this action is a textbook example of a cognizable § 1983 claim: a challenge to ongoing, unconstitutional state conduct that threatens irreparable deprivation of life without lawful process. No other mechanism provides a federal forum for that claim.

VI. The State’s Statute of Limitations Argument Collapses Under Federal and Alabama Law

Respondents’ statute of limitations argument rests on a fundamental misreading of both §1983 accrual law and Alabama’s own doctrine governing when a cause of action arises. Their position would bar constitutional challenges before the injury even occurs—an absurdity that neither Congress nor Alabama law permits.

First, the State ignores that §1983 claims borrow only the length of a state’s personal injury statute of limitations—not its accrual rules. The federal rule of accrual governs when a claim arises. *Wallace v. Kato*, 549 U.S. 384, 388 (2007). Under that federal rule, “the cause of action accrues, and the statute of limitations begins to run, when the plaintiff has a complete and present cause of action,” meaning “when the plaintiff knows or has reason to know of the injury.” *Id.*; *Chappell v. Rich*, 340 F.3d 1279, 1283 (11th Cir. 2003).

Boyd’s constitutional injury did not exist until the Governor actually exercised the unlawful authority to set his execution date. Before that act, there was no injury—only the possibility of one. §1983 does not require clairvoyance. See *McDonough v. Smith*, 588 U.S. 109, 118 (2019) (“A claim accrues only when the plaintiff has a complete cause of action.”). The State’s position—that *Boyd* should have sued before his rights were violated—would invert that rule entirely.

Second, even under Alabama’s own jurisprudence, a claim does not accrue until a party suffers a legal injury. See *Hensley v. Poole*, 910 So.2d 96, 101 (Ala. 2005) (“A cause of action accrues when the act complained of results in injury to the plaintiff.”). The Alabama Supreme Court has repeatedly rejected the notion that a limitations period begins before the plaintiff is actually harmed. See *Garrett v. Raytheon Co.*, 368 So.2d 516, 519 (Ala. 1979). *Boyd* suffered no cognizable injury until the unconstitutional delegation of judicial power was applied to him—when the Governor signed his execution warrant.

To say otherwise would require death row inmates to bring speculative lawsuits about procedures that might never be used against them, the exact kind of premature litigation federal courts consistently reject as unripe. See *Texas v. United States*, 523 U.S. 296, 300 (1998) (“A claim is not ripe for adjudication if it rests upon contingent future events.”).

Third, even assuming *arguendo* the limitations clock could begin before the injury, the doctrine of continuing constitutional violation squarely applies. Each day that the Governor’s unconstitutional assumption of judicial power remains operative, the violation persists and the limitations period renews. See *Nat’l Advert. Co. v. City of Raleigh*, 947 F.2d 1158, 1167 (4th Cir. 1991) (“When the violation is continuing, the statute of limitations runs anew each day.”); *Knight v. Columbus, Ga.*, 19 F.3d 579, 580–81 (11th Cir. 1994) (recognizing continuing violation doctrine for ongoing unconstitutional practices). The act here is not a one time error; it is a systemic structural defect that continues to endanger Boyd’s life.

Finally, Respondents’ reliance on the two-year period borrowed from Ala. Code § 6238(l) is hollow. That provision is a catchall tort rule—it was never designed to foreclose constitutional oversight of ongoing governmental misconduct. Statutes of limitations exist to promote repose, not to immunize continuing violations of the most fundamental constitutional guarantees. As this Court has long held, “[n]o statute of limitations runs against the United States in enforcing public rights,” *Guaranty Trust Co. v. United States*, 304 U.S. 126, 132 (1938), and by the same logic, no state’s procedural default can shield an ongoing deprivation of life without due process.

The rule advanced by Alabama and the Eleventh Circuit would produce a grotesque result: that Boyd was required to sue years before he could possibly have known his execution would be set under an unconstitutional rule, or else forfeit his right to challenge that act forever. The Constitution does not require impossible timing. It requires fairness—and fairness dictates that the clock began when the injury occurred.

VII. The Ongoing Constitutional Violation Warrants Federal Intervention

The delegation of judicial authority to the Governor is not a one time event; it is a continuing constitutional defect that endangers every condemned person in Alabama. The continuing violation doctrine applies because each execution warrant issued under this unconstitutional procedure renews the harm. See *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 380–81 (1982).

Absent intervention, the State will proceed with an execution under an unlawful framework, an act that cannot later be undone.

VIII. The State’s Argument About Boyd’s “Conduct” Is Misleading, Irrelevant, and Fundamentally Unjust

The State's repeated insinuations about Mr. Boyd's "conduct" are a calculated distraction meant to shift attention away from the constitutional issue at the heart of this case. Their argument betrays both factual inaccuracy and moral incoherence. Boyd's personal or litigation history is not before this Court — the Constitution is. And it applies with equal force to every person the State seeks to execute.

First, Boyd's conduct is wholly irrelevant to the constitutional question presented. The issue before this Court is not what he did, but what the State is doing now: carrying out executions under a procedure that violates the separation of powers and due process. The Constitution does not contain a "conduct exception." The Supreme Court has made this clear in countless capital cases: "The Eighth and Fourteenth Amendments are safeguards of liberty for all, even the least deserving." *Furman v. Georgia*, 408 U.S. 238, 274 (1972) (Brennan, J., concurring). The State cannot justify a constitutional violation by invoking the nature of the condemned; if that were permissible, constitutional rights would belong only to the popular.

Second, the State's reliance on character attacks is not only irrelevant—it exposes the weakness of its legal position. A sovereign confident in the legality of its actions would not need to resort to inflammatory descriptions of an individual to distract from the constitutional defect in its own procedure. When the executive branch unlawfully usurps judicial power, that defect taints the entire system regardless of who the defendant is. See *INS v. Chadha*, 462 U.S. 919, 944 (1983) ("The hydraulic pressure inherent within each of the separate Branches to exceed the outer limits of its power... must be resisted.").

Third, the argument is factually dishonest. The State omits that Boyd's filings have been timely and deliberate, constrained by mail delays and the State's own failure to provide proper notice of orders—failures for which Boyd is not responsible. Far from "lastminute gamesmanship," Boyd has acted with diligence at every step, filing pro se only after his pro bono attorneys refused to raise this distinct and urgent constitutional claim. The State's complaint that Boyd "returns to court" simply underscores the ongoing nature of the violation: he returns because no court has yet addressed the substance of his claim. That persistence is not manipulation—it is the essence of seeking redress under law.

Fourth, the invocation of "conduct" is offensive to the core principle of due process. The rule of law does not depend on the worthiness of the person invoking it. The State's position would reduce constitutional protection to a sliding scale of sympathy—a result squarely rejected by this Court. See *Boumediene v. Bush*, 553 U.S. 723, 739 (2008) ("The laws and Constitution are designed to survive, and remain in force, in extraordinary times."). If Alabama may ignore its own separation of powers because it dislikes the petitioner, then the Constitution has meaning only for the favored.

Finally, this tactic of character deflection reveals the true asymmetry of power at work. The State seeks to silence Boyd's challenge by smearing him, rather than addressing the indisputable fact that the Governor is exercising judicial power in direct violation of Alabama Code § 151882(a). But the Constitution was designed precisely to restrain government from using moral

condemnation as a substitute for lawful process. The State's attempt to prejudice the Court against Boyd is not an argument — it is an admission that it has none.

The State's reliance on rhetoric over law cannot change the reality that its execution procedure is unconstitutional, and that Boyd's claim arises not from who he is, but from what the State is doing

IX. The State's Attempt to Minimize the Fourteenth Amendment Violation Misstates Both the Claim and the Law

The State's assertion that Boyd's claim "does not amount to a violation of the Fourteenth Amendment" is wrong both in fact and in principle. The State's new execution procedure offends the Fourteenth Amendment in every respect—substantive, procedural, and structural. Alabama has created a system where life and death are determined not through the judicial process established by law, but by executive fiat. That is the very definition of a deprivation of liberty without due process of law.

1. The Fourteenth Amendment Protects the Process of Law, Not Merely the Outcome.

The Due Process Clause provides that "No State shall deprive any person of life, liberty, or property, without due process of law."

This guarantee does not vanish at the prison gate. Nor does it allow the State to redefine "law" to mean whatever procedure it invents after the fact. The Supreme Court has repeatedly held that when a state creates procedures governing a fundamental interest—such as life—the Fourteenth Amendment requires those procedures to be followed. See *Hicks v. Oklahoma*, 447 U.S. 343, 346 (1980) (state violates due process when it disregards its own mandatory sentencing procedures).

By transferring the power to set execution dates from courts to the executive branch, Alabama abandoned the "lawful procedure" established by its legislature. The judicial act of fixing the date of execution is not ministerial—it is an integral part of the sentencing process. When the Governor assumed that function, she acted outside the law. That act—carried out under color of state law—is precisely what § 1983 exists to prevent.

2. The Separation of Powers Violation Is Itself a Fourteenth Amendment Violation.

The Fourteenth Amendment enforces not just fairness, but structure.

The Constitution's guarantee of due process is meaningless without the division of powers that ensures impartiality in its administration. When the same executive who prosecutes and defends convictions also selects the date of execution and controls clemency, the process becomes fundamentally biased. The judicial safeguard of neutrality is replaced by a political calculation.

This Court has long recognized that “fairness can rarely be obtained by secret, onesided determination of facts decisive of rights.” *Joint AntiFascist Refugee Comm. v. McGrath*, 341 U.S. 123, 170 (1951) (Frankfurter, J., concurring).

Here, the Governor’s unilateral act—undertaken at the Attorney General’s request—transfers a judicial decision into the hands of the very officials most invested in carrying out the execution. That structural fusion of roles destroys the procedural fairness the Fourteenth Amendment guarantees.

3. The State’s Framing of the Issue as “Insufficient” Mischaracterizes Both the Claim and the Injury.

Boyd’s claim is not a challenge to state law—it is a challenge to a process that violates federal constitutional principles.

The Fourteenth Amendment does not merely protect against arbitrary laws; it also forbids arbitrary exercises of power. Alabama’s procedure deprives Boyd of his life through a process that is neither authorized by statute nor subject to judicial oversight. That is the essence of arbitrary state action.

The State’s argument that such a claim is “insufficient” effectively nullifies the Fourteenth Amendment. If a state can recast a constitutional violation as a “mere state law dispute,” then the guarantee of due process is meaningless. See *Ford v. Wainwright*, 477 U.S. 399, 416–17 (1986) (plurality) (holding that a state’s deviation from its own procedures in administering capital punishment violates due process).

4. The Fourteenth Amendment Applies Precisely to This Kind of Unchecked Executive Power.

The Framers of the Fourteenth Amendment designed it to restrain precisely this kind of overreach—the use of state power, cloaked in legality, to bypass judicial process and extinguish rights. When a state official enforces an unconstitutional act “under color of law,” the federal courts are the only remaining safeguard. See *Ex parte Young*, 209 U.S. 123, 159–60 (1908).

Alabama’s argument reduces the Fourteenth Amendment to a procedural nicety, rather than the substantive protection it is. But this Court has made clear that due process requires “the forms and modes of law” to be observed when the State takes a person’s life. See *Hurtado v. California*, 110 U.S. 516, 535 (1884).

In sum:

The Fourteenth Amendment violation here is not theoretical. It is ongoing. It is systemic. And it cuts to the foundation of lawful government: the separation of powers that ensures no single branch can wield unchecked authority over life and death. Alabama’s new rule does exactly that—and no label the State applies can disguise the constitutional injury it causes.

X. The Stay Factors Strongly Favor Boyd

The Eleventh Circuit's summary denial of a stay—without weighing the *Nken v. Holder*, 556 U.S. 418 (2009), factors—creates and deepens an existing circuit split on whether courts must meaningfully assess each stay factor before denying relief in capital cases.

Every factor supports Boyd:

1. Likelihood of success: clear structural and due process violations.
2. Irreparable harm: execution is final.
3. Equities: the State loses nothing by pausing an unlawful act.
4. Public interest: preserving constitutional boundaries is paramount.

XI. CONCLUSION

This Court reviews applications for a stay of execution pending certiorari under a “reasonable probability” standard. A stay is appropriate where there is a reasonable probability that four Justices would grant certiorari, a fair prospect that a majority would reverse the judgment below, and a likelihood of irreparable harm absent relief. *Barefoot v. Estelle*, 463 U.S. 880, 895 (1983); *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam).

Each of those criteria is overwhelmingly satisfied here. The case presents a live, recurring constitutional question of national importance: whether a State may, without legislative authority, transfer the power to set execution dates from the judiciary to the executive branch, collapsing the separation of powers and denying due process of law.

Under the traditional *Nken v. Holder*, 556 U.S. 418, 434 (2009) factors—likelihood of success, irreparable harm, balance of equities, and public interest—Boyd likewise prevails. The merits are substantial: Alabama's procedure directly contradicts its governing statute, violates Article III, § 43 of the Alabama Constitution, and offends the Fourteenth Amendment's due process guarantee. The harm is beyond repair: execution pursuant to an unconstitutional warrant. The equities and public interest unite in one truth—the State has no legitimate interest in carrying out an unlawful execution.

A stay here would not delay justice; it would preserve it. The public's faith in lawful governance depends upon the principle that even in its gravest acts, the State must obey its own laws and the Constitution of the United States. Denying review would allow an untested and unconstitutional procedure to extinguish a life without the judicial process that due process requires.

The question here is not narrow or technical—it goes to the very architecture of government. Alabama has transferred the power of life and death from the judiciary, where the Legislature placed it, to the executive branch, where the Constitution forbids it. That act violates both the structural and substantive guarantees of the Fourteenth Amendment. The State's continued use of that procedure is an ongoing constitutional wrong—one that will not end with Mr. Boyd but will persist until this Court intervenes.

A stay of execution is not an extraordinary indulgence; it is the minimal measure of justice in the face of a grave constitutional question. As this Court has recognized, "the equitable principles governing stay relief reflect a court's own duty to preserve the integrity of its processes." *Hill v. McDonough*, 547 U.S. 573, 584 (2006). Denying a stay here would permit the State to proceed with an execution under a procedure that no federal court has ever reviewed for constitutionality—an act that would render any later decision hollow.

At this juncture, the question before this Court is not whether Alabama may execute Mr. Boyd, but whether it may do so unlawfully. Granting a stay will allow the Court to answer that question on a full record and ensure that the separation of powers—the very structure that guards liberty—remains intact.

Granting certiorari and a stay would be the closest possible step toward justice in this moment. Correcting Alabama's structural defect would go further still: it would restore the rule of law to the most solemn exercise of state power, ensuring that no life in this nation is taken except by lawful authority and under the procedures that due process requires. To deny one now would make this Court complicit in a constitutional wrong that cannot be undone.

For these reasons, Mr. Boyd respectfully prays that this Court grant a stay of execution, grant the petition for a writ of certiorari, and address the profound constitutional question presented .

Respectfully submitted,

Anthony Boyd, Pro Se
AIS Z578
William C. Holman Correctional Facility
866 Ross Road
Atmore, AL 36502

A handwritten signature in black ink that reads "Anthony Boyd". The signature is written in a cursive, flowing style with a large, prominent "A" and "B".