

No. 25A532

IN THE SUPREME COURT OF THE UNITED STATES

BRYAN F. JENNINGS,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Florida

**REPLY IN SUPPORT OF
APPLICATION FOR STAY OF EXECUTION**

**THIS IS A CAPITAL CASE
EXECUTION SCHEDULED FOR
THURSDAY, NOVEMBER 13, 2025, at 6:00 P.M.**

Respondent urges this Court to deny a stay of execution, arguing that “this Court lacks jurisdiction to overturn a state supreme court’s interpretation of a state law,” Mr. Jennings’ procedural due process claim was “found by the Florida Supreme Court to be procedurally barred as a matter of Florida law and, thus, was resolved on independent and adequate state-law grounds,” and Mr. Jennings’ petition for certiorari review does not meet any of the criteria for consideration under Supreme Court Rule 10. Response at 3-4. These arguments are premised on blatant misunderstandings of this Court’s jurisdiction, Mr. Jennings’ actual claims, and the record. Accordingly, this Court should grant Mr. Jennings a stay to permit

meaningful review of his meritorious constitutional claims that implicate the legality of the entire Florida death penalty scheme.

First, this Court has jurisdiction to review Mr. Jennings' procedural due process claim because his claim is predicated upon the violation of his federal rights. The Florida Supreme Court has interpreted Florida law in a way that violates Mr. Jennings' procedural due process rights, as protected by the Fourteenth Amendment and this Court's jurisprudence applying that amendment. While state high courts do have the final say in the interpretation of state law, they are not free to interpret state law in violation of the federal constitution without this Court's intervention. Reviewing state action that violates a petitioner's federal rights is a classic exercise of Supreme Court jurisdiction, despite Respondent's myopic characterization of Mr. Jennings' claims. Additionally, there is a reasonable probability that this Court will vote to grant certiorari because this case presents a compelling question arising out of a conflict between state and federal law, as explained below, the answer to which carries great ramifications for every death penalty scheme in the country.

Second, Mr. Jennings' claims are meritorious and there is a significant possibility of reversal in his case. Respondent argues that his claims must fail because "there is no constitutional right to postconviction counsel at all." Response at 4. Respondent yet again misunderstands and fails to respond to Mr. Jennings' actual claim, which is not a Sixth Amendment claim premised on the right to counsel in any way, shape, or form. Instead, Mr. Jennings' claim is premised on the Fourteenth Amendment's command that states may not deprive their citizens of state-granted

protected interests without due process. Mr. Jennings’ petition for writ of certiorari explained in detail how the State’s actions and laws and rules governing the state’s death penalty violated Mr. Jennings’ procedural due process rights, a wholly distinct claim from a Sixth Amendment claim. *See* Petition for Writ of Certiorari at 27-31. Thus, Mr. Jennings’ claims are meritorious and there is a significant likelihood that this Court will reverse the erroneous decision below.

Additionally, Mr. Jennings’ petition satisfies Supreme Court Rule 10 considerations. The Florida Supreme Court held below that Florida law mandating the appointment of state postconviction counsel did not grant Mr. Jennings a property interest in state postconviction counsel. *Jennings v. State*, Nos. SC2025-1642, SC2025-1686, SC2025-1687, 2025 WL 3096812, at *32 (Fla. Nov. 6, 2025). The Florida Supreme Court offered no analysis of whether or not Mr. Jennings’ entitlement had the hallmarks of a protected property interest as required under this Court’s “*Roth*-type property-as-entitlement” cases. *Town of Castle Rock, Colorado v. Gonzales*, 545 U.S. 748, 766 (2005). Such an analysis would position the Florida Supreme Court’s holding in conflict with the relevant decisions of this Court as the inquiry would find that Mr. Jennings’ entitlement fits snugly within the parameters of property set forth by this Court’s jurisprudence. Likewise, this holding directly conflicts with the Ninth Circuit Court of Appeals’ decision in *Redd v. Guerrero*, 84. F.4th 874, 894 (9th Cir. 2023), where the Ninth Circuit found that California state law mandating the appointment of state postconviction counsel granted the capital defendant-petitioner a property interest in state postconviction counsel. Thus, Mr.

Jennings’ case presents a question arising out a conflict between a United States court of appeals and a state court of last resort. Finally, especially when considering this Court’s precedent in property-as-entitlement cases, Mr. Jennings’ case poses an important question of federal law to be settled by this court. The question of whether, in light of explicit state law, capital defendants have a protected property right to continuous and quality representation during the most important hours of their lives is an important question of federal law to be settled by this Court. Rule 10 considerations weigh in favor of granting certiorari review.

Third, as this Court’s long-standing precedent is clear, Mr. Jennings has demonstrated the likelihood of irreparable injury, despite Respondent’s bizarre argument that “some additional showing should be required to satisfy this factor.” Response at 6. This stay factor “is necessarily present in capital cases.” *Wainwright v. Booker*, 473 U.S. 935, 935 n.1 (1985); *see also Ferguson v. Warden, Fla. State Prison*, 493 F. Appx. 22, 26 (11th Cir. 2012) (Wilson, J., concurring) (“As a general rule, in the circumstance of an imminent execution, this court presumes the existence of irreparable injury.”). This stay factor is therefore present in Mr. Jennings’ case.

Finally, equity warrants a stay in this case. Respondent attempts to shift the burden that Florida law places on the State to ensure appointment of state postconviction counsel for capital defendants, arguing that Mr. Jennings’ alleged “delay” in bringing his claims tips the scale of equity in Respondent’s favor. Response at 7. But it is Respondent who had the sole obligation and power, under the rules and statutes it created, to seek state postconviction counsel for Mr. Jennings, yet chose to

do nothing for over three years, despite seeking counsel for other similarly-situated inmates. It is Respondent who had unfettered discretion in deciding when to sign Mr. Jennings' execution warrant, and it is Respondent that violated its own laws and the federal constitution when it selected Mr. Jennings for execution, knowing full well he lacked statutorily-guaranteed state postconviction counsel for over three years. Thus, alongside all of the stay factors, equity also warrants a stay in this case.

CONCLUSION

For the foregoing reasons, Mr. Jennings respectfully requests that the Court grant his application for a stay of his November 13, 2025, execution to address the compelling constitutional questions in his case on the merits.

Respectfully submitted,

/s/ ERIC C. PINKARD

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