

Nos. 25-6943 & 25A964

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**In The  
Supreme Court of the United States**

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CHARLES L. BURTON, JR.,

*Petitioner,*

v.

JOHN Q. HAMM, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS,

*Respondent.*

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

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**REPLY IN SUPPORT OF CERTIORARI AND STAY OF EXECUTION**

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**CAPITAL CASE**

Execution scheduled during the time frame beginning at 12:00 a.m. on  
Thursday, March 12, 2026, and expiring at 6:00 a.m. on Friday, March 13, 2026  
Central Time

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## REPLY IN SUPPORT OF CERTIORARI AND STAY OF EXECUTION

Alabama did more than “restate[]”<sup>1</sup> Mr. Burton’s questions presented; it omitted the first and third questions entirely. However, Alabama mentions the first question in the introduction section of its brief and in a footnote.<sup>2</sup> In both mentions, Alabama claims Mr. Burton did not “point to clearly established federal law invalidating Eleventh Circuit Rule 22-1(c).”<sup>3</sup> “Clearly established federal law” is a phrase associated specifically with 28 U.S.C. § 2254(d)(1), which is not at issue unless the question relates to AEDPA deference, and the first question presented does not. It relates instead to the constitutionality of Rule 22-1(c), which Mr. Burton argues violates equal protection and due process principles.<sup>4</sup>

Alabama’s responses to the other issues Mr. Burton presented, while fully briefed, are equally lackluster.

**Alabama first asserts Mr. Burton’s Rule 60(b) motion was an unauthorized successive habeas petition.**<sup>5</sup> Alabama then provides no argument not already addressed in Mr. Burton’s petition for writ of certiorari. Mr. Burton therefore rests on the arguments presented in that pleading as to this issue.

**Second, Alabama asserts that, in the alternative, Mr. Burton’s *Andrew v. White*<sup>6</sup> argument is meritless.**<sup>7</sup> Here, the State provides little in the way of

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<sup>1</sup> Opp’n to Appl. for Stay of Execution and Pet. for Writ of Cert. at ii (“Opp’n”).

<sup>2</sup> *Id.* at 1, 17 n.3.

<sup>3</sup> *Id.* at 1; *see also id.* at 17 n.3.

<sup>4</sup> *See* Pet. for Writ of Cert. at 15–17.

<sup>5</sup> *See* Opp’n at 8–18.

<sup>6</sup> 604 U.S. 86 (2025).

<sup>7</sup> *See id.* at 18–21.

argument not already addressed in Mr. Burton’s certiorari petition. So, again, he rests on his arguments as already presented—with one exception. Where Alabama claims Mr. Burton’s case “is not a good vehicle for further elucidating the domains of the client and counsel,”<sup>8</sup> Mr. Burton agrees. He agrees because, *as he has argued since 1993*,<sup>9</sup> those domains have been elucidated and the law delineating those domains *is* “clearly established.”<sup>10</sup>

**Finally, Alabama complains Mr. Burton unreasonably delayed seeking certiorari and a stay of execution, “unnecessarily thrusting this Court into an emergency posture.”**<sup>11</sup> But it was Alabama that sought an execution date while Mr. Burton’s Rule 60(b) motion, which he filed May 30, 2025, was still pending in district court.<sup>12</sup> And it was Alabama that did so on October 2, 2025, one day after the federal government shut down indefinitely,<sup>13</sup> aware that Mr. Burton was represented by federal counsel appointed under 18 U.S.C. § 3599. Indeed, even the Alabama Supreme Court was sympathetic to that fact, granting Mr. Burton an additional 30 days beyond what is typically allowed to respond to the Attorney

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<sup>8</sup> *Id.* at 20–21.

<sup>9</sup> *See* Pet. at 8 (citing *Burton v. State*, 651 So. 2d 641, 656 (Ala. Crim. App. 1993)).

<sup>10</sup> *See* Pet. App. 187a.

<sup>11</sup> Opp’n at 22.

<sup>12</sup> *See id.* at 21.

<sup>13</sup> *See* Mot. for a Sixty (60) Day Extension of Time to Respond to the State of Ala. Mot. to Set an Execution Date at 2–3, *Ex Parte Burton*, No. 1930070 (Ala. Oct. 3, 2025).

General’s motion seeking authorization to carry out his sentence.<sup>14</sup> Thus, it was *Alabama*, not Mr. Burton, who thrust this Court into an emergency posture.

Alabama also raises a litany of complaints about how undersigned counsel—whose appointment is for purposes of federal habeas proceedings and *executive clemency*<sup>15</sup>—spent the time between when the court of appeals declined to reconsider his application for a certificate of appealability (“COA”) and stay on January 13, 2026, and February 27, 2026, when he filed the certiorari petition.<sup>16</sup> Among other things, Alabama cites to a billboard<sup>17</sup> that undersigned counsel were not even aware of until it was announced by a third party the afternoon before it was unveiled. Alabama also cites websites and a film screening event.<sup>18</sup> Executive clemency does not happen in a vacuum, and § 3599 places no limits on counsel’s use of time and resources in pursuing executive clemency.

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<sup>14</sup> *See* Mot. for an Additional Thirty (30) Day Extension of Time to Respond to the State of Ala’s Mot. to Set an Execution Date at 3 n.2, No. 1930070 (Ala. Nov. 4, 2025) (“The Federal Defenders for the Middle District of Alabama is a community defender organization, meaning it is a “non-profit defense counsel organization[] incorporated under state laws.” United States Courts, *About Federal Courts - Defender Services: Community Defender Organizations*, available at <https://www.uscourts.gov/about-federal-courts/defender-services>. Operational funds depend on “sustaining grants from the federal judiciary.” *Id.* Due to the shutdown, continued federal grant funding for this office beyond November is uncertain.”); Order, No. 1930070 (Ala. Nov. 6, 2026) (granting an additional thirty days to respond). The federal government shutdown ended on November 12, 2025.

<sup>15</sup> *See* 18 U.S.C. §3599(e).

<sup>16</sup> Opp’n at 21–23.

<sup>17</sup> *Id.* at 21. Although Alabama discusses “billboards,” undersigned counsel is aware of only one, the same one discussed in the article cited in footnote 5 of Alabama’s brief.

<sup>18</sup> *Id.*

To be clear, Mr. Burton’s counsel did not choose between pursuing executive clemency and seeking a COA from the court of appeals. However, given the near-zero likelihood of a certiorari grant and stay of execution,<sup>19</sup> significantly more time and resources have been devoted to seeking executive clemency in this case. This is so because Mr. Burton is innocent of *capital* murder, but like the constitutional claims at issue in the Rule 60(b) motion, those claims were wrongly decided by the Alabama courts on both direct appeal and in state postconviction.<sup>20</sup> The federal courts were then hampered by the application of AEDPA,<sup>21</sup> as was the situation with the constitutional claims underlying the 60(b) motion. As such, Mr. Burton’s case is a quintessential case for executive clemency’s “fail safe” function.<sup>22</sup> And, as such, undersigned counsel have marshalled available resources to mount a

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<sup>19</sup> See Death Penalty Information Center, Analysis Shows Supreme Court’s Changing View of Death Penalty Cases, available at <https://deathpenaltyinfo.org/analysis-shows-supreme-courts-changing-view-of-death-penalty-cases> (last accessed March 6, 2026) (“*Bloomberg* identified 270 emergency requests to stay executions since 2013 and found that the Court agreed to block an execution just 11 times.”).

<sup>20</sup> See Appl. on Behalf of Charles Lee Burton, Jr. for a Commutation of His Sentence of Death at 3–11, available at [https://static1.squarespace.com/static/66f6dc43a2c59b2f4f1b433a/t/69a0a03490ffab6c22427b41/1772134452690/20251210+FINAL+Clemency+Petition+and+Exhibits\\_Redacted.pdf](https://static1.squarespace.com/static/66f6dc43a2c59b2f4f1b433a/t/69a0a03490ffab6c22427b41/1772134452690/20251210+FINAL+Clemency+Petition+and+Exhibits_Redacted.pdf) (last accessed Mar. 6, 2026) (“Clemency Appl.”).

<sup>21</sup> See *id.* at 6 n.31 (noting that, although the district court judge presiding over Mr. Burton’s habeas proceedings “accepted Mr. Burton’s contention that ‘the State did not produce a witness who testified that Burton possessed the individualized, particularized intent to kill anyone,’ [he] found [Mr. Burton’s] contentions as a whole insufficient to overcome the required deference to state-court factual findings and allow a grant of relief on Mr. Burton’s federal constitutional claim”).

<sup>22</sup> See *id.* at 2–4, 11.

clemency campaign, including an online petition with over 65,000 unique signatures.<sup>23</sup>

To Alabama’s argument that “[a] stay would undermine the public interest in justice,” citing what it claims to be the “powerful interest . . . shared by the State, the public, and the victims of Burton’s crime . . . in the timely enforcement of his sentence,”<sup>24</sup> it is questionable, based only on the number of unique signatures on that petition, whether Alabama accurately represents the interests of the public in this case. It is clear that at least one family member of the victim—Mr. Battle’s daughter, who wrote to the governor and issued a public plea for commutation—does not want Mr. Burton’s sentence carried out.<sup>25</sup> And as stated plainly before, the State has *no* interest in having an unconstitutional sentence carried out.<sup>26</sup>

Moreover, Mr. Burton did not even see the shooting transpire, but he did see the shooter later resentenced to life without parole—a cruel dichotomy the State itself has described as “arguably unjust.”<sup>27</sup> At the end of the day, this question remains: Will this Court interpret statutory law—AEDPA—such that a man is put

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<sup>23</sup> See U.S. Campaign to End the Death Penalty, *Gov. Ivey: Please Grant Clemency to Charles "Sonny" Burton Who Faces Execution Despite Not Having Killed Anyone*, available at <https://actionnetwork.org/petitions/gov-ivey-please-grant-clemency-to-charles-sonny-burton-who-faces-execution-despite-not-having-killed-anyone/> (last accessed Mar. 6, 2026).

<sup>24</sup> Opp’n at 24.

<sup>25</sup> See Clemency Appl. Ex. B; AL.com, *My father was murdered. Alabama is about to execute the wrong man: op-ed* (Dec. 24, 2025), available at <https://www.al.com/politics/2025/12/my-father-was-murdered-alabama-is-about-to-execute-the-wrong-man-op-ed.html> (last accessed Mar. 6, 2026).

<sup>26</sup> See Appl. for Stay of Execution Pending Pet. for Writ of Cert. at 4–5.

<sup>27</sup> State of Ala’s Pet. for Cert. at 24, *Dunn v. DeBruce*, 135 S. Ct. 2854 (2015) (No. 14-807).

to death without the full protection he is afforded under the United States  
Constitution? The world is watching.

Respectfully submitted,

/s/ Matt Schulz

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