

IN THE  
SUPREME COURT OF THE UNITED STATES

JAMES ERNEST HITCHCOCK,

*Petitioner,*

*v.*

STATE OF FLORIDA,

*Respondent.*

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ON PETITION FOR A WRIT OF CERTIORARI  
TO THE FLORIDA SUPREME COURT

**RESPONSE TO APPLICATION FOR STAY OF EXECUTION  
EXECUTION SCHEDULED FOR APRIL 30, AT 6:00 P.M.**

On April 26, 2026, Petitioner James Earnest Hancock filed a petition for a writ of certiorari in this Court seeking review of a decision of the Florida Supreme Court arising from post-warrant public records litigation and a procedurally barred claim of actual innocence. He also filed an application for a stay of execution. This Court should deny the petition and deny the application.

Stays of Execution

A stay of execution is not granted as “a matter of course.” *Hill v. McDonough*, 547 U.S. 573, 583-84 (2006). Rather, it is an equitable remedy, *id.* at 584, which should be the “extreme exception, not the norm.” *Barr v. Lee*, 591 U.S. 979, 981 (2020) (quoting *Bucklew v. Precythe*, 587 U.S. 119, 149-51 (2019)). Both the State and the

victims of crime have an important interest in the timely enforcement of criminal judgments, *Calderon v. Thompson*, 523 U.S. 538, 556 (1998), to which equity must be sensitive. *Hill*, 547 U.S. at 584. Moreover, there is a strong equitable presumption against the grant of a stay where a claim could have been brought earlier without requiring last-minute intervention, *Nelson v. Campbell*, 541 U.S. 637, 650 (2004), and courts must consider an inmate's attempts at manipulation. *Gomez v. U.S. Dist. Ct. for N. Dist. of Cal.*, 503 U.S. 653, 654 (1992).

#### Probability of This Court Granting Certiorari

Hitchcock seeks to constitutionalize a right to discovery to search for a postconviction claim, a proposition this Court has repeatedly rejected. *See Lewis v. Casey*, 518 U.S. 343, 354-56 (1996); *Gray v. Netherland*, 518 U.S. 152, 168 (1996). There is no reasonable probability that this Court will grant certiorari.

First, as explained in the State's brief in opposition, the decision below rests on independent and adequate state law grounds. The Florida Supreme Court denied relief because Hitchcock failed to satisfy Florida's settled, claim-driven framework governing capital postconviction public records requests, which requires such demands to be tied to a colorable postconviction claim. That determination is dispositive and independently forecloses this Court's review. *Michigan v. Long*, 463 U.S. 1032, 1041-42 (1983).

Secondly, Hitchcock's actual innocence claim has been addressed and rejected by Florida courts. The state circuit court held the claim was procedurally barred from review in Hitchcock's successive motion for postconviction relief. This is an independent and adequate state law ground for the decision below. His claim does

not gain strength from repetition.

The court also found Hitchcock's witnesses lacked credibility because none of them came forward during Hitchcock's trial or in any of Hitchcock's three penalty phase trials, instead waiting until twenty years had passed and the alleged perpetrator (Hitchcock's brother Richard) was deceased. Hitchcock's claim of actual innocence has no basis in fact; his actual innocence claim was rejected on the merits and he is not an innocent man.

Hitchcock cannot demonstrate a reasonable probability that this Court will grant certiorari; that failure alone is sufficient to deny a stay.

#### Significant Possibility of Reversal

There is no significant possibility that this Court would reverse. The Florida Supreme Court correctly held that Hitchcock's requests were impermissible because they sought records to determine whether a legal challenge might exist, rather than to support a colorable postconviction claim. That conclusion follows directly from settled Florida law and does not implicate any federal constitutional violation.

This Court's precedent forecloses Hitchcock's central theory as well. The Constitution guarantees the ability to bring claims, not to discover them. *Lewis*, 518 U.S. at 354-56. And due process "has little to say regarding the amount of discovery which the parties must be afforded." *Gray*, 518 U.S. at 168. Consequently, lower courts have uniformly rejected materially indistinguishable claims seeking execution-related information. *See, e.g., Wellons v. Comm'r, Ga. Dep't of Corr.*, 754 F.3d 1260, 1267 (11th Cir. 2014); *Zink v. Lombardi*, 783 F.3d 1089, 1108 (8th Cir.

2015) (en banc).

Nor does Hitchcock identify any concrete constitutional violation. His Eighth Amendment theory is speculative and fails to establish a substantial risk of severe pain. *See Baze v. Rees*, 553 U.S. 35, 53–55 (2008); *Glossip v. Gross*, 576 U.S. 863, 877 (2015). And his equal protection and due process claims fail for the same reasons repeatedly rejected by the Florida Supreme Court in materially indistinguishable cases. *See, e.g., King v. State*, No. SC2026-0336, 2026 WL 672101, at \*5-6 (Fla. Mar. 10, 2026), *cert. denied*, 2026 WL 730666 (U.S. Mar. 16, 2026); *Kearse v. State*, 428 So. 3d 75, 81 (Fla. 2026), *cert. denied*, 2026 WL 586905 (U.S. Mar. 3, 2026).

Finally, the Court should deny the requested stay because Hitchcock’s repackaged “cumulative innocence” theory is not cognizable and falls short of any recognized innocence standard. The Supreme Court has made clear that claims of actual innocence operate at most as a narrow gateway requiring new reliable evidence demonstrating that it is more likely than not that no reasonable juror would have convicted him. *Schlup v. Delo*, 513 U.S. 298, 324-327 (1995).

#### Irreparable Injury

Hitchcock identifies no cognizable irreparable injury. Although execution will result in his death, that is the inherent consequence of a valid capital sentence. Hitchcock’s fallback theory that the Constitution requires cumulative review of alleged innocence evidence finds no support in this Court’s jurisprudence. Absent an independent constitutional violation, this Court does not recognize a freestanding claim of actual innocence as a basis for relief.

The stay standard, derived from ordinary civil litigation, does not naturally fit the capital context, where finality is the execution itself. He identifies no harm beyond that consequence. Moreover, this Court has instructed that courts must consider “the relative harms to the parties,” including the State’s significant interest in enforcing its criminal judgments. *Nelson*, 541 U.S. at 649-50. Without finality, “the criminal law is deprived of much of its deterrent effect.” *Calderon*, 523 U.S. at 555. Hitchcock murdered C.D. in 1976, and Hitchcock’s sentence has been final for decades. He therefore fails this factor as well.

#### Equity Does Not Warrant a Stay

Again, a stay of execution is an extraordinary equitable remedy. This Court has emphasized that last-minute stays should be the “extreme exception, not the norm.” *Barr v. Lee*, 591 U.S. 979, 981 (2020). Hitchcock’s attempt to obtain last-minute, exploratory discovery untethered to any colorable postconviction claim, his dilatory litigation, and his failure to satisfy the *Barefoot* factors weigh heavily against granting his application for a stay of execution. In contrast, the State’s compelling interest in the timely enforcement of its criminal judgments and the corresponding interest in finality for the victim’s family weigh decisively against a stay. The application should be denied.

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