No. 25A0174

EXECUTION SCHEDULED FOR AUGUST 19, 2025, AT 6:00 P.M.

IN THE
SUPREME COURT OF THE UNITED STATES

KAYLE BARRINGTON BATES, *Petitioner*,

v.

RICKY D. DIXON, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, *Respondent*.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE ELEVENTH CIRCUIT COURT OF APPEALS

RESPONSE TO APPLICATION FOR A STAY OF THE EXECUTION

On August 8, 2025, Bates, represented by the Capital Habeas Unit of the Federal Public Defender of the Northern District of Florida (CHU-N) filed a Petition for a Writ of Certiorari in this Court seeking review of the Eleventh Circuit's order denying a certificate of appealability (COA). The Petition raises an issue regarding whether the Eleventh Circuit properly denied a COA regarding a motion to reopen under Federal Rule of Civil Procedure 60(b) based on *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024). Bates asserted in his motion to reopen that *Loper Bright* negated the deference due to state courts under 28 U.S.C. §

2254(d)(1) and required that his closed habeas case be reopened and all the claims raised in his original habeas petition be reviewed again, under a de novo standard of review. The Eleventh Circuit concluded that issue was not debatable and denied a COA.

This Court should deny the petition for the reasons detailed in the brief in opposition and then deny the application for a stay.

Stays of Execution

Stays of executions are not granted as "a matter of course." *Hill v. McDonough*, 54 7 U.S. 573, 583-84 (2006). Rather, a stay is "an equitable remedy" and "equity must be sensitive to the State's strong interest in enforcing its criminal judgments without undue interference from the federal courts." *Id.* at 584. There is 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." *Nelson v. Campbell*, 541 U.S. 637, 650 (2004). Equity must also consider "an inmate's attempt at manipulation." *Gomez v. U.S. Dist. Ct. for N. Dist. of Cal.*, 503 U.S. 653,654 (1992). "Both the State and the victims of crime have an important interest in the timely enforcement of a sentence." *Calderon v. Thompson*, 523 U.S. 538, 556 (1998).

This Court has highlighted the State's and the victims' interests in the timely enforcement of the death sentence. *Bucklew v. Precythe*, 587 U.S. 119, 149-151 (2019). The citizens of Florida, as well as surviving victims and their families, "deserve better" than the "excessive" delays that now typically occur in capital cases. *Id*. at 149. The Court has stated that courts should "police carefully" against last minute claims being used "as tools to interpose unjustified delay" in executions. *Id*. at 150. This Court has also repeatedly stated that last minute stays of execution should be the "extreme exception, not the norm." *Barr v. Lee*, 591 U.S. 979,981 (2020) (vacating a lower court's grant of a stay of a federal execution quoting *Bucklew*, 587 U.S. at 151).

To be granted a stay of execution in this Court, the petitioner must establish three factors: (1) a reasonable probability that the Court would vote to grant certiorari; (2) a significant possibility of reversal if review was granted; and (3) a likelihood of irreparable injury to the applicant in the absence of a stay. *Barefoot v. Estelle*, 463 U.S. 880, 895 (1983). Bates must establish all three factors but he has established none.

Probability this Court will Grant Certiorari Review

There is little chance that this Court would grant review. As the

brief in opposition explains, there is a significant threshold issue of the timeliness of the Rule 60(b) motion to reopen. Properly classified as a Rule 60(b)(1) motion, the motion to reopen was over a decade late under the reasoning of this Court's decision in *Kemp v. United States*, 596 U.S. 528 (2022).

This Court typically does not grant review in cases with threshold issues. *Izumi Seimitsu Kogyo Kabushiki Kaisha v. U.S. Phillips Corp.*, 510 U.S. 27 (1993) (dismissing a writ of certiorari as improvidently granted because there was a threshold issue); *N.C.P. Mktg. Group, Inc. v. BG Star Productions, Inc.*, 556 U.S. 1145 (2009) (statement of Kennedy, J., respecting the denial of certiorari) (explaining that the Petition for Writ of Certiorari was properly denied by the Court, despite the question being presented being a significant one that is worthy of review, because the case might require the Court to first resolve antecedent questions).

Bates provides no reason for this Court to ignore its standard practice of not granting review of cases with significant threshold issues. Indeed, the Petition does not address the proper classification of the Rule 60(b) motion or engage this Court's decision in *Kemp*.

Bates fails the first factor. Based on this factor alone, the stay should be denied.

Significant Possibility of Reversal

There is not a significant possibility that this Court would reverse the Eleventh Circuit's order denying a COA when this Court held in *Loper Bright* itself that relitigation of prior cases was not warranted. This Court in *Loper Bright* overruled *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), but explicitly refused to reconsider its numerous prior decisions relying on *Chevron*. *Loper Bright*, 603 U.S. at 412 (stating that "we do not call into question prior cases that relied on *Chevron* and their prior precedent in the areas of agency law remained valid and stare decisis"). This Court explained that "mere reliance on *Chevron*" cannot constitute a "special justification" for overruling prior cases. *Id*. at 412. If *Loper Bright* does not warrant reopening closed administrative law cases, it certainly does not warrant reopening closed habeas cases. COA is never warranted when this Court has already addressed the issue of reopening closed cases based on *Loper Bright*.

Bates points to the fact that a district court granted a COA on the

issue of the impact of *Loper Bright* on § 2254(d)(1) in another case, which is currently pending in the Eleventh Circuit. Application at 3 (citing *Washington v. Marshall.* No. 24-13905 (11th Cir.)). But that case does not involve a Rule 60(b) motion to reopen. Bates does not point to any case granting a COA involving a Rule 60(b) motion to reopen based on *Loper Bright*, much less to a case granting a COA involving an untimely Rule 60(b)(1) motion to reopen.

There is no "significant" possibility that Bates would prevail in this Court on the issue of being granted a COA. Bates fails the second factor as well.

Irreparable Harm

Bates points to the execution itself as establishing irreparable harm. But the factors for granting a stay are taken from those applied to normal civil litigation, which are not a natural fit in capital cases. *Barefoot*, 463 U.S. at 895-96 (citing *Times-Picayune Pub. Corp. v. Schulingkamp*, 419 U.S. 1301, 1305 (1974) (Powell, J., in chambers)).

There is no irreparable harm, other than the execution itself, which is inherent in the death sentence. Finality in a capital case is the execution, so some additional showing should be required in a capital

case to satisfy this factor. Bates has not identified any irreparable harm that is not a direct consequence of his valid, constitutional, and long-final death sentence. Bates fails this factor as well.

Contrary to Bates' argument, the balance of the equities are not in his favor. This Court has stated in the capital context that "the *relative* harms to the parties" must still be considered, including "the State's significant interest in enforcing its criminal judgments." *Nelson*, 541 U.S. at 649-50 (emphasis added). Without finality, "the criminal law is deprived of much of its deterrent effect." *Calderon*, 523 U.S. at 555-56. The murder in this case occurred over 40 years ago and his death sentence has been final since 2000. *Bates v. Florida*, 531 U.S. 835 (2000). When a prisoner has already had "extensive review of his claims in federal and state courts," absent a strong showing of actual innocence, "the State's interests in actual finality outweigh the prisoner's interest in obtaining yet another opportunity for review." *Calderon v. Thompson*, 523 U.S. 538, 557 (1998). The equities are all in the State's favor.

Bates contends that a stay is warranted to ensure appellate review is not truncated by the exigencies of warrant litigation. Application at 4.

But this Court should simply deny the petition for all the reasons given in the brief in opposition.

Accordingly, this Court should deny the petition for a writ of certiorari and the application for stay of execution.

Respectfully submitted,

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