

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

KAYLEE BARRINGTON BATES, *Petitioner*,

v.

STATE OF FLORIDA, *Respondent*.

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

**RESPONSE TO APPLICATION FOR STAY OF EXECUTION
EXECUTION SCHEDULED FOR AUGUST 19, 2025, AT 6:00 P.M.**

Kayle Bates, a Florida prisoner under an active death warrant with an execution scheduled for August 19, 2025, asks this Court to stay his execution for a heinous murder, robbery, and attempted rape he committed in 1982 while it considers whether to grant certiorari. None of his three questions warrant a stay under *Barefoot v. Estelle*, 463 U.S. 880, 895 (1983) as modified by *Bucklew v. Precythe*, 587 U.S. 119, 149–51 (2019). This Court should deny the stay.

A stay of execution is not granted as “a matter of course.” *Hill v. McDonough*, 547 U.S. 573, 583–84 (2006). Instead, 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).

The People of Florida, as well as the surviving victims, “deserve better” than the “excessive” delays that now typically occur in capital cases, including this one. *Bucklew v. Precythe*, 587 U.S. 119, 149 (2019). “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). And where, as here, federal habeas “proceedings have run their course and a mandate denying relief has issued, finality acquires an added moral dimension.” *Id.*

Courts must “police carefully” against last-minute claims used “to interpose unjustified delay.” *Bucklew*, 587 U.S. at 150. Last-minute stays of execution should be “the extreme exception, not the norm.” *Barr v. Lee*, 591 U.S. 979, 981 (2020) (quoting *Bucklew*, 587 U.S. at 150 and vacating a stay of execution).

Bates must establish at least three elements to receive a stay of execution on his long-finalized sentence from this Court: (1) a reasonable probability that the Court would vote to grant certiorari; (2) a significant possibility of reversal; 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). This Court’s opinion in *Bucklew* effectively modified this test and requires Bates to show an additional two elements: (4) that he has not pursued relief in dilatory fashion and (5) his underlying claims are not based on a speculative theory and simply designed to stall for time. *Bucklew*, 587 U.S. at 151

(“Federal courts can and should protect settled state judgments from undue interference by invoking their equitable powers to dismiss or curtail suits that are pursued in a dilatory fashion or based on speculative theories.”) (Cleaned up; emphases added). Bates must establish all these elements to obtain a stay. *See Hill v. McDonough*, 547 U.S. 573, 583–84 (2006).

All three of Bates’ questions presented are dilatory and therefore no basis for a stay. The first two revolve around perceived deficiencies in his 1995 penalty phase, while the third pertains to lethal injection records Bates failed to seek before his warrant was signed even though he raised a pre-warrant lethal injection claim. He could have litigated the first and third questions before his death warrant but waited until the eleventh hour to do so. On his second question presented, Bates previously asked this Court to review it in 2000, but failed to ask this Court again at the conclusion of federal habeas proceedings despite it being one of his lead claims before the Eleventh Circuit. *See Bates v. Florida*, 531 U.S. 835 (2000) (No. 99-9526); *Bates v. Jones*, 577 U.S. 839 (2015) (No. 14-9864); *Bates v. Sec’y, Fla. Dep’t of Corr.*, 768 F.3d 1278, 1300–06 (11th Cir. 2014). All three of his delayed questions presented are therefore unworthy of a stay. Equity is not on the side of capital defendants who hold back asking, or re-asking, this Court to review questions that could have been, or were, presented decades ago. This Court should deny the stay because Bates’ questions presented are dilatory.

Bates’ questions presented are also all speculative and thus unworthy of a stay under *Bucklew*. He cites no case in the country agreeing with his position on any of

his questions presented and relies exclusively on broad and not directly applicable principles of law. His three questions are foreclosed by this Court’s precedent. *See Blystone v. Pennsylvania*, 494 U.S. 299, 301, 304–09 & n.4 (1990) (holding the Eighth Amendment permits a mandatory death sentence when a capital defendant does not present mitigation); *Ramdass v. Angelone*, 530 U.S. 156, 169 (2000) (rejecting “a functional approach” that “evaluates whether it looks like the defendant will turn out to be parole ineligible” to the rule allowing capital defendants to place their parole eligibility before the jury if future dangerousness is at issue); *Lewis v. Casey*, 518 U.S. 343, 354 (1996) (rejecting the view that “the State must enable the prisoner to *discover* grievances, and to *litigate effectively* once in court”) (emphasis in original); *Wellons v. Comm’r, Ga. Dep’t of Corr.*, 754 F.3d 1260, 1267 (11th Cir. 2014) (relying on *Lewis* to reject a due process right to lethal-injection discovery and collecting cases from the Fifth and Eighth Circuits holding the same). This Court should deny the stay because Bates’ questions presented are speculative attacks on settled precedent. *See Bucklew v. Precythe*, 587 U.S. 119, 150–51 (2019).

For similar reasons, Bates fails the first *Barefoot* element. It is unlikely four justices would vote to grant certiorari on any of Bates’ questions presented. He presents no true conflict in support of any of them and has effectively provided a merits brief instead of explaining why this Court should grant review at all. His first two questions are jurisdictionally barred by the Florida Supreme Court’s reliance on state-law time and procedural bars that adequately and independently support the denial of relief. Contrary to his position, Bates has no federal right to another round

of postconviction review. *Jones v. Hendrix*, 599 U.S. 465, 482–87 (2023) (holding there is no constitutional right to two rounds of postconviction review even for claims of legal innocence); *Stewart v. LaGrand*, 526 U.S. 115, 118–120 (1999) (holding a capital defendant’s claim that execution by lethal gas violated the Eighth Amendment was waived *and* procedurally defaulted while also disagreeing with the Ninth Circuit’s position that “Eighth Amendment protections may not be waived, at least in the area of capital punishment”). This Court lacks jurisdiction over Bates’ first two questions presented.

Aside from the jurisdictional issues, Bates’ first two questions presented face dispositive retroactivity hurdles even if this Court answered his questions favorably. His death sentence finalized in 2000 and the result he asks this Court to adopt was certainly not dictated by prior precedent existing at that time. *See Edwards v. Vannoy*, 593 U.S. 255, 265 (2021); *Bates v. Sec’y, Fla. Dep’t of Corr.*, 768 F.3d 1278, 1300–06 (11th Cir. 2014) (holding the Florida Supreme Court reasonably applied federal law existing in 1999 in rejecting the arguments undergirding Bates’ second question presented). The answers to his first two questions do not apply to his case.

Further, this Court has already declined to answer Bates’ second question presented once before. *Bates v. Florida*, 531 U.S. 835 (2000) (No. 99-9526). That question is also bound up in factual disputes and obsolete questions of state law. Florida now only provides life without parole and death as options for first-degree murder, so disputes about parole eligibility or how long a first-degree-murder defendant will serve in prison are unlikely to reoccur. Bates’ second question is also

encumbered by dispositive factual disputes on whether the State argued future dangerousness and whether the sentencing court relied on the jury's recommendation at all while imposing death.

Bates' third question presents no important or unsettled issue of federal law. His sole attempt to establish conflict relies on cases dealing with evidentiary hearings on right to counsel issues. Those cases are completely inapplicable to whether capital defendants must be diligent in seeking records pre-warrant, narrow their requests, and present a colorable claim before engaging in lethal-injection-related discovery. It appears every court to analyze Bates' third question presented has ruled against his position. *E.g.*, *Wellons v. Comm'r, Ga. Dep't of Corr.*, 754 F.3d 1260, 1267 (11th Cir. 2014) (collecting cases). Bates does not argue otherwise or cite a single conflict case.

For all these reasons, it is unlikely four justices would vote to grant certiorari on any question Bates presents. He thus fails the first *Barefoot* element.

On *Barefoot's* second element, it is even more unlikely Bates would obtain reversal on any of his three questions presented. Bates cites no court, or even a single judge, to ever adopt the broad premise the Eighth Amendment invalidates capital sentences imposed without consideration of substantial mitigation. It is unlikely Bates, unaided by any judicial opinion, would convince five justices to be the first to adopt a rule allowing the Eighth Amendment to continually and completely undermine finality and, by judicial fiat, effectively outlaw the death penalty by making it impossible to execute. That is not the role of the Eighth Amendment or this Court. *See Bucklew v. Precythe*, 587 U.S. 119, 150 (2019); *Middlebrooks v. Parker*, 22

F.4th 621, 626 (6th Cir. 2022) (Thapar, J., statement respecting denial of rehearing en banc) (explaining “the death penalty’s death-by-a-thousand-cuts—through a distortion of the Eighth Amendment—has come mostly at the hands of the federal judges who have overseen ‘the proliferation of labyrinthine restrictions on capital punishment’”) (quoting *Glossip v. Gross*, 576 U.S. 863, 898 (2015) (Scalia, J., concurring)). It is unlikely this Court would take Eighth Amendment “death penalty jurisprudence” even further “afield from the Constitution” by imposing the rule Bates seeks. *See Middlebrooks*, 22 F.4th at 626 (Thapar, J.)

Nor is it likely Bates would prevail on his second question presented. The State did not so much as hint at future dangerousness in Bates penalty phase, as the Florida Supreme Court recognized decades ago. *See Bates v. State*, 750 So. 2d 6, 11 (Fla. 1999) (twice rejecting Bates’ argument the state injected future dangerousness into his penalty phase). And even if it did, it is unlikely this Court would recede from *Ramdass v. Angelone*, 530 U.S. 156, 165 (2000), or craft some new constitutional rule that capital defendants must be allowed to make themselves parole ineligible and inform the jury of that fact when future dangerousness is not a proper consideration for the jury. *E.g., Allen v. State*, 137 So. 3d 946, 961 (Fla. 2013) (Future dangerousness “is not a proper aggravating circumstance in Florida.”).

Bates’ third question presented would require this Court to create, out of thin air, a due process rule that capital defendants can be completely dilatory in seeking lethal-injection records but must be given every record they ask for, even statutorily confidential records, no matter how broad, unduly burdensome, and unrelated to a

plausible claim the records are. To correctly state Bates' claim is to refute it. The due process rule Bates seeks would overturn both Federal Rule of Civil Procedure 8 and Florida Rule of Criminal Procedure 3.852 in one fell swoop. *See Jones v. Comm'r, Georgia Dep't of Corr.*, 812 F.3d 923, 925 (11th Cir. 2016) (Marcus, J., concurring in the denial of initial hearing en banc with Ed Carnes, C.J., and Tjoflat, Hull, William Prior, and Julie Carnes, JJs) (explaining Federal Rule of Civil Procedure 8 requires a plausible lethal-injection claim before a capital defendant is entitled to discovery). It would also mark an abrupt departure from this Court's repeated refusal to constitutionalize discovery through due process. *See Gray v. Netherland*, 518 U.S. 152, 168 (1996) (noting this Court's repeated admonitions that due process has "little to say regarding the amount of discovery which the parties must be afforded" and that there is "no general constitutional right to discovery").

The chances that five justices of this Court would turn the Fourteenth Amendment's right to due process into an unlimited rule of discovery in capital cases that can be easily abused to stall executions with meritless claims is nonexistent. This Court would not adopt a rule that permits capital defendants to wait until a warrant is signed to act on lethal injection concerns. *See Barr v. Lee*, 591 U.S. 979 (2020) (recognizing lethal injection claims must be resolved "fairly and expeditiously"); *Bucklew v. Precythe*, 587 U.S. 119, 150 (2019) (recognizing this Court has repeatedly disapproved of waiting until an execution is scheduled to bring claims that could have been brought earlier).

As a result, Bates fails the second *Barefoot* element as well.

That brings us to the third *Barefoot* element of irreparable harm. Bates contends he is irreparably harmed because he will soon be executed absent a stay. But that argument is entirely divorced from the legal consequences of prevailing on his questions presented. Even a favorable decision on all three of Bates' questions presented would not legally preclude his execution. If this Court agreed with his first two questions, he could receive a new penalty phase. If this Court agreed with his third, he could receive a remand to discover additional lethal injection records.

A showing of irreparable harm for failure to consider Bates' three questions presented before his execution should require him to demonstrate either that he would likely not be resentenced to death at a new penalty phase if this Court reversed on his first two questions presented, or that he would likely discover a valid lethal injection claim if this Court reversed on his third. Any other view of irreparable harm elevates delay, the chief evil in capital cases, to a virtue.

Under a true irreparable harm analysis, Bates certainly cannot establish irreparable harm merely because he cannot obtain lethal injection records before his execution. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008) (rejecting the Ninth Circuit's mere "possibility" standard as too lenient to establish irreparable harm); *Koninklijke Philips N.V. v. Thales DIS AIS USA LLC*, 39 F.4th 1377, 1380 (Fed. Cir. 2022) (explaining the "mere possibility or speculation of harm is insufficient" to establish irreparable harm). The speculative possibility that the records Bates seeks provide some support for a lethal injection claim is insufficient to establish irreparable harm. As a result, the failure to consider Bates' third question

presented before his execution does not establish irreparable harm.

Establishing irreparable harm on the failure to consider Bates' first and second questions presented before his execution should require him to show, more likely than not, that he would be sentenced to life at a new penalty phase if he prevailed on those questions. He cannot make that showing.

On his first question presented, the brain damage evidence he complains was omitted is nowhere near strong enough to establish he would likely not receive another death sentence considering the aggravation and mitigation in his 1995 penalty phase. *See Bates v. State*, No. SC2025-1127, 2025 WL 2319001, at *4 (Fla. Aug. 12, 2025) ("No additional evidence of brain damage would have overcome the significant aggravators presented against Bates."); *Bates v. State*, 3 So. 3d 1091, 1100–1102 (Fla. 2009) (holding the omission of brain damage evidence did not prejudice Bates because it was mostly cumulative to what he presented). *Cf. Thornell v. Jones*, 602 U.S. 154, 163–72 (2024) (holding there was no reasonable probability of a different sentence when considering the new mitigation, which included brain damage, against the strong aggravation and the fact that the defendant presented a fair amount of mitigation at his penalty phase). Bates cannot establish the failure to consider his first question presented before his execution irreparably harms him.

The same is true of Bates' second question presented. Future dangerousness and parole eligibility are not relevant to what Florida juries can consider in capital penalty phases. This information would simply make no difference to an objectively reasonable jury following the law, which is the only kind of jury relevant to this

analysis. *Glossip v. Oklahoma*, 145 S. Ct. 612, 629 (2025) (explaining a materiality analysis “asks what a reasonable decisionmaker would have done with the new evidence”); *Strickland v. Washington*, 466 U.S. 668, 694 (1984) (“An assessment of the likelihood of a result more favorable to the defendant must exclude the possibility of arbitrariness, whimsy, caprice, ‘nullification,’ and the like.”); *Brady v. Maryland*, 373 U.S. 83, 90 (1963) (refusing to evaluate prejudice based on the theory the jury would have “flouted” the court’s instructions). Information that makes no difference to an objectively reasonable decisionmaker following the law would not likely change the outcome of a capital penalty phase.

Bates has failed to establish he is irreparably harmed by the failure to consider his three questions presented before his execution. He therefore fails the third *Barefoot* element along with the rest.

Accordingly, this Court should deny the application for stay.

Respectfully submitted,

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