

No. 25A287

IN THE
Supreme Court of the United States

NEW JERSEY TRANSIT CORPORATION, NJ TRANSIT BUS OPERATIONS, INC.,
AND ANA HERNANDEZ,
Applicants,

v.

JEFFREY COLT AND BETSY TSAI,
Respondents.

On Writ of Certiorari
to the New York Court of Appeals

**OPPOSITION TO APPLICATION TO STAY TRIAL DATE
SET BY THE SUPREME COURT OF
NEW YORK, NEW YORK COUNTY**

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INTRODUCTION

New Jersey Transit waited three years from the time this litigation commenced to move to dismiss based on sovereign immunity. It waited an additional five years to move for a stay of proceedings. In the meanwhile, it voluntarily underwent motions practice, discovery, depositions, summary judgment, and even an adjudication as to its liability. New Jersey Transit comes to this Court on the eve of trial, after subpoenas have been issued, expert witnesses paid to block off time, and significant judicial resources expended in setting a trial date.

New Jersey Transit now seeks extraordinary emergency relief from this Court, claiming that litigation in New York courts will cause it an irreparable sovereign dignitary injury—never mind that it engaged in just such litigation for years without a peep. New Jersey Transit never explains why a one-week damages trial (the question of liability has already been resolved) would cause it some injury different in kind from the litigation it has already chosen to undergo. Nor does it explain what practical difference a stay would make under the unusual circumstances of this case: This Court has no basis to stay the damages trial as to the second defendant, an individual bus driver who has no claim to immunity under federal law. But the driver is indemnified by New Jersey Transit and represented by New Jersey Transit's lawyers; if the trial goes forward as to the driver, it's not clear what difference a stay would make to New Jersey Transit.

Should this Court issue a stay—or even if this Court waits to rule on the stay motion until after Monday—plaintiffs may not get another trial date for many months. The New York courts held that, in light of New Jersey’s yearslong delay in asking for a stay, it would reward gamesmanship and waste judicial resources to oblige. This Court should follow suit.

STATEMENT OF THE CASE

1. In February 2017, a New Jersey Transit bus hit respondent Jeffrey Colt, leaving him permanently disabled. Stay Appendix 1a. He filed suit against New Jersey Transit and the bus driver, Ana Hernandez, in September 2017. *Id.* 2a. New Jersey Transit did not move to dismiss based on sovereign immunity or seek to stay proceedings.

The case proceeded to discovery. *Id.* 2a. Conferences were held and depositions conducted, including depositions of New Jersey Transit employees and of Ms. Hernandez. *Id.* 2a, 16a. The statute of limitations to file suit on the claim in New Jersey expired. *Id.* 2a. In May 2019, this Court issued its opinion in *Franchise Tax Bd. of Cal. v. Hyatt* (*Hyatt III*), 587 U.S. 230 (2019), holding that states are entitled to sovereign immunity in the courts of another state. Still, New Jersey did not move to dismiss based on sovereign immunity or seek to stay proceedings. Stay Appendix 2a.

2. Finally, in July 2020, New Jersey Transit moved to dismiss respondents' case based on interstate sovereign immunity. *Id.* 17a. The trial court denied the motion in October 2020. *Id.* 2a. New Jersey Transit did not seek a stay pending appeal from the ruling. *Id.*

Litigation continued apace in trial court. The parties finished discovery, and the plaintiffs moved for summary judgment. *Id.* 2a. In January 2022, the New York trial court granted summary judgment to plaintiffs, holding that respondents were liable for Mr. Colt's injuries, leaving only the question of damages. *Id.* The parties engaged in multiple settlement conferences. *Id.* New Jersey Transit still did not seek a stay. *Id.*

Meanwhile, the sovereign immunity issue was litigated through the New York appellate courts, culminating with a 6-1 decision of the New York Court of Appeals in November 2024 affirming the trial court's decision to deny the motion to dismiss on sovereign immunity grounds. *Id.* 2a. In her separate opinion, Judge Jenny Rivera took New Jersey Transit to task for making "no effort to avoid potentially unnecessary litigation and the costs associated with a wasteful expenditure of party and judicial resources." Pet. App. 88a. She thought its conduct "suggests the type of gamesmanship" the New York courts "frown[] upon." *Id.* New Jersey Transit still did not seek a stay pending the filing and disposition of a petition for a writ of certiorari.

In April 2025, after multiple extensions, New Jersey Transit filed its petition for certiorari in the instant case. Pet. 1. It did not seek a stay when it filed its cert petition.

3. On May 30, 2025, New Jersey Transit finally moved to stay the upcoming trial. Stay Appendix 1a. It did not request oral argument in the motion as allowed by local rules. *See* Hon. Christopher Chin, J.S.C., Part Rules (Part 22) III.A, *available at* <https://www.nycourts.gov/legacypdfs/courts/1jd/supctmanh/Rules/part22rules.pdf>; instead, New Jersey Transit waited more than three weeks, until June 27, to request oral argument. Stay Appendix 22a. The trial court scheduled oral argument for August.

Less than two weeks after argument, the trial court denied New Jersey Transit's motion. The trial court held that "the New York State courts have already expended significant judicial resources" on the trial and "[t]o deny plaintiffs their day in court at this juncture would (in this court's view)" be unfair. *Id.* 5a-6a. The trial court believed that plaintiffs "would be prejudiced if they were prevented from having an opportunity to present their case to a jury, after eight (8) years of litigation." *Id.* 8a. The trial court also noted that the trial would be brief—no more than six witnesses and less than one week. *Id.* 6a.

Even if the Supreme Court ruled that New Jersey Transit were entitled to sovereign immunity, the trial court thought the ruling would not eliminate the need for

a damages trial as to Ms. Hernandez. *Id.* Ms. Hernandez is indemnified by New Jersey Transit and represented by the same lawyers as New Jersey Transit. *Id.* 1a, 6a. Because liability was ascertained several years ago, next week’s trial will focus solely on the question of damages, meaning the proof will not change depending on whether Ms. Hernandez, New Jersey Transit, or both appear. The trial court held that because a damages trial may be necessary regardless of this Court’s holding, a stay was not warranted. *Id.* 6a.

New Jersey Transit appealed the trial court’s denial to the state intermediate appellate court, requesting that the court stay the trial and issue an administrative stay (called an “interim stay” in New York practice) while it considered the question. *Id.* 11a. The court denied the administrative stay and expedited briefing on the stay of the trial. *Id.* 12a.

New Jersey Transit then appealed to the New York Court of Appeals, the state’s highest court. That court, too, denied an administrative stay. *Id.* 13a. To date, neither the intermediate appellate court nor the state’s high court have ruled on the underlying stay application by New Jersey Transit.

4. Trial is scheduled to begin on Monday. The case was sent to the “Trial Ready Part” several months ago, meaning that witnesses—including expert witnesses—have been notified of “the trial date fixed and of the fact that the trial date is a firm one.” *See* Stay Appendix 3a; 1st JD – Supreme Court, Civil Branch, NY

County, *Trials*, available at <https://ww2.nycourts.gov/courts/1jd/supctmanh/Trials.shtml>.

ARGUMENT

1. “Last-minute stays should be the extreme exception, not the norm,” and “the last-minute nature of an application that could have been brought earlier” is sufficient grounds to deny the stay. *Bucklew v. Precythe*, 587 U.S. 119, 150 (2019) (internal quotations omitted). This Court has denied stay applications where litigants waited days or weeks to seek a stay, finding that such delays “vitiate[d] much of the force of [applicant’s] allegations of irreparable harm.”¹

In this case, New Jersey waited *years* to file its stay application. It did not move to stay proceedings in October 2020 when the trial court denied its motion to dismiss on sovereign immunity grounds. It did not move to stay proceedings in November 2024, when the New York Court of Appeals affirmed that ruling. It did not even move for a stay in April 2025, when it filed its petition for certiorari (after seeking multiple extensions), waiting more than a month to do so.

Indeed, New Jersey Transit did not even move to dismiss based on sovereign immunity *at all* until July 2020—more than three years after Mr. Colt filed suit, 16

¹ *Beame v. Friends of the Earth*, 434 U.S. 1310, 1312 (1977) (Marshall, J., in chambers) (application filed 20 days after petition for writ of certiorari); *see also Ruckelshaus v. Monsanto Co.*, 463 U.S. 1315, 1312 (1983) (Blackmun, J., in chambers) (applicant waited seven weeks); *Morland v. Sprecher*, 443 U.S. 709, 710 (1979) (delay of three months); *Foster v. Gilliam*, 515 U.S. 1301, 1303 (1995) (Rehnquist, J., in chambers) (delay of several weeks).

months after the statute of limitations expired to sue in New Jersey court, and 14 months after this Court decided *Hyatt III*. See Stay Appendix 14a-24a. This Court has held there is “a strong equitable presumption against the grant of a stay where a claim could have been brought at such a time to allow consideration of the merits without requiring entry of a stay.” See *Hill v. McDonough*, 547 U.S. 573, 584 (2006). Had New Jersey Transit raised its claim of sovereign immunity a few months earlier, it would have made its way to this Court last Term, meaning no stay would have been required for next week’s trial.

At this point, subpoenas have been issued; expert witnesses have blocked time, having been told that “the trial date is a firm one”; and both parties and “New York state courts have already expended significant judicial resources” on preparing for trial. See *supra*, 5-6; Stay Appendix 5a-6a. If this Court were to stay next week’s trial altogether—or even to wait to rule on the stay application until Monday—Mr. Colt likely wouldn’t get another trial date for many months.

“It is a wise rule in general that a litigant whose claim of urgency is belied by its own conduct should not expect discretionary emergency relief from a court.” *W. Va. v. B.P.J., by Jackson*, 143 S. Ct. 889 (2023) (Alito, J., dissenting from denial of application to vacate injunction). Here, New Jersey Transit’s conduct belies any claim that subjecting it to continued litigation would somehow irreparably “harm the

State’s sovereign dignity.” Stay Application 24 (citations omitted). Engaging in motions practice, depositions, discovery, or summary judgment apparently did not harm the State’s sovereign dignity enough to warrant a request for a stay. Neither did a ruling actually *holding New Jersey Transit liable*. New Jersey Transit should not now “expect discretionary emergency relief from a court” on the ground that next week’s brief trial to ascertain damages would suddenly be an intolerable harm to New Jersey’s sovereign dignity.

2. Should this Court have any doubt, three background equitable principles further counsel against a stay in this case.

First, there is a “national policy forbidding federal courts to stay or enjoin state court proceedings except under special circumstances.” *Younger v. Harris*, 401 U.S. 37, 41 (1971). Congress has effectuated that policy in the Anti-Injunction Act: Where this Court can typically issue a writ if it is “necessary *or appropriate* in aid of its jurisdiction,” it may only “stay proceedings in a State court” where “*necessary* in aid of its jurisdiction.” *Compare* 28 U.S.C. § 1651 *with* 28 U.S.C. § 2283. The bar for a stay is thus higher in cases like this one that come to this Court from a state court, rather than a lower federal court.

Second, the bar for a stay is higher in cases in the “very unusual procedural posture” where the lower courts have “not yet rendered a decision on whether a stay pending appeal is warranted.” *See United States v. Texas*, 144 S. Ct. 797, 798 (2024)

(Barrett, J., concurring in denial of applications to vacate stay). Both the state intermediate appeals court and the state high court denied *administrative* stays. Stay Appendix 12a, 13a. But neither court ruled on the merits of New Jersey Transit’s underlying stay application. As of 2024, this Court had “never reviewed the decision of a court of appeals to enter—or not enter—an administrative stay,” let alone the decision of a state court to do so. *Texas*, 144 S. Ct. at 799. It should not now “get into the business.” *Id.*

Finally, the “burden of persuasion” is “particularly heavy” when, as here, the trial court has declined to stay proceedings. *Beame*, 434 U.S. at 1312; *see also Ruckelshaus*, 463 U.S. at 1316 (trial court’s “conclusion that a stay is unwarranted is entitled to considerable deference”). That principle should hold with especial force in cases like this one, where the lower court’s decision turns in part on the waste of judicial resources that a stay would entail. *See* Stay Appendix 5a-6a.

Even if New Jersey Transit’s years of delay did not rule out equitable relief, then, this Court’s general presumptions against a stay in cases like this one should.

3. At the very least, this Court must deny a stay to petitioner Ana Hernandez. Ms. Hernandez has no *federal* immunity from suit. *See Lewis v. Clarke*, 581 U.S. 155, 164-65 (2017). And she doesn’t argue otherwise in her stay application. Instead, she claims a New York *state* law entitlement to avoid trial. Stay Application 27 n.3. But even if that were right, this Court may only grant a stay if it is “necessary in aid

of its jurisdiction,” *see* 28 U.S.C. § 2283, and Ms. Hernandez provides no argument that preserving her state-law immunity from suit is necessary to aid this Court’s jurisdiction in addressing the federal question whether New Jersey Transit is an arm of the State of New Jersey.

Ms. Hernandez alternatively argues that “it makes little sense to proceed against Ms. Hernandez now only to have a repetitive trial next year against the other NJ Transit defendants if this Court rules that they lack immunity.” Stay Application 27 n.3. But this Court does not have the authority to stay a trial in state court simply because a litigant believes doing so would be more efficient. It may only issue writs in aid of its own jurisdiction, and the prospect of a “repetitive trial” does not meet that standard. *See* 28 U.S.C. § 2283.

4. New Jersey Transit claims irreparable injury because being “hale[d] into another State’s courts” is “the paradigmatic injury that interstate sovereign immunity guards against.” Stay Application 14. But that has *already* occurred: New Jersey Transit was “haled into” New York’s courts nearly eight years ago, and since then, it has participated in court-supervised conferences, discovery, depositions, and a declaration of its liability—all with no objection. *See, e.g., P.R. Aqueduct & Sewer Auth v. Metcalf & Eddy*, 506 U.S. 139, 144 (1993) (“immunity from suit” includes “costs” and “risks of discovery,” not just trial).

New Jersey Transit cites no case law supporting the proposition that it will suffer some *further* irreparable dignitary injury from next week’s damages trial, beyond what it has chosen to undergo these last eight years. New Jersey Transit protests that it must “pay[] New York outside counsel” to “defend[] that trial,” but as it concedes, such litigation expenses aren’t considered irreparable injuries. Stay Application 18-19. Besides, assuming this Court does not stay the trial as to Ms. Hernandez, New Jersey Transit faces the possibility of incurring that same expense: Ms. Hernandez is represented by the same outside counsel and indemnified by New Jersey Transit. And because the trial is about damages, not liability, nothing about it would change if only Ms. Hernandez and not New Jersey Transit were to appear.²

5. Finally, New Jersey Transit argues that there is a “fair prospect” it will succeed in showing that it is an arm of the State of New Jersey. Stay Application 22-27. Arguments to the contrary were set out in detail by the court below and the brief in opposition. Respondents will further elaborate on those arguments in their forthcoming merits brief and at argument, and there is no reason for this Court to allow

² Relying on *Coinbase, Inc. v. Bielski*, 599 U.S. 736 (2023), New Jersey Transit attempts to argue that because it is entitled to interlocutory review by this Court of its claim for sovereign immunity, it is entitled to a stay of any trial. Stay Application 16-17. But Coinbase was about the default rule in *federal* courts, where an appeal deprives a district court of jurisdiction to act on matters that are the subject of that appeal. *See Coinbase*, 599 U.S. at 746; *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982). There’s no basis for subjecting New York state courts to such a rule.

New Jersey’s last-minute application to force it to engage in rushed consideration of merits issues that it is set to review and decide in the ordinary course.

In a nutshell, however, the factors this Court’s modern cases have considered all indicate that New Jersey is not an arm of the State of New Jersey: New Jersey tort law specifically defines the “State” to exclude entities that, like New Jersey Transit, are “statutorily authorized to sue and be sued,” and the State of New Jersey has “clearly disclaimed any legal liability for judgments against” New Jersey Transit. *See* N.J. Rev. Stat. §§ 27:25-5(a), 59:1-3; Pet. App. 18a. And as a matter of Founding-era understanding, the answer is clearer still: In persuasive concurrences, Fifth Circuit Judge Andrew Oldham and late D.C. Circuit Judge Stephen Williams have explained that “[a]t the time of our founding, the existence of a separate legal person, with the capacity to sue and be sued, was precisely what set certain non-immune state entities apart from the state itself.” *Puerto Rico Ports Auth. v. Fed. Maritime Comm’n*, 531 F.3d 868, 881 (D.C. Cir. 2008) (Williams, J., concurring); *see Springboards to Educ. v. McAllen Indep. Sch. Dist.*, 62 F.4th 174, 194 (5th Cir. 2023) (Oldham, J., concurring) (same).³

³ In addition, if New Jersey Transit is correct that it an arm of the State of New Jersey, this Court may have to grapple with the question of its own jurisdiction to enter a stay. In that circumstance, this Court may well be without jurisdiction to vacate the lower court decision, because this case presents “the rare scenario that comes within the Eleventh Amendment’s text.” *PennEast Pipeline Co., LLC v. New Jersey*, 594 U.S. 482, 511 (2021) (Gorsuch, J., dissenting) (citation omitted). The Eleventh Amendment provides: “The Judicial power of the United States shall not be construed to

Regardless, even if New Jersey had a far stronger prospect of success on the merits, a stay would not be warranted unless “the balance of harms and equities favors it at this time.” *See NetChoice, LLC v. Fitch*, 606 U.S. ____ (No. 25A97) (2025) (Kavanaugh, J., concurring in the denial of the application to vacate stay). Many applications on this Court’s emergency docket present questions with immediate practical consequences of nationwide importance. *See Laborador v. Poe*, 144 S. Ct. 921, 928-29 (2024) (Kavanaugh, J., concurring in the grant of stay). Those stakes often justify a request that this Court “assess the merits on a tight timeline” and decide whether to grant interim relief without the benefit of full briefing and argument. *Id.* at 929-30. But this is not such a case. The only thing at stake is whether New Jersey Transit—which *chose* to subject itself to discovery, summary judgment, settlement conferences, and a ruling of liability—should be formally named in a days-long trial to quantify damages (a trial that might wind up going forward in virtually identical form as to Ms. Hernandez regardless of whether New Jersey Transit is named).

extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State” U.S. Const. amend. XI. If New Jersey Transit is an alter ego of New Jersey, this case would then be a “suit in law” against “one of the United States” (New Jersey) by Citizens of another State (Mr. Colt, a citizen of New York). The “Judicial power of the United States”—including the United States Supreme Court—thus “shall not be construed to extend” to the suit. That language “imposes an Article III subject-matter jurisdiction barrier” that “admits of no waivers, abrogations, or exceptions.” *PennEast*, 594 U.S. at 511 (Gorsuch, J. dissenting). To be sure, a majority of this Court rejected that argument in *PennEast*, holding that this Court’s precedents “have understood the Eleventh Amendment to confer a personal privilege which a State may waive at pleasure.” *Id.* at 506 (cleaned up). But under the view adopted by Justices Gorsuch and Thomas in their concurrence, no such waiver is allowed, and this Court would lack jurisdiction to enter a stay.

The stay application should be denied.

CONCLUSION

For the foregoing reasons, the Court should deny New Jersey Transit's request for a stay of the September 15 trial, and it should do so before trial is set to begin.

Respectfully submitted,

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