No. 25A532
CAPITAL CASE

EXECUTION SCHEDULED FOR
THURSDAY, NOV. 15, 2025, AT 6:00 P.M.

IN THE
SUPREME COURT OF THE UNITED STATES

BRYAN FREDRICK JENNINGS,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

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

RESPONSE TO APPLICATION FOR STAY OF EXECUTION

On November 7, 2025, Petitioner, Bryan Fredrick Jennings, represented by state postconviction counsel Eric C. Pinkard of the Office of the Capital Collateral Regional Counsel – Middle Region (CCRC-M), filed, in this Court, a petition for writ of certiorari seeking review of a decision by the Florida Supreme Court in this active warrant case. The petition raises three issues: (1) whether the Florida Supreme Court misinterpreted Florida law in holding that there is no state-law right to "continuous" postconviction counsel in capital cases; (2) whether that misinterpretation of state law resulted in a denial of Jennings' federal right to due process; and (3) whether Florida's capital sentencing scheme is unconstitutional. Jennings has also filed an

application for a stay of execution based on that petition. This Court, however, should simply deny the petition and then deny the stay.

Stays of Execution

Stays of executions are not granted as "a matter of course." *Hill v. McDonough*, 547 U.S. 573, 583-84 (2006). Rather, a stay of execution 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 people of Florida, as well as the families of the victims of capital crimes, 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) (quoting *Bucklew*, 587 U.S. at 151, and vacating a lower court's grant of a stay of a federal execution).

To be granted a stay of execution in this Court, Jennings 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). He must establish all three factors.

Probability of This Court Granting Certiorari Review

As to the first factor, there is little chance that four justices of this Court would vote to grant certiorari review on the issues raised in Jennings' petition. As an initial matter, this Court lacks jurisdiction to grant review as to any of the questions raised in the petition because: (1) this Court lacks jurisdiction to overturn a state supreme court's interpretation of state law; (2) Jennings' claim to the denial of a due process property interest in his supposed state-law right to continuous collateral counsel was found by the Florida Supreme Court to be procedurally barred as a matter of Florida law and, thus, was resolved on independent and adequate state-law grounds; and (3) all three of Jennings' grounds for arguing that Florida's capital sentencing scheme is unconstitutional either (a) were also resolved on independent and adequate state-law grounds, or (b) are irrelevant to Jennings' case, rendering any decision by this Court an impermissible advisory opinion. Additionally, this Court's Rule 10 states that certiorari review will be granted "only for compelling reasons," which include the existence of conflicting decisions on important questions of federal law among federal

courts of appeals or state courts of last resort; a conflict between the lower court's decision and the relevant decisions of this Court; or an important question of federal law that has not been but should be settled by this Court. Sup. Ct. R. 10. No such situation exists here. Jennings has cited no conflict of decisions or important question of law warranting this Court's review. Indeed, Jennings' petition does not address the Rule 10 standard for granting certiorari review at all. There is little probability that the Court would vote to grant review under these circumstances. Jennings fails the first factor, which alone is sufficient to deny the motion for a stay.

Significant Possibility of Reversal

As to the second factor, there is not a significant possibility of reversal on the issues raised by Jennings. Again, this Court lacks jurisdiction to grant certiorari to begin with. Moreover, Jennings fails to identify any error of law by the Florida Supreme Court, let alone a conflict of decisions or an important or unsettled federal question that would require this Court's intervention to resolve.

In his first two questions presented, Jennings complains at length that his current state collateral counsel, CCRC-M, was not appointed until after the death warrant was signed, and that he was unrepresented by state counsel in the three years preceding the warrant due to the death of his former state collateral counsel in 2022. According to Jennings, the gap in counsel rendered CCRC-M's performance ineffective because they lacked sufficient time to investigate his case in order to try to develop new postconviction claims. However, this Court's precedent is clear that there is no constitutional right to postconviction counsel at all, much less the right to

challenge the constitutional effectiveness of such counsel. Furthermore, Jennings ignores the fact that even after his former state counsel died in 2022, he continued to be represented by his appointed federal counsel, who at the time was litigating Jennings' second federal habeas proceeding on his behalf. If Jennings had wanted new state counsel appointed upon his former counsel's death or at any time prior to the signing of the death warrant, or if he became aware of any new information that could have formed the basis for a new collateral claim, he could have raised those issues through his federal counsel. Instead, Jennings waited until after the warrant was signed to challenge the gap in state counsel. The Florida Supreme Court correctly concluded that in light of Jennings' continuous representation at all times by either state or federal counsel, among other reasons, there was no violation of his federal constitutional rights to due process or access to the courts.

As to Jennings' third question presented, this Court's precedent is clear that neither unanimous jury recommendations in capital sentencing nor proportionality review of death sentences on direct appeal are constitutionally required. As to his clemency arguments, Jennings acknowledged in his fifth successive postconviction motion in state court that he received a clemency proceeding in 1988 in which he was represented by counsel, and that he could have reapplied for clemency in the years that followed but never did. The Florida Supreme Court correctly found that there was no violation of Jennings' "minimal" due process rights in clemency under these circumstances. Ultimately, there was no error at all in the proceedings below, let alone one that warrants certiorari review.

Irreparable Injury

As to the third factor of irreparable injury, none is identified. While the execution will result in Jennings' death, that is the inherent nature of a death sentence. The factors for granting a stay are taken from the standard for granting a stay as applied to normal civil litigation, which is 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)). Finality in a capital case is the execution, so some additional showing should be required to satisfy this factor. Jennings has not identified any irreparable harm that is not a direct consequence of the valid, constitutional, and long-final death sentence that was imposed in 1986 for his kidnapping, rape, and murder of six-year-old Rebecca Kunash.

Moreover, 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 v. Thompson*, 523 U.S. 538, 555-56 (1998). Again, finality in a capital case is the execution. The murder for which Jennings was sentenced to death occurred in 1979, and his death sentence has been final since 1988. Jennings fails this factor as well. Accordingly, this Court should deny the motion to stay.

Equity Does Not Warrant a Stay

Finally, equity does not warrant a stay under the facts of this case given that Jennings could have challenged his lapse in state counsel years ago in light of his

continuous representation by federal counsel. Again, this Court has emphasized the "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*, 541 U.S. at 650. Notably, Jennings previously sought a stay of execution in the United States District Court for the Northern District of Florida. The district court denied Jennings' stay motion for multiple reasons, including his "years-long delay in bringing these claims." *Jennings v. DeSantis*, No. 4:25-cv-449, Doc. 22 at 6 (N.D. Fla. Oct. 30, 2025). The district court's reasons for denying the stay motion on equitable grounds are equally applicable here:

> Mr. Jennings continued to be represented by counsel in federal court for years after Mr. McClain's death and he was well equipped to promptly request the appointment of state counsel or at least notify those responsible for monitoring the performance of his state counsel that his attorney had died. Instead, Mr. Jennings apparently alerted nobody and waited until the eleventh hour to file his federal claims and seek a stay of execution based on the lack of state counsel for the past three years. Given Mr. Jennings's insistence that he has a continuous right to state-appointed counsel, his argument that he did not act sooner in filing this case because he had no reason to believe he was warrant eligible falls short of excusing his delay.

Id. at 7. The district court also noted: "Mr. Jennings's argument is, in effect, that you can sit on your rights, pocket a motion to stay execution, and under the theory that there may be a non-frivolous collateral challenge that you could have filed, move to stay your execution based on the failure to appoint state counsel sooner. This is not the law." *Id.* at 4 n.2.

In summary, Jennings fails to meet any of the three factors for being granted a stay of execution, and a stay is unwarranted as a matter of equity. Therefore, the application for a stay of execution should be denied.

Respectfully submitted,

JAMES UTHMEIER
ATTORNEY GENERAL OF FLORIDA

/S/ SCOTT A. BROWNE
SCOTT A. BROWNE
Chief Assistant Attorney General
Counsel of Record

Office of the Attorney General
3507 E. Frontage Rd., Ste. 200
Tampa, Florida 33607
Telephone: (813) 287-7900
scott.browne@myfloridalegal.com
capapp@myfloridalegal.com

JONATHAN S. TANNEN
Senior Assistant Attorney General

MICHAEL W. MERVINE
Special Counsel, Assistant
Attorney General

NAOMI NICHOLS
Senior Assistant Attorney General

COUNSEL FOR RESPONDENT

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