

No. 25A577
CAPITAL CASE

EXECUTION SCHEDULED FOR
THURSDAY, NOV. 20, 2025, AT 6:00 P.M.

IN THE
SUPREME COURT OF THE UNITED STATES

RICHARD BARRY RANDOLPH,
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 17, 2025, Petitioner Richard Barry Randolph, represented by state postconviction counsel James Driscoll, Jr. of the Office of the Capital Collateral Regional Counsel – South (CCRC-S), filed a petition for writ of certiorari seeking review of a decision by the Florida Supreme Court in this active warrant case. The petition raises two issues: (1) whether the Florida Supreme Court properly applied adequate and independent state-law rules in rejecting Randolph’s Eighth Amendment claim, consistent with the Supremacy Clause and this Court’s precedent; and (2) whether certiorari is warranted where the Constitution confers no right to any

particular clemency procedure. Randolph 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 execution are not granted as “a matter of course.” *Hill v. McDonough*, 547 U.S. 573, 583–84 (2006). This 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).

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); *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. To be granted a stay of execution, Randolph 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). If any one factor is not established, the application for stay must be denied.

Probability of This Court Granting Certiorari Review

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. Randolph has cited no conflict of decisions or important question of law warranting this Court's review. Indeed, Randolph's petition does not address the Rule 10 standard for granting certiorari review at all.

There is little chance that four justices of this Court would vote to grant certiorari review on the issues raised in Randolph's petition. Randolph complains at length that Florida's postconviction warrant litigation deprived him of the right to present his as-applied lethal injection challenge and that he should have been granted an evidentiary hearing. The Florida Supreme Court, however, correctly concluded that Randolph's Eighth Amendment lethal injection challenge was untimely and procedurally barred under Florida law. And consistent with their recent

death-penalty jurisprudence as well as this Court's precedent, the court held that neither of Randolph's proposed alternative methods of execution could be readily implemented, or in fact significantly reduce the substantial risk of severe pain, given the physical condition he describes. This Court lacks jurisdiction to review a State supreme court's interpretation of state law. The Florida Supreme Court's application of a state procedural bar to deny Randolph's as-applied challenge is an adequate and independent state law basis precluding this Court's exercise of certiorari jurisdiction.

As to Randolph's claim that he was denied a meaningful clemency proceeding, the Florida Supreme Court found this claim meritless. Randolph acknowledged in his fourth successive postconviction motion that he received a clemency proceeding in 2014 in which he was represented by counsel, provided information, and was interviewed. The Florida Supreme Court correctly found that there was no violation of Randolph's minimal due process rights in clemency under these circumstances. The Florida Supreme Court's decision is not in conflict with this Court's precedent, federal courts of appeals, or state courts of last resort, nor does it present important federal questions needing this Court's resolution.

Randolph has not established the first requirement for issuance of a stay, that this Court would grant certiorari, which alone is a sufficient reason to deny the motion.

There Is No Possibility of Reversal If Review Is Granted

As outlined in Respondent's Brief in Opposition, even if this Court decides to exercise its discretionary review, Randolph would not be entitled to relief. First, the

Florida Supreme Court ruled on an alternative state law procedural ground that is not being challenged by Randolph. Given the Florida Supreme Court's alternative ruling that Randolph's as-applied challenge was procedurally barred under state law, the outcome of this case would not change even if this Court granted certiorari on the time-bar issue. Next, Randolph never presented his Supremacy-clause argument to the state courts. Because Randolph never framed his claim within the scope of the Supremacy Clause, the Florida Supreme Court did not address whether applying the time bar to Randolph's case would constitute a violation of the Supremacy Clause, and that portion of his claim would not be part of this Court's review. And significantly, Randolph's as-applied claim presented to the state courts failed as a matter of law by not meeting this Court's standard under *Baze v. Rees*, 553 U.S. 35 (2008), *Glossip v. Gross*, 576 U.S. 863 (2015), and *Bucklew v. Precythe*, 587 U.S. 119 (2019). Thus, granting review on Randolph's as-applied claim presents no possibility of reversal, much less a significant one.

As to his clemency claim, Randolph received a clemency proceeding and there was no violation of his "minimal" due process rights. While Randolph complains that he was not offered an opportunity to provide updated information after his original clemency proceeding or to review the findings of the denial of his clemency, he has no right to do so under Florida law or federal law. Randolph certainly would not be entitled to relief on this claim either.

Randolph Faces No Irreparable Injury

The factors necessary for granting a stay are derived from the standard for

granting a stay in typical civil litigation and 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)). Although the execution will result in Randolph's death, that is the inherent nature of a death sentence. Randolph 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 1988 for his robbery, rape, and murder of Minnie McCollum.

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. Without finality, "the criminal law is deprived of much of its deterrent effect." *Calderon v. Thompson*, 523 U.S. 538, 555-56 (1998). Finality in a capital case is the execution. The murder for which Randolph was sentenced to death occurred in 1988, and his death sentence has been final since 1990. Randolph has not established irreparable harm in the absence of a stay distinct from the inherent finality of his death sentence. 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 Randolph could have challenged his method of execution and his clemency decision years ago. 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.

In summary, Randolph fails to meet the standard 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,

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