No. _____

In The
Supreme Court of the United States

CHARLES L. BURTON, JR.,

Petitioner,

v.

JOHN Q. HAMM, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS,

Respondent.

APPLICATION FOR STAY OF EXECUTION PENDING PETITION FOR WRIT OF CERTIORARI

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

CAPITAL CASE
Execution scheduled during the time frame beginning at 12:00 a.m. on Thursday, March 12, 2026, and expiring at 6:00 a.m. on Friday, March 13, 2026 Central Time

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March 3, 2026

To the Honorable Clarence Thomas, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Eleventh Circuit Court of Appeals:

Charles L. Burton, Jr. respectfully requests this Court stay his execution under Supreme Court Rule 23 and 28 U.S.C. § 2101(f), pending consideration of his concurrently filed petition for a writ of *certiorari*.[1] The standard for granting a stay pending *certiorari* is well-established. Considering the likelihood of four justices on this Court voting to grant *certiorari*, the relative harm to the parties, and the extent to which Mr. Burton has unnecessarily delayed his claims,[2] a stay of execution is heavily favored.

First, Mr. Burton's petition for writ of *certiorari* presents a deeply concerning issue impacting access to the courts, due process, and equal protection for all individuals subject to the Eleventh Circuit's jurisdiction. That court not only fails to require, but *disallows*, *en banc* review of a COA denial.[3] Moreover, the court does not require a reasoned opinion to accompany the denial.[4] This falls far short of the standards articulated in *Hohn v. United States*.[5] In that case, this Court attempted to harmonize circuit COA practice,[6] further stating:

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[1] *See Barefoot v. Estelle*, 463 U.S. 880, 889 (1983) ("Approving the execution of a defendant before his [petition] is decided on the merits would clearly be improper."); *see also Lonchar v. Thomas*, 517 U.S. 314, 320 (1996).
[2] *See Hill v. McDonough*, 547 U.S. 573, 584 (2006); *Nelson v. Campbell*, 541 U.S. 637, 649-50 (2004).
[3] *See* Eleventh Circuit Rule 22-1(c).
[4] *See generally* Eleventh Circuit Rule 22-1.
[5] 524 U.S. 236 (1998).
[6] *See id.* at 245 ("It is more consistent with the Federal Rules and the uniform practice of the courts of appeals to construe § 2253(c)(1) as conferring the

> The recognition that decisions made by individual circuit judges remain subject to correction by the entire court of appeals reinforces our determination that decisions with regard to an application for a certificate of appealability should be regarded as an action of the court itself and not of the individual judge.[7]

As it is the *only* circuit in which full-court review is simply not accessible, the Eleventh Circuit is an extreme outlier.

Second, Mr. Burton sought a COA on the issue of whether this Court's recent *Andrew v. White*[8] decision, with its clarification of the 28 U.S.C. § 2254 phrase "clearly established Federal law" ("CEFL")[9] could justify reopening his federal habeas proceedings under Federal Rule of Civil Procedure 60(b). Although the *Andrew* decision is recent, the question it raised for Mr. Burton is one that *has been* debated for decades amongst jurists of reason.[10] Justice Sotomayor explained that intervening precedent (like *Andrew*), which alters "the interpretation of a substantive [federal habeas] statute" may undermine a final judgment, making it the proper subject of a 60(b) motion under *Gonzalez v. Crosby*.[11] *Gonzalez* is the case in which this court differentiated between "true" 60(b) motions and unauthorized second or successive habeas petitions.[12]

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jurisdiction to issue certificates of appealability upon the court of appeals rather than by a judge acting under his or her own seal.").

[7] *Id.* at 244–45.

[8] 604 U.S. 86 (2025).

[9] *Id.* at 93.

[10] *See Buck v. Davis*, 580 U.S. 100, 123 (2017).

[11] *Crutsinger v. Davis*, 140 S. Ct. 2, 2–3 (2019) (mem.) (statement of Sotomayor, J., respecting the denial of certiorari) (citing *Gonzalez v. Crosby*, 545 U.S. 524, 536 n.9 (2005)) (emphasis omitted)

[12] *See generally Gonzalez*, 545 U.S. 941.

Third, this question is particularly impactful for Mr. Burton because of the diligence with which he has pursued relief on his claim that the trial court deprived him of counsel's effective assistance by forcing his attorneys to call witnesses of his choosing. The Alabama courts substituted an ethics rule for the CEFL described in, amongst other cases, *Jones v. Barnes*,[13] which decried any requirement that counsel abide by a client's strategic directives, of which witness choice is one. The Alabama courts are an outlier in misapplying this well-established constitutional rule.[14] Thus, Mr. Burton could never vindicate his constitutional rights in state court,[15] and his one opportunity in federal court was curtailed by the court of appeals' misconstruction of CEFL, a misconstruction that *Andrew* has now corrected. This issue was deserving of a COA, and Mr. Burton risks being put to death despite never accessing full federal review of his constitutional claims.

Finally, the harm to the State is non-existent. Mr. Burton seeks only that to which he was entitled when his federal habeas proceedings began—an opportunity for the "one full round of federal habeas review"[16] to which he was entitled. While the State may have an interest in carrying out death sentences in general, it does not have an interest in carrying out a death sentence that was unconstitutionally

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[13] *Jones v. Barnes*, 463 U.S. 745 (1983).
[14] *See, e.g.*, *Ex parte Mills*, 62 So. 3d 574, 590 (Ala. 2010).
[15] He tried again after this Court decided *McCoy v. Louisiana*, 584 U.S. 414 (2018), but was denied. *See Burton v. State*, No. CR-19-0400 (Ala. Crim. App. Dec. 17, 2021), *cert denied, Ex parte Burton*, No. 1210407 (Ala. May 20, 2022). He tried yet again when Alabama moved to set his execution date and was again denied. *See* Order, No. 1930070 (Ala. Jan. 22, 2026); Resp. to the State of Alabama's Mot. to Set an Execution Date at 15–24 (Ala. Dec. 10, 2025).
[16] *See Gonzalez*, 545 U.S. at 541 (Stevens, J., joined by Souter, J., dissenting).

secured. Obtained in violation of Mr. Burton's right to effective counsel, this death sentence was unconstitutionally secured.[17]

Mr. Burton seeks certiorari because he has been deprived through a confluence of errors of his ability to prove his sentence is unconstitutional. Without a stay and grant of *certiorari*, Mr. Burton will be put to death without the full protection he is afforded under the United States Constitution.

This Court should grant Mr. Burton a stay of execution pending resolution of his petition for writ of *certiorari*, and if granted, until this Court issues a decision on the merits.

Respectfully submitted,

/s/ Matt Schulz
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[17] *See Gideon v. Wainwright*, 372 U.S. 335 (1963).