CAPITAL CASE

No. 26-5332

IN THE

Supreme Court of the United States

JERRY SCOTT HEIDLER,

Petitioner,

—— V.——

CHRISTOPHER CARR, ET AL.,

Respondents.

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

REPLY IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

Respondents do not dispute that Petitioner Jerry Scott Heidler, a man on Georgia's death row, has an extensive history of mental illness beginning in early childhood, and that because of that mental illness, he will raise a claim that he is incompetent to be executed under the Eighth Amendment as soon as Georgia's as-yet untested Execution Competency Act ("ECA") permits—that is, after Respondents obtain an execution warrant against him. Respondents also do not dispute that Georgia is an extreme outlier among the states in issuing execution warrants only ten to twenty days in advance. Absent a stay, this leaves persons under a death sentence in Georgia with less than twenty days, at most, to challenge their competency and vindicate this Court's command in *Ford v. Wainwright*, 477 U.S. 399 (1986), that a state may not execute a person who is mentally incompetent.

Respondents oppose review first on the ground that there is no split of authority—but that is only because Georgia's compressed time limit is such an extreme outlier. Whether Georgia's regime is consistent with *Ford*'s guarantee is a question with life-or-death stakes not only for Mr. Heidler, who will certainly raise an incompetency issue when a death warrant issues, but also for others on Georgia's death row who are incompetent at the time of their execution. The Court should grant review based on the importance of the issue alone.

Respondents also oppose review by contending that the harms to Mr. Heidler are speculative because he may be able to obtain a stay of execution during the ten- to twenty-day window. But Respondents are the ones relying on speculation, as they

assert without support that state courts will grant a stay application filed within days of an execution date "as a matter of course." Br. in Opp'n 4. In fact, Georgia law provides no such guarantee, nor any standards to govern stay applications in the context of a *Ford* claim. Respondents likewise create a distinction between *raising* a claim and *resolving* a claim that does not exist within the ECA. In the absence of a stay, the ECA requires a *Ford* claim to be litigated within the ten- to twenty-day warrant period. *See* O.C.G.A. § 17-10-40(b). This not only deprives Mr. Heidler of a constitutionally adequate amount of time to fully litigate his *Ford* claim but also imposes unnecessary time pressures that interfere with an orderly and deliberate adjudication of *Ford* claims by state courts.

Georgia's extremely limited time constraints create an unacceptable risk that a person who is incompetent will be executed in violation of the Eighth and Fourteenth Amendments. Mr. Heidler has a ripe challenge to the Georgia regime now; the U.S. Court of Appeals for the Eleventh Circuit has already held in separate litigation that Mr. Heidler is substantially likely to face imminent execution. *Pace vs. Comm'r, Ga. Dep't of Corr.*, No. 24-13973, 2026 WL 1847061, at *6–*7 (11th Cir. June 26, 2026).

This Petition presents a vitally important constitutional question that would allow for resolution by the Court in an orderly fashion, rather than on an emergency appeal. The Court should grant it now.

I. THE EIGHTH AMENDMENT AND DUE PROCESS CLAIMS ARE RIPE FOR THIS COURT'S REVIEW.

Mr. Heidler has a ripe, non-speculative claim—that Georgia's statutory regime forbidding him from even raising his *Ford* claim until ten to twenty days before a scheduled execution date is unconstitutional. Respondents' arguments to the contrary ignore the Eleventh Circuit's finding (in separate litigation) that the risk of an execution warrant is imminent and rest on unfounded speculation that the state courts will issue a last-minute stay of execution to permit him an opportunity to litigate his *Ford* claim.

A. Mr. Heidler's Risk of Execution Is "Imminent."

Respondents hang much of their vehicle argument on an assertion that Mr. Heidler's claim is "definitionally unripe." It is true that *Ford* claims do not ripen "unless and until an inmate's execution is imminent," Br. in Opp'n 10, but there is in fact a "realistic danger the state will imminently move forward with [Heidler's] execution," as the Eleventh Circuit has already held in separate litigation brought by Mr. Heidler and two other capital defendants raising separate constitutional claims. *See Pace*, 2026 WL 1847061, at *7. There, the court of appeals reversed the district court and held that Mr. Heidler and the other plaintiffs have standing to raise their constitutional claims because the risk of their executions is imminent. As the Eleventh Circuit put it, the state "overstates what imminence requires." *Id*. The state offers no principled basis to distinguish the Eleventh Circuit's decision in *Pace*; indeed, it does not even mention it at all.

For much the same reason, Respondents' argument that the lower court's ruling rests on adequate and independent state grounds also does not hold water. Br. in Opp'n 9–10. The trial court's rulings dismissing Mr. Heidler's action rested on a fact-bound determination that the harm to Mr. Heidler was not imminent, which was predicated on the federal constitutional question of whether the injury was sufficiently imminent to confer standing. To reiterate, however, the Eleventh Circuit has now held that the risk of Mr. Heidler's execution is "imminent." *Pace*, 2026 WL 1847061, at *7. Thus, this reason also should not serve as a bar to the Court's review.[1]

B. Mr. Heidler Is Seeking Declaratory Relief To Avoid Last-Minute, Eve-of-Execution Litigation.

Under the ECA, the "exclusive procedure" in Georgia for determining competency-to-be-executed claims, O.C.G.A. § 17-10-62, a death row prisoner must file a claim only once the State sets a date for an execution, which will necessarily be in a ten- to twenty-day period from the time the State secures a warrant. Mr. Heidler therefore cannot initiate litigation to raise his *Ford* claim, nor seek a stay of execution, until he is within as little as ten and at most twenty days of a scheduled execution. Georgia's statutory regime flies in the face of this Court's repeated disapprovals of eve-of-execution litigation. In the state courts below, Mr. Heidler

[1] *See, e.g., Foster v. Chatman*, 578 U.S. 488, 497 (2016) (rejecting state's argument that res judicata was an adequate and independent state law ground when that decision rested on the same underlying rationale for rejecting the federal claim) (citing *Ake v. Oklahoma*, 470 U.S. 68, 75 (1985)).

sought declaratory relief to challenge this unconstitutional framework and to avoid precisely the last-minute litigation this Court has condemned.

In contrast, Respondents' proposition for how Mr. Heidler should litigate this claim *requires* the very kind of last-minute litigation that can stymie orderly development of the record and even-handed application of governing constitutional protections. According to Respondents, Mr. Heidler could only proceed on these claims once he has received an execution warrant and then, if a stay is denied, he may re-file an action for declaratory relief[2]—and all this must happen and be adjudicated within as little as ten days before his scheduled execution.

Respondents' requirement for rushed, eleventh-hour litigation of his claims that Georgia's compressed procedure violates due process and the Eighth Amendment is contrary to this Court's clear instruction that "[l]ast-minute stays should be the extreme exception, not the norm, and 'the last-minute nature of an application' that 'could have been brought' earlier . . . 'may be grounds for denial of a stay.'" *Bucklew v. Precythe*, 587 U.S. 119, 140 (2019) (quoting *Hill v. McDonough*, 547 U.S. 573, 584 (2006)); *see also id.* (quoting *Nelson v. Campbell*, 541 U.S. 637, 650 (2004)) (noting "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"). The Eleventh Circuit has echoed these warnings. *See*, *e.g.*, *Mills v. Hamm*, 102 F.4th 1245, 1250 (11th Cir. 2024) (quoting *Ramirez v.*

[2] *See* Br. in Opp'n 11, 17.

Collier, 595 U.S. 411, 434 (2022)) ("'[L]ast-minute claims' that arise from 'long-known facts' counsel the denial of 'equitable relief in capital cases.'"). But Georgia law precludes Mr. Heidler's compliance with these requirements.

The Court should grant review to resolve the direct conflict between Georgia's statutory regime and this Court's precedents disapproving the sort of eleventh-hour emergency litigation Georgia requires for *Ford* claims.

C. Respondents Ignore *Panetti*'s Due Process Protections.

Respondents also misconstrue *Panetti*'s holding as concerning only the appropriate procedural vehicle to bring a *Ford* claim and mischaracterize the nature of Mr. Heidler's challenge. Br. in Opp'n 10–12 (citing *Panetti v. Quarterman*, 551 U.S. 930 (2007)). True, *Panetti* addressed at the outset whether AEDPA's statutory bar on second or successive applications applied to a *Ford* claim (holding that it did not), but Respondents' claim that Mr. Heidler "hast[ily]" attempts "to divine a favorable rule" from the case is unfounded. Br. in Opp'n 10. Indeed, it is Respondents who ignore one of *Panetti*'s central holdings, namely that to satisfy due process, states must provide certain "minimum procedures," 551 U.S. at 949, to condemned prisoners raising *Ford* claims, once they have crossed a "substantial threshold of insanity." *Id.* at 950 (quoting *Ford*, 477 U.S. at 426). Georgia's ECA, in requiring a *Ford* claim to be litigated within its ten- to twenty-day warrant period, in the absence of a mandatory stay, fails to meet that constitutional minimum.

Respondents similarly mischaracterize the nature of this case. The question before the courts below was not whether Mr. Heidler is incompetent to be executed.

The question was whether Georgia's statutory framework for determining competency to be executed claims under the ECA comports with the minimum due process protections guaranteed by the Constitution. The state courts' decision was wrong because the ECA, without a provision for a mandatory stay to permit litigation and adjudication of a *Ford* claim, or even a stay standard, creates an unacceptable risk that incompetent prisoners like Mr. Heidler will be executed in violation of the U.S. Constitution. Respondents argue that *Panetti* gave the states the "latitude to determine when and how inmates may raise *Ford* claims," Br. in Opp'n 3, but as *Panetti* itself recognized, that latitude is not boundless. *See Panetti*, 551 U.S. 949–52.

II. THE STATE'S EXTREME OUTLIER RULE IMPLICATES A CONSTITUTIONAL ISSUE OF EXCEPTIONAL IMPORTANCE.

Respondents urge this Court to decline review in this case as Mr. Heidler, they assert, has failed to "identify a split of judicial authority on the constitutional question he presents." Br. in Opp'n 13. But the issue has not arisen in courts in other states because Georgia is an extreme outlier among states in its procedures implementing *Ford*. In analogous situations, this Court has not hesitated to intervene in death penalty cases to address an outlier state's implementation of constitutional rules when it departs from the Eighth and/or Fourteenth Amendments. *See Moore v. Texas*, 581 U.S. 1, 18–19 (2017) (holding that Texas's outlier practice in its handling of the adaptive functioning prong of intellectual disability claims unconstitutional under the Eighth Amendment); *Lynch v. Arizona*, 578 U.S. 613, 615–17 (2016) (summarily reversing Arizona's outlier refusal to let capital defendants tell sentencing juries that a life sentence meant life without parole when the State had

placed future dangerousness at issue, in violation of due process); *Hall v. Florida*, 572 U.S. 701, 714 (2014) (holding that Florida's outlier practice in its handling of the intellectual functioning prong of intellectual disability claims was unconstitutional under the Eighth Amendment); *Cooper v. Oklahoma*, 517 U.S. 348, 362–64 (1996) (holding that Oklahoma's procedure for determining competency to stand trial claims violates due process).

Georgia has the shortest timeline from warrant to scheduled execution date among all death penalty states.[3] No other state requires persons on death row to file claims of incompetency within such a short time before an execution date, without at least some provision for a stay upon "a threshold showing of insanity." *Panetti*, 551 U.S. at 949 (quoting *Ford*, 477 U.S. at 426 (Powell, J., concurring)). No other state sets a practically impossible timeline in which to litigate a substantial *Ford* claim while not providing for a stay of execution or even setting a standard governing when a stay should issue. This is a far cry from how *Ford* claims are handled in other states.

Other death penalty states either allow death row prisoners raising *Ford* claims to file claims *prior* to the scheduling of an execution date or provide for a stay of execution upon a threshold showing of insanity, or provide for both of these procedural protections. Georgia's statute provides neither.[4] For example, in Kansas,

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[3] Death Penalty Info. Ctr., *Coronavirus Pandemic Halts Executions, Perhaps for the Foreseeable Future* (Mar. 27, 2020), https://perma.cc/TAM2-Q3BX (noting that Georgia's "death warrant period is the shortest in the nation").

[4] Twenty-three states do not have the death penalty at all, so they would obviously not have procedures governing *Ford* claims. Death Penalty Info. Ctr., *State by State* (2025), https://perma.cc/4K9M-PCPG.

a judge must suspend the prisoner's execution when there is "sufficient reason to believe that the [prisoner] is insane," Kan. Stat. § 22-4006(a), and death row prisoners are also allowed to bring a *Ford* claim "at any time prior to execution." *Id.* Texas, too, provides a mandatory stay upon a threshold showing of incompetence. Tex. Code Crim. Proc. art. 46.05(g). In Missouri, the governor *must* call off an execution "if there is not sufficient time . . . for a determination of the [prisoner's] mental condition." Mo. Stat. § 552.060(2). Other states have similar procedural protections in place. *See also* Miss. Stat. § 99-19-57(2) ("If it is found that the [person] is a person with mental illness . . . the court shall suspend the execution of the sentence."); Neb. Rev. Stat. § 29-2537(2) (permitting incompetency claim to be determined prior to an execution, but providing that in the event a date is scheduled, "if necessary, the court shall suspend the execution"); Nev. Rev. Stat. § 176.425(2) (while a litigant may bring a *Ford* claim prior to the scheduling of an execution, if one is brought when a date is scheduled, the judge "may stay the execution" if there is not enough time for the determination); Wyo. Stat. Ann. § 7-13-902 ("If the court finds . . . there is reasonable cause to believe that the [person] does not have the requisite mental capacity, the court shall stay the execution."). In still other states, a prisoner need not wait until an execution date is set in order to raise a *Ford* claim; in other words, there are effectively no time constraints on the litigation of the claim. *See* Ala. Code § 15-16-23; Ariz. Stat. § 13-4022; La. Rev. Stat. § 15:567.1; Or. Rev. Stat. § 137.463. And a handful of states allow prisoners to bring claims of "permanent incompetence" at any time. Cal. Penal Code § 3701.

Thus, Respondents' allegation of cherry-picking is simply false. Respondents point to no state that imposes as compressed a timeframe as Georgia, and without a standard for entering a stay. A comparison to other states is highly relevant. *See Moore*, 581 U.S. at 18–19 (incorporating comparative analysis into assessment of Eighth Amendment challenge to state's procedures for adjudicating intellectual disability claims); *Hall*, 572 U.S. at 714 (same); *Cooper*, 517 U.S. at 360–62 (incorporating comparative analysis of state statutes into assessment of due process challenge to state statutory burden of proof for trial incompetency). Georgia's departure from the minimum due process protections *Ford* and *Panetti* require in assessing competency-to-be-executed claims demand this Court's intervention to avoid a constitutionally unacceptable risk of wrongful execution of an incompetent prisoner.

III. RESPONDENTS' SPECULATION THAT A STAY WILL BE GRANTED "AS A MATTER OF COURSE" IS UNFOUNDED.

Respondents further underscore both their ripeness and merits arguments by baldly asserting that "Georgia's framework . . . presumes a stay will be entered as necessary under *Ford* and *Panetti*," but neither the text of the ECA nor Georgia precedent supports such a conclusion. Br. in Opp'n 18. Notably, Respondents have thus far refused to consent in advance to a stay request in Mr. Heidler's case, nor would it be within their authority to grant a stay.[5] Respondents are thus the ones

[5] Indeed, Respondents took a much more cavalier position in the trial court on the necessity of a stay in these circumstances, arguing that the claim could be handled expeditiously, including on the same day as the scheduled execution, if needed. As an example for the court, Respondents' counsel argued, "We had a case where they filed

relying on a "nonexistent statute," Br. in Opp'n 8, in assuming that a stay will be granted in connection with a *Ford* claim "as a matter of course." Br. in Opp'n 4. As set forth above, the ECA never dictates any standard under which the trial court must grant a stay in consideration of a pending *Ford* claim, in contrast to many other states' procedures. In fact, the ECA's sole reference to stays of execution is in the context of *denying* a *Ford* application: "If the court denies the application . . . *any* stay presently entered under this article shall be dissolved." O.C.G.A. § 17-10-68(e) (emphasis added). This hardly gives rise to the guarantee of a stay; to the contrary, the statute's use of the word "*any*" refutes the notion that a stay will be granted in all cases where a *Ford* claim is raised.

Beyond the statutory language, it would be inappropriate to presume a stay as a "matter of course" when Georgia courts have never before confronted this issue head on. Along those lines, Respondents criticize Mr. Heidler for the lack of data on how Georgia courts have handled *Ford* claims, and his presentation instead of other data illustrating the common practice of Georgia courts denying stays on other claims brought by death-sentenced prisoners on the eve of execution. Br. in Opp'n 21. Given the rarity of competency-to-be-executed claims in the state, however, the absence of data comes as no surprise, and Respondents do not point this Court to any case in which a Georgia court has granted a stay of execution based on a *Ford* claim.

[a claim] at 4:30 on the afternoon of the execution. We got it from the superior court, to the Georgia Supreme Court, to the U.S. Supreme Court[.] Six hours. Done." Hr'g Tr. 88:15–20, *Heidler v. Carr*, No. 24-CV8914 (DeKalb Cty. Sup. Ct. Nov. 18, 2024).

Respondents highlight a recent stay entered by another Georgia trial court, and upheld by the Georgia Supreme Court, relating to a non-*Ford* claim as evidence demonstrating Georgia courts' "evident willingness" to grant stays on "tight timelines." Br. in Opp'n 17. But that one case goes against the broader pattern in Georgia courts: In fact, stays are rarely granted in the state, consistent with this Court's precedent that a stay of execution is an "equitable remedy." *See Hill*, 547 U.S. at 584. What's more, in that very same case, currently on appeal to the Georgia Supreme Court, Respondents are urging the court to reign in eve-of-execution litigation by limiting the availability of stays of execution for claims which "could have been brought earlier[.]" Br. of Appellant 36–37, *State v. Humphreys*, No. S27A0243 (Ga. Sup. Ct. Oct. 1, 2026) (citing *Nance v. Ward*, 597 U.S. 159, 174 (2022)).[6] Since 2010,[7] counsel is aware of only one stay of execution granted by the Butts County Superior Court.[8] The fact that other Georgia courts have granted stays in limited situations says nothing about what they will do when presented with a

[6] *See also* Reply Br. of Appellant 29, *State v. Humphreys*, No. S27A0243 (Ga. Sup. Ct. Oct. 26, 2026) ("Enough is enough. Humphreys's request for a stay should have been swiftly dismissed *regardless of his entitlement to a hearing under the Act*, and without the threat of a lawless snap proceeding on the merits." (emphasis added)).

[7] The Death Penalty Information Center began publishing data on stays of execution across the country in 2010. *See* Death Penalty Info. Ctr., *Outcomes of Death Warrants* (Nov. 2, 2026) https://perma.cc/J46Z-4Z59 (navigate to the relevant year).

[8] The Butts County Superior Court adjudicates the majority of warrant litigation in the state because Georgia's death row is located there, and state law provides for habeas actions to be brought in the county of confinement. O.C.G.A. § 9-14-43. It is also where a condemned prisoner must raise a *Ford* claim. O.C.G.A. § 17-10-63(a).

Ford claim with a threshold showing of incompetence—and the statute is devoid of any guidance.

Because Respondents' assertion that a stay of execution will be granted "as a matter of course" is so completely unfounded, this Court's intervention is urgently needed—before a death-sentenced prisoner challenging his competency to be executed, like Mr. Heidler, faces an unacceptable risk of wrongful execution because Georgia's statutory framework does not comport with the constitutional requirements of *Ford* and *Panetti*. Br. in Opp'n 4. This Court has made clear that state procedures must comport with "fundamental fairness." *Ford*, 477 U.S. at 424–25 (Powell, J., concurring). A death row prisoner seeking to demonstrate his incompetency to be executed has not "lost the protection of the Constitution altogether," *Panetti*, 551 U.S. at 948–49 (citation modified), and must be provided a "constitutionally acceptable procedure," *Ford*, 477 U.S. at 424–27 (Powell, J., concurring). This case does not call for the Court to define the full contours of those constitutional minimums but to recognize simply that Georgia does not meet them.

CONCLUSION

The petition should be granted.

Respectfully submitted,

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