

IN THE
Supreme Court of the United States

In re JAMAAL HOWARD,
Petitioner.

On Original Petition for Writ of Mandamus
to the United States Court of Appeals for the Fifth Circuit

**REAL PARTY IN INTEREST'S BRIEF IN OPPOSITION TO
PETITION FOR A WRIT OF MANDAMUS AND
MOTION FOR STAY OF EXECUTION**

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CAPITAL CASE QUESTIONS PRESENTED

Petitioner Jamaal Howard was convicted and sentenced to death in 2001 for the murder of convenience store clerk Vickie Swartout. His mandamus petition—raised a quarter of a century later and a mere *day* before his execution—seeks to conduct statutorily foreclosed review of the Fifth Circuit’s decision denying Howard authorization to file an impermissibly successive and time-barred intellectual disability claim. This claim has been rejected by the state courts and was also withdrawn by Howard himself as unsupportable in his initial federal habeas proceedings.

AEDPA¹, the governing statute in this matter, is intended to prevent perpetual piecemeal litigation and gamesmanship during federal death penalty review. Howard’s mandamus petition therefore presents the following questions for review:

1. Whether Howard can use a mandamus petition to circumvent the statutory limits that Congress has imposed on federal habeas courts?
2. Whether Howard’s claim that the Fifth Circuit erred by applying a time bar is moot because the Fifth Circuit also determined that Howard’s intellectual disability claim is impermissibly successive?
3. Whether Howard has shown that he has a clear and indisputable right to a writ of mandamus directing the lower court to reverse its holding that Howard is barred by successiveness and limitations when there is circuit-level precedent supporting both decisions?
4. Whether Howard has no adequate remedy besides mandamus when this Court’s precedent holds that an original writ is available and when he is entitled to a *prima facie* merits review of his intellectual disability claim by the Texas Court of Criminal Appeals (CCA)?
5. Whether equity precludes a stay of execution because Howard is dilatory, has “unclean hands,” and his request for mandamus relief is clearly meritless?

¹ The Antiterrorism and Effective Death Penalty Act of 1996.

LIST OF ALL PROCEEDINGS

State v. Howard, No. 15114 (356th Dist. Ct. Hardin Cty., Tex. Apr. 25, 2001) (conviction of capital murder and sentence of death)

Howard v. State, No. AP-74,138 (Tex. Crim. App. Oct. 13, 2004) (direct appeal opinion affirming conviction and sentence)

Ex parte Howard, WR-77,901-01 (Tex. Crim. App. Dec. 12, 2012) (denying relief from initial state habeas application)

Howard v. Director, No. 1:13-cv-256 (E.D. Tex. Sept. 20, 2019) (denying federal habeas relief)

Howard v. Davis, No. 19-70018 (5th Cir. May 11, 2020) (denying certificate of appealability)

Howard v. Lumpkin, No. 20-5996 (Jan. 11, 2021) (denying certiorari following federal habeas review)

Ex parte Howard, WR-77,906-02 (Tex. Crim. App. Oct. 5, 2026) (denying motion for stay of execution and dismissing subsequent state habeas application as an abuse of the writ).

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INTRODUCTION

Howard is **scheduled to be executed sometime after 6:00 P.M. on October 7, 2026**. He was convicted and sentenced to death in 2001 for the murder of convenience store clerk Vickie Swartout, after he shot her in the chest and then reached over her dying body to steal \$114.00 and a carton of cigarettes. For the next fifteen years, Howard would assert and develop his *Atkins*² claim on direct appeal and in postconviction proceedings. But when further (post-*Moore I*³) testing revealed that he does not have an intellectual disability, Howard abandoned his *Atkins* claim in federal district court. His federal proceedings carried on for another three-and-a-half years, and then, five-and-a-half more years passed with no litigation. *See Howard v. Lumpkin*, 592 U.S. 1180 (2021).

Finally, one week before his scheduled execution, Howard filed a subsequent habeas writ in the CCA with yet another iteration of his *Atkins* claim, which the CCA rejected. *Ex parte Howard*, No. 77,906-02 (Tex. Crim. App. Oct. 5, 2026). And a mere *six* days before his scheduled execution, Howard belatedly moved the Fifth Circuit for authorization to file a successive federal habeas petition raising an intellectual disability claim. Appendix (App.) B & C.

² *Atkins v. Virginia*, 536 U.S. 304 (2002).

³ *Moore v. Texas*, 581 U.S. 1 (2017).

Howard sought authorization despite *withdrawing* his intellectual disability claim after raising it on initial federal habeas review.⁴ DE 74⁵ at 1–3. In dispensing with his claim, Howard explained that defense team members had concluded that “an ID claim was not feasible” and that “Howard does not have Intellectual Disability.” *Id.*

Now, *one* day before his execution, Howard has filed a dilatory petition for a writ of mandamus and a related application for a stay of execution. Petition for Writ of Mandamus (Pet.) and Application for Stay of Execution (Stay Appl.). In his petition, Howard asserts he is entitled to a writ of mandamus because the Fifth Circuit erred by applying a time bar to his claim under 28 U.S.C. § 2244(d)(1) and finding that his claim was impermissibly successive under § 2244(b)(1).

⁴ Howard’s claim was adjudicated first by the CCA on direct appeal, *Howard v. Texas*, 153 S.W.3d 382, 386–89 (Tex. Crim. App. 2004), and then again by the CCA in initial state habeas proceedings. *See* Supp. SHCR-01 at 22, ¶¶ 19–25; *Ex parte Howard*, No. 77,906-01, 2012 WL 6200688, at *1 (Tex. Crim. App. 2012) (adopting state habeas court’s findings). The federal district court, the Fifth Circuit, and the CCA have all also reviewed extensive briefing on Howard’s *Atkins* claim. Before Howard abandoned it, the federal district court considered his claim in the context of several of Howard’s motions for funding and subsequent complaints of underfunding. *See Howard v. Director*, No. 1:13-cv-256, 2019 WL4573640, at **2, 38–40 (E.D. Tex. 2019). And the CCA passed over Howard’s most recent claim when it dismissed it as an abuse of the writ, which constitutes an adjudication on the merits. *See Busby v. Davis*, 925 F.3d 699, 709 (5th Cir. 2019); *Blue v. Thaler*, 665 F.3d 647, 653–54 (5th Cir. 2011).

⁵ “DE” refers to docket entries on the federal habeas court’s docket sheet, available on PACER in Eastern District cause number 1:13-cv-256.

But Howard's petition fails for four reasons. *First*, this appeal is plainly foreclosed by statute and rule. This Court's rules explain that a writ of mandamus must be in aid of this Court's appellate jurisdiction. Sup. Ct. R. 20.1. But this Court lacks appellate jurisdiction pursuant to 28 U.S.C. § 2244(b)(3)(E), which makes authorization decisions unappealable. And even if jurisdiction existed, this mandamus action would constitute an unseemly end run around AEDPA's restrictions and Congress's intent.

Second, Howard concedes that the Fifth Circuit found his claim impermissibly successive in addition to time-barred. Pet.13–14. As such, his request for the Court to resolve whether limitations may be applied in the authorization context is moot. Or, at very least, his case presents a poor vehicle for the question since the resolution will afford Howard no relief. This Court does not issue advisory opinions.

Third, Howard is required to show that his right to relief is clear and indisputable. *In re Blodgett*, 502 U.S. 236, 241 n.1 (1992) (Stevens, J., concurring). But Howard contends that multiple circuits apply time bars in the authorization context. Pet.2–3. And the Fifth Circuit noted supporting Seventh Circuit precedent in making its successive determination. App.A at 7 n.8 (citing *Felder v. McVicar*, 113 F.3d 696, 698 (7th Cir. 1997)). Given the existence of contrary precedent at the circuit level and no controlling precedent from this Court, Howard hardly shows clear and indisputable entitlement to relief.

Fourth, this Court's rules also explain that mandamus requires that adequate relief cannot be granted in any other form and in any other Court. Sup. Ct. R. 20.1. Yet, while this Court has explained that it will be "inform[ed]" by AEDPA's restrictions, this Court retains its original writ jurisdiction. *Felker v. Turpin*, 518 U.S. 651, 663 (1996). Additionally, the CCA conducts a prima facie review of intellectual-disability claims when they are raised on subsequent writs with no procedural limitation based on availability. *Busby*, 925 F.3d at 709. There is no statute of limitations for subsequent state habeas applications in Texas either. Howard may thus present unlimited subsequent writs raising intellectual disability to the CCA and obtain a prima facie merits review each time. And any of these may lead to an authorized subsequent proceeding, evidentiary development, and eventual habeas relief.

Finally, Howard's request for a stay is meritless. As the Fifth Circuit explained:

Howard acted with unclean hands. By waiting until the eleventh hour to file his application and motion—when he had the opportunity to file these motions years before—Howard afforded this court with minimal time to respond to his arguments. And by moving at the eleventh hour, Howard manufactured a sense of urgency that could have been averted by an earlier filing.

App.A at 6.

The Fifth Circuit then concluded:

Howard is not entitled to a stay of execution. He has no likelihood of success on the merits. His behavior weighs against this court's

granting him the equitable remedy of a stay. And the mere speculative possibility of the Supreme Court’s holding to the contrary proves insufficient to warrant a stay.

. . .

And because a stay is an equitable remedy, the equitable defenses of laches and unclean hands apply.

App.A at 8–9 (internal citation omitted).

This Court has reiterated time and again that “[l]ast-minute stays should be the extreme exception, not the norm[.]” *Bucklew v. Precythe*, 587 U.S. 119, 150 (2019); *see also Barr v. Lee*, 591 U.S. 979, 981 (2020):

“[T]he last-minute nature of an application” that “could have been brought” earlier, or “an applicant’s attempt at manipulation,” “may be grounds for denial of a stay.” [*Hill v. McDonough*, 547 U.S. 573, 584 (2006)] (internal quotation marks omitted). . . . If litigation is allowed to proceed, federal courts “can and should” protect settled state judgments from “undue interference” by invoking their “equitable powers” to dismiss or curtail suits that are pursued in a “dilatory” fashion or based on “speculative” theories. [*Hill*, 547 U.S. at 584–85].

Bucklew, 587 U.S. at 150 (footnote omitted).

By delaying until the last minute to raise his claim, Howard fails to make the requisite showing to justify interference by the federal courts. Twenty-six years have passed since Howard murdered Vickie Swartout. The ensuing delay in carrying out Howard’s sentence should weigh heavily in the evaluation of this application for a stay, and justice for Howard’s victims should be denied no longer. Simply put, “[t]he people of [Texas], the surviving victims of

[Howard]’s crimes, and others like them deserve better.” *Id.* at 149. The strong interest of the State in the timely enforcement of Howard’s sentence is not outweighed by Howard’s interest in one more court’s review of a claim whose merits have been adjudicated or considered multiple times to the same end. Howard thus fails to demonstrate that he is entitled to a stay of execution under this Court’s precedent. Accordingly, Howard’s request for a stay should be denied.

STATEMENT OF THE CASE

I. Facts of the Crime

The CCA summarized the facts as follows:

[Howard] stole a gun from his grandfather the night before the murder and hid it. Despite his family’s efforts to persuade him to turn over the gun, [Howard] refused. The following morning, [Howard] retrieved the gun and walked several blocks from his house to the Chevron store. After peering in the windows, he entered the store, went into the secured office area where the victim was sitting, cocked the gun, and shot the victim in the chest. [Howard] stole \$114.00 from the cash register and reached over the dying victim to steal a carton of cigarettes before leaving. The offense was recorded on videotape. [Howard] denied committing the offense until he was told it was videotaped. He told the officer who took his statement that he was not sorry for committing the offense.

Howard, 153 S.W.3d at 383–84.

II. Punishment Evidence

The CCA summarized the evidence elicited at Howard’s punishment trial:

. . . [T]he State presented evidence that [Howard] demonstrated a disregard for authority and school rules despite the continued efforts of his mother and educators. During one incident, [Howard] punched a pregnant teacher in the chest with his fist when she asked him to return to his seat. When [Howard] was assigned to an alternative school, he refused to comply with its rules and standards, and he was defiant and disruptive. The State also presented evidence of [Howard's] possession of controlled substances, his fighting with police officers and resisting arrest, his committing several burglaries as a juvenile, and his fighting with other inmates. Dr. Edward Gripon testified for the State that [Howard] was not suffering from schizophrenia, but rather was suffering from antisocial personality disorder.

Id.

III. Conviction and Postconviction Proceedings

After one Texas jury determined Howard was competent to stand trial, 32 RR 134, another convicted Howard of capital murder, 3 CR⁶ 578; 24 RR 53–55. Pursuant to the jury's answers to Texas's punishment-phase special issues, the trial court sentenced Howard to death. 3 CR 578; 27 RR 58–64. On direct appeal, the CCA rejected Howard's *Atkins* claim, *inter alia*, to uphold his conviction and sentence. *Howard*, 153 S.W.3d at 383–84.

While his direct appeal was pending, Howard filed a state application for a writ of habeas corpus raising an *Atkins* claim again. SHCR-01 at 21–123. The

⁶ The Director employs the following citation conventions: “CR” refers to the clerk’s record of pleadings and documents filed during Howard’s capital murder trial. “RR” refers to the reporter’s record of transcribed trial proceedings. “DX” refers to the defense’s trial exhibits. “SHCR–01” refers to the clerk’s record of pleadings and documents filed during Howard’s initial state habeas proceeding. All references are preceded by volume number and followed by page number where applicable.

trial court issued findings of fact and conclusions of law recommending that the CCA deny relief. Supp. SHCR-01 at 20–38. And on December 12, 2012, the CCA did. *Ex parte Howard*, 2012 WL 6200688, at *1.

On December 12, 2012, Howard filed a federal habeas petition in the district court, again raising his *Atkins* claim. DE 16. Over the next four-and-a-half years, Howard would request \$70,912.50 in funding to develop the claim that he now says was never feasible at that time. DE 14 (\$7,500); DE 23 (\$14,000) (DE 44 (\$8,000); DE 50 (\$10,062.50); DE 66(\$5,000); DE 71 (\$5,000); DE 74 (\$21,350). Having been granted \$36,000 of his ask, Howard was authorized to retain a team of three *Atkins* experts. *See* DE 75 at 2.

In 2015, the team’s psychiatrist concluded, “to a reasonable degree of medical certainty,” that Howard was intellectually disabled, albeit without administering any IQ or adaptive-deficit tests. DE 76-14. But with the onboarding of two additional experts who were qualified to administer the tests necessary to sustain an *Atkins* claim, Howard was finally tested. *See* DE 44. And on September 12, 2017, the defense team finally revealed the results: “Howard does not have intellectual disability.” *See* DE 74 at 2–3.

Two years later, the district court issued an order denying relief on Howard’s remaining claims. *Howard*, 2019 WL 4573640. Howard filed an application for certificate of appealability (COA), which the Fifth Circuit

denied, *Howard v. Davis*, 959 F.3d 168 (5th Cir. 2020), and this Court denied certiorari. *Howard*, 592 U.S. at 1180.

On March 26, 2026, the 356th District Court of Hardin County, Texas, scheduled Howard for execution on this Wednesday, October 7, 2026. Approximately half a year after the 356th District Court issued its order—and days before his scheduled execution—Howard filed a subsequent writ in the CCA reasserting the *Atkins* claim that he had abandoned in 2017, along with a motion to stay his execution. While proceedings were pending in the CCA, Howard took to federal court. On October 1, 2026, he filed in the Fifth Circuit a motion for authorization to file a successive *Atkins* petition and a motion to stay his execution. App.B & C. On October 5, 2026, the Fifth Circuit denied both in a published order. App.A.

Later that afternoon, the CCA followed suit, dismissing Howard’s subsequent application as an abuse of the writ and denying his motion for stay. And finally, on the eve of his execution, Howard filed a petition for writ of certiorari in this Court and the instant mandamus petition, along with accompanying motions to stay his execution. The instant opposition to mandamus follows.

REASONS FOR DENYING MANDAMUS

Supreme Court Rule 20.1 provides:

Issuance by the Court of an extraordinary writ authorized by 28 U.S.C. §1651(a) is not a matter of right, but of discretion sparingly exercised. To justify the granting of any such writ, the petition must show that the writ will be in aid of the Court's appellate jurisdiction, that exceptional circumstances warrant the exercise of the Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other court.

Thus, “[t]he remedy of mandamus is a drastic one, to be invoked only in extraordinary situations.” *Kerr v. United States District Court for Northern District of Cal.*, 426 U.S. 394, 402 (1976). A petitioner must additionally demonstrate that his “right to issuance of the writ is ‘clear and indisputable.’” *Id.* at 403; *see also Bankers Life & Casualty Co. v. Holland*, 346 U.S. 379, 384 (1953) (quoting *United States v. Duell*, 172 U.S. 576, 582 (1899)).

I. Howard’s Mandamus Petition Is an Improper Attempt to Circumvent AEDPA’s Restrictions on Authorization Appeals.

Howard is not entitled to the extraordinary relief he seeks because his original petition is, in effect, an effort to circumvent AEDPA’s restriction on successive habeas petitions. Section 2244(b)(3)(E) provides: “The grant or denial of an authorization by a court of appeals to file a second or successive application shall not be appealable and shall not be the subject of a petition for rehearing or for a writ of certiorari.” Here, the Fifth Circuit denied

authorization because Howard is both successive under § 2244(b)(1) and because he was unequivocally barred by limitations under § 2244(d). App.A at 2, 5, 8. Knowing he is statutorily precluded from appealing the Fifth Circuit’s denial of authorization through a petition for writ of certiorari, Howard has sought relief through a mandamus petition. Howard’s attempt to circumvent AEDPA should not be condoned.

II. Howard’s Mandamus Petition Will Yield Him No Relief.

Howard’s question presented is “[w]hether a court of appeals, ruling on a motion for authorization under 28 U.S.C. § 2244(b)(3), may deny authorization on the ground that the proposed application is untimely under 28 U.S.C. § 2244(d).” Pet.i. However, the Fifth Circuit did not just find that Howard was time-barred. It also found that Howard’s claim could not be authorized because it had been previously raised under § 2244(b)(1). App.A at 2, 6, 8. Howard acknowledges as much. Pet.13–14. Accordingly, Howard will secure no relief even if the Court finds that the Fifth Circuit erroneously conducted a time bar analysis.

Howard asserts that his petition is not “futile” because the Fifth Circuit’s § 2254(b)(1) analysis was incorrect. Pet.13–14. However, that argument runs even more squarely headlong into § 2244(b)(3)(E)’s prohibition on authorization appeals. Howard also contends that the Fifth Circuit’s limitations decision somehow infected or tainted its successiveness holding,

Pet.14, but this argument lacks any support in the opinion’s text. While the Fifth Circuit did not hesitate to find that Howard was time-barred and dilatory—i.e., lacking “clean hands”—the court’s analysis is focused and sober and does not somehow rely on limitations or otherwise allow the court’s displeasure at Howard’s blatant dilatoriness to influence its legal analysis.

III. Howard Fails to Show a Clear and Indisputable Right to Relief.

Howard is required to show that his right to relief is clear and indisputable. *Kerr*, 426 U.S. at 403. In a misguided attempt to allege a circuit split, Howard explains: “The Sixth and Tenth Circuits read the statute as written and leave limitations to the district court. . . . The Fifth Circuit, along with the Fourth and the D.C. Circuits, does not.” Pet.2–3 (citing *Harjo v. Harding*, No. 25-5023, 2025 WL 1499424, at *4 (10th Cir. May 27, 2025); *In re McDonald*, 514 F.3d 539, 543–44 (6th Cir. 2008); *In re Burton*, 111 F.4th 664, 667 (5th Cir. 2024); *In re Williams*, 759 F.3d 66, 69 (D.C. Cir. 2014); *In re Vassell*, 751 F.3d 267, 270–71 (4th Cir. 2014)). But a circuit split hurts rather than helps Howard. Relief cannot be clear and indisputable if the circuits are split.

The same goes for the Fifth Circuit’s successiveness determination. The Fifth Circuit noted supporting Seventh Circuit precedent in making its successive determination. App.A at 7 n.8 (citing *Felder*, 113 F.3d at 698).

Again, the existence of the contrary circuit precedent demonstrates that Howard's right to relief is very much disputed.

IV. Howard Has Other Avenues for Relief.

Mandamus requires that adequate relief cannot be granted in any other form and in any other court. Sup. Ct. R. 20.1. Howard's ultimate goal is a finding that he is categorically ineligible for the death penalty due to his intellectual disability—i.e., habeas corpus relief. This Court retains its original jurisdiction to grant writs of habeas corpus. *Felker*, 518 U.S. at 663; Sup. Ct. R. 20.4. This Court's doors remain open to Howard.

Moreover, the CCA conducts a prima facie merits review of intellectual-disability claims when they are raised in subsequent writs, *Busby*, 925 F.3d at 709, with no apparent procedural limitations based on availability or statute of limitations. Howard will receive a prima facie merits review each time he raises a subsequent state writ with this claim. And if he is successful at making a prima facie case, the CCA will authorize subsequent state habeas proceedings where Howard can obtain relief. The fact that the CCA has not authorized a subsequent writ does not mean that state court relief cannot be had. Rather, it simply means Howard's claim is so lacking in merit that he cannot even satisfy a prima facie standard.

V. Howard Is Not Entitled to a Stay of Execution.

A. Standard of review

A stay of execution is an equitable remedy. *Hill*, 547 U.S. at 584. “It is not available as a matter of right, and equity must be sensitive to the State’s strong interest in enforcing its criminal judgments without undue interference from the federal courts.” *Id.* (citing *Nelson v. Campbell*, 541 U.S. 637, 649–50 (2004)). “It is well-established that petitioners on death row must show a “reasonable probability” that the underlying issue is “sufficiently meritorious” to warrant a stay and that failure to grant the stay would result in “irreparable harm.” *Barefoot v. Estelle*, 463 U.S. 880, 895 (1983), *superseded on other grounds by* 28 U.S.C. § 2253(c)(2). To demonstrate an entitlement to a stay, a petitioner must demonstrate more than “the absence of frivolity” or “good faith” on the part of petitioner. *Id.* at 892–93. Rather, the petitioner must make a substantial showing of the denial of a federal right. *Id.* In a capital case, a court may properly consider the nature of the penalty in deciding whether to grant a stay, but “the severity of the penalty does not in itself suffice.” *Id.* at 893. The State’s “powerful and legitimate interest in punishing the guilty,” as well as its interest in finality, must also be considered, especially in a case such as this where the State and victims have for years borne the “significant costs of federal habeas review.” *Herrera v. Collins*, 506 U.S. 390, 421 (1993) (O’Connor, J., concurring); *Calderon v. Thompson*, 523 U.S. 538, 556 (1998) (both the State

and the victims of crime have an important interest in the timely enforcement of a sentence).

Thus, in deciding whether to grant a stay of execution, the Court must consider four factors: “(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.” *Nken v. Holder*, 556 U.S. 418, 434 (2009) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)).

In deciding this issue yesterday, the Fifth Circuit found:

Howard is not entitled to a stay of execution. He has no likelihood of success on the merits. His behavior weighs against this court’s granting him the equitable remedy of a stay. And the more speculative possibility of a favorable Supreme Court ruling proves insufficient to warrant a stay.

App.A at 8–9.

B. Howard has not made a strong showing that he will succeed on the merits.

Given the dilatory and meritless nature of his petition, Howard fails to show that there is any significant possibility that the Court will grant mandamus. When the Fifth Circuit reviewed this issue yesterday, it explained: “Howard has not demonstrated a likelihood of success on the merits. As aforementioned, his successive habeas petition is barred by the statute of

limitations. And it is barred by the fact that it makes a previously presented claim.” App.A at 9. As demonstrated above and found by the lower court, Howard’s failure to offer a sound claim for relief supports the denial of a stay of execution.

C. Howard is unlikely to suffer irreparable harm.

In a capital case, a court may properly consider the nature of the penalty in deciding whether to grant a stay⁷, but “the severity of the penalty does not in itself suffice.” *Barefoot*, 463 U.S. at 893. Howard cannot demonstrate a likelihood that he will suffer irreparable harm if a stay of execution is not granted. His claim has been repeatedly raised in the federal and state courts, with no relief forthcoming.

D. The State and the public have a strong interest in seeing the state court judgment carried out.

The State and crime victims have a “powerful and legitimate interest in punishing the guilty.” *Calderon*, 523 U.S. at 556 (citation omitted). And “[b]oth the State and the victims of crime have an important interest in the timely enforcement of a [death] sentence,” *Bucklew*, 587 U.S. at 149 (quotation omitted); see *Nelson*, 541 U.S. at 650 (“a State retains a significant interest in meting out a sentence of death in a timely fashion”); *Gomez v. United States*

⁷ The Fifth Circuit did consider this factor in Howard’s favor, but it was the only one. App.A at 10.

Dist. Court, 503 U.S. 653, 654 (1992) (per curiam) (“[e]quity must take into consideration the State’s strong interest in proceeding with its judgment”). Once post-conviction proceedings “have run their course . . . finality acquires an added moral dimension.” *Calderon*, 523 U.S. at 556. “Only with an assurance of real finality can the State execute its moral judgment in a case” and “the victims of crime move forward knowing the moral judgment will be carried out.” *Id.* The State should be allowed to pursue its “strong interest in enforcing its criminal judgments without undue interference from the federal courts.” *Crutsinger v. Davis*, 936 F.3d 265, 273 (5th Cir. 2019) (citations and internal quotations omitted).

Indeed, Howard has already passed through the state and federal collateral review process. The public’s interest is not advanced by postponing Howard’s execution, and the State opposes any action that would cause further delay. *Martel v. Clair*, 565 U.S. 648, 662 (2012) (“Protecting against abusive delay *is* an interest of justice.”) (emphasis in original).

Finally, it is no secret that “capital petitioners might deliberately engage in dilatory tactics to prolong their incarceration and avoid execution of a sentence of death.” *Rhines v. Weber*, 544 U.S. 269, 277–78 (2005). The fact that this claim was not raised until after an execution was set must inform the Court’s analysis. “A court considering a stay must also apply ‘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.” *Hill*, 547 U.S. at 584 (quoting *Nelson*, 541 U.S. at 650). Here, Howard’s claim is meritless and does not warrant staying his execution. “And because . . . Howard acted with laches and unclean hands . . . [h]is inequitable behavior further disfavors a stay.” App.A at 9–10.

CONCLUSION

For the reasons set forth above, Howard’s petition for a writ of certiorari should be denied. Moreover, the State’s strong interest in the timely enforcement of a sentence is not outweighed by the unlikely possibility that Howard’s petition will be granted. Thus, his motion for a stay of execution should be denied as well.

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