Capital Case No. 26A623

IN THE
SUPREME COURT OF THE UNITED STATES

JESSE GUARDADO,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

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

RESPONSE TO APPLICATION FOR STAY OF EXECUTION
EXECUTION SCHEDULED FOR NOVEMBER 5, 2026, AT 6:00 P.M.

Jesse Guardado, a Florida prisoner under an active death warrant with an execution scheduled for November 5, 2026, asks this Court to stay his execution for a heinous murder he committed in 2004 while it considers whether to grant certiorari on two questions challenging Florida's clemency procedures under minimal due process. Neither question he presents deserves a stay under *Barefoot v. Estelle*, 463 U.S. 880, 895 (1983) as modified by *Bucklew v. Precythe*, 587 U.S. 119, 149–51 (2019). This Court should deny certiorari and then deny the stay.

Execution stays are not granted as "a matter of course." *Hill v. McDonough*, 547 U.S. 573, 583–84 (2006). Instead, 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).

The People of Florida, as well as the surviving victims, "deserve better" than the "excessive" delays that now typically occur in capital cases, including this one. *Bucklew*, 587 U.S. at 149. "Both the State and the victims of crime have an important interest in the timely enforcement of a sentence." *Hill*, 547 U.S. at 584. And where, as here, federal habeas "proceedings have run their course and a mandate denying relief has issued, finality acquires an added moral dimension." *See Calderon v. Thompson*, 523 U.S. 538, 556 (1998). Courts must "police carefully" against last-minute claims used "to interpose unjustified delay." *Bucklew*, 587 U.S. at 150. Last-minute stays of execution should be "the extreme exception, not the norm." *Barr v. Lee*, 591 U.S. 979, 981 (2020) (vacating an execution stay)

Guardado's stay application must establish at least three elements to receive a stay here: (1) a reasonable probability that the Court would vote to grant certiorari; (2) a significant possibility of reversal; and (3) a likelihood of irreparable injury to the applicant in the absence of a stay. *Barefoot*, 463 U.S. at 895. *Bucklew* modified this test and requires Guardado to show an additional two elements: (4) that he has not pursued relief in dilatory fashion, and (5) his underlying claims are not based on a speculative theory and simply designed to stall for time. 587 U.S. at 151 ("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.") (cleaned up; emphases added).

Guardado needed to make "a clear showing" on all these elements to obtain a stay. *See Hill*, 547 U.S. at 584. But he carried that heavy burden on none.

Dilatory

His dilatory conduct alone precludes a stay here. *See Bucklew*, 587 U.S. at 151 (explaining constitutional rights pursued in dilatory fashion do not merit an execution stay). Guardado could have challenged Florida's clemency process in general decades ago and Governor DeSantis' alleged blanket policy as early as 2021. Florida has procedures for him to start clemency and challenge it much earlier. *Sullivan v. Askew*, 348 So. 2d 312, 313–14, 316 (Fla. 1977); § 940.03, Fla. Stat. His dilatory failure to invoke those state law procedures and raise his challenges pre-warrant precludes a stay now. *See Dunn v. Price*, 587 U.S. 929, 929 (2019) (vacating a stay because the capital defendant unduly delayed raising his claim); *Dunn v. Ray*, 586 U.S. 1138, 1138 (2019) (same).

Speculative

Both questions Guardado presents are also "speculative" attacks on "settled precedent" that do not deserve an execution stay. *See Bucklew*, 587 U.S. at 149, 151. Those questions try to enlarge the minimal due process he has under the long-settled precedent of *Ohio Adult Parole Authority v. Woodard*, 523 U.S. 272, 289 (1998) (O'Conner, J., concurring). Neither situation Justice O'Conner suggested in *Woodard*

occurred in this case and this Court has *never* found a violation of clemency related due process. *See Pizzuto v. Valley*, 177 F.4th 1042, 1052–54 (9th Cir. 2026). Indeed, outside two distinguishable, decades-old circuit cases,[1] neither have the federal appellate courts applying *Woodard*'s holding to clemency-related due process claims over the past twenty-eight years.[2] That wall of cases epitomizes just how speculative

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[1] *Young v. Hayes*, 218 F.3d 850, 852–54 (8th Cir. 2000); *Wilson v. U.S. Dist. Ct. for N. Dist. of California*, 161 F.3d 1185, 1186 (9th Cir. 1998).

[2] *Saunders v. Hall-Long*, No. 20-1957, 2021 WL 5755080, at *1 (3d Cir. Dec. 3, 2021); *Garcia v. Jones*, 910 F.3d 188, 190–91 (5th Cir. 2018); *Tamayo v. Perry*, 553 F. App'x 395, 400–02 (5th Cir. 2014); *Turner v. Epps*, 460 F. App'x 322, 330–31 (5th Cir. 2012); *Roach v. Quarterman*, 220 F. App'x 270, 274–75 (5th Cir. 2007); *Sepulvado v. La. Bd. of Pardons & Parole*, 171 F. App'x 470, 471–73 (5th Cir. 2006); *Lagrone v. Cockrell*, No. 02-10976, 2003 WL 22327519, at *13 (5th Cir. Sept. 2, 2003); *McCowin v. Kent*, 32 F. App'x 126 (5th Cir. 2002); *Moody v. Rodriguez*, 164 F.3d 893, 894 (5th Cir. 1999); *Faulder v. Texas Bd. of Pardons and Paroles*, 178 F.3d 343, 344–45 (5th Cir. 1999); *Bolton v. Dep't of the Navy Bd. for Corr. of Naval Recs.*, 914 F.3d 401, 413 (6th Cir. 2019); *Fautenberry v. Mitchell*, 572 F.3d 267, 271 (6th Cir. 2009); *Workman v. Summers*, 111 F. App'x 369, 370–72 (6th Cir. 2004); *Workman v. Bell*, 245 F.3d 849, 852–83 (6th Cir. 2001); *Bowens v. Quinn*, 561 F.3d 671, 673–76 (7th Cir. 2009); *Lee v. Hutchinson*, 854 F.3d 978, 981–82 (8th Cir. 2017); *Winfield v. Steele*, 755 F.3d 629, 630–31 (8th Cir. 2014) (en banc); *Noel v. Norris*, 336 F.3d 648, 649 (8th Cir. 2003); *Roll v. Carnahan*, 225 F.3d 1016, 1017–18 (8th Cir. 2000); *Pizzuto v. Valley*, 177 F.4th 1042, 1052–54 (9th Cir. 2026); *Creech v. Idaho Comm'n of Pardons & Parole*, 94 F.4th 851, 855–59 (9th Cir. 2024); *Schad v. Brewer*, 732 F.3d 946, 947–48 (9th Cir. 2013); *Wright v. McCurdy*, 299 F. App'x 738, 738–39 (9th Cir. 2008); *Anderson v. Davis*, 279 F.3d 674, 676–77 (9th Cir. 2002); *Gardner v. Garner*, 383 F. App'x 722, 724–28 (10th Cir. 2010); *Duvall v. Keating*, 162 F.3d 1058, 1060–62 (10th Cir. 1998); *Humphreys v. Comm'r, Ga. Dep't of Corr.*, 161 F.4th 1300, 1311–12 (11th Cir. 2025); *Michael v. Gov. of Fla.*, No. 24-11507, 2024 WL 4132922, at *1 (11th Cir. Sept. 10, 2024); *Zack v. Gov. of Fla.*, No. 23-13021, 2023 WL 6376654, at *3–6 (11th Cir. Sept. 26, 2023); *Barwick v. Gov. of Fla.*, 66 F.4th 896, 904–05 (11th Cir. 2023); *Gissendaner v. Comm'r, Ga. Dep't of Corr.*, 794 F.3d 1327, 1330–33 (11th Cir. 2015); *Banks v. Sec'y, Fla. Dep't of Corr.*, 592 F. App'x 771, 773–74 (11th Cir. 2014); *Wellons v. Comm'r, Ga. Dep't of Corr.*, 754 F.3d 1268, 1269 (11th Cir. 2014); *Mann v. Palmer*, 713 F.3d 1306, 1316–17 (11th Cir. 2013); *Valle v. Sec'y, Fla. Dep't of Corr.*, 654 F.3d 1266, 1267–68 (11th Cir. 2011); *Parker v. State Bd. of Pardons & Paroles*, 275 F.3d 1032, 1033–37 (11th Cir. 2001); *Gilreath v. State Bd. of Pardons & Paroles*, 273 F.3d 932, 933–34 (11th Cir.

Guardado's attacks on Florida clemency are. This Court should not stay his execution so he can litigate speculative challenges to Florida's established clemency system.

The Probability of Granting Certiorari Review

The first *Barefoot* element also weighs against Guardado. Four Justices would probably not vote to grant certiorari on either of his questions presented for the reasons fully laid out in the accompanying Brief in Opposition. His Petition lacks clarity; there is no conflict; he unduly delayed his attacks on Florida's clemency process until his warrant issued; he has no clear path to merits relief even if this Court agreed with him; and his attacks on Florida's clemency process lack merit. Given these issues, four Justices are unlikely to vote to grant certiorari here. Guardado therefore fails *Barefoot*'s first element.

Significant Possibility of Reversal

On *Barefoot*'s second element, it is even more unlikely Guardado would obtain reversal on any question he presents. The likely result of any certiorari grant would be to either reaffirm Justice O'Conner's decision about minimal clemency-related due process rights or hold that due process is inapplicable to clemency proceedings. Guardado would not achieve reversal in either case. In the first scenario, this Court would affirm the decision below because the process Guardado received is not remotely close to either flipping a coin and leaving the clemency decision completely to chance or denying him *any* opportunity to participate in clemency.

In the second scenario, Guardado would not even have a cognizable claim.

2001); *Hall v. Barr*, 830 F. App'x 8, 10 (D.C. Cir. 2020).

There is good reason to think that due process rights should not extend into Florida clemency proceedings at all. *See Conn. Bd. of Pardons v. Dumschat*, 452 U.S. 458, 464 (1981) ("Unlike probation, pardon and commutation decisions have not traditionally been the business of courts; as such, they are rarely, if ever, appropriate subjects for judicial review."); *id.* at 467 (Brennan, J., concurring) (explaining there is no liberty interest when the decisionmaker may deny clemency for any constitutionally permissible reason or no reason at all); *Ohio Adult Parole Auth. v. Woodard*, 523 U.S. 272, 279–285 (1998) (plurality opinion) (explaining due process is "inconsistent with the heart of executive clemency, which is to grant clemency as a matter of grace, thus allowing the executive to consider a wide range of factors not comprehended by earlier judicial proceedings and sentencing determinations" and that *Dumschat*'s reasoning applies equally in capital cases). *Cf. Cavazos v. Smith*, 565 U.S. 1, 8-9 (2011) (Executive clemency helps "ensure that justice is tempered by mercy" but it "is not for the Judicial Branch to determine the standards for this discretion. If the clemency power is exercised in either too generous or too stingy a way, that calls for political correctives, not judicial intervention.").

The possibility that Guardado convinces this Court to greatly expand minimal due process under *Woodard* and find a violation here is not significant. Guardado fails *Barefoot*'s second element too.

Irreparable Injury

That brings us to the third *Barefoot* element—irreparable injury. Because Guardado asks for a second shot at clemency rather than any substantive relief, the

irreparable injury analysis focuses on whether he "will be irreparably injured by the denial of the procedures" he seeks. *Humphreys v. Comm'r, Ga. Dep't of Corr.*, 161 F.4th 1300, 1312 (11th Cir. 2025). A pending execution alone does *not* show irreparable harm when the issues the capital defendant presents would not preclude his execution. *Id. See also Ferguson v. Warden, Fla. State Prison*, 493 F. App'x 22, 26 (11th Cir. 2012) (Carnes, J., concurring) ("Executing a defendant who should not be executed inflicts irreparable injury. That is not the claim we have here.").

Guardado failed to show irreparable injury flowing from the denial of a second shot at clemency. The "decision whether to commute a long-term sentence generally depends not simply on objective factfinding, but also on purely subjective evaluations and on predictions of future behavior by those entrusted with the decision." *Conn. Bd. of Pardons v. Dumschat*, 452 U.S. 458, 464 (1981). But speculation a future executive might grant Guardado clemency if this Court agrees with his two questions presented is not enough for irreparable harm. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008) (mere "possibility" insufficient to show irreparable harm); *Koninklijke Philips N.V. v. Thales DIS AIS USA LLC*, 39 F.4th 1377, 1380 (Fed. Cir. 2022) (explaining "mere possibility or speculation of" irreparable "harm is insufficient"). Without a more concrete showing he would be granted clemency if he prevailed, Guardado cannot demonstrate irreparable harm. *See In re Lewis*, 212 F.3d 980, 983 (7th Cir. 2000) (Easterbrook, J.) (holding harmless errors cannot amount to irreparable harm); *Creech v. Idaho Comm'n of Pardons & Parole*, 94 F.4th 851, 855–59 (9th Cir. 2024) (holding any assumed error in clemency harmless).

This Court should not stay an execution to consider giving Guardado a second shot at grace without confidence he would receive it in the end if he prevailed. His failure to make a concrete showing Florida's executive branch would grant clemency apart from the issues he raises means he cannot prove irreparable harm under *Barefoot*'s third element. So he fails that element along with the rest.

Accordingly, this Court should deny the application for stay.

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