

No. 26-5211

IN THE
Supreme Court of the United States

STACEY IAN HUMPHREYS,
PETITIONER,

v.

GEORGIA BOARD OF PARDONS AND PAROLES, ET AL,
RESPONDENTS.

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

**MOTION FOR A STAY OF EXECUTION
PENDING CERTIORARI
*CAPITAL CASE: EXECUTION SCHEDULED
SEPTEMBER 16, 2026***

TO: THE HONORABLE CLARENCE THOMAS,
ASSOCIATE JUSTICE, SUPREME COURT OF
THE UNITED STATES

COMES NOW Petitioner, Stacey Ian Humphreys, a
death sentenced prisoner in the State of Georgia, and
respectfully requests that this Court stay his execution,

currently scheduled for September 16, 2026, until further Order of this Court in order to permit the consideration and disposition of his pending petition for writ of certiorari to the Supreme Court of Georgia filed July 28, 2026.

JURISDICTION

Mr. Humphreys invokes this Court's jurisdiction to stay his execution under 28 U.S.C. § 2101(f) and Rule 23 of the Rules of the Supreme Court of the United States.

PROCEDURAL HISTORY

Mr. Humphreys was sentenced to death on September 30, 2007 for the murders of Cynthia Williams and Lori Brown. His state and federal postconviction challenges to the convictions and death sentence were unsuccessful. On December 1, 2025, the Superior Court of Cobb County entered a warrant for his execution.

On December 12, 2025, Mr. Humphreys filed the mandamus action that formed the basis of the proceedings below, together with an emergency motion for injunctive relief, in the Superior Court of Fulton County, Georgia. He asked the Superior Court to order two members of the Georgia Board of Pardons and Paroles ("the Board") to satisfy their legal duty to recuse themselves from his impending clemency proceedings as a result of their conflicts of interest; to order that the clemency proceedings be stayed while the Board had fewer than five unconflicted members; and to order that the two conflicted members be replaced before any action was taken on Mr. Humphreys's clemency application.

The Superior Court held an emergency hearing on December 15, 2025, taking limited testimony from the two Board members at issue and the Board’s legal counsel. On December 29, the Superior Court entered an order finding that one of the Board members, Kimberly McCoy, did labor under a conflict of interest that precluded her participation in Mr. Humphreys’s clemency decision. The court temporarily enjoined the full Board from moving forward with clemency proceedings “until such time as Petitioner can be afforded the standard, constitutionally mandated clemency hearing before the *full* Board, comprised of five members who are able to participate fully in the proceedings, including the final vote” on clemency. Pet. App. D9 (emphasis in original). The lower court requested briefing “on the question of whether and how Member McCoy can be replaced by an interim Board member[.]” Pet. App. D9.

The Superior Court entered a final order on March 2, 2026. It reaffirmed that Board Member McCoy—a member of the prosecution team at Mr. Humphreys’s capital trial who was appointed to the Board the very day that Mr. Humphreys’s execution warrant was signed—labored under a conflict of interest. Therefore her full recusal from the clemency application proceedings was required. Pet. App. C6-C7. But the court revisited its prior ruling that five Board members were constitutionally required—wholly reversing course. The court ruled that only a mere quorum was legally required to decide a capital clemency application, Pet. App. C3, and therefore all other decisions regarding how to proceed in Mr. Humphreys’s case were

“properly vested in the broad discretion of the Board and the Governor, respectively.” *Id.* at C8.

Mr. Humphreys applied to the Supreme Court of Georgia for discretionary review, but the application was denied without opinion on April 29, 2026, as was a timely-filed motion for reconsideration.

On July 28, 2026, Mr. Humphreys filed his petition for writ of certiorari in this Court, presenting the question of whether the procedure that the Georgia courts had blessed—one where some capital clemency applicants would have to convince three of three or three of four members of the Board in order to obtain a commutation while others would have the opportunity to convince three of five members—deprived him of his federal rights to due process and equal protection. Respondents initially filed a waiver of the right to respond which was not accepted by this Court.

Respondents then chose to push this case onto the emergency track, procuring an execution order for Mr. Humphreys on August 27, 2026, setting his execution during the one-week period beginning on September 16, 2026 and ending on September 23, 2026. (Attachment A hereto). Respondents filed their brief in opposition later that same day. The Department of Corrections has now scheduled Mr. Humphreys’s execution for September 16, 2026 at 7:00 p.m. And the Board has confirmed to Mr. Humphreys’s counsel that only four members will consider his clemency application.

REASONS FOR GRANTING THE STAY

The State of Georgia scheduled Mr. Humphreys's execution despite knowing that one member of the Board of Pardons and Paroles ("the Board") is disqualified from hearing his application for commutation of his death sentence. Moreover, the State has done so during the pendency of the litigation in this Court surrounding the constitutionality of the unprecedented procedure that the State, through the Board, intends to employ to determine Mr. Humphreys's clemency application in her absence.

While Respondents' Brief in Opposition ("BIO") repeatedly accuses Mr. Humphreys of dilatory gamesmanship,¹ it is the State of Georgia that has had the opportunity to avoid this litigation at every turn. It was the State that appointed a clearly conflicted member to the Board on the same day that it procured a warrant for Mr. Humphreys's execution; it was the State that, through the Respondent Board members here, refused to acknowledge that obvious conflict of interest and forced Mr. Humphreys to litigate; and it is the State that seeks to cut short this Court's review of Mr. Humphreys's previously pending petition. A state court judge found this litigation compelling enough to temporarily enjoin Respondents from proceeding with an execution and to order the unprecedented recusal of a sitting Board member. And yet

¹ See BIO at 9 ("transparently dilatory"), 21 ("Humphreys concocts a narrative"); 25 ("attempting to replace McCoy with a temporary appointment would further delay"); 28 (referring to the process of obtaining a new Board member as too onerous and "yet more delay").

the State of Georgia procured a rushed execution warrant rather than allowing this Court to review Mr. Humphreys's petition in the normal course just a few weeks from now. It is *Respondents'* conduct, in other words, that necessitates Mr. Humphreys's request for an emergency stay of execution pending the resolution of his petition.

In order to receive a stay of execution, an applicant must show a likelihood of irreparable injury in the absence of a stay; a reasonable probability that this Court would vote to grant certiorari; and a significant possibility of reversal. *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983). The instant motion and pending petition for certiorari meet this standard.

A. Irreparable Injury

If this Court does not grant a stay, the Board will proceed on Mr. Humphreys's application for a commutation without offering him the basic procedure employed in every prior Georgia death penalty case to come before it. His odds of obtaining a commutation will have been arbitrarily hampered before a single word in support of his application has been uttered. And if Mr. Humphreys is unable to meet this newly-imposed burden unique to him, he will be executed by lethal injection on September 16, 2026. This obviously constitutes irreparable injury. *See, e.g., Evans v. Bennett*, 440 U.S. 1301, 1306 (1979) (Rehnquist, C. J.) (granting a stay of execution and noting the "obviously irreversible nature of the death penalty"); *O'Bryan v. Estelle*, 691 F.2d 706, 708 (5th Cir. 1982) (the "irreversible nature of the death penalty" constitutes irreparable injury and weighs heavily in favor of granting a stay).

B. Probability That This Court Will Grant Certiorari

As outlined in Mr. Humphreys’s petition for writ of certiorari, the State’s departure from both its unbroken historical practice and the Board’s own understanding of its procedures in this matter of life and death presents an excellent vehicle to resolve the constitutional questions that have plagued the courts below since this Court’s determination in *Ohio Adult Parole Auth. v. Woodard*, 523 U.S. 272 (1998), that some constitutional protections apply to capital clemency proceedings.

Justice O’Connor’s controlling opinion in *Woodard*² held that “minimal” due process must be accorded to a capital clemency applicant under the Fourteenth Amendment. *Id.* at 289 (O’Connor, J., concurring in part). Thus, if a State were to “flip[] a coin to determine whether to grant clemency,” or “arbitrarily den[y] a prisoner any access to its clemency process,” it would give rise to a Due Process claim. *Id.* “Other than Justice O’Connor’s hypothetical examples, though, there is no Supreme Court guidance on what clemency procedures are required by the Due Process

² The Court splintered 4-4-1 with Justice O’Connor’s concurrence widely regarded as the controlling opinion on the amount of due process owed to the clemency applicant. *See, e.g., Wellons v. Comm’r, Ga. Dep’t of Corr.*, 754 F.3d 1268, 1269 n.2 (11th Cir. 2014) (“her concurrence set binding precedent”). But the lower courts are not unanimous even on that. *See, e.g., State ex. Rel. Parson v. Walker*, 690 S.W.3d 477, 488 n.10 (Mo. 2024) (concluding that Chief Justice Rehnquist’s plurality opinion controls but collecting numerous sources holding to the contrary).

Clause.” *Pizzuto v. Valley*, 177 F.4d 1042, 1052 (9th Cir. 2026).

As a result, the lower courts have struggled to implement *Woodard*’s instruction, see *Creech v. Idaho Comm’n of Pardons and Parole*, 94 F.4th 851, 855 (9th Cir. 2024) (“[t]he precise contours ... are unclear”), with contradictory authority resulting on the question of what conduct falls below the floor that due process guarantees. Compare, e.g., *Young v. Hayes*, 218 F.3d 850, 853 (8th Cir. 2000) (state interference with efforts to gather clemency evidence violates due process), with *Gissendaner v. Comm’r, Ga. Dep’t of Corr.*, 794 F.3d 1327, 1333 (11th Cir. 2015) (state interference with efforts to gather clemency evidence does not violate due process). The pending petition presents an excellent vehicle to spell out the dictates of due process.

The petition likewise presents an ideal vehicle to hold that arbitrary procedures and disparate treatment of identically-situated clemency applicants violates the Equal Protection Clause. The un rebutted record in the court below established that Mr. Humphreys will be accorded a procedure that no Georgia applicant has ever been subjected to,³ Pet. App. E148, E214—one that materially

³ Respondents’ Brief claims that Mr. Humphreys’s “review of history goes back only 20 years or at most, *possibly* to 2002.” BIO at 23. That is false. During litigation in 2002, the Fulton County Superior Court found that the Board “was unable to refute the Petitioner’s contentions that there has never been a death penalty clemency hearing without a full five (5) member Board not only appointed, but indeed present at the hearing (or at least voting after a review of the record and the papers filed by the parties).” Pet. App. E215. Surely, if Mr. Humphreys

disadvantages his odds of obtaining a commutation. *Id.* at D7. And going forward, the decision below clears the way for the Georgia Board to vary the procedure accorded with each capital clemency applicant at will—without any requirement that the variation be tied to a legitimate state interest. The Equal Protection question was not before the *Woodard* Court. 523 U.S. at 276, n.1. Thus, even though both the *Woodard* decision itself, *see, e.g., id.* at 289, and this Court’s broader Equal Protection doctrine, *see, e.g., Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535, 541 (1942), dictate that Georgia’s conduct here constitutes an unconstitutional denial of equal protection under the Fourteenth Amendment, no decision from this Court has plainly declared that rule.

For each of these reasons, a grant of certiorari in the instant case would provide an opportunity to draw the parameters of due process and equal protection in capital clemency proceedings. The probability that Mr. Humphreys’s petition can command at least four votes for certiorari is substantial.

Moreover, Mr. Humphreys is particularly likely to obtain a grant of certiorari because this Court can alternatively grant the petition and remand the case to the courts below. The state court, in ruling on the federal due process claim, plainly violated the rule of party

were wrong and there *had* once been a clemency determination by fewer than five members, the Board would have cited it in the instant litigation or in the 2002 litigation. In fact, the Board’s counsel acknowledged that as of December 2025, the Board itself believed five members are required. Pet. App. E210.

presentation. Neither party raised the federal constitutional implications of the Board proceeding on Mr. Humphreys's clemency application with fewer than five voting members. Indeed, the Superior Court had *already* ruled that five voting members *were required* as a matter of Georgia law prior to ordering additional briefing. Pet. App. D9. The Superior Court reversed course in its final order without any warning to the parties and without providing an opportunity to be heard on the question. Worse, the Superior Court purported to adjudicate Mr. Humphreys's federal rights, Pet. App. C3-C4, n.6, though that question was not presented. The need to grant the petition, vacate the lower courts' holdings and remand this case to the state court below is plain. Nothing justified the state court's "takeover" of Mr. Humphreys's mandamus proceeding. *See United States v. Sineneng-Smith*, 590 U.S. 371 (2020) (finding that the court of appeals violated the principle of party presentation where "no extraordinary circumstances justified the panel's takeover of the appeal"). Mr. Humphreys's case presents a compelling need for this Court to grant the petition, vacate the rulings below, and remand for further proceedings.

In short, the likelihood of a grant of certiorari is strong.

C. The Likelihood of Success on the Merits

Mr. Humphreys can also show a reasonable likelihood that he will prevail. The procedure that the Board intends to accord him violates his rights to Due Process and Equal Protection under this Court's precedents.

First, Due Process. The procedure that Respondents will employ in Mr. Humphreys's case violates *Woodard's* explicit mandate: that a State not deviate from its own entrenched practice and arbitrarily deny an applicant access to its clemency procedures. 523 U.S. at 289 (O'Connor, J., concurring). In the wake of *Woodard*, most lower state and federal courts concluded that the guarantee of "minimal" due process is satisfied when a State abides by its own established procedures. *See, e.g., Noel v. Norris*, 336 F.3d 648, 649 (8th Cir. 2003) ("[I]f the State actively interferes with a prisoner's access to the very system that it has itself established for seeking clemency petitions, due process is violated."); *Duvall v. Keating*, 162 F.3d 1058, 1061 (10th Cir. 1998) ("the minimal application of the Due Process Clause only ensures a death row prisoner that he or she will receive the clemency procedures explicitly set forth by state law ..."); *Baze v. Thompson*, 302 S.W.3d 57, 60 (Ky. 2010) ("This minimal application [of procedural due process] requires only that a death row prisoner receive the clemency procedures explicitly set forth by state law..."). Here, a commutation decision rendered by fewer than all five members of the Board is unprecedented in Georgia. In fact, both the Board itself and the lower court initially acknowledged that a proceeding before all five members was required as a matter of Georgia law. Denying Mr. Humphreys that very procedure violates Due Process. *See, e.g., Duvall*, 162 F.3d at 1061 (due process provides that "the procedure followed in rendering the clemency decision will not be wholly arbitrary...").

Mr. Humphreys has likewise made a strong showing of an Equal Protection violation. To state a claim under the Equal Protection Clause, he must “show that the State will treat him disparately from other similarly situated persons,” *Arthur v. Thomas*, 674 F.3d 1257, 1262 (11th Cir. 2012), and that this disparate treatment either burdens a fundamental right, targets a suspect class, or is not rationally related to a legitimate government interest. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985). Mr. Humphreys can plainly demonstrate both.

As the lower court observed, Georgia’s newly-crafted procedure will require Mr. Humphreys to “face a clemency hearing in which someone has already, before any presentation of evidence, debate or discussion, effectively voted no.” Pet. App. D7. No prior clemency applicant has had their opportunity to obtain a commutation diminished this way. Pet. App. E148, E214.

This uniquely disadvantageous procedure burdens a fundamental right—life—and has no rational relationship to any government interest. *Woodard* confirmed that a death-sentenced prisoner retains a constitutionally-protected interest in his life, 523 U.S. at 281, 289, 291. No right could be more fundamental—more “implicit in the concept of ordered liberty,” *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997)—than the right to life. And the State of Georgia has not—and indeed, could not—identify any legitimate government interest that would justify discriminating against Mr. Humphreys in his bid for clemency.

In sum, Mr. Humphreys has demonstrated a probability that this Court will grant his July 28, 2026 petition for writ

of *certiorari* and a corresponding likelihood that he will prevail on the merits of the arguments presented therein. A stay is necessary and appropriate.

CONCLUSION

Wherefore, for each of the reasons set forth above and in Mr. Humphreys's petition for writ of certiorari, this Motion for a Stay of Execution should be granted.

Respectfully submitted this, the 28th day of August, 2026.

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PROOF OF SERVICE

I hereby certify that on this date a true and correct copy of the foregoing Motion for a Stay of Execution Pending Certiorari was served electronically upon counsel for Respondents as follows:

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DATED: This, the 28th day of August, 2026.

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