Nos. 24A592 & 24-6164
CAPITAL CASE

IN THE
Supreme Court of the United States

TAHINA CORCORAN as next friend of JOSEPH CORCORAN,

Petitioner,

v.

RON NEAL, WARDEN,

Respondent.

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

OPPOSITION TO APPLICATION FOR STAY OF EXECUTION AND PETITION FOR WRIT OF CERTIORARI

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Execution Scheduled for Midnight to Sunrise, December 18, 2024

CAPITAL CASE

QUESTIONS PRESENTED

In 1997, Joseph Corcoran murdered four people. A jury found him guilty, and on the jury's recommendation, he was sentenced to death. Post-conviction review concluded in 2015. Barely a month before Corcoran's execution date, his counsel lodged a claim with the Indiana Supreme Court that he was incompetent to be executed. That request prompted Corcoran to submit a notarized affidavit to the Indiana Supreme Court stating that he does not want any further review of his sentence. The Indiana Supreme Court denied review, holding that counsel's petition did not conform to state procedural rules, that counsel lacked standing to raise claims that Corcoran—who had been found competent to litigate—did not wish to raise, and that counsel's competency claim lacked merit. Then, despite Corcoran's wishes, Corcoran's wife filed a federal petition for a writ of habeas corpus as his next friend. The district court denied relief, finding procedural default and no unreasonable holding from the state court. The Seventh Circuit affirmed, questioning whether the wife had standing in view of Corcoran's wishes and holding that the state court's resolution of the incompetency-to-be-executed claim was not unreasonable. The questions presented are:

1. Whether Corcoran's wife has standing to pursue habeas relief where Corcoran himself disclaims wanting to pursue any relief.

2. Whether the sole claim in the habeas petition was procedurally defaulted on independent and adequate state-law grounds.

3. Whether the Indiana Supreme Court reasonably rejected the claim from Corcoran's attorneys that Corcoran is not competent to be executed.

4. Whether this Court should deny the wife's stay request.

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INTRODUCTION

Joseph Corcoran is scheduled to be executed between midnight (Central time) and sunrise on December 18, 2024. Corcoran himself no longer wishes to contest his sentence—a desire he has expressed multiple times to multiple courts over the last 20 years, including as recently as two weeks ago to the Indiana Supreme Court. And "both state and federal courts" have held that he is competent "to waive post-conviction remedies after reviewing the same extensive evidentiary record." Pet. App. 21a.

Corcoran's wife nonetheless seeks to challenge his competency to be executed. But no new evidence undermines prior findings that Corcoran is competent to waive his right to further review, and his wife lacks standing to pursue claims he no longer wishes to pursue. And the eleventh-hour nature of the wife's claim that Corcoran cannot even think rationally—an assertion refuted by his recent, notarized affidavit—seriously undermines it. No one suggested that Corcoran could not think rationally when litigation over an execution date occurred in September 2024 or when he married his wife in October 2024. Rather, that claim was made in December 2024—days before the scheduled execution—after Corcoran decided against challenging his death sentence further and the State invoked Corcoran's refusal to sign the petition lodged by his attorneys as an independent state-law ground for denying relief.

To the extent the wife has standing and Corcoran's procedural default in state court does not bar review of the competency-to-be-executed claim, the claim fails. In denying review, the Indiana Supreme Court invoked this Court's decisions setting forth the governing standard and reasonably applied them to the facts of this case.

The court examined both old and new evidence bearing on the question of whether Corcoran is incompetent to be executed and reasonably held that he is competent. The court did not confuse the standard governing competency to litigate with the standard governing competency to be executed. Rather, it simply observed that evidence showing Corcoran to be competent to litigate—such as in-court and sworn statements explaining why he does not want to further contest his death sentence—*also* supports a finding that he rationally understands the rationale for execution. That reasoning does not conflict with any decision from this Court or others.

This Court should also deny the last-minute stay request. Since June 2024, Corcoran's counsel has been on notice that the State would be seeking an execution date. But counsel and his wife did not seek habeas review then or when the Indiana Supreme Court set an execution date on September 11, 2024. Counsel waited more than a month to attempt to initiate another round of post-conviction proceedings in state court, forcing down-to-the-wire litigation in federal court. Rewarding counsel's delay and granting a stay would prejudice the State and disserve the public, which has waited nearly 27 years for a lawful state-court judgment to be carried out. The motion to stay and the request for certiorari should be denied.

STATEMENT OF THE CASE

I. Corcoran's Crimes, Trial, and Direct Appeal (1999-2002)

A. Over 27 years ago, Corcoran murdered his brother, his sister's fiancé, and their two friends while his seven-year-old niece was upstairs. *Corcoran v. State*, 774 N.E.2d 495, 501 (Ind. 2002). Corcoran had been "under stress because his sister's

upcoming marriage would necessitate his moving out of her house," and "his brother said Corcoran could not move in with him." *Id.* Corcoran "awoke one afternoon to hear his brother and others downstairs talking about him." *Id.* at 497. He told his niece to stay put, "loaded his rifle and went downstairs to intimidate them, but as he said later, 'it just didn't happen that way.'" *Id.* Corcoran murdered the four men. *Id.*

The State charged Corcoran with four counts of murder and requested the death penalty. *Corcoran*, 774 N.E.2d at 497. Corcoran's attorneys asked that he be evaluated for an insanity defense and his competency to stand trial. D. Ct. Dkt. 11-2 at 38, 56.[1] After three appointed experts evaluated Corcoran, his counsel moved to withdraw both the insanity defense and their request for a "Court ordered determination" of competency. D. Ct. Dkt. 11-2 at 86–87, 139–40. In support of the motion, Corcoran's attorney stated that he was "convinced that [Corcoran] understands the nature of the proceedings" and that he was able to assist counsel. D. Ct. Dkt. 11-2 at 173. During his testimony, Corcoran could name his counsel, their position, and their role; he related his understanding of the proceedings and that he knew the current hearing was to determine his competency; and he confirmed that he understood the penalty he was facing and knew the roles of the prosecutors, judge, and jury. D. Ct. Dkt. 11-2 at 175–83. The trial court concluded that Corcoran was competent to proceed to trial. D. Ct. Dkt. 11-2 at 142–43, 181–84.

At trial, Corcoran's attorneys consistently asserted that he was competent. For example, Corcoran's attorney informed the court that he felt "very comfortable"

[1] "D. Ct. Dkt." citations are to docket entries in *Corcoran v. Neal*, No. 3:24-cv-970-JD (N.D. Ind).

proceeding with the trial and that he "wanted the record to be clear that … I believe my client is competent to proceed today." D. Ct. Dkt. 11-3 at 223, 12-2 at 74. The jury found Corcoran guilty of all four counts. *Corcoran*, 739 N.E.2d at 651.

B. Defense expert Dr. Eric Engum testified at the penalty phase. D. Ct. Dkt. 12-3 at 96. He had spent approximately 15 hours evaluating Corcoran in January 1999. D. Ct. Dkt. 12-3 at 113. His initial impression was that "there did not appear to be any degree of psychosis." *Id.* at 118. Instead, he described Corcoran as a "very bright individual," with a full-scale IQ of 118, and stated that he "was clearly competent." *Id.* at 113, 120. Dr. Engum gave a personality assessment and diagnosed schizotypal personality disorder. *Id.* at 126, 133, 137, 141, 162. While persons with this diagnosis foster paranoia toward those they think "may be plotting against them"—whether that be real or not—Dr. Engum was careful to explain that Corcoran was not "insane," was not suffering from any delusions, and was able to fully understand what was happening around him. *Id.* at 126, 130, 133, 143, 146, 156–57, 164–66. The jury recommended the death sentence. D. Ct. Dkt. 12-4 at 181–83.

Faced with the jury's recommendation at sentencing, Corcoran's attorneys claimed that they had "made a mistake" about Corcoran's mental state and argued that he suffered from paranoid schizophrenia and had pervasive delusions. *Id.* at 14–15. Corcoran's attorneys proffered a new expert, Dr. Phillip Coons. *Id.* at 110. Dr. Coons testified that he reviewed multiple documents and spent three hours with Corcoran. *Id.* at 118–19. He, unlike the other experts, diagnosed Corcoran with paranoid schizophrenia. *Id.* at 121, 125, 128–29.

The trial court independently reweighed the aggravators and mitigators and gave "medium weight" to the mitigator that Corcoran had proven the "mitigating circumstance that he was under the influence of a mental or emotional disturbance at the time the murders were committed." D. Ct. Dkt. 12-4 at 231. But the court rejected the proposed mitigator that Corcoran's mental illness substantially impaired his ability to appreciate the criminality of his conduct or to conform that conduct to the requirements of the law. *Id.* at 231; *see* Ind. Code § 35-50-2-9(c)(6). The court was "not convinced that [Corcoran]'s afflictions meet the legal definition of mental disease or defect." D. Ct. Dkt. 12-4 at 232. Instead, Corcoran's actions showed that he had "the presence of mind to shield his young niece upstairs from the carnage he inflicted on innocent victims downstairs." *Id.* at 232. The trial court sentenced him to death. *Corcoran v. State*, 739 N.E.2d 649, 651 (Ind. 2000).

C. Corcoran appealed, raising eight claims. *Corcoran*, 739 N.E.2d at 651. The Indiana Supreme Court considered, and rejected, all of them except one. *Id.* The Court remanded with instructions that the trial court "reconsider its sentencing determination," explaining that the trial court may have considered a non-statutory aggravating factor when imposing sentence. *Id.* at 657.

Upon remand, the trial court re-weighed the aggravators and mitigators and issued a revised sentencing order imposing the death sentence. *Corcoran*, 774 N.E.2d at 498.

The Indiana Supreme Court affirmed Corcoran's sentence after finding it was not manifestly unreasonable. *Corcoran*, 774 N.E.2d at 502; *see* Ind. Appellate Rule

7(B) (2002). The court observed, seven qualified doctors had analyzed Corcoran, and the "consensus was that Corcoran suffered from schizotypal or paranoid personality disorder." *Id.* at 501. The court acknowledged that Corcoran's condition may have developed into paranoid schizophrenia, but this progression was "immaterial" because the court was "concerned with his mental state at the time of the murders," which the expert consensus showed was schizotypal personality disorder. *Id.* The court concluded that the trial court's consideration of Corcoran's mental health "reflected a fair amount of care" and that it was satisfied "that the trial court's decision that a quadruple killing was weightier than the proffered mitigation of Corcoran's mental health led the trial court to an appropriate sentence." *Id.* at 502.

II. Waiver of State Post-Conviction Review (2002–2006)

After his direct appeal, Corcoran "indicated that he believed he should be put to death for his crimes and waived any further legal review of his convictions and sentence." *Corcoran v. State*, 820 N.E.2d 655, 656 (Ind. 2005), *aff'd on reh'g*, 827 N.E.2d 542 (Ind. 2005). Despite his desire to waive collateral review, Corcoran's attorneys presented an unsigned petition for post-conviction relief and requested that a competency hearing be held. *Id.* The state post-conviction court held a competency hearing on October 21, 2003. D. Ct. Dkt. 13-2 at 1. Corcoran's post-conviction counsel presented testimony from three mental-health experts, each of whom concluded that Corcoran had paranoid schizophrenia. *Corcoran*, 820 N.E.2d at 660. One of the symptoms of Corcoran's condition, according to the experts, was "recurrent delusions that Department of Correction prison guards are torturing him through the use of an

ultrasound machine." *Id.* All three experts opined that "Corcoran's decision to forego post-conviction review of his sentence, thereby hastening his execution, was premised on his desire to be relieved of the pain that he believes he experiences as a result of his delusions" and that he was "unable to make a rational decision concerning the legal proceedings confronting him." *Id.*

At the hearing Corcoran explained his motivation to waive further review:

> See, I want to waive my appeals because I am guilty of murder. I think that I should be executed for what I have done and not because I am supposedly tortured with ultrasound or whatever. I am guilty of murder.…I believe the death penalty is a just punishment for four counts of murder, and I believe that I should be executed since I am guilty of four counts of murder.

D. Ct. Dkt. 13-2 at 89.

The state post-conviction court found that although Corcoran suffered from a mental illness, he was competent to waive post-conviction review. D. Ct. Dkt. 13-10 at 115–16. It reasoned that his own testimony demonstrated he "understands the nature of the proceedings, the purpose of the doctor's interviews, the responsibility of his counsel and the Deputy Attorney General, and the nature of the appellate procedure." D. Ct. Dkt. 13-10 at 116. The post-conviction court found that the dialogue "the State and the Court had with [Corcoran] clearly indicates he is competent and understands what he is doing.…[H]e is competent to make this ultimate decision in spite of his mental illness." D. Ct. Dkt. 13-10 at 116. The post-conviction court rejected Corcoran's attorneys' unsigned petition as it was non-compliant with Indiana's post-conviction rules. *Id.*; *see* Ind. Post-Conviction Rule 1(3)(b).

Affirming the post-conviction court, the Indiana Supreme Court found it

significant that Corcoran had not made any statements to the experts "indicating that he wished to end his appeals in order to escape his paranoid delusions." *Corcoran*, 820 N.E.2d at 657, 660. Instead, that idea appeared to come from letters "Corcoran wrote to his attorneys and sister stating his willingness to be put to death to gain a sense of relief from prison life." *Id.* at 660 n.7. Corcoran's desire to be executed resulted from not wanting to spend his life in prison rather than some delusion. *Id.* The Court held that the "evidence supports the trial court's conclusion that Corcoran has both a rational understanding of and can appreciate his legal position. Further, the evidence does not conclusively indicate that Corcoran's decision was not made in a rational manner." *Id.* at 662.

In February 2005, while that appeal was pending, Corcoran "recanted his waiver of further review and sought dismissal of the appeal so that he could seek collateral review after all," and submitted a signed petition. *Corcoran v. State*, 845 N.E.2d 1019, 1020 (Ind. 2006); *Corcoran v. State*, 827 N.E.2d 542, 543 (Ind. 2005). The post-conviction court dismissed that petition because it was filed after a court-imposed deadline while rehearing proceedings were pending in the waiver appeal. *Corcoran*, 845 N.E.2d at 1020. Corcoran petitioned for rehearing, which the Indiana Supreme Court denied. *Id.* at 1020, 1024.

III. Federal Habeas Proceedings (2005–2015)

On June 27, 2005, Corcoran's attorneys filed a petition for a writ of habeas corpus that was not signed or endorsed by Corcoran. *Corcoran v. Buss*, 483 F.Supp.2d 709, 716 (N.D. Ind. 2007). While the petition was pending, Corcoran filed a pro se

petition to "Halt All Future Appeals." D. Ct. Dkt. 16-19. He wrote:

> I murdered four men. I knew before I did it that such an act was wrong, and I knew that if I committed such an act, I would go to jail, yet I did it anyway. I knowingly and intentionally took four lives for a motive that I have revealed to no one.

D. Ct. Dkt. 16-19. He wrote that "the death penalty is a just punishment for someone who is guilty of four counts of murder therefore I think I should be executed." D. Ct. Dkt. 16-19. Corcoran explained that he "fabricated the story about being tortured by an ultrasound machine in prison, and he denied that his sleep disorder was a motivation to give up on appeal." *Corcoran v. Buss*, 551 F.3d 703, 707 (7th Cir. 2008):

> In the past lawyers and psychiatrists have claimed that I wanted to waive my appeals and get executed because: (a) I wanted to escape a sleep disorder that I don't have; (b) to escape delusions I have that the prison is tormenting me with ultrasound; (c) to escape an involuntary speech disorder I don't have. They have also claimed that my delusions prevent me from making a rational choice. And no doubt my lawyer will make such claims. But the fact is I made such stories up. All their information comes from letters I wrote to my sister where I made up stories. Also I lied to psychiatrists to get medication to help me sleep. If I try to explain this to psychiatrists I get accused of downplaying my symptoms. But the truth is that no mental illness or delusions or hallucinations are influencing my decision to waive my appeals.

D. Ct. Dkt. 16-19.

The district court granted the petition on a non-mental-health-based claim, but did not dispute that Corcoran was competent to waive post-conviction review: It held the state' court's determination was "neither an unreasonable application … nor an unreasonable determination of the facts." *Corcoran*, 483 F. Supp. 2d at 719, 725–26. The State appealed, and the Seventh Circuit reversed. *Corcoran v. Buss*, 551 F.3d 703, 804 (7th Cir. 2008). Corcoran petitioned for a writ of certiorari, and this Court granted his petition. *Corcoran v. Levenhagen*, 558 U.S. 1 (2009) (per curiam). The

Court remanded because Corcoran's petition raised additional claims that had not yet been resolved by either the Seventh Circuit or the district court. *Id.*

On remand, the Seventh Circuit decided Corcoran's remaining claims. *Corcoran*, 593 F.3d at 550. It granted a new sentencing hearing because it believed that the trial court had relied on non-statutory aggravating circumstances when imposing the death sentence and that the state supreme court's decision to the contrary was an "unreasonable determination of the facts." *Id.* at 551–52. This Court granted certiorari and found that the Seventh Circuit had granted relief on a violation of state law, which is not a ground for federal habeas relief. *Wilson v. Corcoran*, 562 U.S. 1–7 (2010) (per curiam).

On remand, the Seventh Circuit reinstated its previous opinion in *Corcoran v. Buss*, 551 F.3d 703 (7th Cir. 2008), and remanded for consideration of Corcoran's remaining claims. *Corcoran v. Wilson*, 651 F.3d 611, 613–14 (7th Cir. 2011). The Seventh Circuit was careful to explain, however, that "neither of the Supreme Court decisions" cast doubt on its resolution of the "issues raised in the initial appeal, in which [the court] found no basis for habeas relief … on the issue of Corcoran's competency to waive post-conviction remedies." *Corcoran*, 651 F.3d at 613.

On remand, the district court rejected the claims explaining that they "were adjudicated on the merits by the Indiana Supreme Court, which ruled in favor of the State," and that Corcoran's counsel had failed to demonstrate unreasonable error as required by 28 U.S.C. § 2254(d). *Corcoran v. Buss*, No. 3:05-cv-389, 2013 WL 140378, at *1 (N.D. Ind. Jan. 10, 2013). The Seventh Circuit affirmed, and this Court denied

review. *Corcoran v. Neal*, 783 F.3d 676, 677 (7th Cir. 2015), *cert. denied*, 577 U.S. 1237 (2016).

IV. Setting of an Execution Date and State-Court Litigation (June 2024–December 2024)

A. An execution date was not immediately set because the State of Indiana was unable to obtain the necessary drugs to perform executions. Press Release, Office of the Indiana Attorney General (June 26, 2024), *available at* https://tinyurl.com/ymj62t2d. After the State secured the drugs, it asked the Indiana Supreme Court to set an execution date on June 26, 2024. D. Ct. Dkt. 16-1. After briefing, on September 11, 2024, the state court ordered Corcoran, to be executed on December 18, 2024, "before the hour of sunrise." D. Ct. Dkt. 16-2, 16-3, 16-4, 16-5.

B. Corcoran's post-conviction counsel waited 65 days before they filed two requests to file successive petitions for post-conviction relief. D. Ct. Dkt. 16-6, 16-7, 16-8, 16-9, 16-10, 16-11. Only 33 days remained before his execution date. The petitions made two broad claims: (1) executing Corcoran would be unconstitutional because he was allegedly severely mentally ill, and (2) Corcoran was incompetent to be executed. D. Ct. Dkt. 16-6, 16-7, 16-8, 16-9, 16-10, 16-11. Corcoran did not sign either petition, despite the rules requiring it. *See* Ind. Post-Conviction Rule 1(3)(b). After the requests were fully briefed, Corcoran filed a notarized affidavit in the Indiana Supreme Court explaining he did not want further review and that he understood he would be executed because he murdered four people. D. Ct. Dkt. 16-12, 16-13, 16-16. On December 5, 2024, the court denied Corcoran's attorneys permission for successive post-conviction review and issued an opinion explaining its denial on December 10,

2024. Pet. App. 1a–37a.

The Indiana Supreme Court recognized under state law that "a petitioner seeking [post-conviction] remedies must authorize the petition unless they are incompetent to do so." Pet. App. 20a (citing *Corcoran*, 820 N.E.2d at 663). Finding that Corcoran was not incompetent to waive collateral review given both the court's previous competency-to-waive finding and no evidence that "Corcoran's condition has changed" to prove that "he is no longer competent," the court refused to "authorize the successive petitions" because Corcoran himself had not authorized them. Pet. App. 21a–22a. The court then rejected his attorneys' first claim because those attorneys "lack[ed] standing to make these arguments" when those "arguments were made on Corcoran's behalf contrary to his wishes," and also because the arguments "appear to constitute free-standing claims that would not be available for post-conviction review." Pet. App. 23a (quoting *Corcoran*, 820 N.E.2d at 663–65).

The court also rejected the claim that Corcoran is incompetent to be executed by first quoting this Court's standards defining incompetency to be executed:

> The United States Supreme Court interprets that bar on cruel and unusual punishments as prohibiting the execution of a prisoner who has "lost his sanity" after sentencing, *Ford* [*v. Wainwright*,] 477 U.S. [399], 406 [1986], which, in this context, means they "are unaware of the punishment they are about to suffer and why they are to suffer it," *id.* at 422 (Powell, J., concurring)[.]…
>
> "The critical question is whether a prisoner's mental state is so distorted by a mental illness that he lacks a rational understanding of the State's rationale for his execution." *Madison v. Alabama*, 586 U.S. 265, 269 (2019) (cleaned up). In other words, "the issue is whether a prisoner's concept of reality is so impaired that he cannot grasp the execution's meaning and purpose or the link between his crime and his punishment." *Id.* (cleaned up).

Pet. App. 24a. The court added that, for Corcoran to be entitled to more process—such as a hearing that would come with successive post-conviction review—Corcoran's attorneys had to make "a 'substantial threshold showing'" of incompetency to be executed. Pet. App. 24a (quoting *Panetti v. Quarterman*, 551 U.S. 930, 949 (2007)).

The court held that this substantial threshold showing had not been made. It relied first on Corcoran's November 2024 affidavit. Pet. App. 25a. In that affidavit, Corcoran wrote that he did "not wish to litigate" further, that he "accept[ed] the findings of all the appellate courts," that he understood that if his counsels' petitions were rejected "the death warrant will be carried out [and he] will then be put to death for the heinous crime [he] committed," and that he "underst[oo]d the execution, in the interest of judgment, serves as both a punishment and a deterrent. D. Ct. Dkt. 16-15 at 1–2. The court found Corcoran's statements "reaffirm[ed] what he has been saying for twenty years, and what we've previously considered to be a rational understanding." Pet. App. 26a.

The court then rejected Corcoran's attorneys' position that, "while Corcoran has a *factual* understanding that the State is going to execute him as punishment for his crime, that doesn't necessarily mean he has a *rational* understanding." Pet. App. 26a (emphasis in original). The court recognized the distinction Corcoran's attorneys were attempting to draw, but found "that isn't the case here." Pet. App. 26a. Even though the court saw the evidence that "some of Corcoran's other beliefs are irrational," it concluded that "his understanding of his execution is not." Pet. App. 26a–27a. Finding Corcoran's attorneys had presented "minimal new evidence," the

court concluded that this scant evidence was "offered only to demonstrate that Corcoran's condition remains the same, not that it has changed and he is no longer competent to be executed." Pet. App. 27a.

Finally, the court acknowledged that it had used evidence presented to it when Corcoran's attorneys had previously challenged his competency to waive initial post-conviction review and also acknowledged that "the inquiries for competency to waive post-conviction remedies and competency to be executed are not identical." Pet. App. 28a. But the court found "no indication that Corcoran's understanding of why he is to be executed has changed." Pet. App. 28a. "There is therefore no substantial threshold showing that Corcoran is not competent to be executed." Pet. App. 28a.

C. Corcoran's next friend then filed a habeas petition and a motion to stay in the district court on December 11, 2024—six days before his scheduled execution date. D. Ct. Dkt. 1. The district court denied it on December 13, 2024. Pet. App. 38a. Corcoran's next friend quickly appealed and asked the Seventh Circuit for a stay, and the parties filed briefs within two days. C.A. Dkt. 9, 11, 13. The Seventh Circuit affirmed the denial of habeas relief and denied a stay on December 16, 2024. Pet. App. 69a. On December 17, 2024, Corcoran's next friend filed a petition for rehearing en banc, which was denied earlier this afternoon. Pet. App. 109a. Corcoran's next friend then filed a petition for a writ of certiorari and a stay at approximately 2:30 p.m.

REASONS TO DENY CERTIORARI AND A STAY OF EXECUTION

This Court should grant no relief and no delay of Corcoran's execution date based on his last minute petition and stay application. Corcoran's next friend assumes but

does not prove that she has standing to bring a habeas challenge on Corcoran's behalf The most contemporaneous evidence proves he has the ability to interact with the courts and advance his interests without a person acting for him and against his wishes. Review should also be denied because the next friend's claim that Corcoran is incompetent to be executed was procedurally defaulted on independent and adequate state-law grounds. Even if his next friend could overcome these hurdles, the state court's decision denying further review or relief was a faithful application of this Court's Eighth Amendment cases, and the state court made no unreasonable factual determinations that would deprive its decision of deference under Section 2254(d). As for the stay application, it should be denied not only because Corcoran's next friend has no chance of success on the merits but also because she has engaged in unjustified delay. All relief and motions for delay should be denied.

I. Corcoran's Wife Lacks Standing To Challenge a Judgment He Accepts

Corcoran's wife lacks standing to bring a habeas challenge on Corcoran's behalf. Standing is indispensable. *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 408 (2013) (quoting *Raines v. Byrd*, 521 U.S. 811, 818 (1997)). "A federal court is powerless to create its own jurisdiction by embellishing otherwise deficient allegations of standing." *Whitmore v. Arkansas*, 495 U.S. 149, 155–56 (1990) (citing *Warth v. Seldin*, 422 U.S. 490, 508 (1975)). A person wanting to act as a next friend carries the burden "to clearly establish the propriety of his status and thereby justify the jurisdiction of the court." *Id.* at 163–64. The next friend must prove "why the real party in interest cannot appear on his own behalf to prosecute the action," such as "inaccessibility,

mental incompetence, or other disability." *Id.* Corcoran's wife has not.

The court of appeals "seriously question[ed]" whether it had jurisdiction—and for good reason: Corcoran's next friend has not presented meaningful evidence that he is incapable of pursuing federal relief himself. Pet. App. 70a. This Court has held that a petitioner is competent to waive further review if "he has the capacity to appreciate his position and make a rational choice with respect to continuing or abandoning further litigation or on the other hand whether he is suffering from a mental disease, disorder, or defect which may substantially affect his capacity in the premises." *Rees v. Peyton*, 384 U.S. 312 (1966) (per curiam). Corcoran has that ability. Corcoran's competency "has been thoroughly litigated in both state and federal courts" for the last 20 years, and "after reviewing the same extensive evidentiary record" as raised now, "concluded Corcoran is competent to waive" further review of his death sentence. Pet. App. 21a; *see Corcoran*, 820 N.E.2d at 657, 664–66 (state court found him competent after an evidentiary hearing in 2005).

The "minimal" evidence Corcoran's next friend has assembled does not show that his mental status had so declined to render him incompetent. Pet. App. 27a. Corcoran's "State Public Defender does not claim Corcoran's condition has changed that while he was previously competent to waive post-conviction remedies, he is no longer competent." Pet. App. 22a. And in a lucid, well-composed, notarized affidavit submitted to the Indiana Supreme Court, Corcoran recently wrote:

> I, Joseph Edward Corcoran, do not wish to litigate my case further. I am guilty of the crime I was convicted of, and accept the findings of all appellate courts. The long drawn out appeal history has addressed all the issues I wished to appeal, such as the issue of competency. Therefore, I

> am hereby making this statement to the Court through this affidavit: I do not wish to proceed with more and/or endless litigation.

D. Ct. Dkt. 16-16 at 1–2. If Corcoran can compose such a statement, sign it, have it notarized, and file it, then he is competent to litigate this habeas petition himself with the assistance of his appointed counsel as his agent, not through a next friend who is acting contrary to his wishes. *See* Pet. App. 23a ("Because the State Public Defender lacks standing to raise these claims, … the State Public Defender has not demonstrated a reasonable probability of success[.]").

Also cutting against the idea that Corcoran is incompetent to sign a habeas petition is the fact that he married his next friend in October 2024. D. Ct. Dkt. 16-19. And Indiana law holds that "[a] marriage is void if either party to the marriage was mentally incompetent when the marriage was solemnized." Ind. Code § 31-11-8-4. Corcoran's next friend has not proved that he is incompetent to litigate himself and does not have standing to proceed on his behalf and against his wishes.

II. Procedural Default Bars Review of the Wife's Claim

A procedural default precludes review of the sole claim raised in habeas petition filed by Corcoran's wife. Before a federal court can judge the reasonableness of a state-court decision, the issue raised in a habeas petition must have been fully litigated in the state courts. *O'Sullivan v. Boerckel*, 526 U.S. 838, 845 (1999). "This Court will not review a question of federal law decided by a state court if the decision of that court rests on a state law ground that is independent of the federal question and adequate to support the judgment." *Coleman v. Thompson*, 501 U.S. 722, 729 (1991).

This Court cannot reach the merits of the wife's claim because the state court

denied it on an independent state-law ground. In part to ensure completeness of petitions and to ensure attorneys are acting as faithful agents, Indiana's post-conviction rules require a petitioner to verify "under oath … the correctness of the petition, the authenticity of all documents and exhibits attached to the petition, and the fact that he has included every ground for relief under Sec[tion] 1 [of the post-conviction rules] known to the petitioner." Ind. Post-Conviction Rule 1(3)(b). The Indiana Supreme Court has bluntly held: "A Petition for Post-Conviction Relief must be signed by the petitioner." *Corcoran*, 820 N.E.2d at 657. In this case, however. Corcoran did not sign the proposed successive petitions filed by his attorneys in state court, Pet. App. 20a, and the Indiana Supreme Court cited this "independent[]" ground as a basis for denying Corcoran's attorneys further permission to litigate. Pet. App. 22a. That state-law ruling—which rests on a competency-to-*litigate* determination rather than a competency-to-be-*executed* determination—bars federal habeas review.

That the Indiana Supreme Court offered an alternative basis for its holding—that Corcoran was in fact competent to be executed—does not allow federal courts to overlook the procedural default. As this Court has explained, "a state court need not fear reaching the merits of a federal claim in an alternative holding.…[T]he adequate and independent state ground doctrine requires the federal court to honor a state holding that is a sufficient basis for the state court's judgment, even when the state court also relies on federal law." *Harris v. Reed*, 489 U.S. 255, 264 n.10 (1989). Thus, the Indiana Supreme Court's "consideration of the merits of the competency-to-be-executed claim does not undermine the lack of verification as a basis for procedural

default." Pet. App. 51a. Procedural default bars review of the only claim pressed.

III. The Indiana Supreme Court Faithfully Applied This Court's Eighth Amendment Decisions and Made No Unreasonable Factual Findings

Regardless, the wife's objection to Corcoran's competency to be executed fails on the merits. The Indiana Supreme Court faithfully and reasonably applied this Eighth Amendment jurisprudence and made reasonable factual determinations. To be entitled to habeas relief, a petitioner must establish he is being held in violation of the U.S. Constitution. 28 U.S.C. § 2254(a); *Estelle v. McGuire*, 502 U.S. 62, 67 (1991). Under the Antiterrorism and Effective Death Penalty Act of 1996, a federal court may grant habeas relief only if the state court's adjudication of a petitioner's constitutional claims was based on unreasonable fact-finding or was contrary to, or involved an unreasonable application of, clearly established federal law. *See* 28 U.S.C. § 2254(d); *Williams v. Taylor*, 529 U.S. 362, 376–77 (2000).

A. The state court's decision was not contrary to clearly established federal constitutional law

The state court did not apply a rule contradicting those from this Court. A state-court decision is "contrary to" established precedent when either the state court applies a rule that contradicts the governing law set forth in this Court's cases or the state court confronts a set of facts that are materially indistinguishable from those of a case from this Court and yet arrives at an opposite result. *Williams*, 529 U.S. at 405–06. But "a run-of-the-mill state-court decision applying the correct legal rule from [this Court's] cases to the facts of a prisoner's case" is not. *Id.* at 406.

In this case, the Indiana Supreme Court recited the standards governing

claims of incompetency to be executed from *Ford v. Wainwright*, 477 U.S. 399 (1986), and *Madison v. Alabama*, 586 U.S. 265 (2019). Pet. App. 24a. It explained that the "[c]ritical question is whether a prisoner's mental state is so distorted by mental illness that he lacks a rational understanding of the State's rationale for his execution." Pet. App. 24a (quoting *Madison*, 586 U.S. at 269) (cleaned up)). As the court observed, the Eighth Amendment prohibits "the execution of a prisoner who has 'lost his sanity' after sentencing, which, in this context, means they 'are unaware of the punishment they are about to suffer and why they are about to suffer it." Pet. App. 24a (quoting *Ford*, 477 U.S. at 406, and *Ford*, 477 U.S. at 422 (Powell, J., concurring)).

The Indiana Supreme Court also correctly identified the procedural showing a prisoner must make: "And to litigate the question of competence to be executed, the movant must make a 'substantial threshold showing,' *Panetti*, 551 U.S. at 949, that their mental illness prevents them from "'rational[ly] understanding" why the State seeks to impose' the death penalty." Pet. App. 24a–25a (citing *Madison*, 586 U.S. at 267). These are accurate recitations of the relevant precedents, and a "state-court decision applying the correct rule from [this Court] to the facts of a prisoner's case" is not a decision contrary to U.S. constitutional law. *Williams*, 529 U.S. at 406.

Corcoran's next friend claims that the state court used a "20-year-old waiver competency determination" rather than the established rules from *Ford*, *Panetti*, and *Madison*. Pet. 29. That is not true: Yes, the Indiana Supreme Court considered all of the record evidence (both previously and newly presented). Pet. App. 25a–28a. But the court did not confuse the standard governing competency to litigate with the

standard governing competency to be executed. Rather, court cited—among other things—evidence presented in connection with competency-to-litigate arguments because that evidence bears on Corcoran's understanding of why he is to be executed. For example, it understood that statements like the following bear on both issues:

- I am "guilty of the crime . . . convicted of" and "accept[] the findings of all the appellate courts." Pet. App. 25a.
- I understand "execution will end [my] life." Pet. App. 25a.
- "I understand the execution, in the interest of judgment, serves as both a punishment and a deterrent." Pet. App. 25a.

No decision from this Court prohibits a state court from considering some of the same evidence in determining competency to litigate and competency to be executed.

B. The state court reasonably applied clearly established federal constitutional law

Corcoran's wife has failed to prove that the state court unreasonably applied controlling law. When a state court "correctly identifies the governing legal rule," the petitioner must prove that the court "applie[d] it unreasonably to the facts of [his] case." *Williams*, 529 U.S. at 407–09. Under the "unreasonable application" clause, this Court asks whether the state court's application of clearly established federal law was objectively unreasonable. *Id.* at 406–09. An "unreasonable" application of established precedent from this Court means more than merely an "incorrect" application. *Id.* at 410–11. Thus, "a federal habeas court may not issue the writ simply because the court concludes that the relevant state-court decision applied clearly established federal law erroneously or incorrectly." *Id.* at 411.

The Indiana Supreme Court reasonably applied this Court's precedent.

Quoting *Madison*, the court's focus was on the "critical question" of "whether a prisoner's mental state is so distorted by a mental illness that he lacks a rational understanding of the State's rationale for his execution." Pet. App. 24a. The court analyzed all of the evidence before it, both new and old, consistent with *Panetti*. Pet. App. 25–28a; *see Panetti*, 551 U.S. at 949–50. The court noted that, for "twenty years," the courts have been saying that Corcoran has a "rational understanding" of what he has done. Pet. App. 26a. The court considered his recent affidavit. Pet. App. 25a. And the court observed that "now that a challenge to competency for execution is ripe, there is no indication that Corcoran's understanding of why he is to be executed has changed." Pet. App. 28a. "Every indication is that it remains the same. At bottom, the State Public Defender's arguments are rehashing the debates between the majorities and dissents in the previous state and federal opinions evaluating Corcoran's competency, and that is not an adequate basis for further delaying the execution." Pet. App. 28a.

Corcoran's wife stresses that two state-court justices would have granted some relief. But "even a strong case for relief does not mean the state court's contrary conclusion was unreasonable." *Harrington v. Richter*, 562 U.S. 86, 101–02 (2011) (citing *Williams*, 529 U.S. at 410, and *Lockyer v. Andrade*, 538 U.S. 63, 75 (2003)). A petitioner must demonstrate that all "fairminded jurists" would agree "that the state court's decision conflicts with [this Court's] precedents." *Id.* at 102. That means the state court's ruling "was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility of fairminded

disagreement." *Id*. at 103. That "difficult" standard is not met here. *Id.* at 102.

Corcoran's wife argues for an unreasonable application because the state court failed to use the correct temporal point at which to evaluate competency. Pet. 31. As the above quote shows, the state court was looking at evidence of competency to be executed now that the claim "is ripe." Pet. App. 28a. The state court also wrote: "The United States Supreme Court interprets [the Eighth Amendment] bar on cruel and unusual punishments as prohibiting the execution of a prisoner who has 'lost his sanity' after sentencing." Pet. App. 24a (quoting *Ford*, 477 U.S. at 406). And it also relied on the notarized affidavit Corcoran sent to the Court in the last two weeks. Pet. App. 25a. The state court's verb tenses show that it understood the temporal anchor point for its analysis: "But despite his mental illness, Corcoran *has demonstrated* he *understands* why he is being executed, and the State Public Defender has not provided any evidence suggesting that Corcoran's understanding *is* irrational." Pet. App. 28a (emphasis added). The state court knew that the proper focus is on now and not then.

And the state court also did not unreasonably apply *Panetti*. First, *Panetti* does not address the situation here. In *Panetti*, it was "uncontested that petitioner made a substantial showing of incompetency." 551 U.S. at 948. So this Court held that, given the substantial threshold showing was made, the State, at the very least "adequate means by which to submit expert psychiatric evidence in response to the evidence that had been solicited by the state court." *Id.* But this Court did not dictate in *Panetti*, the level of process due when a state court is determining whether the substantial threshold showing was made.

That near-determinative distinction aside, the problem in *Panetti* was that clearly established law entitled the petitioner "to, among other things, an adequate means by which to submit psychiatric evidence in response to the evidence that had been solicited by the state court." *Id.* Indiana's post-conviction rules contemplate the submission of exhibits with a petition. Ind. Post-Conviction Rule 1(3)(b). The state court put no restriction on the breadth of evidence it would consider when making its determination whether Corcoran's attorneys could show a reasonable probability of making the substantial threshold showing of incompetency. And the *Panetti* Court was clear it was not mandating "other procedures, such as the opportunity for discovery or for the cross-examination of witnesses" that would be required *after* the threshold showing was met. *Panetti*, 551 U.S. at 952. It follows that those procedures are not required *before* the threshold showing is met. Therefore, the state court was acting consistently with clearly established law when it denied further process.

The majority of the wife's complaint about the state court's application of *Panetti* relates to the fact that the state court considered Corcoran's recent notarized affidavit and his counsel had no opportunity to respond to it. Pet. 33–34. This complaint is that attorneys purporting to be agents of Corcoran had no opportunity to contradict their client and his express wishes. *Panetti* said nothing about the ability of defense counsel to respond to actual evidence put before the Court. It dictated that courts allow evidence to be presented to it, and Indiana's successive post-conviction procedure placed no limit on the exhibits that could have been submitted. Because *Panetti* said nothing about the situation the Indiana Supreme Court confronted, the Indiana

Supreme Court did not misapply its holding.

Further, Corcoran's wife continues to misunderstand the relevant question: The question is not whether Corcoran has some mental illness or diagnosis, but whether some mental illness has severed Corcoran's understanding of the connection between his crime and his punishment. *See Whitmore*, 495 U.S. at 166; *Rees*, 384 U.S. at 314. And the *most* contemporaneous evidence of his understanding reasonably supports the state-court finding of competency to be executed. Pet. App. 25a–26a. In the last two weeks, Corcoran acknowledged that, "if this Court rejects [his] counsel's petition the death warrant will be carried out" and that he would "then be put to death for the heinous crime [he] committed." D. Ct. Dkt. 16-16 at 2. As the affidavit shows, he understands the purposes of his execution too. "[T]he execution, in the interest of judgment, serves as both a punishment and a deterrent." D. Ct. Dkt. 16-16 at 2.

To the extent that Corcoran's wife does not ignore all of the evidence of his mental health, they attempt to use it to essentially claim that he has always been incompetent to be executed. Corcoran's wife argues that he has always suffered this ultrasound-related delusion and that no court should have ever listened to his protestations against further review because his words cannot be trusted due to mental illness. *See* Pet. 10 ("The crime itself is a result of his mental illness."), Pet. 11 ("Corcoran was so mentally ill that he could not assist in his own defense to save his life."), Pet. 29 (doubting the factual basis behind the state court's holding that Corcoran was competent to waive initial post-conviction review), Pet. 35 ("Corcoran has been endorsing these same kinds of delusional beliefs about torture and mind-control for

decades, long before an execution date was anywhere in his near future."). But it is too late to raise that issue now, which could have been raised at any time over the last two decades. And a chorus of court findings foreclose it.

Putting aside that competency to stand trial and to waive further review are different standards (although, logically, competency to stand trial is a more rigorous standard), no court has ever found Corcoran to be incompetent. Pet. App. 61a. Not the trial court. D. Ct. Dkt. 11-2 at 142–43, 183–84. Not the post-conviction court. D. Ct. Dkt. 13-10 at 116. Not the Indiana Supreme Court on post-conviction review. *Corcoran*, 820 N.E.2d at 657. Not the district court. Pet. App. 63a ("Corcoran has never been adjudicated incompetent."). *Corcoran*, 551 F.3d at 729–33. And not the Seventh Circuit. *Corcoran*, 551 F.3d at 712. Corcoran's wife would ask this Court to hold that every court before now has answered the competency question so wrong that all reasonable jurists would agree they were wrong. *Richter*, 562 U.S. at 101–02. Corcoran's attorneys failed to make the case in state court that he is incompetent to be executed now. Surely, his wife has failed to prove that he has been incompetent for more than 20 years on the same evidence. The state court did not unreasonably apply Eighth Amendment jurisprudence. Habeas relief should be denied.

C. The state court's decision did not rest on an unreasonable determination of the facts

Finally, the state court made no unreasonable factual determinations. This Court's review of the state court's factual findings is "highly deferential." *Cullen v. Pinholster*, 563 U.S. 170, 181 (2011) (citation and internal quotation marks omitted). This Court will defer to the state court unless its decision "was based on an

unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. § 2254(d)(2). "[A] determination of a factual issue made by a State court shall be presumed to be correct." § 2254(e)(1).

Under Section 2254(d)(2), "a state-court factual determination is not unreasonable merely because the federal habeas court would have reached a different conclusion in the first instance." *Wood v. Allen*, 558 U.S. 290, 301 (2010) (citing *Williams*, 529 U.S. at 411). The state court's factual determinations are reasonable if they are supported by the record. *See Burt v. Titlow*, 571 U.S. 12, 20 (2013). Corcoran's next friend must show that all reasonable minds would disagree with the state court's factual findings. *See Rice v. Collins*, 546 U.S. 333, 341–42 (2006). That is to say, the facts must be beyond debate. *See id.* at 342; *Burt*, 571 U.S. at 22; *Wood*, 558 U.S. at 303. Any arguments about the weight of evidence must be made under section 2254(d)(1). *See Lopez v. Smith*, 574 U.S. 1, 8 (2014).

The state court made no unreasonable factual determinations. Corcoran's wife has failed to point to any objectively and unreasonably incorrect facts upon which the state court's decision relied. They have not proved reliance on any fact by the state court that all reasonable jurists would agree is wrong. *Rice*, 546 U.S. at 341–42; *Burt*, 571 U.S. at 22; *Wood*, 558 U.S. at 303. Rather, their argument is about the weight that they believe the state court should have given certain evidence, which does not prove an unreasonable determination of the facts. *See Lopez*, 574 U.S. at 8.

The Seventh Circuit's decision properly applied Section 2254(d)(1) when it rejected Corcoran's challenge to the weight the state court gave Corcoran's affidavit.

Corcoran's next friend claims that the Seventh Circuit erred by evaluating under 2254(d)(1), not (d)(2), when it addressed Corcoran's next friend's claim that the state court placed too much weight on his notarized affidavit. The Seventh Circuit properly determined that "arguments as to weight are properly made under 2254(d)(1), not (d)(2)." Pet. App. 72a.

Corcoran's reliance on *Brumfield v. Cain*, 576 US. 305, 307 (2015), does not show the Seventh Circuit cited to the wrong provision to review this challenge. In *Brumfield*, this Court confronted a different issue. Brumfield requested an opportunity to prove that he was intellectually disabled under *Atkins v. Virginia*, 536 U.S. 304 (2002). The state court denied him an evidentiary hearing after making two underlying factual determinations. *Brumfield*, 576 U.S. at 307. First, the state court found that Brumfield's IQ score of 75 "was inconsistent with a diagnosis of intellectual disability" and second, "that he had presented no evidence of adaptive impairment." *Id.* at 313. This Court found the first factual determination to be unreasonable under 2254(d)(2) in light of the evidence presented because Brumfield's uncontested IQ score of 75 was "entirely consistent with intellectual disability" given the clearly established federal precedent in Atkins and there was no other evidence of a higher IQ score. *Id.* (*quoting Atkins*, 536 U.S. at 309). In other words, the only evidence before the state court showed that Brumfield had an IQ that was consistent—not inconsistent—with a finding that he was intellectually disabled. Id. at 316. Likewise, there was evidence in the record to show adaptive impairment which made the state court's finding that there was no evidence unreasonable. *Id.* at 316.

Contrary to Corcoran's next friend's claim, *Brumfield* does not permit a habeas court to reweigh certain pieces of evidence under 2254(d)(2). Unlike *Brumfield*, Corcoran's next friend challenges the legal significance a state court gave his notarized affidavit and therefore is nothing more than an argument that the state court reached the wrong legal conclusion. See *Lopez*, 574 U.S. at 8 ("Although the Ninth Circuit claimed its disagreement with the state court was factual in nature, in reality its grant of relief was based on a legal conclusion about the adequacy of the notice provided."). Below, the state court considered the evidence before it—prior evidence and new evidence, including Corcoran's own affidavit in which he established that he understood the connection between his crime and his punishment—and ruled that Corcoran was competent to be executed. His next friend's issue, then, is not that the state court made an unreasonable determination of fact but rather that the state court reached the wrong legal conclusion. But, consistent with this Court's decision in *Lopez*, the state court's conclusion is properly characterized as one based on the application of the law to the facts, not on the determination of the facts themselves. Corcoran's next friend fails to identify a factual determination that he claims was unreasonable in light of the facts presented to the state court or demonstrate why the Seventh Circuit's decision contravened compliance with this Court's precedent regarding 2254(d).

Corcoran's wife complains that the Seventh Circuit also erred when it referenced Dr. Angeline Stanislaus' report and improperly considered it under 2254(d)(1), not (d)(2). Pet. 21, 37. But this Court should not consider this new report at all in its

Section 2254(d) review. "[R]eview under Section 2254(d)(1) is limited to the record that was before the state court that adjudicated the claim on the merits." *Pinholster*, 563 U.S. at 181–82; *see* 28 U.S.C. § 2254(e)(2). This report was not admitted in the state court and the record was not expanded in the district court. And most of Corcoran's attorneys' failure in state court rested on the fact that "[v]irtually all the evidence" presented to it was evidence it "previously considered." Pet. App. 27a. Not only did Corcoran's attorneys not present this new report in state court, they never indicated that it was in the universe of evidence that they would present if given an evidentiary hearing. This Court cannot consider this new report.

But even had this report been given to the state court, it would not have changed the outcome. The authoring expert did some document review of records the state court already had before it or prison records that could have been submitted. D. Ct. Dkt. 1-1, Attachment N at 1. This expert reports that Corcoran "still" believes the ultrasound delusion. D. Ct. Dkt. 1 at 40 (quoting D. Ct. Dkt. 1-1, Attachment N at 11). Commenting on this "new" report, the habeas petition relayed that the expert "opined, as other experts have, that he 'minimizes and covers up his symptoms.'" D. Ct. Dkt. 1 at 40 (quoting D. Ct. Dkt. 1-1, Attachment N at 11). This new expert merely relied on what other experts have said, and those prior opinions never led to a finding that Corcoran was incompetent. Further, this new expert relied on stale data, and to the extent that the new expert relied on additional prison records, she gives no indication that those records would change any prior experts' opinions. In fact, this new expert does not even render an opinion about Corcoran's competency to be executed.

D. Ct. Dkt. 1-1, Attachment N. This new report may not be considered, and even if it were, it is cumulative of all the previous evidence.

D. Even without deference, this Court should still find that Corcoran's wife is not entitled to relief

Even if this Court were to find some aspect of the state court's decision unreasonable, Corcoran's wife has failed to prove Corcoran is incompetent to be executed. The Eighth Amendment, as held by the controlling opinion in *Ford*, 477 U.S. at 419–27, forbids the execution of those who are insane, and a prisoner is insane only if he is "unaware of the punishment [he is] about to suffer and why [he is] to suffer it." Corcoran "is presumed to be" competent, and his next friend must prove he is not. *Id.* at 426 (Powell, J., concurring).

Corcoran's wife must make a "substantial threshold showing" that any mental illness "prevents him from 'rational[ly] understanding' why the State seeks to impose" the death penalty. *Madison*, 586 U.S. at 267 (quoting *Panetti*, 551 U.S. at 959). Corcoran's next friend must have presented this Court with sufficient "substantial" indication that his "'concept of reality' is 'so impair[ed]' that he cannot grasp the execution's 'meaning and purpose' or the 'link between [his] crime and its punishment.'" *Madison*, 586 U.S. at 269 (quoting *Panetti*, 551 U.S. at 958, 960) (alteration added in *Madison*).

Corcoran is not incompetent to be executed as most recently proved in his affidavit he filed in the Indiana Supreme Court last week when he wrote that, if no further review were granted, he would "be put to death for the heinous crime [he] committed." D. Ct. Dkt. 16-16 at 1–2. This is consistent with his testimony in the state

post-conviction court when he said that he "should be executed for what [he] ha[s] done and not because [he is] supposedly tortured with ultrasound or whatever." *Corcoran*, 820 N.E.2d at 660–61. And this is also consistent with what he wrote in an affidavit filed in December 2005: "I believe that since I am guilty of murder I should be executed." D. Ct. Dkt. 16-18. Corcoran has consistently shown that he has a rational understanding of the connection between his crime and his punishment.

Most of Corcoran's next friend's arguments focus on the irrationality of his decision to forego further appeals. *See* Pet. 30–31. They fail to recognize that that question is separate from Corcoran's understanding of his death sentence. Corcoran's motivation for ending his fight against his sentence is different from his understanding why he is being executed. Corcoran recognizes that both life imprisonment and a death sentence are punishments. His decision that he would rather accept death rather than fight for life imprisonment is not irrational, just because others would choose differently. The rationality of this decision is not affected by the fact that an alleged Corcoran dislikes prison is an alleged delusion about the ultrasound machine, to the extent Corcoran actually suffers those delusions. D. Ct. Dkt. 16-17, 16-18.

Expert testimony has proved his competency to be executed as well. Dr. Parker, after an evaluation during post-conviction proceedings, testified that Corcoran had "a very clear awareness of the status of his case." *Corcoran*, 820 N.E.2d at 661. Dr. Robert Kaplan, "who also evaluated Corcoran, testified that Corcoran was aware that by not continuing with post-conviction review that he would be executed." *Id.* Back then, the state court unequivocally held that "[t]he evidence supports the trial

court's conclusion that Corcoran has both a rational understanding of and can appreciate his legal position." *Id.* at 662; *see Madison*, 586 U.S. at 275 (the Eighth Amendment does not prohibit the execution of a person who "remains oriented in time and place; he can make logical connections and order his thoughts; and he comprehends familiar concepts of crime and punishment."). Thus, even if Corcoran does experience the claimed delusion about ultrasound machines or the like, it does not impede his ability to appreciate the link between his crimes and the punishment.

Of course, there is reason to doubt that Corcoran suffers from the claimed delusion. Corcoran has said he does not suffer the delusion about an ultrasound machine upon which almost all of his next friend's case for incompetency to be executed relies. Corcoran admitted he fabricated it. He wrote in a letter to the district court in 2006: "I made up a story that the prison is tormenting me with ultrasound.…I tried to hint to [attorneys] that these things don't really happen but I got accused of down playing my symptoms—symptoms I do not have but I made up such as hearing sound effects or taunting music." D. Ct. Dkt. 16-17 at 4.

He said the same in an affidavit he sent to the district court in December 2005:

> In the past lawyers and psychiatrists have claimed that I wanted to waive my appeals and get executed because: (a) I wanted to escape a sleep disorder that I don't have; (b) to escape delusions I have that the prison is tormenting me with ultrasound; (c) to escape an involuntary speech disorder I don't have. They have also claimed that my delusions prevent me from making a rational choice. And no doubt my lawyer will make such claims. But the fact is I made such stories up.

D. Ct. Dkt. 16-18. Corcoran's next friend's case for incompetence rests on a factual premise that was fabricated.

The State does not deny, and has never denied, that Corcoran has some mental-health issues. But the State denies, and has always denied, their severity. Corcoran's next friend has not proved, or even made a threshold showing, that he does not have a rational understanding of the reason he is to be executed. The Court should deny the wife's petition and stay request.

IV. The Motion to Stay Should Be Denied

This Court should deny the motion to stay. "Last-minute stays should be the extreme exception, not the norm." *Bucklew v. Precythe*, 587 U.S. 119, 150 (2019). Stays are an "intrusion into the ordinary processes of administration and judicial review." *Nken*, 556 U.S. at 427 (2009) (quoting *Virginia Petroleum Jobbers Assn. v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958)). The issuance of a stay is not "a matter of right" but an equitable remedy, and courts considering a stay "must be sensitive to the State's strong interest in enforcing its criminal judgments without undue interference from the federal courts." *Hill v. McDonough*, 547 U.S. 573, 584 (2006)). (citing *Nelson v. Campbell*, 541 U.S. 637, 649–50 (2004)). To be granted a stay, Corcoran's wife must make " a strong showing that [he is] likely to succeed on the merits," that Corcoran will be "irreparably injured absent a stay," that the issuance of the stay will not "substantially injure the other parties interested in the proceeding," and that granting a stay is in "the public interest." *Nken v. Holder*, 556 U.S. 418, 434 (2009). None of the requirements for a stay are met. The wife is unlikely to succeed on the merits for the reasons above. And the equities weigh against a stay.

A. The Court should adhere to the traditional stay standard

As an initial matter, this Court should apply the traditional standard for a stay and reject Corcoran's wife's argument for a less-demanding standard derived from *Lonchar v. Thomas*, 517 U.S. 314 (1996), and *Barefoot v. Estelle*, 463 U.S. 880 (1983). Neither *Lonchar* nor *Barefoot* dealt with a habeas petition raising a *Ford* claim. *See Lonchar*, 517 U.S. at 318 (considering stay pending disposition of a first habeas petition raising 22 claims); *Barefoot*, 463 U.S. at 885–86 (considering stay pending disposition of a first habeas petition claiming constitutional error in the admission of evidence). Rather, *Lonchar* governs claims for an initial habeas petition attacking the constitutionality of custody based on a state-court conviction or sentence. *See Lonchar*, 517 U.S. at 322 ("*Barefoot* indicated that stays in "[s]econd and successive federal habeas corpus petitions present a different issue," since in such cases it is more likely that "'a condemned inmate might attempt to use repeated petitions and appeals as a mere delaying tactic'").

A *Ford* claim like the one pending before this Court not an attack on the propriety of the entry of a conviction or sentence, but on the State's capability of carrying out a lawful sentence. Members of this Court and courts around the country have declined to apply the *Lonchar* standard to *Ford* claims about competency to be executed. *See, e.g.*, *Johnson v. Vandergriff*, 143 S. Ct. 2551, 2556 (2023) (Sotomayor, J., dissenting from denial of a stay); *Montgomery v. Watson*, 833 Fed.Appx. 438, 439–40 (7th Cir. 2021); *Bedford v. Bobby*, 645 F.2d 372, 377 (6th Cir. 2011); *Charles v. Stephens*, 612 F. App'x 214, 222 (5th Cir. 2015); *Clayton v. Luebbers*, 780 F.3d 903, 904

(8th Cir. 2015) (per curiam); *Gore v. Crews*, 720 F.3d 811, 815 (11th Cir. 2013). Merely because a habeas petition raising an incompetency-to-be-executed claim is not treated as a successive one such that it requires permission to bring it does not transform a petition raising that claim into an initial habeas petition for all purposes. The well-established standard for a stay controls here.

B. Corcoran's wishes and counsel's delay cut against a stay

Under that standard, no stay is appropriate. Corcoran's wife has not shown that Corcoran will suffer irreparable injury absent a stay. The wife argues that execution, by its very nature, constitutes irreparable harm. Stay. App. 20. But that argument presumes that Corcoran is not competent to be executed. He is competent. Carrying out a lawful sentence in accordance with the law thus inflicts no cognizable legal injury. To the contrary, punishing the guilty is the fulfillment of the public's "moral judgment." *Calderon v. Thompson*, 523 U.S. 538, 556 (1998).

Delay in seeking relief cuts against a stay too. "[L]ast-minute claims arising from long-known facts" can justify "denying equitable relief." *Ramirez v. Collier*, 595 U.S. 411, 434 (2022) (citing *Gomez v. U.S. Dist. Court for Northern Dist. of Cal.*, 503 U.S. 653, 654 (1992) (per curiam)). That "well-worn principle of equity" holds true even "in capital cases." *Id.* And it is fully applicable here. After earlier rounds of post-conviction review concluded in 2015, "neither Corcoran nor anyone on his behalf pursued any claims" for "most of the time." Pet. App. 18a. Then, on June 26, 2024, State filed a motion with the Indiana Supreme Court, asking it to set an execution date in

Corcoran's case. That motion—filed five months ago—put Corcoran's attorneys and wife on notice of the need to raise any competency objections. Nothing happened.

Then, on September 11, 2024, the Indiana Supreme Court ordered that Corcoran be executed on December 18, 2024. D. Ct. Dkt. 16-5. Corcoran's wife conceded below that she could have raised a competency objection no later than September 11, 2024. C.A. Dkt. 6 at 15. Nevertheless, Corcoran's post-conviction counsel waited 65 days—just 33 days before his scheduled execution date—to ask the state courts to authorize successive post-conviction relief. D. Ct. Dkt. 16-6–11. And Corcoran's wife waited to file a federal habeas petition until just days before the execution date. Her late-breaking assertion that Corcoran is incompetent to be executed is exactly the kind of "'last-minute' claim relied on to forestall an execution" that this Court does "not for a moment countenance." *Nance v. Ward*, 597 U.S. 159, 174 (2022). This Court should "police carefully against attempts … to interpose unjustified delay." *Bucklew*, 587 U.S. at 150.

C. A stay will injure third parties and is against the public interest

"Both the State and the victims of crime have an important interest in the timely enforcement of a sentence." *Bucklew*, 587 U.S. at 149. Too often, those interests are "frustrated" by "delay through lawsuit after lawsuit." *Id.* Corcoran's case has proven to be no exception. *See Corcoran*, 483 F.Supp.2d at 712 (noting the "unusual and more convoluted than normal" procedural history of Corcoran's case). This Court has repeatedly recognized that "equity must be sensitive to the State's strong interest in enforcing its criminal judgment without undue interferences from the federal

courts." *Hill*, 574 U.S. at 584. The additional delay caused by a stay at this stage would undermine the powerful interest—shared by the State, the public, and the victims' families,—in the timely enforcement of his sentence. *See id.*

Corcoran was convicted of quadruple murder and sentenced to death in 1999. A quarter-century wait is long enough. "Only with real finality" can we "move forward knowing the moral judgment will be carried out." *Calderon*, 523 U.S. at 556. "To unsettle these expectations," especially at the eleventh hour, "is to inflict a profound injury to…the State and the victims of crime alike." *Id.* A stay should be denied.

CONCLUSION

This Court should deny Corcoran's next friend's motion to stay and petition for a writ of certiorari.

Respectfully submitted,

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