No. 24A771
CAPITAL CASE

EXECUTION SCHEDULED FOR
THURSDAY, FEBRUARY 13, 2025, AT 6:00 P.M.

In the
Supreme Court of the United States

JAMES D. FORD,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

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

RESPONSE TO APPLICATION FOR STAY OF EXECUTION

On February 9, 2025, Ford, represented by state postconviction counsel Ali A. Shakoor and the Capital Collateral Regional Counsel ("CCRC"), filed, in this Court, a petition for writ of certiorari seeking review of a decision from the Florida Supreme Court in this active warrant case. The petition raised two issues: (1) whether Article I, § 17 of the Florida Constitution, which requires Florida's constitutional prohibition against cruel and unusual punishment to be construed in conformity with this Court's decisions interpreting the Eighth Amendment, violates the Eighth and Fourteenth Amendments of the United States Constitution; and (2) whether *Roper v. Simmons*, 443 U.S. 551 (2005), should be extended to first-degree murderers who were over 18

years old at the time of their offenses but had lower mental and developmental ages. He also filed an application for a stay of execution based on that petition. This Court, however, should simply deny the petition and then deny the stay.

Stays of Execution

Stays of executions are not granted as "a matter of course." *Hill v. McDonough*, 547 U.S. 573, 583-84 (2006). A stay of execution 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). "Both the State and the victims of crime have an important interest in the timely enforcement of a sentence." *Calderon v. Thompson*, 523 U.S. 538, 556 (1998). This Court has highlighted the State's and the victims' interests in the timely enforcement of the death sentence. *Bucklew v. Precythe*, 587 U.S. 119, 149-151 (2019). The people of Florida, as well as surviving victims and their families, "deserve better" than the "excessive" delays that now typically occur in capital cases. *Id.* at 149. The Court has stated that courts should "police carefully" against last-minute claims being used "as tools to interpose unjustified delay" in executions. *Id.* at 150. This Court has also stated that last-minute stays of execution should be the "extreme exception, not the norm." *Id.*

To be granted a stay of execution, Ford must establish three factors: (1) a reasonable probability that the Court would vote to grant certiorari; (2) a significant possibility of reversal if review was granted; and (3) a likelihood of irreparable injury to the applicant in the absence of a stay. *Barefoot v. Estelle*, 463 U.S. 880, 895 (1983). Ford must establish all three factors.

Probability of This Court Granting Certiorari

As to the first factor, there is little chance that four justices of this Court would vote to grant certiorari review on the issues raised here. In state court, Ford raised a claim, for the first time after his death warrant was signed, that *Roper* should be extended to persons who were adults at the time of their capital crimes but had lower mental and developmental ages. The Florida Supreme Court found Ford's claim both untimely under Florida law and meritless under the federal and Florida constitutions. *Ford v. State*, SC2025-0110, 2025 WL 428394, at *3-4 (Fla. Feb. 7, 2025). The time bar applied in state court below is reason enough to deny review. This Court does not grant review of issues that are matters of state law. *Foster v. Chatman*, 578 U.S. 488, 497 (2016); *Michigan v. Long*, 463 U.S. 1032, 1041-42 (1983). And Ford's first issue, challenging the Florida Constitution's conformity clause, was never raised in state court at all, which likewise deprives this Court of jurisdiction. *Hill v. California*, 401 U.S. 797, 805 (1971); *Street v. New York*, 394 U.S. 576, 581-82 (1969).

Ford asserts in his certiorari petition that the Florida Supreme Court "did not rely on any adequate or independent state ground" in rejecting his *Roper* claim. Pet. at 11. But that is simply not true. As the Florida Supreme Court explained, Florida

law requires all postconviction claims to be filed no later than one year of the date the defendant's conviction and sentence become final, unless: "(A) the facts on which the claim is predicated were unknown to the movant or the movant's attorney and could not have been ascertained by the exercise of due diligence, or (B) the fundamental constitutional right asserted was not established within the [one-year] period . . . and has been held to apply retroactively, or (C) postconviction counsel, through neglect, failed to file the motion." *Ford*, 2025 WL 428394, at *2 (quoting Fla. R. Crim. P. 3.851(d)(2)). In Ford's case, his "convictions and sentences became final when [this] Court denied certiorari review in 2002." *Id.* at *1 (citing *Ford v. Florida*, 535 U.S. 1103 (2002)). Yet Ford's *Roper*-extension claim was raised for the first time in his "January 18, 2025, third successive motion for postconviction relief, nearly twenty-three years after his convictions and sentences became final." *Id.* at *3.

Importantly, "Ford d[id] not allege that any of the exceptions in rule 3.851(d)(2) apply to [his *Roper*] claim." *Id.* In fact, Ford's postconviction counsel acknowledged that Ford was not alleging that the *Roper* claim rested on newly discovered evidence. *Id.* at *3 n.4. Nor could Ford have seriously argued otherwise. At the penalty phase of his trial, Ford introduced evidence that he had a developmental age of 14 years old as a mitigating circumstance. *See Ford v. State*, 802 So. 2d 1121, 1126-27 & n.2 (Fla. 2001). The trial court accepted that proposed mitigator as "proven" but ultimately gave it no weight "based on extensive testimony by other witnesses showing that Ford functions well as a mature adult." *Id.* at 1135. Therefore, the facts underlying Ford's *Roper* claim have been known to him for more than 25 years. *Ford*, 2025 WL 428394,

at *3 n.5. The Florida Supreme Court also observed that "even assuming that Ford could not have raised the legal basis of this claim until *Roper* was issued in 2005, his claim is still nearly two decades too late." *Id.* at *3. Thus, the Florida Supreme Court held that the "claim was properly denied as untimely." *Id.*

Ford's application for stay of execution only reinforces the fact that his *Roper* claim could have been raised decades ago. Ford laments that the state courts denied his claim without an evidentiary hearing. But much of Ford's stay motion is spent summarizing the penalty-phase testimony of Dr. William Mosman, who evaluated Ford *in 1999*. The Florida Supreme Court flatly rejected Ford's argument that his *Roper* claim did not become "ripe" until the signing of the death warrant or his subsequent evaluation by Dr. Hyman Eisenstein, stating, "The signing of the warrant has nothing to do with whether Ford is eligible for execution based on his mental age, which has remained stable for the last twenty-five years. Nor does he explain why the January 16, 2025, evaluation was not done until the warrant was signed or why its results were necessary to raise this claim that is based on information that has been known to Ford for over twenty-five years." *Id.* at *3 n.5.

The Florida Supreme Court's opinion establishes beyond any question that the denial of Ford's *Roper* claim was based on an independent and adequate state-law ground, *i.e.*, it was time-barred under Fla. R. Crim. P. 3.851. As such, this Court lacks jurisdiction. Further, this Court has consistently denied review of similar claims by Florida death row inmates who committed murder as adults and sought exemption from execution under *Roper*. *See, e.g.*, *Barwick v. Florida*, 143 S. Ct. 2452 (2023);

Branch v. Florida, 583 U.S. 1153 (2018). There is little probability that the Court would vote to grant certiorari review under these circumstances. Ford fails the first factor, which is alone sufficient to deny the motion for a stay.

Significant Possibility of Reversal

As to the second factor, there is not a significant possibility of reversal on either of the issues raised by Ford. His first issue, challenging the constitutionality of the Florida Constitution's conformity clause, was never presented to the state courts, nor was it addressed in the Florida Supreme Court's opinion. Nor does Ford cite any precedent, from this Court or any other, to support his argument that a State violates the Eighth Amendment by refusing to grant greater protections than this Court's Eighth Amendment jurisprudence affords. Ford's second issue, arguing that he should be exempt from execution under *Roper*, was rejected by the Florida Supreme Court on the independent and adequate state-law ground that Ford's claim was untimely, depriving this Court of jurisdiction. And regardless, the Florida Supreme Court correctly rejected Ford's claim on the alternative ground that it was meritless. *Ford*, 2025 WL 428394, at *4 ("[B]ecause Ford was thirty-six at the time of the murders, it is impossible for him to demonstrate that he falls within the ages of exemption, rendering his claim facially insufficient and therefore properly summarily denied."). Thus, Ford fails this factor as well.

Irreparable Injury

As to the third factor of irreparable injury, it is a given in capital cases. While the execution will cause irreparable injury, that is the inherent nature of a death

sentence. The factors for granting a stay are taken from the standard for granting a stay as applied to normal civil litigation. This factor is not a natural fit in capital cases. In the capital context, more should be required. Otherwise, this factor would automatically be satisfied in every capital case. Indeed, this Court has stated in the capital context that "the *relative* harms to the parties" must still be considered, including "the State's significant interest in enforcing its criminal judgments." *Nelson*, 541 U.S. at 649-50 (emphasis added). Here, Ford does not provide any unique or special argument as to why a last-minute stay is warranted in his specific case that outweighs the State's interest in enforcing the law. While the execution means Ford's pending litigation will be rendered moot, that consideration must be balanced by the fact that Ford has had years to raise these claims and did not do so until the eve of the execution. As the Eleventh Circuit has noted regarding stays of execution, they amount to a commutation of a death sentence to a life sentence for the duration of the stay. *Bowles v. DeSantis*, 934 F.3d 1230, 1248 (11th Cir. 2019) (citing *Bucklew v. Precythe*, 587 U.S. 119, 149-151 (2019)). Without finality, "the criminal law is deprived of much of its deterrent effect." *Calderon v. Thompson*, 523 U.S. 538, 555-56 (1998). And real finality is the execution. Because Ford points to no specific argument in support of this factor, he fails this prong as well.

Ford fails to meet any of the three factors for being granted a stay of execution. Therefore, the application for a stay of execution should be denied.

Respectfully submitted,

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