No. ______

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2024

EDWARD THOMAS JAMES,

Petitioner,

v.

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL.,

Respondents.

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

APPLICATION FOR STAY OF EXECUTION

THIS IS A CAPITAL CASE
WITH AN EXECUTION SCHEDULED FOR
THURSDAY, MARCH 20, 2025, AT 6:00 P.M.

To the Honorable Clarence Thomas, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Eleventh Circuit:

Petitioner Edward Thomas James requests a stay of his March 20, 2025, execution pending this Court's decision in *Rivers v. Guerrero*, No. 23-1345, which is scheduled for argument on March 31, 2025.

This Court granted certiorari in *Rivers* to address a conflict in the circuits, one which includes the Eleventh. This Court's resolution of the circuit split will directly impact Mr. James given the substantially similar issues presented by him. Mr. James

should not be executed just weeks before this Court decides the critical legal question in both his and Rivers' cases. The Court should grant a stay to "prevent these . . . virtually identically situated litigants from being treated in a needlessly disparate manner." *Roper v. Weaver*, 550 U.S. 598, 601 (2007).

I. Background

On September 6, 2024, the district court entered a 120-page order denying Mr. James' initial federal habeas petition pursuant to 28 U.S.C. § 2254 as untimely. MDFL-ECF 90.[1] In January 2025, Mr. James moved in the Eleventh Circuit for a COA to appeal the district court's order. CA11-ECF 6. On February 3, 2025, a single judge of the Eleventh Circuit denied Mr. James a COA. CA11-ECF 9-1.

Under 11th Cir. R. 27-2, Mr. James was afforded 21 days to move for a three-judge panel to reconsider the single-judge's COA denial. *See also Hodges v. Attorney Gen., State of Fla.*, 506 F.3d 1337, 1349 (11th Cir. 2007). Before that time expired, on February 18, 2025, the Governor signed Mr. James' death warrant, setting the execution for March 20, 2025. On February 24, 2025, Mr. James timely moved for a three-judge panel's review of his COA request. CA11-ECF 24.

At the same time, Mr. James moved in the district court to amend his § 2254 petition based on his gaining access for the first time to CT imaging scans[2] that were

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[1] Citations to the district court's docket (M.D. Fla. No. 6:18-cv-993) will be in the form "MDFL-ECF." Citations to the two relevant Eleventh Circuit dockets (Nos. 24-14162 and 25-10683) will be in the form "CA11-ECF" and "2CA11-ECF," respectively.

[2] The CT imaging scans were not disclosed to Mr. James until Friday, February 14, 2025—four days before his death warrant was issued.

taken during the pendency of his § 2254 litigation and which significantly strengthened the procedural arguments and substantive claims he made to the district court and the Eleventh Circuit. MDFL-ECF 99 at 3-4, 7-14.

Mr. James acknowledged in the district court that, under *Boyd v. Secretary*, 114 F.4th 1232 (11th Cir. 2024), the Eleventh Circuit's precedent considered his filing an unauthorized second or successive petition under § 2244(b). But Mr. James noted the circuit split on the issue, and that certiorari had recently been granted in *Rivers v. Guerrero*, No. 23-1345 (cert. granted Dec. 6, 2024), to resolve the split. MDFL-ECF 99 at 3-4. In the alternative, Mr. James moved for relief from the district court's judgment pursuant to Federal Rule of Civil Procedure 60(b)(2). *Id.* at 4-7.

On February 27, 2025, the district court dismissed Mr. James' motion for lack of jurisdiction under *Boyd*. MDFL-ECF 99 at 6. Alternatively, the district court rejected Mr. James' Rule 60(b) arguments, finding that the new evidence would probably not produce a new result in this case. *Id.* at 6-7. The district court also denied a COA. *Id.* at 12-13. The same day, a three-judge panel of the Eleventh Circuit denied reconsideration of the single-judge COA denial as to the underlying § 2254 petition's dismissal. CA11-ECF 17-1.

On March 4, 2025, Mr. James appealed the district court's jurisdictional dismissal of his motion to amend. His notice of appeal also covered the district court's alternative Rule 60(b) ruling. MDFL-ECF 102. Under the Eleventh Circuit's precedent, his appeal of the district court's jurisdictional dismissal did not require a COA, *see Osbourne v. Sec'y, Fla. Dep't of Corrs.*, 968 F.3d 1261, 1264 n.3 (11th Cir.

2020), but his appeal of the district court's alternative Rule 60(b) analysis did, *see Hamilton v. Sec'y, Fla. Dep't of Corrs.*, 793 F.3d 1261, 1264 (11th Cir. 2015); *see also Jennings v. Sec'y, Dep't of Corrs.*, 108 F.4th 1299 (2024) ("[U]nder the law of the circuit, Jennings did not need a certificate of appealability to appeal the district court's dismissal of his § 2254 petition for lack of subject-matter jurisdiction.").

However, the Clerk's docketing letter only instructed Mr. James to file a COA motion, and did not set a briefing schedule for his appeal of the district court's jurisdictional dismissal. 2CA11-ECF 1-1. So on March 6, 2025, Mr. James moved (1) to set a briefing schedule on his appeal of the jurisdictional dismissal, and (2) for a COA as to the district court's alternative Rule 60(b) analysis. 2CA11-ECF 4, 5.

Mr. James also moved in the Eleventh Circuit to stay his execution pending his appeal of the jurisdictional dismissal implicating *Rivers*, and his COA motion regarding the district court's alternative Rule 60(b) analysis. 2CA11-ECF 6.

On March 13, 2025, the Eleventh Circuit denied Mr. James' motion to stay his execution. In denying Mr. James' request for a stay based on *Rivers*, the Eleventh Circuit reaffirmed its *Boyd* precedent and emphasized "it is the unequivocal law of this circuit that, because grants of certiorari do not themselves change the law, they must not be used by courts of this circuit as a basis for granting a stay of execution that would otherwise be denied." *James v. Sec'y, Fla. Dep't of Corrs.*, No. 25-10683, 2025 WL 796324, at *3 (11th Cir. Mar. 13, 2025) (citing *Schwab v. Sec'y, Dep't of Corrs.*, 507 F.3d 1297, 1298 (11th Cir. 2007)). The Eleventh Circuit took no action on Mr. James' request for a briefing schedule in his jurisdictional appeal, or his COA

motion regarding the district court's alternative Rule 60(b) analysis.[3]

II. The stay factors weigh in favor of granting a stay

Mr. James requests a stay of execution, pursuant to Supreme Court Rule 23 and 28 U.S.C. § 2101(f), pending this Court's decision in *Rivers*. This Court is empowered to stay an execution pending consideration and disposition of a petition for a writ of certiorari because "[a]pproving the execution of a defendant before his appeal is decided on the merits would clearly be improper." *Barefoot v. Estelle*, 463 U.S. 880, 889 (1983). That is doubly true here because this Court is set to decide in *Rivers* whether the *Boyd* precedent upon which the Eleventh Circuit has relied was correct, just weeks after Mr. James' scheduled execution. While Mr. James recognizes that a stay of execution is "an equitable remedy" and is "not available as a matter of right," *Hill v. McDonough*, 547 U.S. 573, 584 (2006), each of the stay factors—likelihood of success on the merits, undue delay, relative harm to the parties, and the public interest—weigh in favor of granting one here.

A. Mr. James is likely to succeed on the merits

The Eleventh Circuit in its Order denying Mr. James' motion to stay his execution relied on its prior decision in *Boyd* to deny relief. *See* 2CA11-ECF 15-1 at 6-7 ("[A] final judgment ends the district court proceedings, cutting off the

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[3] This Court has admonished lower courts not to proceed in this fashion. Faced with a looming execution date in a first federal habeas action, a court is still obligated to address the merits of the case before the execution, and if it cannot do so in time, it must issue a stay to prevent the case from becoming moot. "[It] would abuse its discretion by attempting to achieve the same result indirectly by denying a stay." *Lonchar v. Thomas*, 517 U.S. 314, 320 (1996). The Eleventh Circuit violated that rule by denying Mr. James a stay but leaving his COA and briefing motions pending.

opportunity to amend pleadings and precluding relitigation of any claim resolved by the judgment unless that judgment is first set aside.") (citation omitted). In *Boyd*, the court added that "once a district court has entered its final judgment on the merits in a habeas case, a new filing by the same prisoner seeking federal habeas corpus relief from the same state conviction is almost always properly considered a second or successive habeas petition, no matter what the prisoner calls it." 114 F.4th at 1236.

Mr. James has shown a likelihood of success on the merits for the reasons explained in his accompanying petition for a writ of certiorari. In short, the Eleventh Circuit's rationale is erroneous as it runs afoul of the federal rules of civil and appellate procedure. While it is true that a district court no longer has jurisdiction over a case upon the filing of a notice of appeal, *see Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982), that does not preclude the court from (1) issuing an indicative ruling; and (2) ruling on the mid-appeal motion after a relinquishment by the court of appeals. *See*, *e.g.* Fed. R. Civ. P. 62.1(b); Fed. R. App. P. 12.1(b).

Moreover, Eleventh Circuit precedent is contrary to this Court's instruction in *Panetti v. Quarterman*, 551 U.S. 930, 946 (2007) and *Banister v. Davis*, 590 U.S. 504 (2020). In *Panetti*, this Court explained that it has "resisted an interpretation of the statute that would 'produce troublesome results,' 'create procedural anomalies,' and 'close our doors to a class of habeas petitioners seeking review without any clear indication that such was Congress' intent.'" 551 U.S. 930, 946 (2007) (quoting *Castro v. United States*, 540 U.S. 375 (2003)). Yet, the Eleventh Circuit has impermissibly displaced the applicable rules of civil and appellate procedure governing post-

judgment amendments in favor of AEDPA's § 2244(b). *See Banister*, 590 U.S. at 511 ("This case requires us to choose between two rules—more specifically to decide whether AEDPA's § 2244(b) displaces Rule 59(e) in federal habeas litigation."). *Id*. at 515. However, § 2244(b) does "not redefine what qualifies as a successive petition, much less place [Rule 62.1] motions in that category."

On the merits, there is a substantial likelihood that this Court's ultimate decision in *Rivers* will abrogate *Boyd*.

B. Undue delay

Mr. James timely and diligently filed his motion to amend in the district court after gaining access to the new evidence for the first time. As described in his petition for a writ of certiorari, Mr. James suffered a near fatal cardiac arrest on death row on January 11, 2023. He was found unresponsive in his cell and blue in color. It is unknown how long he had been unconscious and without oxygen before he was found. He required several rounds of resuscitation in the prison before being transferred to the hospital, including multiple rounds of shocks delivered via an automated external defibrillator and followed by compressions over a twenty-minute period, as well as intubation in the field. Additional lifesaving measures were taken at the hospital, including continued intubation, therapeutic hypothermia, and the placement of a cardiac stent. His lack of consciousness resulted in a loss of oxygen-saturated blood to his brain causing an acute encephalopathy, or a brain injury. In addition to the loss of oxygen to his brain, medical staff noted that Mr. James had an acute head injury. He remained in a coma for two days before showing initial improvement.

Immediately upon learning Mr. James had been hospitalized, his federal counsel contacted multiple facilities seeking all available information and medical records related to this event. The request process was complicated by Mr. James' admission under a pseudonym. And, despite counsel possessing a medical release for Mr. James, security and privacy protocols meant that it took over two weeks from the time of Mr. James' hospitalization to receive confirmation of where he had been hospitalized. That same day, counsel submitted another request seeking all medical records. Although counsel received copies of Mr. James' written medical records and numerous test results on March 24, 2023, it would be nearly two more years until Mr. James' CT images were disclosed.

During those two years, counsel made approximately twelve attempts to obtain the CT images, including contacting multiple medical departments of UF Health; receiving duplicate written records due to renewed requests, but still no scans; and twice being *informed there were no scans*. Finally, on Friday, February 14, 2025—four days before the Governor signed Mr. James' death warrant—counsel received the raw CT imaging and promptly retained expert review of the imaging and radiologist report. At the time, Mr. James' COA proceedings were still pending in the Eleventh Circuit, and there was no indication a death warrant would be signed. On February 24, 2025—ten days after receiving the scans and six days after the death warrant was signed—Mr. James filed his motion to amend in the district court. This was not a motion "filed too late in the day." *Hill*, 547 U.S. at 584.

To the extent the Court's consideration of this application is rushed, the rush is necessitated not due to any delay by Mr. James, but instead because the State of Florida set an execution date while Mr. James' initial round of federal habeas review was still ongoing in the Eleventh Circuit. Without a death warrant, Mr. James' initial appeal and motion to amend would have been decided in the normal course, on a timeline where *Rivers* could inform the ultimate disposition.

C. Harm to parties

Irreparable injury to the petitioner "is necessarily present in capital cases." *Wainwright v. Booker*, 473 U.S. 935, 935 n.1 (1985); *see also In re Holladay*, 331 F.3d 1169, 1177 (11th Cir. 2003) ("We consider the irreparability of the injury that petitioner will suffer in the absence of a stay to be self-evident.").

A stay will not substantially harm the State. This Court will decide *Rivers* by the end of the current term. While the State has a legitimate interest in the timely enforcement of valid criminal judgments, it does not have a legitimate interest in executing a petitioner just before this Court decides a critical legal question in his case, or while other matters are pending in the court of appeals concerning his initial round of § 2254 review. *Cf. Holladay*, 331 F.3d at 1177 ("Moreover, contrary to the State's contention that its interest in executing Holladay outweighs his interest in further proceedings, we perceive no substantial harm that will flow to the State of Alabama or its citizens from postponing petitioner's execution to determine whether that execution would violate the Eighth Amendment."). A brief stay of execution and hold of Mr. James' certiorari petition pending the outcome of *Rivers* is appropriate.

D. Public interest

Granting a stay of execution would not be detrimental to the public interest. Like the State, the public has a legitimate interest in enforcing criminal judgments. However, the public also has an interest in a legal system that opts for deliberate rather than hasty resolutions of criminal cases, especially cases where the consequence for foregoing justice is a petitioner's death. Executing a man who diligently, and for over two years, sought access to his own medical records that substantiate his argument for a causal connection between his mental impairments and his inability to file a timely § 2254 petition undermines the public's confidence in a just system. This is particularly so where this Court is poised to decide an unsettled question of law that is critical to Mr. James' litigation. If Mr. James were to be executed in March, and *Rivers* decided in his favor just weeks later, it would undermine public confidence in the judicial system. A stay of execution pending *Rivers* should be granted.

III. Conclusion

The Court should grant a stay of execution.

Respectfully submitted,

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