No. 24A892

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

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REPLY IN SUPPORT OF APPLICATION FOR STAY OF EXECUTION

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

Mr. James applied for a stay of execution "pending this Court's decision in *Rivers v. Guerrero*, No. 23-1345, which is scheduled for argument on March 31, 2025." Stay App. at 1. The upcoming decision in *Rivers*, and the substantial likelihood that it will abrogate *Boyd v. Sec'y, Fla. Dep't of Corrs.*, 114 F.4th 1232 (11th Cir. 2024), which was the basis for the decisions below here, was the central focus of Mr. James' stay application in this Court. *Rivers* is referenced on almost every page of Mr. James' application. *Id.* at 1-5, 7, 9-10. Yet somehow, Respondent managed to file a six-page response in opposition to a stay without a single mention of either *Rivers* or *Boyd*.

Instead, Respondent first attempts to accuse Mr. James of delay tactics. That accusation is ironic because Mr. James was still litigating his first federal habeas petition, which had been pending since 2018, when the Governor interrupted those proceedings with a death warrant, creating an unnecessarily truncated appeal process. Mr. James' underlying motion to amend in the district court—the filing that implicates *Rivers* and *Boyd*—was based on his long-awaited receipt of CT images on February 14, 2025—four days before the death warrant was signed. Mr. James filed his motion to amend on February 24, 2025—10 days after receiving the scans, and six days after the death warrant. It is therefore difficult to understand the basis for Respondent's criticism. Respondent repeatedly emphasizes that Mr. James filed his certiorari petition in this Court "two days prior to his scheduled execution," Response at 1, 2[1]—ignoring that Mr. James promptly appealed each ruling below, and that it was the Eleventh Circuit that took a quarter of the 30-day warrant period to rule on Mr. James' emergency stay motion. The timing of Mr. James' certiorari filing was the result of an unnecessarily truncated process, not any delay tactics by Mr. James.

Because Respondent ignores *Rivers* and *Boyd*, his analysis of the stay factors simply confuses the issues. Respondent argues there is "little chance that four justices of this Court would vote to grant certiorari review of the questions regarding habeas petition amendments" in Mr. James' petition—without acknowledging that this Court has already granted certiorari in *Rivers* on the same issues. Response at 3.

[1] Respondent only included a page number on the first page of his response. Citations to other pages of the response will thus refer to the page number of the electronic file.

After granting certiorari on a legal issue, this Court often holds pending certiorari petitions pending the outcome of the granted case. *See, e.g.*, *Rutherford v. McDonough*, 547 U.S. 1204 (2006) (after the Eleventh Circuit denied a stay based on the certiorari grant in *Hill v. McDonough*, this Court granted a stay, held Rutherford's certiorari petition pending the decision in *Hill*, and in light of the decision in *Hill*, vacated the Eleventh Circuit's decision and remanded). Because this Court granted certiorari in *Rivers*, it should treat Mr. James' petition the same way.

This is even more critical because the Eleventh Circuit's precedent forbids it from ever granting a stay of execution based on this Court's grant of certiorari in another case—no matter what the issue is or how dispositive it is to the petitioner's case. *See James v. Sec'y, Fla. Dep't of Corrs.*, No. 25-10683, 2025 WL 796324, at *3 (11th Cir. Mar. 13, 2025) ("Indeed, 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…'") (quoting *Schwab v. Sec'y, Dep't of Corrs.*, 507 F.3d 1297, 1298 (11th Cir. 2007)). Therefore, any stay based on a pending case in this Court will only be granted by this Court, as occurred in *Rutherford* and numerous other cases where the Eleventh Circuit denied a stay.

When this Court grants certiorari on an issue, there must be at least a substantial likelihood that each side prevails. Otherwise, the Court would not entertain further briefing and oral argument; instead, it would simply decide the case on the certiorari filings alone. There would be no point of briefing and argument if the outcome was a foregone conclusion. The fact that at least four Justices voted to

place *Rivers* on the oral argument calendar is indicative of at least a substantial likelihood that each side prevails. Moreover, the reason certiorari was granted in *Rivers* was due to a circuit split, meaning that judges in other circuits have disagreed with the Eleventh Circuit's *Boyd* precedent. There is at least a substantial likelihood that this Court rules in *Rivers* that the successive gatekeeping rules do not apply to motions to amend while the initial appeal is pending—which would abrogate *Boyd*.

Respondent misleads in suggesting that, regardless of whether the district court had jurisdiction over the motion to amend, Mr. James would lose his tolling argument because the district court alternatively ruled that "nothing James has ever presented, including the evidence cited in his motion to amend, establishes ground to avoid AEDPA's procedural bar." Response at 3. The district court made no such ruling regarding the motion to amend. The district court found the evidence insufficient to grant relief on Mr. James's alternative request for relief under Rule 60(b), but the district court said nothing about the impact of amending the petition to include the new brain scan information in support of Mr. James's equitable tolling argument. If *Rivers* ultimately abrogates *Boyd*, the district court will need to reconsider Mr. James's motion to amend on the merits, not just dismiss it on jurisdictional grounds.

Respondent insists that "[n]o matter whether James should have been permitted to amend his habeas petition after the district court issued its judgment, his habeas petition remains untimely" because "[i]t was filed over ten years too late, and no exception to the procedural bar has been established." Response at 4. But this begs the entire question of the litigation: whether the district court's *Boyd*-based

jurisdictional dismissal of Mr. James' motion to amend wrongly prevented him from supporting his equitable tolling arguments with the new brain scan information. To keep repeating that Mr. James' petition was filed late does not advance Respondent's position, it simply highlights that *Boyd* and the district court's ruling obstructed Mr. James' equitable tolling argument—i.e., his opportunity to excuse the untimely filing.

This Court is hearing argument in *Rivers* in just 11 days, and will decide it by the end of the current term. This Court should not allow a situation where Mr. James is executed just weeks before a nationally unresolved, dispositive issue in his litigation is decided. In seeking a stay, Mr. James is not asking this Court to apply the law as he or Rivers sees it before the Court decides *Rivers*. He only asks to stay his execution long enough for this Court to decide and announce what the law is.

The Court should grant a stay of execution.

Respectfully submitted,

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