No. 24A948
CAPITAL CASE

EXECUTION SCHEDULED FOR
TUESDAY, APRIL 8, 2025, AT 6:00 P.M.

In the

Supreme Court of the United States

MICHAEL A. TANZI,

Petitioner,

v.

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

Respondent.

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

RESPONSE TO APPLICATION FOR STAY OF EXECUTION

On April 4, 2025, Michael A. Tanzi, represented by state postconviction counsel Paul Kalil and Todd Scher of 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 rendered April 1, 2025, in this active warrant case. The petition raised two related issues: (1) whether Florida may limit a penalty phase jury's role under the Sixth, Eighth, and Fourteenth Amendments based on *Spaziano v. Florida, 468 U.S. 447* (1984); and (2) whether Florida's continued reliance on unanimous advisory recommendations as a substitute for jury fact-finding violates the Sixth Amendment and the Due Process Clause under *Apprendi v. New Jersey,* 530

U.S. 466 (2000) and its progeny. 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, Tanzi 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). Tanzi 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. This Court's Rule 10 states that certiorari will be granted "only for compelling reasons," which include the existence of conflicting decisions on issues of law among federal courts of appeals, among state courts of last resort, or between federal courts of appeals and state courts of last resort. No such situation exists here. Tanzi has cited no conflict or unsettled question of law for this Court's review. Tanzi repeats well-worn and repeatedly rejected claims of *Hurst v. Florida*, 577 U.S. 92 (2016) error. However, there was no underlying error in this case where Tanzi's own guilty pleas to contemporaneous violent felonies rendered him eligible for the death penalty. This Court has repeatedly and consistently declined to review claims of *Hurst* error in Florida. There is little probability that the Court would vote to grant certiorari review under these circumstances. Tanzi 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 Tanzi. Notably, this is the third time Tanzi has sought

review in this Court for a jury fact-finding error under *Ring v. Arizona*, 536 U.S. 584 (2002) or *Hurst*. Tanzi's claims do not gain strength from repetition. Indeed, there is demonstrably less reason to accept review of this case now as it was found procedurally barred below under well-established state law. This Court does not grant review where the decision below rests on independent and adequate state law.

Thus, Tanzi fails this factor as well.

Irreparable Injury

As to the third factor of irreparable injury, there is none. While the execution will result in Tanzi's death, 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, which is not a natural fit in capital cases. In the capital context, more should be required for irreparable injury rather than the execution itself. Otherwise, this factor would automatically be satisfied in every capital case.

In other contexts, this Court has clarified that the "purpose of such a stay is to prevent the execution date from 'interfer[ing] with the orderly processing of a petition on direct review by this Court.'" *Rodriguez v. Texas*, 515 U.S. 1307 (1995). And in *Williams v. Missouri*, 463 U.S. 1301, 1301-02 (1983), this Court explained that a stay would be warranted to prevent a defendant from being executed before having the opportunity to fully present his claim that his death sentence was unconstitutionally imposed. But those situations do not exist here. Likewise, this is not a case in which denying his stay would result in the execution of a defendant who should not be executed. Tanzi faces no actual identifiable harm by the denial of his motion for stay under these circumstances.

Moreover, 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, Tanzi 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.

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 Tanzi points to no specific argument in support of this factor other than the imposition of his lawful sentence, he fails this prong as well.

Tanzi 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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