

No. 13A350

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IN THE  
SUPREME COURT OF THE UNITED STATES

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EDWARD HAROLD SCHAD,  
PETITIONER,

-vs-

CHARLES L. RYAN, Warden,  
RESPONDENT.

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ON PETITION FOR WRIT OF CERTIORARI  
TO THE U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT

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OPPOSITION TO MOTION TO STAY EXECUTION

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Respondents oppose Schad's last-minute motion for a stay of execution. Schad committed the murder for which he is on death row in 1978. His pending petition for certiorari is meritless.

**A. APPLICABLE LAW.**

"[A] stay of execution is an equitable remedy." *See Hill*, 547 U.S. at 584; *Nelson v. Campbell*, 541 U.S. 637, 649 (2004). Equity does not tolerate last-minute abusive delays "in an attempt to manipulate the judicial process." *Nelson*, 541 U.S. at 649 (quoting *Gomez*).

"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)." *See also Hill*, 547 U.S. at 584. "[E]quity must be sensitive to the State's strong interest in enforcing its criminal judgments without undue interference from the federal courts." *Hill*, 547 U.S. at 584 (citing cases).

Hence, 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." *Id.* (quoting *Nelson*, 541 U.S. at 650). This Court has observed that "federal courts can and should protect the State from dilatory or speculative suits, . . ." *Id.* 547 U.S. at 585.

Additionally, to obtain a stay of execution, an inmate must make a clear showing, carrying the burden of persuasion, that he has a "significant possibility of success on the merits." *Id.* at 584, citing *Barefoot v. Estelle*, 463 U.S. 889, 895-96 (1983); and *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (*per curiam*).

**B. SCHAD DOES NOT MERIT A STAY OF EXECUTION.**

**a. Likelihood of success.**

First, the requested stay should be denied because there is no likelihood of success on the merits, even if Schad were allowed to present the claim he raises in his petition for certiorari at this late date. Respondent will simply refer this Court to its brief in opposition to Schad's pending petition for writ of certiorari in this Court's No. 13-6756.

**b. Irreparable harm and balance of equities.**

Absent showing a constitutional violation, Schad fails to show irreparable harm. At this late date, the balance of the equities weigh against granting any stay. Schad has had the opportunity to raise his *Martinez* claim, both to the Ninth Circuit and to this Court.

**c. Interests of justice.**

Equity must be sensitive to the State's strong interest in enforcing its criminal judgments[.]” *Hill*, 547 U.S. at 584. “Both the State and the victims of crime have an important interest in the timely enforcement of a sentence.” *Id.*

**C. SCHAD'S SUPPLEMENT.**

Schad has filed a supplement to his motion for a stay of execution, citing a case pending before this Court: *Sepulveda v. Cain*, No. 12-10251. He argues that *Sepulveda* presents the issue of: “What is a claim?”

But that esoteric issue is not presented here. Both the district court and the Ninth Circuit panel majority recounted the history of Claim P, and concluded that Schad's mental health evidence was submitted in support of Claim P, and was not a

separate claim of ineffective assistance of counsel that had been defaulted. This fact and procedurally-intensive issue cannot be affected by any of the many cases pending before this Court, especially at this late date.

Moreover, the key issue in *Sepulvado* is whether *Martinez* applies to Louisiana. *See In Re Sepulvado*, 707 F.3d 550, 555 (5th Cir. 2013). The Fifth Circuit stated that: “Because *Martinez* is of no moment here, *Sepulvado*’s second-in-time habeas petition is an abuse of the writ and is therefore successive.” *Id.* at 556. The Fifth Circuit assumed, without deciding, that *Sepulvado*’s claim was procedurally defaulted. *Id.* at 555. Therefore, *Sepulvado* has no bearing on this case and presents no compelling reason to grant a stay at the last minute in this long-litigated case.

**D. CONCLUSION.**

For the above reasons, Respondents respectfully requests that this Court deny Schad’s motion for a stay of execution.

Respectfully submitted this 8<sup>th</sup> day of October, 2013,

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**NO APPENDIX**