

DOCKET NO. ____

**IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 2018**

BOBBY JOE LONG,

Petitioner,

vs.

MARK S. INCH, ET AL,

Respondent

**APPLICATION FOR STAY OF EXECUTION PENDING RESOLUTION OF PETITION
FOR WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT**

**CAPITAL CASE, DEATH WARRANT SIGNED
EXECUTION IMMINENT
SCHEDULED FOR MAY 23, 2019, AT 6:00 p.m.**

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REQUEST FOR STAY OF EXECUTION

Comes now the Petitioner, **BOBBY JOE LONG** by and through undersigned counsel, and hereby requests a stay of execution. Mr. Long is currently scheduled to be executed in Florida on May 23, 2019, at 6:00 p.m. Mr. Long applies to this Court pursuant to 28 U.S.C. § 2201(f) for a stay of his execution, currently scheduled for May 23, 2019 at 6:00 p.m. Mr. Long will suffer irreparable harm if this Court does not enter the requested stay of execution. *Barefoot v. Estelle*, 463 U.S. 880 (1983). In support Mr. Long states:

I. PROCEDURAL HISTORY

A. Proceedings on the Writ

On April 23, 2019 Governor DeSantis signed a death warrant setting Mr. Long's execution for May 23, 2019 at 6:00 p.m. Shortly before Mr. Long's death warrant litigation was completed in state court, Mr. Long filed a § 1983 action in the District Court for the Middle District of Florida. The District Court entered an Order denying Mr. Long's accompanying Emergency Motion for Temporary Restraining Order, Preliminary Injunction and/or Stay of Execution. The Eleventh Circuit Court of Appeals affirmed the Order.

B. Prior Proceedings

Mr. Long's procedural history has been previously described in detail in his

pending Application for Stay in this Court on his Petition for Certiorari from his state court proceedings.

II. BASIS FOR A STAY OF EXECUTION

A. The relevant law governing stays of execution.

In *Hill v. McDonough* the U.S. Supreme Court stated that the requirements for a stay of execution listed in *Nelson v. Campbell*, 541 U.S. 637 (2004) and *Gomez v. United States Dist. Court for Northern Dist. Of Cal.*, 503 U.S. 653, 654 (1992) (*per curiam*) should be followed. 126 S.Ct 2096 (2006). The Eleventh Circuit Court of Appeals has in the past used a four-part test in determining whether a stay of execution should be granted that generally comports with *Gomez*:

whether the movant has made a showing of likelihood of success on the merits and of irreparable injury if the stay is not granted, whether the stay would substantially harm other parties, and whether granting the stay would serve the public interest.

Bundy v. Wainwright, 808 F.2d 1410, 1421 (11th Cir.1987). Mr. Chavez has met the standards attendant to the granting of a stay of his execution. Each of the *Gomez* criteria are satisfied in this case.

B. Mr. Long is likely to succeed on the merits of his claims

The Eleventh Circuit Court of Appeals was clearly erroneous in holding there was inexcusable delay by Mr. Long in filing his § 1983 action when it was

filed well within the four year statute of limitations, and the lower court did not even address that issue. A further analysis of the lower court's analysis points out the clear flaws in reasoning.

In holding that *res judicata* applied, the lower court stated petitioner's position was unprecedented, but failed to look at all of the precedent cited by the petitioner. The lower court failed to even examine the compelling reasons supporting manifest injustice.

C. Irreparable injury to Mr. Long of the stay is not granted.

Nothing is more irreparable than death. If a stay is not granted, Mr. Long will suffer irreparable injury as a matter of law, and as a matter of fact.

1) Mr. Long will suffer irreparable injury as a matter of law

Because Mr. Long has demonstrated a likelihood of success on his constitutional claims, a finding of irreparable harm exists as a matter of law. If the requested temporary injunction is not issued, Mr. Long will be executed at Florida State Prison on May 23, 2019 at 6:00 p.m. without being afforded federal review of his claims by this Court. This constitutes irreparable injury. *See, e.g., Evans v. Bennett*, 440 U.S. 1301, 1306 (1979) (Rehnquist, Circuit Justice, granting a stay of execution and noting the "obviously irreversible nature of the death penalty"); *O'Bryan v. Estelle*, 691 F.2d 706, 708 (5th Cir. 1982) (the "irreversible nature of the death penalty" constitutes irreparable injury and weighs heavily in favor of

granting a stay); *Jolly v. Coughlin*, 76 F.3d 468, 482 (2d Cir. 1996) (holding that continued pain and suffering resulting from deliberate medical indifference is irreparable harm).

2) Mr. Long will suffer irreparable injury as a matter of fact

Even if a finding of irreparable harm were not mandated by law upon a finding of likely success on Mr. Long's constitutional claims, there is no doubt in this case that failure to grant a stay would cause Mr. Long irreparable injury in fact, since Defendants will execute him, and soon. Further harm will result from Mr. Long's execution because he will no longer have any meaningful remedy, because he will be dead. The State's violation of Mr. Long's constitutional rights alone validates a presumption of irreparable harm. *See Associated General Contractor's of California, Inc. v. Coalition for Economic Equity*, 950 F.2d 1401, 1412 (9th Cir. 1991) (an alleged constitutional infringement will often alone constitute irreparable harm).

D. Harm to parties

While recognizing that the State of Florida has a finality interest in imposing the sentence of death, substantial harm will not ensue if a stay of execution is granted. Mr. Long will remain in the custody of FDOC, where he has been held since his conviction. Mr. Long is only seeking to prohibit the Defendants from violating his constitutional rights. Under these circumstances, this Court should not

permit Mr. Long's execution to proceed before the Court has the opportunity to review Mr. Long's constitutional claims. Mr. Long has demonstrated specific facts unique to him that require judicial action. The delay resulting from granting the relief sought here will have little adverse effect on the State's interest and will ensure that it does not perform an unconstitutional execution.

A continuation of the status quo while this Court reviews Mr. Long's constitutional claims can cause absolutely no harm to other parties. *See Gomez v. U.S. Dist. Ct. For Northern Dist. Of Cal.*, 966 F.2d 460, 462 (9th Cir. 1992) (Noonan, J., dissenting from grant of writ of mandate) ("The state will get its man in the end. In contrast, if persons are put to death in a manner that is determined to be cruel, they suffer injury that can never be undone, and the Constitution suffers an injury that can never be repaired.") Granting a stay will not substantially harm other parties and, if there was some harm, Mr. Long's potential injury outweighs that harm

E. Public interest

Upholding the U.S. Constitution is always in the public interest. Although there are competing public interests, ultimately one factor favors the issuance of the relief sought. Certainly, the public has an interest in the execution of Mr. Long pursuant to the judgment of the Florida Courts. More importantly, however, it has an interest in having no execution take place until it is determined that Mr. Long's

execution will be carried out consistent with the requirements of the Eighth and Fourteenth Amendments. It is therefore paramount that Mr. Long's weighty constitutional claims be resolved on the merits. The delay in carrying out the execution, which will be necessitated by review and consideration of the merits of Mr. Long's case, is a small price to pay to assure fairness in this critical aspect of carrying out Mr. Long's sentence.

This Court should not be blinded by the State of Florida's rush to execute Mr. Long in violation of his constitutional rights until his constitutional claims are reviewed by this Court.

IV. CONCLUSION

WHEREFORE, Mr. Long respectfully requests this Court stay his execution and allow his Petition for Writ of Certiorari to be fully and fairly litigated without an imminent execution date looming.

Respectfully submitted,

/s/ ROBERT A. NORGARD

Robert A. Norgard
Counsel for Mr. Long

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 23, 2019, I forwarded a copy of the foregoing pleading by electronic transmission to the Office of the Attorney General, at capapp@myfloridalegal.com . I further certify that all parties required to be served have been served.

/s/ ROBERT A. NORGDARD

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