

CASE NO. _____ (CAPITAL CASE)

IN THE SUPREME COURT OF THE UNITED STATES

WESLEY RUIZ,
Petitioner,

v.

STATE OF TEXAS,
Respondent.

APPLICATION FOR STAY OF EXECUTION

EXECUTION SCHEDULED FOR AFTER
7:00 P.M. EASTERN TIME, WEDNESDAY, FEBRUARY 1, 2023

Shawn Nolan*
Peter Walker
Assistant Federal Defenders
Federal Community Defender Office
for the Eastern District of Pennsylvania
601 Walnut Street, Suite 545 West
Philadelphia, PA 19106
(215) 928-0520
Shawn_Nolan@fd.org

** Counsel of Record*
Member of the Bar of the Supreme Court

To the Honorable Samuel A. Alito, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Fifth Circuit:

The State of Texas has scheduled the execution of Wesley Ruiz for February 1, 2023. Mr. Ruiz respectfully requests a stay of execution pending consideration and disposition of the petition for a writ of certiorari filed along with this application.

STANDARDS FOR A STAY OF EXECUTION

Mr. Ruiz respectfully requests that this Court stay his execution, pursuant to Supreme Court Rule 23 and 28 U.S.C. § 2101(f), pending consideration of his concurrently filed petition for a writ of certiorari (the “Petition”). *See Barefoot v. Estelle*, 463 U.S. 880, 889 (1983) (“Approving the execution of a defendant before his [petition] is decided on the merits would clearly be improper.”); *see also Lonchar v. Thomas*, 517 U.S. 314, 320 (1996) (court may stay execution if needed to resolve issues raised in initial petition).

The standards for granting a stay of execution are well-established. Relevant considerations include the prisoner’s likelihood of success on the merits, the relative harm to the parties, the extent to which the prisoner has unnecessarily delayed his or her claims, and public interest. *See Hill v. McDonough*, 547 U.S. 573, 584 (2006); *Nelson v. Campbell*, 541 U.S. 637, 649-50 (2004); *Barefoot*, 463 U.S. at 895. All four factors weigh in Mr. Ruiz’s favor.

PETITIONER SHOULD BE GRANTED A STAY OF EXECUTION

1. Petitioner is likely to succeed on the merits.

In the court below, Mr. Ruiz presented evidence that jurors relied on “overtly racist” and “blatant anti-Hispanic stereotypes” in appraising his future dangerousness and in deciding to sentence him to death. Because the jurors viewed Mr. Ruiz as a “subhuman” and expressed hostility to the very presence of Hispanics in their community, Mr. Ruiz was deprived of the basic Sixth Amendment guarantee that the body making the solemn life-or-death decision be impartial. Because the jurors “relied on racial stereotypes or animus,” *Peña-Rodriguez*, 580 U.S. 206, 225 (2017), and on a “particularly noxious strain of racial prejudice,” *Buck*, 580 U.S. 100, 121 (2017), in determining whether Mr. Ruiz was a future danger, his death sentence is tainted. The Texas courts refused even to consider Mr. Ruiz’s evidence of racial stereotypes and animus. For the reasons discussed in detail in the certiorari petition, Mr. Ruiz makes a strong case that *Peña-Rodriguez’s* holding applies to capital sentencing proceedings to ensure that death sentences are not levied as a result of racial bias. Thus, Petitioner’s request to this Court to grant a stay of execution, grant the Petition, vacate the order of the Texas Court of Criminal Appeals, and remand to the district court to resolve the merits of this case is likely to be granted.

2. Petitioner has been timely and diligent in his litigation.

The events that give rise to this case did not occur until March 2017, when this Court decided *Peña-Rodriguez*, and August 2022, when two jurors signed affidavits acknowledging overt anti-Hispanic bias. As described in the Petition in more detail, Mr. Ruiz's successive application for a writ of habeas corpus in Texas state court was timely under state law. *See* Tex. Code Crim. Proc., Art. 11.071, § 5(a)(1). In short, Petitioner has been timely and diligent in pursuing this litigation.

3. Petitioner will be irreparably harmed if a stay is not granted.

Mr. Ruiz's execution will cause irreparable harm. Irreparable injury "is necessarily present in capital cases." *Wainwright v. Booker*, 473 U.S. 935, 935 n.1 (1985).

4. The public interest weighs in favor of granting a stay.

As the Petition describes in detail, the question of whether overt racial prejudice can be tolerated in the administration of criminal justice, and particularly in the imposition of the death penalty, are issues of great public importance. The particular question concerning whether *Peña-Rodriguez* applies to capital sentencing proceedings has not been previously addressed. The importance of these issues cuts in favor of a stay.

FOR THE FOREGOING REASONS, and those set forth in the Petition for a Writ of Certiorari, Petitioner respectfully requests that his application for a stay of execution be granted.

Respectfully submitted,

/s/ Shawn Nolan

Shawn Nolan*

Peter Walker

Assistant Federal Defenders

Federal Community Defender Office for

the Eastern District of Pennsylvania

601 Walnut Street, Suite 545 West

Philadelphia, PA 19106

215-928-0520

Shawn_Nolan@fd.org

** Counsel of Record*

Member of the Bar of the Supreme Court

Counsel for Petitioner, Wesley Ruiz

Dated: January 31, 2023