****THIS IS A CAPITAL CASE****
EXECUTION SET FOR AUGUST 1, 2023 (6:00 CDT)

No. 23A-____
(CONNECTED CASE 23-____)

IN THE
SUPREME COURT OF THE UNITED STATES

JOHNNY JOHNSON, Petitioner,

v.

DAVID VANDERGRIFF,
Warden, Potosi Correctional Center, Respondent.

On Petition for Writ of Certiorari
to the Eighth Circuit Court of Appeals

EMERGENCY APPLICATION FOR STAY OF EXECUTION

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APPLICATION FOR STAY OF EXECUTION

To the Honorable Brett M. Kavanaugh, Associate Justice of the Supreme Court of the United States and the Circuit Justice for the Eighth Circuit:

The State of Missouri has scheduled the execution of Johnny Johnson for **August 1, 2023, at 6:00 P.M., Central Time**. Mr. Johnson respectfully requests a stay of execution pending consideration and disposition of the petition for a writ of certiorari, filed concurrently with this stay application.

PROCEDURAL BACKGROUND

Johnny Johnson respectfully requests that this Court stay his execution, pursuant to Supreme Court Rule 23. After his execution date was set, Mr. Johnson filed a petition for writ of habeas corpus in the Missouri Supreme Court. R. Doc. 10 pp. 1-83. His petition presented the newly ripe claim that he is incompetent to be executed under the Eighth and Fourteenth Amendments and this Court's precedent in *Ford v. Wainwright*, 477 U.S. 399, 417 (1985); *Panetti v. Quarterman*, 551 U.S. 930, 959-60 (2007); and *Madison v. Alabama*, 139 S. Ct. 718, 722 (2019), because he lacks a rational understanding of the reason for his execution.

The Missouri Supreme Court denied the petition without a hearing, holding that Mr. Johnson had not established the requisite threshold showing of incompetency while also making unreasonable factual findings and credibility determinations as to the evidence submitted. Apx. 103a-111a. One judge dissented from the Missouri Supreme Court's decision. *Id.* at 111a. On June 30, 2023, Mr. Johnson filed a petition for writ of habeas corpus in the United States District

Court for the Eastern District of Missouri pursuant to 28 U.S.C. § 2254(d), contending that the Missouri Supreme Court's opinion was contrary to and an unreasonable application of this Court's clearly established precedent in *Panetti* and *Madison* and that the court's decision involved an unreasonable determination of the facts before it. R. Doc. 3. He concurrently filed a motion for a stay of execution. R. Doc. 4. The district court denied Mr. Johnson's petition and summarily denied the motion for a stay of execution on July 17, 2023; the court also summarily denied a COA. Apx. 112a-125a.

On July 22, 2023, Mr. Johnson filed a COA application and a motion for a stay of execution in the Court of Appeals for the Eighth Circuit. After full briefing, on June 25, 2023, the panel majority (Judges Kelly and Erickson) granted a COA and the stay, setting a briefing schedule for the appeal in compliance with 28 U.S.C. § 2253(c). Apx. 126a. Respondent moved for rehearing en banc, and on July 28, 2023, the en banc court granted the rehearing petition. On July 29, 2023, the en banc court issued an order vacating the panel's order, thereby vacating the stay and revoking the COA. Apx. 129a. Without merit briefing or oral argument, the en banc court, over the dissents of two original panel members and a third judge, Chief Judge Smith, summarily denied a stay and COA. Apx. 130a.

REASONS FOR GRANTING THE STAY

I. Mr. Johnson is Entitled to a Stay Pursuant to *Lonchar* and *Barefoot*.

This Court "need not, and should not, … fail to give non-frivolous claims of constitutional error the careful attention that they deserve." *Barefoot v. Estelle,* 463 U.S. 880, 888-89 (1983). And if this Court is "unable to resolve the merits … before

the scheduled date of execution, [Mr. Johnson] is entitled to a stay of execution to permit due consideration of the merits." *Id.* A claim is non-frivolous if it is not "palpably incredible" or "patently frivolous or false." *Blackledge v. Allison*, 431 U.S. 63, 67 (1977).

Mr. Johnson's newly ripened competency-to-be-executed claim pursuant *Ford*, *Panetti*, and *Madison* was raised in a first habeas petition. Under this Court's precedent, Mr. Johnson's proceedings before this Court are brought as a non-successive first petition. *Stewart v. Martinez-Villareal,* 523 U.S. 637, 644-45 (1998); *Panetti,* 551 U.S. at 942-43. A motion for a stay filed with a first habeas petition containing a non-frivolous claim of constitutional error that cannot properly be determined before the scheduled execution date is governed by *Lonchar v. Thomas,* 517 U.S. 314 (1996), and *Barefoot*. Thus, a stay of execution is warranted when there are "substantial grounds upon which relief might be granted." *Barefoot*, 463 U.S. at 895.

The evidence of Mr. Johnson's incompetency—the expert opinion of a forensically trained neuropsychiatrist finding that Mr. Johnson lacks a rational understanding of the reason for his execution, and decades of mental health records detailing his schizophrenia spectrum disorder, hallucinations, and delusions—suffices to show his claims are not frivolous or "palpably incredible." Furthermore, that Mr. Johnson's filings both to the Missouri Supreme Court and the Eighth Circuit en banc netted numerous dissents underscores the non-frivolousness of his

claim. Under these circumstances, Mr. Johnson more than satisfies the permissive standards in *Barefoot* and *Lonchar*.

The dissent by Judge Draper from the state court decision demonstrates that reasonable jurists could conclude that the decision of the Missouri Supreme Court rested on an unreasonable determination of facts and was both contrary to and an unreasonable application of Supreme Court precedent. Moreover, the three-judge panel of the Eighth Circuit granted a COA to determine whether the Missouri Supreme Court's denial of Mr. Johnson's competency claim was contrary to or an unreasonable application of this Court's precedent or based on an unreasonable determination of the facts—a clear showing that Mr. Johnson's claim is not frivolous. In her dissent to the en banc court's stay and COA denial, Judge Kelly, joined by Chief Judge Smith and Judge Erickson, outlined exactly how reasonable jurists can and do disagree with the decisions of the Missouri Supreme Court, the district court, and the en banc court's summary COA and stay denial. Apx. 135a-142a (Kelly, J., dissenting). The dissent found that Mr. Johnson's quality and volume of evidence indicated he was likely to succeed on the merits of his habeas claim and sufficed to establish a threshold showing of incompetency, and the dissent explicitly stated that "reasonable jurists could, *and in fact do*, debate the issue" of Mr. Johnson's satisfaction of § 2254(d). *Id.* at 137a, 141a. Mr. Johnson's claim of incompetence is therefore necessarily non-frivolous. Thus, Mr. Johnson is entitled to a stay of execution to properly resolve his claim of incompetence to be executed.

It is significant that a stay was issued by the panel. Because of that ruling, the en banc court was required to apply an abuse of discretion standard in order to vacate the stay. And as Chief Justice William Rehnquist previously made clear, any doubt should be resolved in favor of a continuation of a previously entered stay. *Lenhard v. Wolff*, 443 U.S. 1306, 1313 (1979).

II. Mr. Johnson Satisfies all Factors under *Hill* and is Entitled to a Stay of Execution.

Even if this Court considers Mr. Johnson's stay application under the factors set forth in *Hill v. McDonough*, 547 U.S. 573, 584 (2006), all three factors weigh in favor of staying Mr. Johnson's execution. Under that standard, federal courts consider: (1) the petitioner's likelihood of success on the merits; (2) the relative harm to the parties if the stay is not issued; and (3) the extent to which the petitioner has delayed his or her claims. *See Hill*, 547 U.S. at 584; *Nelson v. Campbell*, 541 U.S. 637, 649-50 (2004). In balancing the factors, "the equities in a death penalty case will almost always favor the prisoner so long as he or she can show a reasonable probability of success on the merits." *Bucklew v. Precythe*, 139 S. Ct. 1112, 1146 (2019) (Sotomayor, J., dissenting); *see Nken v. Holder,* 556 U.S. 418, 434 (2009) (noting that success on the merits and irreparable injury "are the most critical" factors). Mr. Johnson has satisfied all three factors.

A. Mr. Johnson is likely to succeed on the merits of his claims.

i. Incompetence-to-be-executed claim.

Mr. Johnson's petition for writ of certiorari has a substantial likelihood of success on the merits, and at least three reasonable jurists of the Eighth Circuit

believe that to be true. Apx. 135a (Kelly, J., dissenting) ("Johnson has shown 'a significant possibility' of succeeding on the merits of his habeas claim."). Mr. Johnson genuinely and fixedly believes the true reason for his execution is that Satan is using the State of Missouri to execute him to bring about the end of the world, which the voice of Satan has confirmed to him. Apx. 54a. Decades of Mr. Johnson's medical records show he has long suffered from delusions, hallucinations, and other schizophrenia spectrum disorder symptoms, and that those symptoms persist today. The only qualified expert to evaluate Mr. Johnson, neuropsychiatrist Dr. Bhushan Agharkar, confirmed that Mr. Johnson's persistent, fixed delusions about the true reasons for his execution render him incompetent to be executed. Dr. Agharkar's conclusions were supported by Mr. Johnson's medical records, which contained at least five references to the same delusion he reported to Dr. Agharkar and at least 15 references to similar and related delusions.

Indeed, the facts underpinning Mr. Johnson's threshold showing of incompetence are materially indistinguishable from those in *Panetti*, (Apx. 137a), and Mr. Johnson submitted more evidence to support his claim than did the petitioner in *Panetti*. *Id.* As noted by the three dissenters:

> Indeed, Johnson's threshold evidence—which consisted of voluminous medical records documenting his decades-long struggle with mental illness and a 55-page report detailing the observations made by a psychiatrist during a two-and-a- half-hour-long "face-to-face clinical interview" with Johnson—is arguably even stronger than the incompetency-related evidence at issue in *Panetti*. *See* 551 U.S. at 970 (Thomas, J., dissenting) (noting that the "Renewed Motion to Determine Competency" that Panetti filed in state court included a "one-page letter" from a doctor to Panetti's counsel "describing" the former's "85-minute 'preliminary evaluation' of Panetti" that

> "contain[ed] no diagnosis" and "d[id] not discuss whether Panetti understood why he was being executed").

Id. The Missouri Supreme Court, the district court, and the concurrence to the Eighth Circuit's en banc ruling rejecting this claim were legally and factually unreasonable in light of that evidence and the significant parallels between Mr. Johnson's case and *Panetti.*

The only evidence the State submitted to counter Mr. Johnson's lack of rational understanding of the reason for his execution was a-one-and-a-half-page affidavit by a prison counselor, Ashley Skaggs. The issues with the State's meager evidence are myriad:

- Skaggs did not conduct a competency evaluation, *see* Apx. 141a ("At no point did Skaggs conduct an evaluation or interview of any kind to determine whether Johnson was competent to be executed.");
- She is, by Missouri law, prohibited from rendering a forensic opinion, which the State did not dispute, *see* Apx. 139a ("Missouri also does not dispute that Skaggs . . . is not qualified under state law to even make such a competency determination.");
- Her observations were irrelevant to the question of Mr. Johnson's rational understanding (or lack thereof), *see* Apx. 138-39a ("nowhere in that affidavit does Skaggs attest that Johnson is competent to be executed under the applicable federal-law question" and "Skaggs's statements . . . do not provide meaningful insight into whether Johnson . . . rationally

understands the 'link between his crime and its punishment'") (citing *Madison*, 139 S. Ct at 731); and

- She spent less than half the time with Mr. Johnson than Dr. Agharkar spent evaluating him, *see* Apx. 141a (noting that the expert's observations are not discredited by the fact that Mr. Johnson did not express his delusional beliefs while "meeting briefly" with Skaggs).

Even setting aside her lack of experience and qualifications, Skaggs applied the wrong standard, discussing Mr. Johnson's awareness of the nature of his execution rather than his lack of rational understanding of the reason for it. In *Panetti*, this Court flatly rejected this "awareness" standard, so Skaggs's observations and opinions of Mr. Johnson are irrelevant to the question of his competence. Apx. 138a-39a (Skaggs's affidavit does not address Mr. Johnson's competence "under the applicable federal-law standard" and does not provide "meaningful insight" into whether he rationally understands the reason for his execution). Thus, Mr. Johnson is likely to succeed on the merits of his claim that reasonable jurists could find he has made a substantial threshold showing of incompetence and must be afforded a fair hearing at which to prove his incompetence.

While the Supreme Court of Missouri unreasonably determined that Mr. Johnson's medical records did not mention a "single" delusion of the type that Mr. Johnson had reported to Dr. Agharkar, *all* participating members of the Eighth Circuit en banc court disagree. Apx. p. 136a (Gruender, J., concurring) ("Even

though Dr. Agharkar observed delusions in February 2023 and Johnson's past medical records show that he had expressed delusions like the ones mentioned in the report[.]"). Every member of the majority joined in the concurrence. The dissent likewise found that Mr. Johnson's "record clearly indicates that Johnson had on more than one occasion expressed delusions similar to the ones that he expressed to his expert psychiatrist—namely, that 'the world will end when he dies.'" *Id.* at 141a (Kelly, J., dissenting). The **entire** Eighth Circuit finding the opposite of the Missouri Supreme Court's factual determination demonstrates that the state court's findings were an unreasonable determination of fact, and **ten** reasonable jurists clearly disagree with the district court's ruling to the contrary.

Further supporting Mr. Johnson's likelihood of success on the merits, in addition to the fact that a judge dissented from the Missouri Supreme Court's unreasonable and erroneous denial of Mr. Johnson's state habeas petition, the Eighth Circuit panel granted a COA on the incompetency question and a stay of execution, and three judges dissented from the en banc court's revocation of the COA and vacatur of the stay. Three reasonable jurists on a federal court of appeals and one on the Missouri Supreme Court have already determined Mr. Johnson demonstrated a likelihood of success on the merits of his competency claim. The dissent from the en banc ruling explicitly found that Mr. Johnson likely satisfied both § 2254(d)(1) and (d)(2) and that the Missouri Supreme Court's conclusion that he had not met the threshold showing of insanity was legally and factually unreasonable, which further supports his likelihood of success on the merits.

ii. Statutory claims

Mr. Johnson is also likely to succeed on the merits of his statutory claim that he is entitled to an appeal when reasonable jurists disagree with the district court's treatment of his claim of incompetence and that the Eighth Circuit's grant of a rehearing en banc was improper, as set out more extensively in his petition for writ of certiorari. The Eighth Circuit panel's grant of the COA was consistent with the standards set forth by this Court and by Congress in § 2253(c), whereas the revocation of the COA and stay run contrary to this Court's holdings and Congress's purpose.

The threshold for a COA, and with it a stay, is by design a relatively low bar. A COA should issue when "jurists of reason would find it debatable whether the petition[er] sates a valid claim of the denial of a constitutional right, and [if] jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 478 (2000); *Miller-El v. Cockrell*, 537 U.S. 322, 337 (2003). Chief Justice John Roberts, referring to three dissenting judges, recently confirmed that a dissent is presumed reasonable, and dissenters are reasonable jurists. *Biden v. Nebraska*, 143 S. Ct 2355, 2375 (2023) ("Reasonable minds may disagree with our analysis—in fact, at least three do."). This presumption extends not only to the dissenting judge of the Missouri Supreme Court, but to the three dissenters from the Eighth Circuit's en banc ruling to revoke Mr. Johnson's COA and vacate the stay of execution. As Judge Kelly confirmed in the dissent joined by Judge Erickson and Chief Judge Smith, "At minimum,

reasonable jurists could, and in fact do, debate the issue." Apx. 141a (Kelly, J., dissenting). Because Mr. Johnson's claims have been debatable among reasonable jurists at every turn, he satisfies the permissive standard to warrant a COA and the corresponding stay of execution, and he thus is likely to succeed on the merits of his claims in his concurrently filed petition for writ of certiorari.

Importantly, it is well established that vacation of a stay "should be reserved for exceptional circumstances." *Holtzman v. Schlesinger*, 414 U.S. 1304, 1308 (1973) (Marshall, J., in chambers). Chief Justice William Rehnquist determined that any doubt should be resolved in favor of a continuation of a previously entered stay. *Lenhard*, 443 U.S. at 1313. To warrant vacatur, the panel's decision to grant the stay must have been an abuse of discretion. *Kemp v. Smith*, 463 U.S. 1344, 1345 (1983) (Powell, J., in chambers). In reaching its decision to vacate the stay in Mr. Johnson's case, the en banc court had to find that the three dissenters—Judges Kelly and Erickson and Chief Judge Smith—were, as a matter of law, unreasonable, and that Judges Kelly and Erickson abused their discretion in granting the stay in the first place. The majority issued no opinion on the matter, and the concurrence did not mention how the en banc court reached such a conclusion.

Further, en banc rehearing is disfavored. Fed. R. App. P. 35 (a). "It should go without saying that a petition for rehearing should not be filed simply to reargue matters already argued unsuccessfully in the original appeal proceedings." *Yankton Sioux Tribe v. Podhradsky,* 606 F.3d 985, 993 (8th Cir. 2010). The State's rehearing request was a mere grievance, an opportunity to rehash previous arguments and to

note disagreement with the panel. Mere disagreement does not come close to satisfying the criteria of Fed. R. App. P. 35, yet the Eighth Circuit granted rehearing en banc based on the State's mere disagreement with the panel. The Eighth Circuit had not granted a COA in a capital case in seven years, *see Christeson v. Roper*, Case No. 16-2730 (8th Cir. Dec. 16, 2016), and its rehearing en banc to rescind Mr. Johnson's suggests a de facto rule against them. Because the Eighth Circuit found no abuse of discretion by the panel, Mr. Johnson is likely to succeed on the merits of the claim that the Eighth Circuit acted improperly when it granted rehearing en banc and revoked the COA and vacated the stay.

Another stay is now warranted to correct the Eighth Circuit's improper use of the rehearing process to revoke a COA and deny a stay after the majority of the three-judge panel granted them. The Eighth Circuit's COA process in capital cases, in which it has created a de facto prohibition on granting a COA, is likewise flawed because it is inconsistent with the standard set forth in *Barefoot* and codified in 28 U.S.C. § 2253.

B. Mr. Johnson will be irreparably harmed without a stay.

Irreparable harm will occur if Mr. Johnson's execution is not stayed until the petition for writ of certiorari is considered. If this Court does not stay Mr. Johnson's execution, he will be executed without the opportunity to fully litigate his claims, including his meritorious constitutional claim of incompetence to be executed. That is an "irremediable" harm because an "execution is the most irremediable and unfathomable of penalties." *Ford v. Wainwright*, 477 U.S. 399, 411 (1986); *See also*

Wainwright v. Booker, 473 U.S. 935, 935 n.1 (1985) (recognizing that irreparable injury "is necessarily present in capital cases").

Allowing the government to execute Mr. Johnson while his petition is pending risks "effectively depriv[ing] this Court of jurisdiction to consider the petition for writ of certiorari." *Garrison v. Hudson*, 468 U.S. 1301, 1302 (1984) (Burger, C.J., in chambers). Because "'the normal course of appellate review might otherwise cause the case to become moot,' . . . issuance of a stay is warranted." *Id.* at 1302 (quoting *In re Bart*, 82 S. Ct. 675, 676 (1962) (Warren, C.J., in chambers)); *see also Chafin v. Chafin*, 568 U.S. 165, 178 (2013) (suggesting that the threat of mootness warrants "stays as a matter of course").

There is no tangible harm to the State. A delay to accurately determine the merits of Mr. Johnson's certiorari petition ensures compliance with the Constitution and with this Court's longstanding precedents. The State is never harmed by following constitutional requirements, including the longstanding prohibition on executing the insane. The State cannot claim harm for having to follow the law and the Constitution.

While the State has a recognized interest in the enforcement of criminal judgments, it "also has an interest in its punishments being carried out in accordance with the Constitution of the United States." *Harris v. Vasquez*, 901 F.2d 724, 727 (9th Cir. 1990). "[A] State has no legitimate interest in carrying out an execution contrary to . . . due process." *Johnson v. Missouri*, 143 S. Ct. 417, 418 (2022) (Jackson, J., dissenting). To the extent the State can claim any harm in this

case, it has only itself to blame: it has short-circuited due process to prevent Mr. Johnson's *Ford* claim from being fairly heard in accordance with this Court's precedent in *Ford* and *Panetti* at every stage of litigation, including by making an end-run around the Eighth Circuit panel's decision and circumventing Mr. Johnson's right to an appeal under 28 U.S.C. § 2253(c).

C. Mr. Johnson has never delayed in presenting this claim.

Mr. Johnson could not have raised this claim at any earlier point because a *Ford* claim only ripens when an execution date issues. *Panetti,* 551 U.S. at 942-43; *Martinez-Villareal*, 523 U.S. at 644-45. There is no delay here. Indeed, neither the district court, nor the concurring judges in the Eighth Circuit, nor the dissenters from the en banc judgment indicated that Mr. Johnson has delayed in presenting his claim during any proceeding.

The record supports the conclusion of the courts below. Mr. Johnson asked for records from the Missouri Department of Corrections beginning in December 2022. A full set of up-to-date records never arrived. He sent follow-up requests and still up-to-date records were withheld.

On April 19, 2023, the Missouri Supreme Court set Mr. Johnson's execution date. On May 16, 2023, Mr. Johnson filed his *Ford* claim 6 days after receiving the report from his expert. When Mr. Johnson filed his *Ford* claim, he remained without access to records more recent than November 2022, because his requests for updated records remained ignored.

The Missouri Supreme Court set a date and time for the State's filing in response to Mr. Johnson's state habeas petition. After receiving one extension, Respondent filed late and had to move to have the pleading accepted *instanter*. It was only until Respondent tardily filed Mr. Johnson's records with the Missouri Supreme Court that Mr. Johnson finally gain access to the records he had requested seven months before, and even then, the records were not up-to-date.
Mr. Johnson timely filed his reply with the Missouri Supreme Court. On June 8, 2023, the Missouri Supreme Court, over a dissent, denied his *Ford* claim.

Mr. Johnson continued to request his own records and continued to be stonewalled by Missouri until June 29, 2023. On that date—21 days after the Missouri Supreme Court denied his state habeas petition and the day before he filed in district court—Mr. Johnson received additional records, but still, inexplicably, only to May 26, 2023.

On June 30, 2023, Mr. Johnson (even though hampered again by an untimely and incomplete disclosure of records) filed a Petition for Writ of Habeas Corpus [R. Doc. 3] and Motion for Stay in the federal district court. R. Doc. 4. After a response and reply, the district court denied relief on July 17, 2023. Apx. 112a-125a.

On July 12, Mr. Johnson received additional records from the Attorney General, but they omitted a critical doctor's note from June 27, 2023 about Mr. Johnson's persistent demon delusions, which supported Dr. Agharkar's findings. Apx. 85a ("He reports he sometimes has contact with demons as indicated by the heat on his ears."). He also received a record indicating a change in his

antipsychotic medication, and his new medication was promptly doubled five days later "for psychosis." Apx. 87a. It was only on July 20 that Mr. Johnson finally received what appeared to be a full set of his records, including records from doctor appointments on May 31, 2023 and June 27, 2023, that support Dr. Agharkar's findings. Mr. Johnson has been forced to litigate his *Ford* claim without having access to the record of his mental health history, medication information, or documentation of his longstanding delusions.

Indeed, the longest delay in this case is the five months between Mr. Johnson's records request and finally receiving them when the state filed them with the Missouri Supreme Court. Another delay of 42 days between a May 31, 2023 record—in which the DOC psychiatrist attempted to ask Mr. Johnson about the delusions in Dr. Agharkar's report and Mr. Johnson confirmed he has often felt other people are controlling him and he hears voices—and the July 12 disclosure of that record to Mr. Johnson impeded his ability to raise a fully supported *Ford* claim. Another lengthy delay is the 23-day delay between the June 27, 2023 record in which the DOC psychiatrist noted Mr. Johnson's report of demon-related delusions, and the July 20 disclosure of that record to Mr. Johnson. There can be no legitimate reason for such lengthy delays in disclosing computer-generated documents already in existence in the DOC system.

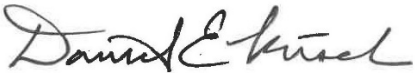
If anyone should be faulted for any perceived delay in raising Mr. Johnson's competency claim, it is the State. The State has slow-walked disclosing Mr. Johnson's own mental health records in order to gain a tactical advantage.

Unlike the State, Mr. Johnson has no interest in delay. His counsel are fully aware of how federal courts perceive any delay. What Mr. Johnson has consistently and timely requested, and what the precedent of this Court required, is that his *Ford* claim be fully heard and adjudicated. Had the Missouri Supreme Court allowed that process to unfold, Mr. Johnson would have no need to request a stay at this point. But because he has thus far been deprived of the fair adjudication of his incompetency claim that the Constitution and this Court's precedent requires, a stay has become necessary to prevent him from being executed while incompetent in violation of the Eighth Amendment, without an opportunity to fairly prove his incompetence in violation of his right to due process under the Fourteenth Amendment, when two Article III Judges followed Congress's directions under 28 U.S.C. § 2253(c).

CONCLUSION

WHEREFORE, for all the foregoing reasons, Petitioner Johnny A. Johnson respectfully requests that the Court stay his execution to allow full and fair litigation of his meritorious petition for writ of certiorari. Alternatively, this Court should exercise its discretion and enter a stay to meaningfully consider this petition for writ of certiorari. *See Glossip v. Oklahoma*, 143 S.Ct. 2453 (2023).

Respectfully submitted,



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