

No. _____

IN THE
Supreme Court of the United States

JOHN FITZGERALD HANSON,
Applicant,

v.

STATE OF OKLAHOMA,
Respondent.

**On Petition for Writ of Certiorari
to the Oklahoma Court of Criminal Appeals**

EMERGENCY APPLICATION FOR STAY OF EXECUTION

**THIS IS A CAPITAL CASE WITH IMMINENT EXECUTION SCHEDULED
FOR JUNE 12, 2025 AT 10:00 A.M. CDT**

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COUNSEL FOR JOHN FITZGERALD HANSON

EMERGENCY APPLICATION FOR STAY OF EXECUTION

To the Honorable Neil Gorsuch, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Tenth Circuit:

Petitioner John Fitzgerald Hanson moves this Court for a stay of execution. **Mr. Hanson's execution is set for Thursday, June 12, at 10:00 A.M.** *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."). This Court traditionally considers four factors in evaluating whether to grant a stay: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Nken v. Holder*, 556 U.S. 418, 426 (2009); *see also Hill v. McDonough*, 547 U.S. 573, 584 (2006). Consideration of these factors here counsel a finding that a stay of execution is warranted.

I. Mr. Hanson is Likely to Succeed on the Merits.

As discussed in full and supported with record documents in Mr. Hanson's Petition for Certiorari, Pet. at 10-11, new evidence was uncovered in 2025 during investigations in preparation for Mr. Hanson's clemency proceedings. Investigators with the Western District of Oklahoma Federal Public Defender's Office were for the first time successful in obtaining information from two sources regarding the State's star witness, the late Rashad Barnes, and his suppressed motive for cooperating with the State in Mr. Hanson's prosecution: Barnes' father, Rodney Worley, and Barnes'

best friend, Michael Cole each independently revealed an instance in which Barnes and the Tulsa County District Attorney's Office secretly agreed that, in exchange for Barnes' continuing cooperation against Mr. Hanson, Michael Cole would receive favorable treatment on his criminal charges. Though trial counsel requested relevant, exculpatory evidence, the State did not provide this impeachment evidence.

Though twenty-five years later, each witness does not have perfect and identically matching memories, the recollections are mutually reinforcing and are supported by external records. Worley recounted Barnes' securing of a deal for favorable treatment on Cole's 1999 felony gun possession charge; the docket shows that charge was dismissed three months after Barnes testified at Mr. Hanson's preliminary hearing. Cole, in turn, recounted Barnes' securing of a deal for favorable treatment on a drug distribution charge Cole picked up in 2002, just before Barnes was due to testify in Mr. Hanson's co-defendant's trial.

As Mr. Hanson's Petition for Writ of Certiorari sets forth more fully, the Oklahoma Court of Criminal Appeals' (OCCA) decision, in which it denied relief on Mr. Hanson's claims raised under *Brady v. Maryland*, 373 U.S. 83, 87 (1963) and *Napue v. Illinois*, 360 U.S. 264, 269 (1959), by shifting a duty onto Mr. Hanson to discover evidence suppressed by the prosecution, is in direct conflict with decisions of this Court and decisions of United States courts of appeal, including decisions of the Third, Sixth, and Tenth Circuits. *See* Pet. at 13-15 (discussing this Court's and the circuit courts' cases in full).

Additionally, the OCCA's assertion that "the evidence against Hanson, irrespective of Barnes's testimony, was compelling," is legally irrelevant to a proper

Brady and *Napue* materiality analysis. See Pet. at 17-23 (discussing proper standard for materiality in *Brady* and *Napue* claims). The resentencing judge, the OCCA, and both parties have all made clear at various points that Barnes' testimony was vital to the State's prosecution. In co-defendant Miller's direct appeal, the OCCA labeled "Hanson's confession to Barnes [] the most critical evidence in the State's case." *Miller v. State*, 98 P.3d 738, 748 (Okla. Crim. App. 2004). See also O.R. 1716 footnote (Resentencing Capital Felony Report of the Trial Judge) ("It appeared from the verdicts in each Defendant's first trials that Barnes' testimony was indeed significant to both guilt and punishment.").

The State relied heavily on Barnes in its guilt-phase case against Mr. Hanson, previewing the evidence that would come from Barnes in its opening statement. Tr. 1005-06 (referring to what "witnesses" would detail regarding Mr. Hanson's specific role in the crime though describing evidence to come only from Barnes); *id.* at 1015-17.

Meanwhile, in its opening argument, the defense attempted to paint Barnes both as lacking credibility due to the timeline of his cooperation, *id.* at 1030-31, and as the actual perpetrator in Mr. Hanson's place. *Id.* at 1031-32. The defense turned back to these themes in cross-examining Mr. Barnes, *id.* at 1178-79, 1185, but had no actual evidence with which to impeach Barnes' credibility or motives. By introducing Mr. Hanson's supposed detailed confession of the events of the crime, Barnes served as the only direct evidence that Mr. Hanson had been the triggerperson in Ms. Bowles' shooting. *Id.* at 1160-64. In doing so, he provided damning evidence of the details of the crime that appeared nowhere else in the

evidence, such as what Mr. Hanson allegedly said to Ms. Bowles and violence towards her before her shooting. *See id.* at 1163.

The State then turned back to Barnes in closing argument, emphasizing the facts known only through Barnes and Barnes' supposed lack of any incentive to cooperate:

[L]et's consider the credibility of the witnesses.

Rashad Barnes came to tell you that sometime early September he was in his back yard when this guy shows up and starts talking to him. He says, "Man, we carjacked some old lady at the Promenade Mall. We had to carjack her 'cause we needed a car for a robbery. We took her out to some road to dump her and some guy in a dump truck saw us. Vic got out and killed the guy," showing him how he killed the guy. He tells Rashad, Vic later gets in the car and tells him, "You know what you got to do now." Tells Rashad, "We drove somewhere to some other road, dragged her out of the car, and I killed the old lady."

What stakes does Rashad have in this? None. For his testimony he's been labeled a snitch. He told you he was scared to testify. He has nothing in this except to tell what he knows of what happened and what that defendant told him.

Tr. 1724 (emphasis added). The State's final guilt-phase closing argument then focused almost entirely on Barnes, concluding, again, with allegations of brutality and cruelty in the crime's commission that would have been absent from the trial entirely without Barnes' testimony:

Rashad Barnes, who came in here from his neighborhood, not much different than my neighborhood or some of your neighborhoods, where the last thing you do is open your mouth and be a snitch. They want you to think that sounds crazy because he's big. That ain't crazy, folks, that's life.

And he got up there and he raised that hand, and he didn't just tell you the truth, he became the third victim in all this. There's two in the ground. He's out there in north Tulsa with the label of snitch around his neck and with them trying to convince you he was involved. . .

They got her because she was old and weak, and that's where even Rashad Barnes has to draw the line. He's not a man that comes forward to give it up on people. But he's got a line that says, I can't take that.

That's what he told you, because that's what's true.

He let this guy live in his car behind his house where his Momma was, where his sisters were. This guy that could stand over an old lady and pump smoking rounds into her chest lived right outside his house. Could have been his Momma. That's where he drew the line. And he came in here with more guts than a lot of people I know that folks stand in line to shake their hands. **And he told you the truth**, and he told you what he told you.

And we know that's true because Phyllis Miller said after the homicide, after that 31st when all that stuff happened, I drove him up there. I drove him up there.

So what if he thinks it may have been the 31st. So what if he doesn't know the exact date. Folks, this was 1999. He's telling you the best he can recall. He ain't lying. If he was lying, he would tell you the exact time and place to make it look --

MR. GORDON: Objection, bolstering.

THE COURT: Overruled.

MR. SMITH: He told you what he remembered as best as he could, but they don't like it because it puts him in the place of standing with this pistol over a little old lady that he had laid on top of. He felt her frail little body under his. He smelled her hair. He talked to her. And when she was reaching out in love, he reached out in violence, because he knew he was going to kill her. She was already dead. She just didn't know it.

Tr. 1746-48 (emphasis added). Thus, both the State's case and the defense hinged on whether the jury believed Barnes.

Mr. Hanson is also likely to succeed based on his claim that Oklahoma's procedural bar, as applied to his *Brady* and *Napue* claims here, violates due process. As Mr. Hanson explains, Pet. at 23-27, the OCCA's procedural bar in Okla. Stat. tit. 22, § 1089(D)(8)(b)(2) imposes a higher materiality standard than do *Brady* and *Napue*, creating a procedural regime in which petitioners like Mr. Hanson are unable to present these inherently late-arising claims. This violates this Court's holding in *Montgomery v. Louisiana*, 577 U.S. 190, 204-05 (2016) requiring state courts to grant the relief that federal law requires on federal claims. Because application of the bar

here violated Mr. Hanson’s due process rights, it does not foreclose this Court from considering and granting relief on Mr. Hanson’s underlying claim.

For all the reasons presented above, Mr. Hanson has a substantial likelihood of success on the merits.

II. Absent a Stay, Mr. Hanson Will Be Irreparably Harmed.

Denying a stay risks “foreclos[ing] . . . review,” which constitutes “irreparable harm.” *Garrison v. Hudson*, 468 U.S. 1301, 1302 (1984). Allowing the State to execute Mr. Hanson before proceedings have concluded will “effectively deprive this Court of jurisdiction.” *Id.* A stay is generally warranted when, as here, mootness is likely to arise during the pendency of the litigation—as it will if Mr. Hanson is executed June 12, 2025. *See Chafin v. Chafin*, 568 U.S. 165, 178 (2013).

A stay in this case is necessary because otherwise Mr. Hanson will be executed in violation of federal law and the Fourteenth Amendment to the United States Constitution. The harm is clear, serious, and irreversible. *See, e.g. Wainwright v. Booker*, 473 U.S. 935, 935 n.1 (1985) (Powell, J., concurring) (stating that the requirement of irreparable harm if stay is not granted “*is necessarily present in capital cases*”) (emphasis added).

III. Respondents/Appellees Will Be Unaffected by a Stay.

Moreover, a stay of execution in this case will not substantially harm Respondents/Appellees. Mr. Hanson seeks merely to maintain the status quo until this action can be resolved on its merits.

There have been many delays, some lasting years and attributable to the State, on the road to Mr. Hanson’s execution. As United States District Court Judge Friot

noted in the *Glossip* lethal injection litigation on May 5, 2020, at that point it had “been 1,625 days since the Attorney General said let’s put this on hold so we can get our act together.” *Glossip v. Chandler*, CIV-14-0665-F, (W.D. Okla. May 5, 2020), Transcript of Motion Hearing before Honorable Stephen P. Friot, at 25. Given that delay, Respondents/Appellees should not be heard to complain of a short delay to protect Mr. Hanson’s constitutional rights. The several years the State waited to establish a new protocol undermines any argument regarding the purported urgency in proceeding with an execution before the Court has had an opportunity to evaluate Mr. Hanson’s claims. *Osorio-Martinez v. Attorney Gen. of the U.S.*, 893 F.3d 153, 179 (3d Cir. 2018). The short stay sought here will ensure the State does not perform an unconstitutional execution, *see Gomez v. U.S. Dist. Ct. for N. Dist. of Cal.*, 966 F.2d 460, 462 (9th Cir. 1992) (Noonan, J., dissenting from grant of writ of mandate).

Maintaining the status quo is the very purpose of a stay. If the stay is granted and Mr. Hanson’s legal claims ultimately fail, then the stay may be lifted, and the State can expeditiously proceed toward a new execution date. A stay of execution in this case will not substantially harm the Respondents/Appellees.

IV. A Stay of Execution Will Serve the Public Interest.

The public interest is not served by executing someone before they have had a full and fair opportunity to avail themselves of legal process. This interest is only heightened in the context of executions. “[I]t is always in the public interest to prevent the violation of a party’s constitutional rights.” *Hobby Lobby Stores, Inc. v. Sebelius*, 723 F.3d 1114, 1145 (10th Cir. 2013). Indeed, “the public interest has never been and could never be served by rushing to judgment at the expense of a condemned inmate’s

constitutional rights.” *In re Ohio Execution Protocol Litig.*, 840 F. Supp. 2d 1044, 1059 (S.D. Ohio 2012) (citation omitted).

The Supreme Court has confirmed that brief stays or injunctions are warranted to permit potentially meritorious claims to be adjudicated before prisoners are executed. *See Barr v. Roane*, 140 S. Ct. 353 (2019) (Alito, J., respecting the denial of stay or vacatur) (“[I]n light of what is at stake, it would be preferable for the District Court’s decision to be reviewed on the merits by the Court of Appeals for the District of Columbia Circuit before the executions are carried out.”); *see also Barr v. Lee*, 140 S. Ct. 2590, 2593 (2020) (Sotomayor, J., dissenting) (noting that “because of the Court’s rush to dispose of this litigation in an emergency posture, there will be no meaningful judicial review of the grave, fact-heavy challenges respondents bring”).

CONCLUSION AND PRAYER FOR RELIEF

For the foregoing reasons, the considerations for granting a stay of execution weigh entirely in Mr. Hanson’s favor, and thus Mr. Hanson requests this Court enter an emergency stay of execution to permit it to preserve jurisdiction to review the final judgments of the lower courts, which will otherwise become moot by his execution.

Respectfully submitted:

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