No. 24A1231
(Capital Case; Execution Scheduled for June 13, 2025, at 6:00 p.m. EDT)

IN THE
Supreme Court of the United States

STEPHEN C. STANKO, *Applicant/Appellant/Plaintiff*

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS et al.,
Respondents/Appellees/Defendants

REPLY TO RESPONSE TO EMERGENCY APPLICATION FOR STAY OF EXECUTION TO PRESERVE JURISDICTION

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Applicant Stephen C. Stanko, by and through undersigned counsel, replies to the Response to Emergency Application for Stay of Execution to Preserve Jurisdiction.

The Response fails to meaningfully address much of what the Application presents to this Court. The Response relies on argument already rebutted and mere assertions of facts without evidentiary support. In the interest of judicial economy given the exceedingly short time window at this juncture, this Reply only highlights the Response's deficiencies without repeating the bulk of the Application which stands effectively unanswered.

1. Likelihood of Success on the Merits

The Response misapprehends the profound constitutional questions at the heart of this matter that supply this Court's impetus to stay the lower court proceedings. The Respondents argue, "Stanko tries to dismiss electrocution as the statutory default, … but that method does not violate the Constitution" Resp. at 17. This litigation is *attacking* "electrocution as the statutory default" because it is an unprecedentedly cynical design legislated to force nominal elections and thereby, pursuant to *Stewart v. LaGrand*, 526 U.S. 115 (1999), eliminate any ability to challenge the coerced methods. Application at 11. The Response avoids any engagement with the fact that South Carolina revised its statute to designate a patently less inhumane method, distinguishing this jurisdiction from all other capital jurisdictions in this nation's history since the advent of the electric chair circa 1890. *Id.*

The Response quote *Bucklew*, stating that "traditionally accepted methods . . . are not necessarily rendered unconstitutional as soon as an arguably more humane method . . . becomes available." Resp. at 17 (quoting *Bucklew*, 587 U.S. at 134). The antiquation of the electric chair is far from recent. Texas, for one important jurisdiction, jettisoned the technique over 60 years ago. Application at 4 n.3. South Carolina relegated it to an alternative in 1995. *Id.* at n.4. Further skating past the gravamen of the litigation, the Response ignores the history of horrific botches. Application at 16 (rehearsing examples from Florida).

The two questions set forth in the Application call for this Court's extraordinary action to stay the lower court proceedings to preserve the prospect of jurisdiction.

The likelihood of success on the merits of a petition for writ of certiorari to this Court necessarily depends on the strength of the underlying Complaint.

The Response asserts unavailing procedural barriers to Mr. Stanko's § 1983 Complaint. Resp. at 8–12. Its central argument is merely a naysaying of the Fourteenth Amendment due process violation here. Mr. Stanko's Complaint alleges that designation of the electric chair as the default to effectuate forced choices of a statutory alternative—choices that are precluded from constitutional challenge, despite the exceptional circumstances regarding the manner South Carolina has

conducted both lethal injection and firing squad executions—violates due process and the prohibition against cruel unusual punishments.[1]

As to the merits themselves, the Response highlights the outstanding fact issues and unaddressed evidence in the underlying constitutional violations at the heart of Mr. Stanko's § 1983 litigation. In short, the Response asserts unsubstantiated facts, well rebutted by evidence, and attempts to characterize the fact dispute as a shortcoming in the pleadings. For example, it embraces the District Court's crediting of the state supreme court's tacit "fact finding" relying on the State's unsupported assertions that all three bullets struck Mahdi in the heart (Resp. at 13), against overwhelming, unaddressed, and unassailable evidence to the contrary and without any hearing of the evidence. *E.g.*, ECF No. 1 (the § 1983 Complaint) at 20–24;[2] ECF No. 1-1 (declaration of ballistic forensic scientist and expert marksman Chris Coleman) at ¶¶ 28–34; ECF No. 1-2 (declaration of forensic pathologist Terri Haddix, M.D.) at ¶¶ 20–30). The District Court's failings are not a deficiency in Mr. Stanko's pleadings: they demonstrate an unresolved issue of fact. Similarly, powerful evidence that the two shooters who fired into Mahdi's body *intentionally* missed the

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[1] This Court has repeatedly recognized that the Eighth Amendment "places a substantive restriction on the State's power" to carry out executions. *Ford v. Wainwright*, 477 U.S. 399, 405 (1986), quoted in *Atkins v. Virginia*, 536 U.S. 304, 321 (2002). *See also*, Jeffrey L. Kirchmeier, *Let's Make A Deal: Waiving the Eighth Amendment by Selecting A Cruel and Unusual Punishment*, 32 CONN. L. REV. 615, 647–49 (2000) (arguing that Eighth Amendment waiver "is more detrimental to society than other constitutional criminal right waiver" and historically, the prohibition of cruel and unusual punishment has been viewed as an unwaivable limit on authority to punish as a reflection on "our own self-respect") (quotation omitted).

[2] Pagination on the District Court header.

target, causing only two entry wounds and two internal pathways both traveling down and to Mahdi's right, away from the heart (*e.g.*, ECF No. 1 at 33; ECF No. 1-1 at ¶¶ 12–16, ECF No. 1-2 at ¶¶ 22–25, ECF No. 1-21 (report of forensic pathologist Jonathan L. Arden, M.D.) at 3), stands against bare assertions that the Madhi execution was carried out correctly (ECF No. 20-1 (Affidavit of Defendant Anderson)) as represented to the state supreme court in prior litigation so as to cause nearly instantaneous loss of consciousness. *See Owens v. Stirling*, 904 S.E.2d 580, 600 (S.C. 2024) (relying on testimony the person will become quickly insensate to pain "less than ten seconds").

2. Irreparable Harm Absent a Stay

The Response fails to address Mr. Stanko's argument for irreparable harm itself, instead effectively resting on its merits argument. Resp. at 18. The Response makes no effort to counter the argument that executing Mr. Stanko today in a cruel and unusual manner is irreparable and separately would render irreparable the deprivation of due process to resolve the fact issues underpinning the merits of this case. Application at 19–20.

3. Weighing the Equities of the Competing Interests

The test for a stay requires equitable weighing of multiple usually competing interests, as well as consideration of the public interest. Application at 8 (citing *Hill v. McDonough*, 547 U.S. 573, 584 (2006); *Ramirez v. Collier*, 595 U.S. 411, 421 (2022)). The Application acknowledges the public interest in carrying out the execution, but provides compelling argument that the interest in carrying it out *today* likely needing a second dose of pentobarbital (because Mr. Stanko was coerced into this choice by

threat of execution by electrocution), without permitting proper litigation to its conclusion of the colorable constitutional claims raised in the Complaint, especially against the backdrop of events in South Carolina capital punishment over recent months and years, is attenuated, and outweighed by interests in favor of the stay. Application at 20–23. The Response, by contrast, fails to conduct *any* weighing, by completely ignoring interests in favor of the stay. Resp. at 18–19. This one-sided analysis fails to encompass the equitable nature of the remedy and the well-established test. Finally, the Response that Mr. Stanko should have acted sooner to assert his rights within the narrow window provided under the statute (Resp. at 19) ignores altogether multiple recitations of the diligence undersigned counsel have exercised in pressing this matter into court. Application at 23–25; Doc. 17 (4th Cir. June 12, 2025) at 5–9; ECF No. 17 at 4–6).

I. CONCLUSION

For the foregoing reasons, Applicant Mr. Stanko respectfully requests that this Court grant an emergency order staying the execution scheduled for June 13, 2025, at 6:00 p.m.

Respectfully submitted,

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