

****THIS IS A CAPITAL CASE- EXECUTION SET FOR JUNE 25, 2025****

No. _____

No. _____ (connected case – Petition for Certiorari)

In the
Supreme Court of the United States

Richard Gerald Jordan,

Petitioner,

v.

State of Mississippi,

Respondent.

On Petition for a Writ of Certiorari
from the Supreme Court of Mississippi

**EMERGENCY APPLICATION FOR STAY OF
EXECUTION**

Krissy C. Nobile
Counsel of Record
S. Beth Windham
MISSISSIPPI OFFICE OF CAPITAL
POST-CONVICTION COUNSEL
239 North Lamar Street
Suite 404
Jackson, MS 39201
(601) 359-5733
knobile@pcc.state.ms.us
bwindham@pcc.state.ms.us

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

The State of Mississippi has scheduled the execution of Petitioner, Richard Gerald Jordan, for Wednesday, June 25, 2025, at 6:00 p.m. Jordan filed a Petition for Writ of Certiorari on June 20, 2025, challenging the Mississippi Supreme Court's inconsistent application of Mississippi law to evade federal review of Jordan's *ex post facto* claim and resulting violation of his due process rights. Jordan respectfully requests a stay of execution pending the Court's disposition of this case.

PROCEDURAL BACKGROUND

Jordan was sentenced to death for a crime that occurred in January 1976, shortly after he returned home from Vietnam. The only constitutional penalty available for the crime at that time was imprisonment for life. Pet. 3. Accordingly, Jordan challenged his sentence arguing it violated the *Ex Post Facto* Clause in 1978. *See Jordan v. State*, 365 So. 2d 1198, 1204 (Miss. 1978). The Mississippi Supreme Court denied Jordan's claim on the grounds that the change in state statute was "procedural" rather than "substantive." *Id.* (relying on *Irving v. State*, 361 So. 2d 1360 (Miss. 1978)).

Mississippi has now radically departed from years of precedent and held that *all* law enacted by the Legislature, including Mississippi's Uniform Post-Conviction Collateral Relief Act, ("UPCCRA") codified at Miss. Code Ann. §99-39-1, *et seq.*, is substantive law. *See Howell v. State*, 358 So. 3d 613 (Miss. 2023); *Ronk v. State*, 391 So. 3d 785 (Miss. 2024). As a result, Jordan filed a successive motion for post-conviction relief in the Mississippi Supreme Court arguing that *Howell* and *Ronk* established that the reasoning the Mississippi Supreme Court originally used to deny

Jordan's *ex post facto* claim was faulty. In a two-page order, a divided Mississippi Supreme Court denied Jordan's motion finding his *ex post facto* claim was "time-and successive writ barred" and "barred by res judicata." En Banc Order, at 1, *Jordan v. State*, No. 2024-DR-01272-SCT (May 1, 2025.) On rehearing, Jordan argued that the Court erred in applying the intervening decision exception to *Howell* and *Ronk*, and that the statutory bars were unconstitutional as applied citing *Hathorne v. State*, 376 So. 3d 1209 (Miss. 2023).

The Mississippi Supreme Court denied rehearing in a one sentence order. Petitioner timely filed for a writ of certiorari to this Court on June 20, 2025.

The Mississippi Supreme Court has refused to apply the new classification that all law passed by the Legislature is substantive to Jordan's renewed challenge to his sentence under the *ex post facto* clause. But if all law passed by the Mississippi legislature is indeed substantive, the Mississippi Supreme Court should not be able to avoid federal review by simply falling back on an application of statutory bars when it is inconvenient to grant relief.

REASONS FOR GRANTING THE STAY

Jordan respectfully asks this Court to stay his execution pending disposition of this case. Due to the timing of the state court's ruling, and Jordan's impending execution date, this Court would be unable to consider his petition in the normal course without the need for a stay. Further, a stay of execution is necessary to permit the Court to resolve the case after briefing and argument next Term.

A stay may be granted in certiorari proceedings when there is "a reasonable probability that four members of the Court would consider the underlying issue sufficiently meritorious for the grant of certiorari or the notation of probable jurisdiction; there must be a significant possibility of

reversal of the lower court’s decision; and there must be a likelihood that irreparable harm will result if the decision is not stayed.” *Barefoot v. Estelle*, 463 U.S. 880, 895 (1983)(internal citations and quotations omitted).

Federal courts evaluating a request for a stay also consider the petitioner’s likelihood of success on the merits, the potential harm to the parties, and whether the prisoner has unduly delayed bringing the claims. *See Hill v. McDonough*, 547 U.S. 573, 584 (2006); *Nelson v. Campbell*, 541 U.S. 637, 649–50 (2004). In the context of certiorari proceedings, a petitioner must demonstrate a reasonable probability that four Justices would vote to grant certiorari, a significant likelihood that the lower court’s decision would be reversed, and a likelihood of irreparable harm in the absence of a stay. *See Barefoot*, 463 U.S. at 895. In this case, each factor supports staying Jordan’s execution.

I. PETITIONER HAS NOT DELAYED.

The Mississippi Supreme Court denied rehearing as to the denial of Jordan’s post-conviction relief on June 12, 2025, after previously setting his execution date for June 25, 2025. At the time the execution date was set, Jordan had (and still has) a petition for certiorari pending in another matter before this Court; Jordan had the right to move for rehearing on this matter in the Mississippi Supreme Court; and Jordan is the lead plaintiff in a Section 1983 action filed in federal court challenging the constitutionality of Mississippi’s method of execution—making setting his execution date contrary to the plain language of Mississippi law. *See Miss. Code Ann. § 99-19-106* (“When judgment of death becomes final and a writ of certiorari to the United States Supreme Court has been denied or the time for filing such petition has expired, the court shall set an

execution date...”); *See also* Pet. for Cert. in No. 24-959; *See Jordan v. State*, No. 2024-DR-0172-SCT; and *Jordan v. Cain*, No. 3:15-cv295-HTW-LGI [Doc. 1].

The two decisions radically altering Mississippi law, *Howell* and *Ronk*, were handed down by the Mississippi Supreme Court in 2023 and 2024. Jordan filed for relief based on the intervening law in those cases only about four months after rehearing was denied in *Ronk*. *See Ronk v. State*, No. 2021-DR-00269-SCT.

Jordan filed the instant petition for certiorari eight days after the Mississippi Supreme Court denied his motion for rehearing. Unfortunately, due to the timing, this Court has no conference day before the execution. Jordan should not be faulted for delay when his state post-conviction motion was filed before the Mississippi Supreme Court set an execution date, and he filed his petition for certiorari a little over a week after denial of the motion for rehearing.

II. THERE IS A REASONABLE PROSPECT THAT THIS COURT WILL GRANT CERTIORARI AND REVERSE.

The question raised in Jordan’s petition is meritorious and should result in a grant of certiorari. Jordan’s case presents an important constitutional issue that deserves to be fully addressed by the Court free from the constraints of a warrant.

As stated in Jordan’s petition, the death penalty was not a constitutionally viable punishment at the time of Jordan’s offense in January 1976; the only constitutional penalty for any classification of murder was imprisonment for life. Jordan originally launched a challenge of his sentence based on the *ex post facto* clause in 1977 because the version of the capital murder statute at the time of the crime was unconstitutional under *Woodson v. North Carolina*, 428 U.S. 280 (1976) and its progeny. *See Jordan v. State*, 365 So. 2d 1198, 1204 (Miss. 1978). The Mississippi Supreme Court rejected this claim, finding instead that the changes in the law were procedural and

ameliorative. *Jordan*, 365 So. 2d at 1198. Based on other constitutional deficiencies, however, Jordan’s 1977 sentence was reversed. *Jordan v. Watkins*, 681 F. 2d 1067 (5th Cir. 1982).

In 2023 and 2024, Mississippi handed down two cases that upended Mississippi law and post-conviction jurisprudence. In *Howell*, the Mississippi Supreme Court held that the UPCCRA’s time limitation for filing initial post-conviction petitions was a matter for substantive law for the legislature since it can “only enact substantive law.” *Howell*, 358 So. 3d at 615. The next year *Ronk* took this rationale a step further and held that all the procedural bars in the UPCCRA are substantive law—relying again on the concept that the “Legislature only can enact substantive law.” *Ronk*, 391 So. 3d at 795. *Howell* and *Ronk* transform law that was once considered to be procedural to be substantive. *See Howell*, 358 So. 3d at 619 (Kitchens, P.J., dissenting) (“Today’s holding that the Legislature is capable of enacting nothing but substantive laws can impact many areas of state law.”).

But rather than addressing Jordan’s *ex post facto* claim on the merits based on the intervening exception to Mississippi’s PCR Act, the Mississippi Supreme Court avoided federal review by relying on the bars contained in the statute, effectively denying Jordan due process. *See En Banc Order, Jordan v. State*, No. 2024-DR-01272-SCT (May 1, 2025). Indeed, arbitrary denial of an available state court forum to adjudicate a federal constitutional claim violates due process. “A state court may not deny a federal right, when the parties and controversy are properly before it, in the absence of ‘valid excuse.’” *Howlett v. Rose*, 496 U.S. 356, 369 (1990) (quoting *Douglas v. New York, N. H. & H. R. Co.*, 279 U.S. 377, 387-388 (1929) (Holmes, J.)). Mississippi has opened its post-conviction forum to reviewing all federal claims, and the state court here arbitrarily shut the door on Jordan’s federal *ex post facto* claim.

III. JORDAN WILL BE IRREPARABLY HARMED IN THE ABSENCE OF A STAY OF EXECUTION, AND THE BALANCE OF EQUITIES AND PUBLIC INTEREST SUPPORT A STAY.

Jordan will suffer irreparable harm if his execution is allowed to go forward as he would be executed without being able to litigate his claim that his due process rights were violated when Mississippi refused to consider his *ex post facto* claim on the merits after intervening law. It has long been recognized that “execution is the most irremediable and unfathomable of penalties.” *Ford v. Wainwright*, 477 U.S. 399, 411 (1986).

Additionally, a stay of execution is necessary to facilitate a thorough and meaningful review, protecting that same due process right. The fundamental requirement of due process is the opportunity to be heard “at a meaningful time and in a meaningful manner.” *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965) (internal citations and quotations omitted). The issue present in the instant case requires appellate review that is not truncated by the exigencies of an imminent execution.

The State will not be comparably harmed by granting a stay. The State has delayed almost fifty years in carrying out Jordan’s execution rendering cries for finality false. Further, public interest has a stake in whether a state may ignore settled precedent and inconsistently apply state procedure to avoid federal review of constitutional claims. In addition, the irreversible nature of the death penalty frequently supports granting a stay. “[A] death sentence cannot begin to be carried out by the state while substantial legal issues remain outstanding.” *Barefoot*, 436 U.S. at 888. Should this Court grant the request for a stay and review of the underlying petition, there is a significant possibility of the lower court’s reversal. This Court’s intervention is urgently needed to

prevent Jordan's imminent execution since the Mississippi Supreme Court has refused to enforce Jordan's due process rights and review his *ex post facto* claim.

CONCLUSION

Jordan asks the Court to grant his application for a stay of his June 25, 2025 execution to address the compelling constitutional question in his case on the merits.

Dated: June 20, 2025

Respectfully submitted,

Krissy C. Nobile

Krissy C. Nobile

Counsel of Record

S. Beth Windham

MISSISSIPPI OFFICE OF CAPITAL POST-
CONVICTION COUNSEL

239 North Lamar Street

Suite 404

Jackson, MS 39201

(601) 359-5733

knobile@pcc.state.ms.us

bwindham@pcc.state.ms.us