

No.
CAPITAL CASE

IN THE
Supreme Court of the United States

BYRON LEWIS BLACK,
Petitioner,

v.

FRANK STRADA ET. AL.
Respondent.

APPLICATION FOR A STAY OF EXECUTION
EXECUTION SCHEDULED FOR AUGUST 5, 2025, AT 10:00 AM.

OFFICE OF THE FEDERAL PUBLIC DEFENDER
FOR THE MIDDLE DIST. OF TENNESSEE
CAPITAL HABEAS UNIT

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**Counsel of Record*

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

Byron Black is scheduled to be executed on **August 5, 2025, at 10:00 AM.**

Mr. Black respectfully requests a stay of his execution pending this Court's disposition of his petition for a writ of certiorari.

I. JURISDICTION

The Tennessee Supreme Court entered its judgment vacating the lower court's injunction on July 31, 2025. Mr. Black's petition for a writ of certiorari was filed on August 1, 2025. The Tennessee Supreme Court set Mr. Black's execution for August 5, 2025. Pursuant to United States Supreme Court Rule 23.3, Mr. Black gives notice that he sought a stay of execution from the Tennessee Supreme Court, which rejected Mr. Black's application on the basis of a newly propounded procedural rule stating that no such stay could be sought in these proceedings. This rejection was communicated via a phone call from court staff. *See* Attach. 1, Decl. of Kelley J. Henry. This Court has jurisdiction to entertain Mr. Black's petition for certiorari and application for a stay of execution under 28 U.S.C. §§ 1257(a) and 1651(a).

II. BACKGROUND

Byron Black was convicted and sentenced to death in 1989. On direct appeal, a divided Tennessee Supreme Court affirmed his convictions and sentences. *State v. Black*, 815 S.W.2d 166, 170 (Tenn. 1991). Mr. Black exhausted the standard, three-tier appellate review process. *Black v. Carpenter*, 866 F.3d 734 (6th Cir. 2017); *Black v. State*, No. M2004-01345-CCA-R3PD, 2005 WL 2662577 (Tenn.

Crim. App. Oct. 19, 2005); *Black v. State*, No. 01C01-9709-CR-00422, 1999 WL 195299 (Tenn. Crim. App. Apr. 8, 1999); *Black*, 815 S.W.3d at 170.

In early 2025, the Tennessee Department of Correction (“TDOC”) released its new execution protocol (“2025 Tennessee Lethal Injection Protocol”) that called for executions to be performed by the injection of a lethal dose of pentobarbital. Mr. Black filed a timely grievance challenging the fact that, among other things, the protocol failed to address, or establish any mechanism for addressing, individualized medical considerations that could interfere in a planned execution. While his grievance was pending, the Tennessee Supreme Court set Mr. Black’s execution for August 5, 2025.

The day after Mr. Black received the final rejection of his grievance, Mr. Black filed suit in Tennessee state court challenging various aspects of the 2025 Tennessee Lethal Injection Protocol, including its failure to address his unique medical needs. In addition to several other very serious health issues, Mr. Black has an implanted cardioverter defibrillator (“ICD”), which was implanted in 2024, when Tennessee had no active lethal injection protocol, and which, unless deactivated prior to the execution, will very likely shock Mr. Black’s heart at least once, and more likely several times, in an effort to restore his normal cardiac rhythm. ICD shocks are extremely painful, and Mr. Black will very likely be conscious when the device shocks him.

On June 30, Mr. Black filed a Motion for Preliminary Injunction requiring TDOC to deactivate the ICD immediately prior to, or simultaneously with, his

execution. The motion sought limited relief—the timely, effective deactivation of the ICD, on the ground that, if it is not deactivated, it will be triggered during Mr. Black’s execution, subjecting him to violent, painful shocks and prolonging his death. The Tennessee Chancery Court for the 20th Judicial District heard two days of evidence regarding Mr. Black’s motion. In addition to the evidence presented regarding the risks posed by the ICD, the court heard evidence establishing that ICD deactivations are routinely performed by medical practitioners for many reasons, including as part of end-of-life care. TDOC presented no evidence that it would experience any hardship in obtaining an individual or entity to perform the deactivation.

On July 18, the court issued a memorandum and order granting Mr. Black’s motion for an injunction. After making those factual findings, the Chancellor concluded that: (1) Mr. Black showed a preliminary likelihood of success on his claim, (2) he made a sufficient showing of a risk of irreparable harm if his device is not deactivated “shortly before or at the point of administering the lethal injection, without any undue administrative or logistical burden being placed on the State,” (3) the injunction does not operate to delay Mr. Black’s execution, and (4) the public interest and the balancing of harms militate in favor of granting the limited temporary injunction. The Chancellor directed Defendants to “arrange to have the necessary medical or certified technical professional present, along with any necessary equipment, at the execution to deprogram and deactivate” Mr. Black’s

ICD. On July 23, 2025, the Chancellor, at the request of TDOC, modified the Order to permit the ICD deactivation to occur at a location outside the prison.

The Defendants appealed, asking the Tennessee Supreme Court to vacate the injunction. On July 31, 2025, the Tennessee Supreme Court did so. The Court, however, did not find any reversible error in the Chancellor's findings or Eighth Amendment analysis. Rather, the Tennessee Supreme Court held, for the first time and contrary to preexisting general statutory authority, *see* Tenn. Code Ann. § 17-1-204, that Tennessee trial courts have no power to issue injunctions bearing on secondary issues related to an execution that has been set.

Immediately following the Tennessee Supreme Court's decision, Mr. Black filed a Motion for Stay of Execution with the Tennessee Supreme Court, seeking time to comply with the new procedural rule. On August 1, 2025, the Tennessee Supreme Court, through its Clerk, informed counsel for Mr. Black that, pursuant to Tenn. Sup. Ct. R. 12.4(E), no stay of execution could be sought in these proceedings. Mr. Black therefore sought a stay pursuant to that rule under the Tennessee Supreme Court's general docket number used to set Mr. Black's execution date. The stay requested, however, was not tied to the petition for certiorari, nor could it have been, because Tenn. Sup. Ct. R. 12.4(E) categorically forbids stays "pending resolution of collateral litigation in federal court."

III. REASONS FOR GRANTING THE STAY

An application for a stay of execution is evaluated under the familiar four factor test that analyzes:

(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, 434 (2009). The contemporaneously filed Petition for Writ of Certiorari contains the following important question of constitutional significance. As outlined in the petition, Petitioner has demonstrated a strong likelihood of success on the merits. In the equitable analysis, the risk of irreparable harm to Mr. Black, where he stands to be executed in a way that violates the 8th Amendment. The public interest favors a stay of execution to settle this important question of constitutional law which is likely to recur. Respondent will not be substantially injured. With the aging death row population in its state, Respondent, and other death penalty jurisdictions, will benefit from this court's guidance on this issue. Finally, because the Tennessee Supreme Court determined that no stay could be sought in these proceedings, "the relief sought"—that is, a stay tied to this appeal—"is not available from any other court or judge." U.S. Sup. Ct. R. 23.3.

IV. CONCLUSION AND PRAYER FOR RELIEF

The equities of this case weigh in favor of Mr. Black's because his case presents a strong likelihood of success on the merits, grievous risk of executing an individual in violation of the constitution, and where Mr. Black has not acted with undue delay. Mr. Black respectfully requests that the Court grant this application, stay his execution, and grant any other relief that the Court may find just.

Respectfully submitted this 1st day of August, 2025.

FEDERAL PUBLIC DEFENDER FOR
THE MIDDLE DISTRICT OF TENNESSEE
CAPITAL HABEAS UNIT

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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of this Response has been served via the electronic filing system to Associate Solicitor General Nick Spangler, at the Office of the Tennessee Attorney General, P.O. Box 20207, Nashville, Tennessee 37202 on this 1st day of August, 2025.

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