

Nos. 25-5261; 25A136

CAPITAL CASE EXECUTION SCHEDULED AUGUST 5, 2025, AT 10:00 AM.

IN THE
Supreme Court of the United States

BYRON LEWIS BLACK,
Petitioner,

v.

FRANK STRADA, ET. AL,
Respondent.

**REPLY TO BRIEF IN OPPOSITION TO
PETITION FOR A WRIT OF CERTIORARI AND APPLICATION FOR STAY
OF EXECUTION**

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INTRODUCTION

In Respondents' Brief in Opposition ("BIO"), they mount a powerful argument in favor of denying a petition for certiorari—just not the one that Mr. Black has actually filed. Respondents talk a great deal about the need to discourage litigation brought by prisoners at the last second before their execution, but it was Respondents, not Mr. Black, who have been responsible for any delays that occurred in this matter. Respondents mount a stirring defense of both capital punishment and pentobarbital, but the injunction Mr. Black sought and obtained neither forbade his execution nor required Tennessee to abandon pentobarbital as its chosen method. And Respondents argue that the Tennessee Supreme Court's irregularities can be disregarded because that court supposedly mopped things up in its *sua sponte* merits analysis performed in response to Mr. Black's subsequent stay request, but that stay request was not even in these proceedings.

For all of the obfuscation mustered by Respondents and the unnecessary complication created by the Tennessee Supreme Court, this case is simple. Mr. Black, facing execution, expeditiously sought a preliminary injunction requiring the State to turn off his implanted cardioverter defibrillator ("ICD") before executing him by lethal injection. He demonstrated his entitlement to that preliminary injunction based on his federal rights and received it. Respondents appealed, and the Tennessee Supreme Court vacated the injunction based on a never-before-applied, novel procedural rule. Mr. Black now seeks this Court's review, consistent with this Court's longstanding caselaw establishing that state courts of last resort may not evade review of federal questions by inventing "independent and adequate" state-law grounds on the fly.

Everything else is a distraction. In particular, the strange stay procedure that the Tennessee Supreme Court forced Mr. Black to pursue after rejecting his stay request in these proceedings has nothing to do with the present appeal, because the Tennessee Supreme Court—in its second invention of a novel procedural rule—said

that any stay request had to be made, for some reason, in an over twenty-year-old post-conviction proceeding unrelated to this civil case. When Mr. Black filed that stay request, moreover, he did so only to seek a limited stay necessary to resolve this issue informally or for the Tennessee Supreme Court to establish procedures sufficient to address it formally. The *sua sponte* merits analysis then embarked on by the Tennessee Supreme Court in its opinion issued *after* Mr. Black's certiorari petition had already been filed was little more than a naked attempt to distract this Court from Mr. Black's well-supported right to review in this case.

By closing the courthouse doors to Mr. Black in the proceedings where he actually obtained his relief, the Tennessee Supreme Court condemned him to a death that a trial court found will amount to cruel and unusual punishment—not because the method of execution is a lethal dose of pentobarbital, but because, in the process of the death by pentobarbital poisoning, the device which Respondents caused to be implanted in him will restart his heart. The proof is that when his defibrillator activates, as it will during the dying process, the pain will be immense. Further, the proof established, and the court found, that this risk is easily eliminated by deactivating the device.

This Court should reject Respondents' invitation to rewrite the petition for a writ of certiorari, as well as the Tennessee Supreme Court's attempt to explode these straightforward proceedings into an inscrutable, ad hoc process incapable of any meaningful review. Mr. Black—who is far from the only person sentenced to death who also has serious health problems relevant to the execution process—has identified an important Eighth Amendment issue that is certain to recur. This Court should grant the application for a stay and grant certiorari review to address that issue before it sows avoidable chaos in executions to come.

I. BECAUSE THE STATE COURT JUDGMENT WAS NOT BASED ON AN INDEPENDENT AND ADEQUATE STATE LAW GROUND, THIS COURT HAS JURISDICTION TO CONSIDER MR. BLACK’S PETITION.

Respondents argue that this Court lacks jurisdiction because “the decision below rests on pure state-law grounds.” BIO at 17. Mr. Black’s petition, however, did not dispute that the Tennessee Supreme Court applied state law when it vacated the injunction to which he had demonstrated his clear entitlement. Rather, this Court retains jurisdiction because the state-law rule the Tennessee Supreme Court applied was newly invented for this case. Under well-established caselaw, such a rule cannot deprive this Court of jurisdiction. *See, e.g., Cruz v. Arizona*, 598 U.S. 17, 28 (2023).

This Court lacks jurisdiction to consider an appeal from a state court if the terminating decision of the relevant state court of last resort. “rested on an adequate and independent state ground.” *Michigan v. Long*, 463 U.S. 1032, 1044 (1983). This Court has been clear, however, that when it uses the term “adequate,” in this context, it is not requiring merely that the state court itself considered the rule to be adequate to support its decision as a substantive matter. After all, every court presumably believes that its own reasons are adequate to support its decisions. Rather, the state-court decision must be adequate to deprive this Court of jurisdiction, with “[t]he question whether a state procedural ruling is adequate” being “itself a question of federal law.” *Beard v. Kindler*, 558 U.S. 53, 60 (2009).

As this Court has held, one of the key requirements for a state-law bar to be adequate is that it “must have been ‘firmly established and regularly followed’ *by the time as of which it is to be applied.*” *Ford v. Georgia*, 498 U.S. 411, 424 (1991) (quoting *James v. Kentucky*, 466 U.S. 341, 348 (1984)) (emphasis added). “Novelty in procedural requirements cannot be permitted to thwart review in this Court applied for by those who, in justified reliance upon prior decisions, seek vindication in state courts of their federal constitutional rights.” *NAACP v. State of Ala. ex rel. Patterson*, 357 U.S. 449, 457–58 (1958)). Based on that rule, this Court has exercised its jurisdiction, despite an ostensible state-law bar, when a review of the relevant state’s history reveals “no other instance” of the underlying rule actually being applied. *Cruz*,

598 U.S. at 28. That is the case here. Respondents have not identified a single opinion in which the Tennessee Supreme Court has so much as suggested that a state trial court lacks the authority to issue an injunction requiring necessary palliative care—or any other necessary step—before an execution.

Rather, Respondents try to hang their hats on the extraordinarily mundane “rule” that a lower court cannot supersede an order of a higher court. At most, though, that is the general background principle on which the Tennessee Supreme Court relied in announcing its new rule, not the rule that it actually applied. If the applicable restriction was that an order of a lower court cannot supersede or modify the order of a higher court, then there would have been no basis for vacating the Chancellor’s injunction, because the injunction did neither. Contrary to Respondents’ framing, the Chancellor’s order did not purport to alter, amend, or place conditions on any order of the Tennessee Supreme Court and certainly called for no alteration of either the date or method of execution. Rather, the Chancellor merely ordered the Respondents to perform an additional step prior to Mr. Black’s execution. The Tennessee Supreme Court has now held that such relief is not permitted, and future litigants can now adapt their litigation decisions accordingly. Mr. Black, however, was given no such option, and, because he was not, this Court has jurisdiction to review the Tennessee Supreme Court’s decision.

Finally, Respondents argue that Mr. Black should instead have filed this petition in an entirely separate proceeding—the consideration of the stay request that the Tennessee Supreme Court strangely required to be filed in the Tennessee Supreme Court proceedings arising out of Mr. Black’s long-ago denial of state post-conviction relief in 2000, rather than in these proceedings. BIO at 16; *see* Suppl. App. 8–9. Mr. Black, however, is not appealing the denial of a stay under Tennessee state law. He is appealing the denial of a preliminary injunction based on his federal rights. That preliminary injunction was granted in these proceedings, not the 2000 proceedings that the Tennessee Supreme Court, *sua sponte* and with little coherent

explanation, demanded that Mr. Black shunt his state-law stay request over to, subject to no meaningfully set out procedures or standard of review.

Indeed, the bizarre, ad hoc process that the Tennessee Supreme Court applied to Mr. Black's collateral stay request proves just how newly minted—and thus untested—the Tennessee Supreme Court's procedures for handling this issue have been. When the Tennessee Supreme Court vacated the injunction Mr. Black obtained due to a supposed procedural infirmity, Mr. Black, as any ordinary litigant would, asked the Tennessee Supreme Court to establish a set of procedures to present his claim appropriately—such as through a special master or a briefing schedule. Suppl. App. 13–14. The Tennessee Supreme Court, however, rejected that request on the ground that Mr. Black had supposedly already received his due process in the form of the very hearing that the Tennessee Supreme Court had thrown out. Resp. App. 10, n. 6. Yet, at the same time, the Tennessee Supreme Court (1) based its ruling on that stay request in large part on evidence presented by Respondents only after that hearing, while this appeal was pending, and (2) did not apply Tennessee's well-established deference to trial court credibility determinations. Resp. App. 6–10; *see Wells v. Tenn. Bd. of Regents*, 9 S.W.3d 779, 783 (Tenn. 1999) (describing Tennessee's appellate rule regarding review of a chancellor's factual findings). An army of law professors could not make that approach make sense.

As the State's highest Court, the Tennessee Supreme Court has broad substantive discretion to define procedures governing claims in the Tennessee court system—including, if it so chooses, by making things up as it goes along. When it takes such a seat-of-its-pants approach to procedures, however, it cannot rely on its improvisations to deprive this Court of jurisdiction, or a litigant their federal constitutional rights. To hold otherwise would require an alteration of this Court's caselaw. If anything, the importance of vindicating that principle supports a grant of certiorari under Sup. Ct. R. 10.

II. THE TENNESSEE SUPREME COURT'S NEWLY CREATED RULE DENIED MR. BLACK DUE PROCESS.

“[W]hile it is for the state courts to determine the adjective as well as the substantive law of the state, they must, in so doing, accord the parties due process of law.” *Brinkerhoff-Faris Tr. & Sav. Co. v. Hill*, 281 U.S. 673, 681–82 (1930). The Tennessee Supreme Court’s decision to vacate the relief that Mr. Black obtained pursuant to a newly propounded rule—then attempt to funnel his concerns into some new, ad hoc vessel attached to a stay request, falls far short of satisfying that responsibility. Nevertheless, Mr. Black was afforded due process, Respondents suggest, because he got a hearing—even though the results and findings of that hearing were thrown out—and because the Tennessee Supreme Court considered his stay request (although, contrary to Respondents’ briefing, it ruled on that request only *after* Mr. Black filed his Petition). Neither argument holds water.

The hearing cannot possibly have provided due process, because the Tennessee Supreme Court threw the findings of that hearing out and afforded them none of the deference to which they were entitled under Tennessee law, *Wells*, 9 S.W.3d at 783. The stay request, in turn, cannot satisfy the requirement of due process because (1) these proceeding arise out of a request for an injunction requiring the deactivation of Mr. Black’s defibrillator, not a stay request, (2) his stay request was not, and was not intended to be, an alternative presentation of his request for injunctive relief or the facts underlying it, and (3) the Tennessee Supreme Court Rule governing stay requests provides no meaningful fixed procedures affording due process.

When Mr. Black filed his stay request, he acknowledged that, because he had “demonstrated a likelihood of success on the merits during the chancery court’s evidentiary hearing, he believe[d] that he [was] entitled to, and would welcome” a stay pending the full resolution of his underlying claim. Suppl. App. 11. Mr. Black, however, did not brief any such request, because he took the Tennessee Supreme Court at its word that it did not consider his original presentation of the issue to have been procedurally appropriate. Accordingly, he requested a shorter, more targeted stay to “afford [the Tennessee Supreme] Court the opportunity to establish a

structure for permitting Mr. Black—and other, future individuals facing execution—to raise secondary and collateral concerns related to executions that, due to the Court’s ruling, the state’s trial courts are now powerless to address.” *Id.* at 13. Nevertheless, the Tennessee Supreme Court chose to issue an opinion in which it *sua sponte* embarked on a merits analysis that Mr. Black had neither briefed nor requested.

The Rule on which the Tennessee Supreme Court relied, moreover, is, in and of itself, incapable of providing due process, because it offers no meaningful fixed procedures at all. Tennessee Supreme Court Rule 12.4(E) states only that the court may issue a stay “pending resolution of collateral litigation in state court” if “the prisoner can prove a likelihood of success on the merits in that litigation.” That rule is inadequate, as a preliminary matter, because it expressly forbids any stay pending resolution of litigation in federal court, meaning that the only stay that Mr. Black actually needed—a stay tied to this petition—was unavailable. More importantly, Rule 12.4(E). provides no procedures for how that “prov[ing]” is supposed to occur. It provides no explanation for how such a request should be lodged, briefed, or factually supported. It provides no discussion of if or when a hearing might be available. It is not even clear, from the rule, how a factual record could even be assembled, given that the Tennessee Constitution explicitly dictates that the jurisdiction of the Tennessee Supreme Court “shall be appellate only,” with the exception of “such other jurisdiction as” was “conferred by law on” on that Court at the time of that Constitution’s adoption in 1870. Tenn. Const. art. VI, § 2. For notice to comport with due process, that notice must be “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950). Rule 12.4(E) gives no notice of how an individual seeking relief may actually pursue it—a problem only exacerbated by the fact that the

Tennessee Supreme Court effectively ambushed Mr. Black with an analysis that he specifically did not ask for. Adjudication by ambush is not, and cannot be, due process.

III. MR. BLACK’S PETITION RAISES AN IMPORTANT ISSUE OF EIGHTH AMENDMENT LAW THAT IS LIKELY TO RECUR AND WHICH WILL INTERFERE IN THE ADMINISTRATION OF JUSTICE IF NOT RESOLVED BY THIS COURT.

A. *BUCKLEW* DOES NOT RESOLVE THE ISSUE PRESENTED BY MR. BLACK’S CASE.

Respondents argue that *Bucklew* already resolved one of the key questions presented by Mr. Black’s case—namely, how the *Baze/Glossip/Bucklew* framework applies to requests for medical accommodations that do not require any change to the state’s underlying method of execution. *See* BIO 22–23. Conveniently, Defendants ignore the distinction presented by the last clause of that sentence—requests for medical accommodations *that do not require any change to the state’s underlying method of execution*. In *Bucklew*, the petitioner challenged the state’s method of execution, arguing that any form of lethal injection would be cruel and unusual as applied to him, due to his unique congenital vascular condition. That claim, though “as applied,” would have required a change in the state’s method of execution; as such, it is unsurprising that this Court treated it as a method of execution challenge. Here, by contrast, Mr. Black’s claim would not require any change in Tennessee’s chosen method of execution—simply the performance of one additional step for one man (i.e., deactivating the ICD before his execution). It makes no sense to require Mr. Black to identify an “alternative method of execution” when he is not asking the court to set aside the original method.

Moreover, insofar as Mr. Black did have an obligation to identify an alternative course of action, he did so by demonstrating, through uncontroverted evidence at the trial court’s hearing, that ICD deactivation is widely available and easily performed. The only argument against the sufficiency of that showing is the bring-your-own-personnel requirement that Respondents urge the Court to import from caselaw surrounding challenges to the use of specific commercial pharmaceuticals as killing agents. The fact that Respondents would urge such an approach—despite its being

inconsistent with the actual purposes of *Baze/Glossip/Bucklew*—is evidence that Mr. Black has identified “an important question of federal law that has not been, but should be, settled by this Court.” Sup. Ct. R. 10(c).

B. THE ONLY COURT TO ACTUALLY HEAR THE EVIDENCE FOUND THAT MR. BLACK HAD SATISFIED THE BURDEN OF ESTABLISHING THAT THE STATE’S FAILURE TO DEACTIVATE HIS ICD WAS SURE OR VERY LIKELY TO CAUSE HIM NEEDLESS SUFFERING, AND THAT A FEASIBLE, READILY AVAILABLE ALTERNATIVE EXISTS—DEACTIVATING THE ICD BEFORE THE EXECUTION.

As to the first prong of the *Baze/Glossip/Bucklew* framework, Respondents argue that “Mr. Black has failed to show more than competing expert testimony as to whether the 2025 protocol is sure or very likely to cause needless suffering that would violate the Eighth Amendment if his ICD is not deactivated before pentobarbital is administered.” BIO at 25. “Competing expert testimony,” however, is all any movant is likely to show on an issue involving a request for a medical accommodation. Respondents cite *Barr v. Lee*, 591 U.S. 979 (2020), for the proposition that such a showing is categorically inadequate to support preliminary relief, but *Barr* involved a challenge to an actual lethal injection agent—not a request for a medical accommodation. *Id.* at 24–25. As Respondents’ own briefing makes abundantly clear, those challenges face a high bar, considering how often such issues have been litigated. Mr. Black’s request for a simple accommodation requiring no change in the method of execution, however, covers no such well-worn territory.

The only court to actually hear the competing testimony concluded that Mr. Black had established that the failure to deactivate Mr. Black’s ICD was sure or very likely to cause him needless suffering. Respondents’ primary evidence that was supposedly to the contrary was barely even relevant, because it came from experts who made no meaningful distinction between consciousness and responsiveness.

As to the second prong, the trial court found that Mr. Black had sufficiently established the existence of a feasible, readily available alternative: deactivating the ICD shortly prior to, or simultaneously with, the lethal injection. Mr. Black presented

evidence that ICD deactivation is a routine, commonplace procedure, and that it is the standard of care to turn off an ICD in the hospice setting when an individual is dying. The State, for its part, presented *no* evidence to contradict Mr. Black’s evidence as to the feasibility of the deactivating the device. As such, the trial court found that Mr. Black’s ICD could be deactivated shortly before or simultaneous with the lethal injection, without any undue administrative or logistical burden being placed on the State.

The trial court did not believe Mr. Black needed to specifically identify the medical provider willing and able to deactivate Mr. Black’s ICD, for obvious reason. Tennessee, like many states, has a “public policy . . . favor[ing] the anonymity of those involved in carrying out capital punishment.” *West v. Schofield*, 460 S.W.3d 113, 124–25 (Tenn. 2015). That policy is based on the assertion—frequently voiced by the State itself—that participants in executions “may be subject to retaliation and harassment if their identities became known throughout the institution or to the public at large.” *Id.* at 123; *cf. Jordan v. Comm’r, Mississippi Dep’t of Corr.*, 947 F.3d 1322, 1326 (11th Cir. 2020) (“[D]eath penalty opponents have vigorously lobbied drug manufacturers to make this drug entirely unavailable for use in American executions.”). The State of Tennessee, moreover, routinely asserts this interest in confidentiality not only to prevent public disclosure, but to prevent even disclosure to counsel pursuant to a protective order. *See West*, 460 S.W.3d at 121–24.

A requirement that a prisoner personally identify and recruit specific, identifiable execution participants simply cannot be squared with the policy of secrecy that numerous courts and departments of correction—including those in Tennessee—have determined to be necessary in order for executions to be staffed and carried out effectively. The collision course on which these policies have been placed, however, can easily be resolved by the Court’s granting certiorari and returning the *Baze/Glossip/Bucklew* inquiry to its actual, stated foundations.

IV. THROUGHOUT THE PENDENCY OF THIS LITIGATION, MR. BLACK HAS EXPEDITIOUSLY PURSUED HIS CONSTITUTIONAL RIGHTS. RESPONDENTS’

**ASSERTION TO THE CONTRARY REQUIRES THE READER TO SQUINT THEIR EYES
AND TILT THEIR HEAD.**

Finally, Respondents characterize Mr. Black’s petition—and all of the prior proceedings—as part of a grand scheme to delay his execution. Throughout this litigation, Respondents have adopted a practice of mischaracterizing facts and glazing over inconvenient details in order to erase Mr. Black’s actual claim and actual litigation conduct and replace it with a crude caricature of a bad-faith method-of-execution challenger. The truth, however, is that it has, every step of the way, been the Defendants, not Mr. Black, who have done everything in their power to shove this issue to the eve of Mr. Black’s execution—for the obvious purpose of citing that last-second status as a reason to deny Mr. Black relief.

For example, the argument that Mr. Black should have raised these concerns when his ICD was implanted ignores the fact that, when that occurred, Tennessee had no lethal injection protocol to challenge. Rather, when Mr. Black received his ICD on May 24, 2024, the state’s prior protocol had been defunct since April 21, 2022. Mr. Black could not challenge Tennessee’s protocol for its failure to include a process for addressing individualized medical conditions, because there was no protocol to challenge.

The protocol that Mr. Black has challenged was signed on January 8, 2025, and unveiled—in redacted form—the next day. On January 14, Mr. Black—who, at that point, had no execution date at all—filed a grievance with TDOC specifically alleging, among other things, that the protocol poses an intolerable risk of severe suffering above what is necessary to enact the sentence of death because it fails to account for specific medical needs.¹ Under Tennessee law, Mr. Black could not litigate

¹ Respondents’ contention that Mr. Black has been on a delay campaign is particularly rich given their response regarding his grievance. On January 13, counsel for Mr. Black emailed the Tennessee Attorney General’s Office and asked whether they would agree that a constitutional challenge to the execution protocol was not subject to the traditional administrative grievance process. Suppl. App. 1–2. Counsel for Respondents declined, stating that Respondents could not agree that such challenges were not subject to the grievance process and that they would not waive any affirmative defenses based on exhaustion. *Id.* at 1. Notably, TDOC returned Mr. Black’s grievance asserting that it was not “appropriate” for the grievance procedure. As a result of Respondents’ representations, Mr. Black exhausted the grievance procedure—a process which took nearly two months.

his claim until that grievance process was resolved. *See Pendleton v. Mills*, 73 S.W.3d 115, 130 (Tenn. Ct. App. 2001)

On March 3, while Mr. Black's grievance was pending, the Tennessee Supreme Court set Mr. Black's execution date for August 5. Less than two weeks later (and the day after TDOC's grievance appeals process was complete), Mr. Black filed a lawsuit in Davidson County Chancery Court. Among his claims was Claim 1.4, which alleges that the 2025 Protocol poses an intolerable risk or causing severe suffering in light of TDOC's failure to account for individual medical conditions. Mr. Black set out his specific medical conditions, including the fact that he has an ICD, and alleged that individual medical conditions should have the opportunity to be addressed in TDOC's execution protocol. Just over two weeks later, Mr. Black filed a motion requesting an expedited scheduling conference. At that scheduling conference, Mr. Black's counsel repeatedly requested expedited proceedings.

On June 9, with his execution date nearly two months away, Mr. Black propounded an interrogatory asking Respondents to specify how, if at all, they planned to address his ICD. Attempting to obtain a quick reply, Mr. Black requested that Respondents voluntarily agree to respond by June 11, on the assumption that if they already had a plan to address his ICD, it would be relatively easy for them to share said plan, and if they did not, they could simply say so. Respondents refused, stating they did not see "what the emergency is." Suppl. App. 3–4. Mr. Black was forced to move to expedite Respondents' response. The chancery court held a hearing on June 13 and ordered Respondents to answer by 4:30 PM on June 23. Respondents waited until 4:09 PM on June 23 to respond they did not believe the Eighth Amendment required a plan outside of that set forth in the 2025 Protocol.

On June 30, Mr. Black filed a motion and supporting memorandum requesting an injunction ordering the State to fully deactivate his ICD immediately prior to, or simultaneous with, the injection of pentobarbital. The court set the hearing for July 14 and heard two days of testimony from four witnesses—two each for Mr. Black and

Respondents. On Friday, July 18, the court issued a fourteen-page memorandum and order granting Mr. Black's motion for an injunction. On the afternoon of Monday, July 21, Defendants filed an emergency motion to dissolve or modify the chancery court's injunction. After briefing (which Mr. Black responded to less than 20 hours later) and argument, the court issued a revised memorandum and order on the afternoon of Tuesday, July 22, giving Respondents what they asked for—the ability to take Mr. Black to Nashville General to have his ICD deactivated.

Unappeased, the next day (July 23), Respondents appealed, asking the Tennessee Supreme Court to vacate the injunction. At 4:54 PM on July 23, the high court assumed jurisdiction and ordered Mr. Black to respond less than 48 hours later, which he did. Nearly a week later, on July 31, the Tennessee Supreme Court vacated the preliminary injunction. At this point, Mr. Black had no choice but to request a stay.

Contrary to Respondents' assertion, Mr. Black's request to have the State disable his ICD was never about obtaining a stay of execution. However, after the Tennessee Supreme Court's order in his ICD litigation, Mr. Black was required to request a stay of execution to vindicate his rights. Sup. Ct. R. 23.3.²

After filing the stay application, following the suggestion of the Tennessee Supreme Court that, “nothing in our decision today prevents the parties from reaching an agreement regarding deactivation of Mr. Black's ICD should it become feasible for the procedure to be performed at an appropriate time[.]” Resp. App. 7, Mr.

² To comply with this procedural rule, Mr. Black filed his motion for stay of execution in the pertinent case. Then, undersigned counsel was contacted by phone by a Court staff member and instructed to re-file the motion for stay of execution in a case number which does not pertain to the merits of the claim before the Court. Suppl. App. 8. Through this staff member, the Court instructed that all stay of execution motions must be filed using the case number in the caption of the execution order. *Id.* The Staff member then directed undersigned counsel to re-file the application by hand at the Court. Counsel complied. *Id.* at 9.

The Tennessee Supreme Court has been historically inconsistent in picking which case number to use for the setting of execution dates. The number they chose here is from the denial of post-conviction relief. If the court were to insist that all stay applications be filed in the case which grants the court authority to set an execution date, it would be in the case number upholding the conviction and sentence on direct appeal. For Mr. Black that would be Case No. M1990-00002-SC-MWR-DD.

Black emailed the State Attorney General to request a meeting to discuss whether it would be feasible to arrange for deactivation of the ICD. Suppl. App. 17–18. Undersigned counsel wrote, “We remain extraordinarily concerned that our client will needlessly suffer if his defibrillator remains active. We would like to meet to determine if there is a path forward to having MR. Black’s ICD deactivated. We are available at your convenience for a phone call, teams meeting, or in person discussion.” *Id.* No response has been received.

Mr. Black has been diligent. He did not seek out a stay on the basis of this particular constitutional claim. Had Respondents acted in good faith, the problem could have been easily solved. Respondents’ foot-dragging and the Tennessee Supreme Court’s newly announced, never-before-applied procedural rule created both the current crisis and the fact that only this Court is in a position to resolve it. It should do so.

CONCLUSION

For the foregoing reasons, this Court should grant this petition for a writ of certiorari and stay Mr. Black’s execution.

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CERTIFICATE OF SERVICE

I certify that a copy of the Petition for Writ of Certiorari was served via first-class mail and e-mail upon counsel for the Respondent, Assistant Attorney General Nicholas Spangler, P.O. Box 20207, Nashville, Tennessee 37243, on this the Nashville, Tennessee 37202, on this the 3rd day of August, 2025.

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