

IN THE  
**Supreme Court of the United States**

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ROBERT SPARKS,  
*Petitioner,*

v.

LORIE DAVIS, Director. Texas Department of Criminal Justice,  
Correctional Institutions Division,  
*Respondent.*

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On Petition for a Writ of Certiorari to the  
United States Court of Appeals for the Fifth Circuit

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**RESPONSE IN OPPOSITION TO  
APPLICATION FOR STAY OF EXECUTION**

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## RESPONSE IN OPPOSITION

This is an application for stay of execution filed in conjunction with the petition for writ of certiorari brought by Petitioner Robert Sparks, a death-sentenced Texas inmate. Sparks seeks review of the lower court's denial of a COA. But, as shown by the Director's separately filed brief in opposition, the lower court acted according to established law and did not err. Because there is no issue that compels this Court's review, there is no reason to grant Sparks a writ of certiorari and because the equities weigh in the Director's favor this Court should not stay Sparks's execution.

The party requesting a stay bears the burden of showing that the circumstances justify an exercise of [judicial] discretion." *Nken v. Holder*, 556 U.S. 418, 433-34 (2009). Before utilizing that discretion, a court must consider:

(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.

*Id.* at 434 (citations omitted) (internal quotation marks omitted). A stay of execution "is not available as a matter of right, and equity must be sensitive to the State's strong interest in enforcing its criminal judgments without undue interference from the federal courts." *Hill v. McDonough*, 547 U.S. 573, 584 (2006). "A court considering a stay must also apply 'a strong equitable

presumption against the grant of a stay where a claim could have been brought at such a time as to allow consideration of the merits without requiring entry of a stay.” *Id.* (quoting *Nelson v. Campbell*, 541 U.S. 637, 650 (2004)).

But Sparks cannot demonstrate a strong likelihood of success on the merits. As discussed in the Director’s brief in opposition, Sparks fails to present a compelling issue that mandates this Court’s review much less a meritorious claim. First, Sparks seeks certiorari on a procedurally defaulted claim of false testimony where the lower court denied a COA. Pet. at 16-27. In addition to his default, the circuit court held the testimony had been corrected on cross-examination. ROA.972-974 (*see also* Pet. Appx B, at 32-34). And, in his second claim, Sparks contends the jury was improperly influenced during the punishment phase by the bailiff’s necktie that displayed a syringe. Pet, at 28-35. But this Court already refused to review this issue when it was raised on direct appeal, and the lower court also refused him a COA on this issue. As shown by the Director’s substantive pleading, Sparks shows no likelihood this Court will choose to review his case. Thus, he fails to demonstrate the first *Nken* factor.

Certainly, the State has a strong interest in carrying out a death sentence imposed for a horrific capital murder wherein Sparks murdered two children and raped two more. *See Hill*, 547 U.S. at 584. Indeed, the public’s interest lies in executing a sentence duly assessed and for which judicial review

has to date terminated without finding reversible error. The public's interest is not advanced by staying Sparks's execution to consider a procedurally defaulted or meritless claims.

This Court should not further delay justice. *See Martel v. Clair*, 565 U.S. 648, 662 (2012) ("Protecting against abusive delay *is* an interest of justice." (emphasis in original)). Considering all of the circumstances in this case, equity favors Texas, and this Court should deny Sparks's application for stay of execution. Sparks committed a heinous crime which resulted in the murders of two young children. He is unable to overcome the overwhelming testimony which forms the basis of the state courts' factual findings. Thus, the district court did not err in relying on these findings which are given great deference. The Fifth Circuit did not err in refusing a COA. And this Court should not grant certiorari to issue an advisory opinion.

## CONCLUSION

For the foregoing reasons, the Court should deny Sparks's application for stay of execution.

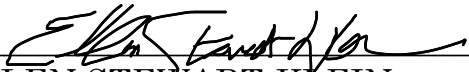
Respectfully submitted,

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