

**CAPITAL CASE  
EXECUTION SCHEDULED FOR AUGUST 15, 2019, AT 7:00 P.M., CDT**

No. 19A161

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IN THE SUPREME COURT OF THE UNITED STATES

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STEPHEN MICHAEL WEST,

*Petitioner,*

v.

TONY PARKER, et al.,

*Respondents.*

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ON PETITION FOR WRIT OF CERTIORARI  
AND APPLICATION FOR STAY OF EXECUTION

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**REPLY TO RESPONDENTS' OPPOSITION  
TO APPLICATION TO STAY EXECUTION**

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## CAPITAL CASE

Respondents argue no stay should issue here. Past their reference to their plainly inadequate reasons why the writ should not issue to reverse the court of appeals' abandonment of the rule of law of *res judicata*, BIO at 11, Respondents offer only the most summarily-described grounds. Each of those grounds are irrelevant to whether a stay should issue. The likelihood of success to which the Court should look is Mr. West's likelihood of success in the petition he has presented which involves fundamental principles of *res judicata* in the hostile setting of a capital case. *Nken v. Holder*, 556 U.S. 418, 434 (2009) ("whether the stay applicant has made a strong showing that he is likely to succeed on the merits") (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)). Because that likelihood remains high for the reasons set forth in Mr. West's reply to Respondents' brief in opposition, Mr. West has established the most important prong required for the granting of this stay.

Here, however, as of this very morning, another factor now strongly weighs in favor of granting the stay. Seeking to avoid the constitutionally-impermissible pain and suffering created by Tennessee's three-drug midazolam-based protocol, Mr. West has, as have two other Tennessee inmates before him, agreed to be executed by the also-unconstitutional, yet still less painful, method of execution, Tennessee's electric chair. The Court should grant a stay of execution to preserve jurisdiction over the issue presented. That issue is of great importance to the public and to the

integrity of the federal court. The need for this issue to be resolved has been enhanced.

Under the All Writs Act, 28. U.S.C. § 1651, this Court is specifically granted power to issue stays of execution to preserve its jurisdiction over Mr. West's petition. *United States v. New York Telephone Co.*, 434 U.S. 159, 172 (1977). As this Court has stated:

The authority to hold an order in abeyance pending review allows an appellate court to act responsibly. A reviewing court must bring considered judgment to bear on the matter before it, but that cannot always be done quickly enough to afford relief to the party aggrieved by the order under review. The choice for a reviewing court should not be between justice on the fly or participation in what may be an "idle ceremony." *Id.*, at 10. The ability to grant interim relief is accordingly not simply "[a]n historic procedure for preserving rights during the pendency of an appeal," *id.*, at 15, but also a means of ensuring that appellate courts can responsibly fulfill their role in the judicial process.

*Nken v. Holder*, 556 U.S. 418, 427 (2009) (parallel citations omitted).

The power of § 1651 is of particular importance here where the damage to the integrity of the federal courts occasioned by the court of appeals opinion, *see* Petition at 6-8. Reply to BIO at 3, is of great public importance. *See In re Grand Jury Subpoena*, 909 F.3d 26, 28 (1st Cir. 2018) (regarding the availability of advisory mandamus). *See also Russo v. Byrne*, 409 U.S. 1219, 1221 (1972) ("If it tenders a ruling out of harmony with our prior decisions, or questions of transcending public importance, or issues which would likely induce this Court to grant certiorari, the stay should be granted.").

Moreover, § 1651's authority to issue a stay in aid of jurisdiction should be invoked because Respondents have already submitted the lower court's order as

supplemental authority in the case of one of Mr. West's former co-plaintiffs, Nicholas Todd Sutton. *See* Defendants' Notice of Supplemental Authority, *Sutton v. Parker*, No. 3:19-cv-00005 (M.D. Tenn. Aug. 7, 2019), ECF No. 22.

Thus, the public interest is served by a stay of execution to preserve this Court's jurisdiction over Mr. West's petition. The decision of the court below, unlawful as it is, should not be permitted to aggrieve another party. More importantly the decision should not stand even a moment longer than necessary as an affront to the rule of law. Should the stay not issue, Mr. West will be executed by means of electrocution tomorrow and jurisdiction to avert both harms will be lost.

#### CONCLUSION

For the foregoing reasons, Petitioners request that this Court issue a stay of Mr. West's execution.

Dated: August 14, 2019

Respectfully submitted,



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