

No. 21-A705

IN THE SUPREME COURT OF THE UNITED STATES

CLARENCE WAYNE DIXON, Petitioner,

vs.

STATE OF ARIZONA, Respondents.

**REPLY TO THE STATE OF ARIZONA'S OPPOSITION TO APPLICATION
FOR STAY OF EXECUTION**

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District of Arizona

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CAPITAL CASE

The State of Arizona faults Dixon for filing his Application for Stay of Execution in the eleventh-hour. But Dixon has diligently followed the State prescribed process for litigating his *Ford* claim and it is the design of the State process that has dictated the timing. The State of Arizona has chosen to allow only 35 days between issuance of a warrant for an execution and the execution date. That time was short to fully litigate a claim which cannot become ripe until the warrant issues is no fault of Dixon's, but rather is the intentional design by the State of Arizona.

Dixon filed his *Ford* petition within two days of a warrant for execution issuing and has diligently litigated the issue. The state competency court set the hearing date and Dixon requested no continuances. Despite Dixon filing his *Ford* petition in state court more than a month before his scheduled execution date, the State court did not hold a hearing or rule on Dixon's *Ford* claim until one week before the execution date. Dixon has a statutory and constitutional right to federal habeas review of the State's decision, and the State's criticism of Dixon for availing himself of that right is unwarranted.

The State points out that Dixon "delayed four days from the competency court's decision finding him competent to be executed before seeking review in the Arizona Supreme Court." But Dixon could not file that petition for review until the transcripts from the hearing were available, which took two days from the conclusion of the hearing. And the transcripts themselves were riddled with errors, so it took another day to successfully move the competency court to release an audio recording to ensure

an accurate record for review. Dixon appealed to the Arizona Supreme Court as soon as the transcripts and audio recordings were available. The State's criticism that Dixon has delayed is unpersuasive and the State's attempts to blame Dixon for a litigation timeline of the State's own creation demonstrates the inadequacy of state court proceedings, which by no fault of Dixon's, has led to truncated habeas and appellate review.

CONCLUSION

Dixon respectfully requests that this Court grant his application for stay of execution so that this issue can be properly litigated in this court.

Respectfully submitted:

May 11, 2022.

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