

No. \_\_\_\_\_

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IN THE SUPREME COURT OF THE UNITED STATES

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BENJAMIN RITCHIE,  
Petitioner,

v.

STATE OF INDIANA,  
Respondent.

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On Petition for Writ of Certiorari to the  
Indiana Supreme Court

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APPLICATION FOR STAY OF EXECUTION

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--- CAPITAL CASE ---

EXECUTION SCHEDULED FOR TUESDAY, MAY 20, 2025

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To Associate Justice Amy Coney Barrett and the Justices of the Court, Petitioner Benjamin Ritchie respectfully requests this Court to issue a stay of his execution, which is currently scheduled for May 20, 2025.

Mr. Ritchie respectfully requests a stay of execution pending consideration and disposition of the petition or a writ of certiorari that is being filed along with this application.

### **STANDARDS FOR A STAY OF EXECUTION**

Mr. Ritchie respectfully requests that this Court stay his execution pending consideration of his concurrently filed petition for a writ of certiorari. *See Barefoot v. Estelle*, 463 U.S. 880, 889 (1983) (“Approving the execution of a defendant before his [petition] is decided on the merits would clearly be improper.”); *see also Lonchar v. Thomas*, 517 U.S. 314, 320 (1996) (holding that a court may stay an execution if needed to resolve issues raised in initial petition).

A stay of execution is warranted where there is a “presence of substantial grounds upon which relief might be granted.” *Barefoot*, 463 at 895. Analyzing whether the stay is warranted, the courts consider the petitioner’s likelihood of success on the merits, the relative harm to the parties, the extent to which the prisoner has delayed his or her claims, and the public interest. *See Hill v. McDonough*, 547 U.S. 573, 584 (2006); *Nelson v. Campbell*, 541 U.S. 637, 649-50 (2004).

All four factors weigh strongly in Mr. Ritchie’s favor.

## **MR. RITCHIE SHOULD BE GRANTED A STAY OF EXECUTION**

1. Mr. Ritchie is likely to succeed on the merits.

Mr. Ritchie, in pursuing a request for successor petition of post-conviction relief followed the process for doing so set in *Shinn v. Ramirez*, 596 U.S. 366 (2022). Under *Shinn*, a petitioner must first present and develop the record in the state court to bring a claim of ineffective assistance of initial-collateral review counsel for potential federal habeas review. *Shinn* made abundantly clear that a record cannot be developed in the federal courts made under *Martinez v. Ryan*, 566 U.S. 1 (2012) and *Trevino v. Thaler*, 569 U.S. 413 (2013). To develop a claim viable for federal habeas review of ineffective assistance of initial-collateral counsel consistent with *Martinez*, the state in which the claim is brought must allow the claim developed if a substantial claim is shown under the equitable standard from direct appeal. *Shinn*, 596 at 366.

The Indiana Supreme Court, in its 2-2 denial of Ritchie's request for permission to litigate a successive petition for post-conviction relief, committed legal error in its analysis and application of *Martinez*. Indiana must meet the federal floor set in *Martinez* when evaluating whether initial-collateral review counsel were ineffective. Indiana's current standard, *Baum v. State*, 533 N.E.2d 1200 (Ind 1989), states if counsel appeared and represented the petitioner, the record cannot be developed further. Though Mr. Ritchie's initial-collateral review counsel were present, Mr. Ritchie has a substantial

claim under *Strickland* that all prior counsel unreasonably failed to investigate powerful and readily apparent mitigating evidence, specifically brain damage from prenatal exposure to alcohol.

Mr. Ritchie has been diagnosed with Partial Fetal Alcohol Syndrome, a FASD in which facial features are present. Mr. Ritchie's jury was told exactly the opposite. Mr. Ritchie's trial counsel hired one mental health expert to provide mitigating circumstances during the penalty phase. The expert was not qualified to evaluate fetal alcohol syndromes, which he admitted to the jury. While the jury was made aware that Ritchie's mother drank during pregnancy, no evidence of any fetal alcohol syndromes were introduced.

For the reasons discussed in detail in the certiorari petition, Mr. Ritchie makes a case that the Indiana Supreme Court, in its tied decision, made a legal error in not analyzing Mr. Ritchie's ineffective assistance of counsel claim under an equitable standard as required in *Martinez*. Thus, Mr. Ritchie's request to this Court to grant a stay of execution, grant the Petition, vacate the Indiana Supreme Court's order, and remand for development of Ritchie's record is likely to be granted.

2. Mr. Ritchie has been timely and diligent in this litigation.

The State of Indiana requested an execution date for Mr. Ritchie on September 27, 2024. Mr. Ritchie submitted his request for permission to litigate a successive petition for post-conviction relief, and the parties finished briefing on the matter on December 3, 2024. On April 15, 2025, Indiana

Supreme Court denied the request for permission to litigate a successive petition, and set the May 20, 2025, execution date. Mr. Ritchie sought rehearing on April 23, 2025. Rehearing was denied by the Indiana Supreme Court on April 30, 2025. Mr. Ritchie now files this request on May 6, 2025.

Mr. Ritchie has been timely and diligent in pursuing this litigation. To the extent the Court's consideration of this application is rushed, the rush is necessitated not due to any delay by Mr. Ritchie. The State of Indiana set an execution date of May 20, 2025, and it took through April 30, 2025, for Mr. Ritchie to exhaust the option of rehearing in the Indiana Supreme Court.

3. Mr. Ritchie will be irreparably harmed if a stay is not granted.

Mr. Ritchie's execution will cause irreparable harm. Irreparable injury "is necessarily present in capital cases." *Wainwright v. Booker*, 473 U.S. 935, 935 n.1 (1985). Beyond that injury, Mr. Ritchie's execution would cause his due process claim to be moot and ability to develop the record extinguished. The record is required to ensure prior to Mr. Ritchie's execution that he had effective assistance of initial-collateral proceeding counsel.

4. The public interest weighs in favor of granting a stay.

Indiana's *Baum* standard disallows the development of a record for habeas review of initial collateral review. States that do not apply an equitable standard of review threaten the vitality of *Martinez*, and the legitimacy of state post-conviction proceedings. The public trust in the system requires ensuring a procedurally fair proceeding with effective counsel.

For the foregoing reasons, and those set forth in the Petition for a Writ of Certiorari, Mr. Ritchie respectfully requests that his application for a stay of execution be granted.

Respectfully submitted,

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Dated: May 7, 2025

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