

No. 25-5928

IN THE
Supreme Court of the United States

ANTHONY BOYD,

Petitioner,

v.

COMMISSIONER, ALABAMA DEPARTMENT
OF CORRECTIONS, HOLMAN CF WARDEN,

Respondents.

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

**REPLY IN SUPPORT OF PETITION FOR CERTIORARI AND
APPLICATION FOR STAY OF EXECUTION**

EXECUTION SCHEDULED FOR OCTOBER 23, 2025

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CAPITAL CASE

REPLY BRIEF

Petitioner Anthony Boyd hereby replies, pursuant to Supreme Court Rule 15, to new points raised in Respondents’ brief in opposition to Boyd’s petition for certiorari and application for stay of execution. The Court should grant certiorari and stay Petitioner’s execution because (i) Petitioner will indisputably suffer irreparable harm absent a stay, (ii) the equities favor Petitioner, (iii) Respondents have no compelling interest in moving forward with execution of Petitioner pursuant to Alabama’s torturous nitrogen hypoxia protocol (the “Protocol”), and (iv) contrary to Respondents’ framing, the Protocol causes both physical and psychological pain.

I. Petitioner Will Suffer Irreparable Harm Absent Full Review and a Stay of Execution.

Contrary to Respondents’ absurd suggestion that Petitioner will suffer “no irreparable harm,” Opposition at 2, absent a stay of execution and full review of his claims, the harm to Boyd literally could not be any more irreparable. All the credible evidence demonstrates that each time Alabama has executed an inmate using Protocol, the inmate suffered the combined physical and psychological pain of profound hypoxia for several minutes prior to losing consciousness. Superadded pain and suffering is inherent to the Protocol; it is a feature, not a bug. If his execution under the Protocol is allowed to proceed while this action remains pending, Boyd will be forced to endure superadded pain and suffering inflicted by virtue of the State’s experimental asphyxiation Protocol. Boyd has proposed a viable, available, and implementable alternative method, which will significantly reduce the risk to of an

unconstitutionally tortured death. This very real harm far outweighs the de-minimis impact on the State of having to delay Boyd’s execution until it can implement a constitutionally sound method. Furthermore, Boyd’s narrowly tailored request for a stay of execution until the conclusion of this litigation serves the public interest by ensuring that the efficacy of the Protocol can be fully adjudicated on the merits.

II. The Equities Favor Boyd.

The district court erred in finding that Boyd engaged in dilatory litigation tactics and that he is on the wrong side of the equitable equation such that his Motion warranted denial.¹ As noted in the first ever court decision in a nitrogen hypoxia case (Kenneth Eugene Smith) – decided less than two years ago on January 10, 2024 – “the Attorney General’s office and the ADOC maintained, until just a few months ago, that nitrogen hypoxia was not a feasible and available method because the ADOC had not yet formalized and approved an execution protocol for it.” *Smith vs. Hamm*, M.D. Ala., No. 2:23-CV-656-RAH, 2024 WL 116303 (Jan. 10, 2024).

The Court’s balancing of the equities and penalization of Boyd for the timing of his suit is unsupported for, among other reasons, two principal reasons.

First, the district court treated the equitable analysis as an all or nothing determination rather than the weighing and balancing of equitable factors. The “well-worn principles of equity apply in capital cases just as in all others.” *Ramirez v. Collier*, 595 U.S. 411, 434 (2022). A court’s equitable discretion in handling

¹ Boyd filed his §1983 action on July 16, 2025, well before August 18, 2025, when the State of Alabama set his execution date for October 23, 2025. Boyd filed his motion for a preliminary injunction two days following the filing of his Complaint, having no inexplicable delay or time in-between.

preliminary injunctions and stays is governed by well-established principles. *Nken v. Holder*, 556 U.S. 418, 434 (2009). Courts examine the stay applicant’s likelihood of success on the merits, whether the applicant will suffer irreparable injury without a stay, whether other parties will suffer substantial injury from a stay, and public interest considerations. *Id.* While the substantial likelihood of success on the merits prong is “generally considered the most important,” courts weigh and balance the equities considering all the facts. *Schiavo ex rel. Schindler v. Schiavo*, 403 F.3d 1223, 1232 (11th Cir. 2005) (“Where the ‘balance of the equities weighs heavily in favor of granting [the injunction]’ the movant need only show a ‘substantial case on the merits’”) (internal citations and quotations omitted); 42 Am. Jur. 2d Injunctions § 15 (“None of the factors used to determine if an injunction should issue, taken individually, is dispositive, and the strength of one factor may affect whether a necessary showing has been made with respect another factor. In other words, each factor is to be weighed and balanced in a qualitative rather than quantitative manner.”).

It is equally well established that “[d]eath is a punishment different from all other sanctions in kind rather than degree.” *Woodson v. North Carolina*, 428 U.S. 280, 303–304 (1976). For that reason, the equities in a death penalty case will almost always favor the prisoner so long as he or she can show a reasonable probability of success on the merits. *See Nken*, 556 U.S. at 434 (noting that success on the merits and irreparable injury “are the most critical” factors). Indeed, courts are entrusted

with a “duty to search for constitutional error with painstaking care” in capital cases. *Kyles v. Whitley*, 514 U.S. 419, 422 (1995) (internal quotation marks omitted).

Thus, where the district court collapsed the equitable inquiry to conclude that because Boyd did not file his case at the earliest possible moment (and despite his not having sufficient factual support to do so), it erred and should be reversed.

Second, the district court’s analysis wrongly discounts and discredits the pleading requirements, evidentiary burdens, and other practical realities that Boyd would have faced if he had filed his claim earlier, especially at the arbitrary temporal markers identified by the district court. For example, bringing a challenge in the timeframe implicitly suggested by both the district court and Respondents would subject Boyd to the attack of bringing a claim *too* early—which is *precisely* what happened with those inmates who filed the first sets of challenges to nitrogen hypoxia executions. In no less than fifteen instances, Respondents took Kenneth Eugene Smith to task for seeking a preliminary injunction based on “a highly speculative parade of horrors attempting to show *nitrogen hypoxia* is cruel and unusual punishment.” *See* App.352-425 (emphasis in original). In that case, the district court adopted, in part, that line of argument, finding that “[h]is evidence and allegations amount to speculation, at best ‘scientific controvers[y,]’ well short “of showing that the method creates an unacceptable risk of pain.” (citing *Glossip v. Gross*, 576 U.S. 863, 884 (2015)).

By contrast, with the benefit of additional time, Petitioner has proffered overwhelming scientific and observational evidence confirming that nitrogen hypoxia

executions under the Protocol are cruel and unusual punishment and that firing squad presents a feasible and readily implemented alternative with a significant reduction in the risk of needless pain and suffering. The evidence adduced at the parties’ two-day hearing was notably not philosophical, academic, or *speculative*—it was direct evidence from experts and thirteen lay persons alike who had observed five people die by nitrogen hypoxia. Indeed, the district court’s Order extensively reviews, discusses, and relies on that evidence that was available only to Boyd *because he filed when he did*. Pet. App. 28a-42a.

None of the above would be true had Boyd filed on any other arbitrary date such as the day the redacted Protocol was released or the day Alabama purported to be ready to implement the Protocol. An effort to learn more facts before proceeding with the legal challenge that will determine whether the state will put a man to death in a manner that violates the Constitution cannot and should not be termed a dilatory litigation practice. *Ramirez v. Collier*, 595 U.S. 411, 434–35 (2022) (“Respondents argue that Ramirez inequitably delayed this litigation by filing suit just four weeks before his scheduled execution. But this is not a case in which a litigant ‘slept upon his rights.’”). A challenge to a method of execution “can work fairly only when more is capable of being known about an execution method.” *Smith v. Hamm*, 144 S. Ct. 414, 416 (2024) (Mem.) (Sotomayor, J. dissenting from denial of certiorari and stay).²

² In contrast, this Court has chastised litigants for a delay of six years when the inmate was already armed with all the facts they would need to bring their challenge. *Murphy v. Collier*, 587 U.S. 901, 908 (2019) (“As of at least 2013, Murphy and his attorneys knew or had reason to know everything necessary to assert the claim that the First Amendment and RLUIPA entitled him to have Rev. Shih at his side during his execution.”) (Alito, J., dissenting). That plainly is not what happened here.

Boyd's execution would be only the eighth nitrogen hypoxia execution to occur in the world (seventh under the Alabama protocol) with the first one, the execution of Kenneth Smith, having only occurred on January 25, 2024. Notably, the execution of Mr. Smith occurred after a split decision of the Eleventh Circuit (Pryor, J., dissenting), *Smith vs. Comm'r, Alabama Dep't of Corr.*, 11th Cir., No. 24-10095 (Jan. 24, 2024) and a denial of certiorari with no accompanying written decision. *Smith v. Hamm*, 144 S. Ct. 414 (2024) (Mem.). Likewise subsequent nitrogen hypoxia executions have not received the level of judicial scrutiny and accompanying factual development that lethal injection had by the time courts began to criticize later lethal injection challenges as untimely. *See, e.g., Miller vs. Hamm*, M.D. Ala., No. 2:22-CV-506-RAH (Sept. 19, 2022) (enjoining nitrogen hypoxia execution) *vacated by Hamm v. Miller*, 143 S. Ct. 50 (2022) (Sotomayor, Kagan, Barrett and Jackson, J. would deny application to vacate); *Grayson v. Hamm*, 145 S. Ct. 586 (2024) (non-memorandum denial of stay of execution); *Hoffman v. Westcott*, 145 S. Ct. 797 (2025) (non-memorandum denial of stay of execution) (Sotomayor, Kagan, and Jackson, J. would grant the application for a stay; Gorsuch, dissenting); *Hunt vs. Alabama*, U.S., No. 24A1192 --- S.Ct. ----, 2025 WL 1636411 (Mem) (June 10, 2025).

This Court has not issued a merits decision in *any* nitrogen hypoxia case. In contrast, at least nine non-memorandum cases have involved challenges and decisions on the merits concerning lethal injection.³ Accordingly, this Court should

³ *Nance v. Ward*, 597 U.S. 159 (2022); *Ramirez v. Collier*, 595 U.S. 411 (2022); *Barr v. Lee*, 591 U.S. 979 (2020); *Bucklew v. Precythe*, 587 U.S. 119 (2019); *Glossip v. Gross*, 576 U.S. 863 (2015); *Baze v. Rees*, 553 U.S. 35 (2008); *Hill v. McDonough*, 547 U.S. 573 (2006); *Nelson v. Campbell*, 541 U.S. 637 (2004); *Heckler v. Chaney*, 470 U.S. 821 (1985).

take this opportunity to address nitrogen hypoxia executions and their constitutionality under the Eighth Amendment.

III. Respondents Cannot Articulate Any Legitimate Interests That Will Be Harmed Through a Stay of Execution and Grant of Certiorari.

Respondents have not, because they cannot, claim to suffer any prejudice from the timing of Boyd's action. To the contrary, eight additional lawsuits challenging the Protocol were filed by death row inmates on August 22, 2025, all of which allege substantially the same factual basis for their Eighth Amendment facial challenges to the Protocol. See, e.g. *Van Pelt v. Hamm*, No. 2:25-cv-00671-ECM, ECF #1 ¶¶ 2, 4, 22, 24, 31, 39-54, 64-65, and 67-70; *Belisle v. Hamm*, No. 2:25-cv-00673-ECM, ECF # 1, ¶¶ 2, 4, 22, 24, 31, 39-54, 64-65, and 67-70; *Brooks v. Hamm*, No. 2:25-cv-00674-RAH, ECF # 1, ¶¶ 2, 4, 22, 24, 31, 39-54, 64-65, and 67-70; *George v. Hamm*, No. 2:25-cv-00675-ECM, ECF #1, ¶¶ 2, 4, 22, 24, 31, 39-54, 65-66, and 68-70; *Jenkins v. Hamm*, No. 2:25-cv-000676-RAH, ECF #1, ¶¶ 1-4, 31-63, 65, 68-70, 79-81, and 86-88; *Williams v. Hamm*, No. 2:25-cv-00677-ECM, ECF #1, ¶¶ 2, 4, 22, 24, 31, 39-54, 64-65, and 67-70 ; *Taylor v. Hamm*, No. 2:25-cv-00678-RAH, ECF #1, ¶¶ 2-6, 31-37, 50-61, 63-125, 127-129, and 183-196 ; *Lee v. Hamm*, No. 2:25-cv-00680-RAH, ECF #1, ¶¶ 2, 4, 22, 24, 31, 39-54, 64-65, and 67-70. There are at least ten cases, including Boyd's, with overlapping claims against the State. One of those, *Wilson v. Hamm*, is already in discovery, following the district court's denial of the Respondents' motion to dismiss. (*Wilson v. Hamm*, 2:24-cv-00111-ECM, ECF # 25).

Respondents acknowledge that Boyd has been on death row for three decades, and it is difficult to comprehend why the State would suffer harm from his remaining

there for an additional fraction of that time, pending resolution of this litigation and a reasoned judgment as to whether or not the Protocol violates the Eighth Amendment. This litigation does not seek to save Petitioner from execution – Alabama will ultimately get its chance to kill Boyd. All that Petitioner requests is that Alabama not do so using a method that all reliable evidence clearly establishes to be cruel, unusual, torturous, and inhumane, superadding profound pain and suffering well above and beyond that incidental to capital punishment by constitutionally sound means. A de minimis additional delay in order to ensure that Boyd’s sentence is carried out through a method that does not unnecessarily torture him in the process benefits, rather than harms, all interested parties.

Nothing could be more inequitable than for Petitioner to be executed prior to trial pursuant to a Protocol that is ultimately adjudicated cruel and unusual. The balance of equities strongly favors having Boyd’s case decided on the merits, settling the matter of the Protocol’s constitutionality, rather than condemning Boyd to execution by a method later determined to violate the Eighth Amendment. Boyd’s interest in not being executed in a cruel and unusual manner is Constitutionally engrained and must be afforded the utmost level of consideration where it embodies both a literal issue of life and death for Boyd as well as the legitimacy of the State’s use of its ultimate power to execute its own people.

IV. Execution By Nitrogen Hypoxia Causes Both Physical and Psychological Pain.

Respondents frame the issue of “emotional distress” (nitrogen hypoxia) versus “great physical pain” (firing squad). Opposition at 21. This framing is contrary to the

record below. The only expert in nitrogen hypoxia to testify at the preliminary injunction hearing stated that an execution under the Protocol involves both physical and psychological components. *See, e.g.*, App. 840:15-19. In addition, the only expert witness to testify about the efficacy of execution by firing squad stated that the firing squad does not cause great physical pain at all due to the resulting “neurological stunning” in the wound area, which persists long past the three to five seconds before consciousness is lost. App.1249-1250. Respondents’ framing ignores the evidence.

CONCLUSION

For the reasons stated above and in Boyd’s Petition, this Court should stay petitioner’s execution and grant this Petition for Writ of Certiorari.

Respectfully submitted,

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Dated: October 23, 2025

CERTIFICATE OF SERVICE

I hereby certify that on October 23, 2025, I served a true and correct copy of the foregoing document and appendix thereto with the clerk of the court via overnight delivery, postage prepaid, and I served a copy, via email and via overnight delivery, on the following counsel of record:

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