

No. _____

In The Supreme Court of the United States

CHARLES VICTOR THOMPSON,

Petitioner,

v.

STATE OF TEXAS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI

APPLICATION FOR STAY OF EXECUTION

Charles Victor Thompson is scheduled to be executed on January 28, 2026.

To the Honorable Samuel Alito, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Fifth Circuit:

Charles Thompson respectfully requests that this Court stay his execution pending the disposition of his petition for a writ of certiorari. Mr. Thompson presents a compelling argument for a violation of the Confrontation Clause.

I. Requirements for a stay of execution.

A stay of execution is justified pending the disposition of a petition for a writ of

habeas corpus. See *Barefoot v. Estelle*, 463 U.S. 880, 889 (1983) ("Approving the execution of a defendant before his appeal is decided on the merits would clearly be improper."). The standards governing when a stay should issue are well-settled. A stay of execution "is an equitable remedy" and "is not available as a matter of right." *Hill v. McDonough*, 547 U.S. 573, 584 (2006). Courts 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.

Nken v. Holder, 556 U.S. 418, 434 (2009) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)). Whether the applicant unnecessarily delayed in bringing his claims is also considered. *Hill*, 547, U.S. at 584.

II. Thompson's petition is likely to succeed on the merits.

Thompson has shown a likelihood of success on the merits. His petition for writ of certiorari demonstrates that he was convicted of capital murder in a trial in which, over a defense objection, the State was permitted to call a medical examiner who played no role in the autopsy and through that examiner was permitted to admit the absent pathologist's autopsy report, have the absent pathologist's findings presented to the jury and then endorsed by the surrogate pathologist. At a subsequent punishment trial, a different surrogate pathologist went through the same exercise and Thompson was sentenced to death. The original examiner was at

all times available and un-cross-examined but was also a highly impeachable witness whose poor work has seen clemency granted in one case and his firing in another. The Texas Court of Criminal Appeals, in adjudicating Petitioner's claim that the surrogate medical examiner's testimony violated Petitioner's right to confrontation, has decided an important federal question in a way that conflicts with this Court's decisions in *Crawford v. Washington*, 541 U.S. 36 (2004), *Smith v. Arizona*, 602 U.S. ____ (2024), and *Seavey v. Texas*, 541 U.S., 145 S.Ct. 368 (2024).

III. Thompson will be irreparably injured absent a stay.

Thompson's impending execution is plainly an ineparable injury. In a capital case, this factor "weighs heavily in the movant's favor" based on the "irreversible nature of the death penalty." *Bryan v. Estelle*, 691 F.2d 706, 708 (5th Cir. 1982). If the court does not stay the execution, he will be executed on January 28, 2026.

IV. Harm to other parties or the public is minimized.

Thompson recognizes that "the State and the victims of crime have an important interest in the timely enforcement of a sentence." *Hill*, 547 U.S. at 584. Thompson timely and diligently pursued this litigation. Here, the doctor who testified as a surrogate for the coroner who performed the autopsy has provided an affidavit stating her testimony would be different today than when she testified in 1999.

CONCLUSION

This Court should stay Thompson's execution pending the disposition of his petition for a writ of certiorari.

Respectfully submitted,

/s/ Eric J. Allen

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CERTIFICATE OF SERVICE

I certify that on the 27th day of January, 2026, I served a copy of the foregoing Application for a Writ of Habeas Corpus upon the following individuals:

Andrew Smith
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And

Jay Clendenin
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/s/ Eric Allen

Eric Allen