

No.

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IN THE  
Supreme Court of the United States

\_\_\_\_\_  
*IN RE:* TONY VON CARRUTHERS,  
*Petitioner,*

\_\_\_\_\_  
**MOTION FOR A STAY OF EXECUTION  
EXECUTION SCHEDULED FOR MAY 21, 2026, AT 10:00 AM.**

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**To the Honorable Brett M. Kavanaugh, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Sixth Circuit:**

Tony Von Carruthers is scheduled to be executed on **May 21, 2026, at 10:00 AM**. Mr. Carruthers respectfully requests a stay of his execution pending this Court's disposition of his Original Petition for a Writ of Habeas Corpus.

**I. JURISDICTION**

This Court has jurisdiction to entertain Mr. Carruthers's Petition for an Original Petition for Writ of Habeas Corpus pursuant to Article II § 2 of the United States Constitution, the Eighth Amendment to the United States Constitution and 28 U.S.C. §§ 2241, 2254 and Application for a Stay of Execution under 28 U.S.C. §§ 1257(a) and 1651(a).

## II. STATEMENT OF JURISDICTION

This Court possesses the jurisdiction to enter a stay of execution under 28 U.S.C. §§ 1651(a) and 2251 “for any matter involved in the habeas corpus proceeding.”

## III. REASONS FOR GRANTING THE STAY

This Court’s consideration of Mr. Carruthers’s motion for a stay is governed by the traditional balance of factors:

(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); *Bedford v. Bobby*, 645 F.3d 372, 375 (6th Cir. 2011). In this case, the balance of these factors substantially weigh in Mr. Carruthers’s favor.

### **A. Mr. Carruthers has made a strong showing that he is likely to succeed on the merits of his petition for an original writ.**

As set out more fully in Mr. Carruthers’s simultaneously filed Original Petition for a Writ of Habeas Corpus, Mr. Carruthers has met the standard warranting a stay of execution under 28 U.S.C. § 2251 and 28 U.S.C. § 1651.

**B. There can be no fair-minded disagreement that Mr. Carruthers will suffer irreparable harm absent a stay.**

Mr. Carruthers will plainly suffer irreparable harm unless this Court stays his execution pending disposition of his motion. The Supreme Court has described “execution [a]s the most irremediable and unfathomable of penalties.” *Ford v. Wainwright*, 477 U.S. 399, 411 (1986). Mr. Carruthers’s claim go directly to the fairness and integrity of both his conviction and his death sentence. And he raises claims of prosecutorial misconduct that have no place in a capital prosecution. Proceeding with an execution under the circumstances of this case—where the State’s already flimsy evidence has been eroded by new facts and where the delay in obtaining those new facts is largely attributable to the State’s misconduct—would be a gross departure from the exacting standards that must apply in capital cases. Moreover, the prospect of executing one who is actually innocent would be, in Justice O’Connor’s words, “a constitutionally intolerable event.” *Herrera v. Collins*, 506 U.S. 390, 419 (1993) (O’Connor, J., concurring). Executing an individual under these circumstances without the opportunity to prove the merits of his claims would be a form of irreparable harm rivaled by few other circumstances.

**C. A stay of execution will not substantially injure the interest of the State of Tennessee, and the public interest is served only by prohibiting an unconstitutional execution.**

When assessing the traditional equitable factors of the harm to the opposing party and the public interest, “[t]hese factors merge when the Government is the opposing party.” *Nken*, 556 U.S. at 435. Although the State of Tennessee has an interest in the enforcement of criminal judgments, *Hill v. McDonough*, 547 U.S. 573, 584 (2006), this interest presupposes that judgment being lawful. The State has no legitimate interest in carrying out an unlawful judgment. When, as here, a litigant presents compelling proof of actual innocence *and* troubling prosecutorial misconduct, the public interest weighs in favor of the party whose constitutional rights will be violated. *See, e.g., United States v. Raines*, 362 U.S. 17, 27 (1960) (“[T]here is the highest public interest in the due observance of all the constitutional guarantees . . . .”); *Brandt by & through Brandt v. Rutledge*, 47 F.4th 661, 672 (8th Cir. 2022) ([I]t is ‘always in the public interest to prevent the violation of a party’s constitutional rights.’) (quoting *D.M. by Bao Xiong v. Minnesota State High Sch. League*, 917 F.3d 994, 1004 (8th Cir. 2019)); *Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005) (“Generally, public interest

concerns are implicated when a constitutional right has been violated, because all citizens have a stake in upholding the Constitution.”); *Chabad of S. Ohio & Congregation Lubavitch v. City of Cincinnati*, 363 F.3d 427, 436 (6th Cir. 2004) (“[T]he public interest is served by preventing the violation of constitutional rights.”); *Deja Vu of Nashville, Inc. v. Metro. Gov’t of Nashville & Davidson Cnty., Tennessee*, 274 F.3d 377, 400 (6th Cir. 2001) (“[I]t is always in the public interest to prevent violation of a party’s constitutional rights.”); see also *Labrador v. Poe by & through Poe*, 144 S. Ct. 921, 923 (2024) (holding a judgment should be enforced in normal course “absent a showing of its unconstitutionality”) (Gorsuch, J., concurring). Likewise, “[n]o substantial harm can be shown in the enjoinder of an unconstitutional policy.” *Chabad of S. Ohio v. City of Cincinnati*, 233 F. Supp. 2d 975, 987 (S.D. Ohio 2002), *aff’d sub nom. Chabad of S. Ohio & Congregation Lubavitch v. City of Cincinnati*, 363 F.3d 427 (6th Cir. 2004).

Here, Mr. Carruthers has made a *prima facie* showing that he satisfies the demanding strictures of 28 U.S.C. § 2244(b)(2). He has shown that previously unavailable exculpatory evidence, considered in light of the entire record, would lead a reasonable jury to acquit or, at the

least, not impose a death sentence and that he should be granted the opportunity to present his constitutional claims for adjudication in the district court. Under these circumstances, the equities tip in favor of Mr. Carruthers: he has made a strong showing that he will prevail in his application for leave to file a second or successive petition, the harm he will suffer without a stay is as substantial as can be, while the State, which has an interest in ensuring that the execution is valid, will suffer minor inconvenience; and the public will be served by making sure that an innocent man is not executed without an opportunity to prove his case.

#### **IV. CONCLUSION AND PRAYER FOR RELIEF**

The only way that equity can vindicate Mr. Carruthers's rights is by a stay of execution that will permit him to prove his actual innocence and the State's misconduct that prevented justice from being vindicated far sooner. Such relief is appropriate because he has shown a likelihood of success on the merits, a risk of grievous harm, and shown that the State's interest in executing its judgment is dwarfed by its decades of withholding evidence.

Mr. Carruthers prays for following relief:

1. Enter a stay of execution so that Mr. Carruthers's original petition for a writ of habeas corpus may be considered; ;

2. Any other relief as law and justice require.

Respectfully submitted,

FEDERAL PUBLIC DEFENDER FOR  
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BY: /s/ Amy Harwell  
Amy Harwell

## CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of this Motion has been served via email to John Bledsoe and Sarah Stone at the Office of the Attorney General, 425 Fifth Avenue North, Nashville, Tennessee 37243 on this 20th day of May, 2026.

/s/ Amy D. Harwell  
First Assistant Federal Public  
Defender