

No. _____

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

EMERGENCY APPLICATION FOR STAY OF EXECUTION

EXECUTION SCHEDULED FOR OCTOBER 23, 2025

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October 21, 2025

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To the Honorable Clarence Thomas, Associate Justice of the United States and Circuit Justice for the Eleventh Circuit:

The State of Alabama has scheduled the execution by nitrogen hypoxia of Petitioner Anthony Boyd for October 23, 2025. On October 21, 2025, Petitioner filed a petition for a writ of certiorari presenting two unresolved questions concerning the proper application of the comparative analysis set forth in *Glossip*, *Baze*, and *Bucklew*: (i) when performing a comparative analysis to determine whether an alternative means of execution would significantly reduce a substantial risk of severe physical and psychological pain, should the comparison focus only fear and anxiety experienced after the introduction of the fatal stimulus or also include the fear and anxiety leading up to the introduction of the fatal stimulus?; and (ii) does the State of Alabama's nitrogen hypoxia execution protocol, which causes a human to consciously experience symptoms of asphyxiation (air hunger, shortness of breath, aching lungs, elevated heart rate, blood pounding in the ears, the feeling of conscious suffocation or of being trapped deep underwater) for two to seven minutes, constitute cruel and unusual punishment in violation of the Eighth Amendment where a feasible and readily implemented alternative exists and where that alternative causes a rapid death in which the inmate feels an impact, shock, and numbness, but not pain?

For the reasons explained at length in the petition, there is at minimum a reasonable prospect that this Court will grant certiorari on that question and reverse the district court's denial of Mr. Boyd's motion for preliminary injunction. Absent a

stay, Petitioner will suffer the irreparable harm of being executed pursuant to Alabama's Nitrogen Hypoxia Protocol (the "Protocol") and will experience the superadded pain and terror of being asphyxiated while remaining conscious for several minutes at the outset of his execution, despite being likely to prevail on the merits of his claim that the Protocol violates his Eighth Amendment rights.

Petitioner respectfully requests a stay of execution pending the Court's disposition of this case.

BACKGROUND

In 2018, the Alabama Legislature authorized execution by an untested method: nitrogen hypoxia. *See* Ala. Code § 15-18-82.1(b)(2).

In August 2023, Respondents released a heavily redacted version of the Protocol. The Protocol has been used in six executions since then. Those executions – and what has become known about the conscious pain and suffering that they entail – led Boyd to challenge the Protocol and seek an alternative method of execution.

On June 11, 2025, the Attorney General moved the Alabama Supreme Court to authorize the Governor to set an execution time frame for Boyd to be executed, by means of the Protocol.

On July 16, 2025 – and before his execution date had been set – Boyd filed suit under 28 U.S.C. § 1983, alleging that Alabama's Protocol violates the Eighth Amendment's prohibition against cruel and unusual punishment.

Two days later, on July 18, 2025, Boyd's filed a Motion for Preliminary Injunction. App.58-236. The district court held an evidentiary hearing on September 4 and 5, 2025.

On October 9, 2025, the district court issued its Memorandum Opinion and Order (the "Order") denying Boyd's Motion for Preliminary Injunction. Appendix A to petition for certiorari, at Pet. App. 1a-13a.

On October 20, 2025, the Eleventh Circuit denied Boyd's motion for a stay of execution. Appendix B to petition for certiorari, at Pet. App. 14a-77a.

Boyd filed his petition for certiorari on or about October 21, 2025.

REASONS FOR GRANTING THE STAY

Petitioner respectfully seeks a stay of execution pending the disposition of this case. Petitioner has already filed a petition for certiorari, and granting a stay of execution would permit this Court to consider that petition and to resolve the case before the State of Alabama executes the Petitioner.

A stay of execution is warranted where there is a "presence of substantial grounds upon which relief might be granted." *Barefoot v. Estelle*, 463 U.S. 880, 895 (1983). To determine whether a stay is warranted, this Court considers a petitioner's likelihood of success on the merits, the relative harm to the parties, and the extent to which the prisoner has delayed his or her claims. See *Hill v. McDonough*, 547 U.S. 573, 584 (2006); *Nelson v. Campbell*, 541 U.S. 637, 649-650 (2004). In certiorari proceedings, a petitioner must show a reasonable probability that at least four members of this Court would vote to grant certiorari, a significant likelihood of

reversal of the lower court's decision, and a likelihood of irreparable harm absent a grant of certiorari. *See Barefoot*, 463 U.S. at 895. Here those factors all weigh in favor of staying Petitioner's execution.

Petitioner's simultaneously filed petition for certiorari sets out the grounds for overturning the lower courts' decisions, which are the same grounds for why a stay of execution pending should be granted. Due to the emergency nature of this situation – Petitioner's execution is scheduled to take place in two (2) days – and to avoid redundancy, Petitioner does not repeat those arguments here but instead incorporates them by reference. The lower courts' decisions are appended to the petition for certiorari.

The irreparable harm Petitioner will suffer without a stay pending review is plain, he will remain conscious for several minutes and experience the superadded physical pain and psychological terror of asphyxiation during his execution pursuant to the Protocol, despite being likely to succeed on the merits of his claim that the Protocol violates his Eighth Amendment rights. In contrast, there is no harm to respondents to merely delay Mr. Boyd's execution.

Finally, the public will not be harmed by a stay of execution to allow Petitioner to fully litigate this appeal and the underlying civil action. To the contrary, Petitioner's suit is in the public interest as an attempt uphold the Eighth Amendment's prohibition against cruel and unusual punishment. If, as Petitioner alleges, the State of Alabama's nitrogen hypoxia protocol violates the Eighth Amendment, it is in the public interest to require the State of Alabama to utilize an

alternative method of execution for him and in other executions, because “it is always in the public interest to prevent the violation of a party’s constitutional rights.” See *G & V Lounge, Inc. v. Michigan Liquor Control Comm’n*, 23 F.3d 1071, 1079 (6th Cir. 1994) (citing *Gannett Co., Inc. v. DePasquale*, 443 U.S. 368, 383 (1979)).

WHEREFORE, Petitioner respectfully requests a stay of execution.

Respectfully submitted,

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Dated: October 21, 2025

CERTIFICATE OF SERVICE

I hereby certify that on October 21, 2025, I served a true and correct copy of the foregoing document and appendix thereto with the clerk of the court first class mail, and I served a copy, via email and first class mail, on the following counsel of record:

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