

*****CAPITAL CASE*****

DOCKET NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

DANIEL OWEN CONAHAN, JR.,

Petitioner,

vs.

STATE OF FLORIDA.

Respondent.

**APPLICATION FOR A STAY OF EXECUTION
AND EXPEDITED CONSIDERATION OF PETITION FOR WRIT OF
CERTIORARI**

**DEATH WARRANT SIGNED
EXECUTION SET SEPTEMBER 10, 2026 at 6:00 P.M.**

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

Daniel O. Conahan, Jr. is scheduled to be executed **September 10, 2026, at 6:00** PM EDT. This Court is Mr. Conahan's last opportunity to access Florida's statutory procedures for testing available DNA evidence that could prove Mr. Conahan's long maintained innocence, undermine his death sentence, and/or identify an alternative suspect. Mr. Conahan sought a stay of execution from the Florida Supreme Court. On September 3, the Florida Supreme Court affirmed the Charlotte County Circuit Court's denial of his request for DNA testing pursuant to Fla. R. Crim. P. 3.853. *Conahan v. State*, SC2026-1234, SC2026-1236, SC2026-1281, SC2026-1282,

2026 WL 2603686 (Sept. 3, 2026).

Mr. Conahan respectfully requests a stay of execution pending this Court's disposition of his Petition for a Writ of Certiorari ("Petition"), filed simultaneously with this Application, and expedited consideration of the Petition.

JURISDICTION

This Court has jurisdiction to entertain Mr. Conahan's Petition and this Application for a Stay of Execution under 28 U.S.C. §§ 1257(a) and 1651(a).

BACKGROUND

Daniel Owen Conahan, Jr. was convicted of one count of first-degree murder and one count of kidnapping for the death of Richard Montgomery and sentenced to death based only on circumstantial evidence. (T. 2016)

On April 17, 1996, Mr. Montgomery was found in a wooded area in Charlotte County, Florida, which was described as what appeared to be a dumping area that contained a lot of trash. Mr. Montgomery was naked, his genitalia was removed, and there were several ligature marks on his neck, wrists, abdomen, and legs. (T. 752, 792) He was covered only with a piece of carpet padding. Mr. Montgomery was last seen less than 24 hours before his body was discovered.

There were no eyewitnesses linking Mr. Conahan to the crime and no direct evidence has ever linked Mr. Conahan to the crime. Mr. Conahan has steadfastly maintained his innocence for nearly 40 years and should be allowed to test material items of evidence that were collected as part of the criminal investigation that led to his wrongful conviction and sentence of death. Absent immediate intervention from

this Court, a wrongful execution will occur on September 10, 2026.

In March 2025, Mr. Conahan sought DNA testing to conclusively establish his innocence. After he filed his motion, the State produced five reports from the Florida Department of Law Enforcement establishing that the State had been conducting its own testing of items collected in the investigation. Mr. Conahan then sought the case file of the testing. While he was litigating access to the records and his motion for DNA testing was pending, on August 11, 2026, Governor DeSantis signed his death warrant, setting his execution for September 10.

Within approximately 24 hours of the warrant, the state postconviction court issued an order denying his public records demands and an order summarily denying his motion for DNA testing. While the State had continued to test comparable items—including extracts from hairs and cigarette butts found at the scene—the court determined Mr. Conahan was not entitled to test the hair and cigarette extracts he identified because they are not the type of evidence that is probative of identity and lead to an exoneration.

The court's opinion ignores the fact that the State's case was built on circumstantial evidence which has fallen apart in postconviction and that the State argued at trial that the DNA on the hair could inculpate Mr. Conahan. Further, the court's denial of his challenge to Florida's surprise and truncated warrant process ignores that the application of Florida's unconstitutional warrant process directly injured his ability to litigate his pre-warrant claims and effectively investigate new claims under warrant.

REASONS FOR GRANT THE STAY

An application for stay of execution is evaluated under the familiar four factor test that analyzes:

- (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). For the reasons discussed below, a stay is appropriate here.

A. Mr. Conahan has shown a reasonable likelihood of success on the merits of his claims.

The arbitrary hurdles erected by the Florida state courts to Mr. Conahan's access to Florida statutory procedures for obtaining DNA testing run afoul of the Due Process Clause of the Fourteenth Amendment as set forth in this Court's precedents, as summarized in the Question Presented in the Petition:

Whether Florida's imposition of a heightened burden of proof at the pleading stage violated Petitioner's right under Florida law to DNA testing that would demonstrate his innocence thereby depriving Petitioner of due process and rendering illusory his state-created right to prove his innocence through newly discovered evidence.

The Question Presented in Mr. Conahan's Petition is cert-worthy and he is likely to prevail on the merits. This Court has recognized the critical importance of DNA in cases like Mr. Conahan's: "DNA testing has an unparalleled ability to both

exonerate the wrongly convicted and to identify the guilty.” *Dist. Attorney’s Office for Third Jud. Dist. v. Osborne*, 557 U.S. 52, 55 (2009). Likewise, as detailed in the Petition, this Court has explicitly recognized that capital prisoners have a liberty interest in obtaining DNA testing (see *Gutierrez v. Saenz*, 606 U.S. 305 (2025); *Skinner v. Switzer*, 562 U.S. 521 (2011); *Osborne*, 557 U.S. 52) and a property interest in not being arbitrarily denied access to state-created investigatory procedures. See *Logan v. Zimmerman Brush*, 455 U.S. 422 (1982).

More recently, at least three members of this Court have expressed concern with procedural obstacles to DNA testing when a prisoner faces imminent execution. See *Reed v. Goertz*, 146 S. Ct. 936, 939 (2026) (Sotomayor, J., dissenting from the denial of certiorari). This case is arguably even more straightforward than *Gutierrez* and *Reed* because it is before this Court on a petition for certiorari from a state supreme court rather than to a federal district court on a § 1983 action. As in *Reed*, it is “inexplicable” why the State of Florida “refuses to allow DNA testing” of evidence that is directly related to the underlying crimes “despite the very real substantial possibility that such testing could exculpate” Mr. Conahan “and identify the real killer.” *Id.*

In light of these expressions of concern by several Justices, and to ensure that the Court gives the Petition due consideration, Mr. Conahan also respectfully requests that these papers be treated as a motion for expedited consideration of the Petition. See Eric M. Freedman, *No Execution if Four Justices Object*, 43 Hofstra L. Rev 639, 655 n. 67 (2015).

The denials of due process to Mr. Conahan ahead of his scheduled execution are blatant and apparent. Under these circumstances, there is a reasonable likelihood that four members of this Court would vote to grant certiorari.

B. There can be no dispute that Mr. Conahan will suffer irreparable harm absent a stay.

Mr. Conahan faces the ultimate deprivation. *See Ford v. Wainwright*, 477 U.S. 399, 411 (1986) (An “execution is the most irremediable and unfathomable of penalties.”); *see also Woodson v. North Carolina*, 428 U.S. 280, 305 (1976). There can be no dispute that Mr. Conahan will suffer irreparable harm unless this Court stays his execution pending disposition of his Petition.

As this Court has recognized for years, “the penalty of death is different in kind from any other punishment imposed under our system of criminal justice.” *Gregg v. Georgia*, 428 U.S. 153, 187 (1976). As a result, this Court has also established a need for heightened reliability in death sentences. *See Caldwell v. Mississippi*, 472 U.S. 320, 340 (1985) (quoting *Woodson*, 472 U.S. at 305).

Unfortunately, our system gets it wrong sometimes. Richard Glossip had nine death warrants and three final meals before being granted relief by this Court last year. *See generally Glossip v. Oklahoma*, 604 U.S. 226 (2025) (remanding for vacatur of conviction and new trial). After almost thirty years on death row and being just hours from death several times, Mr. Glossip was released from prison on bail pending retrial. Jim Vertuno, Former Oklahoma death row prisoner freed from jail as he awaits retrial in 1997 killing, Associated Press (May 14, 2026), <https://apnews.com/article/oklahoma-richard-glossip-death-sentence-overturned->

execution-93cb95674a05161d219b2a54139d531f.

Mr. Conahan's case has many similarities to Mr. Glossip's. Both Mr. Conahan and Mr. Glossip continuously maintained their innocence. *See Glossip*, 604 U.S. at 236. And in both cases, the reliability of the underlying convictions and death sentences eroded after trial. Also in both cases, prosecutors failed to disclose evidence about its main witness at trial (*see id.* at 237-28); here, the State failed to disclose that its primary witness, Stanley Burden, was promised a letter in support of his parole application for a sentence resulting from the rape of a 12-year-old boy. Mr. Burden swore in an affidavit in postconviction that the State directed him to lie if he was asked about a deal. (2PCR. 55-60)

Mr. Conahan does not ask to be declared innocent at this posture. Nor does he ask to be released from prison. All he asks is for this Court to stay his imminent execution so that this Court can review his meritorious claims, in which he seeks fair access to Florida's statutory procedures for testing available DNA evidence.

C. The public interest lies in ensuring that the State does not end a life without adequate due process.

It is a "fundamental legal principle that executing the innocent is inconsistent with the Constitution." *Herrera v. Collins*, 506 U.S. 390, 419 (1993) (O'Connor, J., concurring). It is equally unconstitutional to execute a person whose sentence is unreliable.

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. Undoubtedly, the State of Florida has an

interest in the enforcement of criminal judgments. *Hill v. McDonough*, 547 U.S. 573, 584 (2006). But Mr. Conahan seeks a stay of execution so that he can obtain potentially exculpatory DNA testing which will take only weeks to complete. To proceed with an execution without giving him that opportunity, guaranteed under state law, would be contrary to the public interest. The State’s interest in executing Mr. Conahan is premised upon the enforcement of the judgment and death sentence being lawful. When, as here, a litigant demonstrates that the enforcement of such a judgment would be unconstitutional, the public interest weighs in favor of the party whose constitutional rights will be violated. *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”). And any harm to the State in delaying Mr. Conahan’s execution is minimal. *Hartman v. Bobby*, 319 F. App’x 370, 371-72 (6th Cir. 2009).

The public has a strong interest in ensuring that the State does not end a life without adequate due process—as it seeks to do here by denying Mr. Conahan adequate access to statutory procedures that could ultimately demonstrate his innocence.

D. Mr. Conahan has not delayed in bringing his claim.

Finally, Mr. Conahan’s litigation timeline was dictated not by dilatory conduct on his part, but by the State’s actions and the court’s improper handling of his proceedings. Mr. Conahan sought DNA testing more than a year and a half prior to the Governor’s signing of his execution warrant. The court did not even get the chance to hear argument on the motion or hold an evidentiary hearing to address disputed

issues of fact. Any delay cannot be held against Mr. Conahan.

It likewise cannot go unmentioned that the State has continued to conduct DNA and forensic testing in this case while Mr. Conahan has been precluded from conducting the same.

CONCLUSION

Accordingly, Mr. Conahan respectfully requests that the Court grant this Application, stay his execution, expedite consideration of his Petition, and grant any other relief that the Court may find just.

Respectfully submitted this the 7th day of September 2026.

/s/ Brittney N. Lacy
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