

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

DOCKET NO. 26A306

IN THE SUPREME COURT OF THE UNITED STATES

DANIEL O. CONAHAN, JR.,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

REPLY TO RESPONSE TO APPLICATION FOR STAY OF EXECUTION

**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:

Respondent's response in opposition to Mr. Conahan's Application for Stay is premised upon a misapprehension of the question presented. Mr. Conahan submits that he has shown a stay of execution is appropriate. *See Nken v. Holder*, 556 U.S. 418, 434 (2009).

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

The State misapprehends Mr. Conahan's arguments, and in so doing, fails to respond to his single question presented, not, as the State articulates, two. Mr. Conahan raises due process challenges to Florida's interpretation of Rule 3.853, challenging Florida's creation of a procedure that "is fundamentally inadequate to vindicate the substantive rights provided." *Dist. Attorney's Off. for Third Jud. Dist.*

v. Osborne, 557 U.S. 52, 69 (2009).

Contrary to the State's position, Mr. Conahan's arguments fall squarely in this Court's jurisdiction, and establish a clear violation of this Court's established precedent. A state court may not "under the color of local practice," *Rogers v. Alabama*, 192 U.S. 226, 230 (1904) (Holmes, J.), use a cloudy and manipulable state-law standard to evade review of a federal constitutional right it disfavors. When a state court engages in such behavior, the federal courts will ignore the purported state ground and reach the constitutional merits. *See, e.g., Lee v. Kemna*, 534 U.S. 362 (2002); *Harris v. Reed*, 489 U.S. 255 (1989). It is immaterial that the state court decision rests on a matter of state law when the state law violates the constitution. Mr. Conahan explicitly argued in his petition that due process requires states to provide adequate procedures to "vindicate" state-created substantive rights, including a prisoner's right to prove his innocence with new evidence. *Osborne*, 557 U.S. at 68-69.

The state court erred in applying a procedural impediment for the purposes of denying Mr. Conahan access to his substantive right in the form of a heightened burden. The error is compounded where the burden has been applied inconsistently and arbitrarily applied to Mr. Conahan. As Mr. Conahan has explained, the State continued to test similar natured pieces of evidence that he was denied. And, the court summarily denied Mr. Conahan's motion for testing without providing him an adequate opportunity to meaningfully opportunity to meet that burden.

The State's argument in opposition suggesting Mr. Conahan's application for

stay is dilatory is simply untrue. Mr. Conahan has been in active postconviction litigation since his direct appeal. Mr. Conahan's federal habeas petition was pending when he filed a successive motion asserting that the pathology opinion presented at trial neither supported the State's case nor was rooted in science. While that motion was pending, he sought DNA testing. He intended to utilize those results as newly discovered evidence supporting his claims of evidence. The bottom line is that Mr. Conahan was actively litigating his motion for DNA testing a year and a half before the execution warrant was signed. The court had not even heard argument on the motion nor held a hearing to resolve the factual disputes asserted by the State when it denied his motion a day after his warrant was signed. The signing of the warrant truncated his proceedings and denied Mr. Conahan due process and a meaningful opportunity to be heard.

Although it is true that testing conducted in the 1990's, using some of the earliest and most limited technology, excluded Mr. Conahan as a contributor, the State wholly ignores that *it argued to the jury that Mr. Conahan could be a contributor on the hair evidence*. In listing its reasons as to why the evidence Mr. Conahan seeks testing of would not change the outcome of his case, it neglected to address the hair evidence. Certainly conclusive results identifying the unknown contributor on the hair would absolutely lead to a new suspect. The same applies to the additional items Mr. Conahan seeks testing of. The State's argument that the presence of a third party's DNA at the scene would not be probative defies logic. This is precisely the type of DNA results that law enforcement would investigate. Indeed, it is the type of

DNA results the State itself has sought to inculcate Mr. Conahan for unresolved homicides. While the absence of his DNA was known at trial, the presence of the true killer's DNA was not.

Mr. Conahan does not raise a speculative attack. He met the criteria of the rule—the evidence exists, he asserted that DNA remains on the items to test, and he asserted that conclusive results from the items would lead to an acquittal. The factual discrepancy here is whether Mr. Conahan can meet the last prong, which he maintains he can. As Mr. Conahan has demonstrated throughout his proceedings, the evidence in this case is not what it appears. And when Mr. Conahan has successfully challenged a questionable aspect of his case, the court points to another questionable aspect of the case to deny relief. The Florida Supreme Court just did so in affirming the denial of relief under warrant. It found that the State did overstate the reliability of fiber evidence, which the State continues to argue to this Court, (BIO 7), yet it denied relief relying on the statements of the *Williams* Rule witness Stanley Burden. Ten years ago the same court determined Burden was a habitual liar. It ultimately denied relief at that time relying on the pathology. Again, Mr. Conahan has demonstrated that the pathology testimony was neither accurate nor scientifically reliable.

Notably, the State does not engage with the reality that additional testing could result in newly discovered evidence establishing Mr. Conahan's innocence. It is of no importance to the State of Florida that they will execute an innocent man, so long as their conviction remains intact.

As exhibited in Mr. Conahan’s case, and in Mr. James Duckett’s just six weeks ago, the Florida Supreme Court continues to construe Rule 3.853 in a manner that fails to comport with fundamental fairness and due process in violation of this Court’s precedent. *Dist. Atty’s Office for 3rd Jud. Dist. v. Osborne*, 557 U.S. 52, 69 (2009). 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.” *Reed v. Goertz*, 146 S. Ct. 936, 939 (2026)(Sotomayor, J., dissenting).

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.

Despite the State’s position that “more should be required to establish irreparable harm than the execution itself,” (Res. Stay App. at 5), 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). The irreparable injury is through the procedural impediments used to deny Mr. Conahan access to the mechanisms that would allow him to present a claim of newly discovered evidence to prove his innocence. Through this error, an innocent man will be executed.

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 9th day of September 2026.

Respectfully submitted,

/s/ Brittney N. Lacy

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