

No. \_\_\_\_\_

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**In the**  
**SUPREME COURT OF THE UNITED STATES**  
OCTOBER TERM, 2023

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ANTHONY CASTILLO SANCHEZ, *Petitioner*

v.

CHRISTIE QUICK, *Respondent*

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On Petition for a Writ of Certiorari  
To the Federal Court of Appeals for the Tenth Circuit  
**THIS IS A CAPITAL CASE**  
**EXECUTION IS SET FOR SEPTEMBER 21, 2023**

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**PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT**

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**CERTIFICATE OF COMPLIANCE**

No. \_\_\_\_\_

\_\_\_\_\_

Anthony Sanchez, *Petitioner*

v.

Christie Quick, *Respondent*

\_\_\_\_\_

As required by Supreme Court Rule 33.1(h), I certify the petition of a writ of certiorari contains 1931 words, excluding the parts of the petition that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 20<sup>th</sup> September 2023.

**s/ Eric Allen**

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Eric Allen (0073384)

## **QUESTIONS PRESENTED**

The question presented is whether a District Court can deny a stay of execution when it has been dilatory in removing attorneys who abandoned their clients until a month before the execution.

## **LIST OF PARTIES**

1. Petitioner: Anthony Sanchez Petitioner: Eric J. Allen, Law Office of Eric J. Allen, LTD. 4200 Regent Street, Suite 200, Columbus, Ohio 43219.
2. Respondent: Christie Quick; Jennifer Crabb 313 NE 21 St, Oklahoma City, OK 73105

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES .....iv

OPINIONS BELOW .....1

JURISDICTIONAL STATEMENT .....1

CONSTITUTIONAL PROVISIONS.....2

STATEMENT OF CASE .....2-3

SUMMARY OF ARGUMENT .....3-4

REASON FOR GRANTING PETITION .....5-9

CONCLUSION .....10

CERTIFICATE OF SERVICE .....11

**INDEX TO APPENDICES**

**Appendix A:** Order denying stay in District Court .....1-2

Appendix B: Opinion denying stay in the Tenth Circuit .....3-23

**TABLE OF AUTHORITIES**

Cooey v. Taft, 430 F. Supp. 2d 702, 708.....8  
Hill v. McDonough, 547 U.S. 573, 584.....5  
Nelson v. Campbell, 541 U.S. 637, 649-50.....5  
Williams v. Chrans, 50 F.3d 1358, 1360.....5,7  
Winter v. Natural Res. Def. Council, Inc., 555U.S. 7, 20.....5

**ABA Guidelines**

ABA guidelines for the Appointment and Performance of Defense Counsel in  
Death Penalty Cases, 2003, Rule 10.15.1; Rule 10.15.2.....6

**IN THE  
SUPREME COURT OF THE UNITED STATES**

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**PETITION FOR WRIT OF CERTIORARI**

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Petitioner Anthony Sanchez respectfully prays that a writ of certiorari is issued to review the judgment below.

**OPINION BELOW**

The Opinion of the United States Court of Appeals for the Tenth Circuit appears as Appendix B to this petition. The court's opinion is published at Sanchez v Quick, 2023.

**JURISDICTION**

The Western District of Oklahoma issued its decision on September 15, 2023. A copy is attached as Appendix A. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254.

## CONSTITUTIONAL PROVISIONS

**U.S. Const. Amend. V, VI, VIII: The proceedings below violate the  
Petitioner's rights under the Federal Constitution.**

### STATEMENT OF THE FACTS

On May 15, 2023, current counsel filed motions to substitute and appoint him to represent Petitioner in the clemency and/or late-stage proceedings. On June 6, 2023, the District Court denied this request in a hearing where prior counsel implored the court to allow them to stay on the case. *R. 77, Order*. Nothing was filed between the hearing date and July 17, 2023.

On July 17, 2023, previous counsel filed a motion to have the court determine how to dispose of the file in this matter. *R. 80*. In that motion, counsel states there are at least twelve boxes that are still sealed after being transferred from the Oklahoma Indigent Defense System. *R. 80*. Counsel then stated that there are concerns about witness and juror privacy. *Id.* at 2. Counsel then claimed that Petitioner has no right to the file, only certain documents when he can show cause. *Id.* at 2-3.

The same day, counsel also filed a motion to withdraw from the case. *R. 81*. The only basis for withdrawal is that the client asked and is waiving clemency proceedings.

The District Court, despite there being an execution date of September 21, 2023, waited until August 7, 2023, to order that previous counsel maintain the file.

*R. 85.* In that order, it allowed previous counsel to maintain the file despite previous requests by the Petitioner. *Ibid.* Notice of appeal was timely filed. *R. 91.* Following a limited remand, the issue with the files was resolved. The District Court then filed an order denying the stay of execution. *R 103.* A notice of appeal was filed. *R. 104.* On September 19, 2023, the Tenth Circuit Court of Appeals affirmed the decision of the Western District Court of Appeals. This timely request for certiorari follows.

### **STATEMENT OF THE CASE**

On July 17, 2023, Petitioner's previous counsel filed a motion for order to determine file disposition. *R. 80.* The same day, counsel moved the District Court for leave to withdraw from the case. *R. 81.* These two motions sat in the District Court until August 7, 2023, when the court disposed of them. *R. 85.* On August 22, 2023, current counsel filed a notice of appearance. *R. 90.* On August 30, a notice of appeal was filed. *R. 91.* The record was filed, and a briefing schedule was set. A limited remand resolved the issues with the files. The district court then denied the stay of execution. A notice of appeal was filed. *R. 104*

### **SUMMARY OF THE ARGUMENT**

Petitioner is set to be executed in McAlistar, Oklahoma on September 21, 2023. He requested all his files from previous counsel. They balked claiming privacy rights of witnesses and jurors and other excuses. During this time, the Petitioner waived his right to clemency. In his order, the judge claimed that there are no issues or claims left to litigate. Until the files are transferred and reviewed no one knows if

any issues remain. By their own admission, previous counsel has at least twelve boxes that are still sealed. Those twelve boxes very well could contain evidence that provides substance for a claim that would provide Petitioner relief.

Current counsel cannot guess as to their contents. Undersigned counsel did fly into Oklahoma City for the purpose of going through the files. His flight was delayed until the early hours of September 17, 2023. He then had to work and finish the brief for the Tenth Circuit. He then had to finish an application for a successor petition for habeas corpus. This file engulfs the entire conference room of a local Oklahoma City attorney. It would take weeks, if not months, to review. Counsel has reviewed some but not all these records.

## **REASON FOR GRANTING THE PETITION**

### **A. MR. SANCHEZ IS ENTITLED TO A STAY OF EXECUTION.**

The standards governing preliminary injunctions apply to execution stays in habeas proceedings. *See Williams v. Chrans*, 50 F.3d 1358, 1360 (7th Cir. 1995). “A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Further, the court must consider “the extent to which the inmate has delayed unnecessarily in bringing the claim.” *Nelson v. Campbell*, 541 U.S. 637, 649-50 (2004). In death penalty cases, a stay is warranted upon “a showing of a significant possibility of success on the merits.” *Hill v. McDonough*, 547 U.S. 573, 584 (2006).

#### **a. Mr. Sanchez Has Shown a Significant Possibility of Success on the Merits of His Claims.**

In this case, Petitioner’s counsels filed a motion to determine what should be done with the files in this matter. *R. 80*. The court did not dispose of this motion until August 7, 2023. In that order, the court determined that counsel could keep the files from their client. *R. 89*. The basis of this motion is that there is confidential information in the boxes that should be kept from the Petitioner.

Investigator David Ballard had sought to take possession of these boxes last spring and when he visited the offices of the attorneys was told he could not have them. The court then ordered that the lawyers have no obligation to turn over the Petitioner's file to anyone. This included current counsel, working pro bono for Petitioner.

That court found that no further claims exist. This determination is in error. Respectfully, current counsel does not know if further claims exist until he or someone in his employ goes through the boxes, some of which are still sealed, to determine what exists. These sealed boxes could contain information leading to a claim that provides relief for the Petitioner.

Clemency<sup>1</sup> or post-conviction counsel under the standards provided by the ABA Guidelines must investigate claims. *See ABA guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases, 2003, Rule 10.15.1; Rule 10.15.2.* This cannot be done without the entire file, sealed and unsealed. In a capital case, on the eve of execution, current counsel finally got the client's file. It contains fifty-two boxes and takes up an entire conference room in a law office.

The issue becomes if a stay is not granted, and the boxes turned over that leaves no time to determine if claims exist. There is not time to determine further

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<sup>1</sup> Counsel is aware Petitioner has waived his clemency proceedings, but the duty to determine claims and options for success still exists.

investigation. There is simply no time to review these boxes and determine what is possible.

**b. Mr. Sanchez Will Suffer Irreparable Harm.**

The irreparable harm to Mr. Sanchez is clear: Absent a stay, he will be executed on September 21, 2023, before he can fully research and litigate remaining claims. *See Williams v. Chrans*, 50 F.3d 1358, 1360 (7th Cir. 1995) (holding that “irreparable harm is taken as established in a capital case” because “[t]here can be no doubt that a defendant facing the death penalty at the hands of the [Respondent] faces irreparable injury”).

This is a matter of fairness for the Petitioner. There are between over fifty boxes, some of which were sealed and never unsealed, that until very recently were in the possession of prior counsel.

Undersigned counsel attempted to enter the case in May of this year. Prior counsel fought this attempt. They then filed a motion to withdraw shortly before the execution. And they did nothing in the time between. Undersigned counsel finally has the file but no time to review and determine.

**c. The Balance of Harms Weighs in Mr. Sanchez’s Favor.**

The Respondent’s interest in conducting the execution of Mr. Sanchez on September 21, 2023, before he has a reliable opportunity for judicial review of remaining claims, does not constitute substantial harm to the Respondent.

Mr. Sanchez has diligently pursued relief for the alleged constitutional violations every step of the way in the District Court for the Western District of Oklahoma, in the Tenth Circuit, and now in the United States Supreme Court, only to be stymied by his own counsel when they refused to provide Mr. Sanchez's own file to him. What is more, any delays in resolving this litigation fall solely on that same counsel when they failed to visit or communicate with him for years.

Absent a stay, Mr. Sanchez could be executed even though there is a significant chance his death sentences were obtained in violation of his Constitutional rights. When considered in the full context of Mr. Sanchez's blindness approaching the end of his litigation, the harm to Mr. Sanchez far outweighs any harm to the Respondent.

**d. The Public Interest Weighs in Favor of a Stay.**

There is no public interest in an unjust execution. Moreover, a stay would vindicate the public's interest in making sure an execution is just and only following full and fair judicial review. Mr. Sanchez seeks a meaningful opportunity to have this Court consider the merits of his claims, and a delay in the execution for this purpose would not disserve the public interest. *See Cooley v. Taft*, 430 F. Supp. 2d 702, 708 (S.D. Ohio 2006) (“[T]he public interest only is served by enforcing constitutional rights and by the prompt and accurate resolution of disputes concerning those constitutional rights. By comparison, the public

interest has never been and could never be served by rushing to judgment at the expense of a condemned inmate's constitutional rights"). Here, the public interest would not be served by rushing to judgment where such extraordinary circumstances and equities exist.

**e. Mr. Sanchez did not Unnecessarily Delay this Litigation.**

The two main impediments to Mr. Sanchez being able to litigate anything are his two former court-appointed attorneys. First, they did not visit or communicate with Mr. Sanchez for years. This abandonment prevented Mr. Sanchez from participating in his defense and reviewing his files. Additionally, counsel refused to provide Mr. Sanchez with his file. Attorneys Barrett and Coyne stayed on Mr. Sanchez's case until July 7, 2023. After inquiries, this Court issued an Order on August 7, 2023, ruling that court-appointed counsel should not provide Mr. Sanchez's files to him – not even his trial transcripts that counsel offered to provide. Later, on August 22, 2023, undersigned counsel entered his appearance. Following the filing of a motion to expedite was filed. Twenty days later a motion to stay was filed.

Under these circumstances and this timeline, Mr. Sanchez did not unnecessarily delay this litigation.

## CONCLUSION

Petitioner in this matter was prevented from gathering and reviewing the client's file in the underlying case. Counsel has the file but no time to review and investigate what is in the file. This leaves the Petitioner with no time to have claims investigated on his behalf.

Respectfully submitted,

s/ Eric Allen

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**CERTIFICATE OF SERVICE**

I hereby swear and affirm that on the 20<sup>th</sup> day of September 2023, a copy of the foregoing was sent via electronic mail to Jennifer Crabb, Assistant Oklahoma Attorney General,

s/Eric Allen

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Eric Allen (0073384)