

OCTOBER TERM, 2023

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

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

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**RUBEN GUTIERREZ,**  
Petitioner,

v.

**LUIS V. SAENZ, District Attorney;**  
**FELIX SAUCEDA, Chief, Brownsville Police Department,**  
Respondents.

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On Petition for Writ of Certiorari to the  
United States Court of Appeals for the Fifth Circuit

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**APPLICATION FOR STAY OF EXECUTION**

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**--- CAPITAL CASE ---**  
**EXECUTION SCHEDULED FOR TUESDAY, JULY 16, 2024**

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To the Honorable Samuel A. Alito, Jr., Associate Justice of the Supreme Court of the United States and Circuit Justice for the Fifth Circuit:

The State of Texas has scheduled the execution of Ruben Gutierrez for July 16, 2024. Mr. Gutierrez respectfully requests a stay of execution pending consideration and disposition of the petition for a writ of certiorari that is being filed along with this application.

### **STANDARDS FOR A STAY OF EXECUTION**

Mr. Gutierrez respectfully requests that this Court stay his execution, pursuant to Supreme Court Rule 23 and 28 U.S.C. § 2101(f), pending consideration of his concurrently filed petition for a writ of certiorari (the “Petition”). *See Barefoot v. Estelle*, 463 U.S. 880, 889 (1983) (“Approving the execution of a defendant before his [petition] is decided on the merits would clearly be improper.”); *see also Lonchar v. Thomas*, 517 U.S. 314, 320 (1996) (holding that a court may stay an execution if needed to resolve issues raised in initial petition).

The standards for granting a stay of execution are well established. Relevant considerations include the prisoner’s likelihood of success on the merits, the relative harm to the parties, the extent to which the prisoner has unnecessarily delayed his or her claims, and the public interest. *See Hill v. McDonough*, 547 U.S. 573, 584 (2006); *Nelson v. Campbell*, 541 U.S. 637, 649-50 (2004); *Barefoot*, 463 U.S. at 895. All four factors weigh strongly in Mr. Gutierrez’s favor.

## **MR. GUTIERREZ SHOULD BE GRANTED A STAY OF EXECUTION**

### **1. Mr. Gutierrez is likely to succeed on the merits.**

For the last thirteen years, Ruben Gutierrez has been seeking DNA testing in both state and federal courts, seeking only access to the physical evidence so that he can test it at his own expense. In June 2019, the state district court initially granted Mr. Gutierrez's motion for DNA testing, but then withdrew the order a few days later and denied the motion without explanation. In September 2019, Mr. Gutierrez filed a complaint under 42 U.S.C. § 1983 in federal district court challenging, inter alia, the constitutionality of Texas postconviction DNA testing procedures. The federal district court granted a declaratory judgment for Mr. Gutierrez on this issue, finding that Texas Code of Criminal Procedure Article 64 ("Chapter 64") violates due process by improperly limiting a death-sentenced prisoner's right to file a successive habeas petition: "Texas grants the substantive right to file a second habeas petition with a clear and convincing showing of innocence of the death penalty in Article 11.071, and then Chapter 64 denies the petitioner access to DNA evidence by which a person can avail himself of that right." *Gutierrez v. Saenz*, 565 F. Supp. 3d 892, 910 (S.D. Tex. 2021).

On appeal, a panel of the Fifth Circuit issued a split decision that conflicts with this Court's standard for assessing Article III standing as announced in *Reed v. Goertz*, 598 U.S. 230 (2023), and creates a circuit split with the only other federal appeals court decisions to have yet applied the *Reed* standard, see *Johnson v. Griffin*, 69 F.4th 506 (8th Cir. 2023); *Redd v. Guerrero*, 8 F.4th 874 (9th Cir. 2023). Because the Fifth Circuit panel majority concluded that Mr. Gutierrez did not have

standing to bring his lawsuit, standing was the only issue it considered. Judge Higginson dissented on grounds that there is no “meaningful distinction” between this case and *Reed*, and “[b]ecause the standing analysis of *Reed* applies here, Gutierrez, also facing execution, has standing to bring suit.” *Gutierrez v. Saenz*, 93 F.4th 267, 276 (5th Cir. 2024).

For the reasons discussed in detail in the certiorari petition, Mr. Gutierrez makes a strong case that the panel majority’s analysis of Article III standing conflicts with this Court’s decision in *Reed* and the Eighth and Ninth Circuits’ respective decisions in *Johnson*, 69 F.4th at 511–12, and *Redd*, 84 F.4th at 884. Thus, Mr. Gutierrez’s request to this Court to grant a stay of execution, grant the Petition, vacate the Fifth Circuit’s order, and remand for resolution of the merits of this appeal is likely to be granted.

**2. Mr. Gutierrez has been timely and diligent in this litigation.**

The federal district court issued its decision in this matter on March 23, 2021. The case was fully briefed in the Fifth Circuit as of August 19, 2022, and that court heard oral argument on September 20, 2023. The decision now at issue was filed on February 8, 2024. Mr. Gutierrez timely filed for panel rehearing and rehearing en banc. The Fifth Circuit issued a letter and order denying rehearing on May 29, and Mr. Gutierrez filed a motion to stay the mandate three business days later, on June 3. This motion was denied on June 7, 2024. The mandate issued on June 17, 2024, and the Petition is being filed eight days later.

Mr. Gutierrez thus has been timely and diligent in pursuing this litigation. To the extent the Court’s consideration of this application is rushed, the rush is

necessitated not due to any delay by Mr. Gutierrez, but instead because the State of Texas set an execution date on April 5, 2024, while this matter was still being litigated in the Fifth Circuit.

**3. Mr. Gutierrez will be irreparably harmed if a stay is not granted.**

Mr. Gutierrez’s execution will cause irreparable harm. Irreparable injury “is necessarily present in capital cases.” *Wainwright v. Booker*, 473 U.S. 935, 935 n.1 (1985). Beyond that injury, Mr. Gutierrez’s execution would cause his due process claim to become moot and would extinguish his years-long effort to obtain DNA testing of the physical evidence, and thus to prove his limited role in the offense and his innocence of the death penalty.

**4. The public interest weighs in favor of granting a stay.**

The prevailing uncertainty over the applicable standard for standing in a § 1983 action is a matter of public importance, as is the underlying merits question regarding the constitutionality of Texas’s postconviction DNA testing statute in capital cases. Moreover, the public has an interest in the circuit courts’ adherence to this Court’s rulings. *See Andrus v. Texas*, 142 S. Ct. 1866, 1877 (2022) (Sotomayor, J., dissenting from denial of certiorari) (“On remand from this Court, . . . other courts generally are not free to dispute this Court’s conclusions. To the contrary, ‘it is essential’ that courts ‘follow both the words and the music of Supreme Court opinions’ on issues of federal law.”) (quoting *United States v. Martinez-Cruz*, 736 F.3d 999, 1006 (D.C. Cir. 2013) (Kavanaugh, J., dissenting)). The importance of these issues strongly favors a stay.

For the foregoing reasons, and those set forth in the Petition for a Writ of Certiorari, Mr. Gutierrez respectfully requests that his application for a stay of execution be granted.

Respectfully submitted,

/s/ Shawn Nolan

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Dated: June 25, 2024