

**\*CAPITAL CASE\***  
**EXECUTION SCHEDULED FOR FEBRUARY 5, 2025, 6:00 PM CST**  
**NO. \_\_\_\_\_**

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**IN THE**  
**Supreme Court of the United States**

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STEVEN LAWAYNE NELSON,  
*Petitioner,*

v.

STATE OF TEXAS,  
*Respondent.*

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**On Petition for a Writ of Certiorari to**  
**The Court of Criminal Appeals of Texas**

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**APPLICATION FOR STAY OF EXECUTION PENDING CONSIDERATION**  
**AND DISPOSITION OF PETITION FOR WRIT OF CERTIORARI IN *NELSON V.***  
***TEXAS***

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Applicant Steven Lawayne Nelson requests that this Court grant him a stay of execution pending the Court’s consideration and disposition of his Petition for Writ of Certiorari in *Nelson v. State*, filed on February 3, 2025. A stay is warranted for the reasons set forth below and in the Petition for Writ of Certiorari, which is hereby incorporated by reference.

Texas is scheduled to execute Mr. Nelson by lethal injection after 6 p.m. on February 5, 2025. Mr. Nelson filed a subsequent application for habeas corpus in Texas state court, but the Texas Court of Criminal Appeals (“TCCA”) denied

authorization of the application. The majority of the two-page order recites the case’s procedural history and the entirety of the TCCA’s legal reasoning is confined to two sentences: “Applicant has failed to show that he satisfies the requirements of Article 11.071 § 5. Accordingly, we dismiss the application as an abuse of the writ without reviewing the merits of the claims raised.” The TCCA gives no indication about which of the many potential grounds—some of them federal—its decision rests upon. Mr. Nelson has filed a Petition for Writ of Certiorari asking this Court to decide whether it has jurisdiction over the case because the TCCA’s decision is not supported by an “adequate” and “independent” state ground, and to decide whether Mr. Nelson’s claims merit authorizing further litigation in state court.

A stay of execution is warranted where there is: (1) a reasonable probability that four members of this Court would consider the underlying issue sufficiently meritorious for the grant of certiorari or the notation of probable jurisdiction; (2) a significant possibility of reversal of the lower court’s decision; and (3) a likelihood that irreparable harm will result if no stay is granted. *See Barefoot v. Estelle*, 463 U.S. 880, 895 (1983). For the reasons expressed below and in the Petition for Writ of Certiorari, these criteria are satisfied in this case.

First, there exists a significant possibility that four members of the Court would consider the issue at stake—whether the TCCA’s decision rests on an adequate and independent state ground (“AISG”)—suitable for the grant of certiorari. As the Petition for Writ of Certiorari explains (at 15-27), the issues presented therein implicate important questions about this Court’s Supremacy on matters of

constitutional law. This Court has recently taken up various AISG issues, including in cases that share this case’s procedural posture. *See, e.g., Glossip v. Oklahoma*, 144 S. Ct. 691, 692 (2024) (granting certiorari to review state post-conviction decision and ordering briefing on adequacy of novel procedural ruling); *Cruz v. Arizona*, 598 U.S. 17, 26 (2023) (Arizona post-conviction case involving adequacy of new-law exception to subsequent application bar); *Foster v. Chatman*, 578 U.S. 488, 498 (2016) (holding that post-conviction rule of issue preclusion was not independent of federal law). Finally, these issues arise in the context of a capital case, where review is particularly crucial and where the Court has traditionally granted certiorari at elevated rates.

Second, there is a significant possibility that Mr. Nelson would prevail before this Court. Applying the presumption articulated in *Michigan v. Long*, there is no colorable argument that the TCCA decision rests on an independent state ground. 463 U.S. 1032, 1042 (1983) (presumption against independence “when it is not clear from the opinion itself that the state court relied upon an adequate and independent state ground and when it fairly appears that the state court rested its decision primarily on federal law.”). The TCCA states generally and without any elaboration that Mr. Nelson “has failed to show that he satisfies the requirements of Article 11.071 § 5.” It gives no indication whether its § 5 holding was based on provisional assessments of claim sufficiency—a federal ground—or on some other part of the provision. And even if one were to assume that the TCCA relied on some other ground, the only grounds suggested by the State’s briefing would be so irregular so as to be flagrantly inadequate.

Finally, there is a likelihood that irreparable harm will result absent a stay. If a stay is denied, the case will be mooted and Mr. Nelson will have no ability to enforce his rights. He will be dead.

### CONCLUSION

For the foregoing reasons, the Court should grant a stay of execution pending consideration and disposition of Mr. Nelson's Petition for Writ of Certiorari.

February 3, 2025

Respectfully Submitted,

/s/ Meaghan VerGow

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