

CAPITAL CASE
No. 25A___

IN THE SUPREME COURT OF THE UNITED STATES

JESSIE HOFFMAN,

Petitioner,

v.

GARY WESTCOTT, SECRETARY, LOUISIANA DEPARTMENT OF
PUBLIC SAFETY AND CORRECTIONS; DARREL VANNOY, WARDEN,
LOUISIANA STATE PENITENTIARY, IN HIS OFFICIAL CAPACITY,
JOHN DOES, UNKNOWN EXECUTIONERS,

Respondents.

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

APPLICATION FOR STAY OF EXECUTION

*Jessie Hoffman's execution is scheduled for
March 18, 2025, between 6 p.m. and 9 p.m. CDT.*

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

Petitioner Jessie Hoffman respectfully requests that this Court stay his
execution using nitrogen hypoxia pending the Court's disposition of his pending Petition
for a Writ of Certiorari. Mr. Hoffman is scheduled to be executed on **March 18, 2025,**
between 6 p.m. and 9 p.m. CDT. If the Court is unable to resolve this Application by

5:59 p.m. CDT on March 18, 2025, it should grant a temporary stay while it considers this Application.

REASONS FOR GRANTING THE STAY OF EXECUTION

Mr. Hoffman’s execution date is presently March 18, 2025. Mr. Hoffman has concurrently filed a Petition for a Writ of Certiorari with this Application. The impending execution date may preclude this Court from considering Mr. Hoffman’s petition before the scheduled execution, thus necessitating this Application. This Court has jurisdiction to enter a stay under 28 U.S.C. § 2101(f), 28 U.S.C. § 1651, and Supreme Court Rule 23.

The issuance of a stay is left to this Court’s discretion, guided by four factors:

(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) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)). A stay of execution is justified pending the disposition of a petition for writ of certiorari. See *Barefoot v. Estelle*, 463 U.S. 880, 889 (1983) (“Approving the execution of a defendant before his appeal is decided on the merits would clearly be improper[.]”).

Mr. Hoffman’s challenge to his execution is timely raised and has a strong likelihood of success on the merits. The State of Louisiana announced on February 10, 2025, that it had created its protocol for execution by nitrogen hypoxia—that is, the deprivation of oxygen through the forced inhalation of pure nitrogen until a person dies. It served Mr. Hoffman with a death warrant on February 20, 2025, notifying him for the first time that he would be the first Louisiana inmate to be executed by nitrogen hypoxia

on March 18, 2025. The State did not disclose its new protocol for nitrogen gassing until over one week later. Mr. Hoffman, a practicing Buddhist, diligently exhausted his administrative remedies and filed this suit less than a week after receiving his death warrant, challenging the State’s method of execution under the Eighth Amendment and the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc *et seq.* (“RLUIPA”), and seeking injunctive relief under 42 U.S.C. § 1983.

The Eighth Amendment forbids forms of execution that intensify a death sentence with “superaddition[s] of terror, pain, or disgrace.” *Bucklew v. Precythe*, 587 U.S. 119, 133 (2019) (citation omitted) (cleaned up). To succeed on a method-of-execution challenge under the Eighth Amendment, an inmate must show that a “feasible, readily implemented” alternative procedure that would “significantly reduce a substantial risk of severe pain.” *Baze v. Rees*, 553 U.S. 35, 52 (2008); *Glossip v. Gross*, 576 U.S. 863, 877 (2015).

The district court—after expedited discovery and a 12-hour hearing—concluded that Mr. Hoffman was likely to succeed on the merits of his Eighth Amendment claim and entered a preliminary injunction based on its extensive findings of fact, which in turn were based on expert and lay testimony. Relying on medical expert testimony, the district court concluded that: (1) Mr. Hoffman was likely to succeed in showing that nitrogen gassing superadds psychological terror compared to execution by firing squad (the readily available and feasible alternative Mr. Hoffman proposed); (2) he would likely be irreparably harmed absent a preliminary injunction; and (3) the equities and the public interest weighed against the State’s rushed execution of Mr. Hoffman. A divided panel of

the Fifth Circuit vacated the injunction on March 14, 2025, in an opinion flatly inconsistent with this Court's precedent.

As Mr. Hoffman explains in his petition, a majority of the Fifth Circuit panel misapplied the Eighth Amendment and ignored the district court's factual findings on the central issue of psychological terror. The majority suggested a categorical rule that the Eighth Amendment requires a petitioner to show that the alternative method of execution is less *physically* painful than the chosen method, regardless of *psychological* effect. While giving lip service to the Court's recognition that the "superaddition" of terror can violate the Eighth Amendment, *Bucklew*, 587 U.S. at 133, the majority reasoned that "expert testimony from both parties" established "that nitrogen hypoxia is painless," while "death by firing squad can cause pain." Pet. App. 6a–7a. This approach departs from this Court's precedent, and the well-established rule in other circuits that psychological terror can constitute cruel and unusual punishment.

The panel majority also completely ignored Mr. Hoffman's RLUIPA claim, pressed by Mr. Hoffman as an alternative basis for affirming the district court's preliminary injunction. This case presents a logical extension of *Ramirez v. Collier*, 595 U.S. 411 (2022), which held in the analogous context of a pastor laying hands on an individual being executed that RLUIPA prohibits a state from substantially burdening a condemned inmate's religious exercise in his final moments (unless it is the least restrictive way to advance a compelling state interest). Nitrogen hypoxia makes Mr. Hoffman's religious practice impossible.

I. There Is a Reasonable Probability That the Court Will Grant Certiorari and a Fair Prospect That Mr. Hoffman Will Succeed on the Merits.

Mr. Hoffman has shown a likelihood of success on the merits for the reasons explained in his petition for a writ of certiorari and a fair prospect that this Court will grant review of the Fifth Circuit's decision.

As explained in the petition, the district court faithfully applied this Court's method-of-execution standard, exercising its discretion to conclude that Mr. Hoffman was likely to succeed on the merits of his Eighth Amendment challenge to Louisiana's newest method of execution: nitrogen hypoxia. The district court's determination was based on its findings of fact after hearing hours of expert testimony that nitrogen gassing inflicts sustained psychological terror far more severe than the alternative of execution by firing squad.

The Fifth Circuit incorrectly disregarded the district court's findings as irrelevant, vacating the injunction on the basis that the Eighth Amendment analysis must be confined to physical pain only and that psychological suffering, no matter how severe, does not suffice. The Fifth Circuit's categorical rejection of psychological suffering as a constitutional consideration ignores Supreme Court precedent holding that psychological terror is a component of cruel and unusual punishment, and it is flatly at odds with the approaches of other circuits that have recognized that psychological terror and distress are relevant to the constitutional analysis.

The Fifth Circuit also departed from this Court's precedent in its refusal to consider Mr. Hoffman's RLUIPA claim. Mr. Hoffman is a long-practicing Buddhist. The

record evidence unrebutted by the State establishes that, in Buddhist tradition, meditative breathing at the time of death carries profound spiritual significance, founded in the core belief that meditation and unfettered breath at the time of transition from life to death determines the quality of rebirth.

This Court held in *Ramirez*, 595 U.S. 411, that RLUIPA prohibits a state from substantially burdening a condemned inmate's religious exercise in his final moments unless it is the least restrictive way to advance a compelling state interest. Significantly, the district court found, in the context of the Eighth Amendment claim, that nitrogen gassing causes "conscious terror and a sense of suffocation" that "endures for 35 to 40 seconds" and potentially for "3 to 5 minutes if an unwilling inmate holds his breath." Pet. App. 35a. It also found based on eyewitness accounts of Alabama's executions that nitrogen hypoxia caused the person being executed to gasp for air, displaying signs of suffocation. Pet. App. 29a. The logical conclusion from these facts is that death by nitrogen gassing is fundamentally incompatible with a Buddhist meditative state and breathing practice. Yet, the Fifth Circuit inexplicably, and incorrectly, did not even *mention* Mr. Hoffman's argument that the district court's preliminary injunction should be affirmed on the alternative ground that his scheduled method of execution violates his rights under RLUIPA, much less provide reasoned analysis of the claim.

II. Mr. Hoffman Will Be Irreparably Injured Absent a Stay.

Mr. Hoffman's impending execution is plainly an irreparable injury because he cannot vindicate his rights once he is dead. So irreparable injury "is necessarily present in capital cases." *Wainwright v. Booker*, 473 U.S. 935, 935 n.1 (1985). As a result, this factor "weighs heavily in the movant's favor," based on the "irreversible nature of the death penalty." *O'Bryan v. Estelle*, 691 F.2d 706, 708 (5th Cir. 1982).

III. Harm to Other Parties or the Public Is Minimized, and the Public Interest Lies In Favor of Granting a Stay.

Mr. Hoffman recognizes that "the State and the victims of crime have an important interest in the timely enforcement of a sentence." *Hill v. McDonough*, 547 U.S. 573, 584 (2006). But the public has a strong interest in ensuring that the State does not rush to implement a method of execution that violates fundamental constitutional rights and federal law. The State and the public will not be harmed by the full airing of Mr. Hoffman's claims.

Issuance of a brief stay of execution pending the Court's consideration of Mr. Hoffman's petition serves the public's interest in ensuring that capital punishment is carried out in compliance with the Eighth Amendment and federal protections for religious liberty. A brief stay allowing the Court the opportunity to consider a petition for a writ of certiorari identifying a substantial departure from this Court's precedents concerning method of execution and RLUIPA challenges is in the public interest.

Further, Mr. Hoffman is not responsible for generating the exigencies that necessitated this stay. Mr. Hoffman has pursued his claims as timely and diligently as

possible, only to be rebuffed by the State at every turn. And the last-minute nature of these proceedings is entirely attributable to the State.

As explained in the petition, Mr. Hoffman attempted to bring these claims both before and after receiving his death warrant. In February 2024, the Louisiana Legislature passed Act 5 of the Second Extraordinary Session of 2024, amending La. Rev. Stat. § 15:569–570 to add two new methods of execution in addition to lethal injection—nitrogen gas and electrocution—effective July 1, 2024. La. Rev. Stat. § 15:569 (West 2024). The next month, in March 2024, Mr. Hoffman filed a grievance with the prison challenging all three statutory methods of execution. This grievance was rejected as “premature” as the law had “yet to take legal effect.” Pet. App. 21a (capitalization omitted). In June 2024, Mr. Hoffman filed a motion to reopen his original methods lawsuit, which had been filed in 2012 and was dismissed in 2022. The State opposed this request, arguing that his motion was not ripe. *See* Defs’ Opp’n to Mot. for Relief from J., *Hoffman v. Jindal et al.*, No. 3:12-cv-976 (M.D. La. July 24, 2025), ECF No. 327. Mr. Hoffman attempted to file another grievance after July 1, 2024, when the statute went into effect. Again, the State deemed the grievance “premature.” Pet. App. 21a.

After receiving notice of his execution warrant, Mr. Hoffman invoked the emergency provision to file grievances to contest the method of execution and seek a copy of the protocol. Pet. App. 22a. The State notified him in writing that it would issue a response to him within 40 days—that is, after the scheduled execution date. ROA.1900. Mr. Hoffman’s execution warrant was signed on February 12, 2024, but Mr. Hoffman was not informed until February 20, 2025, that his execution would be by nitrogen

hypoxia. The warrant set a March 18, 2025 execution date, which falls before the State's deadline to respond to Mr. Hoffman's grievance.

On February 10, 2025, Mr. Hoffman timely supplemented his prior motion to reopen his case in the district court, after the State filed its motion for an execution warrant, and Mr. Hoffman further supplemented the motion to reopen on February 14, 2025, once the warrant was signed. But the State sought mandamus and a stay from the Fifth Circuit, which effectively froze that case. *See In re Westcott*, No. 25-30088 (5th Cir. Feb. 23, 2025).

Mr. Hoffman then filed this case on February 25, 2025, seeking a preliminary injunction the next day. Following expedited discovery and a hearing on March 7, 2025, the district court granted the injunction on March 11, 2025. *Hoffman v. Westcott*, No. 25-169-SDD-SDJ, 2025 WL 763945 (M.D. La. Mar. 11, 2025). The State appealed to the Fifth Circuit the next day, which vacated the injunction on March 14, 2025. *Hoffman v. Westcott*, No. 25-70006, 2025 WL 816734 (5th Cir. Mar. 14, 2025).

In short, Mr. Hoffman exhausted all available remedies and has been diligently pursuing his rights in state and federal courts alike. Mr. Hoffman now seeks a writ of certiorari from this Court, filed concurrently with this Application.

CONCLUSION

For the foregoing reasons, the Court should grant this Application and stay Mr. Hoffman's execution pending the disposition of his concurrently filed Petition for Writ of Certiorari.

March 16, 2025

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Respectfully submitted,

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