

No. _____

IN THE
Supreme Court of the United States

DAVID WOOD
Petitioner,
V.
RACHEL PATTON,
IN HER OFFICIAL CAPACITY AS DISTRICT ATTORNEY PRO TEM,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

APPLICATION FOR STAY OF EXECUTION

David Wood's execution is scheduled for March 13, 2025

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

David Wood respectfully requests that this Court stay his execution pending the disposition of his petition for writ of certiorari. His petition raises an important question regarding Article III standing that justifies this Court's intervention. The Fifth Circuit dismissed Wood's due process challenge to the Texas DNA testing statute exclusively based on its unique standing jurisprudence, which requires a

searching and fact-specific inquiry into whether the state actor will redress the injury after a favorable declaratory judgment. The propriety of that doctrine is already before this Court in *Gutierrez v. Saenz*, No. 23-7809. In *Gutierrez*, this Court stayed the petitioner’s execution and later granted the petition for writ of certiorari raising the same question presented here. That case is now fully briefed and is awaiting decision. Wood’s case presents a materially indistinguishable scenario. His execution should be stayed pending the disposition of his petition for writ of certiorari “to prevent these . . . virtually identically situated litigants from being treated in a needlessly disparate manner.” *Roper v. Weaver*, 550 U.S. 598, 601 (2007).

I. Requirements for a stay of execution.

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.”). The standards governing when a stay should issue are well-settled. A stay of execution “is an equitable remedy” and “is not available as a matter of right.” *Hill v. McDonough*, 547 U.S. 573, 584 (2006). Courts consider:

- (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)). Whether the applicant unnecessarily delayed in bringing his claim is also considered. *Hill*, 547 U.S. at 584.

II. David Wood’s petition is likely to succeed on the merits.

Wood has shown a likelihood of success on the merits for the reasons explained in his petition for writ of certiorari. Wood’s due process challenge was dismissed by the Fifth Circuit based only on its unique standing rule, which conflicts both with prior decisions of this Court and decisions of the Eighth and Ninth Circuits. Furthermore, the likelihood of success on Wood’s petition is shown by this Court’s granting of the petition in *Gutierrez*, which presents the same question under materially identical facts.

III. David Wood will be irreparably injured absent a stay.

Wood’s impending execution is plainly an irreparable injury. In a capital case, 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). This is particularly true when unopposed DNA testing definitively excluded Wood as the contributor of male DNA found on a bloodstain on the clothing of one of the female victims, and the underlying case presents a substantial claim that Wood’s due process rights were violated in his attempt to prove his innocence.

IV. Harm to other parties or the public is minimized.

Wood recognizes that “the State and the victims of crime have an important interest in the timely enforcement of a sentence.” *Hill*, 547 U.S. at 584. However, any injury to other parties by staying Wood’s execution is minimized by a number of factors. First, any harm to other parties is mitigated by the temporary nature of the requested relief. The requested stay does not invalidate Wood’s conviction or

sentence, but instead is only a temporary measure to permit him an opportunity to litigate these important and potentially meritorious constitutional claims. And because this question is already fully briefed and argued before this Court in *Gutierrez*, any stay pending disposition of this petition will be short.

Second, the requested DNA testing in state court (last made in 2017) and comparison of the unknown male DNA profile to the alternative suspect (made in 2015) could have occurred long ago. Both were common-sense and necessary requests in light of the exculpatory 2011 DNA result containing an unknown male DNA profile from which Wood was excluded. Now, almost eight years after his final request, ten years after he requested the DNA comparison, and fourteen years after the exculpatory DNA test result, Wood still seeks a constitutionally adequate opportunity to obtain them. Had the State agreed to those steps, all testing would have been completed long ago and this relief would not be necessary.

Finally, the public has an interest in ensuring that DNA testing under Chapter 64 is not an illusory right. Publicly elected officials passed a statute to provide an opportunity for convicted persons to obtain DNA testing to prove their innocence. Yet, the TCCA's authoritative construction of that statute renders it an empty promise. Thus, a stay of Wood's execution to permit resolution of this constitutional issue is in the public interest. The public's confidence in the integrity of the criminal legal system will be undermined if the courts allow finality to trump Wood's potentially meritorious claims of innocence when he is on the brink of execution. This is particularly true where an identically situated individual received a stay of execution

from this Court to litigate the same standing issue that short-circuited any merits resolution of an underlying claim that Chapter 64 violates due process.

V. David Wood timely and diligently pursued this litigation.

Neither of the lower federal courts denied Wood’s stay request based on delay, nor should this Court. Wood timely filed the instant suit in the court below. For due process challenges to Chapter 64, injury occurs when the TCCA denies a motion for rehearing. *Reed v. Goertz*, 598 U.S. 230, 236 (2023). The injury to Wood became complete on August 21, 2024, when the TCCA denied his timely filed motion for rehearing. Wood filed the instant suit a mere nineteen days later and has diligently litigated it. This is not a suit that was “filed too late in the day.” *Hill*, 547 U.S. at 584.

Wood’s state court litigation pertaining to DNA testing does not weigh in favor of denying a stay. Numerous factors support that Wood’s pursuit of DNA testing in that forum should not result in a delay finding here, including that: 1) Chapter 64 was amended multiple times, creating new avenues to seek DNA testing, App.C.7, 10; 2) the State opposed any further DNA testing; 3) the number of separate crime scenes produced a large quantity of evidence that could be tested, App.C.7; 4) the State delayed disclosing inventories of the evidence the police collected from the crime scenes, App.C.7–8; and 5) the State destroyed or lost a number of items of evidence that Wood asked to be subjected to DNA testing, App.C.11.

CONCLUSION

This Court should stay Wood’s execution pending the disposition of his petition for writ of certiorari.

Respectfully submitted,

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