

No. 25-

IN THE SUPREME COURT OF THE UNITED STATES

Mikal Mahdi,

Petitioner,

v.

Bryan P. Stirling, Commissioner, South Carolina,
Department of Corrections,

Respondent.

CAPITAL CASE

Execution of Petitioner Mahdi scheduled for
April 11, 2025, 6:00 p.m.

**MOTION FOR STAY OF EXECUTION
PENDING CONSIDERATION AND DISPOSITION
OF THE PETITION FOR WRIT OF CERTIORARI**

Petitioner Mikal Mahdi, a death-sentenced individual on South Carolina's death row, requests a stay of his execution, **scheduled for April 11, 2025, at 6:00 p.m.** Mahdi asks this Court to stay his execution pending consideration and disposition of the petition for a writ of certiorari, filed in this Court concurrently with this motion, arising from a judgment of the Supreme Court of South Carolina pursuant to 28 U.S.C. § 1257(a). The issue raised will become moot if Mahdi is executed. *See Wainwright v. Booker*, 473 U.S. 935, 936 (1985) (Powell, J., concurring); *see also Murphy v. Collier*, 139 S. Ct. 1475 (2019) (staying the execution pending the timely filing and disposition of a petition for a writ of certiorari). The

requested stay may be lawfully granted pursuant to Supreme Court Rule 23 and under the authority of 28 U.S.C. § 2101(f).

A stay of execution is warranted where there is a “presence of substantial grounds upon which relief might be granted.” *Barefoot v. Estelle*, 463 U.S. 880, 895 (1983). To decide whether a stay is warranted, this Court considers the petitioner’s likelihood of success on the merits, the relative harm to the parties, and the extent to which the prisoner has delayed raising his or her claims. *See Hill v. McDonough*, 547 U.S. 573, 584 (2006); *Nelson v. Campbell*, 541 U.S. 637, 649–50 (2004). In certiorari proceedings, a petitioner must show: (1) a reasonable probability that this Court would vote to grant certiorari; (2) a significant possibility of reversal of the lower court’s decision; and (3) a likelihood that irreparable injury will occur if no stay is granted. *See Barefoot*, 463 U.S. at 895. Additionally, “in a close case it may [also] be appropriate to balance the equities,’ to assess the relative harms to the parties, ‘as well as the interests of the public at large.’” *Indiana State Police Pension Trust v. Chrysler LLC*, 556 U.S. 960, 960 (2009) (per curiam) (quoting *Conkright v. Frommert*, 556 U.S. 1401, 1402 (2009) (Ginsburg, J., in chambers)). All these factors weigh in favor of staying Mahdi’s execution.

The risk of irreparable harm is clearly met. “A prisoner under a death sentence remains a living person and consequently has an interest in his life.” *Ohio Adult Parole Authority v. Woodard*, 523 U.S. 272, 288 (1998) (O’Connor, J., concurring in part and concurring in the judgment). Death is the ultimate deprivation, and no State should carry out a death sentence in violation of a

prisoner's constitutional rights—rights which cannot be reinstated after an execution is carried out.

Likewise, the balance of equities weighs in favor of staying Mahdi's execution. He has a legitimate interest in ensuring that his trial proceedings were constitutional before South Carolina takes the irreparable step of ending his life. The court system itself also has an interest in granting the petition to carefully and deliberately review Mahdi's Sixth Amendment claim because, "[t]o work effectively, it is important that society's criminal process satisfy the appearance of justice." *Richmond Newspapers v. Virginia*, 448 U.S. 555, 571-72 (1980) (citation omitted). In contrast, the harm to the State is minimal when weighed against the strong interests supporting a stay. At most, the harm to the State would be a slight delay in carrying out Mahdi's execution while this Court considers the briefing on the pending petition for a writ of certiorari. Moreover, the State cannot have a legitimate interest in carrying out a sentence that was obtained as the result of an unconstitutional proceeding.

Finally, as to the merits—the probability of certiorari review being granted and reversal of the lower court decision—Mahdi would refer the Court to the arguments in his petition. Mahdi faces execution this week even though the sum total of mitigating evidence presented by his defense counsel filled barely half an hour and fifteen transcript pages. The state courts have upheld Mahdi's death sentence only because they have never properly applied this Court's Sixth Amendment precedent, which explicitly deems capital trial counsel deficient when

they are confronted with indicia of childhood trauma and look no further. *See Strickland v. Washington*, 466 U.S. 668 (1984); *Wiggins v. Smith*, 539 U.S. 510 (2003). Had Mahdi's trial counsel not given up before they began, the sentencing judge would have learned of Mahdi's violent and traumatic childhood, and the torturous isolation he endured through thousands of hours of solitary confinement when he was just a teenager. As Mahdi's death sentence is the product of these stark violations of his Sixth and Fourteenth Amendment rights, this Court should stay his execution and grant certiorari.

For these reasons, and those set forth more fully in his petition for certiorari review, Mahdi requests that the Court stay his execution currently scheduled for April 11, 2025, pending full consideration and disposition of his petition.

Respectfully submitted,

John G. Baker
Federal Public Defender
For the Western District of North Carolina

/s/ David Weiss
David Weiss
Counsel of Record
Assistant Federal Public Defender
(980) 378-5105
david_c_weiss@fd.org

Teresa L. Norris
Assistant Federal Public Defender

Capital Habeas Unit for the Fourth Circuit
129 West Trade Street, Suite 300
Charlotte, NC 28202

E. Charles Grose, Jr.
The Grose Law Firm, LLC

404 Main Street
Greenwood, SC 29646

John LaFitte Warren, III
Law Office of Bill Nettles
2008 Lincoln Street
Columbia, SC 29201

COUNSEL FOR MIKAL D. MAHDI