

Motion for Stay of Execution
Joseph E. Corcoran

**IN THE
INDIANA SUPREME COURT**

CASE No. 24S-SD-222

JOSEPH E. CORCORAN,)
)
Appellant,)
)
v.)
)
STATE OF INDIANA,)
)
Appellee.)

THIS IS A CAPITAL CASE
Execution Date: December 18, 2024

Motion for Stay of Execution

Petitioner Joseph Edward Corcoran, by and through counsel, respectfully moves this Court to stay his impending execution currently scheduled for December 18, 2024, to be carried out before the hour of sunrise. For virtually his entire life, Mr. Corcoran has been plagued by symptoms of psychosis and cognitive dysfunction. These symptoms continue to this day, and numerous mental health experts have diagnosed him with paranoid schizophrenia or precursors to the schizophrenic diagnosis.

There is colorable evidence that Mr. Corcoran is incompetent to be executed pursuant to *Panetti v. Quarterman*, 551 U.S. 930 (2007), and *Ford v. Wainwright*, 477 U.S. 399 (1986). It is unchallengeable and law of this case the extent of the seriousness of the mental illness – paranoid schizophrenia. *Corcoran v. State*, 820 N.E.2d 655, 660 (Ind. 2005). Further, Mr. Corcoran seeks a change in the law regarding the application of the successor provisions. He relies on the Attorney General’s accepted concession in federal court that a *Ford* claim is not ripe and further state court proceedings were necessary. *Corcoran v. Wilson*, Case No. 3:05-cv-00389 Doc. 96 p. 20 (N.D. Ind.) (“As this Court correctly determined, as there is no current execution date set in Corcoran’s case, this claim is unripe. Further, Corcoran must first

exhaust this claim in the state courts through Indiana's post-conviction procedures."'). The State is bound by this prevailing contention from federal court.

This Court should enter a stay to permit the full and fair consideration of these colorable arguments not rebutted by the record.

A. Mr. Corcoran's longstanding serious mental illness presents a colorable *Ford* claim.

According to Mr. Corcoran, he is tortured and has been for decades by the State of Indiana. He constantly suffers painful and frightening delusions and auditory hallucinations, namely that Indiana Department of Correction prison guards are using an ultrasound machine to torture him and that he has a sleep disorder that causes him to unconsciously and unknowingly say inappropriate things that make people angry and retaliate against him. He also believes he can hear people talking about him through the walls of his prison cell.

The Attorney General conceded this point and has never presented contrary evidence.

- Trial court finding that: "The State concedes that Petitioner is mentally ill." PC R. 242;
- Trial court statement that: "[t]he State of Indiana has conceded that the Defendant suffers from mental illness, and I think that is probably a wise concession, gentlemen, as the evidence that was presented at the competency hearing as well as the evidence presented at Mr. Corcoran's trial was that he suffers from a mental disease or defect of mental illness." PC Comp. Dec. T. at 4;
- This Court noted: "The post-conviction court here acknowledged in its written findings that Corcoran suffers from a mental illness. The State also concedes that Corcoran suffers from a mental illness. At the competency hearing, the State Public Defender presented the testimony of three mental health experts, each of whom concluded that Corcoran suffers from paranoid schizophrenia. One of the symptoms of Corcoran's condition, according to the three experts, are recurrent delusions that Department of Correction prison guards are torturing him through the use of an ultrasound machine, causing him substantial pain and uncontrollable twitching." *Corcoran*, 820 N.E.2d at 660;

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- Justice Rucker again dissented, noting Corcoran's serious mental illness: "It is apparent that since July 1997 Corcoran's mental state has deteriorated significantly. So much so that his personality disorder has now developed into full-blown paranoid schizophrenia. In short, Corcoran is seriously mentally ill. And how does his mental illness manifest itself? Corcoran is under the paranoid delusion that prison guards are torturing him with sound waves. As a result, Corcoran wants the State to execute him in order to end the pain. I am not willing to accommodate him." *Id.* at 665 (Rucker, J., dissenting).

The symptoms have not gone away. They persist. Now in 2024, Mr. Corcoran continues to suffer the debilitating symptoms of his paranoid schizophrenia. As he has for twenty years, he experiences auditory hallucinations, psychosis, and the ever-present delusions regarding the ultrasound machine he believes the prison guards are torturing him with and his sleep disorder. For instance, correction records will establish that he has received psychotropic medications to treat the symptoms of schizophrenia for two decades, specifically Geodon, Haldol, Navane, and Cogentin.

Although the Indiana Department of Correction has attempted medicating him, his illness has proven to be resistant to treatment, and nothing during his incarceration has cured him of his paranoid schizophrenia. As recently as **March 1, 2024**, treating correctional personnel noted:

Patient then began sharing information about what he believes to be an ultrasonic machine here at ISP that can control his and others thoughts, sleep, voice, etc. Patient reports it is 'top secret' but it bothers him 'endlessly all day.' Patient reports the machine does put him to sleep at night. Patient stated 'others think I'm delusional but I know its here.' Writer inquired if patient ever recognizes his own thoughts as delusional, patient avoided the question. ... Patient denies MH symptoms and the expressed delusions are the only observable concern.

Attachment A. The above delusion is consistently expressed to counsel.

In addition, on **September 8, 2024**, Mr. Corcoran published a book under the pseudonym JC Chase. The book is entitled *A Whistle-blower Report Electronic*

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Harassment. Attachment B. It is a glimpse into the continuing delusion, where he describes:

- “My goal is to arm people with what victimizers do not want their victims to know: THE TRUTH.” *Id.* p. 8;
- “...that people can be surveilled anywhere, in any place, and from great distances from a device that sits on a desk.” *Id.* p. 13;
- “The answer is that I want to show that what I am describing is not a nut job conspiracy theory, but is basic electronics... .” *Id.*;
- “I suspect that many credentialled MDs do not even know about this phenomenon. The reason why they likely do not know is because it is undetectable by unaided observation. No one by simply talking to an individual, looking at them or even listening to them is able to tell if a person’s throat vibrates when they think. In fact, it is so faint that it cannot even be felt. For all practical purposes it is undetectable and would not be an issue unless...” *Id.* p. 13;
- “So, in essence, a small percentage of people are susceptible to ultrasound surveillance; someone with one of those devices can pretty much listen to them think.” *Id.* p. 14;
- “The same ultrasonic signal that captures audible sounds by modulation can be used to *send* audible sound. Furthermore, the modulating signal can also send an electronic charge.” *Id.* (emphasis in original);
- “So think of the possibilities with such equipment – and the enormous potential for abuse! With it an operator could send a quiet voice into someone’s head *and* make them think that they are thinking the thought...” *Id.* (emphasis in original);
- “Or maybe something extremely bad: a screaming, demonic voice in their head that only they can hear (aside from the operator talking into the box) that tells them to kill people.” *Id.* p. 14-15;
- “The device can easily be used to make someone seriously paranoid...A person susceptible to ultrasonic surveillance would be the easiest to make paranoid. Since an individual can tell what the individual is thinking it would be easy to cause them to believe false things.” *Id.* p. 15;
- “Therefore, using electricity to activate bodily processes is not limited to muscle movements and sleep cycles. Let’s say, therefore, that there is an unfortunate

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man who some bad actor wants to wake up, make stand on his feet, run to a wall, and then pound on it angrily with a closed fist. After this the bad actor wants the poor man to feel dizzy, confused and then vomit.” *Id.* p. 16;

- “So let’s return to the unfortunate man. To wake him up, delivering an electrostatic charge to his midbrain via a modulating ultrasonic frequency will do the trick. To make him stand up, run to the wall, make a fist, and pound on it repeatedly you would simply target the right muscles, in the right order with the proper electrostatic charges. Obviously a cascade of functions must be done to accomplish this, which is very easily done electronically (i.e., a multitude of calculations per second). To make him angry an electrostatic charge can be delivered to the amygdala. To then make him dizzy simply target the vestibular apparatus within his inner ear. The prefrontal cortex would be targeted next to make him confused. For vomit you need only to target the correct places in the stomach, esophagus, and mouth — being dizzy would also help the matter. To some people all of this sounds like science fiction. Unfortunately it is not; it is basic electronics and basic physiology.” *Id.* p. 17;
- “They can spy on people and deceive people virtually unnoticed. Moreover, they can abuse people with anonymity and virtual impunity.” *Id.*;
- “[I]t is apparent to me that correctional staff and other individuals and/or agencies use ultrasonic surveillance devices on susceptible people for sport. However, the fact that institutions keep their possession of such equipment confidential would make it extremely difficult for those abused to expose the abuse.” *Id.* p. 18;
- “In essence, they would treat the poor soul like a video game avatar rather than a real person whose life is going to be adversely affected by the nonsense they are afflicting the victim with.” *Id.* p. 19;
- “And when you research and find inaccurate information that confirms the victimizers' deception, and you then put stock in it, it frankly makes you look like a mental case. Their goal is accomplished. They have a completely plausible cover for their wrongdoing.” *Id.*;
- “The ignorance on the part of mental health professionals about this technology is taken advantage of by victimizers. If a credentialed medical person says a man is mentally ill, but he says that he is the victim of electronic harassment, who would people be more likely to believe? So because of this the victimizer's cover is now seemingly backed up by medical science....Because of this they will likely be oblivious to the fact that mental illness can be mimicked electronically.” *Id.* p. 20;

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- “I recently discovered, by an experiment performed on me, how this is done. Someone need only to use the device to cause you to scratch yourself in your sleep. If done correctly you get the equivalent of a rug burn. As I write this I have a burn on my arm from this method that has been there for over a month.” *Id.* p. 20-21;
- “No one should be forced to live with an electronically simulated mental illness, such as Tourette's, tics, auditor- hallucinations, pain, anger, or a host of other abuses.” *Id.* p. 21;

In short, Mr. Corcoran's longstanding and documented mental illness continues to torment him and there is a colorable basis to explore *Ford* competency.

Mr. Corcoran's paranoid schizophrenia completely removes him from reality. He cannot distinguish between reality and his delusions and hallucinations—his delusions are his reality. And because his reality is informed by his delusions and hallucinations, he is incapable of rational thought. Throughout his legal proceedings, he has been unable to assist counsel with his defense and has been unable to make rational decisions about his case. Indeed, currently, Mr. Corcoran wants to be executed, and is in fact eager for his execution, because he believes execution will relieve him from the pain of the ultrasound machine and sleep disorder.

Because he lacks the ability to engage in rational thought, Mr. Corcoran also lacks the ability to rationally understand the world and reality around him. Accordingly, he lacks any sort of rational understanding of his impending execution. While he may be able to parrot what his attorneys and other jurists have told him, that the death penalty is punishment, over the almost three decades-long span of this case, Mr. Corcoran's words and behavior reveal and reinforce his true belief—his death sentence is a means to end his delusional suffering, which to him is not punishment. *See Panetti*, 551 U.S. at 959 (“A prisoner's awareness of the State's rationale for an execution is not the same as a rational understanding of it.”). In other

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words, he does not truly and rationally understand that he was sentenced to death as punishment for being convicted of four counts of murder. The evidence presented in his proposed post-conviction petition of his inability to rationally understand his sentence at the very least meets the threshold showing under *Ford*. Thus, Mr. Corcoran is incompetent to be executed. *Ford*, 477 U.S. 399; *Panetti*, 551 U.S. 930.

Carrying out Mr. Corcoran's execution despite his lack of rational understanding of his capital punishment would violate the Eighth and Fourteenth Amendments to the United States Constitution and Article One, Section Sixteen of the Indiana State Constitution. Mr. Corcoran has concurrently requested permission from this Court to file a successive post-conviction petition in the Superior Court of Allen County on this *Ford/ Panetti* incompetence to be executed claim and has requested a judicial hearing, as is required under *Panetti* because Mr. Corcoran satisfies the threshold showing of incompetence. *Panetti*, 551 U.S. at 949 ("Once a prisoner seeking a stay of execution has made 'a substantial threshold showing of insanity,' the protection afforded by procedural due process includes a 'fair hearing' in accord with fundamental fairness." (quoting *Ford*, 477 U.S. at 424)).

Panetti, 551 U.S. at 950, requires due process for consideration of a *Ford* claim and faulted the Texas courts' failure to provide it. "[T]he fundamental requisite of due process of law is the opportunity to be heard." *Ford*, 477 U.S. at 413. Which requires, a state court's determination of competency to be executed must be premised upon a process that allows the presentation of "material relevant of the ultimate decision." *Id.* *Panetti* quoted *Ford*: the due process clause requires a "'fair hearing' in accord with fundamental fairness." *Panetti*, 551 U.S. at 949, quoting *Ford*, 477 U.S. at 426 (Powell, J., concurring in part and concurring in judgment).

Every expert subject to adversarial testing this millennium has indicated that Mr. Corcoran does not possess a rational understanding of the world. The post-conviction trial court set those opinions aside two decades ago. However, recent correction records and his own writings demonstrate a medically resistant strain of schizophrenia—in Mr. Corcoran’s world, he continues to be tortured. Any previous competency determination upon which the Attorney General might rely is stale and requires a contemporaneous assessment and a fair and meaningful hearing—the exact point they previously argued in federal court.

A stay should issue to permit this Court to proceed as it did in Mr. Timberlake’s case, where an expert was appointed to perform an evaluation. *Timberlake v. State*, No. 49S00-0606-SD-235 (Ind. Sept. 18, 2006) (unpublished order for mental examination). A stay should issue to permit an evaluation to occur.

B. Mr. Corcoran’s newly ripened claim should be exhausted as the Attorney General successfully argued in federal court.

According to the Attorney General’s accepted concession in federal court, a *Ford* claim is not ripe and further state court proceedings were necessary. *See Corcoran v. Wilson*, Case No. 3:05-cv-00389 Doc. 96 p. 20 (N.D. Ind.) (“As this Court correctly determined, as there is no current execution date set in Corcoran’s case, this claim is unripe. Further, Corcoran must first exhaust this claim in the state courts through Indiana’s post-conviction procedures.”). The federal court relied on that and passed on considering the *Ford* claim. *Corcoran v. Buss*, Cause No. 3:05-CV-389 JD, 2013 U.S. Dist. LEXIS 4499, at *19 n.6 (Jan. 10, 2013).

Incompetence to be executed claims become ripe only when an execution date has been set. *See, e.g., Panetti*, 551 U.S. at 942-43; *Stewart v. Martinez-Villareal*, 523 U.S. 637 (1998); *Purvis v. United States*, 662 F.3d 939, 943-44 (7th Cir. 2011); *Baird v. State*, 833 N.E.2d 28, 29 (Ind. 2005) (“A *Ford* claim is one that by its nature arises after the usual channels of appeal

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have been exhausted.”); *Matheny v. Anderson*, 60 F. Supp. 2d 846, 868 (N.D. Ind. 1999). “[I]t is only at the time that the execution becomes ‘imminent’ and the petitioner’s ‘competency to be executed’ can be determined. *Lee v. Kelley*, 854 F.3d 544, 547 (8th Cir. 2017) (Kelly, J., concurring). Mr. Corcoran could not have brought this claim earlier and received merits review. Additionally, Mr. Corcoran notes that most other jurisdictions, federal and state, consider *Ford/Panetti* claims to automatically be non-successive, and thus do not require permission to file.

This Court has held to the contrary and has held that *Ford* claims are subject to successor provisions. *See, e.g., Overstreet v. State*, 993 N.E.2d 179, 180 (Ind. 2013); *Timberlake v. State*, 858 N.E.2d 625, 627 (Ind. 2006); *Baird v. State*, 833 N.E.2d 28, 29-30 (Ind. 2005). This question of law should be reconsidered in the context of the Attorney General’s concession and the weight of authority on the other side of this legal question.

C. Conclusion.

Mr. Corcoran presents a colorable *Ford* claim; a *Ford* claim that the Attorney General argued in federal court needed to be presented in state court **after** an execution date was set. This Court should stay Mr. Corcoran’s December 18, 2024 execution so that the newly-ripened *Ford* claim may be provided the required process that is due. A stay is warranted so that Mr. Corcoran may have the meaningful opportunity to present his *Ford* claim given that a colorable claim has been presented.

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been delivered through IEFS to the following, this 15th day of November 2024.

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