IN THE UNITED STATES COURT OF APPEALS
SEVENTH CIRCUIT

TAHINA CORCORAN,	)	
as Next Friend on behalf of	)	
Joseph E. Corcoran	)	
Petitioner,	)	
	)	
v.	)	**Case No. 24-3259**
	)	
RON NEAL, Warden,	)	**DEATH PENALTY CASE**
	)	**EXECUTION SCHEDULED**
Respondent.	)	**DECEMBER 18, 2024,**
	)	**BEFORE THE HOUR OF SUNRISE**

Appellant's Motion for Stay of Execution

Next friend petitioner Tahina Corcoran moves the Court for an order staying the execution of Joseph E. Corcoran, now scheduled for December 18, 2024, before the hour of sunrise, while this Court considers the appeal from the Opinion and Order of the United States District Court for the Northern District of Indiana, dated December 13, 2024 (Doc. 1-1)[1], denying the petition for writ of habeas corpus asserting Mr. Corcoran's incompetence to be executed under *Ford v. Wainwright*, 477 U.S. 399, 417 (1985); *Panetti v. Quarterman*, 551 U.S. 930, 959-60 (2007); and *Madison v. Alabama*, 586 U.S. 265, 267-68 (2019).

The district court granted a Certificate of Appealability ("COA") on the issue of "whether the State court unreasonably determined that Corcoran or his counsel had failed to demonstrate a substantial threshold showing of insanity as required by *Panetti v. Quarterman*, 551 U.S. 930 (2007)," (Doc. 20 at 30-31). With Corcoran's execution just four days away, this Court should grant a stay of execution to allow the parties to fully brief and argue the issue certified for appeal by the district court.

[1] "Doc. #" refers to the District Court docket.

BACKGROUND

Every day, Mr. Corcoran is tormented by the guards at the Indiana State Prison. The guards use an ultrasound machine they keep somewhere in the prison to send out ultrasonic waves that torture Mr. Corcoran, telling him what to do and inflicting excruciating pain. He suffers from a sleep and speech disorder which makes him involuntarily talk out loud and reveal his innermost thoughts. People retaliate against him when they hear his private thoughts. He can hear them talking about him through the walls of his prison cell. The torture and the disorder have plagued Mr. Corcoran for the better part of three decades. He attested he wants to escape prison and this torture.

Of course, these are all delusions. There is no such ultrasound machine, the prison guards are almost certainly not using a machine to torture him with ultrasonic waves, there is no evidence Mr. Corcoran suffers from a sleep or speech disorder, and dating back until his childhood, Mr. Corcoran has heard conversations around him that do not exist. But to him, these things are all very real. He is desperate for them to stop, and he believes the only way they will stop is if he is executed.

In other words, Mr. Corcoran seeks to be executed—in fact, he is eager to be executed—because he sees it as his escape from the guards' ultrasonic torture and his speech and sleep disorder. It is an irrational belief, a fixed false belief, and it is one that has infiltrated every part of his life. It even pervaded his trial, where he rejected a life plea offer because the State would not acquiesce to his demands to sever his vocal cords so that his disorder could not force him to broadcast his thoughts.

Mr. Corcoran's reality, which is not reality at all, demonstrates his psychotic and fixed belief systems.

Over the course of two decades, at least five mental health professionals, including three psychiatrists, a neuropsychologist, and a clinical psychologist, have diagnosed Mr. Corcoran with paranoid schizophrenia. Even more professionals have diagnosed him with a myriad of other mental illnesses ranging from schizotypal personality disorder to major depression. Despite spending most of his adult life in the Indiana Department of Correction system, Mr. Corcoran's schizophrenia resisted the Department's minimal treatment efforts via medication, and thus remains untreated and totally uncured.

Mr. Corcoran's schizophrenia manifests in auditory hallucinations and painful, frightening delusions. As he did on the day of the crime in 1997, Mr. Corcoran believes he can hear people talking about him through the walls. Two persistent delusions inflict torment upon him on a daily basis: that prison guards are using an ultrasound machine to torture him with ultrasonic waves,[2] and that he suffers from a speech and sleep disorder that broadcasts his innermost thoughts and causes him to say inappropriate things for which people retaliate against him. Mr. Corcoran's entire perception of the world and of his life is centered around the humiliation and agony he believes he is wracked by. He has no grasp on true reality—to him, the pain of the ultrasound waves and the sleep and speech disorders are reality. Every decision he has made in this case, including that he wants to be executed, is rooted in his desire to escape the pain of his delusions. His eagerness to be executed is because he sees it as the opportunity to avoid further pain; he does not view it as punishment. This is not a rational decision, and it does not involve rational thinking.

Mrs. Corcoran, his wife, as next friend petitioner, filed a petition for writ of habeas corpus

[2] The delusion regarding the ultrasound machine is well-documented, even from the time of trial in 1999. That delusion continues to this day, as evidenced by Mr. Corcoran's September 2024 self-published book, *A Whistle-blower Report: Electronic Harassment* (Attachment H). The book details how the ultrasound machine supposedly works and chronicles how it has been used to torture a specific, targeted population.

pursuant to 28 U.S.C. § 2254, contending that Mr. Corcoran is incompetent to be executed in the United States District Court for the Northern District of Indiana on December 11, 2024. In its December 13, 2024, order and opinion, the district court denied the petition, opining that the Indiana Supreme Court's denial of the post-conviction petition was appropriate because the claim was procedurally defaulted due to Mr. Corcoran's refusal to sign and verify the petition. Doc. 1-1 at 15. The court also considered the merits of Petitioner's *Ford/Panetti* claim "for the sake of completeness," but ultimately concluded that the Indiana Supreme Court's determination that Petitioner failed to demonstrate a substantial threshold showing of insanity under *Panetti* was not unreasonable. *Id.*

As explained in the district court's opinion and order granting a Certificate of Appealability (COA), reasonable jurists could disagree with the district court's affirming the Indiana Supreme Court majority's decision—in fact, reasonable jurists have already expressed their disagreement. In the Indiana Supreme Court, the three concurring justices made a majority only by a razor-thin margin—two justices dissented. Doc. 1-1 at 245 (*Corcoran v. State*, Case No. 24S-SD-222, 2024 WL 5052384, at *15 (Ind. Dec. 10, 2024)). Chief Justice Rush and Justice Goff expressed concern about Mr. Corcoran's mental condition, calling for a current competency evaluation in light of the decades-worth of evidence of Mr. Corcoran's vivid delusions, auditory hallucinations, and disconnection from reality. *Id.* at 241-47.

Reasonable jurists could and do disagree with the district court's decision. Reasonable jurists could and do find that executing Mr. Corcoran without having provided him a fair hearing to prove his incompetency to be executed violates his right to due process under the Fourteenth Amendment. Furthermore, because Mr. Corcoran's execution while incompetent would violate the Eighth Amendment's prohibition on cruel and unusual punishment, *Madison*, 586 U.S. at 283;

Panetti, 551 U.S. at 959-60; *Ford*, 477 U.S. at 417, a stay of execution should issue so this Court can address these critically important questions of law on appeal.

ARGUMENT

I. Petitioner presents a non-frivolous *Ford* claim which has received a COA.

This Court should stay Mr. Corcoran's execution while it resolves the merits of his appeal. *See Barefoot v. Estelle*, 463 U.S. 880, 895 (1983) (A stay is justified when a petitioner presents "substantial grounds on which relief may be granted."). A stay is warranted to prevent the case from becoming moot in just four days by Mr. Corcoran's execution. *Id.* at 893-94 (once a COA is granted, a court, "where necessary to prevent the case from becoming moot by the petitioner's execution, should grant a stay of execution pending disposition of an appeal. . . ."); *Smith v. Armontrout*, 865 F.2d 1515, 1516 (8th Cir. 1989) (approving a grant of a certificate of probable cause and a stay of execution "pending determination by this Court of the appeal on its merits.").

In *Barefoot*, the Supreme Court made clear that federal courts "need not, and should not, . . . fail to give non-frivolous claims of constitutional error the careful attention that they deserve" and when the court is "unable to resolve the merits . . . before the scheduled date of execution, the petitioner is entitled to a stay of execution to permit due consideration of the merits." 463 U.S. 888-89. Petitioner's claim of constitutional error is non-frivolous, and an appeal on the merits of the first habeas petition raising a competency to be executed claim[3] cannot properly be considered before the scheduled execution on December 18, 2024. *Lonchar v. Thomas*, 517 U.S. 314, 320 (1996).

[3] Incompetency to be executed claims are not ripe until an execution date is set. The claim regarding Mr. Corcoran's incompetency to be executed only ripened on September 11, 2024, when the Indiana Supreme Court set his execution date. *Panetti*, 551 U.S. at 942; *Stewart v. Martinez-Villareal*, 523 U.S. 637, 641-46 (1998); *Holmes*, 816 F.3d at 954; *see also Fulks v. Watson*, 4 F.4th 685, 594 (7th Cir. 2021).

Whether a claim is a "first petition" or a "successor provision" is a "term of art," which carries with it legal effect. "Although Congress did not define the phrase 'second or successive,' as used to modify 'habeas corpus application under section 2254,' §§ 2244(b)(1)-(2), it is well settled that the phrase does not simply refe[r] to all § 2254 applications filed second or successively in time." *Magwood v. Patterson*, 561 U.S. 320, 332 (2010) (internal citations omitted). Mr. Corcoran has already fully litigated one federal habeas petition under § 2254, but that does not make this petition automatically successive and subject to the stay standard offered by the State.

Rather, the Supreme Court has rejected the contention that a habeas petition filed second in time raising a *Ford* claim must be treated as successive. *Panetti v. Quarterman*, 551 U.S. 930, 944 (2007) (citing *Stewart v. Martinez-Villareal*, 523 U.S. 637, 643 (1998) ("The State argued that because the prisoner 'already had one fully-litigated habeas petition, the plain meaning of § 2244(b) … requires his new petition to be treated as successive.' We rejected this contention.") The statutory phrase "second or successive" is a term of art in the habeas context, and *Ford* petitions are not successive but first petitions and should be treated as such. This Court has accepted this deferential treatment of *Ford* claims as first petitions. *See Holmes v. Neal*, 816 F.3d 949, 954 (7th Cir. 2016); *see also Fulks v. Watson*, 4 F.4th 685, 694 (7th Cir. 2021).

Within *Barefoot*, the Supreme Court discussed the distinctions between standards to employ given the procedural circumstances. Indeed, *Barefoot* itself addressed the distinction between successive petitions and first-in-time petitions when the Court noted, "**Second and successive federal habeas corpus petitions present a different issue**." 463 U.S. at 895 (emphasis added). In those successive circumstances, the abuse of writ and more onerous standards are to be employed. But in circumstances involving first habeas petitions, the *Barefoot* Court made clear that a stay of execution is warranted to allow the merits to be addressed. *Id.* at 888-89. Critically,

Barefoot's distinction regarding successors continues to be endorsed the Supreme Court in *Magwood*, *Panetti* and *Martinez-Villareal*. This Court should give effect to that precedent and apply the *Lonchar/Barefoot* standard.

The "critical question" is whether the claims are "palpably incredible" and "patently frivolous or false." *Blackledge v. Allison*, 431 U.S. 63, 76 (1977). Undoubtedly and as recognized by the district court's grant of the COA, Petitioner's claim that Mr. Corcoran's paranoid schizophrenia and debilitating delusions render him incompetent to be executed is not "patently frivolous." Not only have multiple experts from multiple disciplines consistently found and testified that Mr. Corcoran's mental illness prevents him from being able to think rationally and assist his legal counsel in the case for his life, but the credibility of the claim is underscored by the dissent in the Indiana Supreme Court, made up of 40% of the court. The dissent stated:

> The evidence submitted by Corcoran's attorney's reveals a documented history of severe mental illness, an inability to cooperate with counsel, and a desire to be executed to escape prison – all of which raise substantial questions about his current mental capacity. As a result, we should stay Corcoran's execution to allow his attorneys to seek successive post-conviction relief to litigate his competency. But at a minimum, we should stay Corcoran's execution and order a psychiatric examination.

Doc. 1-1 at 241 (*Corcoran,* 2024 WL 5052384, *15 (Goff, J., dissenting, Rush, J., concurring in dissent)). The dissenting judges emphasized that "to ignore these findings now and proceed with an execution without a current competency evaluation amounts to enabling [Mr. Corcoran's] delusions – a state sanctioned escape from suffering rather a measured act of justice." *Id.* The dissent was so concerned by the evidence of Mr. Corcoran's disconnection from reality and so troubled by the possibility of executing a severely mentally person who cannot and does not rationally understand why he is being executed that in their seven-page dissenting opinion, the two justices called for a competency evaluation, because "even if it seems that Corcoran may

understand why the State is seeking execution, the point is that we simply do not know." *Id.* at 245 (*Corcoran*, 2024 WL at *17).

This dissent is presumed reasonable, as noted by Chief Justice Roberts just last year: "Reasonable minds may disagree with our analysis—in fact, at least three do." *Biden v. Nebraska*, 600 U.S. 477, 507 (2023); *cf. Jones v. Basinger*, 653 F.3d 1030 (7th Cir. 2011) ("When a state appellate court is divided on the merits of the constitutional question, issuance of a certificate of appealability should ordinarily be routine[,]" indicating dissents equate to disagreement among reasonable jurists). Because reasonable Indiana Supreme Court jurists disagreed with the Court majority's decision that Mr. Corcoran is competent to be executed and because the district court granted a COA, that claim cannot be patently frivolous, and a stay must issue.

II. Under the more strenuous stay standard, this Court must still grant a stay of execution.

Even under the more strenuous stay standard, this Court must grant the stay of execution. Considerations under the stay standard include "the likelihood of success on the merits, the relative harm to the parties, and the extent to which the inmate has delayed unnecessarily in bringing the claim." *Nelson v. Campbell*, 541 U.S. 637, 649-50 (2004). All the factors weigh in favor of granting Mrs. Corcoran's motion for a stay of execution for Mr. Corcoran.

This Court has explained that "[t]he law governing stays of death sentences is, in general, the same as that employed in other situations." *Williams v. Chrans*, 50 F.3d 1358, 1360 (7th Cir. 1995). Thus the moving party must demonstrate four things: (1) a likelihood of success on the merits; (2) a lack of remedy at law; (3) that irreparable harm will result if the injunction is not granted; and (4) that a balancing of the equities falls in [the movant's] favor" with the "critical factor" being "whether the inmate has delayed unnecessarily in bringing the claim." *Lambert v. Buss*, 498 F.3d 446, 451-52 (7th Cir. 2007). These factors favor staying Mr. Corcoran's execution

while this Court resolves his appeal.

A. Petitioner is likely to succeed on the merits of the incompetency to be executed claim.

Mr. Corcoran does not have the ability to rationally understand the world around him—his paranoid schizophrenia and the delusions it causes create a totally different reality for him. While the reason for his execution is that a jury found him guilty of four counts of murder, he truly views his execution as an assisted suicide—with the State providing the assistance—and not as punishment, because his execution will allow him to escape prison and the torture he delusionally believes he suffers there.

And although Mr. Corcoran can parrot that the reason the State seeks to execute him is because he was found guilty of murder, he has not internalized this reason nor does he believe this reason to be true, as evidenced by recent prison staff notes and his book describing how he is tormented on a regular basis. *See Panetti*, 551 U.S. at 959. In short, like the petitioners in *Panetti* and *Madison*, the evidence of Mr. Corcoran's schizophrenic delusions meets the substantial threshold showing of his incompetence for execution and is likely to succeed on the merits of his claim.

It is significant that the very state procedure that precluded the Allen Superior Court from hearing evidence on Mr. Corcoran's *Ford* claim is a procedure wholly inconsistent with federal law (and the law of every other state that actively carries out executions). It is well-settled that a habeas petition raising a *Ford* claim is not a second or successive habeas petition requiring a higher court's permission to file, but rather a first habeas petition because the *Ford* issue is not ripe until an execution date is set. *Panetti*, 551 U.S. at 942; *Martinez-Villareal*, 523 U.S. at 641-46; *Holmes*, 816 F.3d at 954; *see also Fulks,* 4 F.4th at 594. Yet, contrary to Supreme Court precedent, under Indiana law, a *Ford* claim is considered a successive habeas petition and before it can be filed in

superior court, the Indiana Supreme Court must grant permission. *See* Indiana Post-Conviction Rule 1; *Baird*, 833 N.E.2d 28, 30 (Ind. 2005); *Timberlake v. State,* 858 N.E.2d 625, 627 (Ind. 2006).

The decision to deny Mr. Corcoran further review in the state court was a divisively close case with a razor-thin majority margin. Again, two of the Indiana Supreme Court justices—40% of the court, who are unquestionably reasonable jurists—found the evidence supporting the *Ford* claim to satisfy the substantial threshold showing so as to require an evaluation and further proceedings. That two reasonable jurists disagreed with and dissented from the majority's legally and factually unreasonable opinion demonstrates that this claim has substantial merit.

In denying Petitioner's habeas petition on the *Ford* claim, the United States District Court for the Northern District of Indiana found that the claim was procedurally defaulted because Mr. Corcoran had not signed and verified the petition under Section 3 of the Indiana Rules of Post-Conviction Remedies, and thus the Indiana Supreme Court's opinion rested on an adequate and independent basis. Doc. 1-1 at 13. But the issue of whether Mr. Corcoran had properly waived his post-conviction remedies by not signing the petition was necessarily interwoven with his incompetency—an inquiry under federal law and utilizing the federal *Panetti* standard. Thus, the Indiana Supreme Court's analysis was not purely one of state law, but rather incorporated significant elements of federal law. Moreover, the effect of the district court's finding of procedural default is fundamentally unfair in that it created an unconstitutional Catch-22; Mr. Corcoran's mental illness renders him incompetent to be executed, which is the subject of this litigation, but it is that very same mental illness and incompetency that prevented him from pursuing his best interests and signing the post-conviction petition, which prevents the incompetency to be executed claim from being adjudicated. The district court's finding that the Indiana Supreme Court's

decision relied on an independent and adequate state ground upon which a procedural default could arise was improper.

The district court also found the Indiana Supreme Court's opinion to not be unreasonable under 28 U.S.C. §§ 2254(d)(1) and (2) and to not run afoul § 2254(e)(1). This too was an improper and inaccurate finding. The core issue of this litigation is Mr. Corcoran's mental condition and incompetency to be executed *presently at the time of his execution*—the issue is not whether he was competent to waive post-conviction review two decades ago (which, according to three expert opinions from that time, he was not). But unreasonably and contrary to federal law, the Indiana Supreme Court majority relied on a competency determination from over twenty years ago, and made its own unilateral determination based on the new evidence presented that Mr. Corcoran's mental condition had not changed since then. In doing so, the majority unreasonably failed to comply with its own past practices and order a contemporaneous expert evaluation, which the dissenting justices warned was necessary. The majority also failed to account for the well-established and well-supported fact that competency is variable and is certainly so over the span of twenty years. Even if Mr. Corcoran was competent twenty years ago, his competency has been fluid since then.

The majority also heavily and unreasonably relied on Mr. Corcoran's November 2024 affidavit, while discounting the other evidence, including the new evidence such as Mr. Corcoran's book and notes from prison staff. The majority found the affidavit credible on its face without affording Petitioner due process or a meaningful opportunity to respond to the affidavit and explain its full context. Despite seemingly agreeing that Mr. Corcoran is seriously mentally ill, the majority unreasonably relied on his own statements, which were a product of his mental illness, to find that he is competent. It is unreasonable to find a documented mentally ill person competent on the

virtually sole basis that he insisted he is not mentally ill. *See Corcoran v. Buss*, 551 F.3d 703, 717 (7th Cir. 2008) (Williams, J., dissenting) ("Rather, the person whom the court credited was a person diagnosed with a severe mental illness that causes delusions, who told a doctor and his sister he wanted to die to escape those delusions. . . . In fact, Dr. Parker stated that Corcoran 'would rather be executed than admit that schizophrenia might be contributing to his desire to die.'"). The majority's finding that this single piece of evidence established Mr. Corcoran's competency was unreasonable because the rest of the evidence, including Mr. Corcoran's delusional writings about the inner workings of the ultrasound machine, the notes of prison staff of his recurrent delusions, and the testimony and reports of experts that he is incapable of rational thought or engagement with reality, meets the required substantial threshold showing that Mr. Corcoran does not rationally understand the reasons for his execution. Yet, the district court found that the majority's finding was not unreasonable, speculating that Mr. Corcoran's ability to parrot the reason for his execution, his "cogent" writing, and his interest in "electricity-related concepts" supported the majority's finding that he is rational. Doc. 20 at 34-35. The majority's and the district court's fact-finding and credibility determinations should have been reserved for an evidentiary hearing, which federal due process requires under *Panetti*. 551 U.S. at 949 (fundamental fairness requires an evidentiary hearing (citing *Ford*, 477 U.S. at 424, 426)). These determinations were improper.

The evidence of Mr. Corcoran's paranoid schizophrenia and his debilitating delusions and hallucinations shows that he cannot engage in rational thinking and does not rationally understand the reason for his impending execution. Instead of rationally understanding the execution is punishment for the offenses of which he has been convicted, Mr. Corcoran believes the execution is a State-assisted suicide that will allow him to escape prison torture that does not exist. His desire to escape prison is the very reason he wants to be executed and the reason he intentionally masks

his symptoms of mental illness. Petitioner is substantially likely to succeed on the claim that Mr. Corcoran is incompetent to be executed.

B. Mr. Corcoran Has No Adequate Remedy at Law.

This Court has recognized that "a stay of execution is an equitable remedy," and capital prisoners have "no adequate remedy at law." *Lambert,* 498 F.3d at 452 (quoting *Hill v. McDonough*, 547 U.S. 573, 584 (2006)). "This factor weighs in [Mr. Corcoran's] favor." *Id.*

C. Mr. Corcoran Will Suffer Irreparable Harm Without a Stay.

This Court has explained that, while "[t]he law governing stays of death sentences is, in general, the same as that employed in other situations," the "inquiry with respect to irreparable injury is, however, different." *Chrans*, 50 F.3d at 1360. That is because "death is different"—"execution is the most irremediable and unfathomable penalties." *Ford v. Wainwright*, 477 U.S. 399, 411 (1986). So "[t]here can be no doubt that a defendant facing the death penalty at the hands of the state faces irreparable injury." *Chrans*, 50 F.3d at 1360; *see also Wainwright v. Booker*, 473 U.S. 935, 935 n.1 (1985) (Powell, J., concurring) ("The third requirement – that irreparable harm will result if a stay is not granted – is necessarily present in capital cases."). Thus, "the issue of irreparable injury is taken as established in a capital case." *Chrans*, 50 F.3d at 1360. That necessarily present irreparable injury will be compounded by allowing the execution of a severely mentally ill man who does not rationally understand the reason for his execution, in violation of the Eighth Amendment.

D. The Equities Favor Mr. Corcoran.

As to the issue of relative harm, execution is, by its very nature, irreparable harm. *See, e.g., Wainwright v. Booker*, 473 U.S. 935, 935 n.1 (1985) (Powell, J., concurring) (recognizing that irreparable harm "is necessarily present in capital cases"). Mr. Corcoran faces the irreparable harm

of being put to death, and the irreparable harm of being put to death in violation of his right to be free of cruel and unusual punishment under the Eighth Amendment and his right to due process under the Fourteenth Amendment. *See Back v. Bayh*, 933 F. Supp. 738, 754 (N.D. Ind. 1996) ("When violations of constitutional rights are alleged, further showing of irreparable injury may not be required if what is at stake is not monetary damages. This rule is based on the belief that equal protection rights are so fundamental to our society that any violation of those rights causes irreparable harm."); *Bevis v. City of Naperville*, 85 F.4th 1175, 1219 (7th Cir. 2023) ("[A]n alleged constitutional violation often constitutes irreparable harm."); *see also* 11A Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 2948.1 (3d ed. 2022) ("When an alleged deprivation of a constitutional right is involved . . . most courts hold that no further showing of irreparable injury is necessary."); *Cohen v. Coahoma Cnty., Miss.*, 805 F. Supp. 398, 406 (N.D. Miss. 1992) ("It has been repeatedly recognized by federal courts at all levels that violation of constitutional rights constitutes irreparable harm as a matter of law.").

The State's interest in executing Mr. Corcoran must give way to Mr. Corcoran's interest in being executed only when competent, and to all parties' interest in a full determination of this issue. As the Supreme Court has made clear, once a petitioner makes a substantial threshold showing of incompetence, the Constitution entitles him to "a 'fair hearing' in accord with fundamental fairness." *Panetti*, 551 U.S. at 949 (citing *Ford*, 477 U.S. at 424, 426). Carrying out Mr. Corcoran's execution without affording him a fundamentally fair opportunity to prove his incompetency would violate *Ford* and *Panetti* and the Due Process Clause of the Fourteenth Amendment. *See id.* Furthermore, because Mr. Corcoran does not have a rational understanding of the basis for this execution, the State's plan to execute him subjects him to cruel and unusual punishment and an unreliable sentence in violation of the Eighth Amendment. *Madison*, 586 U.S.

at 283; *Panetti*, 551 U.S. at 959-60; *Ford*, 477 U.S. at 409-10, 417. This Court must accord Mr. Corcoran an opportunity to be heard and stay his execution to provide a "fair hearing" in accord with fundamental fairness. *Panetti*, 551 U.S. at 949.

The State's insistence on enforcing Mr. Corcoran's death sentence in the absence of a full and fair hearing unquestionably violates his constitutional right to due process, and because Mr. Corcoran in fact does not have a rational understanding of the basis for this execution, his execution despite his incompetency will subject him to cruel and unusual punishment in violation of the Eighth Amendment. Without this Court's intervention, Mr. Corcoran will be executed even though he is incompetent and before this incompetency claim can be fully litigated, contrary to the tenets and principles of the Constitution and the mandates of the Supreme Court.

The State will incur no injury for not getting to execute Mr. Corcoran, an incompetent severely mentally ill man, during the Advent season, a mere week before the celebration of Christmas. Instead, the State should only have an interest in carrying out constitutionally sanctioned executions—and here there is a colorable, non-frivolous claim that Mr. Corcoran is incompetent to be executed.

E. There Has Been No Delay in Bringing this Claim.

The State does have a "significant interest in enforcing its criminal judgment." *Nelson v. Campbell*, 541 U.S. 637, 649-50 (2004). But it is now operating in a way that would undermine the judicial process. It failed to schedule Mr. Corcoran's execution for years, which "undermines any urgency surrounding" its need to do so. *Osorio-Martinez v. Attorney Gen. of the U.S.*, 893 F.3d 153, 179 (3d Cir. 2018). And yet now it moves with a frenzied pace.

Petitioner timely filed this claim. This *Ford* claim became ripe only after the Indiana Supreme Court set the execution date on September 11, 2024. *See, e.g., Martinez-Villareal*, 523

U.S. at 644-45; *Holmes*, 816 F.3d at 954; *Fulks*, 4 F.4th at 594. Mr. Corcoran filed the request to file his successive petition for post-conviction relief regarding this claim in the Indiana Supreme Court thereafter. The Indiana Supreme Court denied permission to file for post-conviction relief on December 5, 2024, and issued its opinion on December 10, 2024. Petitioner filed the federal habeas petition containing the *Ford* claim less than 24 hours later, on December 11, 2024. The district court denied the petition and accompanying motion for stay of execution on December 13, 2024, and Petitioner brings this motion for stay of execution the next morning.

The proposed successive petition for post-conviction relief filed in the Indiana Supreme Court included extensive evidence of incompetence, including evidence gathered after the Indiana Supreme Court scheduled his execution. Additionally, even after Mr. Corcoran's legal team requested *all* prison records for 10 months beginning in February 2024, and diligently and repeatedly followed-up on that request on a near-weekly basis, the Department of Correction failed to turn over years' worth of Mr. Corcoran's records until December 2, 2024, when counsel received the complete set of records. Nevertheless, despite waiting on several years' worth of records, Mr. Corcoran's counsel filed its petition in the Indiana Supreme Court in the name of expediency.

Mr. Corcoran has been diligent and there has been no delay in bringing this claim

CONCLUSION

The Supreme Court has announced the stay standard to employ—the *Lonchar*/*Barefoot* standard is the applicable standard under these circumstances. And because Petitioner-Appellant satisfies this standard, this Court should enter a stay of execution. This Court should grant Mr. Corcoran a stay to permit a thorough and reasoned assessment of his first appeal, which reasonable jurists agree should proceed. Alternatively, a stay is warranted under the more strenuous standard because Mr. Corcoran meets all four *Nelson* factors.

Respectfully submitted,

/s/ Laurence E. Komp
LAURENCE E. KOMP, MO. Bar #40446
FAITH J. TAN, IL. Bar #6342729
MICHELLE M. LAW, MO. Bar #45487
Capital Habeas Unit
Federal Public Defender
Western District of Missouri
1000 Walnut St., Ste. 600
Kansas City, MO 64106
(816) 675-0923
laurence_komp@fd.org
faith_tan@fd.org
michelle_law@fd.org

Attorneys for Petitioner-Appellant

CERTIFICATE OF SERVICE

I hereby certify that on December 14, 2024, I electronically filed the foregoing pleading with the Clerk of the Court using the CM/ECF system and sent it via email to Tyler Banks, Office of Indiana Attorney General, at Tyler.Banks@atg.in.gov.

/s/ Laurence E. Komp
Laurence E. Komp