IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

TONY CARRUTHERS,

Appellant,

v.

JONATHAN SKRMETTI, Attorney General, Tennessee, HEIDI KUHN, Shelby County Clerk of Court, STEVE MULROY, Shelby County District Attorney, CERELYN DAVIS, Chief, Memphis Police Department, DAVID RAUSCH, Director, Tennessee Bureau of Investigation, DR. SCOTT COLLIER, Chief, Shelby County Medical Examiner, FRANK STRADA, Commissioner, Tennessee Department of Correction, and KENNETH NELSON, Warden, Riverbend Maximum Security Institution, each in their official capacity,

Appellees.

_____/

Case No: 26-5433

CAPITAL CASE

EXECUTION SCHEDULED MAY 21, 2026, at 10:00 a.m.

APPELLANT'S EMERGENCY MOTION FOR STAY OF EXECUTION AND INCORPORATED MEMORANDUM OF LAW

Pursuant to Federal Rule of Appellate Procedure 27 and 6th Circuit Rules 8 & 27, Appellant Tony Carruthers asks this Court to stay his May

21st execution so this Court can address his appeal of the U.S. District Court for the Middle District of Tennessee's denial of a preliminary injunction in his 42 U.S.C. § 1983 action below, which sought to address Tennessee's arbitrary deprivation of his right to access statutory procedures to forensic testing.[1] Staying Mr. Carruthers' execution is a "modest, responsible step" to allow this Court to determine whether Mr. Carruthers is entitled to relief "before it is too late." *Guerrero v. Busby*, No. 25A1235 2026 WL 1345577, at *1 (Jackson, J., dissenting from grant of application to vacate stay).

I. Introduction

Mr. Carruthers has long maintained his innocence of the crimes for which he is scheduled to be executed this week. In the case below, Mr. Carruthers raised five claims addressing Tennessee's arbitrary

[1] Pursuant to Federal Rule of Appellate Procedure 8(a)(2), this Motion is filed in this Court because the District Court has already denied the relief sought. *See also* 6th Cir. R. 8. All filings in the District Court are referenced by docket number as "(Dist. Dkt. _.)" The District Court's May 15, 2026 *Memorandum Opinion* "(Dist. Dkt. 39) is referenced as the "**Opinion**" and cited as "Op." Mr. Carruthers' *First Amended Complaint for Declaratory and Injunctive Relief Pursuant to 42 U.S.C. § 1983* (Dist. Dkt. 32) is referenced as the "**Amended Complaint**" and cited as "Am. Compl."

deprivation of his right to access statutory procedures to forensic testing that could prove his innocence. (*See generally* Am. Compl.) Specifically, Mr. Carruthers' claims below relate to his inability to access forensic testing under Tennessee's Post-Conviction Fingerprint Analysis Act of 2021, Tenn. Code Ann. §§ 40-30-401 *et seq*. ("**Fingerprint Act**"), and Tennessee's Post-Conviction DNA Analysis Act of 2001, Tenn. Code Ann. §§ 40-30-301 *et seq*. ("**DNA Act**" and together with the Fingerprint Act, the "**Acts**").

Mr. Carruthers also sought a stay of execution and preliminary injunction to allow him time to litigate his claims before being executed. (Dist. Dkt. 3, 22 (collectively, the "**Motions**").) In this case, Mr. Carruthers appeals the District Court's denial of the Motions because it is replete with legal error.

First, the District Court explicitly disregarded Sixth Circuit law in reviewing Mr. Carruthers' Motions—opting instead to apply law from other Circuits. The District Court was not free to do so. *United States v. Gleaves*, 654 F. Supp. 3d 646, 651 (M.D. Tenn. 2023) ("Absent a clear directive from the Supreme Court, this Court is bound by Sixth Circuit precedent."); *see also Brown v. Cassens Transp. Co.*, 492 F.3d 640, 646

(6th Cir. 2007) ("Absent a clear directive from the Supreme Court or a decision of this court sitting en banc, we are not at liberty to reverse this court's precedent."); *Hall v. Eichenlaub*, 559 F. Supp. 2d 777, 782 (E.D. Mich. 2008) ("[A] district court is bound by the decisions of the Circuit Court of Appeals in which it sits.").

Second, the District Court denied Mr. Carruthers' Motions after determining that four of Mr. Carruthers' five claims are barred by the *Rooker-Feldman*[2] doctrine. In reaching this conclusion, the District Court wholly misapprehended the *Rooker-Feldman* doctrine. Contrary to the District Court's conclusion, Supreme Court precedent establishes that Mr. Carruthers' claims are valid § 1983 claims. *See generally Skinner v. Switzer*, 562 U.S. 521 (2011); *Reed v. Goertz*, 598 U.S. 230 (2023); *Gutierrez v. Saenz*, 606 U.S. 305 (2025).

Finally, the District Court concluded Mr. Carruthers' sole surviving claim fails on the merits because the District Court could not identify Mr. Carruthers' asserted liberty interest. (*See generally* Op.) However, the liberty interest at issue is clear and undisputed.

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[2] *See Rooker v. Fidelity Tr. Co.*, 263 U.S. 413 (1923); *D.C. Ct. of Appeals v. Feldman*, 460 U.S. 462 (1983).

Mr. Carruthers faces the ultimate deprivation. Absent a stay, this appeal—and, therefore, Mr. Carruthers' constitutionally protected interest in utilizing Tennessee's statutory post-conviction fingerprint and DNA testing procedures will be rendered moot by his execution. Accordingly, this Court should stay Mr. Carruthers' imminent execution to allow this appeal to proceed (and for any necessary review by the U.S. Supreme Court). *See Guerrero*, 2026 WL 1345577, at *1 (Jackson, J., dissenting from grant of application to vacate stay).

II. Standard for a Stay of Execution

In considering whether to grant a stay of execution, the Court must consider four factors: (1) a likelihood of success on the merits, (2) the applicant will be irreparably injured absent a stay, (3) the stay will substantially injure the other parties, and (4) a stay would serve the public interest. *Nken v. Holder*, 556 U.S. 418, 425-26 (2009); *see also Zagorski v. Mays*, 906 F.3d 414, 415-16 (6th Cir.) (quoting *Workman v. Bell*, 484 F.3d 837, 839 (6th Cir. 2007)), *vacated* 586 U.S. 938 (2018). The Court must balance these four "competing factors." *Zagorski*, 906 F.3d at 416.

When applying these factors in capital cases, the Court must recognize that execution constitutes the ultimate and irreversible injury. *See id.*; *see also Ford v. Wainwright*, 477 U.S. 399, 411 (1986) ("This especial concern is a natural consequence of the knowledge that execution is the most irremediable and unfathomable of penalties; that death is different"). As this Court has recognized, once Mr. Carruthers is executed, no court can grant meaningful relief, and the case becomes moot in the most absolute sense.[3]

Here, each of the factors weighs strongly in favor of granting Mr. Carruthers a stay of execution. When considered together, and especially because Mr. Carruthers faces execution in mere days, the balance tips decidedly in Mr. Carruthers' favor.

[3] *See, e.g.*, *Coe v. Bell*, 209 F.3d 815, 818 (6th Cir. 2000) ("grant[ing] a stay of execution to evaluate fully the merits and to prevent [the] scheduled execution from mooting [the] appeal"); *Zagorski*, 906 F.3d at 416 (granting an stay of execution, writing: "If we do not grant a stay, we will necessarily be deciding or rendering moot his appeal, without affording [petitioner] the opportunity to present his appeal to us in the first instance.").

III. Mr. Carruthers has a strong likelihood of success in this appeal.

Mr. Carruthers has a strong likelihood of success in this appeal because the District Court's Opinion committed reversible legal error. The issues in this appeal address the District Court's legal conclusions, which this Court reviews *de novo*. *Certified Restoration Dry Cleaning Network, L.L.C. v. Tenke Corp.*, 511 F.3d 535, 541 (6th Cir. 2007).

A. The District Court abandoned Sixth Circuit law and applied the wrong legal standard in denying Mr. Carruthers' Motions, thereby prejudicing Mr. Carruthers.

Sixth Circuit law is clear that the four-prong test for a stay of execution (and preliminary injunction) is a balancing test. *See, e.g.*, *Zagorski v. Mays*, 906 F.3d 414, 416 (6th Cir. 2018) (quoting *Workman v. Bell*, 484 F.3d 837, 839 (6th Cir. 2007)). In fact, the District Court recognized this. (*See* Op. at 26-27, n.31 ("Published Sixth Circuit case law stands unmistakably for the proposition that these four items are factors rather than requirements . . . .").)

However, the District Court explicitly abandoned this Sixth Circuit law and, instead, applied the test as establishing four mandatory prongs. (*See* Op., at 26 ("To obtain a stay of execution a plaintiff must satisfy a

four-requirement test, just as he would when moving for a preliminary injunction."); *id.* at 27, n.13 (explicitly abandoning Sixth Circuit law to, instead, follow Ninth and Eleventh Circuit law).) The District Court was not free to do so. *United States v. Gleaves*, 654 F. Supp. 3d 646, 651 (M.D. Tenn. 2023) ("Absent a clear directive from the Supreme Court, this Court is bound by Sixth Circuit precedent."); *see also Brown v. Cassens Transp. Co.*, 492 F.3d 640, 646 (6th Cir. 2007) ("Absent a clear directive from the Supreme Court or a decision of this court sitting en banc, we are not at liberty to reverse this court's precedent."); *Hall v. Eichenlaub*, 559 F. Supp. 2d 777, 782 (E.D. Mich. 2008) ("[A] district court is bound by the decisions of the Circuit Court of Appeals in which it sits.").

Rather than considering each of the factors, the District Court determined *only* that Mr. Carruthers does not have a likelihood of success on the merits (wrongly, as discussed below). (*See generally* Op.) After making that determination, the District Court abandoned the required analysis on the other factors. (Op., at 55.)

Contrary to the District Court's analysis, this Court has granted a stay of execution even where the petitioner did not show a likelihood of success on the merits. *See, e.g.*, *Zagorski*, 906 F.3d at 416 (granting a stay

of execution even where petitioner "face[d] an uphill battle on the merits" because "due process requires that [petitioner] be afforded an opportunity to present his appeal" to this Court). This Court has also granted a stay without analyzing this factor because of the interests involved—as the district Court recognized. (*See* Op., at 27, n.31 (citing *Hartman v. Bobby*, 319 F. App'x 370, 371-72 (6th Cir. 2009)).)

Even under the more deferential abuse-of-discretion standard applicable, the District Court's explicit abandonment of Sixth Circuit law categorical refusal to analyze the remaining three factors in a capital case—where irreparable harm is execution—was in error. This reversible error prejudiced Mr. Carruthers by essentially eliminating his ability to litigate his claims.

On this basis alone, Mr. Carruthers has a strong likelihood of success on the merits of this appeal. Further, even on the one prong the District Court did analyze, it erred—as discussed below.

B. The District Court wrongly concluded that four of Mr. Carruthers' claims are barred by the *Rooker-Feldman* doctrine.

The District Court erroneously applied the *Rooker-Feldman* doctrine to determine that Mr. Carruthers does not have a likelihood of

success on the merits on Claims I-III and V of his *Amended Complaint*. To the contrary, the Supreme Court has squarely held that § 1983 challenges to post-conviction forensic testing statutes as authoritatively construed are not barred by the *Rooker-Feldman* doctrine.

In *Skinner*, the Supreme Court held that a death-row prisoner's challenge to a Texas DNA statute "did not challenge the adverse [state court] decisions themselves" but rather "target[ed] as unconstitutional the [state] statute they authoritatively construed." 562 U.S. at 532. The Court articulated the controlling principle: "[A] state-court decision is not reviewable by lower federal courts, but a statute or rule governing the decision may be challenged in a federal action." *Id.* at 532-33; *see also Reed*, 598 U.S. at 235; *see also Gutierrez*, 606 U.S. 305. That is exactly what Mr. Carruthers seeks to do here.

The District Court held that Claims I-III and V "specifically challenge[] particular prior adverse state court rulings" and are therefore barred by *Rooker-Feldman*. The court reasoned that Mr. Carruthers' allegations—which reference specific state-court rulings against Mr. Carruthers and quote from them—demonstrate that he is "challenging specifically" the denials themselves rather than the Acts. (Op., at 33, 38-

39.) This analysis is not only incorrect but reflects a fundamental misapprehension of the *Skinner*/*Reed* framework.

In reaching this conclusion, the District Court conflated the *evidence* of an unconstitutional construction with a request for federal appellate review of a state court decision. Mr. Carruthers' pleading necessarily references specific state-court decisions, including his own, because those decisions constitute the evidence of *how* the statutes have been authoritatively construed and the outcomes manifested by these constructions.

A plaintiff cannot demonstrate that a statute has been construed unconstitutionally without pointing to the decisions that effectuated the unconstitutional construction. That is precisely what *Skinner* held permissible: the plaintiff "target[ed] as unconstitutional the [state] statute [the state courts] authoritatively construed." 562 U.S. at 532.

Indeed, Mr. Carruthers' claims target several distinct unconstitutional constructions of the Acts, all of which violate fundamental fairness and deprive prisoners like Mr. Carruthers of the ability to use and access the Acts, including:

1. Although the Fingerprint Act requires a "reasonable probability" standard, the CCA applied what amounts to a "conclusive proof of innocence" standard in reviewing Mr. Carruthers' request, asking whether fingerprint evidence would "eliminate[] the possibility" of involvement. (Dist. Dkt. 32-12, at 14.) As authoritatively construed, this significantly increases the burden on prisoners seeking relief under the Fingerprint Act in contravention of the language enacted by the Tennessee Legislature. (*See* Am. Compl. ¶¶ 105, 109.)

2. While Tennessee courts have made clear that there is no time-limit for seeking testing under the DNA Act, the Tennessee Supreme Court denied Mr. Carruthers' first DNA motion as "an eleventh-hour DNA claim that was not timely pursued via the existing DNA Act." (Dist. Dkt. 32-13.) In other words, the Tennessee courts authoritatively construed the DNA Act to include a timeliness requirement that appears nowhere in the statutory text. (Am. Compl. Count III.)

3. Rule 12.4(E) provides that post-execution-date collateral litigation "must commence with the filing of a motion in

this Court." Yet the Tennessee Supreme Court construed its own rule to mean that it "neither created a new procedural avenue nor granted this Court original jurisdiction" to adjudicate DNA claims. (Dist. Dkt. 32-13.) Count III of the Amended Complaint challenges the Rule as authoritatively construed to mean the opposite of what it says—directing inmates to file in a specific court that then disclaims jurisdiction. Despite the District Court agreeing that the statute grants the Tennessee Supreme Court original jurisdiction over these claims, it refused to grant any relief. (*See* Op. 39, n. 14. ("This rule thus carves out an exception to the Tennessee Supreme Court's customary role, which is to serve not as a forum for commencement of litigation but rather as a forum for appellate-level review of cases commenced in a lower court.").)

Each of these were arbitrary, unique, and irrational constructions of the Acts and Rule 12.4(E) that deprived Mr. Carruthers of due process of law. *See Bouie v. City of Columbia*, 378 U.S. 347, 353 (1964); *Marks v. United States*, 430 U.S. 188 (1977); *see also Shuttlesworth v. City of Birmingham,* 382 U.S. 87, 90-92 (1965); *Cole v. Arkansas*, 333 U.S. 196 (1948).

To be clear, none of Mr. Carruthers' claims asked the District Court to sit in appellate review of a particular Tennessee state-court ruling. Rather, Mr. Carruthers challenged the state's construction of the Acts and Rule 12.4(E), as outlined above.

In his claims below, Mr. Carruthers asked the District Court to declare that the Acts and Rule 12.4(E), as authoritatively construed by the Tennessee courts, violate his right to due process. *See* U.S. Const. amend. XIV; *Bouie*, 378 U.S. at 353 (holding that "an unforeseeable judicial enlargement of a criminal statute, applied retroactively, operates precisely like an ex post facto law" and therefore violates due process); *Marks*, 430 U.S. at 191-92 (holding that retroactive application of a new, broader judicial standard violates due process because individuals lacked fair warning of the changed legal rule); *see also Shuttlesworth*, 382 U.S. at 90-92; *Cole*, 333 U.S. 196. (*See generally* Am. Compl.) Even the allegations cited in the District Court's Opinion make clear that was the basis for Mr. Carruthers' claims. (*See* Op., at 33-35 (quoting Am. Compl.).) Contrary to the District Court's ruling, this is precisely the type of claim that the Supreme Court has held cognizable under § 1983. *Skinner*, 562 U.S. at 532; *Reed*, 598 U.S. at 235.

In *Bouie*, the Supreme Court established that a judicial interpretation of a statute that is unforeseeable and contradicts the statute's plain text violates the Due Process Clause—operating as the judicial equivalent of an ex post facto law. The Court held that "an unforeseeable judicial enlargement of a criminal statute, applied retroactively, operates precisely like an ex post facto law, such as Art. I, § 10, of the Constitution forbids." 378 U.S. at 353. While *Bouie* arose in the criminal punishment context, its animating principle—that due process forbids the retroactive application of unforeseeable judicial constructions—extends to any deprivation of a constitutionally protected interest. *See Marks*, 430 U.S. at 191-92 (applying *Bouie*'s fair-warning principle to the retroactive broadening of judicial standards); *Shuttlesworth*, 382 U.S. at 90-92 (holding that a person cannot be penalized for failing to comply with an unconstitutional or nonexistent legal requirement); *Cole*, 333 U.S. at 201 (holding that due process requires judgment on the legal theory actually given notice of).

The *Bouie* framework independently reinforces the conclusion that these claims survive *Rooker-Feldman*. A claim that a judicial construction is so unforeseeable as to violate due process is, by its nature,

a challenge to the construction rather than to the underlying ruling. That is what Mr. Carruthers has raised here and is precisely the type of claim that is cognizable under § 1983. *Reed*, 598 U.S. 230; *Skinner*, 562 U.S. 521; *Gutierrez*, 606 U.S. at 314.

The principle of *Shuttlesworth*, 382 U.S. at 90-92, applies with full force here: a person cannot be penalized for failing to comply with a legal requirement that does not exist. The CCA penalized Mr. Carruthers for not meeting a standard that does not exist in the Fingerprint Act. And the TSC penalized Mr. Carruthers on two grounds: (1) filing in the "wrong court," notwithstanding that Rule 12.4(E) expressly directed him to file in the Tennessee Supreme Court; and (2) filing "untimely," notwithstanding that the DNA Act contains no filing deadline whatsoever. Under *Shuttlesworth*, this was constitutionally impermissible.

Similarly, under *Cole*, 333 U.S. 196, due process requires that a litigant be judged based on the legal theory of which he was actually given notice. For the reasons discussed, the Tennessee courts did the opposite. Under *Cole*, substituting an unannounced standard for the one in the statute violates due process.

Indeed, the District Court itself recognized that the *Rooker-Feldman* doctrine "does not bar as-applied constitutional challenges seeking prospective relief as long as 'the source of [the plaintiff]'s alleged injury is not the past state court judgments' but 'the purported unconstitutionality of [the statute] as applied in future cases.'" (Op., at 31 (quoting *Hall v. Callahan*, 727 F.3d 450, 455 n.3 (6th Cir. 2013)).) Each of Mr. Carruthers' claims is squarely within *Hall*'s framework. (*See generally* Am. Compl.)[4]

For these reasons, the District Court erred in determining that *Rooker-Feldman* barred four of Mr. Carruthers' claims. Accordingly, Mr. Carruthers has a strong likelihood of success on the merits of his appeal.

C. The District Court erred in concluding that Mr. Carruthers had not identified a liberty interest in Count IV.

As to Mr. Carruthers' final-remaining claim (Count IV), the District Court determined that it could not identify the liberty interest at issue. (*See* Op. 48-49.) But the liberty interest at issue is straightforward and well-established: the constitutionally protected interest in utilizing the

[4] In fact, as the District Court recognized, Mr. Carruthers' second DNA motion was still pending in the Tennessee state court when his Amended Complaint was filed.

post-conviction DNA and fingerprint testing procedures that Tennessee affirmatively created through the Acts, without being deprived of that interest through fundamentally inadequate process. *See Dist. Attorney's Office for Third Jud. Dist. v. Osborne*, 557 U.S. 52, 68–70 (2009); *Reed*, 598 U.S. 230; *Skinner*, 562 U.S. 521; *Gutierrez*, 606 U.S. at 314. Indeed, that is *exactly what* Mr. Carruthers pled. (*See, e.g.*, Am. Compl. ¶ 173 ("Mr. Carruthers has a liberty interest in utilizing state procedures to demonstrate his innocence and/or seek a reduction of his sentence.").) Contrary to the District Court's conclusions, nothing in Mr. Carruthers' Motions contradicted his pleadings.

In reality, despite the District Court's constrained reading, every formulation Mr. Carruthers has offered reduces to a single, consistent proposition: he has a constitutionally protected interest in accessing state-created DNA and fingerprint testing procedures to establish his innocence; those procedures have never been made available to him in any functional sense; the forensic evidence that could prove his innocence exists and can be tested today; and the State suffers no prejudice from allowing that testing. This is the most basic application of procedural due process: the State created a right; Mr. Carruthers is entitled to a fair

procedure to access that right; and the State is about to render its arbitrary deprivation of such right permanent and irreversible by executing him in violation of *Logan v. Zimmerman Brush*, 455 U.S. 422 (1982).

To the extent any clarification is required, Mr. Carruthers states unequivocally that the liberty interest he asserts is the constitutionally protected interest in accessing and utilizing the post-conviction DNA and fingerprint testing procedures that Tennessee affirmatively created through the Acts to establish his innocence, without being deprived of that interest through fundamentally inadequate process. It is not an interest in "being found innocent" (which would implicate habeas corpus). (Op., at 49.) Nor is it a "compound" interest combining multiple theories. *Id.* It is the interest that the District Court's own citations identify and that *Osborne*, *Skinner*, and *Reed* have recognized.

IV. The irreparable harm Mr. Carruthers faces absent a stay is self-evident and irreversible.

Execution is the ultimate, irreversible deprivation. *See Woodson v. North Carolina*, 428 U.S. 280, 305 (1976). If the execution proceeds, this case will be rendered moot in its entirety, and Mr. Carruthers will be

permanently and irrevocably deprived of his constitutionally protected interest in utilizing the post-conviction DNA testing procedures that Tennessee created through the DNA Act. The threatened harm is neither speculative nor contingent; it is certain and irreversible. As this Court has found in the past, this factor weighs overwhelmingly in favor of a stay. *See Hartman*, 319 Fed. App'x at 370; *Hill v. McDonough*, 547 U.S. 573, 584 (2006) (recognizing that "[t]he injury in [a capital] case—the lack of an opportunity for a prisoner to prove his claims—is irreparable").

V. The balance of harms and public interest weigh in Mr. Carruthers' favor.

"[A] stay of execution is an equitable remedy." *Hill*, 547 U.S. at 584. The balance of equities tips decisively in Mr. Carruthers' favor. The harm to Mr. Carruthers absent a stay—execution—is absolute and irreversible. The harm to the State from a brief delay in carrying out the sentence is, by contrast, minimal: a temporary postponement of the execution date. *Hartman*, 319 Fed. App'x at 370.

Also, the State possesses no cognizable interest in executing a person before he can utilize the post-conviction DNA testing procedures that the State itself created—particularly where the biological evidence

at issue has never been tested. *See id. Cf. Herrera v. Collins*, 506 U.S. 390, 417 (1993) (O'Connor, J., concurring) ("[T]he execution of a legally and factually innocent person would be a constitutionally intolerable event."). The public interest likewise strongly favors ensuring that the liberty interest in utilizing state-created post-conviction DNA testing procedures is not rendered illusory by judicial construction, and that the irreversible penalty of death is not carried out where biological evidence remains untested.

Therefore, this factor also weighs heavily in favor of granting Mr. Carruthers a stay.

VI. Any perceived delay was not Mr. Carruthers' making.

To the extent the State invokes *Gomez v. United States District Court*, 503 U.S. 653 (1992), for the proposition that last-minute filings may justify denial of a stay, this argument fails. Mr. Carruthers' litigation timeline was dictated not by dilatory conduct on his part, but by the Tennessee Supreme Court's own proceedings. Mr. Carruthers' execution was set on September 30, 2025. He had already filed his request for testing under the Fingerprint Act when his execution was set, and it took years for resolution of that request, with a final state court

opinion issued on April 16, 2026, just a month ahead of his execution. He filed the lawsuit below just twelve days later.

Further, as to his DNA-related claims, Tennessee Supreme Court Rule 12.4(E) was amended in December 2025. Mr. Carruthers filed his first DNA motion in the Tennessee Supreme Court on April 9, 2026, as Rule 12.4(E) required—within days of the undersigned being retained as counsel. (*See* Dist. Dkt. 32-3.) The record is undisputed that the DNA testing Mr. Carruthers requests could be completed in approximately two weeks. Mr. Carruthers' original DNA motion was filed with *plenty* of time for the DNA testing to be completed *before* his execution. Had the State agreed to the testing at the outset, it would have been complete sometime in late April. It is illogical to say that the DNA motion was filed for the purpose of delay where the requested relief could have been achieved prior to Mr. Carruthers' execution date.

Unfortunately, the Tennessee Supreme Court did not deny Mr. Carruthers' original motion until April 30, 2026 (Dist. Dkt. 32-13)—a week after the testing would have been completed. Mr. Carruthers filed his Amended Complaint on May 8, 2026, just eight days after the Tennessee Supreme Court's denial. (Dist. Dkt. 1.)

Mr. Carruthers could not have filed his § 1983 action challenging the DNA-related statutes as authoritatively construed until the Tennessee Supreme Court issued the authoritative construction on April 30. Indeed, Mr. Carruthers filed his Amended Complaint adding the DNA Act and Rule 12.4(E) claims between the Tennessee Supreme Court's denial and the Shelby County Criminal Court's denial of his second DNA Motion on the merits. (*See generally* Am. Compl.) The State cannot invoke *Gomez* to benefit from delay attributable to its own judicial processes. *See Nelson v. Campbell*, 541 U.S. 637, 649–50 (2004) (noting that equitable considerations weigh against penalizing a prisoner for delay not of his own making).

VII. There is a strong nexus between the stay and the underlying relief.

The State may contend that because a successful § 1983 action yields only access to DNA testing—rather than immediate release or vacation of the conviction—there is an insufficient nexus between the underlying claim and the extraordinary remedy of a stay of execution. This argument lacks merit.

As the Supreme Court recognized in *Skinner*, "[s]uccess in [the] suit gains for [plaintiff] only access to the [requested] evidence, which may

prove exculpatory, inculpatory, or inconclusive." 562 U.S. at 525. The purpose of a stay is not to guarantee a particular outcome on the merits; it is to preserve the court's jurisdiction and capacity to afford meaningful relief. *See id.*; *see also Gutierrez v. Saenz*, 145 S. Ct. 118, 118-19 (2024) (granting a stay to address similar issues).

To obtain a stay, the movant is not required to demonstrate at the threshold that his § 1983 claim will itself invalidate the underlying conviction. *See Alabama v. U.S. Army Corps of Eng'rs*, 424 F.3d 1117, 1128 (11th Cir. 2005). Actually allowing Mr. Carruthers the testing is the necessary first step in a process that could lead to exoneration through subsequent state post-conviction proceedings. Courts have recognized that preserving the petitioner's ability to utilize state-created testing procedures—which can only occur while the petitioner is alive—justifies a stay.

The District Court cited *Durr v. Cordray*, 602 F.3d 731 (6th Cir. 2010), for the proposition that the absence of a direct nexus between DNA access and conviction invalidation may undermine the basis for a stay. Notably, however, the District Court itself acknowledged that it was "not comfortable" making this argument dispositive and expressly declined to

deny the stay on this basis alone. *Durr* is distinguishable from the present case in at least four material respects. First, in *Durr*, the prisoner presented no viable evidence to test: the State's DNA expert testified that the necklace at issue had been stored in an unsealed envelope, was "unsuitable for DNA testing" due to the victim's advanced decomposition, and that "any DNA results would be wholly unreliable" given the lack of chain of custody. *Id.* at 733-34. Durr "did not call any witnesses at the hearing" and presented "no documentation to support his bald assertion that the DNA results from testing the necklace would have been helpful, much less to support a claim of actual innocence." *Id.* at 738.

By contrast, the biological evidence in Mr. Carruthers' case—fingernail specimens, ligature bindings, and an unknown male DNA profile from the white blanket—exists, has never been subjected to the requested DNA analysis, and is in testable condition. Moreover, Mr. Carruthers has presented substantial documentation of the evidence's potential significance: his co-defendant James Montgomery identified Ronnie Irving as the "kidnap man," and the State itself entered into an *Alford* plea with Montgomery—leading to his release not just from death row but from prison altogether—based on some limited 2003 DNA results

excluding both Mr. Montgomery and Mr. Carruthers from the tested evidence. Yet, Mr. Carruthers faces execution in just days—based on a conviction and death sentence that rested on circumstantial evidence, primarily from the testimony of convicted felons and a secretly paid career government informant.

WHEREFORE, Appellant Tony Carruthers respectfully requests that this Court enter an Order granting this Motion, staying his execution scheduled for May 21, 2026, and granting all such other relief as the Court deems appropriate.

Dated: May 17, 2026

Respectfully submitted,

/s/ Lucas Cameron-Vaughn

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CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on May 17, 2026, a true and correct copy of the foregoing has been served on counsel for all Appellees via the Court's CM/ECF system to the following:

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g), I, Lucas Cameron-Vaughn, Esq., certify that this Motion complies with the word limitation requirements of Rule 27(d). Excluding the parts of the Motion exempted by Rule 32(f), this Motion contains 4,807 words.

/s/ Lucas Cameron-Vaughn
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