

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE**

TONY CARRUTHERS,

Case No: 3:26-cv-00540

Plaintiff,

CAPITAL CASE

v.

**EXECUTION SCHEDULED
MAY 21, 2026**

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,

Defendants.

**PLAINTIFF'S EMERGENCY MOTION FOR
PRELIMINARY INJUNCTION AND STAY OF EXECUTION**

INTRODUCTION

Plaintiff Tony Carruthers, a prisoner under sentence of death at Riverbend Correctional Facility in Nashville, Tennessee, is scheduled to be executed on May 21, 2026, for crimes he maintains he did not commit, while the very evidence that could prove his innocence sits untested in Defendants' custody. His conviction and death sentence rest entirely on circumstantial evidence—including testimony from a secretly paid government informant, several convicted felons, and a medical examiner who has since disavowed his trial testimony. No physical evidence

has ever linked Mr. Carruthers to these crimes. In fact, his codefendant has told investigators that Mr. Carruthers did not commit these crimes.

For years, Mr. Carruthers has tried to obtain forensic testing of evidence from the crime scenes, which he maintains would prove his innocence. Concurrent with this motion, Mr. Carruthers is filing a Complaint pursuant to 42 U.S.C. § 1983 addressing the Tennessee courts' violation of Mr. Carruthers' constitutional rights in denying those requests. This is not a successive habeas petition. Nor is it brought for the purpose of delay. Instead, this is an original civil rights action brought under 42 U.S.C. § 1983 challenging Defendants' unconstitutional denial of Mr. Carruthers' rights to due process and access to the courts by refusing to permit forensic testing of fingerprint evidence under Tennessee's own post-conviction testing statutes that could prove Mr. Carruthers is innocent of the crimes for which the State intends to take his life. *See Skinner v. Switzer*, 562 U.S. 521, 525 (2011) (holding that a convicted person's challenge to a state's refusal to release biological evidence for DNA testing may be brought under § 1983).¹

Without a stay of execution, Mr. Carruthers will be permanently deprived of the opportunity to test readily available forensic evidence that could establish his innocence. Absent a preliminary injunction, Tennessee will proceed with Mr. Carruthers' execution despite holding evidence that could hold critical answers to the legitimacy and legality of Mr. Carruthers' convictions and sentence. Because Mr. Carruthers is substantially likely to succeed on his claims in this case, this Court should issue a preliminary injunction and grant a stay of his scheduled May 21 execution to allow full litigation of his § 1983 claims.

¹ In addition to the fingerprint testing, Mr. Carruthers currently has a request for DNA testing and under Tennessee's Post-Conviction DNA Analysis Act of 2001 pending at the Tennessee Supreme Court. If that claim is denied, Mr. Carruthers intends to amend his Complaint in this case to address that denial.

LEGAL STANDARD

“[A] stay of execution is an equitable remedy.” *Hartman v. Bobby*, 319 Fed. App’x 370, 370 (6th Cir. 2009) (quoting *Hill v. McDonough*, 547 U.S. 573, 584 (2006)). In determining whether to grant a stay of execution, the Court must consider four factors: “1) whether there is a likelihood he will succeed on the merits of the appeal; 2) whether there is a likelihood he will suffer irreparable harm absent a stay; 3) whether the stay will cause substantial harm to others; and 4) whether the injunction would serve the public interest.” *Id.* (quoting *Workman v. Bell*, 484 F.3d 837, 839 (6th Cir. 2007)). The standard is the same for seeking a preliminary injunction in this situation. *See Hill v. McDonough*, 547 U.S. 53, 584 (2006); *Barefoot v. Estelle*, 463 U.S. 880, 895 (1983); *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997). The Court should also consider “the extent to which the inmate has delayed unnecessarily in bringing the claim.” *Nelson v. Campbell*, 541 U.S. 637, 650 (2004).

ARGUMENT

The U.S. Supreme Court has long recognized that death is different.” *Gregg v. Georgia*, 428 U.S. 153, 188 (1976). It is the only irreversible punishment in the American criminal justice system. *See Woodson v. North Carolina*, 428 U.S. 280, 305 (1976). “Death, in its finality, differs more from life imprisonment than a 100-year prison term differs from one of only a year or two. Because of that qualitative difference, there is a corresponding difference in the need for reliability in the determination that death is the appropriate punishment” *Id.* Here, Mr. Carruthers’ claims seek just that—forensic testing to which he has been unconstitutionally denied that will determine whether his death sentence and execution are reliable.

I. Mr. Carruthers has a strong likelihood of success on the merits.

Mr. Carruthers' concurrently filed Complaint raises meritorious claims under 42 U.S.C. § 1983 that Defendants violated his constitutional rights to due process and access to the courts by denying forensic testing under Tennessee's Post-Conviction Fingerprint Analysis Act of 2021.

The Supreme Court has unequivocally held that a convicted person possesses a liberty interest in demonstrating his innocence with new evidence under state law that creates avenues for doing so. *Gutierrez v. Saenz*, 606 U.S. 305, 314 (2025); *Dist. Attorney's Office for Third Judicial Dist. v. Osborne*, 557 U.S. 52, 68–69 (2009). Where, as here, a state provides statutory mechanisms for post-conviction forensic testing, the state's procedures for applying those statutes must "comport with fundamental fairness." *Osborne*, 557 U.S. at 69; *see also Pichiorri v. Burghes*, 162 F.4th 745 (6th Cir. 2025) (recognizing that state law can give rise to a liberty interest for a prisoner in obtaining DNA evidence).

Here, the Tennessee state courts violated fundamental fairness and Mr. Carruthers' constitutional rights by: (a) applying an improperly heightened standard to Mr. Carruthers' petitions that is not found in the statutory text; (b) failing to analyze the permissive provisions of both statutes; (c) imposing improper temporal limitations on the evidence eligible for testing; (d) dismissing the significance of evidence that could inculpate third parties, including Ronnie "Eyeball" Irving, who Mr. Carruthers' co-defendant James Montgomery identified as the actual third participant in the crimes; and (e) summarily dismissing Mr. Carruthers' petitions despite his satisfaction of the statutory requirements.

The strength of Mr. Carruthers' claims is underscored by the extraordinary circumstances of this case. The Sixth Circuit itself has noted the "troubling" treatment of Mr. Carruthers' right to counsel at his trial, where he was forced to represent himself despite repeated requests for counsel.

Carruthers v. Mays, 889 F.3d 273 (6th Cir. 2018). His co-defendant Mr. Montgomery received a new trial on appeal precisely because of the prejudice caused by Mr. Carruthers' forced self-representation and ultimately accepted a plea deal that led to his release in 2016. Meanwhile, Mr. Carruthers—who Mr. Montgomery has told investigators was not involved in the crimes—remains sentenced to death.

The evidence of Mr. Carruthers' innocence has only grown stronger over time. In 2010, co-defendant Montgomery gave a statement exonerating Mr. Carruthers and identifying Ronnie Irving as the actual third participant. Then, in 2024, after decades of denying and evading requests for information, the State finally revealed that its key witness, Alfredo Shaw, was a paid government informant. Further, the medical examiner who testified at Mr. Carruthers trial, Dr. O.C. Smith, has disavowed his trial testimony that the victims were buried alive.

In this case, Mr. Carruthers seeks to obtain testing of critical forensic evidence—six unidentified latent fingerprints from the crime scene²—that has not be tested and could prove his innocence. Mr. Carruthers is entitled to this testing under Tennessee law, and it was unconstitutionally denied by the state courts.

Accordingly, Mr. Carruthers has a strong likelihood of succeeding on the merits of his § 1983 claims.

II. Mr. Carruthers will suffer the ultimate irreparable harm absent a stay.

Execution is the ultimate, irreversible deprivation. *See Woodson*, 428 U.S. at 305. Once carried out, no judicial remedy can restore Mr. Carruthers' life—even if forensic testing later conclusively demonstrates his innocence. Mr. Carruthers' execution is currently scheduled for

² In his pending DNA request, Mr. Carruthers seeks testing of fingernail scrapings from all three victims, cloth bindings from the victims' bodies, and an unknown male DNA profile on a blanket buried with the victim. *See supra* note 1.

May 21, 2026—less than thirty days away. Without a stay, this Court’s ability to adjudicate Mr. Carruthers’ meritorious § 1983 claims will be forever mooted by his death. The forensic evidence at issue—which could prove his innocence—will never be tested. This is the very definition of irreparable harm. Because execution is irrevocable, the irreparable harm factor weighs “unquestionably favor[s] granting a stay” and preliminary injunction. *Hartman* , 319 F. App’x at 371.

III. The balance of equities favors a stay.

Proceeding with the execution would permanently and irrevocably deprive Mr. Carruthers of the ability to test forensic evidence that could establish his innocence. On the other hand, a temporary stay of execution imposes minimal burden on the State. *See id.* The State’s interest in carrying out a lawful sentence is not eliminated by a brief delay—it is merely postponed pending resolution of Mr. Carruthers’ constitutional claims, which could show that his execution is completely unwarranted. *See id.* (“[T]emporarily staying the execution would not cause substantial harm to others.”).

The equities here are particularly stark. Mr. Carruthers has been on death row for approximately thirty years. No physical evidence has ever linked him to the murders. The key witness against him was a paid government informant whose status was concealed for three decades. A co-defendant has publicly exonerated him. And the State possesses untested forensic evidence that could resolve the question of Mr. Carruthers’ guilt or innocence once and for all. Under these circumstances, the balance of equities tips sharply in favor of granting a stay and preliminary injunction to allow this Court to resolve Mr. Carruthers’ claims on the merits. *See id.*

IV. The public interest strongly favors a stay of Mr. Carruthers' execution.

There is a powerful public interest in ensuring that no innocent person is executed by the State. “[T]he execution of a legally and factually innocent person would be a constitutionally intolerable event.” *Herrera v. Collins*, 506 U.S. 390, 419 (1993) (O’Connor, J., concurring). The integrity of our criminal justice system depends on public confidence that convictions are reliable and that the State does not carry out irreversible punishment when credible evidence of innocence remains untested.

Likewise, the public interest is served by allowing this Court to adjudicate the important constitutional questions raised in Mr. Carruthers’ Complaint—namely, whether Defendants’ application of Tennessee’s post-conviction forensic testing statutes comported with due process. These questions have broad significance for the administration of justice in Tennessee and throughout the Sixth Circuit.

Accordingly, the public interest strongly favors the Court granting Mr. Carruthers a stay of execution and preliminary injunction.

V. Mr. Carruthers’ claims are not filed for delay.

Mr. Carruthers’ claims are not filed for the purpose of delay. His petition for fingerprint testing was filed in 2021 and just resolved in April of 2026. Rather than delay, Mr. Carruthers’ claims are filed for the critical purpose of obtaining forensic testing to prove his innocence before he is executed—testing which he has been unconstitutionally denied.³

³ Mr. Carruthers’ pending petition for DNA testing was filed within two weeks of new counsel assuming representation. If the State of Tennessee had agreed to the testing when the state court DNA testing petition was filed, the testing would be completed by now. *See Keel Aff.* (attached to Complaint), at p.8.

WHEREFORE, Plaintiff Tony Carruthers respectfully requests that this Court enter an order (1) granting this motion, (2) staying his execution currently scheduled for May 21, 2026, pending resolution of his Complaint Pursuant to 42 U.S.C. § 1983, (3) entering a preliminary injunction enjoining Defendants from executing Mr. Carruthers until this litigation is resolved, and (4) granting all other relief the Court deems appropriate.

Dated: April 28, 2026

Respectfully submitted,

/s/ Lucas Cameron-Vaughn
Lucas Cameron-Vaughn, Esq.
TN BPR No. 036284
ACLU of Tennessee
P.O. Box 120160
Nashville, Tennessee 37212
(615) 645-5067
lucas@aclu-tn.org

Maria DeLiberato, Esq.*
American Civil Liberties Union
201 W. Main St. Suite 402
Durham, NC 27701
(717) 503-2730
mdeliberato@aclu.org

QUARLES & BRADY LLP

Melanie C. Verdecia, Esq.*
(pro hac vice forthcoming)
101 East Kennedy Blvd., Suite 3400
Tampa, FL 33602
melanie.verdecia@quarles.com

**Pro Hac Vice Forthcoming*

Counsel for Plaintiff Tony Carruthers