

RECEIVED

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA

Nov 20 2025

S.C. SUPREME COURT

MARION ALEXANDER LINDSEY )

Petitioner, )

NO. \_\_\_\_\_

v. )

JOEL ANDERSON, Commissioner, )

South Carolina Department of Corrections, )

and STEPHEN DUNCAN, Warden, )

Broad River Secure Facility. )

Respondents. )

MOTION FOR STAY OF EXECUTION AND APPOINTMENT OF COUNSEL

THIS IS A CAPITAL CASE.

Pursuant to 18 U.S.C. § 3599 and 28 U.S.C. § 2251(a)(3), Marion Alexander Lindsey, an indigent prisoner under a state sentence of death, requests that this Court preemptively stay his execution<sup>1</sup> and appoint counsel to represent him in the preparation, presentation, and litigation of a petition for a writ of habeas corpus under 28 U.S.C. § 2254. Specifically, Mr. Lindsey requests that this Court appoint the Capital Habeas Unit for the Fourth Circuit (“the CHU”), a division of the Federal Public Defender for the Western District of North Carolina (“FPD-WDNC”), and Rosalind S.D. Major of Columbia, South Carolina to represent him. In support of this Motion, counsel submit the following facts and argument.<sup>2</sup>

<sup>1</sup>Though the South Carolina Supreme Court has not yet issued an execution notice setting an execution date, Mr. Lindsey’s execution is nevertheless imminent and requires a stay from this Court. As discussed below, the Supreme Court of South Carolina denied Mr. Lindsey’s appeal from the denial of his state post-conviction relief application. Pursuant to *In re: Stays of Execution in Capital Cases*, 471 S.E.2d 140 (S.C. 1996), following the denial of state post-conviction relief, the Clerk of the Supreme Court of South Carolina is directed to issue an execution notice when the remittitur is sent to the circuit court, which results in an execution date scheduled for the fourth Friday following the issuance. See S.C. Code § 17-25-370.

<sup>2</sup> Mr. Lindsey contemporaneously filed a Motion to Proceed *In Forma Pauperis*, in accordance with Rule 3(a) of the Rules Governing Section 2254 Cases.

**I. RELEVANT PROCEDURAL HISTORY.**

Mr. Lindsey was convicted of murder and sentenced to death in the Spartanburg County Court of General Sessions in 2004. On February 20, 2007, the South Carolina Supreme Court upheld Mr. Lindsey’s conviction and sentence on direct appeal. *State v. Lindsey*, 372 S.C. 185, 642 S.E.2d 557 (S.C. 2007). Mr. Lindsey sought rehearing of the denial of direct appeal, which was denied on April 4, 2007. He petitioned the Supreme Court of the United States for review of the direct appeal decision, which was denied on October 1, 2007. *Lindsey v. South Carolina*, 552 U.S. 917 (2007).

Mr. Lindsey’s initial application for post-conviction relief (“PCR”) was filed on August 14, 2007. The post-conviction court denied relief on August 12, 2011. Following a timely appeal, the Supreme Court of South Carolina vacated the denial of relief and remanded the case to the lower court. Remand Order, *Marion Alexander Lindsey v. State of South Carolina*, Appellate Case No. 2012-206087 (S.C. Sept. 30, 2014). On remand, the post-conviction court again denied relief. Mr. Lindsey timely sought review from the Supreme Court of South Carolina, which affirmed the denial of relief on November 5, 2025. The remittitur from the Supreme Court of South Carolina will issue on November 20, 2025.

28 U.S.C. § 2244(d) imposes a one-year limitations period from the conclusion of direct appeal to initiate a federal habeas corpus petition, although that period is tolled during the pendency of state postconviction proceedings. As Mr. Lindsey initiated his state postconviction proceedings while his direct appeal was pending, no portion of his limitations period has been expended.<sup>3</sup> The 365 days remaining on Mr. Lindsey’s limitations period will begin to run when

---

<sup>3</sup>Mr. Lindsey’s conviction became final on October 1, 2007, when the Supreme Court of the United States denied certiorari from Mr. Lindsey’s direct appeal denial. 28 U.S.C. § 2244(d)(1)(A). Mr. Lindsey’s application for state post-conviction relief was filed on August 14, 2007, and remained pending until the South Carolina Supreme Court denied review of the lower court’s denial of post-

the Spartanburg County Circuit Court files the remittitur from the South Carolina Supreme Court's denial of his petition for writ of certiorari. *See Beatty v. Rawski*, 97 F. Supp. 3d 768, 774 (D.S.C. 2015). As the remittitur will not issue until November 20, 2025, Mr. Lindsey has until at least November 20, 2026 to file his federal habeas corpus petition.

## **II. THE COURT MUST APPOINT COUNSEL TO REPRESENT MR. LINDSEY IN HIS FEDERAL HABEAS CORPUS PROCEEDING.**

Pursuant to 18 U.S.C. § 3599, indigent death-sentenced prisoners are “entitled to the appointment of one or more attorneys” to pursue federal habeas corpus remedies and available postconviction relief.<sup>4</sup> The right to counsel conferred by § 3559 attaches prior to the filing of a prisoner's habeas petition. As the Supreme Court has explained, absent this pre-petition right to counsel, condemned prisoners would not have meaningful access to the remedy of habeas corpus:

Congress' provision of a right to counsel under [§3559] reflects a determination that quality legal representation is necessary in capital habeas corpus proceedings in light of “the seriousness of the possible penalty and . . . the unique and complex nature of the litigation.” An attorney's assistance prior to the filing of a capital defendant's habeas corpus petition is crucial, because “[t]he complexity of our jurisprudence in this area . . . makes it unlikely that capital defendants will be able to file successful petitions for collateral relief without the assistance of persons learned in the law.”

*McFarland v. Scott*, 512 U.S. 849, 855-856 (1994) (quoting *Murray v. Giarratano*, 492 U.S. 1, 14 (1989) (Kennedy, J., joined by O'Connor, J., concurring in the judgment)); *see also Martel v. Clair*, 565 U.S. 648, 657 (2012) (citing § 3599(a)(2)).

---

conviction relief. *See* § 2244(d)(2) (“The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection”); *see also Artuz v. Bennett*, 531 U.S. 4 (2000) (construing the statutory phrase “properly filed application”). Thus, zero days of the one-year limitations period have expired.

<sup>4</sup> This statutory provision was formerly located at 21 U.S.C. § 848(q)(4)(B). Effective October 12, 2008, Congress moved this provision to 18 U.S.C. § 3599.

In construing § 3599 to require appointment of counsel prior to the filing of the petition, the Supreme Court explained that Congress provided for investigative and expert resources to be made available to counsel upon request and a showing of need. Since these services “may be critical in the preapplication phase of a habeas corpus proceeding, when possible claims and their factual bases are researched and identified,” Congress clearly intended counsel to be appointed prior to the filing of the habeas petition. *McFarland*, 512 U.S. at 855. It is thus plain that the right to counsel conferred by § 3599 is a right to assistance in identifying, developing, and pleading all available claims for relief, including the record-based claims already raised in the state trial and appeal proceedings, as well as the claims not raised in those proceedings because they are derived from non-record facts which require access to investigative and expert resources. Moreover, “the right to counsel necessarily includes a right for that counsel meaningfully to research and present a defendant’s habeas claims. Where this opportunity is not afforded, ‘[a]pproving the execution of a defendant before his [petition] is decided on the merits would clearly be improper.’” *McFarland*, 512 U.S. at 858 (quoting *Barefoot v. Estelle*, 463 U.S. 880, 889 (1983)).

§ 3599 requires the appointment of at least one attorney who has been admitted to practice in the court of appeals for not less than five years and who has not less than three years experience in the handling of appeals in that court in felony cases. § 3599(c). Alternatively, for good cause, this Court may appoint counsel “whose background, knowledge, or experience would otherwise enable him or her to properly represent the defendant, with due consideration to the seriousness of the possible penalty and to the unique and complex nature of litigation.” § 3599(d).

Moreover, the District of South Carolina’s plan for implementing the Criminal Justice Act (“CJA Plan”) instructs the court to appoint “at least two attorneys” and permits the Court to utilize the expert services available through the Administrative Office of the United States (“AO”), which

includes out-of-district federal defender organization staff and capital habeas units, in order “to achieve cost and other efficiencies together with high quality representation.” CJA Plan XIII(F)(2)-(3). Likewise, the Court may appoint counsel from qualified attorneys in the CJA Panel. *Id.*

The CJA Plan specifically highlights the importance of “distinguished prior experience” in federal post-conviction and capital post-conviction representation under 2254. CJA Plan XIII(F)(6)-(7). Likewise, the CJA Plan permits the Court to consider the commitment of counsel to capital representation and willingness to zealously represent the petitioner. *Id. at* XIII(F)(9). The CJA Plan also requires the Court to appoint counsel at the earliest opportunity and provide counsel with “appropriate litigation resources.” *Id. at* XIII(F)(4).

In this case, the Court should appoint the CHU and Rosalind S.D. Major to represent Mr. Lindsey. The CJA guidelines permit this, and other courts in this District have appointed the CHU alongside another attorney. *See, e.g., Torres v. Stirling*, 6:23-cv-04659-BHH-KFM, ECF No. 13 (D.S.C. Order Sept. 5, 2023); *Owens v. Stirling*, 0:16-cv-02512-TLW, ECF No. 237 (D.S.C. Order Apr. 8, 2021) (available at 2021 WL 1313550).

The CHU was established by the Fourth Circuit to provide the representation mandated by § 3599(e) for indigent, death-sentenced prisoners within that court’s appellate jurisdiction. Based in the FPD-WDNC, the CHU has a staff of Assistant Federal Public Defenders (AFPDs) with specialized expertise in capital jurisprudence and who meet the qualification standards set forth in § 3599(b) and (c).

Per the guidelines promulgated by the Judicial Conference for the United States Courts, cases “assigned to a federal public...defender organization...should be made in the name of the

organization...rather than in the name of an individual staff attorney within the organization,”<sup>5</sup> and “federal public defenders...should be responsible for the assignment of cases within their own offices.”<sup>6</sup> The Federal Public Defender, John G. Baker, and the CHU Chief, Gerald W. King, Jr., intend to assign this case to Mr. King<sup>7</sup> and another AFPD who satisfies the requirements of § 3599(b). If the attorney assigned is not a member of the South Carolina Bar, they will promptly apply for pro hac vice admission to this Court.

As the CHU attorneys would appear within the scope of their duties as Federal Public Defenders, the appointment of the CHU would obviate the need for payment of attorney fees and expenses for their services. The appointment of the CHU will also ensure the provision of expert services and resources that § 3599 requires without the submission of requests and vouchers to this Court, except for the attorney fees and expenses of Ms. Major.

---

<sup>5</sup>See Guide to Judiciary Policy, Vol 7A, § 220.35 (available at <https://www.uscourts.gov/rules-policies/judiciary-policies/cja-guidelines/chapter-2-ss-220-appointment-counsel>) (last visited November 19, 2025).

<sup>6</sup>See *Id.*, Vol 7A, § 440 (available at <https://www.uscourts.gov/rules-policies/judiciary-policies/cja-guidelines/chapter-4-ss-440-assignment-cases#a440>) (last visited November 19, 2025).

<sup>7</sup> Mr. King has more than twenty-two years of experience in federal capital habeas proceedings and appeals. Mr. King has been the Chief of the CHU for the past five years. He previously served as a staff attorney in the CHU for the Northern District of Georgia and with the Equal Justice Initiative of Alabama. Mr. King also has extensive experience in executive clemency and post-certiorari litigation. Mr. King has been admitted to practice before: the Supreme Court of the United States; the U.S. Courts of Appeals for the Fourth, Eleventh, and D.C. Circuits; the U.S. District Courts for the Western and Middle Districts of North Carolina, the Northern and Middle Districts of Georgia, the District of Columbia, and the Supreme Courts of North Carolina, Georgia, and Alabama. This Court has previously appointed Mr. King to represent death-sentenced prisoners in the § 2254 and additional postconviction proceedings anticipated by § 3599 in: *Sigmon v. Byars*, 8:13-cv-01399-RBH; *Owens v. Stirling*, 0:16-cv-02512-TLW; *Bixby v. Stirling*, 4:17-cv-00954-BHH; *Torres v. Stirling*, 6:23-cv-04659-BHH; *Bryant v. Stirling*, 9:16-cv-01423-DCN; and *Dickerson v. Stirling*, 9:21-mc-00618-SAL-MHC.

Rosalind S.D. Major is a staff attorney at Justice 360, formerly called the Death Penalty Resource Center for South Carolina. Ms. Major received a B.A. from Davidson College in 2018 and a J.D. from Cornell Law School in 2021. She is admitted to the state bars of South Carolina and Texas and the federal bars of this Court and the Fourth Circuit Court of Appeals. Following law school, Ms. Major served as a law clerk to the Honorable Nancy J. Koppe, United States District Court for the District of Nevada. Since that time, Ms. Major has been an attorney at Justice 360, where her practice is devoted to representing South Carolina death sentenced inmates in their state and federal post-conviction proceedings. Ms. Major has been appointed to represent four death-sentenced individuals in state capital post-conviction proceedings, including Bobby Wayne Stone (Case No. 2018-CP-43-001025, Sumter County), Jerry Buck Inman (Case No. 2012-CP-39-00918, Pickens County), Timothy Ray Jones (Case No. 2024-CP-32-01312, Lexington County), Rickey Lee Blackwell (Appellate Case No. 2025-001377, South Carolina Supreme Court), and one individual in capital federal habeas proceeding, *Delacerda v. Lumpkin*, 1:22-cv-00557 (E.D. Tex). She has additionally provided pro bono representation in several other capital cases in state and federal court. Ms. Major has also completed over 100 hours of continuing legal education in the last three years specifically focused on capital post-conviction and habeas representation, including attendance at several seminars presented by the Office of the U.S. Courts Habeas and Assistance Training Program.

Mr. King and Ms. Major have discussed this motion with Mr. Lindsey, who wishes to pursue federal habeas relief and requests the CHU and Ms. Major be appointed to represent him in these federal court proceedings.<sup>8</sup>

---

<sup>8</sup> Counsel were not able to meet with Mr. Lindsey until November 18, 2025, due to the pendency of the execution warrant for Stephen Corey Bryant, which was issued on October 17, 2025—prior to the Supreme Court of South Carolina’s denial of Mr. Lindsey’s petition for certiorari on October 31, 2025—and concluded with Mr. Bryant’s execution on November 14, 2025.

**III. UPON APPOINTMENT OF COUNSEL, THIS COURT SHOULD ENTER A STAY OF EXECUTION.**

This Court is authorized to issue a stay of execution based on Mr. Lindsey's request for appointment of counsel to assist him in his federal habeas proceedings. 28 U.S.C. § 2251(a)(3); *McFarland*, supra. In order for the right of assistance of counsel to have meaning in federal habeas proceedings, the district courts are authorized to stay an execution. *McFarland*, 512 U.S. at 857. Mr. Lindsey has affirmatively represented that he wishes to pursue federal habeas review of his case and asks this Court to appoint undersigned counsel to represent him. This Court should therefore, as it has done in numerous other federal capital habeas proceedings, enter a stay of execution pending the resolution of his federal habeas corpus proceedings to allow Mr. Lindsey to prepare, file, and litigate his petition for habeas relief. *See e.g.*, *Dickerson v. Stirling*, Case No. 9:21-mc-00618-SAL-MHC, ECF No. 16 (granting stay for 90 days); *Allen v. Davis*, Case No. 0:18-cv-01544-DCC-PJG, ECF No. 8 (granting stay for 90 days); *Mahdi v. Stirling*, Case No. 8:16-cv-03911-TMC, ECF No. 12 (granting stay for 90 days); *Owens v. Stirling*, Case No. 16-cv-02512-TLW, ECF Nos. 9 (granting stay for 90 days), 30 (granting stay for 90 days), 37 (granting stay for 90 days), 69 (granting stay for 90 days).

**IV. CONCLUSION.**

Wherefore, for the foregoing reasons, this Court should enter an order staying Mr. Lindsey's execution and appointing the CHU and Rosalind S. D. Major to assist Mr. Lindsey in the preparation and filing of a timely petition for habeas relief.

Respectfully submitted,

**GERALD W. KING, JR.**  
Chief, Capital Habeas Unit  
for the Fourth Circuit  
gerald\_king@fd.org

/s/Gerald King

Federal Public Defender for the  
Western District of North Carolina  
129 W. Trade Street, Suite 300  
Charlotte, NC 28202  
Telephone: (704) 374-0720  
Fax: (704) 374-0722

**ROSALIND S. D. MAJOR**  
Fed. ID # 14595  
Justice 360  
900 Elmwood Ave., Suite 200  
Columbia, SC 29201  
rosalind@justice360sc.org  
(803) 765-1044

BY: s/ Rosalind S.D. Major

November 19, 2025.