UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

MARION ALEXANDER LINDSEY, Petitioner, vs. JOEL ANDERSON, Interim Director, South Carolina Department of Corrections, and LYDELL CHESTNUT, Deputy Warden, Broad River Secure Facility, Respondents.[1]	C/A No. 2:25-mc-00903-DCN-MGB RETURN TO MOTION FOR STAY OF EXECUTION AND APPOINTMENT OF COUNSEL

NO EXECUTION NOTICE PENDING

Petitioner, Marion Alexander Lindsey, is a death-sentenced South Carolina prisoner. Lindsey has moved for a stay of execution[2] and for the appointment of counsel to seek federal habeas corpus relief. Respondents do not object to a temporary, 90-day stay of execution under

[1] The caption on the motion does not have Mr. Anderson's correct title and identifies the Warden for the separate facility at Broad River Road instead of Death Row. Deputy Warden Chestnut is the correct custodian. Respondents provide this corrected caption for the Court's information and to ensure the correct party opponents will be named in the formal petition.

[2] Lindsey is actually requesting an order that would prohibit the Clerk of the Supreme Court of South Carolina from issuing the notice of execution. There is no notice of execution presently pending and no scheduled execution to stay. A stay issued in such circumstances is not unusual, however, where the issuance of the notice is imminent. *See Bixby v. Stirling*, 4:17-mc-00138-BHH-TER (issuing a 90-day stay of execution though an "execution date has not yet been set" though "imminent"). Issuance of the notice is imminent in this case.

The notice of execution would not be issued until the Supreme Court of South Carolina issues the remittitur in Lindsey's state post-conviction relief action appeal. Because no petition for rehearing was filed following the November 5, 2025, published opinion, the remittitur could be issued at any time. However, a notice of execution would not likely be issued until, at the earliest, Friday, December 5, 2025. *See Owens v. Stirling*, 904 S.E.2d 580, 604 n. 23 (S.C. 2024) (establishing that notices may only be issued on Fridays). The major point is that there would be no state impediment to the notice being issued at that time.

28 U.S.C. § 2251(a)(3). Further, Respondents take no position on the appointment of counsel. Respondents do object to a one-year delay in the proceedings and ask the Court to consider a scheduling order after the filing of the initial petition. In support of this position, Respondents would respectfully show the Court:

1. As an initial matter, it appears Lindsey has exhausted his ordinarily available state court remedies,[3] a preliminary step to seeking federal habeas corpus relief under 28 U.S.C. § 2254. *See generally* 2254(b)(1); *Mahdi v. Stirling,* 20 F.4th 846, 892 (4th Cir. 2021) (a habeas petitioner is generally required to first "exhaust his state court remedies").

Lindsey was sentenced death on May 24, 2004, and he timely appealed. The Supreme Court of South Carolina affirmed the conviction and sentence on February 20, 2007. *State v. Lindsey*, 642 S.E.2d 557, 558 (S.C. 2007). Following the affirmance in the state court, appellate counsel filed a petition for writ of certiorari in the Supreme Court of United States. That petition was denied on October 1, 2007. *Lindsey v. South Carolina,* 552 U.S. 917 (2007). While the petition was pending, Lindsey filed a post-conviction relief (PCR) petition on August 14, 2007. Relief was denied and Lindsey timely appealed. After a remand to address certain aspects of the PCR court's order, the appeal proceeded with the Supreme Court of South Carolina affirming the denial of relief by opinion issued on November 5, 2025. Thus, Lindsey has fully exhausted his ordinarily available state court remedies, and the potential action would not be subject to dismissal

[3] It is well-established in this district that "South Carolina law permits a convicted individual to attack the validity of a state court conviction through either: (1) a direct appeal; or (2) an application for post-conviction relief ("PCR"). *McLean v. Wright,* No. CV 1:24-5979-SAL-SVH, 2025 WL 1864920, at *2 (D.S.C. Jan. 8, 2025), *report and recommendation adopted,* No. 1:24-CV-5979-SAL, 2025 WL 1792877 (D.S.C. June 30, 2025). Generally, a habeas petitioner must exhaust both remedies before pursuing federal habeas corpus relief under 28 U.S.C. § 2254.

without prejudice to allow exhaustion. Further, it does not appear that a petition would be barred, at this time, under the statute of limitations in 28 U.S.C. § 2244(d)(1).

2. Respondents and Lindsey largely agreed on the time calculations under 28 U.S.C. § 2244(d), but there is a disagreement on when the time would begin to run at the conclusion of the PCR appeal. Because Lindsey filed his action prior to the completion of his direct appeal process, there is no time to count between finality of the direct appeal under 28 U.S.C. § 2244(d)(1)(A), and the filing of the PCR action which would toll the time pursuant to 28 U.S.C. § 2244(d)(2). Lindsey asserts the filing of the remittitur in the lower court would signal finality (Mtn. at 2-3); however, whether this district accepts that date is not clear. "South Carolina district courts have offered varied opinions on whether (1) the decision date, (2) the remittitur date, or (3) the date of receipt of the remittitur controls for purposes of calculating the statute of limitations." *Brawner v. Warden Lee Corr. Inst.,* C/A No. 5:19-cv-3534-CMC-KDW, 2020 WL 2842155, at *2 n.2 (D.S.C. Jan. 28, 2020), *report and recommendation adopted,* 2020 WL 1303144 (D.S.C. Mar. 19, 2020). Thus, Respondents do not agree with Lindsey on that point. The broader point, however, is that Lindsey is not currently time-barred and, on that point, the parties agree.

3. Having exhausted his state court remedies, Lindsey now moves for stay of execution and appointment of counsel. Consistent with responses and orders in prior South Carolina death penalty actions before this Court, Respondents do not oppose a stay in this matter. Such requests are generally deemed appropriate. *See*, *e.g.*, *Brown v. Vasquez*, 952 F.2d 1164, 1168 (9th Cir. 1991) (stay of execution issued because, while petitioner had not yet filed petition for writ of habeas, he had filed petition seeking appointment of counsel to do so). However, the stay is limited to 90-days:

> ... If a State prisoner sentenced to death applies for appointment of counsel pursuant to section 3599 (a)(2) of title 18 in a court that

> would have jurisdiction to entertain a habeas corpus application regarding that sentence, that court may stay execution of the sentence of death, ***but such stay shall terminate not later than 90 days after counsel is appointed or the application for appointment of counsel is withdrawn or denied.***

28 U.S.C. § 2251(a)(3) (emphasis added).

An additional stay may be granted only after the filing of a petition. 28 U.S.C. § 2251 (a)(1) and (2).

4. Further, Lindsey requests the appointment of specific counsel. Respondents do not object to the appointment of counsel pursuant to 18 U.S.C. § 3599, but take no position as to Lindsey's comments, assertions, and preferences. Appointment of counsel would be in the discretion of the Court. *See Christeson v. Roper*, 574 U.S. 373, 377 (2015) (finding no right to particular counsel, rather, "the statute leaves it to the court to select a properly qualified attorney").

5. Lastly, Lindsey asserts that he does not need to file a petition until expiration of his one-year statute of limitations. (Mtn. at 3). This is incorrect given the necessity of obtaining and maintaining a stay in these circumstances. The initial 90-day stay may not be extended, or a new stay granted, under 28 U.S.C. § 2251(a)(1) absent the filing of a petition. A reasonable time for investigation and drafting of the petition is anticipated in the 90-day period. A petition should be submitted thereafter. Further, federal habeas corpus proceedings are uniquely limited as to the types of claims that may be raised and consider, and any hearing is extraordinarily rare given the strict limitations in 28 U.S.C. § 2254(e)(2) and *Shinn v. Ramirez,* 596 U.S. 366, 389 (2022). There appears to be no cause to simply wait an additional year for the action to *begin* to move forward. *See generally Shinn v. Ramirez*, 596 U.S. at 390 (courts must avoid '"needlessly prolong[ing]' a habeas case"). Even so, Respondents submit that scheduling is premature at this juncture and should be revisited after the filing of the initial petition and expiration of the initial 90-day stay.

WHEREFORE, having made their response, and for the reasons set out above, Respondents submit that a stay may be issued but that this Court must limit the initial stay to a period of 90-days pursuant to 28 U.S.C. § 2251(a)(3). Respondents take no position on the individual attorney(s) to be appointed.

Respectfully submitted,

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s/Melody J. Brown
BY: _____

November 25, 2025
Columbia, South Carolina.

ATTORNEYS FOR RESPONDENT