

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

CECIL C. JOHNSON, JR.,)	
)	
Plaintiff-Appellant,)	<u>CAPITAL CASE</u>
)	
v.)	No. 09-6416
)	
)	
PHIL BREDESEN, Governor of the)	
State of Tennessee; GEORGE M.)	
LITTLE, Commissioner of the)	
Tennessee Department of Correction;)	
and RICKY BELL, Warden, Riverbend)	
Maximum Security Institution, in their)	
official capacities only,)	
)	
Defendants-Appellees.)	

**PLAINTIFF-APPELLANT’S EMERGENCY MOTION
FOR A STAY OF EXECUTION**

Plaintiff-Appellant, Cecil C. Johnson, Jr., hereby moves the Court under Rules 8, 21, and 27, Fed. R. App. P., Sixth Circuit Rule 27, and the All Writs Act, 28 U.S.C. § 1651(a), to enter an Order staying his execution, which is currently scheduled to take place at 1:00 a.m. CST on December 2, 2009. He also seeks an Order transferring this case back to the District Court under 28 U.S.C. § 1631. A copy of the District Court filings required by Sixth Circuit Rule 27(c) is attached. A Memorandum of Law in support of the Motion will be forthcoming shortly.

Briefly stated, Plaintiff-Appellant submits that the Court should grant a stay so that it can consider in an orderly fashion whether the District Court erred in its determination that Plaintiff-Appellant's claim should be characterized as a "second or successive" habeas corpus petition rather than a claim under 42 U.S.C. § 1983 (or alternatively, as a habeas petition that is simply not "second or successive" within the meaning of 28 U.S.C. § 2244(b)(2)). Should this Court determine that Mr. Johnson has not submitted a "second or successive" application, it should transfer the case back to the District Court, but the point will become moot if Mr. Johnson's execution is allowed to go forward.

Respectfully submitted,

NEAL & HARWELL, PLC

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served by email upon Jennifer L. Smith, Esq., Associate Deputy Attorney General, 425 Fifth Avenue North, Second Floor, Nashville, TN 37202, this the 30th day of November, 2009.

s/James G . Thomas