UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION

JOHN FITZGERALD HANSON,

PETITIONER,

v.

GENTNER DRUMMON, Attorney General of the State of Oklahoma;

DANON COLBERT, Acting Regional Director, U.S. Department of Justice, Federal Bureau of Prisons;

WILLIAM W. LOTHROP, Acting Director, U.S. Department of Justice, Federal Bureau of Prisons; and

HOWARD K. GOLDEY, Warden, United States Penitentiary Pollock, Federal Bureau of Prisons,

RESPONDENTS.

No. 1:25-cv-00102-DDD-JPM

RESPONSE OF THE UNITED STATES & FEDERAL DEFENDANTS TO PETITIONER'S MOTION FOR EMERGENCY RELIEF & OBJECTION TO THE MAGISTRATE'S REPORT & RECOMMENDATION

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INTRODUCTION

George John Hanson (Plaintiff) is currently serving a term of life followed by a consecutive sentence of 1,584 months in federal custody for armed robbery and related firearms crimes. But he has also received a sentence of death in the State of Oklahoma for violently murdering a 77-year-old woman. Plaintiff now seeks to block the Federal Bureau of Prisons (BOP) from transferring him, pursuant to 18 U.S.C. § 3623, to Oklahoma authorities who intend to carry out his lawful sentence by filing an *ex parte* request for a temporary restraining order (TRO). Providing no notice to the Federal Defendants, and notwithstanding the statutory prohibition that Magistrate Judges lack authority to hear motions for injunctive relief, the Magistrate Judge issued a Report & Recommendation (R&R) to the district court asserting that a TRO should issue. ECF No. 5 at 7–8.

There is no legal basis to adopt the Magistrate's R&R and enter an injunction barring Plaintiff's transfer to the State of Oklahoma. Plaintiff's motion for a TRO should be denied and the Complaint dismissed for four reasons. At the threshold, Plaintiff is obligated to establish this Court's jurisdiction, and he has not identified any applicable waiver of sovereign immunity. Having failed to meet his burden, the Court is obligated to dismiss the complaint for lack of jurisdiction. In addition, his claim attacking the validity of his state conviction is only cognizable if brought under the relevant habeas statutes, and is improper in this forum. Further, transfer decisions of a federal prisoner to a state authority are solely "a matter of comity to be resolved by the executive branches of the two sovereigns." *United States v. Warren*, 610 F.2d 680, 684–85 (9th Cir. 1980). Here, the requested injunction would constitute an unwarranted judicial intrusion into a matter within the exclusive authority of the Executive Branch. Finally, even if some limited review of the transfer decision was allowed, the statutory requirements in 18 U.S.C. § 3623 have plainly been satisfied. Here, Congress has expressly authorized the BOP Director to determine

whether to transfer a federal prisoner to the custody of a state authority. *See* 18 U.S.C. § 3623. That statute permits the transfer of any prisoner on request of the State Authority where "the Director [of BOP] finds that the transfer would be in the public interest." *Id.* As permitted by federal statute, the Attorney General of the United States has made this public interest determination. This Court should decline the baseless request to substitute its own assessment of the "public interest" for that of the Federal Defendants.

Accordingly, this Court should reject the R&R, discharge any injunctive order, and dismiss the Complaint for the reasons set out below.

BACKGROUND

The pertinent facts are relatively straightforward. Plaintiff/Petitioner is federal prisoner John Hanson, over whom the Federal Government has primary jurisdiction. Plaintiff is currently serving a federal life sentence after having been convicted of numerous violent crimes in the Northern District of Oklahoma. He is and at all relevant times has been in custody at a Federal Bureau of Prisons (BOP) facility in Pollock, Louisiana (FCC Pollock).

Plaintiff was first arrested and convicted by federal authorities, and he was thereafter convicted of murder in state court in Oklahoma and sentenced to death. On January 23, 2025, the Attorney General of Oklahoma, Gentner Drummond, requested the Acting Regional Director of the Federal Bureau of Prisons transfer Plaintiff pursuant to 18 U.S.C. § 3623 to the custody of Oklahoma. *See* Exh. 1 (AG Oklahoma Ltr. & Attachments), attached hereto. Attorney General Drummond included a certified copy of the judgment of conviction indicating that Plaintiff was sentenced to death in Oklahoma state court. *Id.* Plaintiff sued the Federal Defendants on January 29, 2025, alleging that the transfer would violate the common law principle of primary jurisdiction, would be an affront to tribal sovereignty, and was not consistent with the federal statute authorizing

the transfer of prisoners to state authorities. Compl. ¶¶ 17–44. Shortly after this lawsuit's inception, Plaintiff moved for an *ex parte* temporary restraining order and preliminary injunction to block his transfer. Without addressing the merits of Plaintiff's claims, the magistrate judge issued an R&R that the District Court grant the motion in part "to the extent it seeks an order prohibiting Plaintiff's transfer to the State of Oklahoma until such time as the parties in opposition may be heard, and the District Judge may conduct additional proceedings in his discretion." R&R, ECF No. 5 at 7–8.

Separately, President Trump issued Executive Order on January 20, 2025 entitled, *Restoring the Death Penalty and Protecting Public Safety*, available at https://www.whitehouse.gov/presidential-actions/2025/01/restoring-the-death-penalty-and-protecting-public-safety/ (Jan. 20, 2025), making clear that "[c]apital punishment is an essential tool for deterring and punishing those who would commit the most heinous crimes and acts of lethal violence against American citizens." *Id.* § 1. Among other things, that Executive Order directs the Attorney General to encourage States to bring State capital charges, evaluate whether certain federal offenders can be charged with State capital crimes, and otherwise take actions to preserve capital punishment in the States. *Id.* §§ 3(b), 3(e), & 4. Shortly after being confirmed, Attorney General of the United States Pam Bondi issued a memorandum for the Acting Director of the Federal Bureau of Prisons regarding the transfer of Plaintiff Hanson. *See* Memo. Att'y Gen. Regarding Transfer, attached as Exh. 2. That memorandum authorizes the transfer of Plaintiff in response to Attorney General Drummond's request noting that capital punishment is "vitally important to preserving public safety, supporting the rule of law, and achieving justice." *Id.* Citing this fact as well as the horrendous suffering caused by Plaintiff, Attorney General Bondi

concluded, as required by 18 U.S.C. § 3623, that Plaintiff's transfer is in the "public interest."[1] *Id.*

ARGUMENT

As an initial matter, the Magistrate Judge lacked authority to address Plaintiff's motion because of the statutory prohibition on Magistrate Judges hearing motions for injunctive relief. 28 U.S.C. § 636(b)(1)(A) ("a judge may designate a magistrate judge to hear and determine any pretrial matter pending before the court, except a motion for injunctive relief."). Even setting that error aside, the Court should reject the Magistrate's R&R and deny Plaintiff's motion because he fails to show any entitlement to temporary or preliminary injunctive relief. Indeed, for the reasons set out below, the Court should dismiss the Complaint entirely.

Plaintiff requests an emergency order prohibiting BOP from transferring him to Oklahoma's custody. First, Plaintiff premises his request for emergency relief on the common law doctrine of "primary jurisdiction" that governs how to deal with a prisoner who has violated the laws of multiple sovereigns. *See* Compl. ¶¶ 17–19. Second, Plaintiff argues that a transfer to Oklahoma for the imposition of a death sentence would be an affront to tribal sovereignty because of his membership in the Muscogee Nation and because the state crimes for which he was sentenced to death occurred on Cherokee reservation lands. *Id.* ¶¶ 20–25. Finally, Plaintiff argues that the federal government cannot transfer him to state custody absent his consent or the expiration of his federal sentence without violating the federal statute governing transfers of federal prisoners to state authorities, 18 U.S.C. § 3623. *Id.* ¶¶ 26–44. Each of these arguments is unavailing.

A temporary restraining order or preliminary injunction is an "extraordinary and drastic remedy." *Canal Auth. v. Callaway*, 489 F.2d 567, 573 (5th Cir. 1974). As such, it is "not to be

[1] Here, Attorney General Bondi determined the public interest supported the transfer, thereby satisfying the statutory conditions of 18 U.S.C. § 3623. *See infra* p. 11-12 & Exh. 2.

granted routinely, but only when the movant, by a clear showing, carries [the] burden of persuasion." *Black Fire Fighters Ass'n v. City of Dallas*, 905 F.2d 63, 65 (5th Cir. 1990) (quoting *Holland Am. Ins. Co. v. Succession of Roy*, 777 F.2d 992, 997 (5th Cir. 1985)). "The four prerequisites are as follows: (1) a substantial likelihood that plaintiff will prevail on the merits, (2) a substantial threat that plaintiff will suffer irreparable injury if the injunction is not granted, (3) that the threatened injury to plaintiff outweighs the threatened harm the injunction may do to defendant, and (4) that granting the preliminary injunction will not disserve the public interest." *Canal Auth.*, 489 F.2d at 572. A preliminary injunction should be granted only if the movant has "clearly" carried the burden of persuasion on all four of these prerequisites. *Id.* at 573. As explained below, Plaintiff fails to meet his burden to obtain an emergency injunctive order.

A. Plaintiff Is Unlikely to Succeed on the Merits.

The Complaint asserts three causes of action, namely that a transfer would violate the doctrine of primary jurisdiction, would be an affront to tribal sovereignty, and would violate the statute governing transfers of federal prisoners to state authorities, 18 U.S.C. § 3623. (*See* Compl. ¶¶ 17–44; *see also* TRO/PI Mot., ECF No. 3 at 3). These arguments fail for at least four separate reasons: (1) the court lacks jurisdiction, as Plaintiff has not cited a waiver of sovereign immunity; (2) his complaint about the impact of tribal sovereignty on his state conviction and sentence of death is cognizable only under the habeas statute; (3) the decision to transfer a federal prisoner to state custody is the exclusive province of the Executive Branch and is not subject to judicial review; and (4) in light of Attorney General Bondi's determination of the public interest, *see* Exh. 2, the statutory requirements of § 3623 have been satisfied.

1. Plaintiff has Not Identified a Waiver of Sovereign Immunity.

In general, a federal court has no subject-matter jurisdiction over claims against the United

States and its officers "unless the government waives its sovereign immunity and consents to suit." *Danos v. Jones*, 652 F.3d 577, 581 (5th Cir. 2011). The Administrative Procedure Act (APA) "effects a broad waiver of sovereign immunity and allows any person adversely affected or aggrieved by [final] agency action to seek judicial review." *Jobs, Training & Servs., Inc. v. E. Texas Council of Governments*, 50 F.3d 1318, 1323 n.3 (5th Cir. 1995) (citing 5 U.S.C. § 702). Plaintiff does not (and could not) invoke the APA's waiver of sovereign immunity here, however, because Congress expressly exempted BOP's prisoner-transfer determinations from the requirements of the APA. *See* 18 U.S.C. § 3625. Plaintiff asserts that this Court has jurisdiction "under 28 U.S.C. § 1331, 28 U.S.C. § 1346, . . . and 28 U.S.C. § 1343(a)."[2] Compl. at 1. But, it is well established that none of these statutes, which only grant subject matter jurisdiction to this Court, also provide a waiver of sovereign immunity. *See, e.g., Delta Commercial Fisheries Ass'n v. Gulf of Mexico Fishery Management Council*, 364 F.3d 269, 274 n. 5 (5th Cir. 2004) (noting Section 1346 does not on its own waive sovereign immunity); *Voluntary Purchasing Groups, Inc. v. Reilly*, 889 F.2d 1380, 1385 (5th Cir. 1989) (similar as to Section 1331); *Beale v. Blount*, 462 F.2d 1133, 1138 (5th Cir. 1972) (similar as to Section 1343). Plaintiff bears the burden of identifying a waiver of sovereign immunity and establishing jurisdiction, *St. Tammany Parish, ex rel. Davis v. FEMA*, 556 F.3d 307, 315 (5th Cir. 2009), and, having identified no such waiver, he has no likelihood of success on the merits.

Although not cited by Plaintiff, the Federal Defendants recognize that Congress has permitted limited lawsuits by prisoners seeking "remedies with respect to prison conditions." 18

[2] Plaintiff also cites the Declaratory Judgment Act, 28 U.S.C. §§ 2201–02, but that Act "is procedural and does not create an independent private right of action," and does not waive sovereign immunity. *Harris Cnty. Texas v. MERSCORP Inc.*, 791 F.3d 545, 553 (5th Cir. 2015); *see, e.g., Sid Richardson Carbon & Gasoline Co. v. Interenergy Res., Ltd.*, 99 F.3d 746, 752 n.3 (5th Cir. 1996).

U.S.C. § 3626. Assuming arguendo that this would constitute a limited waiver of sovereign immunity, such a waiver must be read narrowly to cover only a qualifying "civil action with respect to prison conditions," *id.* § 3626(a) & (g)(7). It is unclear that such a waiver of sovereign immunity would apply to transfers authorized under a separate section of this Subchapter of Title 18. Transfers permitted under Section 3623 are not expressly mentioned in Section 3626 and indeed the word "transfer" does not appear at all in that Section. Nor is it obvious that a transfer permitted under Section 3623 would meet the definition in 3626(g)(2) of a "civil action with respect to prison conditions." After all, waivers of sovereign immunity are to be strictly construed, *Wilkerson v. United States*, 67 F.3d 112, 118 (5th Cir. 1995), and Plaintiff has made no effort to demonstrate that his causes of action seeking to halt his transfer to Oklahoma are subject to this limited waiver as to "prison conditions."

In light of Congress's explicit decision to shield the BOP's § 3623 decisions from the APA's provisions, *see* 18 U.S.C. § 3625, it would be passing strange to transform that legislative restriction on the unavailability of a cause of action and immunity waiver into a license to use a separate provision of Title 18 regarding "remedies with respect to prison conditions" into a freewheeling permission to scrutinize statutorily authorized transfers of federal prisoners to state authorities. *Cf. Hernandez v. Mesa*, 140 S. Ct. 735, 747 (2020) ("[I]t would be 'anomalous to impute a judicially implied cause of action beyond the bounds Congress has delineated for a comparable express cause of action." (alterations omitted) (quoting *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 736 (1975))). For these reasons, Plaintiff's claims under the doctrine of primary jurisdiction, tribal sovereignty, and his misreading of 18 U.S.C. § 3623 provide no basis to enjoin Plaintiff's transfer to Oklahoma. Since those are the sole bases on which his TRO motion was premised, the Court should deny the Magistrate's R&R and discharge any injunctive order.

2. Plaintiff's Attack on the Validity of His State Conviction is Cognizable Only Under Habeas Statutes, and Not Here.

Plaintiff also challenges the validity of his state conviction, arguing that his sentence of death for a state crime violates tribal sovereignty. *See* Compl. ¶¶ 20–25. But this action is not the appropriate forum in which to raise a challenge to his state conviction and sentence of death. Congress has codified specific provisions that allow an inmate to seek post-conviction relief in federal court by challenging the validity of his confinement. *See United States v. Escajeda*, 58 F.4th 184, 186 (5th Cir. 2023) (citing 28 U.S.C. §§ 2241, 2244, 2254, 2255). The Supreme Court has "repeatedly held that by codifying these specific provisions, Congress required prisoners to bring their legality-of-custody challenges under [the federal habeas statutes] and prohibited prisoners from bringing such claims" by other means, such as Plaintiff's action here. *Id.* at 186–87 (citing *Wilkinson v. Dotson*, 544 U.S. 74, 81 (2005); *Heck v. Humphrey*, 512 U.S. 477, 481–82 (1994); *Preiser v. Rodriguez*, 411 U.S. 475, 486 (1973)). As such, the Court should disregard Plaintiff's argument that his sentence of death is invalid. *See* Compl. ¶¶ 20–25.[3]

3. A Decision to Transfer a Federal Prisoner to a State Authority under Section 3623 is not Subject to Judicial Review.

For well over a century, federal courts have recognized that the Federal Government may waive its sovereign right to exclusive custody over a federal prisoner and transfer the prisoner to a State "as a matter of comity." *See, e.g.*, *Ponzi v. Fessenden*, 258 U.S. 254, 261–62 (1922)

[3] In addition, Plaintiff has had an opportunity to challenge the validity of the State of Oklahoma's jurisdiction to prosecute him based on his Indian status and the location of his crimes under *McGirt v. Oklahoma*, 591 U.S. 894, 140 S.Ct. 2452 (2020). *See* Exh. 3, Opinion Denying Successive Application For Capital Post-Conviction Relief, *Hanson v. Oklahoma*, Case No. PCD-2020-611 (Okla. Crim. App. Sept. 9, 2021) (denying Plaintiff's jurisdictional challenge to his conviction based on binding state precedent that *McGirt* "would not be applied retroactively to void a state conviction that was final when *McGirt* was decided") (citing *State ex rel. Matloff v. Wallace*, 497 P.3d 686, 689 (Okla. Crim. App. 2021)).

(expressing "no doubt" that this authority exists); *In re Andrews*, 236 F. 300, 301 (D. Vt. 1916) (describing this principle as "well settled"). In many cases, such a waiver is partial; the Federal Government temporarily "loan[s]" its prisoner to the State, typically for court proceedings, "without a complete surrender of [its] prior jurisdiction over him." *See, e.g.*, *Zerbst v. McPike*, 97 F.2d 253, 254 (5th Cir. 1938). In other circumstances, the Federal Government fully surrenders its superior claim to impose its sentence, permanently transferring the prisoner to State custody, and yielding primary jurisdiction to the State. *See, e.g.*, *Johnson v. Gill*, 883 F.3d 756, 765 (9th Cir. 2018); *cf. Weekes v. Fleming*, 301 F.3d 1175, 1181 (10th Cir. 2002) (Idaho permanently relinquished custody of an inmate to the Federal Government). This longstanding authority to transfer an inmate from one sovereign to another has its origins in the common law and has also been codified in statute.

In 1940, Congress enacted such an express authority—the predecessor statute to § 3623. The statute provided that the Attorney General "shall" cause a federal prisoner to be transferred to a State prison "prior to his release" (1) "upon the request of the Governor or the executive authority of such State;" (2) "upon the presentation of a certified copy of [an] indictment or judgment of conviction" for a state-law felony; (3) "if [the Attorney General] finds it in the public interest to do so." Act of April 30, 1940, Pub. L. No. 76-503, 54 Stat. 175 (originally codified at 18 U.S.C. §§ 733, 733a, 733b (1940)). In 1948, the statute was transferred to 18 U.S.C. § 4085, *see* Pub. L. No. 80-772, 62 Stat. 850 (June 25, 1948), and in 1984 it was transferred (with minor stylistic changes) to § 3623. *See* Pub. L. No. 98-473, 98 Stat. 2008 (Oct. 12, 1984); *see also* S. Rep. No. 98-223 at 140–41 (1983) (noting that the current § 3623 "is derived from [the former] § 4085(a), except that language relating to appropriations is omitted as unnecessary").

The Fifth Circuit, as well as numerous other federal courts, has interpreted § 3623's

predecessor statute as "codify[ing]" the power recognized in *Ponzi*—that is, as congressional affirmation of the common law doctrine that the Attorney General may in her sole discretion waive, in whole or in part, the Federal Government's exclusive, primary jurisdiction over a prisoner wanted by a State. *Atkinson v. Hanberry*, 589 F.2d 917, 919 n.4 (5th Cir. 1979); *see also United States v. Hooker*, 607 F.2d 286, 289 (9th Cir. 1979); *Trigg v. Moseley*, 433 F.2d 364, 367 (10th Cir. 1970); *Konigsberg v. Ciccone*, 417 F.2d 161, 162 (8th Cir. 1969); *In re Sindona*, 584 F. Supp. 1437, 1443 (E.D.N.Y. 1984); *Commonwealth v. McGrath*, 205 N.E.2d 710, 712 & n.2 (Mass. 1965); *State v. Heisler*, 390 P.2d 846, 848 (Ariz. 1964); *Wilkins v. State*, 245 A.2d 80, 83 (Md. Ct. Spec. App. 1968). But the statutory codification "in no way lessened the Attorney General's discretionary power" to grant or deny a State's transfer request. *Heisler*, 390 P.2d at 848; *see also Ciccone*, 417 F.2d at 162; *Wilkins*, 245 A.2d at 83; *Richerson v. State*, 428 P.2d 61, 62 (Idaho 1967); *Lalla v. State*, 463 S.W.2d 797, 799 (Mo. 1971). Federal Defendants are aware of no case concluding that § 3623 limited the Attorney General's or BOP Director's discretion in any fashion.

Numerous cases interpreting § 3623's predecessor—18 U.S.C. § 4085—establish that the opposite is true: Rather than cabining the discretion of the Attorney General or BOP Director, the "public interest" provision codifies the broad discretion that the Supreme Court recognized in *Ponzi*. *See Heisler*, 390 P.2d at 848 (whether to transfer was "wholly a matter for the United States, through its Attorney General to determine" prior to enactment of § 4085, and enactment of statute "in no way lessened the Attorney General's discretionary power"); *Ciccone*, 417 F.2d at 162 ("Under § 4085 the Attorney General has the authority" to transfer federal inmate; "[t]he exercise of this authority is discretionary, however, and the Attorney General need not transfer a prisoner."); *Poland v. Reno*, 29 F. Supp. 2d 8, 10 n.1 (D.D.C. 1998) (referring to the Attorney General's authority under § 4085 as the unreviewable "discretionary decision to transfer a prisoner");

Thomas v. Levi, 422 F. Supp. 1027, 1033 n.20 (E.D. Pa. 1976) (describing § 4085 as "a statute allowing the Attorney General at his discretion to turn over federal prisoners to state authorities"); *see also Lalla*, 463 S.W.2d at 799 (citing § 4085 and explaining that "return of this defendant to Missouri . . . would be purely discretionary with the United States Attorney General").

The legislative history is in accord. The Senate Judiciary Committee report on the Comprehensive Crime Control Act, through which Congress transferred the statute to its current location in the U.S. Code, explained that the "last requirement of public interest places the entire transfer procedure directly within the discretion of the Director of the Bureau of Prisons." S. Rep. No. 98-225 at 144 (1983). "This granting of discretion to the Director follows closely Section 3621(b) which permits the Bureau to designate the place of the prisoner's confinement, whether or not such place is maintained by the federal government." *Id.*; *see also id.* at 142 (describing the "public interest" provision in § 3623 at the "catch-all clause at the end of the subsection"). Congress insulated BOP's discretionary "public interest" determinations from APA review to "assure that [BOP] is able to make [such decisions] without constant second-guessing." *Id.* at 149.

If anything, Congress's decision to shield transfer decisions from APA review in § 3625 reflects a congressional intent not to allow *any* judicial review of decisions under § 3623. "(The power of federal courts of equity to enjoin unlawful executive action is subject to express and implied statutory limitations." *Armstrong v. Exceptional Child Center, Inc.*, 575 U.S. 320, 327 (2015). When Congress has excluded or restricted private enforcement of a statute, plaintiffs "cannot, by invoking [a court's] equitable powers, circumvent Congress's" restrictions. *Id.* at 328. The decision whether, and to what extent, the federal government will "waive its strict right to exclusive custody of" a given prisoner over whom the federal government has primary jurisdiction is "solely [within] the discretion of the sovereign[]." *Ponzi*, 258 U.S. at 260. The federal courts

have no role to play in this issue. *See Warren*, 610 F.2d at 684–85. Indeed, it is well settled that "[d]etermination of priority of custody and service of sentence between state and federal sovereigns" is "an executive, and not a judicial, function." *Id.*

As a matter of comity, the federal and state governments regularly negotiate sovereign-to-sovereign transfers of primary jurisdiction over a detainee, such that the transferring sovereign yields its right to impose its own sentence on an inmate before a receiving sovereign gets a chance to do so. There is no evidence that Congress sought to permit the federal judiciary a role in that process. Because a decision to transfer a federal prisoner to a state authority is not subject to judicial review, Plaintiff has not demonstrated any likely success on the merits and this Court should therefore deny the Magistrate's R&R.

4. Plaintiff's Transfer Meets the Statutory Requirements of Section 3623.

Section 3623 provides that, when three enumerated conditions[4] are satisfied, the BOP Director "shall order that a prisoner who has been charged . . . with, or convicted of, a State felony, be transferred to [State custody] prior to his release from a Federal prison facility." Where all three conditions for transfer to state custody are met, there is no violation of § 3623 unless BOP *releases* the prisoner rather than transferring him.

Here, Attorney General Drummond's January 23, 2025 Letter and transmittal of a certified copy of the judgment of conviction satisfies the first two enumerated conditions. *See* Compl., Exh. 1. Further, Congress has expressly empowered the BOP Director to decide whether to effectuate such transfers, which are to occur only "*if . . . the Director* finds that the transfer would be in the

[4] These three conditions are: "(1) the transfer has been requested by the Governor or other executive authority of the State; (2) the State has presented to the Director a certified copy of the indictment, information, or judgment of conviction; and (3) the Director finds that the transfer would be in the public interest." 18 U.S.C. § 3623.

public interest." 18 U.S.C. § 3623(3) (emphasis added). As such, Section 3623 grants the BOP Director exceedingly broad discretion over transfers—similar to the unreviewable discretion he enjoys under § 3621(b). S. Rep. No. 98-223, Sept. 14, 1983, at 141; *see also Armstrong v Salinas*, Civil Action No. 6:13-179-KKC, 2014 WL 340399, at *8 (E.D.K, Jan. 30, 2014)("[A]ll transfers and prison assignment are functions wholly within the discretion of [] BOP.") (citing *Olim v. Wakinekona*, 461 U.S. 238, 245 (1983)). Ultimately, the statutory provision "places the entire transfer procedure directly within the discretion of the Director of the Bureau of Prisons." S. Rep. No. 98-223, Sept. 14, 1983, at 141.

Attorney General Bondi has made the determination that Plaintiff's transfer is in the public interest, *see* Exh. 2, meaning that the third enumerated condition of Section 3623 is also satisfied.[5] *See also* Exh. 4, Reviving the Federal Death Penalty and Lifting the Moratorium on Federal Executions, Memo. Att'y Gen., at 4 (Feb. 5, 2025) (directing the Federal Bureau of Prisons to "work with each state that allows capital punishment to ensure that states have sufficient supplies and resources to impose the death penalty," including "transferring federal inmates with state or local death sentences to the appropriate authorities to carry out those sentences"). As a result, Plaintiff's transfer is permitted under statute and lawful, meaning this Court should deny the Magistrate's R&R and discharge any injunctive order.

Further, the statute's "public interest" standard confers exceedingly broad discretion on the decisionmaker. In interpreting § 3623(3), the Court must "start with the text." *BNSF Railway Co. v. United States*, 775 F.3d 743, 751 (5th Cir. 2015). The text provides that the BOP Director shall

[5] Here, Attorney General Bondi made the public interest determination. *See* Exh. 2. As Attorney General, Congress ensured that she is "vested" with the authority to perform and carry out "[a]ll functions of other officers of the Department of Justice and all functions of agencies and employees of the Department of Justice," 28 U.S.C. § 509, such as subordinate officials like the Director of the Bureau of Prisons. *See also id.* § 510.

approve a State's transfer request "if . . . the Director finds that the transfer would be in the public interest." 18 U.S.C. § 3623. The ordinary meaning of the "public interest" means or refers to "[t]he general welfare of a populace considered as warranting recognition and protection" or "[s]omething in which the public as a whole has a stake; esp., an interest that justifies government regulation." Public Interest, *Black's Law Dictionary* (12th ed. 2024); *see also* Public Interest, *Oxford English Dictionary* (Sept. 2007) ("the benefit or advantage of the community as a whole; the public good."). Congress left the term "public interest" particularly open-ended in § 3623. As used in Section 3623, the term "public interest" does not impose any constraint on the decisionmaker's discretion. To the contrary, the term is "both broad and vague"—an "open-textured term" that the Supreme Court has interpreted "expansively." *See, e.g.*, *Huawei Techs. USA, Inc. v. FCC*, 2 F.4th 421, 437-38 (5th Cir. 2021). Unlike neighboring statutes, § 3623 does not enumerate any specific factors for consideration in evaluating the "public interest," leaving it particularly open-ended.

Compare Congress's use of the term in the immediately preceding statutory section, which sets forth the circumstances in which a prisoner may be temporarily released by BOP. Pursuant to § 3622, BOP may temporarily release a prisoner "if such release appears to be consistent with the purpose for which the sentence was imposed" and any relevant policy statements by the United States Sentencing Commission, "if such release otherwise appears to be consistent with the public interest and if there is reasonable cause to believe that a prisoner will honor the trust to be imposed in him, by authorizing him, under prescribed conditions, to . . . visit a designated place" for no more than 30 days for various purposes. 18 U.S.C. § 3622.

The statute then lists five purposes (visiting a dying relative, attending a relative's funeral, obtaining otherwise unavailable medical treatment, contacting a prospective employer, and

establishing family or community ties) as well as a catch-all sixth: "engaging in any other significant activity *consistent with the public interest*." *Id.* § 3622(a)(1)-(6) (emphasis added). Perhaps then, in the context of § 3622, Congress's reference to "*other*" activities "consistent with the public interest" indicates that the term "public interest" is to be interpreted in light of the preceding list of five activities. *See id.* (emphasis added); *see also Easom v. US Well Servs., Inc.*, 37 F.4th 238, 243 (5th Cir. 2022) (concluding that a broad term should be read in the context of any examples of that term specifically enumerated in the statutory text). In § 3623, however, Congress offered no limiting guideposts, affording the BOP Director broad latitude to determine whether transfer "would be in the public interest."

Similarly, Congress did not enumerate specific factors for the BOP Director to consider in exercising his discretion to assess whether transfer "would be in the public interest." That omission is noteworthy given that Congress knows how to shape the contours of a public-interest inquiry when it wants to. *See* 21 U.S.C. § 823(d) ("In determining the public interest [in assessing whether to grant manufacturer CSA registration], the following factors shall be considered: (1) maintenance of effective controls against diversion . . . ; (2) compliance with applicable State and local law; (3) promotion of technical advances in the art of manufacturing these substances and the development of new substances; (4) prior conviction record of applicant under Federal or State laws relating to the manufacture, distribution, or dispensing of such substances; (5) past experience in the manufacture of controlled substances . . . ; ; and (6) such other factors as may be relevant to and consistent with the public health and safety."); *see also* 21 U.S.C. § 958 ("In determining the public interest, the factors enumerated in paragraph (1) through (6) of section 823(a) of this title shall be considered."); 49 U.S.C. § 40101 ("[T]he Secretary of Transportation shall consider the following [sixteen factors], among others, as being in the public interest and

consistent with public convenience and necessity . . . ."). These examples demonstrate that, even when Congress provides guidance as to how a public-interest determination should unfold, the inquiry is still a far-reaching one. Where, as here, Congress has not even attempted to cabin the considerations relevant to the public-interest decision, the decisionmaker has even greater discretion. *See, e.g.*, *Huawei*, 2 F.4th at 437-38 (explaining that the term "public interest" is "both broad and vague" and an "open-textured term" that has been interpreted "expansively" by the Supreme Court).

Given that all three enumerated conditions for Plaintiff's transfer to the custody of Oklahoma are clearly met, Plaintiff cannot establish a likelihood of success on the merits. As a result, the Court must reject the Magistrate's R&R, deny Plaintiff's motion for injunctive relief, and discharge any injunctive order that might prohibit Plaintiff's transfer.

B. Plaintiff Fails to Satisfy the Remaining Factors.

Where a plaintiff challenges a government policy, the third and fourth elements of the test for preliminary relief "merge" into a single consideration of the "public interest." *See Nken v. Holder*, 556 U.S. 418, 435 (2009). This factor, too, favors the government. It is well settled that "[d]etermination of priority of custody and service of sentence between state and federal sovereigns" is "an executive, and not a judicial, function." *Warren*, 610 F.2d 680, 684; *accord United States v. Dowdle*, 217 F.3d 610, 611 (8th Cir. 2000). The requested injunction would be contrary to the public interest because it would upset the "inviolable rules of comity," *Zerbst*, 97 F.2d at 254, and would potentially "subject to judicial review a wide spectrum of discretionary actions that traditionally have been the business of prison administrators rather than of the federal courts," *Meachum v. Fano*, 427 U.S. 215, 225 (1976).

CONCLUSION

Plaintiff's motion for emergency relief should be denied and the Court should reject the Magistrate's R&R.

February 12, 2025

Respectfully submitted,

BRETT A. SHUMATE
Acting Assistant Attorney General
Civil Division

ALEXANDER K. HAAS
Director

ANDREW WARDEN
Assistant Director

/s/ *Kevin K Bell*
KEVIN K. BELL
(GA Bar No. 967210)
Trial Attorney
United States Department of Justice
Civil Division, Federal Programs Branch
1100 L St. NW
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Phone: (202) 305-8613
E-mail: Kevin.K.Bell@usdoj.gov
Counsel for the United States

CERTIFICATE OF SERVICE

On February 12, 2025, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court for the Western District of Louisiana, using the electronic case filing system of the Court. I hereby certify that I have served all parties electronically or by another manner authorized by Fed. R. Civ. P. 5(b)(2).

/s/ Kevin K. Bell
KEVIN BELL
(GA Bar No. 967210)
Trial Attorney

Exhibit 1

GENTNER DRUMMOND
ATTORNEY GENERAL

January 23, 2025

Via U.S. Mail

Danon Colbert, Acting Regional Director
U.S. Department of Justice
Federal Bureau of Prisons
South Central Regional Office
US Armed Forces Reserve Cmpl
344 Marine Forces Drive
Grand Prairie, Texas 75051

Re: Transfer of Inmate George John Hanson (No. 08585-062) to State Custody

Dear Acting Director Colbert:

I am writing to request the transfer of inmate George John Hanson from the U.S. Bureau of Prisons to state custody. He is currently incarcerated at the United States Penitentiary, Pollock, which I understand is a facility within the South-Central Region. Your agency's records indicate that Inmate Hanson is currently assigned the BOP Register Number 08585-062. I request that he be transferred to Lexington Assessment and Reception Center in Lexington, Oklahoma.

As Oklahoma's executive authority responsible for law enforcement, I am submitting this request to you pursuant to 18 U.S.C. § 3623 and your agency's policies. As you know, the statute creates certain obligations for the Director of the Bureau of Prisons. The Director has delegated that authority to you. *See* BOP Program Statement 5140.35, ¶ 5 ("The respective Regional Director is the delegated authority to approve transfers to State officials").

I have enclosed a certified copy of the judgment of conviction indicating that Inmate Hanson was sentenced to death in Oklahoma state court. On August 31, 1999, Inmate Hanson and his accomplice, Victor Miller, carjacked and kidnapped 77-year-old Mary Bowles from the parking lot of a mall in Tulsa, Oklahoma, before Inmate Hanson eventually executed her with a semi-automatic pistol as she lay on the ground by an isolated dirt pit near Owasso, Oklahoma. While searching for a suitable location to kill Mary and dispose of her body, Inmate Hanson held down Mary in the back seat of her car as she tried to appeal to his humanity. When she asked Inmate Hanson whether he had any loved ones, he told her to "shut up" and punched her. An innocent bystander, Jerald Max Thurman, who witnessed Inmate Hanson and his accomplice in the act of holding Mary hostage at the dirt pit, also lost his life as collateral damage when Inmate Hanson's accomplice shot him numerous times with a revolver and left him for dead. Mary, Jerald, and their surviving family and friends have been denied justice for over 25 years. Justice must not be delayed any longer.

313 N.E. 21ST STREET • OKLAHOMA CITY, OK 73105 • (405) 521-3921 • FAX: (405) 521-6246

Previously, the Oklahoma Court of Criminal Appeals had ordered Hanson's death sentence to be carried out on December 15, 2022. However, the Biden administration prevented the state from carrying out Inmate Hanson's sentence by refusing to comply with federal law and perform a timely transfer of the inmate upon request. I have enclosed Heriberto H. Tellez's letter, which reached the appalling conclusion that it is not in the public interest for the federal government to respect a valid state death warrant, judgment, and sentence.

As you are likely aware, one of President Trump's first acts of his second term was to counteract the previous administration's inexplicable interference with state criminal judgments. On January 20, 2025, President Trump issued an executive order, titled "Restoring the Death Penalty and Protecting Public Safety."[1] Importantly, Section 2 of the order reads: "It is the policy of the United States to ensure that the laws that authorize capital punishment are respected and faithfully implemented, and to counteract the politicians and judges who subvert the law by obstructing and preventing the execution of capital sentences." The prior administration's refusal to transfer Inmate Hanson to state custody to finally carry out a decades-old death sentence is the epitome of subverting and obstructing the execution of a capital sentence. As a result, I respectfully request that you comply with federal law and President Trump's righteous order by transferring Inmate Hanson to state custody.

The next execution in Oklahoma is currently scheduled for March 20, 2025. I request that you effectuate Inmate Hanson's transfer to state custody in advance of that date, so that he is eligible for the next available execution date. Please contact me immediately if you are unable to comply with my request.

Respectfully,

GENTNER DRUMMOND
Attorney General

Enclosure:
Inmate Hanson's death warrant and judgment and sentence
Previous Regional Director Heriberto H. Tellez's refusal letter

cc: Acting Director William W. Lothrop
William W. Lothrop, Acting Director
U.S. Department of Justice
Federal Bureau of Prisons
Central Office
320 First St., NW
Washington, DC 20534

[1] *Available at*: https://www.whitehouse.gov/presidential-actions/2025/01/restoring-the-death-penalty-and-protecting-public-safety/.

ORIGINAL

IN THE DISTRICT COURT IN AND FOR TULSA COUNTY, OKLAHOMA

State Of Oklahoma, -vs- **JOHN FITZGERALD HANSON** SS#440-80-9179 DOB: 4-8-64	Case No. CF-99-4583 Count No. 1

DISTRICT COURT
FILED
FEB 08 2006
SALLY HOWE SMITH, COURT CLERK
STATE OF OKLA. TULSA COUNTY

DEATH WARRANT
Death Penalty

Whereas, on the 7th day of February, 2006, the defendant, upon a trial by jury, was duly convicted of the crime of **Murder in the First Degree** said verdict of the jury being as follows, to wit:

"We, the jury, drawn, impaneled and sworn in the above entitled cause, do upon our oaths, having been informed the defendant, John Fitzgerald Hanson, was **found guilty of Murder I the First Degree, fix his punishment at death.**" Robert Smith, foreman.

And whereas, in the District Court of Tulsa on the 7th day of February, 2006, the defendant, received a sentence of death for the offense of having murdered one **Mary Agnes Bowles** as charged in the information; and for which the defendant, has been found guilty by the verdict of the jury on **June 8th, 2001** as stated above.

NOW, THEREFORE, IT IS HEREBY ORDERED that the execution of this sentence be made upon the defendant, **John Fitzgerald Hanson**, on **May 9 2006 at 10:00 a.m. by continuous, intravenous administration of a lethal quantity of an ultra-short-acting barbiturate in combination with a chemical paralytic agent until death is pronounced by a licensed physician according to accepted standards of medical practice, as provided for in such cases under the statute laws of this state, John Fitzgerald Hanson be dead; said punishment of death by continuous, intravenous administration of a lethal quantity of an ultra-short-acting barbiturate in combination with a chemical paralytic agent until death is pronounced by a licensed physician according to accepted standards of medical practice to be inflicted upon John Fitzgerald Hanson and the judgment of death to be executed within the walls of the State Prison at McAlester, Oklahoma, said prison being situated and located in Pittsburg County of the State of Oklahoma.**

And you are hereby directed to deliver the defendant, within ten (10) days from this date, to the Warden of the State Prison at McAlester, Oklahoma for execution.

And the defendant, has prayed an appeal from the judgment and sentence of this Court to the Court of Criminal Appeals of the State of Oklahoma, and the same has been allowed by the Court and counsel appointed and directed to prosecute said appeal.

Witness my hand as District Judge of the District Court of Tulsa County, State of Oklahoma, and of the Judicial District Number Fourteen of the State of Oklahoma, at Tulsa, the county seat of Tulsa County, Oklahoma, and within said judicial district aforesaid, on this 7th day of February, 2006 A.D.

Caroline E Wall

JUDGE CAROLINE E. WALL

ATTESTATION:

SALLY HOWE SMITH
District Court Clerk, Tulsa County

By: _____
Letha J. Butcher, Deputy

I, Sally Howe Smith, District Court Clerk of Tulsa County, Oklahoma, hereby certify that the foregoing is a true, correct and full copy of the instrument, record or document as appears on record in the District Clerk's Office of Tulsa County, Oklahoma, this

AUG 04 2022

By Pam L Russell
Deputy

OFFICER'S RETURN OF SERVICE

Received this order the ____ day of _____, _____, and executed it by delivering said defendant to the Warden of the Lexington Assessment and Reception Center at Lexington, Oklahoma on the _____ day of _____, _____.

SHERIFF STANLEY GLANZ, TULSA COUNTY, OKLAHOMA

By:_____
Deputy

COURT CLERK'S CERTIFICATION

I, Sally Howe Smith, District Court Clerk for Tulsa County, Oklahoma, hereby certify that the foregoing is a true, correct and full copy of the instrument herewith set out as appears on record in the Court Clerks Office of Tulsa, Oklahoma.

Dated this the _____ day of _____, _____.

SALLY HOWE SMITH, TULSA COUNTY DISTRICT COURT CLERK

By: _____, Deputy

ORIGINAL

IN THE DISTRICT COURT IN AND FOR TULSA COUNTY, OKLAHOMA

State Of Oklahoma, -VS- **JOHN FITZGERALD HANSON** SS# 440-80-9179 DOB 4-8-64	Case No. CF-99-4583 Count No. 1

DISTRICT COURT
FILED
FEB 0 8 2006
SALLY HOWE SMITH, COURT CLERK
STATE OF OKLA. TULSA COUNTY

JUDGMENT AND SENTENCE FELONY
Death Penalty

Now, this 7th day of February, 2006, this matter comes on before the Court for sentencing and the defendant appears personally and by his or her Attorney of record, Jack Gordon and Steve Hightower, and the State of Oklahoma is represented by Doug Drummond, and the Court Reporter, Kim White, is present.

The defendant previously entered a plea of **not guilty** and has been found guilty by the Court of the crime of **Murder In The First Degree; 21 OS 7017; offense date: 8-31-99.**

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED by the Court that the defendant, is guilty of **Murder In the First Degree** and is sentenced to be imprisoned by the Oklahoma Department of Corrections until **May 9, 2006 at 10:00 a.m.** on which date the defendant **shall be put to death** by continuous, intravenous administration of a lethal quantity of an ultra-short-acting barbiturate in combination with a chemical paralytic agent until death is pronounced by a licensed physician according to the accepted standards of medical practice pursuant to the verdict for the crime of **Murder In the First Degree.**

IT IS FURTHER ORDERED, ADJUDGED AND DECREED BY THE COURT that in addition to the preceding terms, and the general miscellaneous costs of this action. The total costs assessed against the defendant in this case (all counts) is **$22,407.58.** It is further ordered that judgment is hereby entered against the defendant for all costs, fees, fines, and assessments ordered in this action.

The Court further advised the defendant of his or her right to appeal to the Court of Criminal Appeals of the State of Oklahoma and of the necessary steps to be taken by him or her to perfect such appeal, and that if he or she desired to appeal and was unable to afford counsel and a transcript of the proceedings, that the same would be furnished by the State, subject to reimbursement in accordance with 22 § O. S. 1355.14, 20 § O. S. 106.4 (b), and, ADC-72-33.

The Sheriff of Tulsa County, Oklahoma, is ordered and directed to deliver the defendant to the Lexington Assessment and Reception Center at Lexington, Oklahoma, and leave therewith a copy of this Judgment and Sentence to serve as warrant and authority for the imprisonment of the defendant as provided herein. A second copy of this Judgment and Sentence to be warrant and authority of the Sheriff for the transportation and imprisonment of the defendant as herein before provided. The Sheriff is to make due return to the clerk of this Court with his proceedings endorsed thereon.

Witness my hand this 7th day of February, 2006

Caroline E. Wall

JUDGE CAROLINE E. WALL

ATTESTATION:

SALLY HOWE SMITH
District Court Clerk Tulsa County

By: _____
Letha J. Butcher, Deputy

I, Sally Howe Smith, Court Clerk, for Tulsa County, Oklahoma, hereby certify that the foregoing is a true, correct and full copy of this instrument and that it appears on record in the Court Clerk's Office of Tulsa County, Oklahoma.

AUG 04 2022

By: Pam L Russell
Deputy

OFFICER'S RETURN OF SERVICE

Received this order the ____ day of _____, _____, and executed it by delivering said defendant to the Warden of the Lexington Assessment and Reception Center at Lexington, Oklahoma on the _____ day of _____, _____.

STANLEY GLANZ, SHERIFF, TULSA COUNTY, OKLAHOMA

By:_____

Deputy

COURT CLERK'S CERTIFICATION

I, Sally Howe Smith, District Court Clerk for Tulsa, Oklahoma, hereby certify that the foregoing is a true, correct and full copy of the instrument herewith set out as appears on record in the Court Clerks Office of Tulsa, Oklahoma.

Dated this the _____ day of _____, 20[illegible].

SALLY HOWE SMITH, DISTRICT COURT CLERK, TULSA COUNTY, OKLAHOMA

By: _____, Deputy

U.S. Department of Justice

Federal Bureau of Prisons

South Central Regional Office

344 Marine Forces Drive
Grand Prairie, Texas 75051

October 17, 2022

John M. O'Connor
Oklahoma Attorney General
313 N.E. 21st Street
Oklahoma City, OK 73105

Re: HANSON, George John; Reg. No. 08585-062

Dear Attorney General O'Connor:

This is in response to your letter, dated October 14, 2022, concerning the denial of the request to transfer federal inmate George John Hanson to Oklahoma state custody for state execution proceedings. You seek confirmation of the decision to deny the requested transfer, as conveyed to the Tulsa County District Attorney in a letter dated September 28, 2022.

Title 18 U.S.C. § 3623 provides for the transfer of a federal prisoner to state custody prior to satisfaction of a federal obligation if the transfer would be in the public interest. Ordinarily, the Federal Bureau of Prisons effectuates such a transfer, when qualified, within the last 90 days of the inmate's satisfaction of the Federal sentence.

Inmate Hanson is in the primary jurisdiction of federal authorities, and I am unaware of any indication another sovereign may properly possess primary jurisdiction of him. On June 28, 2000, the Honorable H. Dale Cook, United States District Judge for the Northern District of Oklahoma, sentenced inmate Hanson to a term of life imprisonment, which he has been serving since that date. As inmate Hanson is presently subject to a Life term imposed in Federal Court, his transfer to state authorities for state execution is not in the public interest.

Sincerely,

/s/ Heriberto H. Tellez
Heriberto H. Tellez
Regional Director

Exhibit 2

Office of the Attorney General
Washington, D. C. 20530

FEBRUARY 11, 2025

MEMORANDUM FOR THE ACTING DIRECTOR OF THE FEDERAL BUREAU OF PRISONS

FROM: THE ATTORNEY GENERAL

SUBJECT: TRANSFER OF INMATE GEORGE JOHN HANSON (AKA, JOHN FITZGERALD HANSON) TO THE CUSTODY OF OKLAHOMA TO IMPLEMENT A SENTENCE OF DEATH

On January 23, 2025, Attorney General of the State of Oklahoma, Gentner Drummond, delivered a letter to the Federal Bureau of Prisons (BOP). The letter requested that BOP transfer inmate George John Hanson (aka, John Fitzgerald Hanson) to the custody of Oklahoma. While inmate Hanson is presently in BOP custody serving a life sentence plus an additional 1,884 months, he also has received a death sentence in Tulsa County, Oklahoma, for the carjacking, kidnapping, and brutal murder of a 77-year-old woman. According to Attorney General Drummond, Oklahoma is now in a position to implement inmate Hanson's death sentence.

Federal law provides that if an inmate in BOP custody also carries a state conviction, BOP "shall" transfer the inmate to the state of conviction if requested by a state executive who provides a certified copy of the judgment of conviction to the BOP director, and if the transfer is in the "public interest." 18 U.S.C. § 3623. Consistent with BOP's internal policy guidance, the public interest is typically not served by transferring an inmate to state custody before a federal sentence is fully served. But following that policy where a state is ready to carry out a lawful death sentence grossly undermines the public interest. As President Trump made clear in Executive Order, "Restoring the Death Penalty and Protecting Public Safety;" and as I stated in a memorandum issued today entitled, "Reviving the Federal Death Penalty and Lifting the Moratorium on Federal Executions," the death penalty is the only just punishment for the most egregious crimes. It is vitally important to preserving public safety, supporting the rule of law, and achieving justice—and any unwarranted delay defeats these important public interests. Moreover, the transfer of a federal inmate to state custody furthers the public interest in promoting state and federal cooperation on capital crimes.

Upon my consideration of Oklahoma's request, I have determined that, in addition to meeting the first two requirements of § 3623, the transfer of inmate Hanson to Oklahoma is in the public interest under the unique circumstances of this case. Inmate Hanson viciously murdered an innocent woman. The victim experienced indescribable pain and terror before her violent death, and her family has suffered for decades as a result. An Oklahoma jury convicted

Oklahoma is ready to carry out the sentence. Timely enforcement of inmate Hanson's death sentence will achieve justice and provide a measure of closure to the victim's family and her community for the horrific crime committed by inmate Hason. The Department of Justice owes it to the victim and her family—as well as the public—to transfer inmate Hanson so that Oklahoma can carry out this just sentence.

Therefore, pursuant to my authority under 28 U.S.C. §§ 509-510, I am directing the Acting Director of the Federal Bureau of Prisons to transfer George Johnson Hanson (aka, John Fitzgerald Hanson) to the Lexington Assessment and Reception Center in Lexington, Oklahoma.

Exhibit 3

ORIGINAL

IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

JOHN FITZGERALD HANSON,	)	
	)	
Petitioner,	)	**NOT FOR PUBLICATION**
	)	
v.	)	**Case No. PCD-2020-611**
	)	
THE STATE OF OKLAHOMA,	)	
	)	
Respondent.	)	

OPINION DENYING SUCCESSIVE APPLICATION FOR CAPITAL POST-CONVICTION RELIEF

ROWLAND, PRESIDING JUDGE:

Before the Court is John Fitzgerald Hanson's successive application for capital post-conviction relief and accompanying motion for evidentiary hearing, challenging only the State's jurisdiction to prosecute and punish him in this case. We granted his motion for evidentiary hearing and remanded the case to the District Court of Tulsa County to take evidence and make conclusions concerning Petitioner Hanson's Indian status and the location of his crimes based on *McGirt v. Oklahoma*, 591 U.S. ___, 140 S.Ct. 2452 (2020). Prior to the completion of the remand proceedings, we stayed the proceedings pending the Court's consideration of *McGirt's*

retroactive application to otherwise final state convictions.[1] We have since decided *State ex rel. Matloff v. Wallace,* 2021 OK CR 21, ¶ 15, ___P.3d___, unanimously holding that the new rule of criminal procedure concerning Indian Country jurisdiction announced in *McGirt* would not be applied retroactively to void a state conviction that was final when *McGirt* was decided. Because Hanson's state convictions were long final when *McGirt* was decided,[2] his case is

[1] Although the district court went ahead and concluded the evidentiary hearing in this matter and filed Findings of Fact and Conclusions of Law as previously ordered, we make no decision on those findings as part of our ruling today. We observe that the district court found Hanson has some Indian blood and that the crimes were committed in Indian Country. It concluded, however, that Hanson failed to prove that he was recognized as Indian by a federally recognized tribe or the federal government and therefore Hanson was not an Indian for purposes of federal criminal jurisdiction under the Major Crimes Act.

[2] *Hanson v. State,* 2003 OK CR 12, 72 P.3d 40 (affirming Hanson's Tulsa County convictions for one count of First Degree Malice Aforethought Murder (Count 1) and one count of First Degree Felony Murder as well as his sentence of life imprisonment without the possibility of parole on Count 2, but vacating his death sentence and remanding Count 2 for resentencing); *Hanson v. State,* 2009 OK CR 13, 206 P.3d 1020 (affirming Hanson's death sentence following resentencing); *Hanson v. Oklahoma,* 558 U.S. 1081 (2009) (denying certiorari from resentencing direct appeal); *Hanson v. State,* Case No. PCD-2006-614, (Okl.Cr. June 2, 2009) (unpublished) (denying post-conviction relief); *Hanson v. State,* Case No. PCD-2011-58, (Okl.Cr. March 22, 2011) (unpublished) (denying successive application for post-conviction relief); *Hanson v. Sherrod,* Case No. 10-CV-113-CVE-TLW (N.D. Okla July 1, 2013) (unpublished) (denying federal habeas relief); *Hanson v. Sherrod,* 797 F.3d 810 (10th Cir.2015) (affirming denial of federal habeas relief); *Hanson v. Sherrod,* 136 S.Ct. 2013 (2016) (denying certiorari from affirmance of denial of federal habeas relief).

controlled by our decision in *Matloff* and he is not entitled to post-conviction relief based upon his jurisdictional challenge.

DECISION

Petitioner Hanson's Successive Application for Post-Conviction Relief is **DENIED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2021), the **MANDATE** is **ORDERED** issued upon delivery and filing of this decision.

APPEARANCES ON APPEAL

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MEGHAN LeFRANCOIS
PATTI PALMER GHEZZI
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MARIANNA MCKNIGHT
ASST. DISTRICT ATTORNEY
TULSA COUNTY COURTHOUSE
500 S. DENVER, SUITE 900
TULSA, OK 74103
COUNSEL FOR RESPONDENT

OPINION BY: ROWLAND, P.J.
HUDSON, V.P.J.: Concur
LUMPKIN, J.: Concur
LEWIS, J.: Concur

Exhibit 4

Office of the Attorney General
Washington, D. C. 20530

February 5, 2025

MEMORANDUM FOR ALL DEPARTMENT EMPLOYEES

FROM: THE ATTORNEY GENERAL

SUBJECT: REVIVING THE FEDERAL DEATH PENALTY AND LIFTING THE MORATORIUM ON FEDERAL EXECUTIONS[1]

Since our Nation's founding, the federal government, and nearly every state, has relied upon the death penalty as a just punishment for the most egregious crimes. The American people, through their elected representatives, have repeatedly reaffirmed the effectiveness of capital punishment in deterring crime, achieving justice for victims, and closure for their loved ones. At the federal level, the Department of Justice is charged with determining whether to seek death sentences for certain federal crimes and, when imposed, carrying out those sentences. This is among the Department's most serious and solemn responsibilities.

Throughout much of its nearly 155-year history, the Department of Justice career prosecutors and political leadership have appropriately secured federal death sentences against the very worst criminals. Consistent with Congress's mandate, the Department has consistently and faithfully fulfilled its duty to carry out those sentences in accordance with the law. The American people undoubtedly are safer, and more secure, as a result of this critical work.

Recently, however, the Department's political leadership disregarded these important responsibilities and supplanted the will of the people with their own personal beliefs. Those at the very highest levels of the Department failed to seek death sentences against child rapists, mass murderers, terrorists, and other criminals. More appalling, the Department's leadership sought—and received from former President Biden—commutations for the death sentences of 37 murderers that Department of Justice prosecutors had tirelessly secured over the past three decades. These actions severely undermined the rule of law and grievously damaged the public's trust in the justice system. For the victims of these horrific crimes and the loved ones left behind, these actions betrayed our sacred duty and broke our promise to achieve justice.

This shameful era ends today. Going forward, the Department of Justice will once again act as the law demands—including by seeking death sentences in appropriate cases and swiftly implementing those sentences in accordance with the law. Consistent with this principle and

---

[1] This guidance is not intended to, does not, and may not be relied upon to create, any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

President Trump's Executive Order 14164 entitled, "Restoring the Death Penalty and Protecting Public Safety," I am ordering the following actions effective immediately:

I. Lifting the Moratorium on Federal Executions

President Trump's Executive Order established that "[i]t is the policy of the United States to ensure that the laws that authorize capital punishment are respected and faithfully implemented." Therefore, the moratorium imposed by the prior Attorney General in a July 1, 2021, Memorandum entitled "Moratorium on Federal Executives Pending Review of Policies and Procedures" on federal executions is lifted, effective immediately. When a death sentence is imposed by a federal court, the Department will carry out its mandate to implement that sentence consistent with the law.

II. Seeking the Death Penalty

Pursuant to President Trump's Executive Order, federal prosecutors at the Department, including at U.S. Attorney's Offices, shall seek the death penalty— if that is a penalty proscribed by Congress—for the most serious, readily provable offenses, and if doing so is consistent with the relevant statutory considerations and other applicable regulations and Department of Justice guidance. Absent significant mitigating circumstances, federal prosecutors are expected to seek the death penalty in cases involving the murder of a law-enforcement officer and capital crimes committed by aliens who are illegally present in the United States. This policy applies to the recent murder of U.S. Customs and Border Patrol agent David Maland during a traffic stop in Vermont. It would also apply to the murder of Debrina Kawam who was burned to death while she was riding the New York City subway, to the extent these are federal capital crimes.

The policy set forth in the March 20, 2018, Memorandum entitled "Guidance Regarding Use of Capital Punishment in Drug-Related Prosecutions" is hereby reinstated. In addition to drug-related prosecutions, the policy shall also be applied to cases involving non-drug capital crimes by cartels, transnational criminal organizations, and aliens who traverse our borders and remain in the United States without legal status.

Federal prosecutors are strongly encouraged to use applicable statutes, when appropriate, to aid in the Department's continuing fight against drug trafficking and the violence it brings. This includes charging capital crimes and pursuing capital punishment in cases involving use of interstate commerce facilities to commit murder-for-hire resulting in death, 18 U.S.C. § 1958(a); murder in aid of racketeering activity, 18 U.S.C. § 1959(a)(1); murder in furtherance of a continuing criminal enterprise, 21 U.S.C. § 848(e); use of a firearm that causes death in connection with a crime of violence or drug-trafficking offense, if the killing is a murder, 18 U.S.C. § 924(j)(1); certain murders during a drive-by shooting, 18 U.S.C. § 36(b)(2)(A); and certain offenses involving extremely large quantities of drugs, 18 U.S.C. § 3591(b)(1). The murder of a law-enforcement officer, or a capital crime by an alien illegally present in the United States, are the types of aggravating circumstances that, absent significant mitigating circumstances, will warrant the Department seeking the death penalty. See 18 U.S.C. §§ 3592(c)–(d). The Department will support state and local law enforcement in lawful efforts to seek capital punishment based on crimes committed under similar circumstances and in other appropriate cases.

III. Reviewing No-Seek Decisions Since January 20, 2021

The Attorney General's Capital Review Committee is directed to review no-seek decisions in all pending capital-eligible cases (*i.e.*, death-eligible cases that have not yet resulted in a conviction) charged between January 20, 2021, and January 19, 2025. This group shall reevaluate no-seek decisions and whether additional capital charges are appropriate. Particular attention shall be paid to cases involving defendants associated with cartels or transnational criminal organizations,[2] capital crimes committed by defendants present in the United States illegally, and capital crimes committed in Indian Country or within the federal special maritime and territorial jurisdictions. The review required by this paragraph shall be completed within 120 days.

IV. Strengthening the Federal Death Penalty

President Trump's Executive Order directed the Department "to modify the Justice Manual based on the policy and purpose set forth" in Executive Order 14164. Therefore, all previous Department policies relating to the death penalty that are inconsistent with the Executive Order and the policies set forth herein—including former Attorney General Garland's January 15, 2025, Memorandum entitled "Determination Following Review of the Federal Execution Protocol and the Manner of Execution Regulations," which directed the Federal Bureau of Prisons to rescind the July 25, 2019, addendum to the execution protocol—are rescinded effective immediately. All revisions to Justice Manual § 9-10.000, et seq., that occurred between January 20, 2021, and January 19, 2025, are suspended for period of 45 days during which time the Office of Legal Policy, in coordination with additional components as appropriate, will review such revisions and make recommendations to the Deputy Attorney General concerning whether such revisions should be retained, amended, or rescinded. Further, the Office of Legal Policy will lead an evaluation, in coordination with additional components as appropriate, of all internal policies and procedures concerning capital crimes and propose revisions to the Deputy Attorney General that will strengthen the federal death penalty.

In addition, the Office of Legal Policy, in coordination with additional components as appropriate, will evaluate whether the Federal Bureau of Prisons should readopt the July 2019 addendum to the execution protocol. The review should focus on whether the use of pentobarbital as a single-drug lethal injection comports with the Eighth Amendment. As part of this review, the Office of Legal Policy will evaluate whether the Federal Bureau of Prisons should revise the addendum to include other manners of execution in accordance with 18 U.S.C. § 3596(a) and 28 C.F.R. § 26.3.

The Office of Legal Policy is also directed to evaluate all potential avenues to strengthen the federal death penalty as a valid means of punishment for the heinous crimes it is intended to punish, including by promptly achieving finality in cases where a court has imposed a death

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[2] Further information concerning cartels and transnational criminal organizations is provided in a companion February 5, 2025, Memorandum, "Total Elimination of Cartels and Transnational Criminal Organizations."

sentence. The Office of Legal Policy shall complete the evaluations required by these paragraphs and provide a report to the Office of the Deputy Attorney General within 90 days.

Finally, the Department's Criminal Division, Civil Division, and Office of the Solicitor General are directed to take all appropriate action to seek to cabin or obtain reassessment of Supreme Court precedents that limit the authority of state and federal governments to impose capital punishment.

V. Assisting with the Implementation of State and Local Death Sentences

The President's Executive Order directs the Attorney General to assist states in prosecuting capital crimes and implementing death sentences. Consistent with that Executive Order, the Federal Bureau of Prisons is directed to work with each state that allows capital punishment to ensure the states have sufficient supplies and resources to impose the death penalty. This includes transferring federal inmates with state or local death sentences to the appropriate authorities to carry out those sentences. The Office of Legal Policy is also directed to promptly address states' pending requests for certification pursuant to 28 U.S.C. § 2265.