

IN THE SUPREME COURT OF THE STATE OF NEBRASKA

STATE OF NEBRASKA,	)	Case No. S-86-0946
	)	
Appellee,	)	
	)	
v.	)	MOTION TO
	)	SET EXECUTION DATE
	)	
MICHAEL W. RYAN,	)	
	)	
Appellant.	)	

COMES NOW THE STATE OF NEBRASKA and moves this court to establish a date certain for the enforcement of the sentence of death imposed by the Nebraska courts in this case.

**Status in the Nebraska courts**

1. Ryan's sentence of death was affirmed by this court on mandatory direct appeal in *State v. Ryan*, 233 Neb. 74 (1989), *cert.den.*, 498 U.S. 881 (1990).
2. This court has twice affirmed the denial of postconviction relief for Ryan. *State v. Ryan*, 248 Neb. 405 (1995); *State v. Ryan*, 257 Neb. 635 (1999), *cert.den.* 529 U.S. 1100 (2000).
3. The State of Nebraska Department of Justice has not been notified that Ryan currently has any litigation pending in the district court challenging the validity of his conviction or sentence of death.
4. Ryan's sentence of death is valid and final.

**Status in the federal courts**

5. The federal courts have denied Ryan federal habeas corpus relief. *Ryan v. Clarke*, 387 F.3d 785 (8<sup>th</sup> Cir. 2004), *cert.den.* 544 U.S. 1065 (2005).

**RECEIVED**

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CLERK  
NEBRASKA SUPREME COURT  
COURT OF APPEALS

6. No stay of execution has been issued by any federal court preventing the enforcement of Ryan's sentence of death. See, Statement of the Attorney General pursuant to *State v. Palmer*, 246 Neb. 305 (1994). Exhibit A.
7. The State of Nebraska Department of Justice has not been notified that Ryan currently has any litigation pending in the federal courts.

**Constitutional method of enforcing sentences of death**

8. In *State v. Mata*, 275 Neb. 1, 68-69 (2008) this court stated: "When the State moves that an execution date be set, in addition to the other requirements for such a motion, the State should allege, and be prepared to demonstrate, that a constitutionally acceptable method of carrying out Mata's sentence is available." In response, the State of Nebraska offers the following:
  9. Subsequent to the release of this court's opinion in *State v. Mata*, the Nebraska Legislature has enacted Laws 2009, L.B. 36, Section 9 (effective August 31, 2009), which provides: "A sentence of death shall be enforced by the intravenous injection of a substance or substances in a quantity sufficient to cause death. The lethal substance or substances shall be administered in compliance with an execution protocol created and maintained by the Department of Correctional Services." Neb.Rev.Stat. § 83-964 (2010 Cum.Supp.).
  10. The execution protocol required by § 83-964 has been duly promulgated by the State of Nebraska Department of Correctional Services and is in full force and effect. Attachment B.

11. An execution conducted by the method authorized by § 83-964 and the DCS execution protocol does not violate the Eighth Amendment standards articulated in *Baze v. Rees*, 553 U.S. 35 (2008) or the requirements of the Nebraska Constitution, article I, § 9 as described in *State v. Mata*.
12. Since issuing its directive in *State v. Mata*, this court has issued an execution warrant in *State v. Moore*, S-95-0485 (April 21, 2011) (“[S]ince statutes are presumed to be constitutional, *Yant v. City of Grand Island*, 279 Neb. 935 (2010), we conclude the state has met its pleading burden under *Mata*.”)
13. This court also has rejected specific constitutional challenges to § 83-964 in *State v. Ellis*, 281 Neb. 571, 591-604 (May 27, 2011).
14. A duly enacted statute is presumed to be constitutional and the State carries no burden of proof on the question of the constitutionality of such a statute. *State v. Mata*, 275 Neb. 1, 49 (2008).

#### **Execution Date**

15. The State of Nebraska is presently prepared to conduct a constitutional execution and requests this court to order the enforcement of Ryan’s sentence of death.
16. The State of Nebraska requests this court to select an execution date falling on a Tuesday within the time frame described by Neb.Rev.Stat. § 29-2543 (2010 Cum.Supp.).

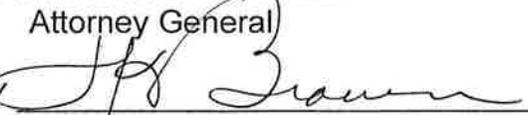
WHEREFORE, the State of Nebraska moves this court to issue its warrant establishing a date certain for the enforcement of Ryan’s sentence of death in

compliance with Neb.Rev.Stat. § 29-2543 (2010 Cum.Supp.).

Respectfully submitted,

STATE OF NEBRASKA, Appellee,

BY JON BRUNING, #20351  
Attorney General

BY 

J. Kirk Brown, #10456  
Solicitor General  
2115 State Capitol  
Lincoln, NE 68509-8920  
Tel: (402) 471-2682

***Attorneys for the Appellee.***

IN THE SUPREME COURT OF THE STATE OF NEBRASKA

STATE OF NEBRASKA,	)	Case No. S-86-0946
	)	
Appellee,	)	
	)	STATEMENT OF THE
v.	)	ATTORNEY GENERAL
	)	
MICHAEL W. RYAN,	)	
	)	
Appellant.	)	

COMES NOW JON BRUNING, Attorney General of the State of Nebraska, and offers the following pursuant to the requirements of this court's opinion in *State v. Palmer*, 246 Neb. 305 (1994).

**Federal litigation history**

1. The federal courts have denied Ryan federal habeas corpus relief. *Ryan v. Clarke*, 387 F.3d 785 (8<sup>th</sup> Cir. 2004), *cert.den.* 544 U.S. 1065 (2005).

**No federal stays of execution**

2. Based upon responses to our inquiry from the Clerks of the Supreme Court of the United States (Exhibit 1), the United States Court of Appeals for the Eighth Circuit (Exhibit 2) and the United States District Court for the District of Nebraska (Exhibit 3) there are currently no federal court orders preventing the enforcement of Ryan's sentence of death.
7. I have not received notice of any pending motions before any federal court seeking to stay the enforcement of Ryan's sentence.

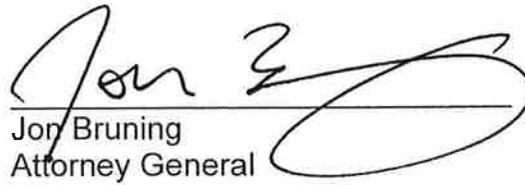
**Verification**

Jon Bruning, the duly elected Attorney General of the State of Nebraska, being



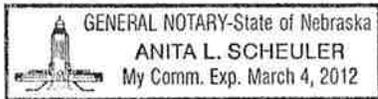
first duly sworn, states that the information contained in this Statement is correct to the best of his personal knowledge, information and belief.

Further affiant sayeth not.

  
Jon Bruning  
Attorney General

Subscribed in my presence and affirmed before me this 2<sup>nd</sup> day of November, 2011.

  
Notary Public



Office of the Clerk  
Supreme Court of the United States  
Washington, D. C. 20543-0001

November 1, 2011

Attn: J. Kirk Brown

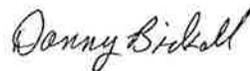
Mr. Jon Bruning  
Attorney General  
Office of the Attorney General  
2115 State Capital Building  
Lincoln, NE 68509-8920

Re: Michael W. Ryan

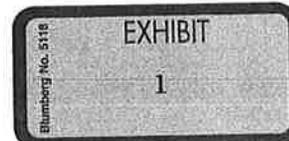
Dear Mr. Bruning:

The Supreme Court of the United States has not issued a currently valid stay of execution in the case of Michael W. Ryan. As of this date Michael W. Ryan does not have anything pending before this Court.

Sincerely,  
William K. Suter, Clerk



Danny Bickell  
Staff Attorney  
(202) 479-3024



United States Court of Appeals  
For the Eighth Circuit  
Thomas F. Eagleton U.S. Courthouse  
111 South 10<sup>th</sup> Street, Room 24.329  
St. Louis, Missouri 63102

Michael E. Gans  
Clerk of Court

VOICE (314) 244-2400  
FAX (314) 244-2780  
www.ca8.uscourts.gov

October 31, 2011

Mr. J. Kirk Brown  
Solicitor General  
Office of the Attorney General  
State of Nebraska  
2115 State Capitol Building  
Lincoln, Nebraska 68509-8920

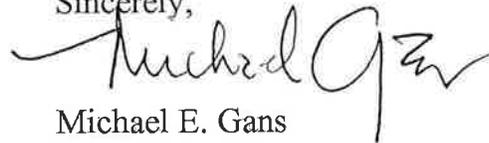
Re: Michael W. Ryan

Dear Mr. Brown:

This will acknowledge your letter of October 25, 2011, concerning Nebraska death-row prisoner Michael W. Ryan. I have consulted the court's records, and no currently valid stay of execution has been issued by the Eighth Circuit which would prevent the execution of Mr. Ryan's sentence.

Please contact me if you need additional information.

Sincerely,



Michael E. Gans  
Clerk of Court



UNITED STATES DISTRICT COURT  
DISTRICT OF NEBRASKA  
OFFICE OF THE CLERK  
[www.ned.uscourts.gov](http://www.ned.uscourts.gov)

Denise M. Lucks  
Clerk of Court

M. Therese Bollerup  
Chief Deputy Clerk

October 31, 2011

Jon C. Bruning  
Attorney General of the State of Nebraska  
Office of the Attorney General  
2115 State Capitol Building  
Lincoln, Nebraska 68509-8920

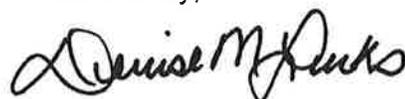
**RE: *Ryan v. Clarke*, 4:99CV3318**

Dear Mr. Bruning:

Attached to this letter is a copy of an e-mail dated October 31, 2011, from United States District Judge Richard Kopf, the assigned judge in Michael W. Ryan's case, 4:99CV3318. The e-mail serves as Judge Kopf's written assurance that no stays of execution are pending in this court.

Based on Judge Kopf's written assurance and my review of the court's records in *Ryan v. Clarke*, I therefore can confirm that the United States District Court for the District of Nebraska does not currently have in effect a stay of execution in *Ryan v. Clarke*, 4:99CV3318, reported as 281 F. Supp. 2d 1008 (2002), *aff'd*, 387 F.3d 785 (8th Cir. 2004), *cert. denied*, 544 U.S. 1065 (2005).

Yours truly,



Denise M. Lucks  
Clerk of the Court

Enclosure

cc: Judge Richard G. Kopf [e-mail]  
✓ J. Kirk Brown  
Michael A. Nelsen  
Steven E. Achelpohl





Re: Ryan V. Clarke, 4:99cv3318   
Richard Kopf to: Therese Bollerup  
Cc: Denise Lucks, Susie Cordero, Kristin Leininger

10/31/2011 09:47 AM

Dear Ms. Bollerup:

I have your request which is reproduced below.

This will certify that there is no stay in place in this case that would prevent the execution of Mr. Ryan. You may provide a copy of this e-mail to the Nebraska Attorney General.

Richard G. Kopf  
United States District Judge

Fifth Floor  
Federal Building  
100 Centennial Mall North  
Lincoln, NE 68508

Land Line: 402.437.1640  
Cell: 402.504.0265  
E-Mail: Richard\_Kopf@ned.uscourts.gov  
Fax: 402.437.1641

Therese Bollerup

Judge, The clerk's office has received a letter (s...

10/31/2011 09:35:36 AM

From: Therese Bollerup/NED/08/USCOURTS  
To: Richard Kopf/NED/08/USCOURTS@USCOURTS  
Cc: Denise Lucks/NED/08/USCOURTS@USCOURTS, Susie Cordero/NED/08/USCOURTS@USCOURTS  
Date: 10/31/2011 09:35 AM  
Subject: Ryan V. Clarke, 4:99cv3318

Judge,

The clerk's office has received a letter (see attachment) from the Nebraska Attorney General requesting "written assurances" that there are no federal stays in place that would prevent the execution of Michael W. Ryan.

The CM/ECF docket sheet shows that no activity has occurred in Ryan v. Clarke, 4:99cv3318, since the United States Supreme Court denied Mr. Ryan's petition for a writ of certiorari in June 2005. Would you please verify that you have not imposed any stays in this case?

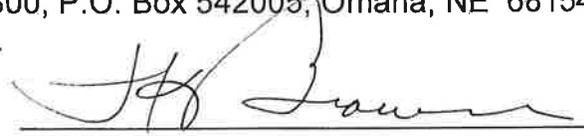
Thanks,  
Therese



Attorney General re Michael W Ryan.pdf

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing Motion to Set Execution Date and Statement of the Attorney General have been served upon the Appellant by regular U.S. Mail, postage prepaid, addressed to Appellant's last known attorneys of record Steven E. Achepohl, Law Offices of Steve Achelpohl, 1010 Historic Library Plaza, 1823 Harney Street, Omaha, NE 68102-1913 and Michael A. Nelsen, Marks Clare & Richards, L.L.C., 11605 Miracle Hills Drive, #300, P.O. Box 542005, Omaha, NE 68154 on the 3rd day of Nov., 2011.



J. Kirk Brown  
Solicitor General