

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

No. 11-50643

RAIS BHUIYAN

Plaintiff - Appellant

v.

RICK PERRY, GOVERNOR, STATE OF TEXAS
BRAD LIVINGSTON, EXECUTIVE DIRECTOR,
TEXAS DEPARTMENT OF CRIMINAL JUSTICE;
ANGIE MCCOWN, DIRECTOR,
TDCJ VICTIM SERVICES DIVISION; AND
RISSIE OWENS, MEMBER TEXAS BOARD OF
PARDONS AND PAROLES

Defendants - Appellees

Appeals from the United States District Court
for the Western District of Texas

O R D E R

Before JONES, Chief Judge, and HIGGINBOTHAM and DAVIS, Circuit
Judges.

By the Court:

The court has considered the appellant's Emergency Motion for a Stay to
Preserve Jurisdiction, which was filed to seek review of the district court's order

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of July 20, 2011, denying injunctive relief to stay the execution of Mark Anthony Stroman. We treat this motion as a notice of appeal.

To obtain injunctive relief, the appellant must establish: (1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable injury if the injunction is not issued; (3) that the threatened injury if the injunction is denied outweighs any harm that will result if the injunction is granted; and (4) that the grant of an injunction will not disserve the public interest. *See, e.g., Janvey v. Alguire*, 628 F.3d 164, 174 (5th Cir. 2010).

The second, third and fourth factors are unsatisfied for essentially the reasons relied on by the district court. As to the first factor, we conclude that the appellant does not have standing under 42 U.S.C. § 1983 to seek the requested relief as a bystander to the prosecution. *See, e.g., Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). Even if he has standing of some sort as a victim, his claim is barred by laches for untimeliness. Nor do the federal courts have jurisdiction to issue a stay of execution. *See Beets v. Tex. Bd. of Pardons & Paroles*, 205 F.3d 192, 193 (5th Cir. 2000); *see also* 28 U.S.C. § 2283. Appellant therefore cannot succeed on the merits.

Appellant's Emergency Motion for injunctive relief is DENIED.

Appellant's counsel is required to Show Cause within seven days (1) why this motion is not frivolous; and (2) how he, she or they complied with Fifth Circuit Local Rule 8.10.

United States Court of Appeals
FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE
NEW ORLEANS, LA 70130

July 20, 2011


MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 11-50643 Rais Bhuiyan v. Brad Livingston, et al
USDC No. 1:11-CV-603

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk


By: _____
Mary Frances Yeager, Deputy Clerk
504-310-7686

Mr. Rais Bhuiyan
Mr. Allan Kennedy Cook
Mr. Woodson Erich Dryden
Mr. William Putnicki
Ms. Danalynn Recer