
In The
SUPREME COURT OF THE UNITED STATES
October Term 2017

Raymond Tibbets,
Applicant/Petitioner,

v.

John Kasich, et al.,
Respondents.

Application for an Extension of Time Within
Which to File a Petition for a Writ of Certiorari to the
United States Court of Appeals for the Sixth Circuit

APPLICATION TO THE HONORABLE JUSTICE
ELENA KAGAN AS CIRCUIT JUSTICE

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April 20, 2018

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APPLICATION FOR AN EXTENSION OF TIME

Pursuant to Rule 13.5 of the Rules of this Court, Applicant Raymond Tibbetts hereby requests a 60-day extension of time within which to file a petition for a writ of certiorari, up to and including Monday, July 2, 2018.

JUDGMENT FOR WHICH REVIEW IS SOUGHT

The judgment for which review is sought is *In re Ohio Execution Protocol Litig.*, No. 17-4221 (February 1, 2018); the opinion is attached as Exhibit 1.

JURISDICTION

This Court will have jurisdiction over any timely filed petition for a writ of certiorari in this case pursuant to 28 U.S.C. § 1254(1). Under Rules 13.1, 13.3, and 30.1 of the Rules of this Court, a petition for a writ of certiorari is currently due to be filed on or before May 2, 2018.

REASONS JUSTIFYING AN EXTENSION OF TIME

Applicant respectfully requests a 60-day extension of time within which to file a petition for a writ of certiorari seeking review of the decision of the United States Court of Appeals for the Sixth Circuit in this case, up to and including July 2, 2018.

1. Applicant is an inmate under a sentence of death in Ohio, who is scheduled to be executed on October 17, 2018. Applicant filed a civil-rights lawsuit challenging the State's method of execution under the Eighth Amendment to the U.S. Constitution. On February 1, 2018, the United States Court of Appeals for the Sixth Circuit issued its opinion in this case, affirming the denial of Applicant's request for preliminary injunctive relief. Among other important issues of federal law that the decision below presents, the lower court applied a heightened legal

standard that conflicts with this Court’s decisions in *Baze v. Rees*, 553 U.S. 35, 50 (2008) (plurality opinion), and *Glossip v. Gross*, 135 S. Ct. 2726, 2737 (2015). Specifically, the lower court held that, to obtain a preliminary injunction under *Glossip*, Applicant must “prove” with “scientific evidence” that “a 500-mg dose of midazolam . . . is *sure or very likely* to fail to prevent serious pain.” Slip op. at 7. The decision below establishes a legal standard that is impossible to meet in practice, and, further, insulates Ohio’s lethal-injection protocol from meaningful constitutional scrutiny.

2. The extension of time is necessary because Applicant has obtained new counsel, Mr. Jeffrey Green. A 60-day extension for the Applicant would allow Mr. Green the necessary amount of time to become acquainted with the record in this case and effectively contribute to all open matters, including Applicant’s petition. The extension of time is also necessary because of the press of Mr. Green’s other client business. For example, in the coming months, Mr. Green and the Northwestern Supreme Court Practicum have several overlapping commitments representing other clients in this Court, including oral argument on behalf of petitioner in *Chavez-Meza v. United States* (17-5639), a brief in opposition in *Ryan v. Poyson* (17-), petitions for certiorari in *Arjune v. Washington* (17-), *Dixon v. United States* (17-) and *Miscevic v. Laborers’ Pension Fund and Estate of M.M.* (17-), and a certiorari-stage reply brief in *Martinson v. Arizona* (17-7407). Mr. Green is also appointed counsel in six D.C. Court of Appeals cases (*Best v. United States*, No. 12-CF-1590; *Givens v. United States*, No. 14-CF-712; *Gray v. United States*, No. 15-CF-388; *Johnson v. United States*, No. 13-CF-493; *Walker v. United States*, Nos. 14-CF-839 and 14-CF-840; and *General v. United States*,

No. 16-CF-0822) and has ongoing litigation in the District Court for the District of Columbia.

3. The extension of time is also warranted because Applicant is scheduled to appear before the Ohio Department of Rehabilitation and Correction's Parole Board on June 14, 2018. Ohio was previously set to execute Applicant on February 13, 2018, but the State's Governor postponed the execution after receiving a letter from one of the jurors in Applicant's original trial. The Governor issued a temporary reprieve, moved Applicant's execution date to October 17, 2018, and asked the Parole Board to hold a hearing on the matter. A 60-day extension for the Applicant would allow the Parole Board's process to fully play out, and may impact or ultimately obviate the need for a petition for a writ of certiorari in this case.

4. No prejudice would arise from the requested extension. Even with a 60-day extension, full briefing would be completed and the Court would have an opportunity to decide whether to grant the petition for a writ of certiorari during its first conference of October Term 2018 and before Applicant's scheduled execution date. Moreover, were this Court to grant the petition for a writ of certiorari, the Court would not hear oral argument in this case until October Term 2018, regardless of whether an extension is granted.

5. Respondents do not oppose this 60-day request for an extension of time within which to file a petition for a writ of certiorari.

CONCLUSION

For the foregoing reasons, Applicant respectfully requests that this Court grant an extension of 60 days, up to and including July 2, 2018, within which to file a petition for a writ of certiorari in this case.

Respectfully submitted,



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