

IN THE
Supreme Court of the United States

NATHANIEL WOODS,
Petitioner,
v.

COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS, WARDEN, HOLMAN CORREC-
TIONAL FACILITY, ATTORNEY GENERAL, STATE OF ALABAMA,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

**PETITIONER'S REPLY TO RESPONDENTS' BRIEF IN OPPOSITION
TO PETITION FOR WRIT OF CERTIORARI AND APPLICATION FOR
STAY OF EXECUTION**

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CAPITAL CASE: EXECUTION SCHEDULED FOR MARCH 5, 2020

In denying Mr. Woods’ motion to stay, the Eleventh Circuit of Court of Appeals limited the applicability of the Eighth Amendment in a way never before endorsed by the Court. *See* Appendix, Ex. 1 at 13-14 (“The district court correctly rejected Woods’s attempt to equate his situation—the *carrying out* of his death sentence—with the *imposition* of a death sentence.”) (emphasis in original)). Respondents concede that the Eleventh Circuit was wrong, stating that “[n]o one ... suggests that such a method of setting execution dates”—based on the race of the victim—“would be constitutional.” Opp. at 23. But there’s no dispute the Eleventh Circuit’s binary approach to the issue would permit precisely that. And it’s the very reason Mr. Woods seeks certiorari: to rectify the Eleventh Circuit’s misunderstanding of settled precedent and clarify the constitutional contours of the Eighth Amendment in this context.

The State concludes, with little analysis, that “[t]here is nothing arbitrary, much less cruel and unusual,” about the way in which it is seeking to execute Mr. Woods to the exclusion of fourteen (14) other death-row inmates who have been indefinitely spared. *See* Opp. at 23. Because of this, the State contends, “this claim is not worthy of certiorari.” But the way in which a state schedules executions—and the contours of the Eighth Amendment’s obligations related to same—is an important issue that requires this Court’s attention. Not only is it likely to surface in future cases as more states seek alternatives to lethal injection (and certainly, in the State of Alabama), but at least one other Circuit Court of Appeal has faced this very issue—resulting in a fractured opinion and ongoing confusion. Specifically, in *McGehee v. Hutchinson*, the Eighth Circuit was called upon to address the constitutionality of

Arkansas’ plan to execute eight inmates in an eleven-day period, all because the State’s supply of a drug used in its lethal-injection protocol was about to expire. 854 F.3d 488 (8th Cir. 2017) (per curiam), *cert. denied* 137 S.Ct. 1275 (2017). Ultimately, the Eighth Circuit overturned the district court’s decision to stay the executions, finding that petitioners were not likely to succeed on their claims that the *method* of execution violated the Eighth Amendment, pursuant to this Court’s decision in *Glossip v. Gross*, 135 S.Ct. 2726 (2015). *McGehee*, 854 F.3d at 492. But what the majority did not adequately address was whether the way in which the State *scheduled* the executions—coupled with the method-of-execution claim—violated the Eighth Amendment. *See id.* at 503 (Kelly, J., dissenting). Judge Kelly explained, irrespective of the method-of-execution claim, “[t]he State’s expedited execution schedule is troubling on a more fundamental level” as it violated “the evolving standards of decency” that guide the Eighth Amendment. *Id.* at 506-08. So too here.

As this Court has long recognized, “[t]he basic concept underlying the Eighth Amendment is nothing less than the dignity of man.” *E.g., Atkins v. Virginia*, 536 U.S. 304, 311 (2002) (internal quotation omitted). In addition, this Court has limited the way in which the State carries out the death penalty when doing so is necessary for the “protection of dignity” and for “the integrity of the trial process.” *Hall v. Florida*, 134 S.Ct. 1986, 1992-93 (2014). When a State schedules executions on factors that have “nothing to do with the heinousness of [inmates’] crimes[,] ... with the presence (or absence) of mitigating behavior[,] ... with their mental state[,] ... [or] with the need for speedy punishment[,]” the State violates the Eighth Amendment’s

prohibition against carrying out death sentences arbitrarily. *McGehee*, 137 S.Ct. at 1276-77 (Breyer, J., dissenting). That is exactly what has occurred here, and this case provides the Court the opportunity to finally address an important—and emerging—question.

Respectfully submitted,

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