Nos. 20A12 and 20-26

IN THE SUPREME COURT OF THE UNITED STATES

WESLEY PURKEY, PETITIONER

v.

WARDEN OF USP TERRE HAUTE, UNITED STATES OF AMERICA

(CAPITAL CASE)

BRIEF FOR THE UNITED STATES IN OPPOSITION TO APPLICATION FOR STAY OF EXECUTION AND TO PETITION FOR A WRIT OF CERTIORARI

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PARTIES TO THE PROCEEDING

Petitioner (petitioner-appellant below) is Wesley Ira Purkey.

Respondents (respondents-appellees below) are T.J. Watson, in his official capacity as Warden of United States Penitentiary - Terre Haute, and the United States of America.

RELATED PROCEEDINGS

United States District Court (W.D. Mo.):

United States v. Purkey, No. 01-cr-308 (Jan. 26, 2004)

Purkey v. United States, No. 06-cv-8001 (Sept. 29, 2009)

United States District Court (S.D. Ind.):

Purkey v. United States, No. 19-cv-414 (Nov. 20, 2019)

United States Court of Appeals (8th Cir.):

United States v. Purkey, No. 04-1337 (Nov. 7, 2005)

Purkey v. United States, No. 10-3462 (Sept. 6, 2013)

United States Court of Appeals (7th Cir.):

Purkey v. Hanlon, No. 19-3047 (Nov. 7, 2019)

Purkey v. United States, No. 19-3318 (July 2, 2020)

Supreme Court of the United States:

Purkey v. United States, No. 05-11528 (Oct. 16, 2006)

Purkey v. United States, No. 13-9783 (Oct. 14, 2014)

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Petitioner here seeks emergency relief on a claim that this Court has already declined to review twice this week -- once in his own case earlier today. Both the application for a stay of execution and the petition for a writ of certiorari should be denied.

Yesterday, the Court unanimously denied an application for a stay and petition for a writ of certiorari raising a question identical to the question petitioner raises here. See Lee v. Watson, No. 20-532 (20A7) (July 14, 2020). Petitioner's execution was scheduled to be carried out at 7:00 p.m. Eastern Daylight Time today. This afternoon, this Court vacated a stay of execution that the United States Court of Appeals for the Seventh Circuit had entered in this case, pending the court of appeals' consideration of a potentially forthcoming petition for rehearing

or rehearing en banc by petitioner. See United States v. Purkey, No. 20A4 (July 15, 2020). Following this Court's vacatur of that stay, petitioner then filed a new application for a stay in the court of appeals, asking that court to enter a stay pending his filing of a petition for a writ of certiorari in this Court. C.A. Docket No. 49. The court of appeals summarily denied that motion without calling for a response. See C.A. Docket No. 50.

Petitioner now seeks a stay from this Court pending consideration of a petition for a writ of certiorari. The only purposes that can be served by this latest filing are delay to the government and inconvenience to the Court. As the government explained in asking this Court to vacate the stay previously entered by the court of appeals, petitioner has not established a likelihood of success on the merits, and his strategic litigation conduct weighs strongly against any stay of his execution. This Court accepted those arguments in vacating the stay, and nothing has changed in the last 12 hours that would lead this Court to reach a different conclusion now that petitioner affirmatively asks this Court to enter a stay. To the contrary, the continued efforts at delay only make it clearer that no stay should be entered, the petition should be denied, and his execution should be allowed to proceed.

CONCLUSION

The petition for a writ of certiorari and accompanying stay application should be denied.

Respectfully submitted.

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Acting Solicitor General

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JULY 2020