No. 20A

IN THE SUPREME COURT OF THE UNITED STATES

UNITED STATES OF AMERICA, APPLICANT

v.

LISA MARIE MONTGOMERY

(CAPITAL CASE)

APPLICATION FOR STAY OR VACATUR OF THE STAY OF EXECUTION ISSUED BY THE COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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PARTIES TO THE PROCEEDING

Applicant (appellee below) is the United States of America.

Respondent (appellant below) is Lisa Marie Montgomery.

RELATED PROCEEDINGS

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

United States v. Montgomery, No. 05-cr-6002 (Apr. 4, 2008)

Montgomery v. United States, No. 12-cv-8001 (Mar. 3, 2017)

United States v. Montgomery, No. 05-cr-6002 (Jan. 10, 2021)

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

United States v. Montgomery, No. 08-1780 (Apr. 5, 2011)

In re Montgomery, No. 13-2958 (Oct. 17, 2013)

In re Montgomery, No. 14-2437 (July 11, 2014)

In re Montgomery, No. 14-2725 (Aug. 13, 2014)

Montgomery v. United States, No. 17-1716 (Jan. 25, 2019)

United States v. Montgomery, No. 21-1074 (Jan. 12, 2021)

Supreme Court of the United States:

Montgomery v. United States, No. 11-7377 (Mar. 19, 2012)

Montgomery v. United States, No. 19-5921 (May 26, 2020)

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Pursuant to Rule 23 of this Court and the All Writs Act, 28 U.S.C. 1651, the Acting Solicitor General, on behalf of the United States, respectfully applies for an order immediately staying or vacating a stay of respondent's execution entered by the United States Court of Appeals for the Eighth Circuit. Although respondent's execution was scheduled to occur today at 6 p.m., a divided panel of the Eighth Circuit -- in a two-sentence, unreasoned, and unsigned order -- issued a stay at about 4 p.m. today, and it did so based on a claim that respondent filed in district court on Sunday. This Court repeatedly has admonished that "last-minute" stays of execution "'should be the extreme exception, not the norm.'" Barr v. Lee, 140 S. Ct. 2590, 2591 (2020). Yet this is the third stay entered against respondent's execution in the past 24 hours -- the Seventh Circuit has already vacated one of them, Montgomery v. T.J. Watson, No. 21-1052 (Jan. 12, 2021), and this Court vacated a second one moments ago, see

No. 20A122. This third stay is even more meritless than the prior two. As Judge Wilkinson recently observed, "[i]t is disheartening to say the least to watch the Supreme Court's warnings disregarded." United States v. Johnson, No. 20-15 (4th Cir. Jan. 12, 2021), slip op. at 3. This Court should make clear that it means what it says, and immediately set aside the Eighth Circuit's stay so that respondent's execution can proceed. Lee, 140 S. Ct. at 2591.

Respondent was convicted and sentenced to death 12 years ago for strangling a pregnant woman to death and kidnapping her baby by cutting it out of her body while the woman was still alive. Despite respondent's barrage of meritless, last-minute legal challenges, she remains scheduled for execution today. In preparation for the execution, she was transferred yesterday evening from a federal women's prison in Texas to the federal execution facility in Indiana. Multiple members of the murdered woman's family are currently in Indiana to witness the execution.

This past Sunday, a mere two days before her scheduled execution, respondent filed a motion to "enforce the judgment" in the sentencing court, suggesting for the first time that her twelve-year-old judgment included an automatic stay that took effect when she filed her direct appeal in 2008 and has been in place ever since. The district court correctly and promptly rejected this improbable, last-minute claim, explaining that the

court had not imposed an indefinite stay that would limit the execution of its judgment beyond the exhaustion of appeals. Respondent appealed to the Eighth Circuit, challenging the district court's reading of its own order and asking the Eighth Circuit to issue a stay of execution pending the appeal of her claim that was now as undeniably meritless as it was inexcusably dilatory.

Yet earlier this afternoon, the court of appeals granted respondent's request. And to make matters worse, the court of appeals granted that stay of execution in an unsigned, unreasoned order, which reads in full: "Appellant's motion for a stay of execution pending appeal is granted. Judge Shepherd would deny the motion." App., infra, 1a. The court of appeals' order should immediately be vacated for three reasons.

First, and most obviously, the Eighth Circuit's order fails to make the required finding for issuing a stay of execution. "[I]nmates seeking time to challenge the manner in which the State plans to execute them must satisfy all of the requirements for a stay, including a showing of a significant possibility of success on the merits." Dunn v. McNabb, 138 S. Ct. 369, 369 (2017) (citation omitted). In Dunn, this Court summarily set aside a lower-court order "enjoin[ing] [an] execution without" making those necessary findings. Id. at 369. It should do so again here.

Second, the balance of equities weighs overwhelmingly against halting respondent's execution on the basis of her current claim. Although respondent rests that claim on the judgment itself -- which was issued in 2008 -- she waited until two days before her scheduled execution to raise it. That delay is inexcusable. And it is particularly inexcusable given that the district court presiding over another of respondent's last-minute challenges sua sponte identified purported deficiencies in the judgment in December. And yet even at that court's prompting, respondent still failed to press the claim she now raises. This Court has held that "where a claim could have been brought at such a time as to allow consideration of the merits without requiring entry of a stay," there is a "strong equitable presumption that no stay should be granted." Bucklew v. Precythe, 139 S. Ct. 1112, 1134 n.5 (2019) (citation and internal quotation marks omitted). Respondent cannot remotely overcome that presumption here. And her gamesmanship is only underscored by her representations to this Court in other litigation that she will suffer irreparable harm in the absence of a stay -- a claim that is inconsistent with her current position that a stay is already in place.

No further delay is warranted. Respondent was sentenced to death 12 years ago for a crime of staggering brutality. She has exhaustively litigated challenges to her conviction and sentence, all of which have failed. Now, in yet another dilatory challenge

to her execution date, she again seeks delay for delay's sake. She asserts no substantive interest that would be compromised by permitting her execution to proceed. She seeks only to postpone the enforcement of her lawful judgment. But the victim's family, her community, and the Nation "deserve better." Bucklew, 139 S. Ct. at 1134.

Finally, as should not be surprising given respondent's failure to raise the claim until the eve of execution, her proffered interpretation of the judgment is wrong on the merits. Appellate courts owe deference to district courts' interpretation of their own orders. In the order on appeal in the court below, the district court made crystal clear that the automatic stay imposed by the 2008 judgment did nothing more than protect respondent's appellate rights. It did not impose an unjustified indefinite stay in violation of the principle articulated in cases like Dunn, Nken v. Holder, 556 U.S. 418 (2009), and Hill v. McDonough, 547 U.S. 573, 584 (2006). That judgment also cannot reasonably be read to impose any deadline barring the government from executing respondent outside the 60- to 90-day deadline it presumptively imposed. And even if it could, the district court order below should be construed as lifting that indefinite stay and waiving any such timeframe to permit, at last, the enforcement of respondent's lawful sentence.

This Court should vacate the court of appeals' stay so that respondent's execution can "proceed as planned." Lee, 140 S. Ct. at 2592.

STATEMENT

1. In April 2004, respondent and Bobbie Jo Stinnett met at a dog show. Stinnett maintained a website to promote her dog-breeding business, which she ran out of her home. In the spring of 2004, Stinnett became pregnant and shared that news with her online community, including respondent. 635 F.3d at 1079.

Around that time, respondent, who was herself unable to become pregnant because she had been sterilized years earlier, falsely began telling people that she was pregnant. Respondent said that she had tested positive for pregnancy, and she began wearing maternity clothes and behaving as if she were pregnant. Respondent's second husband and her children were unaware of her sterilization and believed that she was pregnant. 635 F.3d at 1079-1080.

On December 15, 2004, when Stinnett was eight months pregnant, respondent contacted Stinnett via instant message using an alias and expressed interest in purchasing a puppy from her. The women arranged to meet the following day. The following day, respondent drove from her home in Melvern, Kansas, to Stinnett's home in Skidmore, Missouri, carrying a white cord and sharp kitchen knife in her jacket. 635 F.3d at 1079.

When respondent arrived, she and Stinnett initially played with the puppies. But sometime after 2:30 p.m., respondent attacked Stinnett, using the cord to strangle her until she was unconscious. Respondent then cut into Stinnett's abdomen with the knife, which caused Stinnett to regain consciousness. A struggle ensued, and respondent again strangled Stinnett with the cord, this time killing her. Respondent then extracted the baby from Stinnett's body, cut the umbilical cord, and left with the child. Stinnett's mother arrived at Stinnett's home shortly thereafter, found her daughter's body covered in blood, and called 911. Stinnett's mother said the scene looked as if Stinnett's "stomach had exploded." 635 F.3d at 1079-1080.

The next day, December 17, 2004, state law-enforcement officers arrived at respondent's home, where respondent was sitting on the couch, holding the baby. An officer explained that they were investigating Stinnett's murder and asked about the baby. Respondent initially claimed that she had given birth at a clinic in Topeka, but later admitted to that lie and told another one. She claimed that, unbeknownst to her husband, she had given birth at home with the help of two friends because the family was having financial problems. When asked for her friends' names, respondent said that they had not been physically present but had been available by phone if difficulties arose. Respondent asserted

that she had given birth in the kitchen and discarded the placenta in a creek. 635 F.3d at 1080.

At some point, respondent requested that the questioning continue at the sheriff's office. Once there, respondent confessed that she had killed Stinnett, removed the baby from her womb, and abducted the child. The baby was returned to her father. 635 F.3d at 1080.

2. On December 17, 2004, the government filed a criminal complaint charging respondent with kidnapping resulting in death, in violation of 18 U.S.C. 1201(a)(1) (2000). Complaint. Shortly thereafter, in January 2005, a federal grand jury indicted respondent on one count of kidnapping resulting in death. Indictment 1. The indictment included special findings (id. at 1-4) required under the Federal Death Penalty Act of 1994, 18 U.S.C. 3591 et seq., for charges as to which a capital sentence is sought. See also Superseding Indictment 1-3.

After trial, the jury unanimously found respondent guilty of kidnapping resulting in death and recommended a capital sentence. 635 F.3d at 1085. The district court sentenced respondent in accord with that recommendation. App., infra, 4a. The court's final judgment provided that the Attorney General shall set the time of execution, "provided that the time shall not be sooner than 60 days nor later than 90 days after the date of the judgment." Ibid. But it added that, "[i]f an appeal is taken from the conviction or

sentence, execution of the judgment shall be stayed pending further order of this Court upon receipt of the Mandate of the Court of Appeal." Ibid.

Respondent timely appealed, and the court of appeals affirmed. 635 F.3d 1074. In 2012, this Court denied certiorari. 565 U.S. 1263.

In 2012, respondent sought post-conviction relief under 28 U.S.C. 2255. After holding an evidentiary hearing, the district court denied relief and further denied a certificate of appealability (COA). Order, No. 12-8001 (W.D. Mo. Mar. 3, 2017); Order, No. 12-8001 (Dec. 21, 2015). The court of appeals similarly denied a COA and dismissed respondent's appeal. Judgment, No. 17-1716 (8th Cir. Jan. 25, 2019). This Court again denied certiorari. 140 S. Ct. 2820 (2020) (No. 19-5921).

3. On October 16, 2020, the Director of BOP designated December 8, 2020, as the date for respondent's execution. D. Ct. Doc. 444. At the time of her designation and through the time that she filed her habeas petition, respondent was confined at FMC Carswell, in Fort Worth, Texas. Montgomery v. Barr, No. 4:20-CV-01281-P, 2020 WL 7353711, at *1 (N.D. Tex. Dec. 15, 2020). She has since been transferred to FCC Terre Haute, in preparation for her execution.

Since the designation of her date of execution, respondent has filed a series of lawsuits in courts across the country in an

attempt to preclude or delay her execution. One such suit in the District of Columbia resulted in a limited, preliminary injunction to afford her counsel, who were suffering from COVID-19, additional time to prepare a clemency petition. Under the injunction, the government was precluded from carrying out respondent's execution before December 31, 2020. Montgomery v. Barr, 20-cv-3261, 2020 WL 6799140, at *11 (D.D.C. Nov. 19, 2020). On November 23, 2020, in compliance with that injunction, the BOP Director designated January 12, 2021, as respondent's new execution date. D. Ct. Doc. 445.

Respondent has used the intervening weeks to press various regulatory and constitutional claims concerning the scheduling of her execution and her planned transfer to Terre Haute, in the Southern District of Indiana. See, e.g., Montgomery v. Barr, No. 4:20-cv-1281, 2020 WL 7353711 (N.D. Tex. Dec. 15, 2020); Montgomery v. Rosen, No. 20-cv-3261, 2020 WL 7695994 (D.D.C. Dec. 24, 2020), summarily reversed, No. 20-5379, 2021 WL 22316 (D.C. Cir. Jan 1, 2021), reh'g en banc denied, No. 20-5379 (D.C. Cir. Jan. 5, 2021), cert. denied, No. 20-922 (U.S. Jan. 9, 2021); Montgomery v. Rosen, No. 20-cv-3261, 2021 WL 75754 (D.D.C. Jan. 8, 2021), stay granted, No. 21-5001 (D.C. Cir. Jan. 11, 2021) (en banc), motion for stay or vacatur pending, No. 20A122 (U.S. filed Jan. 12, 2021); Montgomery v. Warden, No. 21-cv-20, (S.D. Ind. Jan. 11, 2021), vacated, No. 21-1052 (7th Cir. Jan. 12, 2021).

4. This past Saturday, the government provided the district court in this case notice of an opinion from the United States District Court for the District of Columbia that discussed respondent's criminal judgment and sua sponte raised questions as to whether a stay remained in place, even though respondent herself had raised no such claim. D. Ct. Doc. 446. The government explained that, in its view, the automatic "stay in the judgment plainly was intended to permit the defendant to seek the appellate review to which she was entitled." Id. at 2. As such, the stay expired when the court "entered its further order denying the defendant's Section 2255 motion," ibid., which occurred March 3, 2017. See D. Ct. Doc. 212, No. 12-8001 (W.D. Mo.) (denying motion and certificate of appealability).

The next day, respondent moved the sentencing court to "enter an order confirming that its final judgment precludes the Government from carrying out the execution as scheduled." D. Ct. Doc. 448.

Late Sunday evening, the district court denied Montgomery's motion. App., infra, 2a. The court explained: "The Government is correct; in the Court's view, the stay lifted when it denied her 2255 motion. The Court had no intention to limit execution of the judgment beyond exhaustion of appeals." Ibid. Accordingly, "[f]or this reason and the reasons explained in the Government's

Notice," the court denied respondent's motion, and to the extent it could be construed as such, her motion for a stay. Ibid.

5. Respondent appealed to the Eighth Circuit and, fewer than 24 hours before her scheduled execution, moved for a stay of her execution pending appeal of the district court order denying her motion to enforce the judgment. At approximately 4 p.m. today, the court of appeals granted that request in its unsigned, unreasoned order. App., infra, 1a.

ARGUMENT

Under Rule 23 of this Court and the All Writs Act, 28 U.S.C. 1651, a single Justice or the Court may stay or summarily vacate an injunction against execution entered by a lower court. See, e.g., Barr v. Lee, 140 S. Ct. 2590, 2591-2592 (2020) (summarily vacating injunction); Barr v. Purkey, 140 S. Ct. 2594 (2020) (same); Barr v. Purkey, 141 S. Ct. 196 (2020) (same); Barr v. Hall, No. 20A102, 2020 WL 6797719 (Nov. 19, 2020) (same). The Court must determine whether the applicant is likely to succeed on the merits and which party the equities support. See Nken v. Holder, 556 U.S. 418, 434 (2009); San Diegans for the Mt. Soledad Nat'l War Mem'l v. Paulson, 548 U.S. 1301, 1302 (2006) (Kennedy, J., in chambers).

Here, those considerations overwhelmingly favor a swift stay or vacatur of the court of appeals' stay of execution, given the court of appeals' blatant failure to make the requisite findings

to support such relief, respondent's egregious pattern of delay in bringing this and other claims, the profound public interest in implementing respondent's lawfully imposed sentence without further delay, and respondent's failure to establish a likelihood of success on the merits. Particularly given the extensive preparations that have taken place, and the fact that the victim's family members are currently in Terre Haute to witness justice for respondent's victim, this Court should vacate the district court's unsupportable "last-minute" injunction and allow the execution to "proceed as planned." Lee, 140 S. Ct. at 2591–2592.

I. THE COURT OF APPEALS FAILED TO MAKE THE REQUISITE FINDINGS TO SUPPORT A STAY OF EXECUTION

The most obvious flaw in the court of appeals' stay of execution is its failure to make any of the requisite findings for granting such relief. "[A] stay of execution is an equitable remedy. It is not available as a matter of right, and equity must be sensitive to the State's strong interest in enforcing its criminal judgments without undue influence from the federal courts." Hill v. McDonough, 547 U.S. 573, 584 (2006). "Thus, like other stay applicants, inmates seeking time to challenge the manner in which the State plans to execute them must satisfy all of the requirements for a stay," ibid., including: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the

stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." Nken, 556 U.S. at 434.

In Dunn v. McNabb, 138 S. Ct. 369 (2017), this Court summarily set aside a lower-court order that "enjoined [an] execution without" making those necessary findings, including "that [the prisoner] ha[d] a significant possibility of success on the merits." Id. at 369. The All Writs Act, the Court explained, "does not excuse a court from making these findings." Ibid. The Eighth Circuit repeated that error. For that reason alone, this Court can and should summarily vacated the stay of execution.

II. THE BALANCE OF THE EQUITIES OVERWHELMINGLY FAVORS PERMITTING RESPONDENT'S EXECUTION TO PROCEED

The balance of the equities in this case is stark: On the one hand, respondent cannot come close to showing any irreparable harm -- an essential showing for obtaining a stay, see, Nken, 556 U.S. at 434-435 -- arising from the error she alleges. She does not argue that the district court cannot lift the stay imposed by the judgment or the government may not execute her pursuant to that lawful judgment. She challenges only the timing of her lawful execution. And even in that regard, she has no substantive basis for her objection. See pp. 18-24, infra. On the other hand, respondent is egregiously relying on yet another belated challenge to delay the effectuation of her lawful death sentence. This Court has recognized a "strong equitable presumption" against granting

a stay in response to last-minute claims. Bucklew v. Precythe, 139 S. Ct. 1112, 1134 n.5 (2019) (internal quotation marks omitted). Respondent cannot remotely overcome that presumption here.

According to respondent, the stay of execution she currently asserts is contained in the criminal judgment itself. That judgment was issued in 2008 and has remained unchanged for the past 12 years. D. Ct. Doc. 402. Her conviction has been final since 2012. 635 F.3d 1074; 565 U.S. 1263. She could have raised it at any point in the intervening years. She could have raised it when her execution was first scheduled, on October 16, or when it was rescheduled on November 23. Instead, she chose to wait until Sunday, January 10 -- two days before her scheduled execution -- to assert this claim. That delay is inexcusable.

Respondent cannot claim past ignorance of her current theory. After all, it is based on the language of her own judgment, which has been available to her counsel since the day it was issued. And to remove all doubt, the district judge presiding over another of petitioner's countless last-minute challenges to her execution, after asking the parties to submit a copy of the judgment for his review, sua sponte identified the issue for respondent's counsel. See Montgomery v. Rosen, 20-cv-3261 (D.D.C.).

At a hearing on December 23, the court asked counsel for respondent whether the language of the judgment precluded the

scheduled execution. See App., infra, 47a-48a.[1] Then, at the January 7 hearing, when the court again raised questions surrounding the criminal judgment, counsel for respondent explained: "Your Honor, we haven't made that argument. We didn't make that argument in our supplemental complaint as to the judgment. We didn't add it to this proceeding after Your Honor raised that very interesting point in our last conversation. So we are simply not pressing that point at all." App., infra, 18a. Counsel subsequently stated that "we are riding the horse we have at the moment." Id. at 20a.

Respondent's gamesmanship is only further underscored by her inconsistent representations to different courts. Before this Court, she has sought emergency relief based on the representation that she will suffer irreparable harm absent a stay. See 20A121, Appl. 24 ("Absent a stay, Mrs. Montgomery will be unlawfully executed."). But she failed to disclose that, in her view, she was already protected by a stay of execution under the terms of her original criminal judgment. See D. Ct. Doc. 448, at 6 ("To be clear, a stay is already in place, meaning this Court's Judgment already precludes the Government from executing Mrs. Montgomery on January 12, 2021.") (emphases in original).

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[1] At that hearing, in response to questions from the court, counsel for the government asserted the government's consistent position that the Section 2255 denial lifted any preexisting stay. App., infra, 72a.

This Court should not permit respondent's sandbagging tactics to delay her lawful execution. This Court has repeatedly emphasized that the public has a "powerful and legitimate interest in punishing the guilty," Calderon v. Thompson, 523 U.S. 538, 556 (1998) (citation omitted), and that "[b]oth the [government] and the victims of crime have an important interest in the timely enforcement of a [death] sentence," Bucklew, 139 S. Ct. at 1133 (internal quotation marks omitted). "Only with an assurance of real finality can the [government] execute its moral judgment in a case," and "[o]nly with real finality can the victims of crime move forward knowing the moral judgment will be carried out." Calderon, 523 U.S. at 556. "The proper role of courts is" thus to ensure that challenges to the execution of "lawfully issued sentences are resolved fairly and expeditiously," and to "police carefully against attempts to use such challenges as tools to interpose unjustified delay." Bucklew, 139 S. Ct. at 1134. Federal courts "can and should" reject "dilatory or speculative suits," Hill v. McDonough, 547 U.S. 573, 585 (2006), and ensure that "[l]ast-minute stays should be the extreme exception, not the norm," Bucklew, 139 S. Ct. at 1134.

Nor is the harm to the government and the public mitigated in a meaningful way by the fact that respondent's legal claim may only entitle her to a limited period of delay. Cf. Barr v. Hall, No. 20A102, 2020 WL 6797719, at *1 (U.S. Nov. 19, 2020) (vacating

brief stay designed to permit additional findings). Even minor delays can inflict serious psychological harms on the families of victims -- including the family members in this case who are already waiting in Terre Haute to witness the execution. Delay also amplifies the substantial logistical challenges that inhere in any execution, even absent last-minute injunctive relief.

The balance of equities does not support relief. Respondent committed one of the most horrific crimes imaginable: strangling a pregnant mother to death and cutting her premature baby out of her stomach to kidnap the child. Respondent does not challenge her conviction for the kidnapping and murder she committed "in an especially heinous or depraved manner," 635 F.3d at 1095-1096, nor does she challenge her sentence of death or even the protocol that will be used in her execution. Respondent's eleventh-hour request to delay the execution on the basis of an implausible reading of her criminal judgment that she intentionally delayed asserting cannot be credited.

III. RESPONDENT HAS NOT ESTABLISHED A LIKELIHOOD OF SUCCESS ON THE MERITS OF HER APPEAL

Finally, the court of appeals erred in granting a stay of execution because respondent cannot establish a likelihood of success on the merits of her appeal -- which is unsurprising, given that she left this claim to the last-minute, while pressing other claims that have been summarily rejected in other cases. To justify a stay of execution, a prisoner must make a "strong

showing" that she is likely to succeed on the merits. Nken, 556 U.S. at 434. Here, especially in light of the district court's reasonable reading of its own judgment, to which this Court grants (and the Eighth Circuit owed) deference, she cannot make that showing.

The district court's judgment ordered that the Attorney General shall set the time of execution, "provided that the time shall not be sooner than 60 days nor later than 90 days after the date of the judgment," but that, if an appeal was taken, execution of the judgment would be "stayed pending further order of this Court upon receipt of the Mandate of the Court of Appeal." D. Ct. Doc. 402. As the district court has confirmed, that stay terminated when the district court issued a further order denying respondent's Section 2255 motion, after that court had received the court of appeals' mandate from respondent's direct appeal. And in so doing, the district court eliminated any barrier posed by the judgment on its execution.

1. The district court unambiguously stated that "in the Court's view, the stay lifted when it denied her 2255 motion," adding that "[t]he Court had no intention to limit execution of the judgment beyond exhaustion of appeals." App., infra, 2a. Appellate courts, including the Eighth Circuit, generally grant substantial deference to a district court's "construction of its own order." Brachtel v. Apfel, 132 F.3d 417, 420 (8th Cir. 1997);

see Hartis v. Chicago Title Ins. Co., 694 F.3d 935 (8th Cir. 2012); ABT Building Products Corp. v. National Union Fire Ins. Co. of Pittsburgh, 472 F.3d 99, 113 (4th Cir. 2006) ("[W]e are obliged to accord substantial deference to a district court's interpretation of its own judgment."); Graefenhain v. Pabst Brewing Co., 870 F.2d 1198, 1203 (7th Cir. 1989) ("If a court construes or interprets its own orders it will not be reversed "unless it constitutes a clear abuse of discretion."). The district court's clarification that the stay was no longer in place defeats respondent's self-serving reading of the text.

The stay in the judgment plainly was intended to permit respondent to seek the appellate review to which she was entitled. See 18 U.S.C. 3596(a); Fed. R. Crim. P. 38(a); Lonchar v. Thomas, 517 U.S. 314, 320 (1996). The court of appeals returned its mandate on respondent's direct appeal on June 22, 2011. D. Ct. Doc. 427. Respondent moved to vacate her sentence under 28 U.S.C. 2255, and the district court denied her motion and a COA on March 3, 2017. D. Ct. Doc. 212. At that point, proceedings in the district court on Montgomery's conviction and sentence concluded. The denial of respondent's Section 2255 motion was the "order of th[e district] [c]ourt" that followed receipt of the court of appeals' mandate and lifted the stay. App., infra, 2a.

In respondent's contrary view, her judgment automatically imposed an indefinite stay upon her appeal. The judgement,

however, could not have imposed such a stay because the court did not make the necessary findings for such relief. See Dunn, 138 S. Ct. at 369; Nken, 556 U.S. at 434; see pp. 13-14, supra. Respondent has not explained and cannot explain how a court could, without such findings, impose a delay that remains in place until it decides to the contrary. The district court here did not enter such an invalid stay, and itself made clear that it had done no such thing.

Moreover, the district court's and government's understanding of the judgment conforms with how the sentencing court has addressed respondent's execution. The government provided notice of both respondent's original and rescheduled executions dates, and the sentencing court has never expressed any concern of its intentions. The court has appropriately acted consistent with its clarification that it did not limit its judgment from being executed after Montgomery exhausted her appeals. And again, the court's understanding reflects respondent's own understanding, as revealed by her failure to raise this claim at any point until 48 hours before her execution, even when prodded to do so by the D.C. district court.

2. Tacitly acknowledging that the district court's construction of its judgment defeated her claim that a stay remained in place, respondent principally argued below that the judgment's original mandate that her execution "not be sooner than

60 days nor later than 90 days after the date of the judgment," somehow imposed an outer limit and indefinite bar on the government ever executing respondent beyond 90 days after the stay lifted. But the district court rejected that reading of its order as well, explaining that it "had no intention to limit execution of the judgment beyond exhaustion of appeals." App., infra, 2a. That reading too deserves deference, and defeats respondent's claim.

As with the automatic stay itself, the judgment's original timing provision merely provided respondent sufficient time to file an appeal, which she did the next day. App., infra, 4a; D. Ct. Doc. 403. At that point, the automatic stay took effect and her execution could not possibly have taken place within 90 days of the "date of the judgment." App., infra, 4a. The district court, however, did not impose a similar timeframe for the execution after the stay lifted with the denial of respondent's 2255 motion. Moreover, even assuming the judgment imposed a post-exhaustion window for executing the judgment, nothing in the judgment purported to prohibit the government from ever executing the judgment if it did not comply with that initial 90-day deadline, particularly if the Government's failure to do so was based on the automatic stay imposed by the judgment itself. Cf. Dolan v. United States, 560 U.S. 605, 611 (2010) (explaining that where "a statute 'does not specify a consequence for noncompliance

with' its 'timing provisions,' 'federal courts will not in the ordinary course impose their own coercive sanction'").

Courts that have reviewed similar last-minute challenges based on long-expired stays in years-old judgments have reached the same conclusions. For example, the Western District of Texas interpreted a judgment containing language similar to what Montgomery puts at issue here and refused to vacate an execution date. Order on Motion for Injunctive Relief (D. Ct. Doc. 690), United States v. Vialva, 6:99-cr-070 (W.D. Tex. Sept. 11, 2020). The court concluded that its judgment did not limit the Attorney General's authority to set an execution date after the inmate exhausted his appeals. "When read in context with the entire judgment," the Court wrote, "it is clear the second paragraph was intended to limit only the Attorney General's authority to set an execution date before Vialva had a chance to exhaust his appeals. There is no indication that a stay of execution -- or the limitations placed on the Attorney General's authority to set an execution date -- was meant to apply after Vialva had exhausted his appeals." Ibid.; cf. Order (D. Ct. Doc. 1425), United States v. Lee, No. 97-cr-243 (E.D. Ark. July 10, 2020) (finding that Attorney General retained authority to schedule execution dates despite the judgment not expressly ordering it to do so).

3. Finally, if there were any doubt about whether the district court's interpretation of the judgment were correct, the

court's denial of respondent's motion to "enforce the judgment" should be construed as itself lifting any stay that remained in place and waiving any 60- to 90-day window that would otherwise retrain the government's ability to enforce that lawful judgment. Again, the court could not have been more clear: it had "no intention to limit execution of the judgment beyond the exhaustion of [respondent's] appeals." App., infra, 2a. Respondent long ago exhausted her appeals and the lawfulness of the judgment was affirmed. Her last-ditch efforts to avoid the execution of that lawful judgment here must fail.

CONCLUSION

The court of appeals' stay of execution pending appeal should be stayed or summarily vacated effective immediately.

Respectfully submitted.

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