

IN THE SUPREME COURT OF THE UNITED STATES

No. 21-439

MICHAEL NANCE, PETITIONER

v.

TIMOTHY C. WARD, COMMISSIONER,
GEORGIA DEPARTMENT OF CORRECTIONS, ET AL.

(CAPITAL CASE)

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

MOTION OF THE UNITED STATES FOR LEAVE TO PARTICIPATE
IN ORAL ARGUMENT AS AMICUS CURIAE, FOR DIVIDED ARGUMENT,
AND FOR ENLARGEMENT OF TIME FOR ARGUMENT

Pursuant to Rule 28 of the Rules of this Court, the Solicitor General, on behalf of the United States, respectfully moves that the United States be granted leave to participate in the oral argument in this case; that the time allotted for oral argument be enlarged to 70 minutes; and that the time be allotted as follows: 20 minutes for petitioner, 15 minutes for the United States, and 35 minutes for respondents. Petitioner and respondents consent to this motion.

This case concerns the procedural mechanism for a state capital inmate to raise an as-applied challenge to the method of carrying out the execution. The United States has a substantial interest in the resolution of this case. Federal law authorizes capital punishment for certain criminal offenses and provides that the method for implementing federal death sentences is the method authorized "by the law of the State in which the sentence is imposed" or, if that State "does not provide for implementation of a sentence of death," another State designated by the court. 18 U.S.C. 3596(a). Although 42 U.S.C. 1983 does not provide a mechanism for claims against the federal government, a determination that the challenge at issue in this case must proceed in habeas may suggest that a similar challenge by a federal capital inmate must likewise proceed in habeas rather than under the Administrative Procedure Act (APA), 5 U.S.C. 701 et seq. See 5 U.S.C. 704. Accordingly, the decision in this case could alter the procedure by which federal capital inmates bring method-of-execution claims. See, e.g., In re Federal Bureau of Prisons' Execution Protocol Cases, 980 F.3d 123, 126, 131-135 (D.C. Cir. 2020) (per curiam) (addressing method-of-execution claims by federal inmates brought under the APA).

The United States has previously presented oral argument as amicus curiae in Hill v. McDonough, 547 U.S. 573 (2006), which presented similar questions to those at issue in this case. And the United States presented oral argument as amicus curiae in

another case this Term that presented questions about state execution procedures that likewise implicated federal interests. See Ramirez v. Collier, No. 21-5592. In light of the substantial federal interest in the resolution of this case, the United States' participation at oral argument would materially assist the Court's consideration of it.

Respectfully submitted.

ELIZABETH B. PRELOGAR
Solicitor General
Counsel of Record

MARCH 2022