

No. 22-6049

IN THE
Supreme Court of the United States

KENNETH EUGENE SMITH,

Petitioner,

V.

STATE OF ALABAMA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF ALABAMA

REPLY IN SUPPORT OF APPLICATION FOR STAY OF EXECUTION (22A432)

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Mr. Smith's execution is scheduled for 6:00 pm CST on November 17, 2022.

To the Honorable Clarence Thomas, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Eleventh Circuit:

The State does not dispute that Mr. Smith will suffer irreparable harm if he is executed on November 17, 2022, contrary to his jury's determination that he be sentenced to life imprisonment without the possibility of parole. Instead, the State persists in its assertion that Mr. Smith's claim was untimely and improperly filed in the Alabama Supreme Court. But as explained in Mr. Smith's reply in support of his petition for certiorari, the Alabama Supreme Court was not only the proper court, it was the only Alabama state court authorized to set and stay execution dates.

The State's opposition relies heavily on *Gomez v. United States District Court for Northern Dist. of Cal.*, 503 U.S. 653 (1993), but that case involved an Eighth Amendment claim that was not included in four federal habeas corpus petitions filed over 10 years. As explained in Mr. Smith's reply in support of his petition for certiorari, his Eighth Amendment argument is premised on the current national consensus against executing people after capital juries have determined that the death penalty is not appropriate. Finally, this Court has granted a stay of execution pending appeal when the petitioner brought an action under 42 U.S.C. § 1983 just four days before his scheduled execution. *See Hill v. McDonough*, 547 U.S. 573, 578 (2006). Accordingly, Mr. Smith respectfully requests that the Court issue a stay of execution pending appeal to maintain the status quo while the meritorious issues

raised in his appeal are decided. *See, e.g., Barefoot v. Estelle*, 463 U.S. 880, 888–89 (1983).

CONCLUSION

For the foregoing reasons, a stay of execution pending appeal should be granted.

Respectfully submitted,

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November 16, 2022