

No. 18A1238

**In the
Supreme Court of the United States**

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CHRISTOPHER LEE PRICE,
Petitioner,

v.

JEFFERSON S. DUNN, Commissioner,
Alabama Department of Corrections, et al.,
Respondents.

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**RESPONDENTS' ANSWER TO PROPOSED INTERVENOR
PLAINTIFFS' MOTION TO UNSEAL**

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**RESPONDENTS' ANSWER TO PROPOSED INTERVENOR PLAINTIFFS'
MOTION TO UNSEAL**

On June 7, 2019, proposed intervenor plaintiffs National Public Radio, Inc., and Reporters Committee for Freedom of the Press moved this Court to direct the parties to file unredacted versions of their briefs in this matter. For the reasons that follow, Respondents do not oppose the motion.

After Petitioner Christopher Lee Price avoided his April 11, 2019, execution date by last-minute filings, the Alabama Supreme Court reset his execution for May 30. While Respondents prepared for Price's reset execution, Price's second 42 U.S.C. § 1983 method-of-execution challenge remained pending in the Southern District of Alabama. Price requested an expedited hearing on his claims, and so the district court set a trial for June 10. The parties quickly conducted discovery on the abbreviated schedule. As they have done in past method-of-execution challenges, Respondents requested that Price agree to a protective order¹ to keep confidential certain information that, if released, could pose a security risk to the Alabama Department of Corrections (ADOC), its personnel, inmates, and visitors to its facilities. Of particular interest to Respondents was keeping confidential the ADOC's execution protocol, which the ADOC has long sought to protect from disclosure

1. Doc. 70. This protective order was very much like the one to which Price agreed in his previous § 1983 litigation. *See Protective Order, Price v. Dunn*, 1:14-cv-00472-KD-C (S.D. Ala. Dec. 28, 2015), Doc. 51.

for these reasons. Respondents thus designated as confidential the pretrial depositions conducted in May 2019 because the protocol would be introduced as an exhibit and discussed in detail by the expert witness deponents. And during the abbreviated timeframe when the parties litigated Price's additional requests for stays, the parties filed their briefs in the district court, Eleventh Circuit, and this Court under seal to protect potentially sensitive information referenced therein.

Recent decisions of other courts now require the ADOC to disclose its execution protocol in substantive part, less references to any information that could compromise security or the safety of those involved in the execution process. In April 2018, following another inmate's § 1983 method-of-execution challenge, the Northern District of Alabama permitted three media entities to join the litigation as intervenor plaintiffs and ordered that the lethal injection protocol be both produced to the district court and unsealed. The district court added, however, that it would "consult with [the ADOC] to redact the parts of the lethal injection protocol that relate to security measures and the identities of people involved in executions."² The Eleventh Circuit affirmed the district court's decision, and the appellate court's mandate issued on June 12.³ While

2. Memorandum Opinion at 19, *Hamm v. Dunn*, 2:17-cv-02083-KOB (N.D. Ala. May 30, 2018), Doc. 122.

3. *See Comm'r, Ala. Dep't of Corrs., v. Advance Local Media, LLC*, 918 F.3d 1161 (11th Cir. 2019).

the ADOC accepts that its protocol likely will be disclosed, its security concerns remain, as the district court recognized.

In the present matter, the proposed intervenor plaintiffs have moved this Court to direct the parties to file unredacted versions of their briefs, which were redacted in accordance with the protective order entered in the district court. Now that the rushed stay litigation has concluded, and in light of the Eleventh Circuit's recent decision in *Commissioner, Alabama Department of Corrections, v. Advance Local Media, LLC*, Respondents do not oppose the motion to release unredacted versions of the briefs.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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