

IN THE
Supreme Court of the United States

IN RE: FEDERAL BUREAU OF PRISONS' EXECUTION PROTOCOL CASES

JAMES H. ROANE, JR., et al.,

Petitioners,

v.

WILLIAM P. BARR, ATTORNEY GENERAL, et al.,

Respondents.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the D.C. Circuit**

**EMERGENCY CONSENT MOTION FOR EXPEDITED
CERTIORARI-STAGE BRIEFING**

PIETER VAN TOL
HOGAN LOVELLS US LLP
390 Madison Avenue
New York, NY 10017

CATHERINE E. STETSON
Counsel of Record
DANIELLE DESAULNIERS STEMPEL*
REEDY C. SWANSON
HOGAN LOVELLS US LLP
555 Thirteenth Street, NW
Washington, DC 20004
(202) 637-5600
cate.stetson@hoganlovells.com

** Admitted only in Maryland; practice supervised by principals of the firm admitted in D.C.*

Counsel for Daniel Lewis Lee

June 17, 2020

Additional counsel listed on next page

JOSEPH W. LUBY
ALEX KURSMAN
LYNNE KOLODINSKY
FEDERAL COMMUNITY
DEFENDER OFFICE E.D. PA.
601 Walnut Street
Suite 545 West
Philadelphia, PA 19106
(215) 928-0520

Counsel for Alfred Bourgeois

SHAWN NOLAN
TIMOTHY KANE
DEVON PORTER
FEDERAL COMMUNITY
DEFENDER OFFICE E.D. PA.
601 Walnut Street
Suite 545 West
Philadelphia, PA 19106
(215) 928-0520

ALAN E. SCHOENFELD
STEPHANIE SIMON
WILMER CUTLER PICKERING
HALE AND DORR LLP
7 World Trade Center
New York, NY 10007
(212) 230-8800

Counsel for Wesley Purkey

JON JEFFRESS
KAISERDILLON PLLC
1099 Fourteenth Street, N.W.
8th Floor West
Washington, DC 20005
(202) 640-2850

Counsel for Dustin Lee Honken

Petitioners respectfully submit this Motion for Expedited Certiorari-Stage Briefing pursuant to Supreme Court Rule 21. Counsel for the Government consents to the relief requested.

The D.C. Circuit rendered judgment in this case on April 7, 2020. Pet. App. 1a. In a badly fractured opinion, that court adopted a reading of the Federal Death Penalty Act endorsed by none of the parties to this case and not considered by the District Court. Although the case was “en banc worthy,” the D.C. Circuit denied rehearing on May 15 given this Court’s instruction “to proceed ‘with appropriate dispatch.’” *Id.* at 129a (statement of Tatel, J.) (quoting *Barr v. Roane*, 140 S. Ct. 353 (2019)).

Although this Court’s current rules allow Petitioners 150 days to file a certiorari petition, they did so in just three weeks, on June 5, 2020. Petitioners also asked this Court to stay the D.C. Circuit’s mandate pending consideration of the petition, which would be considered in approximately three months according to this Court’s usual rules.

Two days ago, however, despite the universal disagreement with the decision below and lingering confusion about what it actually means, *see* Pet. 16-18, the Government set execution dates for three of the four Petitioners in approximately one month, Stay Appl. Reply App. 1a, proposing to execute them while their petition remains pending, *see* Stay Opp’n 39.¹

¹ Petitioner Bourgeois’s execution has been stayed in a separate litigation based on his intellectual disability. *See Bourgeois v. Warden*, No. 2:19-cv-00392-JMS-DLP, 2020 WL 1154575, at *1, 3-5 (S.D. Ind. Mar. 10, 2020). The Government has also set Keith Dwayne Nelson’s execution for August 28, 2020. Stay Appl. Reply App. 1a.

In light of that development, Petitioners respectfully request that this Court set the following briefing schedule to ensure that the petition may be considered this Term, before Petitioners are executed:

June 19, 2020, at 5:00 p.m. Respondents' brief in opposition due and
amicus briefs supporting either side due

June 22, 2020, at 5:00 p.m. Petitioners' reply brief due

This schedule would permit the Court to consider the petition at the conference scheduled for June 25, 2020.

Respectfully submitted,

/s/ Catherine E. Stetson

CATHERINE E. STETSON
Counsel of Record
DANIELLE DESAULNIERS STEMPEL*
REEDY C. SWANSON
HOGAN LOVELLS US LLP
555 Thirteenth Street, NW
Washington, DC 20004
(202) 637-5600
cate.stetson@hoganlovells.com

** Admitted only in Maryland; practice supervised by principals of the firm admitted in D.C.*

Counsel for Daniel Lee Lewis

JOSEPH W. LUBY
ALEX KURSMAN
LYNNE KOLODINSKY
FEDERAL COMMUNITY
DEFENDER OFFICE E.D. PA.
601 Walnut Street
Suite 545 West
Philadelphia, PA 19106
(215) 928-0520

ALAN E. SCHOENFELD
STEPHANIE SIMON
WILMER CUTLER PICKERING
HALE AND DORR LLP
7 World Trade Center
New York, NY 10007
(212) 230-8800

Counsel for Wesley Purkey

Counsel for Alfred Bourgeois

SHAWN NOLAN
TIMOTHY KANE
DEVON PORTER
FEDERAL COMMUNITY
DEFENDER OFFICE E.D. PA.
601 Walnut Street
Suite 545 West
Philadelphia, PA 19106
(215) 928-0520

JON JEFFRESS
KAISERDILLON PLLC
1099 Fourteenth Street, N.W.
8th Floor West
Washington, DC 20005
(202) 640-2850

Counsel for Dustin Lee Honken

June 17, 2020