No. 19A1050

IN THE

Supreme Court of the United States

IN RE: FEDERAL BUREAU OF PRISONS' EXECUTION PROTOCOL CASES

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

Applicants,

v.

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

Respondents.

CAPITAL CASE

On Application for Stay

REPLY IN SUPPORT OF APPLICATION FOR A STAY OF MANDATE PENDING DISPOSITION OF PETITION FOR A WRIT OF CERTIORARI

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

Counsel for Dustin Lee Honken

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

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The parties agree on this: The D.C. Circuit was wrong about how federal executions must be conducted. That agreement demonstrates that certiorari is necessary. The Government in response calls the stakes in this case "abstract" and "not actually harmful in any real-world sense." Stay Opp'n 3, 37. That is baseless. The challenged Protocol governs every aspect of Petitioners' executions. It determines how Petitioners will die. And the practical difficulties in the decision below will plague all future litigation over federal executions.

Rather than engage on the merits of a ruling everyone agrees was wrong, the Government argues that Petitioners did not act expeditiously *enough* to warrant a stay. That is simply untrue. Petitioners proposed an expedited certiorari-stage briefing schedule to the Government weeks ago. The Government refused. Petitioners sought certiorari months ahead of the deadline. Petitioners approached the Government *again* after filing about setting a schedule to ensure this Court could review the petition before the Government attempted to execute them. In response, the Government scheduled execution dates. And, as the Government has scheduled those dates for next month, Petitioners are now formally moving this Court to expedite review of their pending petition.

The Court should not countenance the Government's brinkmanship and allow it, on the precipice of this Court's review, to moot the petition by executing Petitioners. The mandate should be recalled and stayed.[1]

[1] Because the mandate has since issued, Petitioners ask this Court construe their application as one to recall and stay the mandate.

I. THERE IS A FAIR PROSPECT THAT THIS COURT WILL GRANT CERTIORARI AND CONCLUDE THAT THE DECISION BELOW WAS ERRONEOUS.

Given that both sides agree that the D.C. Circuit's controlling opinion is wrong, there is at least "a fair prospect" that this Court will grant certiorari and conclude the D.C. Circuit erred. *Indiana State Police Pension Trust* v. *Chrysler LLC*, 556 U.S. 960, 960 (2009) (per curiam) (quoting *Conkright* v. *Frommert*, 556 U.S. 1401, 1402 (2009) (Ginsburg, J., in chambers)).

1. a. The Government agrees that there is a significant, substantive problem with the controlling opinion below. In fact, it does not even attempt to defend the panel's interpretation of the phrase "prescribed by the law of the State." For good reason: It is wrong, and will cause significant confusion and negative consequences. *See* Stay Appl. 19-20.

Instead, the Government argues that a stay is not warranted because three Justices have already indicated that they are likely to *reject* the panel majority's holding about the meaning of the term "manner." But that counsels in favor of a stay. The question is whether there is "a reasonable probability" that this Court will grant certiorari and "a fair prospect" that this "Court will conclude that the decision below was erroneous." *Indiana State Police Pension Trust* 556 U.S. at 960 (internal quotation marks omitted). In other words, might a majority of this Court hold the D.C. Circuit's interpretation of the FDPA was "inconsistent with the law?" *Erroneous*, Black's Law Dictionary (11th ed. 2019). Three Justices indicated they may do so. And those same three Justices have indicated that *if* manner means

more than method, it encompasses state execution protocols—again, the opposite of what the D.C. Circuit held. *See Barr* v. *Roane*, 140 S. Ct. 353, 353 (2019) (statement of Alito, J.) ("the District Court's interpretation would * * * require the BOP to follow procedures" laid out in "a State's [execution] protocol").

Although the views of these three Justices enhance the likelihood of certiorari, three Justices do not a majority make. And there is a fair prospect that after plenary review a majority of this Court will agree with the D.C. Circuit and Petitioners that "manner" means more than execution "method."

The language of the FDPA confirms as much. It instructs the USMS to "supervise implementation" of a death sentence in the "manner prescribed by the law of the State." 18 U.S.C. § 3596(a). The Government does not grapple with any of these words, save "manner." That omission is telling, as Congress's use of "implementation," "supervise," and "prescribed" demonstrates that it instructed the federal government to follow more than just the top-line method of execution, and more than just those procedures set forth in state statutes and formal regulations.[2] "Implementation" lies at the heart of Section 3596(a)—it is the subject of its title and its variants appear five times in subsection (a). "In the death penalty context," that term refers to "a range of procedures and safeguards surrounding executions, not just the top-line method of execution." Pet. App. 59a (citing Implementation of Death Sentences in Federal Cases, 58 Fed. Reg. 4,898 (Jan. 19, 1993)). To "super-

[2] *Andres* v. *United States*, 333 U.S. 740, 745 n.6 (1948), which the Government cites (at 26), confirms this. It refers to the 1937 Act as adopting "the local mode of execution." That is just a synonym for manner. Pet. App. 51a ("[A] way of acting; a mode of procedure; the mode or method in which something is done or in which anything happens." (quoting *Manner*, New Int'l Dictionary of the English Language (2d ed. 1941)) (brackets in original).

vise" means to "oversee." *Id.* at 60a (quoting *Supervise*, Merriam Webster's Collegiate Dictionary (11th ed. 2014)). It does not, as the Government claims, authorize USMS "to create new law or to act in contravention of law." *Id.* Likewise, "prescribed" encompasses multiple forms of action, including "to lay down as a guide, direction, or rule of action." *Prescribe*, Merriam-Webster's Collegiate Dictionary 921 (10th ed. 1994). Thus, this provision requires USMS to ensure States execute federal prisoners in accordance with those "procedures and safeguards" the State has directed its officials, by law, to establish.

History and practice reinforce that conclusion. As the Government admits, in 1937, Congress adopted a "federalist structure," Stay Opp'n 26 (internal quotation marks omitted), because it viewed the States as working to make executions "more humane" at that time, H.R. Rep. No. 75-164, at 2 (1937).[3] But electrocution in and of itself is not necessarily more humane than hanging; it was that the States had adopted a manner of carrying out electrocutions that Congress viewed as more humane. It is hard to imagine Congress would have viewed electrocution as more humane if, say, it took three hours to pronounce death.

Accordingly, executions under the 1937 Act often followed state procedures, both formal and informal. For example, the Rosenbergs were executed by the New York State executioner using the electric chair in Sing Sing, with their rabbi present—as prescribed by state statute. Ari Goldman, *Rabbi Irving Koslowe, 80; Gave*

[3] The Government's claim that the States lack "reserved sovereignty over federal punishment of federal crimes" is a red herring. Stay Opp'n 26. The question is not whether the States have a reserved sovereignty interest in conducting federal executions in accordance with their law; it is whether Congress chose to defer to the States' expertise in this area.

the Rosenbergs Last Rites, N.Y. Times (Dec. 7, 2000), https://nyti.ms/30N2TLu; *see* N.Y. Penal Law §§ 491, 507 (36th ed. 1953). In the first execution conducted under the 1937 Act, the federal government hired "an experienced" hangman, who "used his own scaffold," "trap door," and procedures. David Gardner Chardavoyne, *The United States District Court for the Eastern District of Michigan: People, Law, and Politics* 220 (2012). A local sheriff pulled the lever. *Id.*

The FDPA, too, uses manner to mean more than "method." That statute was Congress's response to the Government's attempt to implement a uniform, federal execution regime. Indeed, DOJ made Congress aware that, in its view, the FDPA would prevent "Federal officials" from carrying out federal executions "pursuant to uniform regulations issued by the Attorney General." H.R. Rep. No. 104-23, at 22 (1995). Congress enacted the FDPA anyway.

b. The Government's contrary arguments cannot save its crabbed reading of the FDPA. Its primary response is that because the 1790 Act did not refer to any procedural details, Congress could not have intended a different statutory scheme in either 1937 or 1994. Stay Opp'n 24. The text and context of those statutes demonstrate the opposite. *See* Pet. App. 58a-59a (the "broad language [of Section 3596(a)] encompasses more than earlier federal death penalty statutes" because "implementation" is more capacious than "inflicting"). Nor did the 1937 Congress "*sub silentio* accede[] to a massive transfer of authority over federal executions to the States." Stay Opp'n 25-26. It expressly *stated* that federal executions must be

conducted in accordance with the "manner prescribed by the laws of the State within which the sentence is imposed." 18 U.S.C. § 542 (1937).

The Government also relies on its own interpretation of the 1937 Act—as articulated in a 1942 BOP Manual never before mentioned in this litigation. This document, which post-dates the Act, relies on none of the traditional tools of statutory interpretation. *Cf. Skidmore* v. *Swift & Co.*, 323 U.S. 134, 140 (1944) (the persuasiveness of an agency's statutory interpretation depends on "the thoroughness evident in its consideration" and "the validity of its reasoning"). And even if BOP was correct in 1942 about the 1937 Act, Congress indicated an intent to sweep in additional procedures by changing "inflict" to "implement" in 1994, as even the Government recognized. H.R. Rep. No. 104-23, at 22.[4]

Finally, the Government argues that the FDPA's text might lead to "unintended results." That is wrong, *see* Appellees' C.A. Br. 30-33, but immaterial; "[p]olicy arguments are properly addressed to Congress, not this Court," *SAS Inst. Inc.* v. *Iancu*, 138 S. Ct. 1348, 1358 (2018).

c. This issue warrants review. Neither the Government *nor* Petitioners think the decision below is correct. Only one judge has embraced the novel interpretation that will become law absent this Court's review. A second begrudgingly accepted it, acknowledging that it could produce "practical * * * difficulties to the implementation of federal death sentences." Pet. App. 62a.

[4] The execution of Timothy McVeigh is not instructive: McVeigh had dropped his appeals by the time of his execution. Jo Thomas, *McVeigh Ends Appeal of His Death Sentence*, N.Y. Times (Dec. 13, 2000), https://nyti.ms/2PzBKFR. And, besides, "[p]ast practice does not, by itself, create power." *Medellín* v. *Texas*, 552 U.S. 491, 532 (2008) (internal quotation marks omitted) (brackets in original).

This shared dissatisfaction further counsels in favor of certiorari, particularly because the differences between these varying interpretations are far from "theoretical." Stay Opp'n 29. In Petitioners' view, federal executions must follow the execution procedures a State has directed its officials by law to establish, not just those procedures contained in "statutes or formal regulations." *See* Pet. App. 49a. Under Petitioners' interpretation, for example, the Government must have a physician present during the executions of Petitioners Honken or Bourgeois—a key component of Missouri and Texas's protocols. AR 70 (Missouri Protocol ¶ A); AR 91 (Texas Protocol § VII.K). Under the controlling decision below, this is not a requirement.

The Government, for its part, claims that because "manner" means only "method," and each State at least provides the option for execution by lethal injection, the Protocol need not comply with *any* other state execution procedures to satisfy the FDPA. Under the Government's interpretation, for instance, because the 2019 Protocol does not mandate any requirements for the source of its lethal drugs, the federal government may execute Petitioner Lee using a drug that has not been obtained from an approved manufacturer or accredited compounding pharmacy, as required by Arkansas law. Ark. Code § 5-4-617(d); *see* Pet. App. 36a (collecting additional examples). The decision below would require the opposite result. *See* Pet. App. 63a.

2. This Court is also likely to grant certiorari and hold that the panel's decision violates *Chenery*. The Government's defense of the panel's decision in this respect is no defense at all. It does not claim that any part of the Protocol or the Ad-

ministrative Record mentions state law—let alone that its uniform federal lethal-injection Protocol must yield to conflicting state requirements. It does not argue that BOP expressly contemplated that situation when it drafted the catch-all "other circumstances" exception. It has no response to this Court's holding in *Federal Power Commission* v. *Texaco* that such general language cannot "supply the requisite clarity" necessary to confirm the agency took the relevant statutory requirement into account. 417 U.S. 380, 396-397 (1974). And the Government *admits* that, despite setting dates for Petitioners, the BOP Director has not exercised his discretion to modify the Protocol in accordance with procedures required by state law. Stay Opp'n 31.

Nor does the Government have any rejoinder to the argument that, on its reading, this "other circumstances exception" would swallow the Protocol whole. The Protocol is designed to carry out the mandate that BOP "implement death sentences" by lethal injection. Pet. App. 133a. But under the panel's reading, if the Government moves to execute an individual in a State that permits an alternative execution procedure, such as lethal gas or electrocution, this tiny catch-all permits it to create an entirely new protocol from scratch. For an electrocution, it will have to locate an electric chair, decide the proper current and voltage, and establish testing and training procedures. *See id.* at 210a-213a (discussing these procedures in the context of conducting an execution by lethal injection).

Without a response to these problems, the Government resorts to mischaracterizing Petitioners' argument. Petitioners never claimed the D.C. Circuit was obli-

gated to follow the policy advocated by Government counsel "in litigation." Stay Opp'n 32. Their argument is that the controlling opinion authorizes courts to "interpret" agency rules to mean something the agency has never claimed and to achieve results the Administrative Record expressly repudiates. The Government's litigation statements simply illuminate *why* the Protocol and Administrative Record are silent about whether the Protocol yields to conflicting state law. *See* Stay Appl. 15 (citing the Government's various statements that interpreting the Protocol to accommodate conflicting state procedures would "defy common sense," "hamstring" officials, and invite "state obstructionism"). In fact, it is the Government that must rely on a litigating position to salvage the panel's position: It claimed the Protocol yields to conflicting state procedures only after the panel held that, without such a carve-out, it would be invalid. *See* C.A. Opp'n to Pet. for Reh'g En Banc 9.

3. There is also a reasonable probability this Court will grant certiorari and reverse on whether the Protocol is a "procedural rule." The Government does not seriously dispute that the decision below contributes to ongoing disarray among lower courts in general, and the D.C. Circuit in particular, about the standard for a procedural rule. Indeed, the Government recognizes that this issue "come[s] up routinely in a wide variety of cases," and that this Court may "grant review to clarify [it]." Stay Opp'n 35. Despite this acknowledgement, the Government claims this case is a bad vehicle for review because it is an ostensibly "time-sensitive capital case." *Id.* But the stakes only reinforce Petitioners' point: A rule with such "grave" consequences for non-governmental actors is not "procedural." *Elec. Privacy Info*

Ctr. v. *U.S. Dep't of Homeland Sec.*, 653 F.3d 1, 5-6 (D.C. Cir. 2011). And this case is only "time-sensitive" because the Government chose to schedule dates before this Court could complete review.

The Government also disputes that the panel broke new ground by holding that "substantive burdens" may be classified as procedural when they "are derived from" a federal statute. Pet. App. 84a. But the lone case it cites, *James V. Hurson Associates* v. *Glickman*, does not help it. 229 F.3d 277 (D.C. Cir. 2000). That case holds that an agency's elimination of a courier option to request approval of a food label is procedural, even if it imposes a "burden" on applicants. *Id.* at 279, 281. It does not trace that burden to any statute. *See id.* Indeed, *Glickman*'s focus on rules governing "the manner in which the parties present themselves or their viewpoints to the agency" illustrates how far the Government has strayed from the roots of the procedural-rule exception. *Id.* at 280 (internal quotation marks omitted).

II. PETITIONERS WILL SUFFER IRREPARABLE HARM ABSENT A STAY, AND THE EQUITIES FAVOR A STAY.

Absent a stay, the Government intends to begin executing Petitioners in less than a month. Not a problem, the Government suggests; the Court is free to take up these questions at a later date involving *other* petitioners. That is not a solution. The risk is that *these* Petitioners will be executed according to an unlawful Protocol that dramatically increases their odds of extreme suffering or a botched execution. That very "real-world" risk, Stay Opp'n 37, is what motivated Congress to adopt the FDPA, and it is why the APA prohibits the Government from acting on an incom-

plete record. The Court should recall and stay the mandate long enough to fully consider whether the Protocol complies with these requirements.

1. The Government has now confirmed that it will seek to execute Petitioners imminently—from July 13 to July 17. Reply App. 1a.[5] Yet the Government says that execution under an illegal protocol is not an irreparable harm. That assertion rests on a false premise: that this case is about "procedural details." Stay Opp'n 36 (internal quotation marks omitted). It is not. The Protocol selects a specific lethal drug, determines how it will be administered and by whom, and dictates the degree of experience and amount of training required of those administering the drug, among other things. Pet. App. 210a-213a. Equally important is what the Protocol *does not* say: For instance, it does not specify the manner in which to insert an IV catheter, or whether there is a time-limit for establishing IV access; it does not mandate the pharmacy that compounds the lethal substances have any specific experience or accreditation; it does not specify how Petitioners' attorneys can communicate with their clients or the courts during the execution, if need be; and it does not guarantee a physician will be present.[6]

These choices are in no sense "abstract." Stay Opp'n 3. They determine the level of pain each Petitioner will experience and the likelihood of a botched execution. Petitioners explained as much in their petition and the stay application. *See* Pet. 21-23; Stay Appl. 22. The Government never disputed that point. Instead, it

[5] Petitioner Bourgeois's execution has been separately stayed 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. Reply App. 1a.

[6] Several of these issues relate to claims still pending before the District Court.

falsely claims that because *some* plaintiffs have challenged *some* aspects of *some* States' execution procedures in the past, the federal Protocol is *per se* less "likely to cause pain." Stay Opp'n 37. Setting aside the obvious rejoinders—that science is not static, and those were not these plaintiffs or cases—many States *do* include important protections notably absent from the Protocol, like Missouri and Texas's mandate that a physician be present during an execution. *See supra* p.7.

The way the Government adopted this Protocol augments the risks of an inhumane execution: By relying solely on two handpicked experts, AR3, to the exclusion of the public, the Government deprived members of the medical community and the public the opportunity to offer their viewpoints about what procedures are humane. Those opinions would have provided valuable insight. The panel's determination that the Director of the BOP may change the Protocol to comply with conflicting state procedures at will and without notice further exacerbates the risk of complications.

2. The facts do not remotely support the Government's characterization of Petitioners as dilatory. The relevant timeline begins in 2011, when the Government announced it needed to revise the existing execution protocol. That process took eight years, the last six of which the Government devoted to the "final phases of finalizing the protocol." *See* Reply App. 9a. On July 25, 2019, the Government simultaneously announced the new Protocol and scheduled Petitioners' executions. *See* Pet. App. 8a. Petitioners quickly sought preliminary injunctions, and engaged in expedited briefing. *See* Dist. Dkt. # 2, 13, 14, 29, 34. The parties again engaged in

expedited briefing on appeal. Following the D.C. Circuit's judgment, Petitioners agreed to dramatically curtail their time to seek rehearing from forty-five days to seventeen. *See* Consent Mot. to Shorten the Time to Petition for Reh'g or Reh'g En Banc 1, *In re FBOP*, No. 19-5322 (D.C. Cir. Apr. 9, 2020). After the Court denied rehearing, Petitioners filed a petition for certiorari in three weeks, although current rules afford them 150 days. Finally, less than 48 hours after the D.C. Circuit denied their motion to stay the mandate, Petitioners filed this stay application. *See* Stay Appl. App. 1a.

The Government nevertheless contends Petitioners might have moved a few days faster in filing of this stay application. But, as the Government knows, the filing date resulted from the unorthodox way the D.C. Circuit handled Petitioners' motion to stay the mandate.[7] In that motion, Petitioners asked the court to stay the mandate for a brief window pending filing of the certiorari petition. "[U]pon consideration of" Petitioners' motion, the court stayed the mandate for seventeen days. Pet. App. 121a. Thus, Petitioners concluded their motion had been granted and that the stay would be automatically extended under Rule 42(d)(2)(B)(ii) if a petition was filed during that time—which it was. As it turned out, the D.C. Circuit had—without ruling on Petitioners' motion or citing the relevant rule—acted *sua*

[7] The Government's opposition suggests it was incongruous to call the application an "Emergency" one. Stay Opp'n 18. Given that the Government set execution dates hours after filing that opposition, that objection rings hollow. In any event, under the Court's COVID precautions, the designation ensures timely docketing of the filing. *See Guidance Concerning Clerk's Office Operations* 3, Supreme Court of the U.S. Office of the Clerk (Apr. 17, 2020), https://bit.ly/2URXFdL.

sponte under Rule 41(b).[8] The court clarified its disposition only in an amended order, which "expressly den[ied]" Petitioners' motion, on Monday, June 8. Appl. App. 1a. Because of this confusion, the D.C. Circuit granted Petitioners an additional four days to seek a stay from this Court, *id.*, which Petitioners did two days later.

Despite Petitioners' accelerated filing of their petition, the Government faults them for not further expediting review. But the *Government* declined Petitioners' offer to establish an expedited briefing schedule that would ensure this Court's consideration of the petition by the June 25 conference. *See* C.A. Mot. to Stay Issuance of the Mandate 1 n.1. Only now, nearly a month later—and on the same day it announced Petitioners' execution dates—has the Government finally confirmed its apparent agreement to the schedule Petitioners proposed.

In any event, Petitioners have simultaneously moved to expedite the remaining briefing before this Court. As a result, the Government also errs in speculating that granting certiorari in this case would lead to a delay of at least a year. Granting Petitioners' motion would ensure consideration at the June 25 conference. If this Court grants certiorari, it is capable of resolving the case "with appropriate dispatch," *Roane*, 140 S. Ct. at 353, while affording these Petitioners the benefit of review and any decision.

3. The Government finally suggests that granting a stay here would require stays in all future manner-of-execution cases. Stay Opp'n 37, 39. That is baseless. A stay is warranted in this case based on the confluence of several factors: (1) a bad-

[8] In other cases where the D.C. Circuit has relied on its Rule 41(b) authority, it has said so. *See, e.g.*, Order, *Trump* v. *Mazars*, No. 19-5142 (D.C. Cir. Nov. 7, 2019) (per curiam).

ly fractured circuit court decision that no party defends; (2) the novel and cross-cutting administrative claims that will be implicated in all future executions; and (3) the fact that the Government completely changed the proposed method of execution for all federal prisoners.

4. The balance of equities also favors Petitioners. The Government's purported hardships are of its own making. It argues for speed after "finalizing" the Protocol for six years. It argues for finality after hastening to schedule executions at the earliest possible moment, without regard to this Court's processes. It contends that the public has an interest in justice, but not when it comes to ensuring the Government carries out the most severe sanction available in a just manner.[9] The equities do not favor the Government.

By asking this Court to short-circuit review, the Government threatens to extinguish life in a manner that is not authorized by law. The mandate should be recalled and stayed to prevent that irremediable outcome.

CONCLUSION

For all of these reasons, and those in the stay application, Petitioners respectfully request that this Court recall the D.C. Circuit's mandate and stay it pending the disposition of their petition for a writ of certiorari.

[9] In its brief mention of the *Lee* case, the Government both misstates the facts and ignores the equities. The prosecution's own evidence was that the child was murdered solely by the far more culpable co-defendant. *See* Compl. at 9, *Lee* v. *Barr*, No. 19-cv-02559-TSC (D.D.C. Aug. 23, 2019), Dkt. 1. More importantly, the judge who presided, the lead attorney who prosecuted, and the family of the victims are all vehemently against his execution. *Id.* at n.3. A stay would be in all their interests.

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

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

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

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

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

APPENDIX

APPENDIX A

IN THE DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

In the Matter of the Federal Bureau of Prisons' Execution Protocol Cases,	)	
LEAD CASE: *Roane et al. v. Barr*	)	Case No. 19-mc-145 (TSC)
THIS DOCUMENT RELATES TO:	)	
ALL CASES	)	

DEFENDANTS' NOTICE REGARDING EXECUTION DATES

The United States hereby notifies the Court that the Director of the Federal Bureau of Prisons, upon the direction of the Attorney General, has scheduled the executions of four of the Plaintiffs in this case, in accordance with 28 C.F.R. Part 26, specifically:

- Daniel Lewis Lee, July 13, 2020
- Wesley Ira Purkey, July 15, 2020
- Dustin Lee Honken, July 17, 2020
- Keith Dwayne Nelson, August 28, 2020

Dated: June 15, 2020

Respectfully submitted,

MICHAEL R. SHERWIN
Acting United States Attorney

DANIEL F. VAN HORN
Civil Chief, U.S. Attorney's Office

/s/ *Alan Burch*
ALAN BURCH (D.C. Bar 470655)
Assistant United States Attorney
U.S. Attorney's Office
for the District of Columbia
Washington, D.C. 20530
202-252-2550
alan.burch@usdoj.gov

JOSEPH H. HUNT
Assistant Attorney General

DAVID M. MORRELL
Deputy Assistant Attorney General

PAUL R. PERKINS
Special Counsel

JEAN LIN (NY Bar 4074530)
Special Litigation Counsel
JONATHAN KOSSAK (D.C. Bar 991478)
CHRISTEN HANDLEY (MO Bar 69114)
Trial Attorneys
Civil Division
Federal Programs Branch
Civil Division, Department of Justice
1100 L Street, N.W.
Washington, D.C. 20005
(202) 514-3716
Jean.lin@usdoj.gov
Jonathan.kossak@usdoj.gov
Cristen.handley@usdoj.gov

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on June 15, 2020, I caused a true and correct copy of the foregoing Notice Regarding Execution Dates to be served on all counsel of record via the Court's CM/ECF system. Pursuant to this Court's August 20, 2019 Order, below is a list of all plaintiffs' counsel of record (as most recently identified in the signature pages of the Consolidated Amended Complaint, ECF No. 92):

Alan E. Schoenfeld (admitted *pro hac vice*)
Ryan M. Chabot (admitted *pro hac vice*)
WILMER CUTLER PICKERING HALE AND DORR LLP
7 World Trade Center
250 Greenwich Street
New York, New York 10007
(212) 230-8880
Alan.Schoenfeld@WilmerHale.com
Ryan.Chabot@WilmerHale.com

Andres C. Salinas (DC Bar No. 156118)
WILMER CUTLER PICKERING HALE AND DORR LLP
1875 Pennsylvania Avenue NW
Washington, DC 20006
(202) 663-6289
Andres.Salinas@WilmerHale.com

Counsel for Wesley I. Purkey

Joshua C. Toll
D.C. Bar No. 463073 King & Spalding LLP
1700 Pennsylvania Avenue, N.W.
Washington, DC 20006
(202) 737-8616
jtoll@kslaw.com

Margaret O'Donnell
P.O. Box 4815
Frankfort, KY 40604
(502) 320-1837
mod@dcr.net

Counsel for Plaintiff Anthony Battle

Ginger D. Anders (Bar No. 494471)
Jonathan S. Meltzer (Bar No. 888166546)
Brendan Gants (Bar No. 1031419)

MUNGER, TOLLES & OLSON LLP
1155 F Street N.W., Seventh Floor
Washington, D.C. 20004-1357
(202) 220-1100

Counsel for Plaintiff Brandon Bernard

Alex Kursman, Assistant Federal Defender
Shawn Nolan, Chief, Capital Habeas Unit
Federal Community Defender Office, E.D. Pa.
601 Walnut Street, Suite 545 West
Philadelphia, PA 19106
Telephone - 215-928-0520
Email – alex_kursman@fd.org

Counsel for Plaintiff Alfred Bourgeois

Joseph Luby, Assistant Federal Defender
Federal Community Defender Office, E.D. Pa.
601 Walnut Street, Suite 545 West
Philadelphia, PA 19106
Telephone - 215-928-0520
Email – joseph_luby@fd.org

Counsel for Plaintiff Chadrick Fulks

Amy Lentz (DC Bar No. 990095)
Steptoe & Johnson, LLP
1300 Connecticut Avenue NW
Washington, DC 20036
202.429.1320

Counsel for Plaintiff Orlando Hall

Scott W. Braden
Assistant Federal Defender
Arkansas Federal Defender Office
Ark Bar Number 2007123
1401 West Capitol, Suite 490
Little Rock, Arkansas 72201
(501) 324-6114
Scott_Braden@fd.org

Jennifer Ying (DE #5550)
Andrew Moshos (DE #6685)
MORRIS, NICHOLS, ARSHT & TUNNELL LLP
1201 N. Market St.
P.O. Box 1347

Wilmington, Delaware 19801
(302) 658-9300
jying@mnat.com
amoshos@mnat.com

Counsel for Plaintiff Norris G. Holder, Jr.

Jon Jeffress
KaiserDillon PLLC
1099 14th Street NW
8th Floor West
Washington, DC 20005
Telephone - 202-640-2850
Email - jjeffress@kaiserdillon.com

Timothy Kane, Assistant Federal Defender
Shawn Nolan, Chief, Capital Habeas Unit
Federal Community Defender Office, E.D. Pa.
601 Walnut Street, Suite 545 West
Philadelphia, PA 19106
Telephone - 215-928-0520
Email – timothy_kane@fd.org
Email – shawn_nolan@fd.org

Counsel for Plaintiff Dustin Lee Honken

Donald P. Salzman (D.C. Bar No. 479775)
Charles F. Walker (D.C. Bar No. 427025)
Steven M. Albertson (D.C. Bar No. 496249)
Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue, N.W.
Washington, D.C. 20005
(202) 371-7983
donald.salzman@skadden.com

Counsel for Plaintiff Corey Johnson

David S. Victorson
Hogan Lovells US LLP
Columbia Square
555 13th Street NW
Washington, DC 20004
(202) 637-5600
(202) 637-5910 (fax)
david.victorson@hoganlovells.com

Pieter Van Tol (admitted *pro hac vice*)
Hogan Lovells US LLP

390 Madison Avenue
New York, NY 10017
(212) 918-3000
(212) 918-3100 (fax)
pieter.vantol@hoganlovells.com

Counsel for Plaintiff Daniel Lewis Lee

Kathryn L. Clune
Crowell & Moring LLP
1001 Pennsylvania Avenue NW
Washington D.C. 20004-2595
(202) 624-2705
kclune@crowell.com

Harry P. Cohen (pro hac vice application pending)
Michael K. Robles (pro hac vice application pending)
James Stronski (pro hac vice application pending)
Crowell & Moring LLP
590 Madison Avenue New York, NY 10022
(212) 223-4000
(212) 223-4134(fax)
hcohen@crowell.com
mrobles@crowell.com
jstronski@crowell.com

Jon M. Sands (pro hac application to be filed)
Dale A. Baich (pro hac application to be filed)
Jennifer M. Moreno
Federal Public Defender
District of Arizona
850 West Adams Street, Suite 201
Phoenix, Arizona 85007
602-382-2816
602-889-3960 (fax)
dale_baich@fd.org
jennifer_moreno@fd.org

Counsel for Plaintiff Keith Nelson

Shawn Nolan, Chief, Capital Habeas Unit
Federal Community Defender Office, E.D. Pa.
601 Walnut Street, Suite 545 West
Philadelphia, PA 19106
Telephone - 215-928-0520
Email – timothy_kane@fd.org
Email – shawn_nolan@fd.org

Counsel for Plaintiff Jeffrey Paul

Paul F. Enzinna
D.C. Bar No. 421819
Ellerman Enzinna PLLC
1050 30th Street, NW
Washington, DC 20007
202.753.5553

Counsel for Plaintiff James H. Roane, Jr.

Amy Karlin
Interim Federal Public Defender
Celeste Bacchi
Jonathan C. Aminoff
Deputy Federal Public Defenders
321 E. Second Street
Los Angeles, CA 90012
(213) 894-2854

Counsel for Plaintiff Julius O. Robinson

Gerald W. King, Jr. Ga. Bar No. 140981
Jeffrey Lyn Ertel Ga. Bar No. 249966
FEDERAL DEFENDER PROGRAM, INC.
101 Marietta Street, Suite 1500
Atlanta, Georgia 30303
404-688-7530
(fax) 404-688-0768
Gerald_King@fd.org
Jeff_Ertel@fd.org

Stephen Northup
VSB #16547
Troutman Sanders LLP
P.O. Box 1122
Richmond, Virginia 23218-1122
(804) 697-1240
(fax) (804) 698-5120
steve.northup@troutmansanders.com

Frederick R. Gerson VSB #39968
Bank Of America Center
1111 East Main Street, 16th Floor Richmond,
Virginia 23219
(804) 482-1121
fgerson@dagglaw.com

Counsel for Richard Tipton, III.

Evan Miller (DC Bar # 219310)
Vinson & Elkins LLP
2200 Pennsylvania Avenue, NW
Suite 500 West
Washington, D.C. 20037
(202) 639-6605
(202) 478-1815 (fax)
emiller@velaw.com

Counsel for Bruce Webster

APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JAMES H. ROANE, JR., et al	)
	)
Plaintiffs,	)
	)
	)
v.	) Civil Action No. 05-2337 (RWR)(DAR)
	)
	)
ERIC H. HOLDER, JR., et al.,	)
	)
Defendants.	)
	)

DEFENDANTS' STATUS REPORT

Pursuant to the Court 's July 29, 2011 Minute Order, Defendants are providing this status report on the Bureau of Prisons' ("Bureau") revisions of the Lethal Injection Protocol used to effectuate federal death sentences. The Department of Justice and the Bureau of Prisons are in the final phases of finalizing the protocol as it relates to revision or amendment of the Bureau's lethal injection protocol due to the unavailability of sodium thiopental used in the current protocol. However, the assessment is ongoing and no final determinations have been made as to specific changes to the protocol.

As ordered by the Court on November 3, 2011, Defendants will continue to file monthly reports on the status of the revisions.

Date: July 3, 2013

Respectfully Submitted,

RONALD C. MACHEN JR.
D.C. BAR # 447889
United States Attorney
for the District of Columbia

DANIEL F. VAN HORN
D.C. BAR # 924092
Civil Chief

By: /s/

BENTON G. PETERSON, BAR # 1029849
Assistant United States Attorney
U.S. Attorney's Office
555 4th Street, N.W. - Civil Division
Washington, D.C. 20530
(202) 514-7238

/s/ Robert J. Erickson /bgp
ROBERT J. ERICKSON, D.C. Bar# 220731
Principal Deputy Chief
Criminal Appellate Section
U. S. DEPARTMENT OF JUSTICE
950 Pennsylvania Avenue, NW, Room 1515
Washington, DC 20530
Ph: (202) 514-2841

Of Counsel:
Rick Winter
Federal Bureau of Prisons

CERTIFICATE OF COMPLIANCE

As required by Supreme Court Rule 33.2(b), I certify that the document contains 15 pages, excluding the parts of the document that are exempted by Supreme Court Rule 33.1(d).

/s/ Catherine E. Stetson
CATHERINE E. STETSON