

IN THE SUPREME COURT OF THE UNITED STATES

NO. 20A134

UNITED STATES OF AMERICA,

v.

DUSTIN JOHN HIGGS,

(CAPITAL CASE)

**RESPONSE IN OPPOSITION TO
APPLICATION TO VACATE STAY OF EXECUTION
ISSUED BY THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

On January 13, 2021, the United States Court of Appeals for the Fourth Circuit sua sponte entered a stay of Mr. Higgs’s execution. Mot. to Vacate App. 1a.¹ The Government has now moved to vacate that stay. The Government’s request is unnecessary and unwarranted.

In August 2020, the Government moved to amend the sentencing judgment and order in *United States v. Higgs*, Crim. No. 98-520 (D. Md.). While that motion was pending, the Government scheduled Mr. Higgs’s execution for January 15, 2021. On December 29, 2020, the United States District Court for the District of

¹ We cite to the Appendix filed in support of the Government’s stay application as “Mot. to Vacate App.” and to the Appendix filed by the Government in *United States v. Higgs*, No. 20-927, as “Pet. App.”

Maryland denied the Government's motion to amend the judgment. Pet. App. 1a–17a. The Government appealed.

After reviewing the parties' briefs, the Fourth Circuit scheduled oral argument for January 27, 2021. Pet. App. 27a. The Government moved to expedite or dispense with oral argument, which the Fourth Circuit denied. Pet. App. 29a. The Government then asked this Court to remove this case from the Fourth Circuit by granting either certiorari before judgment or mandamus. Petition, *United States v. Higgs*, No. 20-927 (Jan. 11, 2021). Mr. Higgs responded to the Government's request, and the Government replied.

After the Government sought review in this Court, the Fourth Circuit sua sponte entered a stay. Mot. to Vacate App. 1a. Although the Fourth Circuit did not explain its reasoning, its intent is relatively clear. At no previous time had either the district court, the Fourth Circuit, or this Court entered a stay. It was and is conceivable that the date of Mr. Higgs's scheduled execution would pass—or that it would be late in the day on that date—before this Court rules on the Government's Petition. The Fourth Circuit likely issued the stay to preserve its own jurisdiction in that event, and to make clear to all parties that an execution could not go forward in the absence of a ruling in the Government's favor by this Court.

The Government says that the stay is unnecessary because it has indicated that it will not execute Mr. Higgs unless it gets relief from the district court's order. Mot.

to Vacate 2, 4–5. Of course, this may be clearer to counsel for the Government than to the Fourth Circuit or, for that matter, to the Federal Bureau of Prisons officials who would be charged with carrying out an execution. Moreover, if the Government’s representations are accurate, then as of now the Fourth Circuit stay order does no harm to the Government or to anyone else. To the contrary, it adds the belt of a court order to the suspenders of the Government’s assurance that it will not proceed with an execution as long as the district court’s order is in place. In the absence of harm to the Government, there is no reason to vacate the stay.

The real question before this Court consists of the merits of the issues that have been briefed with respect to the Government’s Petition in No. 20-927. The Court should focus on those issues and put the stay question to the side. As long as the district court order remains in place, the Fourth Circuit stay order should also remain in place.

There is a further reason why this Court should not act now on the Government’s Motion. The obvious goal of the Government’s Petition in No. 20-927 is to execute Mr. Higgs on January 15. But there is a wide range of actions that this Court can take in response to the Petition, not all of which would decide the merits—for example, granting certiorari before judgment but requiring expedited briefing on the merits. Vacating the stay in conjunction with such an order (or in

conjunction with no other order at all) could mistakenly be understood as clearing the way for today's execution to go forward.

In short, the legal positions of the parties will become much clearer once this Court rules with respect to the Petition. At least until then, the Court should take no action on the Government's Motion.

CONCLUSION

This Court should take no action with respect to the Government's Motion to Vacate until it rules on the Petition.

Respectfully submitted,

/s/ Matthew Lawry
Matthew Lawry
Aren Adjoian
Cristi Charpentier
Elizabeth Hadayia
Assistant Federal Defenders
Federal Community Defender Office
Eastern District of Pennsylvania
Suite 545 West – The Curtis
Philadelphia, PA 19106
215-928-0520

Stephen H. Sachs
Roland Park Place
830 W. 40th Street, Apt. 864
Baltimore, MD 21211
410-243-4589

Dated: January 15, 2021