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\*\*\*THIS IS A CAPITAL CASE\*\*\*  
\*\*\*EXECUTIONS SCHEDULED FOR APRIL 17, 20, 24, AND 27, 2017 \*\*\*

No. 16-6496

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In the Supreme Court of the United States

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STACEY JOHNSON, JASON McGEHEE, BRUCE WARD,  
TERRICK NOONER, JACK JONES, MARCEL WILLIAMS,  
KENNETH WILLIAMS, DON DAVIS, and LEDELL LEE

*Petitioners*

v.

WENDY KELLEY, in her official capacity  
as Director, Arkansas Department of Correction,  
and ARKANSAS DEPARTMENT OF CORRECTION

*Respondents*

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On Petition for a Writ of Certiorari to the  
Supreme Court of Arkansas

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PETITION FOR REHEARING

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Certificate of Counsel

## PETITION FOR REHEARING

Pursuant to Supreme Court Rule 44.2, Petitioners respectfully petition for rehearing of the Court's order denying certiorari in this case.

## GROUND FOR REHEARING

As required by Rule 44.2, there are "intervening circumstances of a substantial or controlling effect" to support rehearing in this case. Specifically, on February 27, 2017, the Governor of Arkansas set execution dates for eight of the nine Petitioners (Nooner being the exception). That fact in itself might not be remarkable, but the details are: the executions are scheduled to occur over a ten-day period from April 17, 2017, to April 27, 2017, with two executions per night on four separate nights. In the post-*Gregg* era, no state has executed so many men in so short a time frame. This unprecedented execution schedule is not merely a substantial new development—it is truly extraordinary. As such, it recommends the Court's rehearing of its order denying certiorari in this case.

Most fundamentally, the Arkansas schedule is an affront to Petitioners' basic human dignity. "Evolving standards of decency must embrace and express respect for the dignity of the person, and the punishment of criminals must conform to that rule." *Kennedy v. Louisiana*, 554 U.S. 407, 420 (2008). Executing eight men in ten days is far outside the bounds of what contemporary society finds acceptable. Every other State to conduct executions spaces them at a reasonable interval; no state has performed eight executions in even a month since Texas in 1997. And Arkansas has no legitimate penological reason for scheduling executions in this way. Its reversion

to an antiquated practice—one that refutes these condemned men’s individuality even in death—is simply one last affront to the humanity of men the State has maintained in solitary confinement for decades.

The need for rehearing is only increased by the State’s use of midazolam as the first drug in the execution protocol. As the dissenting Justices wrote in *Arthur v. Dunn*, No. 16-602, slip op. at 16 (Sotomayor, J., dissenting), “we should not blind ourselves to the mounting firsthand evidence that midazolam is simply unable to render prisoners insensate to the pain of execution.” As explained in the Petition, Petitioners have already contributed to that evidence in the trial court—a contribution the Arkansas Supreme Court ignored by applying an illogical interpretation of *Glossip*’s requirement to plead an alternative execution method. The Court should grant rehearing so the Petitioners’ next contribution does not come in the form of eight botched executions.

Even with an ideal execution drug, Arkansas’s scheduling choices would warrant another look by the Court. No state has carried out a double execution since 2000. The last time such a thing was attempted, in 2014, Oklahoma mangled the execution of Clayton Lockett. Arkansas’s wish to hold four double executions flies in the face of established practice and heightens the risk of suffering to Petitioners.

In short, Arkansas’s intention to wring eight midazolam executions into a ten-day period significantly elevates the urgency and the importance of the Questions Presented in the Petition. Petitioners respectfully request that the Court grant

rehearing to consider the propriety of Arkansas's execution method and the Arkansas Supreme Court's interpretation of *Baze* and *Glossip*.

CONCLUSION

The Court should grant the petition for rehearing.

MARCH 20, 2017

Respectfully submitted,



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CERTIFICATE OF COUNSEL

I hereby certify that this petition for rehearing is presented in good faith and not for delay, and that it is restricted to the grounds specified in Supreme Court Rule 44.2



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MEREDITH L. BOYLAN



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WENDY KELLEY, in her official capacity  
as Director, Arkansas Department of Correction,  
and ARKANSAS DEPARTMENT OF CORRECTION

*Respondents*

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**CERTIFICATE OF SERVICE**

I hereby certify that I have served all parties required to be served with the Petitioners' Petition for Rehearing. Specifically, in compliance with S. Ct. R. 29.3, I emailed and hand-delivered a copy of these documents to below-listed counsel on March 20, 2017:

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March 20, 2017

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Mr. Scott Harris  
Clerk of the Supreme Court of the United States  
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Re: *Stacey Johnson v. Wendy Kelley*, No. 16-6496

Dear Mr. Harris:

**Notice Of Change Of Address**

Please take Notice that *effective Monday, February 27, 2017, Counsel of Record to Petitioners Don Davis, Stacey Johnson, Jack Jones, Ledell Lee, Jason McGehee, Terrick Nooner, Bruce Ward, Marcel Williams, and Kenneth Williams* moved to the following address:

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All telephone numbers, email addresses, and facsimile numbers will remain the same.

Respectfully submitted,



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Meredith L. Boylan, Esq.

*Counsel of Record to Petitioners Don Davis, Stacey Johnson, Jack Jones, Ledell Lee, Jason McGehee, Terrick Nooner, Bruce Ward, Marcel Williams, and Kenneth Williams*