

THIS IS A CAPITAL CASE

EXECUTIONS SCHEDULED FOR APRIL 20, 24, and 27, 2017

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

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

Petitioners,

v.

ASA HUTCHINSON, Governor of the State of Arkansas, in his official capacity, and
WENDY KELLEY, Director, Arkansas Department of Correction, in her official
capacity,

Respondents.

Emergency Application for Stay of Execution

To the Honorable Samuel A. Alito, Jr., Associate Justice of the Supreme Court of
the United States and Circuit Justice for the Eighth Circuit:

Petitioners respectfully request a stay of their executions pending the Court's
disposition of their Petition for Writ of Certiorari seeking review of the decision of
the United States Court of Appeals for the Eighth Circuit in Case No. 17-1805 (Apr.
17, 2017). Petitioners have concurrently filed a Petition for Writ of Certiorari with
this application. Petitioner Johnson is scheduled to be executed at **7 p.m. CDT on
Thursday, April 20, 2017**. Petitioner Lee is scheduled to be executed at **8:15 p.m.**

CDT on Thursday, April 20, 2017. Counsel for the State has informed the undersigned that the State intends to begin the executions at the appointed times even if this application remains pending. In light of the State's intention, if the Court is unable to resolve this application by 7 p.m. CDT on Thursday, April 20, it should grant a temporary stay while it considers the application.

JURISDICTION

This Court has jurisdiction to enter a stay under 28 U.S.C. § 2101(f), 28 U.S.C. § 1651, and Supreme Court Rule 23.

REASONS FOR GRANTING THE STAY

On February 27, 2017, the Governor of Arkansas scheduled execution dates for each of the Petitioners with the exception of Nooner. These dates are:

- Don Davis and Bruce Ward: April 17, 2017¹
- Stacey Johnson and Ledell Lee: April 20, 2017
- Jack Jones and Marcel Williams: April 24, 2017
- Jason McGehee² and Kenneth Williams: April 27, 2017.

On March 27, 2017, Plaintiff initiated this action in the Eastern District of Arkansas, claiming, among other things, that the State's execution schedule violates the Eighth Amendment because it is contrary to the evolving standards of

¹ The Arkansas Supreme Court stayed Davis's and Ward's executions. Their execution date passed and they are not currently under warrant.

² The Arkansas Parole Board recommended that the Governor grant McGehee clemency, and the U.S. District Court for the Eastern District of Arkansas granted him a stay so the Governor can consider the recommendation within the statutorily mandated timeframe. McGehee remains under warrant.

decency of a maturing society. The district court declined to dismiss the claim but also declined to issue a preliminary injunction. The Eighth Circuit declined to issue a stay pending cross-appeal of this claim.

A stay of execution is appropriate if there is (1) a “reasonable probability that four Members of the Court would consider the underlying issue sufficiently meritorious for the grant of certiorari”; (2) a “significant possibility of reversal of the lower court’s decision”; and (3) a “likelihood that irreparable harm will result” without a stay. *Barefoot v. Estelle*, 463 U.S. 880, 895 (1983).

There is a reasonable probability that four Members of the Court will grant the Petition. Respondents’ execution schedule raises important questions about the Eighth Amendment’s prohibition of certain penological practices. There is a significant possibility Petitioners will succeed if the Court considers the case, given the unprecedented nature of the execution schedule and the way in which it disregards the dignity to which Petitioners are entitled under the Eighth Amendment. There is no doubt of irreparable harm. Petitioners will be executed without a stay.

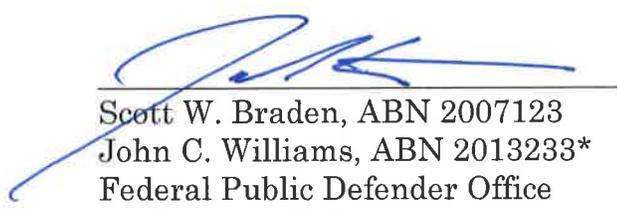
Petitioners have not unduly delayed in this request for a stay. They challenged the execution schedule a month after their executions were set, and while they were preparing other end-stage matters such as clemency. They have filed their Petition for Writ of Certiorari and this stay motion two days after the Eighth Circuit’s opinion was issued. They ask not for delay but rather for vindication of meritorious claims that will prevent their cruel and unusual executions.

CONCLUSION

The Court should grant this application and stay Petitioners' executions pending disposition of their Petition for Writ of Certiorari.

DATED: APRIL 19, 2017

Respectfully submitted,



Scott W. Braden, ABN 2007123
John C. Williams, ABN 2013233*
Federal Public Defender Office
scott_braden@fd.org
john_c_williams@fd.org
1401 W. Capitol Ave., Ste. 490
Little Rock, AR 72201
(501) 324-6114

**Counsel of Record for Petitioners*