

IN THE SUPREME COURT OF THE UNITED STATES

RICHARD E. GLOSSIP, et al.,            )  
  )  
                  Petitioners,                    )            No. (14-7955)  
  )  
v.    )  
  )  
KEVIN J. GROSS, et al.,                 )  
  )  
                  Respondents.                )

**RESPONDENTS’ APPLICATION FOR STAYS OF EXECUTION OF SENTENCES OF DEATH**

COMES NOW the Respondents, Kevin J. Gross, et al., and moves for stays of execution until final disposition by this Court of this challenge to Oklahoma’s lethal injection protocol using midazolam; or, alternatively, until the Oklahoma Department of Corrections (ODOC) has in its possession a viable alternative to midazolam for use in its executions.

In support thereof, Respondents show the following:

1. Petitioners are death row inmates with pending execution dates set by the Oklahoma Court of Criminal Appeals (OCCA). Richard E. Glossip’s execution is scheduled for January 29, 2015. John M. Grant’s execution is scheduled for February 19, 2015. Benjamin R. Cole’s execution is scheduled for March 5, 2015. See Exhibits 1 & 2 (attached) (OCCA orders setting execution dates).

2. All three petitioners are scheduled to be executed by ODOC using a three-drug protocol of midazolam hydrochloride (midazolam), rocuronium bromide and potassium chloride. ODOC’s intended use of midazolam to initiate the lethal injection sequence has been approved during recent federal litigation in the lower

courts. In that litigation, petitioners sought a preliminary injunction to prevent their execution until the federal district court could rule on the merits of their claims after a full trial on the merits of their 42 U.S.C. § 1983 lawsuit challenging the constitutionality of Oklahoma's lethal injection protocol. Both the district court and U.S. Tenth Circuit Court of Appeals held that petitioners failed to establish a likelihood of success on the merits of their claims and denied preliminary injunctive relief. *See Warner v. Gross*, \_\_\_F.3d\_\_\_, 2015 WL 137627 (10<sup>th</sup> Cir. Jan. 12, 2015).

3. On January 15, 2015, this Court denied an application for stays of execution by petitioners and Charles Warner, another Oklahoma death row plaintiff in this federal litigation. *Warner v. Gross*, 2015 WL 171517 (U.S. Jan. 15, 2015) (No. 14A761). Shortly thereafter, Warner was executed without incident using midazolam, rocuronium bromide and potassium chloride.

4. On January 23, 2015, this Court granted a petition for writ of certiorari filed by petitioners to review the Tenth Circuit's decision upholding Oklahoma's current midazolam-based lethal injection protocol. *Glossip v. Gross*, No. 14-7955 (U.S. Jan. 23, 2015). A copy of this Court's order granting certiorari is attached. *See* Exhibit 3.

5. In light of this Court's grant of petitioners' petition for writ of certiorari, Respondents request that the executions of Glossip, Grant and Cole be stayed until final disposition of this appeal; or, alternatively, until ODOC has in its possession a viable alternative to midazolam for use in its executions.

6. Respondents submit that no further executions using midazolam should occur in Oklahoma until final disposition of this appeal.

7. However, the State of Oklahoma continues its search for sodium thiopental and pentobarbital for use in its executions. These two drugs have been previously approved for use in executions, *see, e.g., Baze v. Rees*, 553 U.S. 35 (2008) (sodium thiopental); *Pavatt v. Jones*, 627 F.3d 1336 (10<sup>th</sup> Cir. 2010), *cert. denied*, \_\_\_U.S.\_\_\_, 131 S. Ct. 974 (2011) (pentobarbital); *Wackerly v. Jones*, 398 Fed. Appx. 360 (10<sup>th</sup> Cir. 2010) (sodium thiopental); *Hamilton v. Jones*, 472 F.3d 814 (2007), *cert. denied*, 549 U.S. 1158 (2007) (sodium thiopental), and ODOC would use those drugs in favor of midazolam were those drugs in its possession. Notably, ODOC's current protocol allows for the use of sodium thiopental, pentobarbital or midazolam to carry out executions. *See* Attachment D to *Execution of Offenders Sentenced to Death* dated 9/30/2014, ODOC Execution Procedures (OP-040301).<sup>1</sup>

8. Should ODOC obtain a sufficient quantity of sodium thiopental and/or pentobarbital, there would be no remaining impediment to carrying out petitioners' executions. ODOC could simply use these drugs instead of midazolam to execute petitioners. The use of sodium thiopental or pentobarbital is not at issue in this challenge. In the event ODOC obtains sodium thiopental and/or pentobarbital for use in its executions, the Attorney General will advise this Court of that fact and suggest by written application of the appropriateness of vacating the stay entered by

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<sup>1</sup> Available at [www.ok.gov/doc/documents/op040301.pdf](http://www.ok.gov/doc/documents/op040301.pdf) and [www.ok.gov/doc/documents/040301ad.pdf](http://www.ok.gov/doc/documents/040301ad.pdf).

this Court. Such action by the State is particularly appropriate considering that petitioners “have committed horrific crimes, and should be punished.” *Warner*, 2015 WL 171517, at \*4 (Sotomayor, J., dissenting from denial of stay).

### CONCLUSION

The executions of Richard E. Glossip, John M. Grant and Benjamin R. Cole should be stayed by this Court until final disposition of this appeal; or, alternatively, until ODOC has in its possession a viable alternative to midazolam for use in its executions.

Respectfully submitted,

/s/John D. Hadden

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 26<sup>th</sup> day of January, 2015, I electronically transmitted the foregoing document to the Clerk of this Court and to the following:

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