

No. 14A796

IN THE SUPREME COURT OF THE UNITED STATES

Richard E. Glossip; John M. Grant; and Benjamin R. Cole, by and through his next friend, Robert S. Jackson, Petitioners,

vs.

Kevin J. Gross, Michael W. Roach, Steve Burrage, Gene Haynes, Frazier Henke, Linda K. Neal, Earnest D. Ware, Robert C. Patton, and Anita K. Trammell, Respondents.

*****CAPITAL CASE***
EXECUTION OF RICHARD E. GLOSSIP
SCHEDULED FOR 6:00 PM (CST)
THURSDAY, JANUARY 29, 2015**

**PETITIONERS' RESPONSE IN SUPPORT OF RESPONDENTS'
APPLICATION FOR STAYS OF EXECUTION OF SENTENCES OF DEATH**

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**RESPONSE IN SUPPORT OF RESPONDENTS'
APPLICATION FOR STAYS OF EXECUTION OF SENTENCES OF DEATH**

To the Honorable Sonia Sotomayor, Associate Justice of the Supreme Court of the United States, and Circuit Justice for the Tenth Circuit:

Petitioners Richard Glossip and John Grant, through counsel, and Benjamin Cole, by and through his next friend Robert S. Jackson, file this response in support of Respondents' application for stays of their imminently scheduled executions.

On January 13, 2015, Petitioners filed a petition for writ of certiorari (No. 14-7955), along with an application for stays of their executions. On January 15, this Court denied the application to stay Petitioners' executions pending review of the case.¹ *See Warner v. Gross*, No. 14-7955, 574 U.S. ___, 2015 WL 171517 (Jan. 15, 2015) (Sotomayor, J., dissenting). On January 23, this Court granted the petition for writ of certiorari. Today, January 26, 2015, Respondents asked this Court to stay Petitioners' executions. Resp'ts' Application for Stays of Execution of Sentences of Death, *Glossip v. Gross*, No. 14-7955,² filed Jan. 26, 2015. Because Petitioners' scheduled execution dates are imminent, they respectfully join

¹ Charles Warner was one of the petitioners in the case. Mr. Warner's execution was scheduled for January 15, 2015, and he was executed by the State of Oklahoma after the stay was denied.

² Though Respondents' filed their Application for Stays under case number 14-7955, this Court has assigned case number 14A761 to it.

Respondents' application, but only in asking the Court to stay their executions until final review of this matter.³

If no stay is ordered, Petitioners will be executed before the Court has a chance to review the merits of their case. Petitioners' brief on the merits is due on March 9—which is four days *after* the last of the three scheduled executions. The Court grants certiorari “only for compelling reasons,” and it will review cases where a “court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court” *See* Sup. Ct. R. 10; *Berkemer v. McCarty*, 468 U.S. 420, 426 (1984) (granting certiorari to resolve confusion in federal and state courts regarding applicability of previous Supreme Court rulings); *Chicago & N.W. Ry. Co. v. United Transp. Union*, 402 U.S. 570, 572-73 (granting

³ *See* Resp'ts' Application for Stays, at 4 (asking Court to stay executions until, *inter alia*, “final disposition of this appeal”). Petitioners do not join in any other aspect of Respondents' application, except to support the request that this Court should stay the scheduled executions.

Moreover, Petitioners, in conformity with Supreme Court Rule 23.3, note that the stays of executions sought are not available from the Governor of Oklahoma or the Oklahoma Court of Criminal Appeals. Under the Oklahoma Constitution, the Governor may only grant a reprieve for up to sixty days. *See* Okla. Const. art. 6, § 10. (“The Governor shall have power to grant after conviction, reprieves, or leaves of absence not to exceed sixty (60) days”). Likewise, the Oklahoma legislature has limited the ability of the Oklahoma Court of Criminal Appeals to issue stays of executions in death-penalty cases. *See* 22 Okla. Stat. Ann. § 1001.1(C) (“When an action challenging the conviction or sentence of death is pending before it, the Court of Criminal Appeals may stay an execution date”). The Oklahoma Court of Criminal Appeals has strictly interpreted the statute to prevent authorizing a stay of execution when there is no action pending before it. *See Lockett v. State*, 329 P. 3d 755 (Okla. Crim. App. 2014).

certiorari to consider “important question” on which views of lower courts diverge).⁴ The Court should not allow the important questions presented in this case to become moot only because the Petitioners will be executed. *Wainwright v. Booker*, 473 U.S. 935, 936 (1985) (Mem.) (Powell, J., concurring). Nor should the Court deny Petitioners the opportunity to see the final resolution of their case before the State carries out their sentences.⁵

Further, if the Court’s decision is favorable to Petitioners, then there is all the more reason to issue the stay so that Petitioners are not executed in violation of the Constitution. *See Booker*, 473 U.S. at 936 n.1 (Powell, J., concurring) (irreparable harm that will result if stay is not granted “is necessarily present in capital cases”). If the State is permitted to execute Petitioners before the constitutionality of Oklahoma’s protocol has been fully reviewed by the Court, the effects are irreversible.

⁴ Compare, e.g., App. C at 56:7-14 (finding that petitioners are required to plead an alternative method of execution) *with* Mem. and Order, *Arthur v. Thomas*, No. 2:11-cv-438-WKW (M.D. Ala.), filed Jan. 5, 2015 (unpublished), at 10, ECF No. 195 (finding that plaintiff need not plead an alternative method of execution in order to survive motion to dismiss).

⁵ “[W]hen certiorari is granted, *by definition* the Court’s resolution of the issues presented in that case might affect the judgment rendered below.” *Straight v. Wainwright*, 476 U.S. 1132, 1133 n.2 (1986) (Mem.) (Powell, J., concurring in the denial of a stay of execution); *see also Warner v. Gross*, No. 14A761 (14-7955), 574 U.S. ___, 2015 WL 171517, at *4 (Sotomayor, J., dissenting from denial of application for stay) (noting that Petitioners should be punished, but not in a manner that violates the Eighth Amendment).

Finally, staying the currently scheduled executions for Petitioners would be in the interest of the public. All citizens have an interest in ensuring that the Constitution is upheld. *See Gannett Co., Inc. v. DePasquale*, 443 U.S. 368, 383 (1979). And, the public interest is even greater where, as here, the ultimate punishment of death is being carried out. *Cf. Woodson v. North Carolina*, 428 U.S. 280, 303-04 (1976). As such, staying the pending executions is appropriate here.

CONCLUSION

For the reasons set forth above, Petitioners respectfully ask the Court to grant Respondents' application for stays of execution pending review of this case.

Respectfully submitted: January 26, 2015.

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