

No. 14-8647, 14A908

In the Supreme Court of the United States

KELLY RENEE GISSENDANER,

Petitioner,

v.

HOMER BRYSON, Commissioner, Georgia Department of Corrections,
BRUCE CHATMAN, Warden, Georgia Diagnostic and Classification Prison, and
OTHER UNKNOWN EMPLOYEES AND AGENTS, Georgia Department of Corrections ,

Respondents.

**On Petition for a Writ of Certiorari to the United
States Court of Appeals for the Eleventh Circuit**

EMERGENCY MOTION FOR STAY OF EXECUTION

CAPITAL CASE

**TO: THE HONORABLE CLARENCE THOMAS, ASSOCIATE JUSTICE,
SUPREME COURT OF THE UNITED STATES**

Petitioner KELLY RENEE GISSENDANER, a death-sentenced prisoner in the State of Georgia, requests that this Court stay her execution, which is imminent, as even Respondents are now conceding that the quality of their lethal injection drugs are suspect. All indications, however, are that Respondents are considering proceeding with the

execution of Ms. Gissendaner in spite of their own pharmacist's assessment that the drugs are "cloudy."

The facts are these. At approximately 10:25 p.m., counsel for Respondents telephoned Ms. Gissendaner's counsel and informed them that her execution would be postponed for several days because their pharmacist, who had examined their lethal injection drugs just an hour ago, determined that they were "cloudy." Approximately five minutes later, however, counsel for Respondents called back to state that the prison was no longer sure which drugs they had examined – "this week's or last week's"¹ – and that they were considering proceeding. Counsel for Respondents then called again to say that they were not planning to proceed, conceding that "this particular batch [of drugs] just didn't come out like it was supposed to." Another reversal of course, however, remains possible without this Court's intervention.

There is simply too much uncertainty for the Court to allow this execution to proceed. As the underlying action details, Respondents hide every scintilla of information about the origins and true nature of their lethal injection drugs from Ms. Gissendaner, the public, and the Court. They have asked this Court and the lower courts to trust their representations as to the quality, safety, and efficacy of these drugs. Now, by their own admission, those assurances are revealed as hollow.

¹ This statement not only suggests that Respondents are not keeping track of their drugs, but given their assertions that these drugs come from a common source, problems with one would constitute evidence of problems with the other. Certainly the difference of a week should not be enough to render one batch contaminated or compromised. Moreover, if Respondents had proceeded with the execution at 7:00 p.m.

Despite their concession as to the suspect quality of their drugs, Respondents might yet proceed with an execution that they themselves, mere moments ago, deemed unsafe to allow to proceed. This Court must prevent this.

REASONS FOR GRANTING A STAY

For a Circuit Justice to grant a stay of execution, a petitioner must show: 1) irreparable injury if no stay is granted; 2) A “reasonable probability that four (4) members of the Court will consider the issue [presented] sufficiently meritorious to grant certiorari,” *Graves v. Burnes*, 405 U.S. 1201 (1972) (Powell, Circuit Justice), or a reasonable probability that a plurality of the Court would grant relief on an original habeas petition; and, 3) a likelihood of success on the merits. *See Barefoot v Estelle*, 463 U.S. 880, 893 (1983); *see also Fare v. Michael C.*, 439 U.S. 1310 (1978) (Rehnquist, Circuit Justice). Ms. Gissendaner respectfully submits that she meets these standards.

A. Irreparable Injury

If no stay is granted, Ms. Gissendaner will be executed imminently. This constitutes irreparable injury. *See, e.g., Evans v. Bennett*, 440 U.S. 1301, 1306 (1979) (Rehnquist, Circuit Justice, granting a stay of execution and noting the “obvious irreversible nature of the death penalty”); *O’Bryan v. Estelle*, 691 F.2d 706, 708 (5th Cir. 1982) (the “irreversible nature of the death penalty” constitutes irreparable injury and weighs heavily in favor of granting a stay). Further, the concerns that Ms. Gissendaner has raised go to whether Respondents’ refusal to disclose information concerning the provenance of their execution drugs and the qualifications of the personnel has concealed

“a substantial risk of significant harm” – an injury that has been underscored by Respondents’ admissions over the last thirty minutes. By Respondents’ own concession, Ms. Gissendaner faces a potential injury of not only her death, but a death by cruel and unusual punishment. Given these facts and concerns, a Stay of Execution will in no way prejudice the State.

B. Probability That The Court Will Grant The Writ, and Likelihood of Success

As the facts in Mr. Gissendaner’s case present troubling and substantial constitutional issues, there is a reasonable likelihood that this Court would grant certiorari and that she would prevail before this Court. As Ms. Gissendaner has detailed in her petition, her claims closely track those of the petitioners in *Glossip v. Gross*, which this Court has recently accepted for certiorari review. — S.Ct. —, Nos. 14-7955, 14-A761 (Jan. 23, 2015).

In his petition for a writ of certiorari, Ms. Gissendaner has detailed how Respondents’ conduct violates her rights pursuant to the Constitution of the United States. Where, as here, “the petition demonstrates a likelihood of success in at least some respects” a stay should be granted. *Bundy v. Wainwright*, 808 F.2d 1410, 1421 (11th Cir. 1987). Ms. Gissendaner’s case involves issues that “are debatable among jurists of reason”; which “a court could resolve in a different manner”]; and which involve “questions [that] are ‘adequate to deserve encouragement to proceed further.’” *Barefoot v. Estelle*, 463 U.S. 880, 893 n. 4. (1983) (citations omitted).

CONCLUSION

For the foregoing reasons, Ms. Gissendaner respectfully requests that this Court enter an order pending consideration of her petition for a writ of certiorari to the United States Court of Appeals for the Eleventh Circuit.

Respectfully submitted this, the 2nd day of March, 2015.

/s/ Gerald King

*Gerald W. King, Jr. (Ga. Bar No. 140981)
FEDERAL DEFENDER PROGRAM, INC.
101 Marietta Street, Suite 1500
Atlanta, Georgia 30303
404-688-7530
(fax) 404-688-0768
Gerald_King@fd.org

Susan C. Casey (Ga. Bar. No. 115665)
965 Virginia Avenue, NE
Atlanta, Georgia 30306
404-242-5195
(fax) 404-879-0005
susancasey@outlook.com

Lindsay N. Bennett (Ga. Bar. No. 141641)
FEDERAL PUBLIC DEFENDER
801 I Street, 3rd Floor
Sacramento, CA 95814
916-498-6666
(fax) 916-498-6656
Lindsay_Bennett@fd.org

*COUNSEL OF RECORD