

**CAPITAL CASE
EXECUTION DATE 6/28/06 1:00 a.m.**

No. 05-_____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 2005

SEDLEY ALLEY,

Petitioner,

v.

GEORGE LITTLE, *et al.*,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

MOTION FOR STAY OF EXECUTION

Paul R. Bottei
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Counsel for Petitioner Sedley Alley

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Petitioner Sedley Alley respectfully requests that this Court stay his execution pending disposition of his contemporaneously filed certiorari petition and any proceedings occurring thereafter should this Court grant the petition. In support thereof, Mr. Alley shows:

1. Mr. Alley filed a 42 U.S.C. § 1983 action challenging the constitutionality of the lethal injection protocol Respondents intend to employ for his execution.

2. The District Court entered a preliminary injunction pending this Court's disposition of *Hill v. McDonough*. In doing so the District Court reasoned (1) *Hill* will establish whether the court has subject-matter jurisdiction to consider Alley's § 1983 action; (2) weighing the traditional four-factors considered in injunction proceedings leads to the conclusion that a preliminary injunction should issue; and (3) Alley brought his § 1983 action in a timely manner.

3. A Sixth Circuit panel vacated the District Court's order, holding that Alley fails to make a likelihood of success showing, and finding that Alley had not brought his § 1983 action in a timely manner.

4. Following the release of this Court's opinion in *Hill*, the District Court granted Defendants' Motion to Dismiss, finding that it was bound by the panel's

opinion that Mr. Alley had not brought his § 1983 action in a timely manner.

5. Mr. Alley has now filed his petition for writ of certiorari asking this Court to resolve the obvious conflict among the circuits regarding what constitutes a timely challenge to the constitutionality of lethal injection proceedings. As Mr. Alley's certiorari petition reflects (1) his case presents an ideal vehicle for this Court's resolution of the conflicting circuit law; and (2) he presents a potentially meritorious argument that his lethal injection challenge became ripe only recently when an execution date was set and lethal injection was established as the method for that proposed execution.

6. Mr. Alley respectfully requests that this Court stay his execution pending this Court's disposition of his certiorari petition and any proceedings occurring thereafter should this Court grant the petition.

7. Mr. Alley also requests that this Court order any such additional relief as it deems just.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of this Petition was served by hand on Joseph Whalen, Office of the Attorney General, 425 Fifth Avenue North, Nashville, Tennessee 37243 this 26th day of June 2006.

Paul R Bottei