IN THE
SUPREME COURT OF THE UNITED STATES

No. 14A82

CHARLES L. RYAN, Director of the Arizona Department of Corrections, et al., Petitioners, v. JOSEPH RUDOLPH WOOD, III, Respondent.	(Capital Case) EXECUTION SCHEDULED FOR JULY 23, 2014, 10:00 A.M. (M.S.T.)

REPLY RE: APPLICATION TO VACATE STAY OF EXECUTION

Thomas Horne
Attorney General
(Firm State Bar No. 14000)

Jeffrey A. Zick
Chief Counsel

John Pressley Todd
Special Assistant Attorney General
(Counsel of Record)

Jeffrey L. Sparks
Lacey Gard
Assistant Attorneys General
Capital Litigation Section
1275 W. Washington
Phoenix, Arizona 85007–2997
Telephone: (602) 542–4686
CADocket@azag.gov
(State Bar Number 010806)

Attorneys for Petitioners

1. There is no claim that Arizona's scheduled execution of Joseph Rudolph Wood, III, would violate the Eighth Amendment. Yet, at the last minute, based on a purported First Amendment right that no court has found existed, the panel majority ordered Arizona to halt its execution or turn over information the State considers confidential. The effect of this "conditional injunction" is a stay of execution because *no court* has found that Arizona is prohibited by the First Amendment from maintaining the confidentiality of the "provenance" of the unexpired 50mg of Midazolam and 50mg of Hydromorphone plan to use in Wood's execution.

2. Wood accuses the State of mischaracterizing his First Amendment claim when it points out that the panel majority's "novel" remedy, the stay of a lawful execution unless the State discloses information to Wood, fails to match the right asserted, a public right of access. Although Wood repeats that he is asserting an alleged right to the information as a member of the general public, the remedy grants him special status since it would be absurd to halt his execution if it were any other member of the public bringing the claim. He cannot have it both ways— either he is asserting a general public right of

access to the information, in which case the conditional injunction is inappropriate because its disclosure is irrelevant to whether his execution occurs, or he is asserting a special right to the information that would properly be brought under the Due Process Clause or the Eighth Amendment, not the First Amendment.

3. Wood, like the panel majority below, also repeats the idea that unless the sought-after information is revealed (again, pursuant to an alleged right the panel majority claimed it did not find on the merits), his execution will proceed "under a cloak of secrecy." (Opposition at 12.) In making this assertion he blithely ignores that nearly every detail about his execution is provided to him and to the general public, including exactly what and how much lethal drugs will be used, how they will be administered, and the qualifications of those placing the IV lines to administer them.

4. The context and unsupported legal foundation of the panel majority's opinion makes clear that the First Amendment has been co-opted as yet another tool to bar states from carrying out lawful executions. (*See* Bybee, J., dissenting, Appendix B, at 34.) Recently, inmates nationwide have sought the information Wood seeks here, but

under different constitutional theories. (*See* Application at 8–9, citing cases.) Because those arguments have not prevailed, Wood posits—and the panel majority below obliged—an opportunistic theory under the First Amendment to gain access to non-public government information. Contrary to Wood's position, his claim is "novel"—it is not supported by this Court's jurisprudence, it is in conflict with *Wellons*, and the remedy fashioned by the Ninth Circuit is far out of proportion to the alleged harm. Accordingly, this Court's intervention is necessary to remedy the Ninth Circuit's interference with the State's strong interest in carrying out an unchallenged, lawful execution. *See Hill v. McDonough*, 547 U.S. 573, 584 (2006).

CONCLUSION

Petitioners respectfully request that this Court vacate the stay of execution and vacate the opinion entered by the court below.

DATED this 22nd day of July, 2014.

Thomas C. Horne
Attorney General

Jeffrey A. Zick
Chief Counsel

/s *John Pressley Todd*
John Pressley Todd
(Counsel of Record)
Jeffrey L. Sparks
Lacey Stover Gard
Assistant Attorneys General

Attorneys for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that on July 22, 2014, I electronically mailed this Application to Vacate Stay to the U.S. Supreme Court to be lodged for filing.

Copies of this Reply were electronically mailed this date to:

Jon M. Sands
Federal Public Defender
District of Arizona
Dale A. Baich
Robin C. Konrad
Assistant Federal Public Defenders
dale_baich@fd.org
robin_konrad@fd.org

Attorneys for Respondent Joseph R. Wood III

/s/
Jeffrey A. Zick
Chief Counsel
Capital Litigation Section
1275 West Washington
Phoenix, Arizona 85007–2997
Telephone: (602) 542–4686

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