

No. 05-1036

IN THE
Supreme Court of the United States

Abu-Ali Abdur'Rahman,
Petitioner,

v.

Phil Bredeesen et al.

On Petition for a Writ of Certiorari
to the Tennessee Supreme Court

SUPPLEMENTAL BRIEF FOR THE PETITIONER

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May 3, 2006

REPLY BRIEF FOR THE PETITIONER

Petitioner submits this supplemental brief to bring to this Court's attention the troubling events surrounding the most recent execution by lethal injection to take place in this country: that of Joseph Clark, who was executed in Ohio on May 2, 2006. See Adam Liptak, *Trouble Finding Inmate's Vein Slows Lethal Injection in Ohio*, N.Y. TIMES, May 3, 2006. As news accounts of the execution detail, Clark's execution was initially delayed for approximately twenty-two minutes while a group of technicians – which included paramedics, but no nurses or doctors, see John Mangels, *Condemned Killer Complains Lethal Injection "Isn't Working,"* CLEVELAND PLAIN DEALER, May 3, 2006 – searched for a vein in which to insert an intravenous line, see Liptak, *supra*. Although prison procedures call for the insertion of two such lines, with one in each arm, an intravenous line was eventually inserted in only one arm. See Associated Press, *State Executes Man After Unprecedented Delay*, USA TODAY, May 2, 2006. Approximately three to four minutes after the administration of the drug cocktail began, Clark was able to lift his head off the gurney and say, “[i]t’s not working.” See Liptak, *supra*. Prison officials then determined that Clark’s vein had collapsed, see Reuters, *Killer Executed the Hard Way*, May 2, 2006, available at <http://www.cnn.com/2006/LAW/05/02/lethal.injection.reut/index.html>. Technicians spent more than a half-hour working behind the curtain to locate another vein in which to insert the IV line. See Liptak, *supra*. Although the curtain separating the witnesses from the execution was drawn while the technicians attempted to place the new line, Clark “could be heard moaning and groaning from behind the curtain.” See Associated Press, *supra*. The execution then continued, and Clark was pronounced dead nearly ninety minutes after the execution commenced. Liptak, *supra*.

Clark’s execution further confirms what the petition (at 16-19) and reply (at 7-9) made clear: the risk that, as a result

of the flaws in the lethal injection protocol, petitioner will be inadequately anesthetized and thus suffer excruciating pain is substantial. Contra BIO 13 (risk of inadequate anesthesia is “less than remote”). Although there is virtually no dispute that, if properly administered, the sodium Pentothal should render an inmate unconscious almost immediately, and that the inmate’s breathing should cease within one to two minutes, see Pet. 11; Petr. Reply 8-9; Human Rights Watch, *So Long As They Die: Lethal Injections in the United States* 27-28 (Apr. 2006), available at <http://hrw.org/reports/2006/us0406/> (visited May 2, 2006), here Clark was both fully conscious and able to speak several minutes after the administration of the drugs began. Moreover, there is no indication that, prior to Clark’s statement that the drugs were not working, any member of the execution team was aware that Clark’s vein had collapsed or that the sodium Pentothal was not being properly delivered. See Pet. 18; *Cooley v. Taft*, No. 2:04-cv-1156, 2006 U.S. Dist. LEXIS 24496, at **13-14 (S.D. Ohio Apr. 28, 2006) (“Compounding the gravity of the risk that [the plaintiff] will not be properly anesthetized prior to and while being executed * * * is the absence prior to and during the execution process of certified medical personnel capable of ensuring, among other things, that the drugs are properly prepared and delivered, and that the condemned inmate has been rendered unconscious prior to and during the administration of the [Pavulon] and potassium chloride.”). Finally, the same problem at issue in Clark’s execution – a collapsed vein – is one that Tennessee officials have themselves experienced during practice sessions, see Pet. 13, but – to the best of petitioner’s knowledge – have done nothing to address.

CONCLUSION

For the foregoing reasons, as well as those set out in the petition and reply, certiorari should be granted.

Respectfully submitted,

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