

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21-5001

September Term, 2020

1:20-cv-03261-RDM

Filed On: January 11, 2021

Lisa Marie Montgomery,
Appellant

v.

Jeffrey Rosen, Acting Attorney General of the
United States in his official capacity, et al.,
Appellees

BEFORE: Srinivasan, Chief Judge, and Henderson,* Rogers, Tatel, Garland,**
Millett, Pillard,** Wilkins, Katsas,* Rao,* and Walker,* Circuit Judges

ORDER

It is **ORDERED**, on the court's own motion, that the court's January 11, 2021 order denying the motion for stay be reconsidered and that appellant's motion for a stay of execution pending appeal be granted. A majority of the en banc court has determined that appellant has satisfied the stringent requirements for a stay pending appeal. See Nken v. Holder, 556 U.S. 418, 434 (2009); D.C. Circuit Handbook of Practice and Internal Procedures 33 (2020). It is

FURTHER ORDERED, on the court's own motion, that the merits of this appeal will be heard en banc on a highly expedited basis. In light of this court's divided decisions in In re: Federal Bureau of Prisons' Execution Protocol Cases (FBOP I), 955 F.3d 106 (D.C. Cir. 2020), In re: Federal Bureau of Prisons' Execution Protocol Cases, No. 20-5361 (D.C. Cir. Dec. 10, 2020), and the stay order in this case, and because of the acute urgency of prompt resolution, we sua sponte grant highly expedited initial hearing en banc of Montgomery's appeal to resolve our circuit law on the important question of the meaning of "implementation of death in the manner prescribed by the law of the State in which the sentence is imposed," under the Federal Death Penalty Act, 18 U.S.C. § 3596(a). The following briefing schedule will apply:

Appellant's brief	January 19, 2021
Appendix	January 19, 2021
Appellees' brief	January 26, 2021
Reply brief	January 29, 2021

*Circuit Judges Henderson, Katsas, Rao, and Walker would not grant reconsideration.

**Circuit Judges Garland and Pillard did not participate in this matter.

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The parties will be informed by separate order of the date of oral argument.

All issues and arguments must be raised by appellant in the opening brief. The court ordinarily will not consider issues and arguments raised for the first time in the reply brief.

To enhance the clarity of their briefs, the parties are urged to limit the use of abbreviations, including acronyms. While acronyms may be used for entities and statutes with widely recognized initials, briefs should not contain acronyms that are not widely known. See D.C. Circuit Handbook of Practice and Internal Procedures 43 (2019); Notice Regarding Use of Acronyms (D.C. Cir. Jan. 26, 2010).

The parties are directed to hand deliver the paper copies of their briefs to the Clerk's office on the date due. All briefs and appendices must contain the date that the case is scheduled for oral argument at the top of the cover. See D.C. Cir. Rule 28(a)(8).

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Scott H. Atchue
Deputy Clerk