No. _____

In the Supreme Court of the United States

BRANDON ASTOR JONES,

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.

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

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CAPITAL CASE

QUESTION PRESENTED

Does Georgia's lethal injection secrecy act – which "effectively insulates the source, quality, and composition of [Georgia's] lethal injection drug compound" from any scrutiny by prisoners and the courts, thus depriving them of "the exact information required to raise a method-of-execution claim under *Glossip* [*v. Gross*]"[1] – violate Mr. Jones's Fifth, Eighth and Fourteenth Amendment rights, particularly "once something has gone demonstrably wrong with the compounded pentobarbital [Georgia] has procured[?]"[2].

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[1] *Jones v. Bryson*, Case. No. 16-10277 at 30-31 (WILSON, J., dissenting, joined by MARTIN, ROSENBAUM, JILL PRYOR, and JORDAN, JJ.) (February 2, 2016)(internal quotations omitted).

[2] *Gissendaner v. Bryson*, 803 F.3d 565, 579 (JORDAN, J., dissenting) (11th Cir. 2015).

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BRANDON ASTOR JONES respectfully petitions this Court for a writ of certiorari to review the orders of the United States Court of Appeals for the Eleventh Circuit.

OPINIONS BELOW

The decision of the United States District Court for the Northern District of Georgia dismissing Mr. Jones's action pursuant to 42 U.S.C. § 1983, *Jones v. Bryson, et al.,* Civil Action No. 1:15-CV-4445-CAP (N.D. Ga. January 21, 2016), appears as Exhibit A to this petition. The February 1, 2016, panel opinion of the Eleventh Circuit denying his motion for stay of execution, *Jones v. Bryson, et al.*, No. 16-10277, appears as Exhibit B to this petition. The February 2, 2016, order of the Eleventh Circuit denying Mr. Jones's petition for initial hearing *en banc* appears as Exhibit C to this petition. The February 2, 2016, order of a panel of the Eleventh Circuit summarily affirming the district court's denial is attached as Exhibit E.

JURISDICTION

Mr. Jones invokes the jurisdiction of this Court pursuant to 28 U.S.C. § 1254.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment I to the United States Constitution provides, in relevant part: provides, in relevant part: "Congress shall make no law . . . abridging . . . the right of the people peaceably to assemble, and to petition the government for a redress of grievances." U.S. CONST. art. I.

Amendment V to the United States Constitution provides, in relevant part: "No person . . . shall be deprived of life, liberty, or property without due process of law . . . ." U.S. CONST. art. V.

Amendment VIII to the United States Constitution provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. CONST. art. VIII.

Amendment XIV to the United States Constitution, section 1, provides, in relevant part: "Nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. art. XIV, cl. 1.

Section 1983 of Title 28 of the United States Code states, in relevant part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . . .

O.C.G.A. § 42-5-36(d) provides:

> (1) As used in this subsection, the term 'identifying information' means any records or information that reveals a name, residential or business address, residential or business telephone number, day and month of birth, social security number, or professional qualifications.
>
> (2) The identifying information of any person or entity who participates in or administers the execution of a death sentence and the identifying information of any person or entity that manufactures, supplies, compounds, or prescribes the drugs, medical supplies, or medical equipment utilized in the execution of a death sentence shall be confidential and shall not be subject to disclosure under Article 4 of

> Chapter 18 of Title 50 or under judicial process. Such information shall be classified as a confidential state secret.

STATEMENT OF THE CASE

At 7:00 tonight, Respondents will attempt to execute Brandon Astor Jones by injecting him with a substance that purports to be pentobarbital, but that has been mixed from unknown ingredients by an anonymous pharmacist who has *twice* provided batches of drugs that, for reasons unknown, coagulated into clumps and were too dangerous to use. "It is certainly fair to infer that if there is a problem with the supply of defective compounded pentobarbital . . . and Georgia has not been able to figure out what caused that problem, the problem is likely to recur." *Gissendaner v. Comm'r, Ga. Dep't of Corr.*, 803 F.3d 565, 576 (11th Cir. 2015) (JORDAN, J., dissenting) (*"Gissendaner II"*). But "[t]he shroud of secrecy imposed by [Georgia's lethal injection secrecy act] effectively insulates the State of Georgia's source, quality, and composition of pentobarbital from any [judicial] scrutiny, *Terrell v. Bryson*, 807 F.3d 1276, 1281 (11th Cir. 2015) (MARTIN, J., concurring), thus depriving both Mr. Jones and the courts of "the exact information required to raise a method-of-execution claim under *Glossip* [*v. Gross*]." *Jones v. Bryson*, Case. No. 16-10277 at 30-31 (WILSON, J., dissenting, joined by MARTIN, ROSENBAUM, JILL PRYOR, and JORDAN, JJ.) (February 2, 2016).

The precedent of the Eleventh Circuit holds that prisoners have no constitutional right to the information withheld by Defendants concerning the origin and true nature of their lethal injection drugs and, in the absence of this information, allegations that the drugs pose a substantial risk of significant harm

must fail as mere speculation.[3] Earlier today, however, a sharply-divided Eleventh Circuit denied Mr. Jones's petition for initial hearing *en banc* by a vote of 6-5, with the dissenting judges agreeing that this precedent should be revisited, and detailing their concerns that Respondents' use of Georgia's lethal injection secrecy act violated Mr. Jones's right to due process and access to the courts. See Ex. C. Given the division within the circuit on so grave a question, and as Georgia's lethal injection secrecy act "depriv[es] Mr. Jones and other condemned prisoners of any ability to subject the State's method of execution to meaningful adversarial testing before they are put to death,"[4] he respectfully petitions this Court to grant him certiorari.

COURSE OF PROCEEDINGS

Mr. Jones was convicted and sentenced to death by the Superior Court of Cobb County in 1979 and, after his death sentence was vacated in federal habeas, was resentenced to death in 1997. The ordinary course of state and federal appellate and habeas review of his conviction and sentence concluded on November 30, 2015. *Jones v. Chatman*, 136 S. Ct. 570 (2015).

On December 22, 2015, Mr. Jones initiated the underlying § 1983 action, challenging the constitutionality of Respondents' method of execution and asserting

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[3] *Wellons v. Comm'r, Ga. Dep't of Corr.*, 754 F.3d 1260 (11th Cir. 2014); *Gissendaner v. Comm'r, Ga. Dep't of Corr.*, 803 F.3d 565 (11th Cir. 2015); *Terrell v. Bryson, et. al*, 807 F.3d 1276 (11th Cir. 2015). *See* discussion *infra*.

[4] *Terrell*, Case. No. 15-15427 (Martin, J., concurring) at 14.

that their use of Georgia's lethal injection secrecy act to conceal the information necessary for him to plead that claim deprives him of due process of law. Mr. Jones acknowledged that his claims were foreclosed by panel precedent of the Eleventh Circuit Court of Appeals and advised the district court of his intention to petition that court for hearing *en banc*.

Twenty-two days later – on January 13, 2016 – Respondents obtained an order from the Superior Court of Cobb County authorizing Mr. Jones's execution, which they scheduled for 7:00 p.m. **tonight**, February 2, 2016. Ex. F. Respondents then filed their pre-answer motion to dismiss his complaint on Friday, January 15, 2016. The district court granted that motion on January 21, 2016.

Mr. Jones filed his petition for initial hearing *en banc* and an emergency motion for a stay of execution with the Eleventh Circuit on January 25, 2016. On February 1, 2016, a panel of that court denied Mr. Jones's motion for a stay of execution by a vote of 2-1. Earlier today – February 2, 2016 – the full Eleventh Circuit denied Mr. Jones's petition for initial hearing *en banc* by a vote of 6-5, with the dissenting judges detailing their beliefs that Respondents' use of Georgia's lethal injection secrecy act violated Mr. Jones's right to due process and access to the courts. Ex. C. This timely petition for certiorari follows.

REASONS FOR GRANTING THE WRIT

In March 2013, the Georgia legislature amended O.C.G.A. § 42-5-36 – a provision that previously governed "[c]onfidential information *supplied by inmates*" – to classify all "identifying information" about a "person or entity who participates

in or administers the execution of a death sentence . . . [or] that *manufactures, supplies, compounds, or prescribes the drugs*, medical supplies, or medical equipment" used in an execution as a "confidential state secret" not subject to disclosure through Georgia's Open Records Act or "*judicial process*." O.C.G.A. § 42-5-36(d) (emphases added).[5] The legislation had two purposes: 1) "to make it more difficult for lawyers representing death-row inmates to challenge the state's lethal-injection process"[6]; and 2) to shield the compounding pharmacies from which Defendants obtain lethal-injection drugs from "legal and public relations problems."[7]

Since the enactment of the act, Respondents have been allowed to deprive prisoners and the courts of the information necessary to determine whether their current lethal injection protocol – which employs compounded drugs mixed by a pharmacist whose identity is a state secret -- comports with the Eighth

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[5]The secrecy act was adopted in the wake of a series of missteps by Defendants in their administration of executions, including the 2011 seizure of their stockpile of lethal injection drugs by the DEA. Defendants now respond to Open Records Act requests from death-sentenced prisoners by asserting that the act obliges them to withhold the *entirety* of any record that contains identifying information classified by that statute.

[6]Rhonda Cook and Bill Rankin, *Lethal injection secrecy bill wins approval*, ATLANTA JOURNAL-CONSTITUTION (March 26, 2013), available at: http://www.ajc.com/news/news/state-regional-govt-politics/lethal-injection-secrecy-bill-wins-approval/nW4tK/ (last visited Jan. 24, 2016).

[7]Rhonda Cook, *Compounding pharmacies may be source of lethal injection drugs*, ATLANTA JOURNAL-CONSTITUTION (April 27, 2013) (emphasis added), available at: http://www.myajc.com/news/news/state-regional/compounding-pharmacies-may-be-source-of-lethal-inj/nXXxT/ (last visited Jan. 24, 2016).

Amendment.[8] The constitutional crisis precipitated by Respondents' use of the secrecy act came to a head on the night of March 2, 2015, when both Brian Terrell and Kelly Gissendaner were scheduled for execution – Ms. Gissendaner for 7:00 p.m., and Mr. Terrell for March 10, 2015. At 10:19 p.m. that night, however, Ms. Gissendaner's lawyers were notified that her execution would not proceed because Respondents' compounded lethal injection drugs were "cloudy," and the attending physician and a pharmacist had deemed them not "appropriate for medical use." Ex. D-04 at ¶ 2. On March 3, Respondents announced that executions would be postponed indefinitely while they conducted an analysis into the drugs' coagulation. *See* Ex. D-07.

Respondents subsequently asserted that their lethal injection drugs had congealed after being stored at too cold of a temperature. *Gissendaner v. Bryson (Gissendaner II)*, Case No. 1:15-cv-00689 (Doc. No. 9) Ex. D-10. On June 5, 2015, Defendants disclosed testing that they had conducted in the hopes of confirming their "cold storage" theory, but which had effectively disproved it. *Gissendaner v. Bryson (Gissendaner II)*, Case No. 1:15-cv-00689 (Doc. No. 17) Ex. D-11. Further, subsequent disclosures by Defendants revealed that *two* distinct batches of lethal injection drugs in Defendants' possession on March 2 (one mixed and received on February 17, and the other on February 24) had congealed and were unusable – disproving Defendants' claim that their cloudiness had simply been an isolated

[8]Per Respondents' representations, this pharmacist has provided the drugs used in every execution since the adoption of the lethal injection secrecy act.

mishap.

Mr. Jones alleged below that Respondents' continued use of the same anonymous pharmacist who has (at least) twice mixed defective drugs poses a substantial and objectively intolerable risk of significant harm. He further submitted evidence that every explanation for the "cloudiness" of the February 17 and 24 batches would cause him serious illness and needless suffering, and that the underlying problem would not necessarily manifest as obviously as on March 2.[9] And he has demonstrated that Defendants have not figured out what that problem *is*, meaning that it "is likely to recur." *Gissendaner II*, 803 F.3d at 576 (JORDAN, J., dissenting).[10] But the information necessary to identify the cause of the drugs' defectiveness and to prevent its recurrence – which his expert has detailed below, (Ex. F at 33-36 and 34, n. 40) – is concealed by the secrecy act, leaving it impossible for him to satisfy this Court's standard for challenging a method of execution, discussed *infra*. As five judges of the Eleventh Circuit now acknowledge, this can

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[9]As explained by Dr. Michael Jay, a professor of pharmaceutical sciences, Respondents' drugs could cause serious illness or suffering in myriad ways that would not be visible. Ex. D-21, D-22; *see also Gissendaner II*, 803 F.3d at 579 (there is "no guarantee that a doctor or pharmacist will recognize the problem the next time, particularly if the compounded pentobarbital has an incorrect pH or is, despite its adulteration, only slightly cloudy.") For these reasons, the hourly visual checks that Respondents now conduct are an inadequate safeguard.

[10] In the proceedings below, Respondents assert that the execution timelines for Ms. Gissendaner, Mr. Johnson, and Mr. Terrell provide "definitive proof that Defendants ascertained what caused the precipitation and have kept it from reoccurring." This good fortune is neither definitive nor proof. Respondents still adhere to explanations that their own testing has disproven, which shows only that those prisoners were fortunate enough to escape the worst outcome threatened by Respondents' ongoing game of Russian roulette.

no longer be countenanced by the Constitution.

I. Respondents Are Violating Mr. Jones's Rights Pursuant to the Fifth, Eighth, and Fourteenth Amendments

The Eighth Amendment's prohibition against cruel and unusual punishment forbids methods of execution that present "a substantial risk of significant harm." U.S. Const. Amend. VIII; *Glossip v. Gross*, —— U.S. ——, 135 S. Ct. 2726, 2737 (2015); *Baze v. Rees*, 553 U.S. 35, 50-52 (2008) (plurality opinion); *see also in re Kemmler*, 136 U.S. 436, 447 (1890) ("Punishments are cruel when they involve torture or a lingering death"). Where an Eighth Amendment cruel-and-unusual-punishment claim alleges the risk of future harm, "the conditions presenting the risk must be '*sure or very likely* to cause serious illness and needless suffering,' and give rise to 'sufficiently *imminent* dangers.'" *Baze,* 553 U.S. at 50 (quoting *Helling v. McKinney,* 509 U.S. 25, 33, 34–35 (1993)); *see also Glossip*, 135 S. Ct. at 2737. Accordingly, "[p]risoners seeking to challenge their method of execution as unconstitutional under the Eighth Amendment face a 'heavy burden.'" (Ex. C at 29-30) (Wilson, J., dissenting, joined by Martin, Rosenbaum, Jill Pryor, and Jordan, JJ,) (quoting *Terrell v. Bryson*, 807 F.3d 1276, 1281 (11th Cir. 2015) (per curiam) (Martin, J., concurring). "In the lethal injection context, this standard requires an inmate to show an objectively intolerable risk of harm that prevents prison officials from pleading that they were subjectively blameless for purposes of the Eighth Amendment." *Glossip*, 135 S. Ct. at 2737 (quoting *Baze*, 553 U.S. at 50). The controlling opinion in *Baze* further states that prisoners "cannot successfully challenge a State's method of execution merely by showing a slightly or marginally safer alternative." *Baze*, 553 U.S. at 51. Instead, prisoners must

identify an alternative that is "feasible, readily implemented, and in fact significantly reduce[s] a substantial risk of severe pain." *Id.* at 52.

Because *Glossip* and *Baze* oblige a prisoner challenging a method of execution "to present evidence that the State's drug compound and/or injection process present a significant risk of harm . . . [and] know enough about the State's drug compound to be able to offer a distinguishable, feasible alternative . . . information regarding the composition of the State's compound, the source of the compound, the compound's manufacturing process, and the actual injection process is *critical* to raising a lethal injection method-of-execution claim." Ex. C at 29-30 (emphasis added).

As five judges of the Eleventh Circuit recognized below, Georgia's lethal injection secrecy act "denies death row prisoners, such as Brandon Jones, a fair opportunity to protect their Eighth Amendment rights because it precludes them from accessing information necessary to challenge their method of execution." Ex. C at 27-28. A bedrock principle of our rule of law is that "where there is a legal right, there is also a legal remedy by suit or action at law, whenever that right is invaded." *See Marbury v. Madison*, 5 U.S. 137, 163 (1803); *see also General Oil Co. v. Crain*, 209 U.S. 211, 221-30 (1908) (holding that a state court must provide a remedy for a constitutional violation). Accordingly, "i]f persons who are sentenced to death are denied a fair opportunity to challenge an unconstitutional method of execution, then the Eighth Amendment's guarantee is *meaningless.*" Ex. C at 27.[11]

[11] As Judge Wilson noted in dissent from the panel decision denying a stay of execution, Mr. Jones's "due process claim is inextricably intertwined with his method-of-execution claim." Ex. B at 17.

Further, "[t]he Eighth Amendment relies on the Fifth and Fourteenth Amendments for support in fulfilling the constitutional promise of dignity in state-enforced deaths." (Ex. C at 27); *see also* U.S. Const. amend. V (1791) ("No person shall … be deprived of *life*, liberty, or property, without due process of law…"); U.S. Const. amend. XIV (1868) ("nor shall any State deprive any person of *life*, liberty, or property, without due process of law").[12] The secrecy act, however, deprives Georgia death-sentenced prisoners of "the 'basic ingredient of due process': 'an opportunity to be allowed to substantiate a claim before it is rejected.'" (Ex. C. at 28), citing *Ford v. Wainwright*, 477 U.S. 399, 417-18 (1986) (Eighth Amendment's prohibition against the execution of the insane entitled Ford to adequate procedures for determining his sanity).[13]

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[12] ; *See also Adams v. United States ex rel. McCan*, 317 U.S. 269, 276 (1942) ("procedural devices rooted in experience were written into the Bill of Rights not as abstract rubrics in an elegant code but in order to assure fairness and justice before any person could be deprived of 'life, liberty, or property.'") "Due process, unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances." *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976) (quoting *Cafeteria Workers v. McElroy*, 367 U.S. 886, 895 (1961)). Rather, "due process is flexible and calls for such procedural protections as the particular situation demands." *Id.* (quoting *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972)). It is clear, however, that due process entitles a person whose constitutional rights might be affected by state actions to, at a minimum, both notice of those actions and an opportunity to be heard "*at a meaningful time and in a meaningful manner*." *Fuentes v. Shevin*, 407 U.S. 67, 80 (1972) (emphasis added) ("Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified.")

[13]Similarly, in *Morgan v. Illinois*, this Court held that a criminal defendant's Sixth Amendment right to an impartial jury and "the requirement of impartiality embodied in the Due Process Clause of the Fourteenth Amendment" in tandem entitled the defendant to information about whether potential jurors would automatically vote for a death sentence in every capital case, and required that the trial court afford him adequate process to conduct *voir dire* and make challenges for

As the five dissenting judges noted, the Eleventh Circuit's precedent also contravenes this Court's holdings in *Goldberg v. Kelly* and its progeny. (Ex. C. at 28) (citing 397 U.S. 254, 262–63, 90 S. Ct. 1011, 1017–18 (1970) ("The extent to which procedural due process must be afforded the [individual] is influenced by the extent to which he may be condemned to suffer grievous loss . . . and depends upon whether the [individual]'s interest in avoiding that loss outweighs the governmental interest [at stake.]" (citation and internal quotation marks omitted)); *Morrissey v. Brewer*, 408 U.S. 471, 481, 92 S. Ct. 2593, 2600 (1972)). As those judges observe, the Eleventh Circuit "has consistently has consistently rejected due process challenges to the Secrecy Act without applying this framework" and is accordingly "legally deficient" and in contravention of this Court's precedent. *Id.* Four judges, moreover, have concluded that the proper application of the two-step analysis promulgated by this Court in *Goldberg* would "reveal[] that the Secrecy Act violates his constitutional rights." (Ex. C at 33-40).

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cause. *Morgan v. Illinois*, 504 U.S. 719, 728-29 (1992) ("the Sixth *and* Fourteenth Amendments . . . ensure the impartiality of any jury that will undertake capital sentencing"). As this Court noted, "[w]ere *voir dire* not available to lay bare the foundation of petitioner's challenge for cause against those prospective jurors who would always impose death following conviction, his right not to be tried by such jurors would be rendered as *nugatory*." *Id.* at 733 (emphasis added).

Further, in *Brady v. Maryland*, 373 U.S. 83, 86 (1963), this Court held that due process requires the government to disclose evidence which "would tend to exculpate [the defendant] or reduce the penalty." The underlying principles of *Brady*, which recognize that the government cannot withhold information bearing upon the rights of a person whom they wish to deprive of life or liberty, apply with equal force here.

Moreover, given Respondents continued reliance upon a compounding pharmacist who has twice provided defective drugs, these are not abstract concerns. As Judge Jordan has written:

> It is certainly fair to infer that if there is a problem with the supply of defective compounded pentobarbital (which Georgia's doctor and pharmacist agreed was not appropriate for medical use) and Georgia has not been able to figure out what caused that problem, the problem is likely to recur. There is also no guarantee that a doctor or pharmacist will recognize the problem the next time, particularly if the compounded pentobarbital has an incorrect pH or is, despite its adulteration, only slightly cloudy.

Gissendaner II, 803 F.3d at 579 (citations omitted). Given that history and the continuing risks it presents, Respondents cannot be permitted to use the secrecy act as a shield.

> Georgia can certainly choose, as a matter of state law, to keep much of its execution protocol secret, but it cannot hide behind that veil of secrecy once something has gone demonstrably wrong with the compounded pentobarbital it has procured. *See Wellons v. Comm'r*, 754 F.3d 1260, 1267-68 (11th Cir. 2014) (WILSON, J., concurring). It is not asking too much to require Georgia to put on some evidence that will provide some level of confidence that its compounded pentobarbital is no longer a problem.

Id.

Further, while the secrecy act does nothing less than negate the protections of the Eighth Amendment, the harm from its overreach is not limited to Mr. Jones and his fellow prisoners. The act, with its express goal of preventing judicial scrutiny, is a direct attack upon the courts' "constitutional role of determining whether a state's method of execution violates the Eighth Amendment's prohibition against cruel and unusual punishment before it becomes too late." *Wellons*, 754

F.3d at 1268 (WILSON, J., concurring); *Terrell*, 807 F.3d at 1276 (MARTIN, J., concurring). Particularly given Respondents' track record over the last ten months – to say nothing of the preceding years – this Court cannot allow itself and the lower courts to be divested of that purpose.[14]

> [T]here must be a way for Georgia to do this job without depriving . . . condemned prisoners of any ability to subject the State's method of execution to meaningful adversarial testing before they are put to death. A defendant *cannot have received due process* when he must wait for a botched execution, or other mishap, in order to get sufficient information to satisfy *Glossip* and vindicate his Eighth Amendment rights.

Id. (emphasis added). Mr. Jones urges this Court to direct Respondents to that way.

CONCLUSION

As the question of whether Georgia's lethal injection secrecy act deprives Mr. Jones of due process of law is of exceptional importance that has sharply divided the Court below, Petitioner BRANDON ASTOR JONES respectfully requests that this Court grant the writ of certiorari to review the decision of the United States Court

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[14]Respondents argue below that this information must remain secret no matter what errors they make, and what harm they risk, because "those opposed to the death penalty will stop at no measure to thwart" executions. (Doc. 8 at 5-6). Whoever "those" people are, they are not parties to this appeal. Any suggestion that Mr. Jones's constitutional rights must be curtailed because of the actions of a group with whom he is *perceived* to be sympathetic finds no support in the law – apart, perhaps, from *Korematsu v. U.S.*, 323 U.S. 214, 219-20 (1944). Further as Judge Martin noted, "Federal courts routinely construct procedures in other areas of the law . . . to protect one side's legitimate privacy interests and at the same time guard the Constitutional rights of the other." *Terrell*, 807 F.3d at 1281. As Georgia's secrecy act "accomplishes the former at the expense of the latter," it should not be tolerated. *Id.* But "[s]urely, if [the courts] can protect grand jury proceedings and commercial trade secrets, [it] can come up with a process that protects the important interests of both Georgia and [a prisoner] as the State carries out the 'gravest sentence our society may impose.'" *Id.* (citation omitted).

of Appeals for the Eleventh Circuit.

Respectfully submitted this, the 2nd day of February, 2016.

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CERTIFICATE OF SERVICE

I hereby certify that on February 2, 2016, a true and correct copy of the foregoing Petitioner's Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit was served electronically via sgraham@law.ga.gov upon Respondent's counsel as follows:

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Dated: This, the 2nd day of February, 2016.

/s/ Gerald W. King, Jr.
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