

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
AT PADUCAH  
(Filed Electronically)**

**CRIMINAL ACTION NO. 5:06CR-19-R  
UNITED STATES OF AMERICA,**

**PLAINTIFF,**

**vs.**

**STEVEN DALE GREEN,**

**DEFENDANT.**

**REPLY TO UNITED STATES' RESPONSE TO MOTION  
TO DECLARE LETHAL INJECTION UNCONSTITUTIONAL**

Comes the defendant, Steven Dale Green, by counsel, and for his reply to the United States' response to his motion to declare lethal injection unconstitutional, states as follows:

The United States argues that defendant's motion is not ripe for review because he has not yet been convicted of capital murder, sentenced to death, and exhausted his appeals. (United States' Response, pp. 1-2). It has been held that a challenge to the execution of a federal sentence can be brought in a post-conviction habeas corpus action, pursuant to 28 U.S.C. §2241, United States v. Little, 392 F.3d 671, 679 (4th Cir. 2004). See also Bell v. True, 413 F.Supp.2d 657, 735-737 (W.D.Va.2006) affirmed Bell v. Kelly, 2008 WL 59946 (4th Cir., 1-4-08) (challenge to method of execution properly brought in habeas corpus action), or in an action for relief under 42 U.S.C. §1983. Hill v. McDonough, 547 U.S. 573 (2006) (challenge to method of lethal injection).

Defendant has raised this issue at the present time in order to avoid any future claim by the Government that a later challenge to the constitutionality of execution by lethal injection is merely a dilatory tactic. Cf. Cooey v. Strickland, 479 F.3d 412, 413-418 (6th Cir. 2007).

Defendant is not unmindful of the Supreme Court's recent decision in Baze v. Rees, 553 U. S. \_\_\_\_ (No. 07-5439 April 16, 2008), upholding the lethal injection protocol utilized by the Commonwealth of Kentucky. Defendant does not concede, however, that this opinion forecloses further consideration of the issues raised in his motion. The judgment was supported by no less than six opinions. While the use of the specific chemicals in the Kentucky protocol was approved, the legal issues in lethal injection as a method of execution go beyond the types of drugs used. Left unresolved by Baze, for example, are how execution administrators are trained, how the drugs are administered, etc. Justices Scalia and Thomas warned that the ruling sets a standard open to interpretation and will invite more litigation on the issue.

When we granted certiorari in this case, I assumed that our decision would bring the debate about lethal injection as a method of execution to a close. It now seems clear that it will not. The question whether a similar three-drug protocol may be used in other States remains open, and may well be answered differently in a future case on the basis of a more complete record. Instead of ending the controversy, I am now convinced that this case will generate debate not only about the constitutionality of the three-drug protocol, and specifically about the justification for the use of the paralytic agent, pancuronium bromide, but also about the justification for the death penalty itself.

Baze v. Rees, Concurring Opinion of Justice Stevens at p. 1.

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**CERTIFICATE**

I hereby certify that on April 18, 2008, I electronically filed the foregoing with the clerk of the court by using the CM/ECF system, which will send a notice of electronic filing to the following: Marisa J. Ford, Esq., Assistant United States Attorney; James R. Lesousky, Esq., Assistant United States Attorney; and Brian D. Skaret, Esq., Attorney at Law.

/s/ Scott T. Wendelsdorf