

**IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT**

No. 14 EM 2015

COMMONWEALTH OF PENNSYLVANIA,

Petitioner,

v.

TERRANCE WILLIAMS,

Respondent.

ANSWER OF RESPONDENT TERRANCE WILLIAMS

On Emergency Commonwealth Petition for Extraordinary Relief
Under King's Bench Jurisdiction

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Dated: February 20, 2015

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I. INTRODUCTION

The Philadelphia District Attorney's Office has filed a petition seeking to invoke this Court's King's Bench jurisdiction to nullify a reprieve issued by the Governor of Pennsylvania to Respondent Terrance Williams, who was facing an imminent execution date. The District Attorney's petition is without legal basis. This Court's King's Bench jurisdiction is to be exercised in limited circumstances in the exercise of its supervisory, adjudicatory, or administrative authority. None of those jurisdictional bases exist here. Further, judicial interference with the Governor's constitutional and lawful exercise of his reprieve power would violate the separation of powers doctrine.

The District Attorney's petition is particularly misplaced given that it misstates the nature of the reprieve power, as well as the nature of the reprieve actually issued by Governor Wolf in this matter. Governor Wolf issued a temporary reprieve to Mr. Williams for the limited purpose of permitting the legislative death penalty task force to complete its study and have its concerns, if any, addressed. This time- and scope-limited action is precisely what the constitutional reprieve power entrusts solely to Pennsylvania's democratically elected Governor.

II. THE HISTORY LEADING TO THE DISTRICT ATTORNEY'S PETITION

Terrance "Terry" Williams is under a death sentence for the 1986 murder of Amos Norwood, an offense committed three months after Terry turned 18. At trial, the jury was informed that Terry had a prior conviction for the murder of Herbert Hamilton, which occurred when Terry was 17 years old. But the jury never learned that Hamilton and Norwood had sexually abused Terry as a child, or that the motive for both killings derived from sexual abuse by both men.

In 2012, Governor Corbett issued an execution warrant. During subsequent litigation, records from the Philadelphia District Attorney's files and other evidence came to light

demonstrating that the Philadelphia District Attorney's Office had known about Norwood's pedophilic abuse before trial but suppressed that evidence and had also suppressed evidence of abuse by Hamilton.

Mr. Williams petitioned the Board of Pardons to commute his sentence to life imprisonment. On September 17, 2012, the Board held a clemency hearing. The information submitted to the Board included the following:

- Mr. Norwood's widow, Mamie Norwood, stated that she has forgiven Terry and does not want Terry to be put to death;
- Five jurors urged that Terry's life be spared. In sworn statements, they explained that they were unaware at trial that Terry was exploited and sexually assaulted by the men he killed and that, if they had known the truth, they would not have sentenced Terry to death;
- Expert testimony was presented regarding the horrible childhood physical and sexual abuse Terry suffered and the damaging impact it had on him; and
- Dozens of child advocates, activists against sexual violence, former judges, and former prosecutors urged that Terry's life should be spared.

During these proceedings, an attorney representing the Philadelphia District Attorney's Office assured the Board, in response to a direct question, that the Commonwealth had not suppressed evidence in this case.

Three of five Board members, including Attorney General Linda Kelly, voted in favor of clemency, but clemency was denied because, in capital cases, the Board's support must be unanimous. *See* Pa. Const. Art. IV, § 9(a). Soon thereafter, Mr. Williams provided the Board with evidence demonstrating that the Philadelphia District Attorney's lawyer had made false representations to the Board itself, and that his office had suppressed evidence of Norwood's predatory behavior. In response, the Board voted on September 27, 2012, to reconsider its

clemency decision. A new hearing was then held, after which the Board took Mr. Williams' clemency application under advisement. *The application remains pending before the Board.*

Meanwhile, in PCRA proceedings in 2012, the Court of Common Pleas ruled that the Philadelphia District Attorney's Office had suppressed information about Norwood's sexual predation, Hamilton's sexual predation, and other favorable evidence, and that the prosecution's misconduct undermined confidence in the jury's death sentence. Accordingly, on September 28, 2012, the court vacated the death sentence and issued a stay of execution.

On December 15, 2014, this Court vacated the stay and reinstated the death sentence, ruling that the PCRA court lacked jurisdiction under the PCRA to entertain Mr. Williams' successive petition. *Commonwealth v. Williams*, 105 A.3d 1234 (Pa. 2014). On December 29, 2014, Mr. Williams applied for reargument.

On January 13, 2015, one week before he left office, Governor Corbett issued an execution warrant directing that Mr. Williams be executed on March 4, 2015.

On February 13, 2015, Governor Wolf invoked his constitutional "power to . . . grant reprieves" and issued a "temporary reprieve of the execution unto Terrance Williams until I have received and reviewed the forthcoming report of the Pennsylvania Task Force and Advisory Committee on Capital Punishment, and any recommendations contained therein are satisfactorily addressed." Exhibit 1. On the same date, Governor Wolf released a statement to the public in which he explained his decision to grant the temporary reprieve and expressed his "intention" to grant reprieves in other cases until the task force's work is complete.

Mr. Williams' application for reargument in this Court was denied two days ago, on February 18, 2015. Mr. Williams has until May 19, 2015, to file a petition for certiorari in the United States Supreme Court.

III. ARGUMENT

A. The Reprieve Is a Valid Exercise of the Governor's Constitutional Power.

The Pennsylvania Constitution provides that “[i]n all criminal cases except impeachment, the Governor shall have power . . . to grant reprieves.” Pa. Const., Art. IV § 9(a). “As a matter of law, a reprieve is the postponement of execution of . . . a sentence.” *Morganelli v. Casey*, 646 A.2d 744, 747 (Pa. Cmwlth. 1994) (“*Morganelli II*”). A reprieve does not affect the validity of the underlying judgment or sentence. *See Morganelli v. Casey*, 641 A.2d 674, 678 (Pa. Cmwlth. 1994) (“*Morganelli I*”).

Issuance of a reprieve requires an affirmative act by the Governor and will “normally [be granted] for a defined purpose or period.” *Id.* There is no limit to the number of reprieves that a Governor may issue. The Constitution speaks of the Governor’s power in the plural (the “power . . . to grant reprieves”), and no court has ever sought to limit the number or duration of a Governor’s reprieves. Indeed, some defendants have received quite a few. *See, e.g., Alberts v. Bradley*, 11 Pa. D. & C.2d 107, 113, 1958 WL 7212 (Pa. Com. Pl. 1958) (discussing *Commonwealth v. Thompson*, a case in which the governor issued 15 reprieves).

In a capital case, the scheduling of an execution gives rise to the Governor’s unilateral reprieve power. *Morganelli I*, 641 A.2d at 678. Once that power is triggered, “the Governor has unfettered discretion to grant a reprieve . . . on a case by case basis.” 1981-84 Pa. Op. Atty. Gen. 32 (Feb. 14, 1983); *accord Commonwealth v. Michael*, 56 A.3d 899, 903 (Pa. 2012) (“The Pennsylvania Constitution entrusts clemency decisions to the sole discretion of the executive branch.”); *Commonwealth ex rel. Banks v. Cain*, 28 A.2d 897, 900 (Pa. 1942) (“The constitutional power of the Governor to grant pardons and commutations of sentence is exclusive”).

The Governor's reprieve power has remained "unfettered" since colonial times. An early twentieth century Pennsylvania treatise explained:

While every reasonable safeguard has been thrown about the great prerogative through the constitutional restriction upon the governor as to pardons and commutations, *there is no limitation upon the number or nature of reprieves he may grant.* His power embraces all those grounds upon which by the English Common Law the courts granted reprieves, such as *ex arbitrio judicis*, where the judge was not satisfied with the verdict, and *ex necessitate legis*, such as the pregnancy of a woman convict, or insanity. It also embraces the reprieve *ex mandato regis*, which anciently was an expression of the Crown's will to the trial court. In Provincial times, both the court and the governor exercised the right but the latter seems to have been bound by no technical rules and reprieved indefinitely or on condition. . . . [The Governor's] discretion alone controls.

William Smithers & George Thorn, *Treatise on Executive Clemency in Pennsylvania* 78 (1909), available at <https://play.google.com/store/books/details?id=FSHrAAAAMAAJ&rdid=book-FSHrAAAAMAAJ&rdot=1> (emphasis added). Despite a series of constitutional amendments that have cabined the Governor's commutation and pardon powers, the reprieve power remains as broad today as when the Commonwealth's first Constitution was adopted. See *Morning Call, Inc. v. Commonwealth Bd. of Pardons*, 580 A.2d 1183, 1184-85 (Pa. Cmwlth. 1990).¹

In short, the Pennsylvania Constitution gives the Governor unfettered power to postpone a scheduled execution, so long as the postponement is the result of an affirmative act in a specific case for a defined purpose or period. As an example, on September 12, 2014, Governor Corbett

¹ Before the Governor's pardon power was restricted by constitutional amendment, this Court recognized just how broad the power was:

A pardon . . . being an act of such a nature as that by the common law *it may be upon any condition*, it has the same nature and operation in Pennsylvania, and it follows that the governor may annex to a pardon any condition whether precedent or subsequent not forbidden by law. . . . The propriety or wisdom of granting such pardons, or of the terms and conditions annexed, must rest with the executive, to whom the constitution entrusts this authority.

Case of Flavell, 1844 WL 5100, *2 (Pa. 1844) (emphasis added). Today, the Governor's reprieve power retains that expansive nature.

issued an official reprieve in the case of Hubert Michael, postponing his execution – then scheduled for September 22, 2014 – until the Department of Corrections “complete[d] its acquisition of the injection agents required to carry out lethal injection.” *See* Exhibit 2. That reprieve remained in effect until January 2015, when Governor Corbett rescinded it shortly before leaving office. *See* Exhibit 3.²

Just as his predecessor did, Governor Wolf here issued an official reprieve in a specific case for a defined purpose. *See* Exhibit 1. The reprieve is valid, lawful, and not subject to override by this Court.

The District Attorney nonetheless beseeches this Court to intervene and to invoke its extraordinary King’s Bench jurisdiction. The District Attorney’s arguments in favor of this course simply do not withstand scrutiny.

The District Attorney first argues that Governor Wolf’s “supposed ‘reprieve’ . . . is not, in fact, a reprieve, but an open ended suspension of a death sentence.” Petition, 18. In support of this argument, the District Attorney defines a reprieve as follows:

² Governor Corbett did *not* rescind the reprieve because the lethal injection drugs had become available. Counsel for the Department of Corrections has consistently stated in proceedings in the United States District Court for the Middle District of Pennsylvania, as recently as this month, that the Department does not possess the drugs it needs to conduct an execution. This problem is a result of a nationwide shortage of the types of drugs mandated by 61 Pa.C.S. § 4304(a). *See Cook v. Food & Drug Admin.*, 733 F.3d 1, 4, 10-11 (D.C. Cir. 2013) (explaining that “[i]n 2009 the last domestic manufacturer of thiopental stopped making it” and holding that the FDA was compelled by law to prohibit its importation); *Pavatt v. Jones*, 627 F.3d 1336, 1338 n.1 (10th Cir. 2010) (“[S]odium thiopental is now effectively unobtainable anywhere in the United States, thus requiring Oklahoma and 17 other death-penalty states to revise their lethal injection protocols.”). Investigating issues surrounding Pennsylvania’s lethal injection procedures is part of the death penalty task force’s mandate. It thus appears, as a practical matter, that Governor Corbett’s and Governor Wolf’s reprieves are not meaningfully different. They both arise in a context where the Department cannot fulfill its duty to conduct executions – unless and until the drugs become available or the Legislature amends § 4304(a).

At all times in Pennsylvania history a reprieve has meant one thing and only one thing: a temporary stay of a criminal judgment for a defined period of time, for the purpose of allowing the defendant to pursue an available legal remedy.

Petition, 21. The District Attorney cites no authority for this narrow definition, and it is in fact belied by Pennsylvania history and decisional law. As set forth above, a reprieve need not be issued “for a defined period of time,” but may be granted for “a defined *purpose*” or pending some future event. That purpose has included, but has never been limited to, pursuing “an available legal remedy,” and the Governor need not even state a reason for the action. *See, e.g., Smithers & Thorn* at 83 (the Governor may issue a reprieve “without assigning any reason for his action”).³ Under the plain language of the Constitution, there is virtually no limitation on the Governor’s power to issue reprieves – unlike his powers to grant pardons and commutations, which are limited by the requirement of approval by the Board of Pardons. *See Pa. Const., Art. IV § 9(a).*

Despite the plain language of Article IV, the District Attorney contends that the reprieve power is in *pari materia* with the pardon and commutation powers. Petition, 21. The District Attorney errs. The reprieve, pardon and commutation powers are all contained in the same section of the Constitution; the concept of in *pari materia* applies only when construing separate provisions of a statute or Constitution. *See Jubelirer v. Rendell*, 953 A.2d 514, 528 (Pa. 2008); 1

³ The District Attorney also asserts that Mr. Williams has “no remaining legal remedy available to [him],” that his request for clemency has been denied, and that “[t]here is nothing legitimate left to pursue.” Petition, 21. These contentions are untrue. This Court denied Petitioner’s motion for reargument in Case No. 668 CAP earlier this week, which makes ripe a certiorari petition in the United States Supreme Court. Mr. Williams is also the lead plaintiff in a case filed in the Commonwealth Court in July 2014, challenging the validity of the Department of Corrections’ lethal injection protocol in light of its conflict with the enabling lethal injection statute. *Williams et al. v. Dep’t Corrections*, No. 353 MD 2014 (Pa. Cmwlth). Moreover, Mr. Williams’ clemency petition is being held under advisement by the Board of Pardons and Parole, and clemency therefore remains available to him as well. Thus, even assuming arguendo that a reprieve is valid only for condemned inmates with available legal remedies, Mr. Williams would plainly meet that prerequisite.

Pa. C.S. § 1932. Moreover, Article IV, § 9 expressly limits the pardon and commutation powers, *but not the reprieve power*. Reading the three provisions as equivalent would be contrary to the doctrine of *expressio unius est exclusio alterius*, which “holds that the express inclusion of one thing implies the exclusion of another.” *Veterans of Foreign Wars Post 1989 v. Indiana Cnty. Bd. of Assessment Appeals*, 954 A.2d 100, 106 (Pa. Cmwlth. 2008). The District Attorney thus asks this Court to impose a limit on the reprieve power that is contrary to the language and intent of the Constitution itself.

Under their broad powers, Pennsylvania governors have issued reprieves to await the acquisition of lethal injection drugs, *see* Exhibit 2; in light of a prisoner’s mental or physical condition, *see* *Smithers & Thorn* at 78; or simply “until further order,” *Commonwealth v. Hill*, 39 A. 1055, 1056 (Pa. 1898) (recounting a colonial era case where the Governor issued a reprieve “to suspend her execution until further order,” which remained in effect for the better part of a year). In states with comparable gubernatorial reprieve powers, governors have issued reprieves, *inter alia*, to “allow the Legislature enough time to amend the current [lethal injection] statute,”⁴ and “until modified or rescinded by future Executive Order of the Governor.”⁵ There is nothing unique or problematic in Governor Wolf’s “defined purpose” of delaying Mr. Williams’ execution until completion of the legislative death penalty task force’s work.

The cases cited by the District Attorney do not help his cause. The District Attorney quotes *Morganelli II* for the notion that a reprieve may not operate “retroactively,” must “be articulated,” and must postpone “a scheduled event.” Petition, 19 (quoting *Morganelli II*, 646

⁴ “Gov. Rounds Issues Statement on the Stay of Execution for Elijah Page,” *available at* <http://news.sd.gov/newsitem.aspx?id=9749> (last visited Feb. 19, 2015).

⁵ Colorado Exec. Order D-2013-006, Death Sentence Reprieve (May 22, 2013) *available at* <http://www.colorado.gov/cs/Satellite/GovHickenlooper/CBON/1251642762288> (last visited Feb. 19, 2015).

A.2d at 747). The reprieve here is plainly prospective, articulated, and directed at a “scheduled event” – Mr. Williams’ scheduled execution. See Exhibit 1. *Morganelli II* thus supports the validity of Governor Wolf’s reprieve.

The District Attorney quotes *Morganelli I*’s definition of a reprieve as “do[ing] no more than stay[ing] the execution of a sentence for a time [and] with reference to a particular proceeding.” Petition, 19 (quoting *Morganelli I*, 641 A.2d at 678). That definition, taken from *Black’s Law Dictionary*, perfectly describes the reprieve here, which has stayed Mr. Williams’ execution pending completion of the death penalty task force’s work. See *Morganelli I*, 641 A.2d at 678 (quoting *Black’s Law Dictionary* 1170 (5th ed. 1979)).

The District Attorney also cites *Commonwealth v. Haag*, 809 A.2d 271, 276 (Pa. 2002), for the proposition that a Governor *may* issue a reprieve pending completion of PCRA proceedings. Petition, 20. But the District Attorney does not explain why the reprieve power is valid for the duration of such an “open ended,” years-long judicial proceeding and yet would be invalid pending the outcome of a legislatively authorized proceeding like the commission at issue here. The plain and unqualified language of the Constitution supports no such distinction.

The District Attorney next posits that the reprieve “has no end,” because it provides “no expiration date” and its “terminating event . . . is illusory.” Petition, 22-23. An expiration date is not required, as demonstrated by the above discussion. And the terminating event here is well-defined: the reprieve will remain in effect until the legislative commission issues its report and its concerns, if any, are addressed. It is appropriate for the Governor to await the report of the

legislative commission and consider any recommendations, especially in the context of a case with pending judicial proceedings and a pending clemency application.⁶ *See* n.3, *supra*.

Finally, the District Attorney argues that “the Governor seeks to nullify valid, final judgments of sentence in usurpation of the judicial function.” Petition, 24. This argument overlooks the plain meaning and effect of a reprieve. A reprieve “does no more than stay the execution of a sentence.” *Morganelli I*, 641 A.2d at 678 (quoting *Black’s Law Dictionary* at 1170). Contrary to the District Attorney’s contentions, the reprieve neither nullifies Mr. Williams’ judgment of sentence nor usurps any judicial function.

B. Interfering with the Governor’s Reprieve Power Would Be a Misuse of This Court’s King’s Bench Jurisdiction.

The King’s Bench jurisdiction gives this Court all of the powers inherent in the judiciary and allows it to exercise adjudicatory, supervisory, and administrative authority. *In Re Bruno*, 101 A.3d 635, 669 (Pa. 2014). The authority includes jurisdiction over all inferior tribunals, as well as the power to supervise the judiciary and its processes. *Id.* The power must be exercised with extreme caution and is limited to the “proper administration and supervision of the judicial system.” *Id.* at 670.

King’s Bench jurisdiction does not allow this Court to review matters that are constitutionally ascribed to the other branches of government. *See Commonwealth ex rel Cater*

⁶ The District Attorney imputes nefarious and fraudulent motives to the Governor and argues that the reprieve is intended to persist until the Governor reaches a state of “personal satisfaction.” Petition, 22-23. A fair and sensible reading of the reprieve, however, indicates that any problems identified by the commission will be accompanied by recommendations addressing those problems. The commission, in fact, is charged with doing just that. *See* House Resolution 413 at 4 (Sept. 28, 2011) (directing the task force and advisory committee “to determine what policy recommendations, if any, would guarantee that, in its application and administration, capital punishment in this Commonwealth is free from bias and error.”); Senate Resolution 6 at 6 (Dec. 6, 2011) (directing the task force and committee to “report their findings and recommendations to the Senate”). The reprieve is thus tailored to *the commission’s* inquiry and concerns, if any, and not to the Governor’s personal feelings.

v. Myers, 194 A.2d 185, 197 (Pa. 1963) (“we do not believe that this Court can impinge upon the exclusive jurisdiction of the executive branch of the government in showing clemency”). In *Cater*, this Court thus held that the courts have no jurisdiction to intrude into the clemency process. “[I]t would be a clear invasion by judicial direction of the immunity granted the executive branch of our government. Such is not consonant with our constitutional doctrine of separation of powers.” *Id.* (quoting *Mississippi v. Johnson*, 18 L. Ed. 437 (1863)); *cf. Bruno*, 101 A.3d at 697 (Saylor, J., concurring) (“King’s Bench . . . should be reserved for extraordinary circumstances – and all the more so where, as here, the type of action involved is, by constitutional design, expressly allocated to a distinct [entity].”); *Smithers & Thorn* at 8 (“As to the freedom of the pardoning power from judicial interference it need only be said that neither mandamus, injunction, certiorari or writ of prohibition will be granted to review an executive discretionary power.”). And such an intrusion is particularly inappropriate here, where the Department of Corrections does not even possess the drugs needed to carry out the execution. *See* n.2, *supra*.

The District Attorney concedes that this Court’s supervisory authority over the judiciary does not support the exercise of King’s Bench jurisdiction to review the Governor’s exercise of his constitutional power. *See* Petition, 3 n.1. But the District Attorney then asserts, without explanation, that such jurisdiction arises from this Court’s authority to review acts of the other branches of government. *Id.* The District Attorney obscures the limits of this Court’s King’s Bench jurisdiction.

The District Attorney relies on *Robinson Township, Washington County v. Commonwealth*, 83 A.3d 901, 927 (Pa. 2013). *See* Petition, 3. *Robinson Township* concerned a challenge to a municipality’s effort to regulate the shale gas industry. It did not involve power

given exclusively to the executive, and it has no bearing on the constitutional issues presented here. Indeed, this Court held in *Robinson Township* that, while it may consider whether the Constitution can require actors in the other branches of government to undertake certain acts, “our role may not extend to the ultimate carrying out of those acts.” 83 A.3d at 927. Yet that is what the District Attorney asks this Court to do here: to review and overturn the Governor’s issuance of a reprieve.

Even if some limited judicial review of the Governor’s reprieve power, or its exercise in an individual case, were permissible, this Court should not exercise its King’s Bench jurisdiction to conduct such review here. King’s Bench jurisdiction is extraordinary and should be exercised with extreme caution. *Bruno*, 101 A.3d at 670; *Commonwealth v. Morris*, 771 A.2d 721, 731 (Pa. 2001). None of the recognized criteria for exercising King’s Bench jurisdiction are present in this case.

If the reprieve is reviewable at all, the District Attorney would have to proceed by filing a petition for review in the Commonwealth Court, pursuant to 42 Pa. C.S. § 761. Section 761(b) grants the Commonwealth Court exclusive jurisdiction over such challenges, and this Court retains appellate jurisdiction over those matters. Indeed, the decisions cited by the District Attorney in favor of judicial review of executive action were commenced and litigated in this fashion. *See, e.g., Jubelirer v. Rendell*, 953 A.2d 514, 520 (Pa. 2008); *Morganelli I*, 641 A.2d 674.

The procedural provisions of the appellate rules provide substantial protections for those sued under § 761, including, for example, the requirement that service be in person or by certified mail. Pa. R. App. 1514(c). These provisions are manifestly intended to give the government parties an adequate opportunity to respond and defend their actions, an opportunity

not afforded to the Governor by the District Attorney's current petition. Failure to comply with these requirements in an action under § 761 would deprive the Commonwealth Court of jurisdiction to hear the action. *Nat'l Solid Wastes Mgmt. Ass'n v. Casey*, 580 A.2d 893, 897 (Pa. Cmwlth. 1990). The District Attorney should not be allowed to bypass the requirements of § 761 and the applicable rules through the King's Bench request now before this Court.

The District Attorney also relies on *Commonwealth v. Morris*, 771 A.2d at 731. In *Morris*, this Court made clear that King's Bench jurisdiction can only be invoked when the "record clearly demonstrates petitioner's rights." *Id.* (quoting *Cnty. of Berks v. Pa. Labor Relations Bd.*, 678 A.2d 355, 359 (Pa. 1996)). For the reasons discussed throughout this Answer, the District Attorney's "rights" are anything but clear.

In sum, the District Attorney provides no authority for this Court's assumption of extraordinary jurisdiction to somehow oversee and overturn the Governor's constitutional power to issue a reprieve.

C. Interfering with the Governor's Reprieve Power Would Violate the Separation of Powers Doctrine.

As established above, the Pennsylvania Constitution entrusts the reprieve power to the sole and unfettered discretion of the Governor. *See* Pa. Const. Art. IV, § 9(a); *Michael*, 56 A.3d at 903-04. This Court has accordingly recognized that the separation of powers doctrine requires it to defer to the Governor's authority in matters of executive clemency. This Court has concluded that it lacks authority to:

impinge upon the exclusive jurisdiction of the executive branch of the government in [determining whether to commute a sentence]. Action by the Board of Pardons is in accordance with constitutional provisions and *in no way comes under the aegis of the courts*. Indeed, were a court to review the conduct of a hearing before the Board of Pardons, *it would be a clear invasion by judicial direction of the immunity granted the executive branch of our government. Such is not consonant with our constitutional doctrine of separation of powers.*

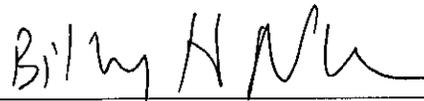
Michael, 56 A.3d at 903-04 (quotation omitted; emphasis added); *see also Commonwealth v. Banks*, 29 A.3d 1129, 1147-48 (Pa. 2011) (declining to reach issue of Petitioner’s competency to initiate clemency proceedings due to, *inter alia*, separation of powers concerns).

Because the reprieve power is exclusive to the Governor and is unrestricted, the relief requested by the District Attorney would constitute “a clear invasion” of the executive’s province, and this Court should therefore deny the District Attorney’s request. *See Michael*, 56 A.3d at 903-04; *see also Commonwealth v. Gaito*, 419 A.2d 1208, 1212 (Pa. Super. 1980) (“There could hardly be a clearer impingement on the governor’s commutation power than reimposition of a sentence exceeding the term to which the governor had commuted it.”); *Ohio Adult Parole Auth. v. Woodard*, 523 U.S. 272, 285 (1998) (“Here, the executive’s clemency authority would cease to be a matter of grace committed to the executive authority if it were constrained by the sort of procedural requirements that respondent urges.”).

IV. CONCLUSION

For all of the foregoing reasons, the Court should deny the District Attorney's petition. The District Attorney is asking this Court to impose restrictions on the Governor's power to issue reprieves – a power that has been unrestricted since the inception of this Commonwealth. We do not believe that this Court can or should intrude on the Governor's power to issue reprieves. To the extent, however, that this Court even contemplates taking such a step, it should do so only after proper process involving the Governor, full briefing, oral argument, and careful consideration. To make a ruling of such profound constitutional significance without thorough review of these important issues would be inappropriate.

Respectfully submitted,



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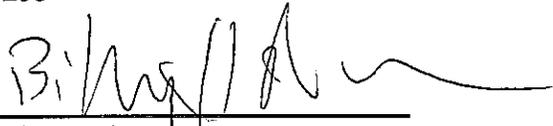
Counsel for Respondent Terrance Williams

CERTIFICATE OF SERVICE

I, Shawn Nolan, hereby certify that on this 20th day of February, 2015, I served the above Answer of Respondent Terrance Williams upon the following persons by United States First Class Mail, postage prepaid, and electronically:

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Billy Nolas

Dated: February 20, 2015

EXHIBIT 1

Commonwealth of Pennsylvania



Governor's Office

EXECUTIVE ORDER

REPRIEVE

To John E. Wetzel, Secretary of Corrections, or your successor in office,

WHEREAS, at a Court of Common Pleas held at Philadelphia, in and for the County of Philadelphia as to information number 2367 of the August Term of the Criminal Division in the year A.D. one thousand nine hundred and eighty-four, a certain Terrance Williams was tried upon a certain information charging him with the crime of Murder, and was on the third day of February, A.D. one thousand nine hundred and eighty-six, found guilty of Murder in the First Degree on said information, and on the fourth day of February, A.D. one thousand nine hundred and eighty-six, the jury fixed the penalty at death, and was thereupon, to wit, on the first day of July, A.D. one thousand nine hundred and eighty-seven, sentenced by the Court to suffer death; and

WHEREAS, the Supreme Court of this Commonwealth of Pennsylvania has reviewed the matter and upheld the constitutionality of the death penalty as well as affirmed its imposition upon said Terrance Williams, and has thus transmitted to the Governor a full and complete record of the trial, sentencing hearing, imposition of sentence and review by the Supreme Court pursuant to an Act of the General Assembly of this Commonwealth entitled the "JARA Continuation Act of 1980," approved the fifth day of October, A.D. one thousand nine hundred and eighty.

WHEREAS, on the thirteenth day of January, A.D. two thousand and fifteen, a warrant was issued to cause the sentence imposed by the Philadelphia County Court of Common Pleas to be executed upon Terrance Williams, on the fourth day of March, A.D. two thousand and fifteen; and

WHEREAS, Article IV, Section 9 of the Pennsylvania Constitution provides that "[i]n all criminal cases except impeachment, the Governor shall have the power to ... grant reprieves"

NOW THEREFORE, I, Tom Wolf, as Governor of the Commonwealth of Pennsylvania, by virtue of the authority vested in me under the Constitution and the Laws of this Commonwealth, do hereby grant a temporary reprieve of the execution unto Terrance Williams until I have received and reviewed the forthcoming report of the Pennsylvania Task Force and Advisory Committee on Capital Punishment, and any recommendations contained therein are satisfactorily addressed.

GIVEN under my hand and the Great Seal of the State, at the City of Harrisburg, this thirteenth day of February, in the year of our Lord two thousand and fifteen, and of the Commonwealth the two hundred and thirty-ninth.



BY THE GOVERNOR:

Tom Wolf

ATTEST:

Recha C. Cantieri

Acting Secretary of the Commonwealth

EXHIBIT 2

Commonwealth of Pennsylvania



Governor's Office

EXECUTIVE ORDER

REPRIEVE

To John E. Wetzel, Secretary of Corrections, or your successor in office;

WHEREAS, on the eleventh day of October, A.D. one thousand nine hundred and ninety-four, at a Court of Common Pleas held at York, in and for the County of York as to information number 3699 of the Criminal Division in the year A.D. one thousand nine hundred and ninety-three, a certain Hubert L. Michael, Jr. pled guilty to Murder of the First Degree on said information; and on the twentieth day of March, A.D. one thousand nine hundred and ninety-five, the Court fixed the penalty at death, and was thereupon, to wit, on the twentieth day of March, A.D. one thousand nine hundred and ninety-five, sentenced by the Court to suffer death; and

WHEREAS, the Supreme Court of this Commonwealth of Pennsylvania has reviewed the matter and upheld the constitutionality of the death penalty as well as affirmed its imposition upon said Hubert L. Michael, Jr., and has thus transmitted to the Governor a full and complete record of the trial, sentencing hearing, imposition of sentence and review by the Supreme Court pursuant to an Act of the General Assembly of this Commonwealth entitled the "JARA Continuation Act of 1980," approved the fifth day of October, A.D. one thousand nine hundred and eighty.

WHEREAS, on the twenty-fourth day of July, A.D. two thousand and fourteen, a warrant was issued to cause the sentence imposed by the York County Court of Common Pleas to be executed upon Hubert L. Michael, Jr., on the twenty-second day of September, A.D. two thousand and fourteen; and

WHEREAS, the Pennsylvania Department of Corrections must complete its acquisition of the injection agents required to carry out lethal injection as prescribed under Pennsylvania state law; and

WHEREAS, Article IV, Section 9 of the Pennsylvania Constitution provides that "[I]n all criminal cases except impeachment, the Governor shall have the power to ... grant reprieves"

NOW THEREFORE, this twelfth day of September, A.D. two thousand and fourteen, I, Tom Corbett, as Governor of the Commonwealth of Pennsylvania, by virtue of the authority vested in me under the Constitution and the Laws of this Commonwealth, do hereby grant a temporary reprieve of the execution unto Hubert L. Michael, Jr. until another warrant is issued.

FURTHERMORE, upon written notice from the Secretary of Corrections, or his successor in office, confirming that the Department of Corrections has completed its acquisition of injection agents, the Governor shall terminate the reprieve within 15 days of said notice, and reissue a warrant specifying a day for execution in accordance with law.

GIVEN under my hand and the Great Seal of the State; at the City of Harrisburg, this twelfth day of September, in the year of our Lord two thousand and fourteen, and of the Commonwealth the two hundred and thirty-ninth.



BY THE GOVERNOR:

ATTEST:

Secretary of the Commonwealth

EXHIBIT 3

Commonwealth of Pennsylvania

Governor's Office

EXECUTIVE ORDER

RESCISSION

To John E. Wetzel, Secretary of Corrections, or your successor in office,

WHEREAS, on the eleventh day of October, A.D. one thousand nine hundred and ninety-four, of a Court of Common Pleas held at York, in and for the County of York as to information number 3699 of the Criminal Division in the year A.D. one thousand nine hundred and ninety-three, a certain Hubert L. Michael, Jr., pled guilty to Murder of the First Degree on said information, and on the twentieth day of March, A.D. one thousand nine hundred and ninety-five, the Court fixed the penalty at death, and was thereupon, to wit, on the twentieth day of March, A.D. one thousand nine hundred and ninety-five, sentenced by the Court to suffer death; and

WHEREAS, the Supreme Court of this Commonwealth of Pennsylvania has reviewed the matter and upheld the constitutionality of the death penalty as well as affirmed its imposition upon said Hubert L. Michael, Jr., and has thus transmitted to the Governor a full and complete record of the trial, sentencing hearing, imposition of sentence and review by the Supreme Court pursuant to an Act of the General Assembly of this Commonwealth entitled the "JARA Continuation Act of 1980," approved the fifth day of October, A.D. one thousand nine hundred and eighty.

WHEREAS, on the twenty-fourth day of July, A.D. two thousand and fourteen, a warrant was issued to cause the sentence imposed by the York County Court of Common Pleas to be executed upon Hubert L. Michael, Jr., on the twenty-second day of September, A.D. two thousand and fourteen; and

WHEREAS, on the twelfth day of September, in the year of our Lord two thousand and fourteen, a temporary reprieve of the execution was granted unto Hubert L. Michael, Jr. pursuant to Article IV, Section 9 of the Pennsylvania Constitution; and

WHEREAS, the warrant of execution issued on the twenty-fourth day of July, A.D. two thousand and fourteen to cause the sentence imposed by the York County Court of Common Pleas to be executed upon Hubert L. Michael, Jr., on the twenty-second day of September, A.D. two thousand and fourteen has now expired on the twenty-third day of September, A.D. two thousand and fourteen, the day after the scheduled execution; and

WHEREAS, the stay of execution issued by the United States Court of Appeals for the Third Circuit Court on the twenty-third day of October, A.D. two thousand and fourteen is in full effect pending the review of the petition for certiorari timely filed by Hubert L. Michael, Jr.; and

WHEREAS, the aforementioned judicial stay of the United States Court of Appeals for the Third Circuit renders the temporary reprieve of the execution unnecessary;

I, Tom Corbett, Governor of the Commonwealth of Pennsylvania, by virtue of the authority vested in me under the Constitution and the Laws of this Commonwealth, do hereby rescind the temporary reprieve of the execution issued unto Hubert L. Michael, Jr. for another warrant to be issued in accordance with the law upon the lifting of the stay of execution.

GIVEN under my hand and the Great Seal of the State, at the City of Harrisburg, this thirteenth day of January, in the year of our Lord two thousand and fifteen, and of the Commonwealth the two hundred and thirty-ninth.



BY THE GOVERNOR:

Thomas Corbett

ATTEST:

John E. Wetzel
Deputy Secretary of the Commonwealth