

(ORDER LIST: 552 U.S.)

TUESDAY, OCTOBER 16, 2007

ORDER IN PENDING CASE

07A311 NORRIS, DIR., AR DOC, ET AL. V. JONES, JACK H.

The application to vacate the stay of execution of sentence of death entered by the United States Court of Appeals for the Eighth Circuit on October 11, 2007, presented to Justice Alito and by him referred to the Court, is denied.

Justice Scalia, dissenting.

I vote to grant the State's application to vacate the stay because in my view the decision of the Eighth Circuit was based on the mistaken premise that our grant of certiorari in *Baze v. Rees*, ___ S. Ct. ___ (2007), calls for the stay of every execution in which an individual raises an Eighth Amendment challenge to the lethal injection protocol. The grant of certiorari in a single case does not alter the application of normal rules of procedure, including those related to timeliness. In this case, Jones's challenge to the lethal injection protocol, which was brought nine years after his conviction and sentence became final, was dilatory.