IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION AT COLUMBUS

MICHAEL R. TURNER,

                                                                    :

        Petitioner,   Case No. 2:07-cv-595

                                                                    :   District Judge Timothy S. Black
   -vs-   Magistrate Judge Michael R. Merz

STUART HUDSON, Warden,

                                                                    :

        Respondent.

DECISION AND ORDER

This capital habeas corpus case is before the Court on Petitioner's Supplemental Memorandum (ECF No. 279) in Support of his Renewed Motion for Leave to File a Fourth Amended Petition (ECF No. 253).

The Magistrate Judge had denied that Motion, then withdrew the denial and ordered supplemental briefing in light of *Adams v. Bradshaw*, 817 F.3d 284 (6th Cir. March 15, 2016)(*Adams II*).   Ultimately briefing was postponed until after issuance of the mandate following *Adams v. Bradshaw*, 826 F.3d 306[1] (6th Cir. June 13, 2016)(*Adams III).*

Although Petitioner's prior Motion to file a Fourth Amended Petition was denied without prejudice to renewal not later than thirty days after the *Adams* mandate, Petitioner did not re-file such a motion, but only the instant Supplemental Memorandum which says it is in support of the

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[1] Petitioner persistently refers to this opinion as *Adams II* when it is in fact the third published opinion in the *Adams* case. It will be referred to as *Adams III* herein.

first of those Motions (ECF No. 279, PageID 11276, citing ECF No. 253). It also purports to incorporate by reference all of ECF No. 253.

In his Exhibit 1 entitled "Proposed Lethal Injection Grounds for Relief," Turner states the following proposed additions to his Petition:

> FIFTEENTH GROUND FOR RELIEF: The State of Ohio cannot constitutionally execute Petitioner because the only manner available under the law to execute him violates his Eighth Amendment rights.
>
> SIXTEENTH GROUND FOR RELIEF: The State of Ohio cannot constitutionally execute Petitioner because the only manner available for execution violates the Due Process Clause or the Privileges or Immunities Clause of the Fourteenth Amendment.
>
> SEVENTEENTH GROUND FOR RELIEF: DRC cannot constitutionally execute Petitioner because the only manner of execution available for execution under Ohio law violates the Equal Protection Clause of the Fourteenth Amendment.
>
> EIGHTEENTH GROUND FOR RELIEF: The State of Ohio cannot constitutionally execute Petitioner because Ohio's violations of federal law constitute a fundamental defect in the execution process, and the only manner of execution available for execution depends on state execution laws that are preempted by federal law.

These are not the same proposed lethal injection Grounds for Relief attached to Petitioner's Motion for Leave to File a Fourth Amended Petition (ECF No. 253).

There is no pending motion to amend. The Court *sua sponte* extends Petitioner's leave to file a renewed motion to amend to include lethal injection claims to and including April 17, 2017, on the following conditions:

> 1.   The grounds for relief requested to be added shall be set forth verbatim in the body of the motion or in an

attachment as previously done. **There shall be no incorporation by reference.**

2.   The motion shall be accompanied by a memorandum of law supporting the amendment under Fed. R. Civ. P. 15. Petitioner shall demonstrate cognizability by reference to *Adams III* and shall include parallel PageID references to each place in the pending complaint in *In re: Ohio Injection Protocol Litig.,* Case no 2:11-cv-1016, where a claim is made based on the same constitutional right relied on in the proposed amendment.

3.   Because the Warden has raised a statute of limitations defense, Petitioner shall show why the proposed amendments are not barred by the statute of limitations.

4.   If Petitioner intends to take the position that a motion to amend is a dispositive motion on which a Magistrate Judge is unauthorized to act but must file a report and recommendations, Petitioner shall state that position in the motion to amend and provide legal authority in support.

April 6, 2017.

s/ *Michael R. Merz*
United States Magistrate Judge