

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

LARRY GAPEN,

Petitioner,

:

Case No. 3:08-cv-280

- vs -

District Judge Walter Herbert Rice  
Magistrate Judge Michael R. Merz

DAVID BOBBY, Warden,

Respondent.

:

ROBERT BETHEL,

Petitioner,

:

Case No. 2:10-cv-391

-vs-

District Judge Michael R. Barrett  
Magistrate Judge Michael R. Merz

DAVID BOBBY, Warden,

Respondent.

:

BOBBY T. SHEPPARD,

Petitioner,

:

Case No. 1:12-cv-198

-vs-

District Judge Gregory L. Frost  
Magistrate Judge Michael R. Merz

NORM ROBINSON, Warden,

Respondent.

:

**NOTICE OF ORAL ARGUMENT**

**ORAL ARGUMENT** on the pending Motions to Dismiss is hereby set for **Monday, August**

**6, 2012, beginning at 10:00 a.m.**, in Courtroom #4, Fifth Floor Federal Building, 200 W. Second Street, Dayton, Ohio, before United States Magistrate Judge Michael R. Merz.

The Magistrate Judge is particularly concerned to hear argument on how the added claims for relief purport to state a claim on which habeas corpus relief can be granted. That is, what is Petitioner's constitutional theory upon which relief granted on any of the added claims would prevent his execution entirely, rather than merely preclude his execution pursuant to the currently-adopted Ohio execution protocol? To put that question in another way, how (in detail) are the constitutional claims now made in these cases different from the constitutional claims made in *In re: Ohio Execution Protocol*, Case No. 2:11-cv-1016, pending before Judge Frost. The Magistrate Judge does not regard this question as answered or precluded by the grant of the motions to amend: the fact that a lethal injection claim is cognizable in habeas corpus per *Adams v. Bradshaw*, 644 F.3d 481 (6<sup>th</sup> Cir. 2011), does not imply that these claims actually state a claim for relief.

July 19, 2012

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