

NO. _____ (CAPITAL CASE)

IN THE
SUPREME COURT OF THE UNITED STATES

JOHN DAVID BATTAGLIA,
Appellant,

v.

STATE OF TEXAS,
Respondent.

MOTION FOR STAY OF EXECUTION PENDING CONSIDERATION
AND DISPOSITION OF PETITION FOR WRIT OF CERTIORARI

Mr. Battaglia requests that this Honorable Court grant him a stay of execution pending the Court's consideration and disposition of his Petition for Writ of Certiorari in *Battaglia v. Texas*, filed simultaneously with this Motion. A stay is warranted for the reasons set forth below and those appearing in the Petition for Certiorari, which is incorporated by reference.

Texas is scheduled to execute Mr. Battaglia by lethal injection after 6:00 p.m. on March 30, 2016. It is poised to execute him even though Mr. Battaglia made a colorable showing that he is incompetent to be executed under *Ford v. Wainwright*, 477 U.S. 399 (1986), and *Panetti v. Quarterman*, 551 U.S. 930 (2007). Despite this colorable showing of incompetency, the state court ruled that Mr. Battaglia was not entitled to counsel or a stay of execution to present his *Ford* claim. The practical consequence of the court's ruling is that incompetent inmates would never receive a stay that is required to present their *Ford*

claims, even if they can make a colorable showing of incompetency, creating a constitutional lacuna. The legal consequence is that capital inmates' right to representation on their *Ford* claims under 18 U.S.C. § 3599 would never be meaningful as required by *McFarland v. Scott*, 512 U.S. 849 (1994).

A stay of execution is warranted where there is: (1) a reasonable probability that four members of the Court would consider the underlying issue sufficiently meritorious for the grant of certiorari or the notation of probable jurisdiction; (2) a significant possibility of reversal of the lower court's decision; and (3) a likelihood that irreparable harm will result if no stay is granted. *See Barefoot v. Estelle*, 463 U.S. 880, 895 (1983). For the reasons expressed below and in the Certiorari Petition itself, these criteria are satisfied in this case.

First, there exists a significant possibility that four members of the Court would consider the issue at stake—announcing the standard that governs when capital inmates must be appointed counsel to give meaningful effect to their statutory right to representation—suitable for the grant of certiorari. *Ford* and *Panetti*, which did not concern stays or statutory provision of counsel, did not articulate this standard. *McFarland* provides guidance, instructing that inmates' statutory right to representation under § 3599 must be “meaningful[.]” 512 U.S. at 858. But *McFarland*, while instructive, concerned pre-application appointment of counsel; it does not clarify when a stay or provision of services is appropriate in the context of a *Ford* claim. *Ford* claims are unique in that they do not become ripe until an execution date is set, and require ancillary services—expert and investigative assistance—to be fully developed. As such, in certain

circumstances, *Ford* claims will require a stay to allow counsel an opportunity to “meaningfully . . . research and present a defendant’s” *Ford* claim. *Id.* at 858. Because this Court has never clarified the standard that governs when a stay and counsel are required for *Ford* claims, there is a significant possibility that four members of the Court would consider the issue suitable for review.

Second, there is a significant possibility of reversal of the lower court’s decision. The state court’s ruling was contrary to the Court’s instruction in *McFarland* that courts must give meaningful effect to capital inmates’ statutory right to representation. Texas has erected substantial statutory hurdles that a capitally convicted inmate must meet simply to trigger his right to the adjudication of his execution competency. The complex statutory requirements are simply impossible to surmount for an indigent defendant, let alone one whose indigency is compounded by serious mental illness or cognitive impairment. An inmate could never meet such a high standard without appointed counsel who have a reasonable amount of time to investigate, prepare, and file appropriate *Ford* claims. The Texas court ruled that Mr. Battaglia was not entitled to appointed counsel necessary to present an execution-incompetency claim, precluding him from presenting his *Ford* claims. Because the lower court’s decision is in conflict with *McFarland*’s principles, there is a high likelihood it would be reversed if *certiorari* is granted.

Finally, there is a likelihood that irreparable harm will result absent a stay. Mr. Battaglia has presented colorable evidence of incompetency, including multiple psychiatric diagnoses of serious mental illness and psychotic

behavior; genetic risks factors; and demonstrated paranoid delusions indicated in bizarre pro se filings. Despite this colorable showing of incompetency, the state court denied Mr. Battaglia appointed counsel to present a *Ford* claim without providing a hearing or any kind of explanation. Therefore, the State of Texas will violate Mr. Battaglia's statutory right to representation if this Court does not grant a stay of execution.

CONCLUSION

For the preceding reasons, the Court should grant a stay of execution pending consideration and disposition of Mr. Battaglia's petition for writ of *certiorari*.

March 24, 2016

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Gregory W. Gardner, certify that true and correct electronic versions of this Motion for Stay of Execution Pending Consideration and Disposition of Petition for Writ of Certiorari was served on opposing counsel on March 24, 2016, via electronic mail to:

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