

No. \_\_\_\_\_

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**IN THE SUPREME COURT OF THE UNITED STATES**

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**October Term, 2017**

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**ROBERTO MORENO RAMOS,**

**Petitioner,**

**v.**

**STATE OF TEXAS,**

**Respondent.**

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**MOTION FOR STAY OF EXECUTION  
PENDING DISPOSITION OF PETITION FOR WRIT OF *CERTIORARI*  
TO THE TEXAS COURT OF CRIMINAL APPEALS**

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**THIS IS A DEATH PENALTY CASE.**

**Mr. Moreno Ramos Is Currently Scheduled To Be Executed  
on Today, November 14, 2018, after 6:00 p.m.**

DANALYNN RECER  
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November 12, 2018

## **QUESTIONS PRESENTED**

**This is a capital case**

1. When a State chooses to create a mechanism for post-conviction relief, what due process is required to afford a habeas applicant an adequate and effective opportunity to present a claim of trial ineffectiveness in his initial collateral review?
2. Did the Texas Court of Criminal Appeals violate Mr. Moreno Ramos's due process rights when it applied unfair and arbitrary procedures to deny him any opportunity for review of his substantial trial ineffectiveness claim?

TO THE HONORABLE JUSTICES OF THIS COURT:

Petitioner Roberto Moreno Ramos requests that this Court grant a stay of execution pending the consideration and disposition of a petition for writ of *certiorari* to the Texas Court of Criminal Appeals.

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. *Barefoot v. Estelle*, 463 U.S. 880, 895 (1983); *Moore v. Texas*, 535 U.S. 1110 (2002). All three criteria are met in this case.

First, four members of this Court should consider the underlying issues sufficiently meritorious for *certiorari*. This case involves the important and undecided issue of what due process is required by a state to afford an applicant an adequate and effective opportunity to present a claim of trial ineffectiveness and derives from the State of Texas's willful refusal to provide Mr. Moreno Ramos with either a competent lawyer or a fair forum to raise and adjudicate his Sixth Amendment claim. As the petition for writ of certiorari reveals, Mr. Moreno Ramos's trial counsel conducted no meaningful investigation whatsoever, and therefore failed to discover easily discoverable and significant mitigating evidence. Had any court, state or federal, addressed the merits of Mr. Moreno Ramos's Sixth Amendment challenge, it is probable that he would have obtained relief, and thereby been entitled to a new trial. However, by invoking irregularly applied, inconsistent, and Byzantine barriers, the state court has deprived Mr. Moreno Ramos of a forum in which to litigate this meritorious claim.

Second, there is a significant possibility that this Court will in fact reverse the lower court's judgment and hold that the procedures applied by the state court in this case do not comport with the basic due process required to protect Mr. Moreno Ramos's liberty interest. Indeed, a judge of Texas Court of Criminal Appeals just wrote on November 12, 2018 that the "end result of all of this is that a possibly meritorious claim concerning the violation of applicant's Sixth Amendment right to counsel has never been reviewed on its merits by any court." Mr. Moreno Ramos's petition for writ of *certiorari* reveals that the Texas Court of Criminal Appeals applied procedures in state postconviction in a haphazard, inconsistent, opaque, and unfair way, with the ostensible objective not on applying state law fairly, but of depriving inmates with meritorious constitutional claims from obtaining a review on the merits of those very claims.

Third and finally, Mr. Moreno Ramos is entitled to a stay from this Court because there exists a likelihood that he will suffer irreparable injury if a stay of execution is denied. Without a stay of execution, Mr. Moreno Ramos will be executed tonight, with the result that no tribunal, neither state nor federal, will ever have adequately addressed the manifestly meritorious Sixth Amendment claim he seeks to present for judicial review.

## **CONCLUSION**

Mr. Moreno Ramos therefore requests a stay of execution from this Court, pending the consideration and disposal of his petition for writ of *certiorari* to review the state court's judgment in this case.

Respectfully Submitted,

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November 12, 2018

Counsel for Roberto Moreno Ramos

\* Member, Supreme Court Bar

Certificate of Service

I certify that I have served the foregoing Motion for Stay of Execution upon opposing counsel by e-mailing it to:

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Assistant Attorney General  
Capital Litigation Division  
P. O. Box 12548  
Austin, Texas 75211  
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this the 14<sup>th</sup> day of November, 2018.

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Danalynn Recer