

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

JOSEPH C. GARCIA,
Petitioner,

vs.

CARMELLA JONES, et al.,
Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit

APPLICATION FOR STAY OF EXECUTION

****CAPITAL CASE****

Execution Scheduled for TUESDAY, DECEMBER 4, 2018

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APPLICATION FOR STAY OF EXECUTION

To The Honorable Samuel A. Alito, Jr., Associate Justice of the Supreme Court of the United States and Circuit Justice for the United States Court of Appeals for the Fifth Circuit:

Pursuant to 28 U.S.C. § 2101(f) and Supreme Court Rule 23, Petitioner Joseph C. Garcia respectfully requests a stay of his execution currently scheduled for after 6:00 p.m. CST on Tuesday, December 4, 2018. Concurrent with this document, Garcia is filing a petition for writ of certiorari (hereafter “Petition”) asking this Court to review the judgment¹ of the United States Court of Appeals for the Fifth Circuit. That court denied Garcia’s motion to stay his execution and dismissed his appeal from the United States District Court for the Southern District of Texas’s denial of his motion for preliminary injunction against Respondents. Important questions of (1) whether Texas’s failure to provide Garcia with a clemency proceeding that comports with Texas law violates the minimal due process rights—including the right to a meaningful opportunity to be heard—to which Garcia is entitled under the Fourteenth Amendment’s Due Process Clause and (2) whether this Court’s decision in *Ohio Adult Parole Authority v. Woodard*, 523 U.S. 272 (1998), requires states to adhere to state laws governing clemency proceedings in order to comport with the Fourteenth Amendment’s minimal due process guarantees, will become moot if

¹ The order of the United States Court of Appeals for the Fifth Circuit and the order and judgment from the United States District Court for the Southern District of Texas are appended to this application.

Garcia is executed as scheduled. *See Wainwright v. Booker*, 473 U.S. 935, 936 (1985) (Powell, J., concurring).

ARGUMENT

To obtain a stay of execution, a death-row prisoner must show that four factors, balanced together, weigh in favor of a stay: (1) a likelihood of success on the merits; (2) a likelihood of suffering irreparable harm without a stay; (3) the balance of hardships tips in his favor; and (4) a stay is in the public interest. *See Rhoades v. Blades*, 661 F.3d 1202, 1203 (9th Cir. 2011) (citing *Beaty v. Brewer*, 649 F.3d 1071, 1072 (9th Cir. 2011)); *see also Nken v. Holder*, 556 U.S. 418, 434 (2009); *In re Campbell*, 750 F.3d 523, 534 (5th Cir. 2014). A petitioner may, instead of showing a likelihood of success on the merits, demonstrate that “serious questions going to the merits” of his claims are presented in his appeal, and he may obtain a stay as long as the other three factors weigh in his favor. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011). In this case, Garcia has presented a serious question about the minimal due process that the Fourteenth Amendment guarantees in a clemency proceeding. As explained in Garcia’s concurrently filed petition for a writ of certiorari, Texas has failed to provide Garcia with a clemency proceeding that comports with Texas law. The important and heretofore unresolved federal constitutional questions that Garcia’s petition presents must be resolved in order to forestall the arbitrary application of the most severe sanction that the State can impose.

1. Garcia has presented serious questions about whether the Fourteenth Amendment’s minimal due process guarantee in clemency proceedings require states to adhere to state laws governing those proceedings.

Garcia’s Petition asks the Court to resolve the issue of whether states must adhere to state laws governing clemency proceedings in order to comport with the Fourteenth Amendment’s minimal due process guarantees. As detailed in Garcia’s Petition, Texas is in violation of Texas law that entitles death-sentenced prisoners to a fair and impartial decision-maker, and one that is representative of the general public, during clemency proceedings. Garcia’s Petition thus presents the serious question of whether his execution is constitutionally permissible when viewed through the lens of the Fourteenth Amendment’s minimal due process guarantee in clemency proceedings. Furthermore, Texas, by violating its own laws governing clemency proceedings, has implicated Garcia’s fundamental due process right to a meaningful opportunity to be heard. This Court should thus grant Garcia’s Petition in order to resolve serious questions about the process owed to Garcia during his clemency proceeding under the Fourteenth Amendment’s Due Process Clause. Accordingly, the first *Nken* factor weighs in favor of granting Garcia’s request for a stay of execution.

2. Garcia will suffer irreparable harm absent a stay of execution.

It is evident that Garcia will suffer irreparable harm without a stay of execution. The death penalty is “unique in its severity and irrevocability.” *Gregg v. Georgia*, 428 U.S. 153, 187 (1976) (joint opinion of Stewart, Powell, and Stevens, JJ.). If Garcia is executed this evening as presently scheduled, then his death sentence will render his

appeal moot thereby leaving the serious questions raised in his Petition unresolved. This factor also weighs in favor of granting Garcia's requested stay of execution.

3. The balance of hardships tips in Garcia's favor.

For obvious reasons, Garcia will suffer irreparable harm if he is executed in violation of his Eighth and Fourteenth Amendment rights. Conversely, the State suffers comparatively little injury—a short delay in the imposition of punishment—should this Court enter a stay long enough to allow for plenary consideration of Garcia's Petition. Should this Court ultimately affirm the United States Court of Appeals for the Fifth Circuit, the State's executioners presumably will be available to carry out Garcia's execution. Insofar as failing to grant a stay of execution imposes an irreparable hardship only on Garcia and not on the State, the third factor favors Garcia as well.

4. A stay of execution is in the public interest.

Finally, a stay of execution is in the public interest. In general, the public interest is served by enforcing constitutional rights. *See Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005). This appeal asks the Court to consider whether Texas's violation of its laws governing clemency proceedings violates the minimal due process rights that the Fourteenth Amendment affords in clemency proceedings to those who society sentences to death. The public interest is not served, nor the integrity and legitimacy of the judiciary furthered, by executing those who have unresolved, meritorious constitutional claims. The public interest weighs especially in favor of this Court addressing serious, and up to now unanswered, federal constitutional questions in a case involving the most serious penalty. *See Gregg*, 428 U.S. at 188

(joint opinion of Stewart, Powell, and Stevens, JJ.) (recognizing that “death is different in kind from any other punishment imposed under our system of criminal justice”). Moreover, the public interest is served by this Court ensuring that Garcia’s death sentence is constitutional before the State of Texas may carry it out. Accordingly, this factor also weighs in favor of granting Garcia’s request for a stay of his execution, which is currently scheduled for after 6:00 p.m. on December 4, 2018.

CONCLUSION

For the foregoing reasons, and because the considerations outlined by this Court in *Nken* for granting a stay of execution weigh in Garcia’s favor, Garcia requests that Your Honor or this Court enter a stay of execution in order to permit the Court to fully consider the important federal constitutional questions presented in this appeal before they are mooted by virtue of Garcia’s execution.

Respectfully submitted:

December 4, 2018

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