No. _____

IN THE SUPREME COURT OF THE UNITED STATES

JOSEPH C. GARCIA,
Petitioner,

vs.

LORIE DAVIS, Director,
Texas Department of Criminal Justice Correctional Institutions Division,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

****CAPITAL CASE****
Execution Scheduled for TUESDAY, DECEMBER 4, 2018

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****CAPITAL CASE****

QUESTIONS PRESENTED FOR REVIEW

Petitioner Joseph C. Garcia was sentenced to death in the State of Texas under the state's controversial "law of parties," due in large part to the ineffective assistance of Garcia's court-appointed trial counsel. Unfortunately, Garcia's experience with counsel in his state and federal habeas proceedings was no better, and at least four meritorious and compelling claims of trial counsel ineffectiveness were never investigated or raised on Garcia's behalf. Garcia's current counsel filed a motion to reopen his federal habeas proceedings in order to raise the claims that Garcia's prior counsel had missed, but the district court denied the motion. Garcia's case raises an issue of national importance: whether the criminal justice system tolerates executing indigent defendants who do not receive meaningful federal habeas review of their case because they were denied meaningful representation under 18 U.S.C. § 3599. Specifically:

1. Whether the United States Court of Appeals for the Fifth Circuit imposed an improper and unduly burdensome Certificate of Appealability (COA) standard when it reached the merits of Garcia's Rule 60(B)(6) motion in denying him a COA.
2. Whether the denial of meaningful representation required by 18 U.S.C. § 3599 may cause a defect in the integrity of federal habeas proceedings that can justify reopening of judgment under Rule 60(b)(6).

LIST OF PARTIES TO THE PROCEEDING

All parties to the proceeding are listed in the caption on the cover page.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Joseph C. Garcia, a Texas prisoner under a sentence of death, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for Fifth Circuit Court denying his Motion to Remand and his alternative request for a for Certificate of Appealability.

OPINION BELOW

The opinion of the Court of Appeals for the Fifth Circuit is reproduced in the Appendix at A. 1. The judgment of the United States District Court for the Northern District of Texas and the underlying opinion are reproduced at A. 11 and A. 12, respectively.

JURISDICTION

The United States Court of Appeals for the Fifth Circuit issued an opinion denying a certificate of appealability on December 4, 2018. The jurisdiction of this Court is invoked under 28 U.S.C. § 1354(1).

STATUTES AND OTHER AUTHORITIES INVOLVED

This case involves a state criminal defendant's constitutional rights under the Sixth Amendment. The Sixth Amendment provides in relevant part:

> In all criminal prosecutions, the accused shall enjoy the right to . . . have the assistance of counsel for his defense.

This case also involves the application of 28 U.S.C. § 2253(c), which states:

> (1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from –
>
> (A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; . . .

> (2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

This case further involves the application of 18 U.S.C. § 3599, which states in relevant part:

> (a)(1)(A)–(B) Notwithstanding any other provision of law to the contrary, every criminal action in which the defendant is charged with a crime which may be punishable by death, a defendant who is or becomes financially unable to obtain adequate representation or investigative, expert, or other reasonably necessary services . . . shall be entitled to the appointment of one or more attorneys . . .
>
> (d) the court . . . may appoint another attorney whose background, knowledge, or experience would otherwise enable him or her to properly represent the defendant, with due consideration to the seriousness of the possible penalty and to the unique and complex nature of the litigation.
>
> (e) each attorney so appointed shall represent the defendant throughout every subsequent stage of available judicial proceedings . . .

Finally, this case invokes Federal Rule of Civil Procedure 60(b), which states:

> On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceedings for the following reasons:
>
> (6) any other reason that justifies relief.

STATEMENT OF THE CASE

A. Introduction

Garcia's federal habeas proceedings were compromised by a procedural defect: the denial of meaningful representation necessary to investigate and present his Sixth Amendment claim that his trial attorneys were ineffective. Garcia's federal habeas counsel failed to raise claims that: (1) trial counsel failed to uncover evidence of Garcia's history of childhood sexual assaults; (2) trial counsel failed to conduct a reasonable investigation of Garcia's 1996 first-degree murder conviction in Bexar County, Texas; (3) trial counsel failed to present evidence about the conditions of the two prison facilities in which Garcia was housed before the escape; and (4) trial counsel failed to retain an expert to assess and interpret the effects of Garcia's traumatic upbringing. Instead, federal counsel raised ineffective-assistance-of-trial-counsel claims arguing that trial counsel failed to properly object to the State's challenge to a venireperson, an improper jury selection process, the prosecutor's misstatements of law and mischaracterization of evidence; and that counsel failed to employ a mitigation investigator. (ECF No. 109 at 2061–83.)[1] Thus, without hearing the entirety of trial counsel's failures or the substantiating evidence, the district court denied relief and denied a certificate of appealability (COA). (ECF No. 104.)

On November 30, 2018, Garcia filed a Rule 60(b) motion seeking to reopen that judgment. His case presents a number of extraordinary circumstances. First, no

[1] Pleadings in the district court proceedings below, *Garcia v. Davis,* 3:06-cv-2185, are cited as "ECF No. ___."

mitigation specialist was involved in this case at any point during trial or state habeas proceedings. (ECF No. 143 at 15403–05; ECF No. 143 at 15414–15; ECF No. 143 at 15431–33; ECF No. 143 at 15380–99.) Second, initial federal habeas counsel learned that as a child, Garcia was sexually assaulted by a man, but counsel failed to follow up on that avenue of investigation, to retain a trauma psychologist to evaluate Garcia, or to question Garcia about his traumatic past.[2] Third, despite the fact that the Dallas County prosecutor made Garcia's 1996 prior conviction for first-degree murder in Bexar County a centerpiece of the State's penalty-phase presentation, initial federal habeas counsel did not investigate Garcia's prior conviction or uncover all of the evidence that Garcia had acted in self-defense, but that his trial attorney in that case, Robert Norvell Graham Jr., failed to investigate and present that evidence. (ECF No. 143 at 15257–315; ECF No. 143 at 1540002, 1525456; ECF No. 143 at 15408– 13.) Finally, initial federal habeas counsel failed to pursue any avenue of investigation regarding why Garcia decided to participate in the prison escape. Accordingly, initial federal habeas counsel repeated the errors of trial counsel. As a result of these errors, until Garcia raised this issue in his Rule 60(b) motion to the district court, no Court has had occasion to review the entirety of his Sixth Amendment claim. In sum, until recently, Garcia's full story has never been told—not to the jurors who sentenced him to death, or to the courts with reviewing his death sentence to ensure that it was not procured in violation of the Constitution.

[2] Men are particularly hesitant to discuss sexual abuse and often, eliciting that type of sensitive information requires specialized questioning. (ECF No. 143 at 15358.)

Garcia detailed the facts that made his case extraordinary in a Rule 60(b)(6) motion challenging the denial of meaningful representation as a defect in the integrity of his federal habeas proceedings. (ECF No. 142.) Rule 60(b) vests wide discretion in courts, but this Court has held that relief under Rule 60(b)(6) is available only in "extraordinary circumstances." *Buck v. Davis*, 137 S. Ct. 759, 777 (2017). Instead of conducting an equitable, holistic assessment of the extraordinary circumstances of Garcia's case, the district court determined that Garcia's 60(b) motion presents an argument that is "fundamentally substantive" and "seeks to add new grounds for relief" and therefore construed the motion as a successive petition (A. 25–27.) The district court then determined that it did not have jurisdiction to consider the motion and transferred the matter to the United States Court of Appeals for the Fifth Circuit. (A. 12, 27–28.) In doing so, the district court applied an incorrect standard to Garcia's Rule 60(b)(6) motion and misapplied Supreme Court precedent that mandates that when no "claim" is presented in a Rule 60(b) motion, a court has no basis for treating that Rule 60(b) motion as a habeas corpus application. *Gonzalez v. Crosby*, 545 U.S. 524, 533 (2005).

The district court also engaged in the "alternative analysis" of considering Garcia's motion as one for relief under Rule 60(b) and denied it on the merits, holding that the motion was untimely (A. 28–30) and that the denial of meaningful representation could not constitute a defect in the proceedings, and therefore Garcia failed to present extraordinary circumstances as required for relief under Rule 60(b)(6) (A. 30, 32). In reaching this conclusion, the district court inappropriately

assessed the merits of the underlying ineffective-assistance-of-trial-counsel claims that Garcia discussed in order to shed light on the significance of the claims federal habeas counsel neglected to investigate and raise during his federal habeas review. (*See* A. 31–32.)

The Fifth Circuit held that the district court was correct in ruling that Garcia's Rule 60(b) motion was in fact a successive habeas petition. (A. 2–4), and that Garcia did not meet the standard for authorization to file a successive petition contained in 28 U.S.C. § 2244(b)(2) (A. 4–5). The Fifth Circuit also denied Garcia's request for a COA because "he failed to demonstrate extraordinary circumstances." (A. 5.) In so holding, it improperly reached the merits of Garcia's Rule 60(b) motion and imposed an unduly burdensome standard on Garcia at the COA stage. The Fifth Circuit did not even pay lip service to the proper COA standard, instead asking whether the district court had abused its discretion in denying Garcia's Rule 60(b) motion. The proper inquiry was "whether a reasonable jurist could conclude that the District Court abused its discretion in declining to reopen the judgment." *Buck*, 137 S. Ct. at 777. In effect, the court did what it did *Buck*[3] and countless other cases—and a rate far exceeding that of other circuits. *See* Petition for Writ of Certiorari, *Buck v. Stephens*, No. 15-8049, 2016 WL 3162257, at *21 (Feb. 4, 2016 U.S.).

Garcia asks for a writ of certiorari to review both questions raised by the Fifth Circuit's decision: (1) the continued imposition of an unduly burdensome COA standard by the Fifth Circuit and (2) whether denial of meaningful representation

[3] *See Buck v. Stephens*, 623 F. App'x 668, 669 (5th Cir. 2015).

under 18 U.S.C. § 3599 may amount to the kind of 'extraordinary circumstances' that justifies the application of Rule 60(b).

B. Trial and direct appeal proceedings

Garcia was indicted for capital murder in Dallas County, Texas, in connection with the death of Officer Aubrey Hawkins. Garcia's trial began on February 3, 2003, and he was represented by court-appointed attorneys Hugh Lucas, Paul Brauchle, and Bradley Lollar. (45 RR 1–2, 10.)[4] Garcia's attorneys did not retain a mitigation specialist. (ECF No. 143 at 15403 ¶ 4; ECF No. 143 at 15414 ¶ 4; ECF No. 143 at 15431 ¶ 6.) Instead, Lollar divided his time between working on the guilt phase of Garcia's case and, at Brauchle's and Lucas's direction, investigating the "family stuff." (ECF No. 143 at 15403 at ¶ 4.)

During Garcia's penalty phase, trial counsel called three lay witnesses who testified about Garcia's difficult childhood.[5] These three witnesses presented the jury with snippets of Garcia's traumatic and unstable upbringing, but not even their collective testimony told the full story of the numerous traumas, the abandonment, and the rejection that Garcia experienced. Significantly, not one of those witnesses knew about the sexual assaults—including rape—that Garcia suffered during his childhood. Further, these witnesses were not qualified to explain the effects of

[4] Citations to the reporter's record in *State v. Garcia*, Cause No. F01-00325-T (283rd Jud. Dist. Ct. Dallas Cty., Tex.), are designated with the volume number, followed by "RR" and the page number. Citations to the clerk's record in that case are designated with "CR" and the page number.

[5] The three defense lay witnesses were Elizabeth Venecia from Child Protective Services, Garcia's mother's cousin Virginia Nerone, and Garcia's ex-wife Debra Garza. (*See* 54 RR 3–20; 53 RR 199, 229–37; 55 RR 136, 153–54.)

Garcia's dysfunctional family or traumatic upbringing on his adult life or why they mattered to the jury's punishment determination.

Counsel also called three expert witnesses, all of whom focused mainly on the sentencing "special issue" the jury had to answer regarding future dangerousness. *See* Tex. Code Crim. Proc. Ann. art. 37.071, § 2(b)(1) ("whether there is a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society"). Dr. Gilda Kessner and Dr. Judy Stonedale both specialized in assessing whether a person would engage in violence while in prison (*i.e.*, whether a person would be a "future danger"). (*See* 55 RR 44–45, 59–101; 56 RR 3–72.) Neither expert's practice concentrated on evaluating people who had experienced childhood trauma. (55 RR 44; 56 RR 3–4.) Drs. Kessner and Stonedale gave an overview of Garcia's dysfunctional family life before focusing on future dangerousness and their assessment of Garcia's ability to abide by prison rules. Counsel also presented the testimony of prison classification expert S.O. Woods, who testified exclusively about issues related to future dangerousness. (*See, e.g.*, 54 RR 70–157; 54 RR 157.)

Garcia was convicted and sentenced to death in February 2003. *State v. Garcia*, No. AP-74,692, 2005 WL 395433 (Tex. Crim. App. Feb. 16, 2005) (not designated for publication). Garcia appealed his conviction and sentence to the Texas Court of Criminal Appeals, and in 2005, the Court of Criminal Appeals affirmed his conviction and sentence. *Id* at *1.

C. State habeas corpus proceedings

Represented by Richard Langlois, Garcia filed a state habeas petition in 2004.

(ECF No. 20-9 at 437–43.) The Texas Court of Criminal Appeals adopted the district court's findings of fact and conclusions of law and denied relief. *Ex parte Garcia*, No.WR-64,582-01, 2006 WL 3308744, at *1 (Tex. Crim. App. Nov. 15, 2006) (not designated for publication). The petition did not include any claims relying on extra-record evidence.[6] Specifically, counsel failed to raise claims that (1) trial counsel failed to uncover evidence of Garcia's history of sexual assaults; (2) trial counsel failed to conduct a reasonable investigation of Garcia's 1996 first-degree murder conviction in Bexar County; (3) trial counsel failed to present evidence about the conditions of the two prison facilities at which Garcia was housed before the escape; and (4) trial counsel failed to retain an expert to assess the effects of Garcia's traumatic upbringing.[7]

D. Federal habeas corpus proceedings and second successive state court habeas corpus proceedings

Camille Knight and Ronald Goranson were appointed, as lead counsel and co-counsel respectively, to represent Garcia in his federal habeas corpus proceedings. (ECF No. 9.) Habeas counsel filed Garcia's initial federal habeas petition on November 13, 2007. (ECF No. 15.) The district court granted counsel's request to stay

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[6] Because every claim Langlois raised could have been raised on direct appeal—he had developed no additional extra-record evidence—he failed to state a claim upon which relief could have been granted. The state post-conviction court acknowledged as much. (*See, e.g.*, CR 360, 391, 424.)

[7] The Fifth Circuit recently held that "[t]he mere fact that state habeas counsel failed to raise two potentially meritorious ineffective-assistance-of-trial counsel claims evidences both his ineffectiveness and the prejudice that resulted." *Washington v. Davis*, 715 F. App'x 380 at 385 (5th Cir. 2017) (per curiam) (vacating district court's order denying habeas relief after petitioner sought discovery and hearing to substantiate defaulted claims of ineffective assistance of trial counsel).

and abate Garcia's federal proceedings in order to exhaust state remedies. (ECF No. 17.) In the successive state writ for habeas corpus that federal counsel filed, counsel failed to raise the four ineffective-assistance-of-trial-counsel claims listed above that Langlois also neglected to raise. The Texas Court of Criminal Appeals denied the successive petition for writ of habeas corpus as an abuse of the writ. *Ex parte Garcia*, No. WR-64,582-02, 2008 WL 650302, at *1 (Tex. Crim. App. Mar. 5, 2008) (per curiam) (not designated for publication).

Once back in federal court, counsel filed an amended federal habeas petition on April 2, 2008. (ECF No. 20.) After the Supreme Court issued its decisions in *Martinez v. Ryan*, 566 U.S. 1 (2012), and *Trevino v. Thaler*, 569 U.S. 413 (2013), the district court held a limited hearing on whether the procedural default of certain claims of ineffective assistance of trial counsel could be overcome under this new precedent. At that hearing, the district court permitted testimony only from Garcia's prior counsel. (*See* Mem. Op. & Order, *Garcia v. Stephens*, No. 3:06-CV02185-M (N.D. Tex. Apr. 15, 2014), ECF No. 74; *see also* Tr. of Evid. Hr'g, *Garcia v. Stephens*, No. 3:06-CV02185-M (N.D. Tex. Aug. 21, 2014), ECF No. 92.) After that limited hearing, the district court denied relief and denied a certificate of appealability (COA). (ECF No. 104.)

E. Certificate of appealability application and petition for certiorari

Knight and Goranson moved to withdraw as counsel and, on November 23, 2015, this Court appointed the Office of the Federal Public Defender for the District

of Arizona to represent Garcia.[8] (ECF No. 132; ECF No. 131.) On June 17, 2016, Garcia sought a COA from the Fifth Circuit on several issues. The Fifth Circuit denied Garcia's request for COA and affirmed the denial of an evidentiary hearing on one claim. *See Garcia v. Davis*, 704 F. App'x 316, 327 (5th Cir. 2017), *panel reh'g denied*, No 15-70039 (Sept. 22, 2017). Garcia's petition for certiorari seeking review of the Fifth Circuit's decision was denied on April 30, 2018. *Garcia v. Davis*, 138 S. Ct. 1700 (2018) (mem.)

F. Subsequent habeas corpus proceedings in state court

Garcia filed a subsequent habeas corpus application in state court on November 14, 2018. *Ex parte Garcia*, No. WR-64,582-03 (Tex. Crim. App. Nov. 14, 2018.) Garcia raised a number of claims in the application, including that he was denied the effective assistance of counsel because his trial attorneys failed to investigate and present available mitigating evidence of his childhood history of trauma, including sexual assaults. He alleged that as a consequence of their inadequate investigation, trial counsel failed to consult with an appropriate expert who could have assessed and explained the influence Garcia's traumatic upbringing had on him as an adult. Garcia further alleged that counsel failed to adequately investigate his 1996 murder conviction in Bexar County. Finally, he alleged that counsel failed to investigate the

[8] In 2014, Knight rejoined the trial unit in the Office of the Federal Public Defender (FPD) for the Northern District of Texas after which all parties agreed that that FPD office for the Northern District of Texas should accept appointment of Garcia's case. Shortly afterward, at the request of that FPD office, the FPD for the District of Arizona agreed to seek appointment to Garcia's case.

conditions at the two prison facilities in which Garcia was housed prior to his participation in the prison escape.

The Court of Criminal Appeals denied, over dissent by Judge Alcala, Garcia's ineffective-assistance-of-trial-counsel claim on procedural grounds on November 30, 2018, without considering the merits. *See Ex parte Garcia*, No. WR-64, 582-03 (Tex. Crim. App. Nov. 30, 2018.)

G. Subsequent federal court proceedings

The same day his subsequent application for writ of habeas corpus was denied, Garcia filed a Rule 60(b) motion in the United States District Court for the Northern District of Texas. (ECF No. 142.) As previously noted, in that motion, Garcia argued that there was a defect in the integrity of his federal habeas proceedings because his federal habeas counsel did not provide him with meaningful representation, as guaranteed by 18 U.S.C. § 3599, and this Court's instruction that this statutory right to counsel "necessarily includes a right for that counsel *meaningfully to research and present* a defendant's habeas claims." *McFarland v. Scott*, 512 U.S. 849, 858 (1994) (emphasis added); *id.* ("Where this opportunity is not afforded, '[a]pproving the execution of a defendant before his [petition] is decided on the merits would clearly be improper.'").

The district court treated Garcia's motion as a second or successive habeas petition and transferred it to the Fifth Circuit. (A. 12, 27–28.) In reaching this conclusion, the district court also determined that it did not have jurisdiction to reach Garcia's motion to stay his execution and also transferred the motion to the Fifth Circuit. (A. 27, 33.) The district court also engaged in an "alternative analysis" and

denied Garcia's Rule 60(b)(6) motion on the merits and also denied a COA. (A. 28, 33.) The Fifth Circuit affirmed. (A. 9.) This petition for writ of certiorari follows.

REASONS FOR GRANTING WRIT

I. A writ of certiorari should be granted because, despite repeated admonitions from this Court, the Fifth Circuit continues to place too heavy of a burden on the prisoner at the COA stage.

This Court's precedent is clear: a COA involves only a threshold analysis and preserves full appellate review of potentially meritorious claims. Therefore, "a prisoner seeking a COA need only demonstrate 'a substantial showing'" that the district court erred in denying relief. *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003) (quoting 28 U.S.C. § 2253(c)(2)). This "threshold inquiry" is satisfied so long as reasonable jurists could either disagree with the district court's decision or "conclude the issues presented are adequate to deserve encouragement to proceed further." *Id.* at 327. This Court recently reiterated this standard in *Buck v. Davis*, 137 S. Ct. 759 (2017): a "'court of appeals should limit its examination [at the COA stage] to a threshold inquiry into the underlying merit of [the] claims,' and ask 'only if the District Court's decision was debatable.'" 137 S. Ct. at 774 (quoting *Miller–El*, 537 U.S. at 327, 348) (alterations in original).

In sum, the touchstone is "the debatability of the underlying constitutional claim [or procedural issue], not the resolution of that debate. *Miller-El*, 537 U.S. at 342; *see also id.* at 348 (Scalia, J., concurring) (recognizing that a COA is required when the district court's denial of relief is not "undebatable").

In Garcia's case, however, the Fifth Circuit performed its own independent analysis of the merits of his Rule 60(b) motion and concluded that Garcia's Rule 60(b)

motion was untimely and that Garcia did not present extraordinary circumstances necessary to justify reopening his case. (A. 5–9.) The Fifth Circuit asked simply whether the district court had abused its discretion in denying Garcia's motion, and in answering that inquiry decided the merits of his claim. Thus, the Fifth Circuit exceeded the scope of the COA inquiry.

A. The Fifth Circuit improperly bypassed the COA process by denying relief based on its analysis of the merits of Garcia's Rule 60(b) motion

In reviewing the facts and circumstances of Garcia's case, the Fifth Circuit panel did not even ""pay[] lipservice to the principles guiding issuance of a COA," *Tennard v. Dretke*, 542 U.S. 274, 283 (2004), and held Garcia to a far more onerous standard. Specifically, the panel "sidestep[ped the threshold COA] process by first deciding the merits of [Garcia's] appeal," "in essence deciding an appeal without jurisdiction." *Miller-El*, 537 U.S. at 336–37. In fact, the Fifth Circuit recited the COA standard only in the very last line of its order, instead finding that "Garcia has not demonstrated an entitlement to Rule 60(b) relief." (A. 9.)

As this Court emphasized in *Buck*, "when a reviewing court (like the Fifth Circuit here) inverts the statutory order of operations and first decides the merits of an appeal, . . . then justifies its denial of a COA based on its adjudication of the actual merits, it has placed too heavy a burden on the prisoner at the COA stage." 137 S. Ct. at 774 (internal quotation marks and alterations omitted). Further, as this Court stressed in *Miller-El*, the threshold nature of the COA inquiry "would mean very little if appellate review were denied because the prisoner did not convince a judge, or, for that matter, three judges, that he or she would prevail." *Miller-El*, 537 U.S. at 337.

The Fifth Circuit improperly sidestepped the COA inquiry in this manner because the court treated Garcia's case as if it were already on appeal, instead of asking whether a COA should issue. The Fifth Circuit thereafter found that Garcia's Rule 60(b) motion was untimely and that his case is not "extraordinary." The Fifth Circuit went through a fact-based analysis of whether Garcia had filed his Rule 60(b) motion within a reasonable time, ultimately determining that the motion was untimely. (A. 5–7.) The court then determined that "there are no extraordinary circumstances warranting relief from judgment" because "[n]one of [Garcia's] allegations appears to have a basis in law or fact." (A. 7.) The court then ruled that Garcia had not (1) "explained why his prior counsel would have had reason to believe they needed to investigate [his childhood sexual assaults] further," (2) "explained why a trauma expert's observations would have caused the district court to resolve his IATC claim differently," (3) shown that prior federal habeas counsel had not investigated his prior conviction for anything other than strategic reasons, and (4) shown that prior counsel failed to investigate evidence concerning the conditions of the facilities where he was housed that was both different from what they had offered and mitigating. (A. 7–8.) These were all rulings that Garcia had not made a showing that counsel performed ineffectively and reflect the panel's departure from the proper COA analysis. The panel should have determined only whether Garcia made a "substantial showing" that the district court erred in denying relief.

The Fifth Circuit's departure from the correct COA standard in Garcia's case is not an anomaly. This Court has repeatedly corrected the Fifth Circuit's unduly

restrictive approach to granting COAs. *See Buck*, 137 S. Ct. 759; *Tennard*, 542 U.S. at 283; *Miller-El*, 537 U.S. at 327. Even before *Buck*, three Justices noted that the Fifth Circuit continues its "troubling" pattern of failing to apply the threshold COA standard required by this Court's jurisprudence. *Jordan v. Fisher*, 135 S. Ct. 2647, 2652 n.2 (2015) (Sotomayor, J., joined by Ginsburg and Kagan, JJ., dissenting from denial of certiorari). As the petition for writ of certiorari in *Buck v. Davis* argued, "a review of capital § 2254 cases over the last five years shows that in 59% of cases arising out the Fifth Circuit, a COA was denied by both the district court and Court of Appeals on all claims." Petition for Writ of Certiorari at *21, *Buck v. Stephens*, No. 15-8049, 2016 WL 3162257 (Feb. 4, 2016 U.S.). By contrast, "during that same period, only 6.25% cases arising out of the Eleventh Circuit and 0% of cases arising out of the Fourth Circuit have had a COA denied on all claims." *Id.*

This Court's subsequent decision in *Buck* admonished the Fifth Circuit that "the question for the Fifth Circuit was not whether Buck had 'shown extraordinary circumstances' or 'shown why [Texas's broken promise] would justify relief from the judgment.'" 137 S. Ct. at 774. Rather, "[t]hose are ultimate merits determinations the panel should not have reached." This Court again emphasized that a "court of appeals should limit its examination [at the COA stage] to a threshold inquiry into the underlying merit of [the] claims," and ask "only if the District Court's decision was debatable." *Id.* (internal quotation marks omitted).

Garcia presented the same question to the Fifth Circuit as did the appellants in those cases—whether the district court's decision was debatable—and again, the

Fifth Circuit departed from the correct standard and denied Garcia a COA based on an improper analysis of the merits. Despite this Court's admonition in *Buck* not to reach the merits of a Rule 60(b) motion, the Fifth Circuit did it once more, and held that the district court had not abused its discretion by denying Garcia's motion. That question, however, was not before the Fifth Circuit.

This Court should reverse the Fifth Circuit's decision.

B. Under the proper COA standard, the district court's decision is "debatable"

Had the Fifth Circuit applied the proper standard, it would have determined that the district court failed to consider all of the facts and circumstances that make Garcia's case extraordinary, including that a wrongful conviction figured into the jury's decision to sentence Garcia to death. The decision to deny Garcia's Rule 60(b) motion was at least "debatable."

1. When the movant shows "any other reason that justifies relief" and demonstrates extraordinary circumstances, Rule 60(b)(6) permits reopening a final judgment

Federal Rule of Civil Procedure 60(b) allows a party to seek relief from a final judgment, and request that his case be reopened, under a limited set of circumstances, including fraud, mistake, and newly discovered evidence. Rule 60(b)(6) also permits reopening when the movant shows "any other reason that justifies relief" from the operation of the judgment, beyond the more specific circumstances set out in Rules 60(b)(1)–(5). This Court has held that a proper Rule 60(b) motion "attacks, not the substance of the federal court's resolution of a claim on

the merits, but some defect in the integrity of the federal habeas proceedings." *Gonzalez v. Crosby*, 545 U.S. 524, 532 (2005).

In *Gonzalez v. Crosby*, this Court counseled that relief under Rule 60(b)(6) is appropriate when the movant demonstrates "extraordinary circumstances justifying the reopening of a final judgment." *Id.* at 535 (internal quotation marks omitted). Although finality is important, "[t]hat policy consideration, standing alone, is unpersuasive in the interpretation of a provision whose whole purpose is to make an exception to finality." *Id.* at 529.

Determining whether extraordinary circumstances exist requires examination of the unique facts and "equities of the particular case." *Seven Elves, Inc. v. Eskenazi*, 635 F.2d 396, 401 (5th Cir. 1981). Because Rule 60(b)(6) exists as "a grand reservoir of equitable power to do justice in a particular case," the rule is "liberally construed in order to do substantial justice." *Id.* at 401–02.

Here, Rule 60(b)(6) relief is necessary to correct a defect in the integrity of Garcia's federal habeas proceedings. Because Garcia's federal habeas counsel did not provide him with meaningful representation, Garcia was unable to investigate and present his ineffective-assistance-of-trial-counsel claim. Beginning with his 1996 non-capital conviction in Bexar County, Texas, Garcia has been woefully saddled with ineffective counsel. Garcia's capital trial counsel made numerous, grave errors that deprived Garcia's capital-trial jurors of compelling mitigating evidence. Federal habeas counsel were obligated to present all of the evidence substantiating Garcia's Sixth Amendment claim but failed to provide the district court with all of the evidence

necessary to ensure that Garcia had meaningful federal review of his constitutional claims. Because Garcia needed federal habeas counsel's assistance to investigate and present his claim to the district court, the result of counsel's failures resulted in a defect in the integrity of his federal habeas proceedings. Garcia attacked that defect in his Rule 60(b) motion.

2. Garcia made a "substantial showing" that the district court erred in denying relief

Garcia met the required Rule 60(b) standard in pleading a number of extraordinary circumstances that justify reopening the judgment in his case. *Miller-El*, 537 U.S. at 327. The district court ignored many of the facts Garcia pled and applied an erroneous legal standard to others.

Garcia met this Court's condition that a Rule (60)(b)(6) movant "show extraordinary circumstances justifying the reopening of a final judgment." *Gonzalez*, 545 U.S. at 535 (internal quotation marks omitted). Garcia's death sentence is the result of extraordinary circumstances—until now, the events that lead to Garcia's capital murder conviction and death sentence have never been fully presented to or considered by any court.

Garcia's case was lead counsel Camille Knight's very first capital case. (ECF No. 143 at 15443 ¶ 3.) Goranson had worked on one or two other capital habeas cases and one capital trial before his appointment to Garcia's case. (ECF No. 143 at 15435 ¶ 3.) Goranson's role in Garcia's case mainly involved reviewing voir dire and jury selection. (ECF No. 143 at 15435 ¶ 5; ECF No. 143 at 15443 ¶ 4.) Knight retained a mitigation specialist, Toni Knox, with whom she had not previously worked. (ECF

No. 143 at 15438 ¶ 3.) Knox was mainly left to her own devices; neither Knight nor Goranson were involved in or supervised her investigation. (ECF No. 143 at 15438 ¶ 3; ECF No. 143 at 15444 ¶ 7.) Knox's timesheet indicates that Knox conferred with counsel for less than two hours from the beginning to the end of her involvement in Garcia's case. (ECF No. 143 at 15441.) According to Knox, Knight failed to understand the importance of conducting an entirely new mitigation investigation to uncover what was missed by prior defense teams. (ECF No. 143 at 15438 ¶ 4.)

Garcia's 1996 conviction—the conviction for which he was imprisoned before he participated in the escape that lead to his capital case—was wrongfully procured and precipitated the events that ultimately lead to Garcia's death sentence. Garcia, who had never before been in any legal trouble, was sentenced to 50 years' imprisonment for first-degree murder after his court-appointed attorney, Norvell Graham, Jr., failed to investigate Garcia's case. If Graham had conducted even a minimal investigation, he would have uncovered plenty of powerful evidence that supported what Garcia had maintained all along—that he had acted in self-defense. Indeed, there were numerous court and police records that supported self-defense. For example, evidence of the victim's criminal history corroborated Garcia's claim that the victim was the first aggressor. (*See, e.g.*, ECF No. 143 at 15257–315.) Further, several witnesses saw the wounds that the victim had inflicted upon Garcia during their altercation, which substantiated Garcia's assertion that he had reasonably believed his life was in danger. (ECF No. 143 at 15410 ¶ 20; ECF No. 143 at 15400–01 ¶¶ 9–10.) Yet, the only evidence Graham offered to support Garcia's self-defense assertion was Garcia's

own testimony, and the testimony of Garcia's then-wife. Graham did not request any records, interview any witnesses, or even speak with Garcia about his case except for two meetings that were just minutes long. Without hearing all of the evidence that Garcia had acted in self-defense, his jurors found him guilty of first-degree murder and sentenced him to 50 years' imprisonment. Despite the import of the Bexar County conviction to the State's presentation at Garcia's capital sentencing proceedings, habeas counsel did not investigate Garcia's Bexar County case.

After being wrongfully convicted of first-degree murder, Garcia was sent to the Garza East facility in Beeville, Texas. It should have been obvious to counsel that no court or jury had ever heard an explanation as to why Garcia decided to escape. Had habeas counsel investigated Garcia's experience at Garza East, counsel would have learned that the facility had a reputation as particularly dangerous; indeed, it was plagued by violence including beatings, bludgeonings, and stabbings. (ECF No. 143 at 15416–17 ¶¶ 4–9; ECF No. 143 at 15423–24 ¶¶ 8, 10, 13.) In addition to the constant physical violence, sexual assaults and threats were pervasive at the facility; they were especially common at the hands of other prisoners, who frequently wielded shanks in their attacks. (ECF No. 143 at 15425 ¶ 20.) Garza East was also overcrowded, and the temperature inside the facility was scorching. (ECF No. 143 at 15429 ¶ 11; ECF No. 143 at 15425 ¶ 11.) The guards would check the dorm temperatures and note that it was hot enough for the prisoners to overheat, but the guards would not then get the prisoners water or do anything else to help them. (ECF No. 143 at 15429 ¶ 11.)

To Garcia—who had never even been so much as arrested and who should not have been imprisoned in the first place—life at Garza East was a complete shock. To survive these conditions, Garcia formed a close bond with three other individuals, all of whom were also in prison for the first time. (ECF No. 143 at 15423 ¶ 4.) The four stuck together and kept a close eye on one another. (ECF No. 143 at 15416 ¶ 6; ECF No. 143 at 15428 ¶ 3.) With the protection and support of this group, Garcia was able to survive his time at Garza East without physical harm.

Garcia was transferred from Garza East to the Connally Unit in early 1998. As violent as Garza East was, Connally had an even worse reputation. (ECF No. 143 at 15426 ¶ 26; ECF No. 143 at 15417 ¶ 7.) And here, unlike at Garza East, Garcia did not have a group of fast friends for support and protection. While at Connally, Garcia wrote to his friend from Garza East that he feared for his safety because of the gangs; Garcia added that he "wished to die." (ECF No. 143 at 15418 ¶ 16.) And there was no end to the threat of sexual assault, which Garcia had been unable to escape for most of his life. On one occasion, as Garcia and his cellmate prepared for cell check at Connally, his cellmate attacked Garcia from behind and tried to rape him. (ECF No. 143 at 15345.) Although Garcia was able to fend off his cellmate, he lived in constant fear of being raped, causing him to relive the trauma he had suffered as a boy from repeated sexual assaults. (ECF No. 143 at 15345.) This information would have helped Garcia's capital jurors understand why he made the decision to participate in the prison escape, yet trial counsel failed to pursue this avenue of investigation and none of Garcia's subsequent attorneys pointed out counsel's critical error.

In addition to all of this evidence, federal habeas counsel failed to conduct an adequate mitigation investigation into Garcia's upbringing. Consequently, counsel failed to learn about the sexual assaults that Garcia suffered during his childhood, or the impact that the traumas Garcia experienced had on his adult behavior. During the limited federal habeas mitigation investigation, Garcia told Knox that he had been sexually abused as a child while he was in New York. (ECF No. 143 at 15438 ¶ 6.) However, counsel did not further pursue that avenue of investigation and thus failed to unearth all of the evidence that Garcia was repeatedly sexually assaulted during childhood. Until undersigned counsel was appointed to represent Garcia, no court has ever had occasion to consider Garcia's full history of sexual trauma.

Initial habeas counsel did not learn that while Garcia was at his grandmother's housing development, a sexual predator invited Garcia—a vulnerable, unsupervised child—into his apartment for popsicles. (ECF No. 143 at 15342.) As Garcia stared at the freezer full of ice cream and popsicles, the man began kissing Garcia's neck, and stood behind him pressing his erect penis against Garcia. (ECF No. 143 at 15342.) Garcia stood frozen, in shock and helpless, before running out the door. (ECF No. 143 at 15342.) For the rest of the time his grandmother lived at that apartment complex, Garcia was petrified that the man would come to find him while his grandmother was at work. (ECF No. 143 at 15342–43.)

Nor did counsel learn that Garcia was molested by the adult brother of his friend. (ECF No. 143 at 15343.) This happened when Garcia stayed the night at his friend's house, and he woke up on the couch to his friend's brother rubbing Garcia's

penis and masturbating. (ECF No. 143 at 15343.) The man later molested Garcia a second time, when Garcia was again spending the night at his friend's home. (ECF No. 143 at 15344.)

Perhaps most importantly, counsel did not uncover that Garcia had been raped. When Garcia was about 12 years old, he was raped by the brother of one of his mother's boyfriends. (ECF No. 143 at 15344.) The boyfriend's brother was around 19 at the time, and Garcia had to share a room with bunk beds with him. (ECF No. 143 at 15344.) One night, Garcia was sitting on the bottom bunk when the brother attacked: he flipped Garcia over and raped him. (ECF No. 143 at 15344.)

The information that prior habeas counsel did learn about Garcia's upbringing, including one incident of sexual assault, should have prompted them to retain an expert who specialized in the effects of childhood trauma. Apart from mitigation specialist Knox, the only expert witness counsel consulted was Bruce Anton, a standard of care expert who reviewed the work done by Garcia's initial state habeas counsel, Langlois. (ECF No. 143 at 15406 ¶ 2; ECF No. 143 at 15444 ¶¶ 9–10.)[9] Anton's involvement focused on opining on the quality of Langlois's initial state habeas petition and providing "boilerplate" constitutional claims to Knight; Anton did not consult with federal habeas counsel about their mitigation investigation or look

[9] Prior to assisting on Garcia's case, Anton had served as state habeas counsel for one of Garcia's co-defendants, Randy Halprin. (ECF No. 143 at 15406 ¶ 3.) Anton was not concerned about any conflict of interest and assumed that Knight and Goranson "had weighed that issue from their end." (ECF No. 143 at 15406 ¶ 4.)

into whether counsel were raising all potentially meritorious claims in the federal habeas petition. (ECF No. 143 at 15407 ¶ 8; ECF No. 143 at 15444 ¶ 8.)

Garcia's behavior and functioning throughout his life reflected the trauma he had endured. For example, Garcia experienced dissociation, which started in childhood and persisted into adulthood. (ECF No. 143 at 15318.) Dissociation is an automatic physical and mental response that occurs in conjunction with overwhelming feelings of terror, pain, or helplessness. (ECF No. 143 at 15366.) When a person dissociates in response to a traumatic event, he often experiences a disconnect in behavior, awareness, and thinking; sometimes dissociation manifests as a feeling of numbness or blacking out. (ECF No. 143 at 15366.) An expert could have explained to counsel how Garcia's tendency to dissociate to cope with stress reflected the fact that nobody taught him other ways to handle the experiences he had faced. The traumatizing impact of the sexual abuse that Garcia had suffered was exacerbated by the fact that he, through no fault of his own, had no support system. Garcia never learned to properly process or cope with his repeated exposure to violence—by his mother and sexual predators, among others. (ECF No. 143 at 15356.) Garcia's traumatic experiences impaired his ability to function as expected in environments such as school, the Coast Guard, work, and his marriage. (ECF No. 143 at 15318.) Still, despite being aware of Garcia's history of trauma, habeas counsel made the same error as trial counsel and failed to retain an appropriate expert to evaluate Garcia. (ECF No. 143 at 15438.)

At Garcia's capital sentencing, the result of trial counsel's missteps was a penalty-phase presentation spent largely on the issue of future dangerousness. The ill-formed decision to focus on future dangerousness allowed the State to repeatedly tell the jurors that Garcia was an inherently violent person. Defense counsel simply handed the State repeated opportunities to frame the jury's consideration of the escape, without giving the jurors any insight into why it occurred. (*See, e.g.*, 56 RR 63–64.)

Despite the importance of all of this evidence, until now, the events that led to Garcia's capital case have never been fully presented to any court despite the fact that Garcia has repeatedly provided his attorneys with the information necessary to tell his full story. (*See, e.g.*, ECF No. 143 at 1543839 ¶¶ 6, 11, 13; ECF No. 143 at 15404 ¶¶ 9, 10; ECF No. 143 at 15414 ¶ 7.) Thus, Garcia's case is sufficiently extraordinary to warrant Rule 60(b) relief.

In denying Garcia's motion, the district court did not grapple with these allegations, which make Garcia's case extraordinary. Moreover, the district court did not cite to *Seven Elves* or address all the factors enumerated therein. The district court further erred in concluding that the motion was not filed within a reasonable time, as explained in Garcia's motion in the district court. (ECF No. 142 at 19.)

In sum, the district court failed to undertake the equitable Rule 60(b) inquiry mandated by this Court's precedent. Further, the district court disregarded this Court's determination that Rule 60(b) "provides courts with authority 'adequate to enable them to vacate judgments whenever such action is appropriate to accomplish

justice.'" *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863–64 (1988) (quoting *Klapprott v. United States*, 335 U.S. 601, 614–15 (1949)). As with any equitable standard where the touchstone is accomplishing justice, a court must "examine all of the circumstances" to determine whether "collectively [they establish] extraordinary circumstances for purposes of Rule 60(b)(6)." *Ramirez v. United States*, 799 F.3d 845, 851 (7th Cir. 2015); *see Klapprott*, 335 U.S. at 615 (analyzing circumstances collectively in concluding that reopening the judgment was appropriate under Rule 60(b)).

Instead of following the approach outlined by this Court, the district court improperly diluted the full weight of the circumstances that make Garcia's case extraordinary.

3. The Fifth Circuit ignored the errors in the district court's decision and conducted its own analysis of the merits of Garcia's motion

Because this is merely an application for a COA, the Fifth Circuit should have conducted only "a threshold inquiry into the underlying merit of [the] claims,' and ask 'only if the District Court's decision was debatabale.'" *Buck v. Davis*, 137 S. Ct. 759 (2017). Garcia has met that standard.

The Fifth Circuit's contrary conclusion is a direct product of its failure to adhere to this Court's precedent. Instead of assessing the debatability of the district court's opinion, the panel improperly considered the merits underlying Garcia's Rule 60(b) motion. In so doing, the Fifth Circuit imposed and undue burden on Garcia. For these reasons, Garcia asks the Court to grant his petition for writ of certiorari to correct the Fifth Circuit's repeated disregard of the proper scope of a COA analysis.

II. This Court should grant certiorari to address the question whether the denial of meaningful representation under 18 U.S.C. § 3599 may cause a defect in the integrity of federal habeas proceedings sufficient to justify reopening the judgment pursuant to a Rule 60(b)(6) motion.

The Fifth Circuit affirmed the district court's transfer order and denied the motion for remand and for a COA, and accordingly did not directly address the issue of whether the denial of meaningful representation under 18 U.S.C. § 3599 may cause a defect in the integrity of proceedings sufficient to merit Rule 60(b)(6) relief. This Court should address the question presented and hold that Rule 60(b)(6) is satisfied under such circumstances because a contrary holding would raise a concern that even when a death-sentenced habeas petitioner can show that his federal habeas counsel failed to ensure that he received meaningful review of his state court proceedings, he has no way to remedy that defect.

Congress has enacted a statutory scheme designed to ensure that indigence does not preclude effective legal representation for individuals who face criminal penalties. The Criminal Justice Act generally provides indigent defendants with a right to the representation necessary to develop and prove a case. In a distinct provision, Congress has specified additional requirements for indigent individuals facing the death penalty. The provision governing capital representation, 18 U.S.C. § 3599, outlines the specific requirements regarding counsel across every phase of capital proceedings in federal court. 18 U.S.C. § 3599(a)(2) ("In any post conviction proceeding . . . seeking to vacate or set aside a death sentence, any defendant who is or becomes financially unable to obtain adequate representation . . . shall be entitled to the appointment of one or more attorneys . . ."); *id.* § 3599(e) ("each attorney so

appointed shall represent the defendant throughout every subsequent stage of available judicial proceedings").

The "meaningful assistance of counsel [in federal habeas review] is essential to secure federal constitutional rights." *Rohan ex rel. Gates v. Woodford*, 334 F.3d 803, 813 (9th Cir. 2003), *overruled on other grounds by Ryan v. Gonzales*, 568 U.S. 57 (2013); *see Lonchar v. Thomas*, 517 U.S. 314, 330 (1996) (recognizing the importance of a first federal habeas petition); *Lugo v. Sec., Florida Dept. of Corrs.*, 750 F. 3d 1198, 1217 (11th 2014) ("[S]tate prisoners on death row have a right to federal habeas review, and this right should not depend upon whether their court-appointed counsel is competent enough to comply with AEDPA's statute of limitations."); *In re Hearn*, 376 F.3d 447, 451–52 (5th Cir. 2004) (noting that *McFarland* evidences the "expansive nature" of § 3599). This Court recently "recognized the historic importance of federal habeas proceedings as a method for preventing individuals from being held in custody in violation of federal law." *Trevino v. Thaler*, 569 U.S. 413, 412 (2013) (citing *Martinez v. Ryan*, 566 U.S. 1, 8–9 (2012)).

In recognizing the importance of federal habeas review, this Court has held that this statutory right to counsel "necessarily includes a right for that counsel *meaningfully to research and present* a defendant's habeas claims." *McFarland v. Scott*, 512 U.S. 849, 858 (1994) (emphasis added); *see also Mendoza v. Stephens*, 783 F.3d 203, 206 (5th Cir. 2015) (per curiam) ("[t]he enactment of § 3599 by Congress 'reflec[ted] a determination that quality legal representation is necessary' in all capital proceedings to foster 'fundamental fairness in the imposition of the death

penalty'" (Higginbotham and Southwick, JJ., concurring) (quoting *McFarland*, 512 U.S. at 859)). Further, this Court has admonished that "[w]here this opportunity is not afforded, '[a]pproving the execution of a defendant before his [petition] is decided on the merits would clearly be improper.'" *McFarland*, 512 U.S. at 858 (quoting *Barefoot v. Estelle*, 463 U.S. 880, 889 (1983)).

Given this Court's recognition of the right of death-sentenced individuals to have their constitutional claims meaningfully researched and presented on federal habeas review, *see McFarland*, 512 U.S. at 858, this Court should grant Garcia's petition for writ of certiorari and clarify that the denial of that right constitutes a defect in the integrity of federal habeas proceedings sufficient to justify reopening the judgment pursuant to Rule 60(b).

Garcia was not afforded the competent federal habeas counsel contemplated by § 3599 and this Court. Until recently, Garcia did not have the opportunity to meaningfully research and develop his federal habeas claim that he was denied his Sixth Amendment right to the effective assistance of counsel during his capital sentencing proceedings. Consequently, the integrity of the district court's judgment denying him habeas corpus relief was compromised. Further, because the errors of Garcia's appointed counsel prevented federal habeas review of Garcia's constitutional claims, Garcia now faces execution despite that compelling evidence—evidence that would have tipped the scale in favor of life—has never been properly considered by any court. *See Clemons v. Mississippi*, 494 U.S. 738, 749 (1990) (the Supreme Court "has repeatedly emphasized that meaningful appellate review of death sentences

promotes reliability and consistency"); *see also Harris v. Nelson*, 394 U.S. 286, 290–91 (1969) ("The writ of habeas corpus is the fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action.").

CONCLUSION

At a minimum, reasonable jurists could conclude that the district court's disposition of Garcia's Rule 60(b)(6) motion was debatable. Instead of conducting a proper threshold inquiry into the debatability of the district court's decision, the Fifth Circuit conducted its own analysis on the merits. In doing so, it exceeded the limited scope of COA analysis and imposed an unduly burdensome standard on Garcia at the COA stage. The Fifth Circuit also erroneously determined that Garcia's case is not sufficiently extraordinary to warrant the application of Rule 60(b)(6) and that his motion was untimely.

Additionally, the State of Texas is prepared to execute Garcia despite the fact that his Sixth Amendment claim of ineffective assistance of trial counsel has never been properly reviewed by any federal court, including his claim that the prior conviction that was pivotal to his death sentence was wrongfully procured. Garcia is entitled to a meaningful federal habeas corpus review before his death sentence is carried out. For the foregoing reasons, the Court should recognize that the right to meaningful representation during federal habeas proceedings can justify reopening a judgment pursuant to Rule 60(b)(6).

Respectfully submitted: December 4, 2018

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