

No.

IN THE SUPREME COURT OF THE UNITED STATES

In re Joseph C. Garcia, Petitioner

APPLICATION FOR STAY OF EXECUTION

CAPITAL CASE

****EXECUTION SET FOR DECEMBER 4, 2018****

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COUNSEL FOR PETITIONER

**Counsel of Record for Petitioner*

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

Joseph C. Garcia respectfully requests a stay of his execution, which has been ordered for December 4, 2018, pursuant to a Warrant of Execution issued by the 283rd Judicial District Court, Dallas County, Texas.

This stay is sought in order to permit this Court to consider a Petition for Writ of Habeas Corpus, which Petitioner has filed concurrently with this Application for Stay of Execution. With respect to the Petition for Writ of Habeas Corpus, the Court's original jurisdiction is invoked pursuant to 28 U.S.C. §§ 2241, 2254(a), and 651(a), and Article III of the United States Constitution. Pursuant to Supreme Court Rules 23.1 and 23.2, and under the authority of 28 U.S.C. 2101(f), the stay applied for may lawfully be granted. Pursuant to Supreme Court Rule 23.3, Petitioner submits that a stay is not available from another court because Petitioner seeks to have this Court consider his Petition for Writ of Habeas Corpus pursuant to the Court's original jurisdiction.

The stay is justified due to the significance of the questions presented in the Petition for Writ of Habeas Corpus, to wit:

1. Whether Joseph Garcia's extended stay on Texas' death row for nearly 15 years has resulted in his suffering additional severe psychological stress that exceeds the punishment of death determined by the jury and imposed by the trial court, and amounts to an additional punishment that the Court should find proscribed by the Eighth and Fourteenth Amendments; and,

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2. Whether Mr. Garcia is actually innocent of the death penalty, as that term is defined in *Sawyer v. Whitley*, 505 U.S. 333, 348 (1992), because his excessively-long incarceration, with extreme deprivation on Texas' death row, makes him part of a class of offenders whose executions should be circumscribed by the Eighth and Fourteenth Amendments, and renders him not eligible for a sentence of death.

Petitioner asserts that the discussion in his Petition for Writ of Habeas Corpus about the importance of these issues and why this Court should grant the writ demonstrate that there is a reasonable probability that four members of the Court will consider the issue sufficiently meritorious to grant certiorari. *E.g. Multimedia Holdings v. Circuit Court of Fla.*, 544 U.S. 1301, 1306 (2005) (Kennedy, J.). Petitioner further asserts that the discussion in his Petition for Writ of Habeas Corpus of exceptional circumstances demonstrates that, upon granting certiorari and resolving the issues presented, five Justices are likely to conclude that the writ should issue as to Petitioner's death sentence. *See Barefoot v. Estelle*, 463 U.S. 880, 895 (1983).

It is of course self-evident that Petitioner will suffer irreparable injury if this stay is not granted. *See Gregg v. Georgia*, 429 U.S. 1301 (1976). Petitioner does not deny that the State of Texas has an interest in seeing its judgments carried out. Petitioner submits, however, that in this case, a judgment in his favor, which would result in *vacatur* of his death sentence, tips the balance in favor of the grant of a stay.

It is respectfully requested that Petitioner's Application for Stay of Execution set for December 4, 2018, be granted.

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Respectfully submitted this 3rd day of December, 2018.

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By:



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