

In the Supreme Court of the United States

MICHAEL DEAN GONZALES,

Petitioner,

v.

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

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

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Counsel for Petitioner

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

Petitioner, Michael Dean Gonzales, seeks leave to file the enclosed Petition for Writ of Certiorari without prepayment of costs and to proceed *in forma pauperis* in accordance with Supreme Court Rule 39, and 18 U.S.C. § 3006A(d)(6).

The United States District Court for the Western District of Texas found Mr. Gonzales could not proceed *in forma pauperis* because petitioner had sufficient funds to pay the five-dollar filing fee. The District Court found Mr. Gonzales lacked sufficient financial resources to retain private counsel and appointed counsel Katherine Black and co-counsel Mandy Welch pursuant to 18 U.S.C. § 3599(a)(2) on January 14, 2013. App. A. The District Court appointed Richard Burr on April 7, 2015. App. B. The Federal Public Defender for the Western District of Texas entered an appearance as co-counsel on September 9, 2016. App. C. In the United State Court of Appeals for the Fifth Circuit, Tivon Schardl entered an appearance for the Federal Public Defender for the Western District of Texas as co-counsel under the same provision on June 13, 2019. App. D.

The filing of this petition is the continuation of counsel's representation of Mr. Gonzales under the 18 U.S.C. § 3599(a)(2) appointment. *See* 18 U.S.C. § 3599(e) (“[e]ach attorney so appointed shall represent the defendant throughout every subsequent stage of available judicial proceedings, including ... applications for writ of certiorari to the Supreme Court of the United States”). In accordance with Supreme Court Rule 39, no affidavit declaring Mr. Gonzales's indigency is required.

WHEREFORE, Petitioner, Michael Dean Gonzales, seeks leave to proceed *in forma pauperis*.

Respectfully submitted this 27th day of November 2019,

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**Counsel of Record*

APPENDIX

- A. Order Appointing Counsel,
Gonzales v. Thaler, No. No. 7-12-126-RAJ (W.D. Tex. Jan. 14, 2013)
- B. Appointment Cover Sheet,
Gonzales v. Thaler, No. 7-12-126-001 (W.D. Tex. Apr. 7, 2015)
- C. Notice of Appearance,
Gonzales v. Thaler, No. No. 7-12-126-DAE (W.D. Tex. Sept. 9, 2016)
- D. Notice to Appointed Counsel & Attorney Appearance,
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APPENDIX A

JAN 14 2013

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY [Signature]
DEPUTY CLERK

V.

CIVIL NO. MO-12-CA-126-RAJ

Respondent .

APP 001

petitioner's application for state habeas corpus relief on March 10, 1999. Petitioner subsequently sought federal habeas relief from this Court. In an Order issued January 14, 2003, District Judge Royal Furgeson denied relief as to petitioner's conviction but vacated petitioner's death sentence and directed the Respondent therein to afford petitioner a new capital sentencing hearing. See MO-99-CA-72-RF, *docket entry no. 90*.

Petitioner's second capital sentencing hearing took place in May, 2009, at the conclusion of which the state trial court once again sentenced petitioner to death based upon the jury's answers to the Texas capital sentencing special issues. The Texas Court of Criminal Appeals affirmed petitioner's new death sentence on September 28, 2011. *Gonzales v. State*, 353 S.W.3d 826 (Tex. Crim. App. 2011). Petitioner did not thereafter seek certiorari review of his conviction or death sentence from the United States Supreme Court. Petitioner also apparently failed to file a new application for state habeas corpus relief challenging his judgment of conviction and sentence of death.

In Forma Pauperis Motion

Petitioner has not paid the five dollar filing fee in this cause. The certified copy of petitioner's inmate trust account statement attached to petitioner's *in forma pauperis* motion indicates petitioner currently has more than three hundred dollars in his inmate trust account with which to pay the five dollar

filing fee in this cause. Therefore, petitioner's *IFP* motion will be denied and he will be directed to pay the five dollar filing fee immediately or face dismissal of this cause without prejudice. While petitioner lacks sufficient financial resources to retain private counsel, he most certainly is not entitled to have this Court waive the minimal filing fee in this habeas corpus action.

Motion for Appointment of Counsel

In a letter submitted but not filed with this Court and dated January 12, 2013, petitioner requests appointment of attorney Katherine Black as lead counsel and attorney Mandy Welch as co-counsel to represent him in this federal habeas corpus proceeding. Petitioner's in forma pauperis application is accompanied by sufficient documentation to establish to this Court's satisfaction that petitioner is currently unable to afford retained counsel herein.

As noted by the Supreme Court in its opinion in *McFarland v. Scott*, 512 U.S. 849, 855-58, 114 S.Ct. 2568, 2572-73, 129 L.Ed.2d 666 (1994), a state prisoner facing a death sentence has a qualified statutory right to the appointment of counsel in connection with a federal habeas corpus proceeding challenging his criminal conviction and death sentence. *Sterling v. Scott*, 57 F.3d 451, 454 (5th Cir. 1995), cert. denied, 516 U.S. 1050 (1996). Petitioner requests this Court to appoint attorneys Burr and Welch as counsel to represent him herein pursuant to Title 18 U.S.C.

Section 3599(a)(2) and the Supreme Court's holding in *McFarland*. In March, 2006, Congress repealed the statute at issue in *McFarland* (i.e., former Title 21 U.S.C. Section 848(q)) and simultaneously re-enacted same in substantially similar form as new Title 18 U.S.C. Section 3599. The Court will grant petitioner's request.

The Court finds that attorney Katherine Black, who is not currently admitted to practice before this Court but who has substantial experience in the representation of Texas death row inmates in post-conviction proceedings, fully qualifies for appointment of counsel to represent petitioner herein under the criteria set forth in Title 18 U.S.C. Section 3599(d).

The Court also finds that attorney Mandy Welch, who is not currently admitted to practice before this Court but who has previously appeared in this Court in multiple proceedings over the past two decades on behalf of Texas death row inmates, qualifies for appointment as co-counsel under 18 U.S.C. Section 3599(d).

Each of petitioner's counsel will be directed to file a *pro hac vice* motion and make timely application for admission to the bar of this Court.

The Court advises petitioner's counsel they are eligible to receive interim payments from this Court in connection with their representation of petitioner this cause upon the filing of a motion requesting same.

Motion for Additional Time to File Amended Petition

Petitioner requests a period of 180 days within which to file an amended federal habeas corpus petition in this cause. Petitioner alleges no facts in his motion for additional time, however, suggesting any legal or equitable factors warrant tolling the AEDPA's one-year statute of limitations or extending such an extraordinary time period to petitioner's newly appointed federal habeas counsel to investigate petitioner's potential claims in this cause. Petitioner has been through the federal habeas corpus process once before in this Court, i.e., in cause no MO-99-CA-72-RF, and was represented by able counsel throughout that proceeding. Because the petitioner chose to wait until the very last date possible for filing his federal habeas corpus petition herein permitted by the AEDPA's one-year statute of limitations before filing his "skeletal" original federal habeas corpus petition herein, there does not appear to be any equitable reasons for granting petitioner the six-month period he has requested to permit his newly appointed federal habeas counsel to investigate potential claims and file an amended federal habeas corpus petition. Petitioner's complaint that he was allegedly denied the assistance of counsel to pursue state habeas remedies following affirmance of his second death sentence does not justify granting petitioner an extraordinary amount of time at this juncture to prepare an amended federal habeas corpus petition. Petitioner possessed no federal

constitutional right to the assistance of counsel in state post-conviction proceedings. *Pennsylvania v. Finley*, 481 U.S. 551, 557, 107 S.Ct. 1900, 1994, 95 L.Ed.2d 539 (1987); *Stevens v. Epps*, 618 F.3d 489, 502 (5th Cir. 2010), *cert. denied*, ___ U.S. ___, 131 S.Ct. 1815, 179 L.Ed.2d 775 (2011); *Williams v. Thaler*, 602 F.2d 291, 308 (5th Cir.), *cert. denied*, ___ U.S. ___, 131 S.Ct. 506, 178 L.Ed.2d 376 (2010); *Matchett v. Dretke*, 380 F.3d 844, 849 (5th Cir. 2004), *cert. denied*, 543 U.S. 1124 (2005).

In this Circuit, even those federal habeas corpus represented by incompetent counsel must demonstrate due diligence with regard to compliance with the AEDPA's one-year statute of limitations. *Manning v. Epps*, 688 F.3d 177, 185 (5th Cir. 2012) (prisoners seeking to establish due diligence must exercise diligence even if they receive inadequate legal representation), *cert. filed December 3, 2012* (no. 12-7690); *United States v. Petty*, 530 F.3d 361, 366 (5th Cir. 2009) ("a prisoner has no right to counsel during post-conviction proceedings").

Likewise, petitioner's complaints about the alleged failure of the state courts to appoint counsel for petitioner in connection with a potential state habeas challenge to petitioner's most recent death sentence do not warrant any relief or any extension of equitable tolling by this Court. Few principles have been more consistently applied in this Circuit than the well-settled rule that complaints about alleged constitutional violations occurring

during the course of state habeas corpus proceedings do not give rise to a legal basis for federal habeas corpus relief. See *Kinsel v. Cain*, 647 F.3d 265, 273 & n.32 (5th Cir.) (infirmities in state habeas corpus proceedings do not constitute grounds for relief in federal court), *cert. denied*, ___ U.S. ___, 132 S.Ct. 854, ___ L.Ed.2d ___ (2011); *Wiley v. Epps*, 625 F.3d 199, 207 (5th Cir. 2010) ("It is axiomatic that infirmities in state habeas proceedings under state law are not a basis for federal relief."); *Stevens v. Epps*, 618 F.3d at 502 ("Infirmities in state habeas proceedings do not constitute grounds for relief in federal court."); *Haynes v. Quarterman*, 526 F.3d 189, 195 (5th Cir. 2008) ("alleged infirmities in state habeas proceedings are not grounds for federal habeas relief"); *Brown v. Dretke*, 419 F.3d 365, 378 (5th Cir. 2005) ("alleged infirmities in state habeas proceedings are not grounds for federal habeas relief"), *cert. denied*, 546 U.S. 1217 (2006); *Moore v. Dretke*, 369 F.3d 844, 846 (5th Cir. 2004) ("It is axiomatic that 'infirmities in state habeas proceedings do not constitute grounds for federal habeas relief.' This is because 'an attack on the state habeas proceeding is an attack on a proceeding collateral to the detention and not the detention itself.'" (citation omitted)); *Henderson v. Cockrell*, 333 F.3d 592, 606 (5th Cir. 2003) ("It is well-settled that 'infirmities in state habeas proceedings do not constitute grounds for federal habeas relief.'"), *cert. denied*, 540 U.S. 1163 (2004); *Rudd v. Johnson*,

256 F.3d 317, 319-20 (5th Cir. 2001) ("A long line of cases from our circuit dictates that 'infirmities in state habeas proceedings do not constitute grounds for relief in federal court.' That is because an attack on the state habeas proceeding is an attack on a proceeding collateral to the detention and not the detention itself." (citations omitted)), *cert. denied*, 534 U.S. 1001 (2001); *Beazley v. Johnson*, 242 F.3d 248, 271 (5th Cir 2001) ("infirmities in state habeas proceedings do not constitute grounds for relief in federal court"), *cert. denied*, 534 U.S. 945 (2001); *Wheat v. Johnson*, 238 F.3d 357, 361 (5th Cir. 2001) ("infirmities in state habeas proceedings are not proper grounds for federal habeas relief"), *cert. denied*, 532 U.S. 1070 (2001).

This Court routinely permits federal habeas counsel appointed in capital habeas proceedings between ninety and one-hundred twenty days following their appointment to investigate potential claims on behalf of their client and file a coherent, lucid, petition for federal habeas corpus relief containing all of the claims the petitioner wishes to present to this Court. For almost two decades since his capital offense, operating with the assistance of state trial counsel, state appellate counsel, state habeas counsel, and federal habeas counsel, petitioner has successfully forestalled his execution. Petitioner's eleventh hour plea of ignorance as to the provisions of the AEDPA and the applicable federal habeas corpus statute of limitations defies credibility. There is no reason to

extend the time period for petitioner to file an amended petition in this case beyond the time frame routinely allowed to newly appointed federal habeas counsel in other capital habeas proceedings.

Therefore, this Court will grant petitioner's motion for time to prepare and file an amended petition in part by permitting petitioner's newly appointed counsel slightly more than 120 days from the date of this Order within which to investigate petitioner's potential claims and to file an amended petition herein.

Motion for Stay of Execution

Petitioner requests a stay of his currently scheduled March 21, 2013 execution for the purpose of permitting petitioner's newly appointed federal habeas counsel to investigate, develop, and present all of petitioner's claims challenging his latest death sentence.¹ Section 2251 of Title 28, United States Code authorizes this Court to stay any state court proceeding necessary to preserve the efficacy of this Court's habeas corpus jurisdiction. *McFarland v. Scott*, 512 U.S. 849, 857-58. 114 S.Ct. 2568, 2573, 129 L.Ed.2d 666 (1994). Petitioner and his newly appointed federal habeas counsel are statutorily entitled to a reasonable period of time

¹ Nothing in this Order should be construed as addressing in any manner the issue of whether, at this juncture, petitioner may challenge the validity of his December, 1995 conviction for capital murder.

within which to investigate, develop, and present all claims petitioner possesses challenging his current death sentence. *Id.* Because petitioner has not pursued state habeas corpus remedies collaterally attacking his current death sentence and because petitioner's newly appointed federal habeas counsel need a reasonable time period within which to investigate, develop, and present petitioner's federal constitutional claims herein, this Court will stay petitioner's scheduled execution.

Accordingly, it is hereby **ORDERED** that:

1. Petitioner's motion for appointment of counsel, filed December 27, 2013, docket entry no. 2, is **GRANTED** as follows: in accordance with Title 18 U.S.C. Section 3599, attorney Katherine Cooper Black, whose mailing address is Box 2223, Houston, Texas 77252, and whose telephone number is (713) 226-7027, is appointed lead counsel of record for petitioner herein; attorney Mandy Welch, whose mailing address is P.O. Box 525, Leggett, Texas 77350, and whose telephone number is (713) 516-5229 is appointed co-counsel to represent petitioner herein.

2. The Clerk shall send to each of petitioner's counsel a copy of this Order and all forms and vouchers necessary to permit said counsel to comply with all requirements for obtaining reimbursement for expenses and payment for attorneys fees for services rendered in connection with this cause.

3. Petitioner's counsel are directed to transmit a copy of

this Order to petitioner as expeditiously as possible.

4. Unless they have already done so, on or before ten (10) days from the date of this Order, each of petitioner's counsel shall (1) formally seek leave to appear *pro hac vice* in this cause (including making timely payment of all necessary fees) and (2) make application for admission to the bar of this Court in accordance with the Local Rules of the United States District Court for the Western District of Texas.

5. Petitioner's motion for time to prepare and file an amended habeas corpus petition, filed December 27, 2012, docket entry no. 3, is **GRANTED** IN PART as follows: on or before May 24, 2013, petitioner shall file, and serve on the Post-Conviction Litigation Division of the Office of the Texas Attorney General, petitioner's *amended* federal habeas corpus petition in this cause and include therein all grounds for federal habeas corpus relief petitioner wishes this Court to consider in connection with petitioner's capital murder conviction and death sentence.

6. Respondent shall file his answer to petitioner's *amended* federal habeas corpus petition or other responsive pleading on or before sixty (60) days after receipt of a copy of petitioner's *amended* federal habeas petition. Respondent's answer or other responsive pleading shall conform to the requirements of Rule 5 of the Rules Governing Section 2254 Cases in the United States District Courts and Rule 12 of the Federal Rules of Civil

Procedure. Respondent is not required to file an answer or other response to the petitioner's original federal habeas corpus petition filed in this cause on December 27, 2012.

7. Respondent shall serve petitioner's counsel of record with a copy of said answer or other responsive pleading in accordance with the provisions of Rule 5(b), Federal Rules of Civil Procedure.

8. Exhaustion and Procedural Bar Issues Respondent shall clearly and directly respond to the issue of whether petitioner has exhausted available state remedies with regard to each of the grounds for federal habeas corpus relief set forth in petitioner's pleadings filed in this cause as of this date. If respondent denies that petitioner has exhausted available state remedies with regard to each ground for federal habeas relief set forth in petitioner's pleadings herein, respondent shall explain, in detail, those state remedies still available to petitioner with regard to each unexhausted claim. In the event that respondent wishes to assert the defense that the petitioner has procedurally defaulted on any claim for relief contained in petitioner's federal habeas corpus petition, respondent shall explicitly assert that defense and identify with specificity which of the petitioner's claims the respondent contends are procedurally barred from consideration by this Court.

9. Abuse of the Writ In the event that respondent wishes to assert the defense that the petitioner has abused the writ,

respondent shall explicitly assert that defense and identify with specificity which of the petitioner's claims herein either were included in a prior federal habeas corpus petition by petitioner or could, with the exercise of diligence on petitioner's part, have been included in an earlier federal habeas petition by petitioner.

10. Second or Successive Petition In the event that the respondent wishes to assert the defense that this is a second or successive petition filed by the petitioner attacking the same state criminal proceeding and that the petitioner has failed to comply with the requirements of Title 28 U.S.C. Section 2244, the respondent shall explicitly assert that defense.

11. Limitations In the event that respondent wishes to assert the defense that the petitioner has failed to file this federal habeas corpus action within the one-year statute of limitations set forth in Title 28 U.S.C. Section 2244(d), respondent shall explicitly assert that defense and identify with specificity the date on which the one-year limitations period began to run and all time periods during which that limitations period was tolled.

12. State Court Records On or before thirty (30) days after the date respondent files his answer or other responsive pleading in this cause, respondent shall submit to the Clerk of this Court true and correct copies of all pertinent state court records from petitioner's state court proceedings. Respondent is advised that,

consistent with this Court's Local Rules regarding the disposition of exhibits, all state court records filed in connection with petitioner's first federal action in this Court, i.e., MO-99-CA-72-RF, were destroyed in 2007. Thus, respondent will need to furnish this Court with a complete set of state courts records relating to petitioner's claims contained in petitioner's *amended* petition.

13. Petitioner's Reply On or before twenty (20) days after the date respondent serves petitioner's counsel of record with a copy of respondent's answer or other responsive pleading, petitioner shall file with the Clerk of this Court and serve on respondent's counsel of record any reply he wishes to make to respondent's answer or other responsive pleading.

14. Petitioner's motion for leave to proceed *in forma pauperis*, filed December 27, 2012, docket entry no. 5, is **DENIED**.

15. On or before thirty days from the date of this Order, petitioner shall pay the five dollar filing fee in this cause to the Clerk of this Court. Failure by petitioner to timely comply with this directive will result in the dismissal of this cause without prejudice. Petitioner is advised that it is his responsibility to pay the five dollar filing fee in this cause, not that of his court-appointed counsel.

16. Petitioner's motion for stay of execution, filed December 27, 2012, docket entry no. 4, is **GRANTED** as follows: the Order of the 358th Judicial District Court, Ector County, Texas, setting

petitioner's execution for March 21, 2013 is **STAYED** pending further Order of this Court.

17. The Clerk shall immediately transmit copies of this Order to respondent and all other responsible state governmental officials in accordance with the policies and operating procedures of the United States District Clerk for the Western District of Texas for notifying state officials of a stay of execution.

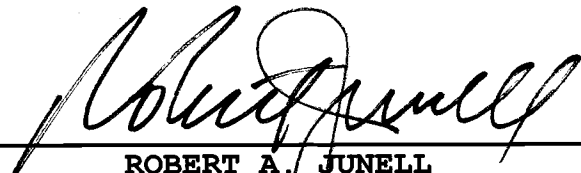
18. Any party seeking an extension on any of the foregoing deadlines shall file a written motion requesting such extension prior to the expiration of the deadline in question and shall set forth in such motion a detailed description of the reasons why that party, despite the exercise of due diligence, will be unable to comply with the applicable deadline.

19. Petitioner is advised his court-appointed counsel are not required to accept collect telephone calls from petitioner or any person acting on petitioner's behalf and that said counsel are not required to expend said counsels' own funds to investigate any claim or potential claim in this cause.

20. The Clerk shall send a copy of this Order via first class mail with a receipt acknowledgment card enclosed to the Post-Conviction Litigation Division of the Office of the Attorney General of the State of Texas, attention *Erich Dryden*.

IT is so ORDERED.

SIGNED and ENTERED this 14th day of January, 2013 at
Midland, Texas.



ROBERT A. JUNELL
United States District Judge

APPENDIX B

CJA 30 DEATH PENALTY PROCEEDINGS: APPOINTMENT OF AND AUTHORITY TO PAY COURT APPOINTED COUNSEL

1. CIR./DIST./DIV. CODE TXW		2. PERSON REPRESENTED GONZALES, MICHAEL DEAN		VOUCHER NUMBER 3015001150																															
3. MAG. DKT./DEF. NUMBER		4. DIST. DKT./DEF. NUMBER 7:12-000126-001		5. APPEALS DKT./DEF. NUMBER																															
6. OTHER DKT. NUMBER		7. IN CASE/MATTER OF (Case Name) GONZALES V THALER		8. TYPE PERSON REPRESENTED																															
9. REPRESENTATION TYPE Capital Habeas Corpus (2254) (Including appeals)		10. OFFENSE(S) CHARGED (Cite U.S. Code, Title & Section) If more than one offense, list (up to five) major offenses charged, according to severity of offense.																																	
11. ATTORNEY'S NAME (First Name, M.I., Last Name, including any suffix) AND MAILING ADDRESS BURR, RICHARD H. BURR AND WELCH PC P.O. BOX 525 LEGGETT TX 77350 Telephone Number: (713) 628-3391		12. COURT ORDER <input checked="" type="checkbox"/> O Appointing Counsel <input type="checkbox"/> C Co-Counsel <input type="checkbox"/> F Subs For Federal Defender <input type="checkbox"/> R Subs For Retained Attorney <input type="checkbox"/> P Subs For Panel Attorney <input type="checkbox"/> Y Standby Counsel Prior Attorney's Name: _____ Appointment Date: _____ (A) Because the above-named person represented has testified under oath or has otherwise satisfied this court that he or she (1) is financially unable to employ counsel and (2) does not wish to waive counsel, and because the interests of justice so require, the attorney whose name appears in Item 11, who has been determined to possess the specific qualifications required by law, is appointed to represent this person in this case. (B) The attorney named in Item 11 is appointed to serve as: <input type="checkbox"/> LEAD COUNSEL <input type="checkbox"/> CO-COUNSEL Name of Co-Counsel or Lead Counsel: _____ Appointment Date: _____ (C) If you represented the defendant or petitioner in any prior proceeding related to this matter, attach to your initial claim a listing of those proceedings and describe your role in each (e.g., lead counsel or co-counsel). <input type="checkbox"/> (D) Due to the expected length of this case, and the anticipated hardship on counsel in undertaking representation full-time for such a period without compensation, interim payments of compensation and expenses are approved pursuant to the attached order. Signature of Presiding Judicial Officer or By Order of the Court _____ Date of Order: 4/3/2015 Nunc Pro Tunc Date _____ (E) Repayment or partial repayment ordered from the person represented for this service at time of appointment. <input type="checkbox"/> YES <input type="checkbox"/> NO																																	
13. NAME AND MAILING ADDRESS OF LAW FIRM (only provide per instructions)																																			
CLAIM FOR SERVICES AND EXPENSES																																			
14. STAGE OF PROCEEDING Check the box which corresponds to the stage of the proceeding during which the work claimed at Item 15 was performed even if the work is intended to be used in connection with a later stage of the proceeding. CHECK NO MORE THAN ONE BOX. Submit a separate voucher for each stage of the proceeding.																																			
<table style="width:100%; border: none;"> <tr> <td colspan="2" style="text-align: center;">CAPITAL PROSECUTION</td> <td colspan="2" style="text-align: center;">HABEAS CORPUS</td> <td colspan="2" style="text-align: center;">OTHER PROCEEDING</td> </tr> <tr> <td>a. <input type="checkbox"/> Pre-Trial</td> <td>e. <input type="checkbox"/> Appeal</td> <td>g. <input type="checkbox"/> Habeas Petition</td> <td>k. <input type="checkbox"/> Petition for the U.S. Supreme Court</td> <td>l. <input type="checkbox"/> Stay of Execution</td> <td>o. <input type="checkbox"/> Other (specify)</td> </tr> <tr> <td>b. <input type="checkbox"/> Trial</td> <td>f. <input type="checkbox"/> Petition for the U.S. Supreme Court</td> <td>h. <input type="checkbox"/> Evidentiary Hearing</td> <td>m. <input type="checkbox"/> Appeal of Denial of Stay</td> <td>n. <input type="checkbox"/> Petition for Writ of Certiorari to the U.S. Supreme Court Regarding Denial of Stay</td> <td>p. <input type="checkbox"/> Clemency</td> </tr> <tr> <td>c. <input type="checkbox"/> Sentencing</td> <td>i. <input type="checkbox"/> Dispositive Motions</td> <td>j. <input type="checkbox"/> Writ of Certiorari</td> <td>gg. <input type="checkbox"/> State Court Appearance</td> <td></td> <td></td> </tr> <tr> <td>d. <input type="checkbox"/> Other Post Trial</td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> </table>						CAPITAL PROSECUTION		HABEAS CORPUS		OTHER PROCEEDING		a. <input type="checkbox"/> Pre-Trial	e. <input type="checkbox"/> Appeal	g. <input type="checkbox"/> Habeas Petition	k. <input type="checkbox"/> Petition for the U.S. Supreme Court	l. <input type="checkbox"/> Stay of Execution	o. <input type="checkbox"/> Other (specify)	b. <input type="checkbox"/> Trial	f. <input type="checkbox"/> Petition for the U.S. Supreme Court	h. <input type="checkbox"/> Evidentiary Hearing	m. <input type="checkbox"/> Appeal of Denial of Stay	n. <input type="checkbox"/> Petition for Writ of Certiorari to the U.S. Supreme Court Regarding Denial of Stay	p. <input type="checkbox"/> Clemency	c. <input type="checkbox"/> Sentencing	i. <input type="checkbox"/> Dispositive Motions	j. <input type="checkbox"/> Writ of Certiorari	gg. <input type="checkbox"/> State Court Appearance			d. <input type="checkbox"/> Other Post Trial					
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d. <input type="checkbox"/> Other Post Trial																																			
HOURS AND COMPENSATION CLAIMED																																			
15. CATEGORIES (Attach itemization of services with dates)		HOURS CLAIMED	TOTAL AMOUNT CLAIMED	MATH/TECH ADJUSTED HOURS	MATH/TECH ADJUSTED AMOUNT																														
a. In-Court Hearings (Rate per Hour = \$)					IN COURT TOTAL (Category a)																														
b. Interviews and Conferences with Client																																			
c. Witness Interviews																																			
d. Consultation with Investigators and Experts																																			
e. Obtaining and Reviewing the Court Record																																			
f. Obtaining and Reviewing Documents and Evidence					OUT OF COURT TOTAL (Categories b - j)																														
g. Consulting with Expert Counsel																																			
h. Legal Research and Writing																																			
i. Travel																																			
j. Other (Specify on additional sheets)																																			
Totals: Categories b thru j (Rate per hour = \$)																																			
CLAIM FOR TRAVEL AND EXPENSES (Attach itemization of expenses with dates)																																			
16. Travel Expenses (lodging, parking, meals, mileage, etc.)																																			
17. Other Expenses (other than expert, transcripts, etc.)																																			
GRAND TOTALS (CLAIMED AND ADJUSTED)																																			
18. CERTIFICATION OF ATTORNEY/PAYEE FOR THE PERIOD OF SERVICE FROM _____ TO _____			19. APPOINTMENT TERMINATION DATE IF OTHER THAN CASE COMPLETION		20. CASE DISPOSITION																														
21. CLAIM STATUS <input type="checkbox"/> Final Payment <input type="checkbox"/> Interim Payment Number _____ Have you previously applied to the court for compensation and/or reimbursement for this case? <input type="checkbox"/> YES <input type="checkbox"/> NO If yes, were you paid? <input type="checkbox"/> YES <input type="checkbox"/> NO Other than from the court, have you, or to your knowledge has anyone else, received payment (compensation or anything of value) from any other source in connection with this representation? <input type="checkbox"/> YES <input type="checkbox"/> NO If yes, give details on additional sheets. I swear or affirm the truth or correctness of the above statements. Signature of Attorney: _____ Date: _____																																			
APPROVED FOR PAYMENT - COURT USE ONLY																																			
22. IN COURT COMP.	23. OUT OF COURT COMP.	24. TRAVEL EXPENSES	25. OTHER EXPENSES	26. TOTAL AMT. APPROVED																															
27. SIGNATURE OF THE PRESIDING JUDICIAL OFFICER			DATE	27a. JUDGE CODE																															

APPENDIX C

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
MIDLAND DIVISION

MICHAEL DEAN GONZALES

V.

RICK THALER

§
§
§
§
§
§

CAUSE NO. MO-12-CV-126 DAE

NOTICE OF ATTORNEY APPEARANCE

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Donna F. Coltharp, Deputy Federal Public Defender and enters his appearance as counsel for the defendant in the above-styled and numbered cause.

Respectfully submitted,

MAUREEN SCOTT FRANCO
Federal Public Defender

/s/DONNA F. COLTHARP
Deputy Federal Public Defender
727 E. César E. Chávez Blvd., Suite B-207
San Antonio, Texas 78206-1205
State Bar No. 24001909
Tel.: 210-472-6700
Fax: 210-472-4454

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of September, 2016, I filed the foregoing Notice of Attorney Appearance using the CM/ECF system which will give electronic notification to the following:



W. Erich Dryden
Office of the Attorney General
State of Texas
P. O. Box 12548
Austin, Texas 78711

/s/ DONNA F. COLTHARP
Assistant Federal Public Defender

APPENDIX D

Selected docket entries for case 18–70026

Generated: 11/25/2019 13:15:53

Filed	Document Description	Page	Docket Text
08/13/2018	 Notice to Appointed Counsel	2	CJA APPOINTMENT for Attorney Mr. Richard H. Burr, III, Esq. for Mr. Michael Dean Gonzales. Counsel must use the eVoucher system to file the voucher at disposition of the case. Please see the attached document for further guidance. ORIGINATING COURT DISTRICT: WTX ORIGINATING CASE NUMBER: 7:12–CV–126 DATE OF APPOINTMENT: 08/09/2018 [18–70026] (MRW)
08/28/2018			APPEARANCE FORM FILED by Attorney Richard H. Burr III for Appellant Michael Dean Gonzales in 18–70026 [18–70026] (MRW)
06/13/2019	 Attorney Appearance Filed	4	APPEARANCE FORM for the court's review. Lead Counsel? No. [18–70026] (Tivon Schardl)
06/14/2019			APPEARANCE FORM FILED by Attorney(s) Tivon Schardl for party(s) Appellant Michael Dean Gonzales, in case 18–70026 [18–70026] (MRW)

NOTICE TO APPOINTED COUNSEL

****PLEASE READ CAREFULLY****

The federal judiciary's electronic vouchering (eVoucher) system was implemented in the Fifth Circuit Court of Appeals on December 7, 2015. **Paper vouchers for work in appeals are no longer accepted.**

EVOUCHER

The eVoucher system has been designed to electronically replicate the paper vouchering process. It is a web-based application that allows attorneys to make contemporaneous time and expense entries as the work progresses. At the end of the representation, the individual entries are cumulated into a virtual voucher which the attorney submits to the court electronically. Scanned copies of supporting material, such as receipts for expense items, may be attached to the voucher file. The system prevents mathematical errors, substantially simplifies the process of voucher preparation, facilitates notification to counsel regarding voucher status, and streamlines the process of voucher approval and payment.

BILLING AND VOUCHER SUBMISSION

Please refer to the Fifth Circuit's CJA Home Page (<http://www.lb5.uscourts.gov/cja2/>) for detailed instructions about how to bill time and expenses and for information on applicable hourly rates and maximum compensation limits. The rules governing the billing of time and expenses compensable under the Criminal Justice Act have not changed with the implementation of eVoucher.

If a voucher requests an amount in excess of the applicable presumptive limit, a **CJA 27 form or memorandum** that provides an explanation will be required and should be submitted as an attachment to the electronic voucher.

In non-capital cases, vouchers should not be submitted until **the end of the case in the court of appeals, including any requests for rehearing.**

In capital cases, attorneys may submit vouchers requesting interim payment of fees and expenses after the completion of significant milestones in the case, for instance, completion of briefing or completion of oral argument. Interim vouchers must be designated as such.

A voucher requesting payment for any work on a petition for certiorari **must be accompanied by a copy of the petition.** If a final voucher has already been submitted for work on the appeal itself, the voucher for the petition for certiorari should be designated "supplemental."

FAQ AND OTHER INFORMATION

A list of frequently asked questions, and a copy of the Fifth Circuit's *Plan Under the Criminal Justice Act for Representation on Appeal*, is available on the CJA Home Page (<http://www.lb5.uscourts.gov/cja2/>).

If you need assistance with CJA vouchers please email cja_request@ca5.uscourts.gov or call 504-310-7765.

Additional information on Criminal Justice Act Guidelines may be found at:

<http://www.uscourts.gov/FederalCourts/AppointmentOfCounsel/CJAGuidelinesForms/GuideToJudiciaryPolicyVolume7.aspx>

ALL PAYMENTS MADE PURSUANT TO THE CRIMINAL JUSTICE ACT ARE SUBJECT TO POST-AUDIT

Unless time entries are made in eVoucher contemporaneously with the work performed, counsel must maintain other contemporaneous time and expense records for three years after approval of the final voucher. Any overpayments are subject to collection, including through deductions from future voucher payments.

NOTICE TO COURT-APPOINTED COUNSEL OF PUBLIC DISCLOSURE OF ATTORNEY FEE INFORMATION

The Criminal Justice Act (CJA), 18 U.S.C. § 3006A, was amended in 1998 to require that the amounts paid to court-appointed attorneys be made publicly available upon the court's approval of the payments. Although the amended paragraph of the statute, § 3006A(d)(4), expired after two years and thus only applies to cases commenced between January 25, 1998, and January 24, 2000, the corresponding guideline (paragraph 5.01 of the Guidelines for the Administration of the Criminal Justice Act and Related Statutes, Volume VII, *Guide to Judiciary Policies and Procedures*) continues as a matter of Judicial Conference policy. The court may disclose an unredacted copy of a payment voucher submitted by defense counsel, or a redacted copy of a voucher indicating only the amounts approved for payment according to categories of services listed in the statute. The extent of disclosure depends on whether the case is pending and on whether the court determines that certain interests (listed below in part B.1) require the redaction of detailed information on the voucher. Upon court approval of a voucher claim, payment information will be made available as follows:

A. BEFORE OR DURING THE TRIAL: After redacting any detailed information provided to justify the expenses, the court shall make available to the public only the amounts approved for payment. Upon the completion of trial, unredacted copies of the vouchers may be released, depending on whether an appeal is being pursued and whether the court determines that one or more of the interests listed in part B.1 require the redaction of information.

B. AFTER THE TRIAL IS COMPLETED: The court shall make available to the public either redacted or unredacted vouchers as follows:

1. If trial court proceedings have been completed and appellate review is not being pursued or has concluded at the time payment is approved: The court shall make an unredacted copy of the payment voucher available to the public unless it determines that one or more of the interests listed below justify limiting disclosure to the amounts approved for payment in the manner described in part A. The interests that may require limiting disclosure include:

- (1) the protection of any person's 5th Amendment right against self-incrimination;
- (2) the protection of the defendant's 6th Amendment right to effective assistance of counsel;
- (3) the defendant's attorney-client privilege;
- (4) the work product privilege of the defendant's counsel;
- (5) the safety of any person; and
- (6) any other interest that justice may require (with the exception that for death penalty cases where the underlying alleged criminal conduct took place on or after April 19, 1995, the amount of the fees shall not be considered a reason justifying any limited disclosure).

2. If appellate review is being pursued at the time payment is approved: The court shall make available to the public only the amounts approved for payment in the manner described in part A unless it finds that none of the interests listed above in part B.1 will be compromised.

C. AFTER THE APPEAL IS COMPLETED: The court shall make an unredacted copy of the payment voucher available to the public unless it determines that one or more of the interests listed in B.1 justify limiting disclosure to the amounts approved for payment in the manner described in part A.

If counsel believes that any of the interests listed above in part B.1 justify limiting disclosure to the amounts approved for payment, counsel should submit to the court a written request, identifying the interests at risk and the arguments in support of providing protection, **AT OR BEFORE THE TIME A CLAIM FOR PAYMENT IS MADE**. Failure to do so could result in the public availability of unredacted copies of your vouchers without further notice.

<p>This constitutes notice under CJA Guideline 5.01. You may NOT receive additional notice before any payment information is made available to the public.</p>	<p>APP 021</p>
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NOTICE OF FORM FOR APPEARANCE (See Fifth Cir. Rule 12)

Only attorneys admitted to the Bar of this Court may practice before the Court. Each attorney representing a party must complete a separate form. (COMPLETE ENTIRE FORM).

Fifth Cir. Case NO. 18-70026Gonzalesvs. Davis

(Short Title)

The Clerk will enter my appearance as Counsel for Michael Gonzales

(Please list names of all parties represented, attach additional pages if necessary.)

The party(s) I represent IN THIS COURT

Petitioner(s)



Respondent(s)



Amicus Curiae



Appellant(s)



Appellee(s)



Intervenor



I certify that the contact information below is current and identical to that listed in my Appellate Filer Account with PACER.

Tivon Schardl

(Signature)

Tivon_Schardl@fd.org

(e-mail address)

Tivon Schardl

(Type or print name)

FL #73016

(State/Bar No.)

Capital Habeas Unit Chief

(Title, if any)



Male



Female

Federal Defender for the Western District of Texas

(Firm or Organization)

Address 919 Congress, Suite 950City & State Austin, TexasZip 78701Primary Tel. 737-207-3008 Cell Phone: 916-320-0924

NOTE: When more than one attorney represents a single party or group of parties, counsel should designate a lead counsel. In the event the court determines oral argument is necessary, lead counsel **only** will receive via e-mail a copy of the court's docket and acknowledgment form. Other counsel must monitor the court's website for the posting of oral argument calendars.

Name of Lead Counsel: Richard Burr

A. Name of any Circuit Judge of the Fifth Circuit who participated in this case in the district or bankruptcy court.

B. Inquiry of Counsel. To your knowledge:

(1) Is there any case now pending in this court, which involves the same, substantially the same, similar or related issue(s)?



Yes



No

(2) Is there any such case now pending in a District Court (i) within this Circuit, or (ii) in a Federal Administrative Agency which would likely be appealed to the Fifth Circuit?



Yes



No

(3) Is there any case such as (1) or (2) in which judgment or order has been entered and the case is on its way to this Court by appeal, petition to enforce, review, deny?



Yes



No

(4) Does this case qualify for calendaring priority under 5th Cir. R. 47.7? If so, cite the type of case _____

If answer to (1), or (2), or (3), is yes, please give detailed information. Number and Style of Related Case:

Name of Court or Agency _____

Status of Appeal (if any) _____

Other Status (if not appealed) _____

NOTE: Attach sheet to give further details.