

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

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In The  
Supreme Court of the United States

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JUAN BALDERAS,  
*Petitioner,*

v.

TEXAS,  
*Respondent.*

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UNOPPOSED MOTION TO DIRECT CLERK TO FILE PETITION  
FOR WRIT OF CERTIORARI

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Juan Balderas is confined under a sentence of death pursuant to a judgment of Texas courts. In 2016, Mr. Balderas filed an application for writ of habeas corpus, challenging the constitutionality of his conviction and sentence. On December 18, 2019, the Texas Court of Criminal Appeals denied relief to Mr. Balderas. As such, the deadline for seeking a writ of certiorari in this Court was March 17, 2020.

On March 17, 2020, counsel for Mr. Balderas submitted Mr. Balderas's petition for writ of certiorari for electronic filing to the Clerk of this Court, along with a related motion to proceed in forma pauperis, certificate of service, and certificate of compliance. On the same day, counsel for Balderas served opposing counsel for the State, Assistant District Attorney Joshua Reiss of the Harris County

District Attorney, with an electronic copy of the petition and related documents. Despite filing the petition through the Supreme Court e-filing system, counsel failed to submit an original and ten copies of the petition as required by Rule 12 of the Supreme Court of the United States. *See also* Rule 29. Counsel was unaware of this oversight until the Clerk's Office brought it to his attention on April 1, 2020. In consultation with the Clerk's Office and opposing counsel, this motion follows.

As this Court is aware, the nation and the world are in the midst of an unprecedented worldwide pandemic related to the coronavirus, COVID-19. Since its first reported case in November 2019, nearly a million cases have been reported worldwide. As of March 11, 2020, the World Health Organization declared the outbreak a pandemic. On March 12, 2020, the Administrative Director of the Texas Office of Courts Administration advised that all Texas courts, staff and agencies needed to take steps to reduce the impact of the virus on the public and protect staff. On that same day, after receiving guidance from the Office of Court Administration, undersigned counsel, the Director of the Texas Office of Capital and Forensic Writs (OCFW),<sup>1</sup> closed the office and directed staff that they could no longer work from the office. The next day, President Trump declared a national state of emergency and the Governor of Texas declared a state of disaster.

All OCFW staff are subject to a shelter-in-place order, which requires that they stay in their homes with the exception of certain specified essential activities

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<sup>1</sup> The Texas Office of Capital and Forensic Writs is an independent agency within the Texas judiciary, and serves as capital post-conviction public defender.

and work performed for an “essential business.”<sup>2</sup> OCFW has not been deemed an “essential business.”<sup>3</sup> Thus, OCFW staff are not authorized to travel to the office for otherwise necessary function such as printing and preparing documents for filing, getting office supplies, and checking the mail. OCFW staff are continuing to do as much work as they can from home, but the circumstances of this worldwide pandemic, illnesses among families and communities, have caused enormous strain and difficulty.<sup>4</sup>

It was undersigned counsel’s responsibility alone to ensure that the requisite number of paper copies were timely sent to the Supreme Court Clerk’s office, separate and apart from the documents submitted for filing through the Court’s e-filing system. This did not occur. Under the circumstances of this capital case, especially given the ongoing worldwide pandemic, counsel asks that this Court not hold counsel’s failure against Mr. Balderas.

At the time when the paper copies should have been sent for filing, OCFW staff, pursuant to guidance from the Texas judiciary, were not allowed to go into the office and access supplies and equipment commonly used for filing. And all staff are

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<sup>2</sup> The emergency declarations of the Texas Governor may be accessed here: <https://gov.texas.gov/news/post/governor-abbott-issues-executive-order-implements-statewide-essential-services-and-activities-protocols> (last visited April 2, 2020). The stay-at-home orders of Travis County Texas (which includes Austin), may be accessed here: <https://www.traviscountytx.gov/news/2020/1945-novel-coronavirus-covid-19-information> (last visited April 2, 2020).

<sup>3</sup> *See, e.g.*, [https://www.cisa.gov/sites/default/files/publications/CISA\\_Guidance\\_on\\_the\\_Essential\\_Critical\\_Infrastructure\\_Workforce\\_Version\\_2.0\\_Updated.pdf](https://www.cisa.gov/sites/default/files/publications/CISA_Guidance_on_the_Essential_Critical_Infrastructure_Workforce_Version_2.0_Updated.pdf) (last visited April 2, 2020)

<sup>4</sup> This Court recognized the difficulty posed by this pandemic to litigants with its March 19 Order extending filing deadlines.

presently under a shelter-in-place order, which likewise limits their ability to travel to the office to accomplish these tasks.

Notwithstanding these difficulties associated with the ongoing national disaster and worldwide pandemic, counsel concedes that he should have ensured that paper copies were properly sent as both counsel of record and as the person with supervisorial authority over the office. At the time, however, as Director of OCFW, counsel was preoccupied by the intense challenges of figuring out how to transition OCFW to a remote-working environment, ensuring that staff remained safe while continuing necessary client work, caring for ill family members, and attempting to home school young children.

Under the circumstances, counsel respectfully requests this Court not to hold counsel's failure against Mr. Balderas and grant his motion to direct the Clerk to file Mr. Balderas's petition for writ of certiorari. The requested relief is consistent with the measures that this Court has already found to be appropriate under these frightening and sui generis circumstances of this worldwide deadly pandemic. Counsel has conferred with opposing counsel for the State of Texas, who are unopposed to this motion.<sup>5</sup> A copy of the Petition for Writ of Certiorari filed in *Juan Balderas v. Texas*, the motion to proceed in forma pauperis, and the certificates of service and compliance, all of which were timely efiled on March 17, 2020 are

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<sup>5</sup> On April 2, 2020, counsel conferred with Harris County Assistant District Attorney Joshua Reiss, who indicated that his office was unopposed to this motion. Mr. Reiss also informed counsel that the Texas Attorney General would be assisting the Harris County District Attorney in responding to Mr. Balderas's Petition for Writ of Certiorari, specifically Assistant Attorney General Tomee Heining. On April 2, 2020, counsel conferred with Ms. Heining, who indicated that she did not oppose the relief sought.

attached hereto as appendices. Counsel additionally notes that because the State of Texas was timely served on March 17, 2020, the State is not prejudiced by counsel's clerical error.

Wherefore, Mr. Balderas moves this Court to direct the Clerk to file the attached petition for writ of certiorari and grant his motion to proceed in forma pauperis.

*/s/ Benjamin Wolff*  
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