

CASE NO. _____ (CAPITAL CASE)

IN THE SUPREME COURT OF THE UNITED STATES

JOE MICHAEL LUNA,
Petitioner,

v.

BOBBY LUMPKIN, DIRECTOR,
Respondent.

**PETITIONER'S MOTION AND AFFIRMATION
FOR LEAVE TO PROCEED *IN FORMA PAUPERIS***

Petitioner, Joe Michael Luna, through counsel, respectfully moves for leave to proceed *in forma pauperis* and submits as follows:

1. This case is before the Court on a petition for writ of certiorari.
2. Joe Michael Luna is a death sentenced prisoner in Texas.
3. On June 3, 2015, the United States District Court for the Western District of Texas appointed counsel to represent Petitioner in this capital habeas proceeding, but required him to pay the \$5 filing fee. A copy of that Order is attached.
4. On January 7, 2019, the Fifth Circuit docketed his appeal and allowed him to proceed *in forma pauperis*. A copy of the docket is attached which indicates "Fee Status: In Forma Pauperis."

5. Petitioner remains incarcerated today and there has been no change in his financial status. He is without funds to secure the services necessary to proceed in this Court (*e.g.*, printing fees, etc.) or to pay any fees.

6. Undersigned counsel affirms that all statements related above are true and correct.

WHEREFORE, Petitioner requests that this Court allow him to proceed *in forma pauperis*.

Respectfully submitted,

/s/ Stuart B. Lev
STUART BRIAN LEV
Assistant Federal Defender
Federal Community Defender Office
for the Eastern District of Pennsylvania
The Curtis Center – Suite 545 West
Independence Square West
Philadelphia, PA 19106
(215) 928-0520
stuart_lev@fd.org

Counsel for Petitioner, Joe Michael Luna

Dated: August 12, 2021

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

**JOE MICHAEL LUNA,
TDCJ No. 999509,**

Petitioner,

V.

**WILLIAM STEPHENS, Director,
Texas Department of Criminal Justice,
Correctional Institutions Division,**

Respondent.

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CIVIL NO. SA-15-CA-451-XR

ORDER APPOINTING COUNSEL AND SETTING DEADLINES

The matters before this Court are (1) Petitioner's application for leave to proceed In Forma Pauperis, submitted as attachment 1 to Petitioner's motion for appointment of counsel, filed June 1, 2015 (ECF no. 1-1), and (2) Petitioner's motion for appointment of counsel, filed June 1, 2015 (ECF no. 1), and (3) the status of this case.

Background

In March, 2006, Petitioner pled guilty in open court to capital murder in connection with the fatal strangulation of Michael Paul Andrade in the course of the robbery of Andrade and the burglary and arson of Andrade's apartment. A Bexar County jury answered the Texas capital sentencing special issues favorably to the prosecution and the state trial court imposed a sentence of death. The Texas Court of Criminal Appeals affirmed Petitioner's capital murder conviction and death sentence on direct appeal. *Luna v. State*, 268 S.W.3d 594 (Tex. Crim. App. 2008). The United States Supreme Court denied certiorari on October 5, 2009. *Luna v. Texas*, 558 U.S. 1093 (2009). Petitioner filed an application for state habeas corpus relief which the Texas Court of Criminal

Appeals denied in an unpublished *per curiam* Order in which it adopted most of the state habeas trial court's findings of fact and conclusions of law. *Ex parte Joe Luna*, 2015 WL 1870305, WR-70,511-01 (Tex. Crim. App. April 22, 2015).

Filing Fee and IFP Application

Petitioner has neither paid the five dollar filing fee in this cause nor filed a complete application for leave to proceed In Forma Pauperis with the accompanying certificate of inmate trust account available from Petitioner's TDCJ facility law librarian. The Court will direct Petitioner to either pay the modest filing fee in this cause or submit to the Clerk the necessary application for leave to proceed In Forma Pauperis with all necessary documentation indicating Petitioner is currently unable to pay the filing fee. Petitioner is advised he may obtain a certified copy of his TDCJ inmate trust account statement from the law librarian at his TDCJ facility. Payment of the five dollar filing fee in this cause does not render Petitioner ineligible for appointment of counsel in this cause.

Motion for Appointment of Counsel

Petitioner's state habeas counsel, attorney Michael C. Gross, filed a motion for appointment of counsel on Petitioner's behalf requesting that this Court appoint qualified counsel to represent Petitioner in this federal habeas corpus proceeding. The Supreme Court concluded in its opinion in *McFarland v. Scott*, 512 U.S. 849, 855-58 (1994), that a state prisoner facing a death sentence possessed a qualified statutory right under former 21 U.S.C. Section 848(q)(4)(B) 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). In March, 2006, Congress repealed 21 U.S.C. Section 848(q) and simultaneously re-enacted

same in substantially similar form as new 18 U.S.C. Section 3599. Petitioner requests that this Court appoint qualified counsel to represent Petitioner herein pursuant to Section 3599. Petitioner has requested that this Court appoint the Federal Community Defender Office for the Eastern District of Pennsylvania to represent Petitioner herein pursuant to the Guide to Judiciary Policy, Volume 7, Section 440. This Court will grant Petitioner's request.

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

1. Petitioner's motion for appointment of counsel, filed June 1, 2015, (ECF no. 1), is **GRANTED**. The Federal Community Defender Office for the Eastern District of Pennsylvania is appointed to represent Petitioner herein pursuant to the Guide to Judiciary Policy, Volume 7, Section 440. Attorney Stuart B. Lev, whose mailing address is 8217 Forest Hill Drive, Elkins Park, Pennsylvania 19027, and whose office telephone number is (215) 928-0520, is appointed lead counsel of record for Petitioner herein and attorney Peter Walker, whose mailing address is 3455 Indian Queen Lane, Philadelphia, Pennsylvania 19129, and whose office telephone number is (713) 829-6407 is appointed as co-counsel for Petitioner herein.

2. On or before **October 9, 2015**, Petitioner shall file, and serve on the Post-Conviction Litigation Division of the Office of the Texas Attorney General, his 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 his capital murder conviction and death sentence.

3. Respondent shall file his answer to Petitioner's federal habeas corpus petition or other responsive pleading on or before sixty days after receipt of a copy of Petitioner's 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.

4. 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.

5. 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.

6. 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.

7. 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 28 U.S.C. Section 2244, the Respondent shall explicitly assert that defense.

8. 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 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.

9. State Court Records. On or before thirty 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.

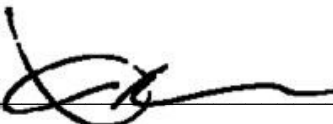
10. Petitioner's Reply. On or before twenty days after the date Respondent serves Petitioner's counsel of record with a copy of Respondent's answer or other responsive pleading, Petitioner shall file with the Clerk of this Court *and* serve on Respondent's counsel of record any reply he wishes to make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

11. Extensions. 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.

12. Filing Fee. On or before thirty days from the date of this Order, Petitioner shall either (1) pay the five dollar filing fee in this cause to the Clerk of this Court or (2) file a completed application for leave to proceed *in forma pauperis*, including a certified copy of Petitioner's inmate trust account statement available from the law librarian at Petitioner's TDCJ facility.

13. The Clerk shall send a copy of this Order via first class mail with a receipt acknowledgment card enclosed to (1) Petitioner, (2) Petitioner's counsel of record, and (3) the Post-Conviction Litigation Division of the Office of the Attorney General of the State of Texas, *attention Stephen Hoffman*.

SIGNED this 3rd day of June, 2015.



XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE

PACER fee: Exempt

**General Docket
United States Court of Appeals for the Fifth Circuit**

Court of Appeals Docket #: 19-70002 Nature of Suit: 3535 Habeas Corpus - Death Penalty Luna v. Lumpkin Appeal From: Western District of Texas, San Antonio Fee Status: In Forma Pauperis	Docketed: 01/07/2019 Termed: 10/22/2020
Case Type Information: 1) Death Penalty w/ Counsel 2) State 3)	
Originating Court Information: District: 0542-5 : 5:15-CV-451 Originating Judge: Xavier Rodriguez, U.S. District Judge Date Filed: 06/01/2015 Date NOA Filed: 12/31/2018 Date Rec'd COA: 01/02/2019	
Prior Cases: None	
Current Cases: None	
Panel Assignment: Not available	














Joe Michael Luna Petitioner - Appellant	Peter James Walker Direct: 215-928-0520 Email: peter_walker@fd.org Fax: 215-928-0826 [COR LD NTC CJA Appointment] Federal Community Defender Office Eastern District of Pennsylvania Suite 545-W. 601 Walnut Street Curtis Center Philadelphia, PA 19106-0000
	Stuart Lev Direct: 215-928-0520 Email: stuart_lev@fd.org Fax: 215-928-0826 [COR NTC Fed Public Defender] Federal Community Defender Office Eastern District of Pennsylvania 5th Floor 601 Walnut Street Curtis Center Philadelphia, PA 19106-0000
v.	
Lorie Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division Terminated: 08/13/2020 Respondent - Appellee	
Bobby Lumpkin, Director, Texas Department of Criminal Justice, Correctional Institutions Division Respondent - Appellee	Katherine D. Hayes, Assistant Attorney General Email: katherine.hayes@oag.texas.gov [COR LD NTC Government] Office of the Attorney General Criminal Appeals Division P.O. Box 12548 Austin, TX 78711-2548














Kyle D. Highful
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[COR LD NTC Government]
Office of the Attorney General
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Austin, TX 78711-2548

Joe Michael Luna,
Petitioner - Appellant












v.

Bobby Lumpkin, Director, Texas Department of Criminal Justice, Correctional Institutions Division,
Respondent - Appellee






- 01/07/2019  DEATH PENALTY CASE docketed. NOA filed by Appellant Mr. Joe Michael Luna [19-70002] (MRW) [Entered: 01/07/2019 03:16 PM]
3 pg, 36.84 KB
- 01/09/2019  APPEARANCE FORM received from Mr. Peter James Walker for Mr. Joe Michael Luna for the court's review. Lead Counsel? Yes. [19-70002] (Peter James Walker) [Entered: 01/09/2019 03:12 PM]
1 pg, 139.27 KB
- 01/10/2019  TRANSCRIPT ORDER received advising transcript unnecessary [19-70002]
REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: TRANSCRIPT ORDER received from Appellant Mr. Joe Michael Luna advising transcript unnecessary Date of Service: 01/10/2019 via email - Attorney for Appellee: Hayes; Attorney for Appellant: Walker [19-70002] (Peter James Walker) [Entered: 01/10/2019 09:47 AM]
1 pg, 123.54 KB
- 01/11/2019 APPEARANCE FORM FILED by Attorney Peter James Walker for Appellant Joe Michael Luna in 19-70002 [19-70002] (MRW) [Entered: 01/11/2019 10:30 AM]
- 01/11/2019  INITIAL CASE CHECK by Attorney Advisor complete, Action: Case OK to Process. [8958795-2] Initial AA Check Due satisfied. [19-70002] (MRW) [Entered: 01/11/2019 10:32 AM]
3 pg, 171.41 KB
- 01/11/2019 ELECTRONIC RECORD ON APPEAL REQUESTED FROM DISTRICT COURT for 5:15-CV-451. Electronic ROA due on 01/28/2019. [19-70002] (MRW) [Entered: 01/11/2019 10:53 AM]
- 01/14/2019  APPEARANCE FORM received from Ms. Katherine D. Hayes for Ms. Lorie Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division for the court's review. Lead Counsel? Yes. [19-70002] (Katherine D. Hayes) [Entered: 01/14/2019 02:43 PM]
1 pg, 192.68 KB
- 01/14/2019 APPEARANCE FORM FILED by Attorney Katherine D. Hayes for Appellee Lorie Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division in 19-70002 [19-70002] (MRW) [Entered: 01/14/2019 03:00 PM]
- 01/30/2019 ELECTRONIC RECORD ON APPEAL FILED. Exhibits on File in District Court? No. State Court Papers included? Yes. Electronic ROA deadline satisfied. [19-70002] (MRW) [Entered: 01/30/2019 08:44 AM]
- 01/30/2019  LETTER ISSUED. Motion for COA and brief in support are required. Motion due on 03/11/2019 for Appellant Joe Michael Luna. Brief in Support due on 03/11/2019 for Appellant Joe Michael Luna [19-70002] (MRW) [Entered: 01/30/2019 08:47 AM]
3 pg, 120.43 KB
- 03/01/2019  UNOPPOSED MOTION filed by Appellant Mr. Joe Michael Luna to extend time to comply with COA requirements until 04/10/2019 [8996221-2]. Date of service: 03/01/2019 via email - Attorney for Appellee: Hayes; Attorney for Appellant: Walker [19-70002] (Peter James Walker) [Entered: 03/01/2019 01:47 PM]
5 pg, 96.07 KB
- 03/04/2019  COURT ORDER granting Motion to extend time to comply with COA requirements filed by Appellant Mr. Joe Michael Luna [8996221-2] Motion due deadline updated to 04/10/2019 for Appellant Joe Michael Luna. Brief in Support deadline updated to 04/10/2019 for Appellant Joe Michael Luna [19-70002] (MFY) [Entered: 03/04/2019 01:25 PM]
2 pg, 105.35 KB
- 03/29/2019  UNOPPOSED MOTION filed by Appellant Mr. Joe Michael Luna to extend time to comply with COA requirements until 04/24/2019 [9017593-2]. [19-70002]
REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: UNOPPOSED LEVEL 1 EXTENSION REQUESTED by Appellant Mr. Joe Michael Luna for filing Application for Certificate of Appealability until 04/24/2019 [19-70002] (Peter James Walker) [Entered: 03/29/2019 03:14 PM]
6 pg, 98.67 KB
- 03/29/2019  COURT ORDER granting motion to extend time to comply with COA requirements filed by Appellant Mr. Joe Michael Luna [9017593-2] Motion due deadline updated to 04/24/2019 for Appellant Joe Michael Luna. Brief in Support deadline updated to 04/24/2019 for Appellant Joe Michael Luna [19-70002] (DLM) [Entered: 03/29/2019 04:02 PM]
1 pg, 71.77 KB
- 04/24/2019  OPPOSED MOTION for certificate of appealability [9036716-2]. Motion due deadline satisfied.. Response/Opposition due on 05/24/2019. [19-70002]
REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: MOTION filed by Appellant Mr. Joe Michael Luna for certificate of appealability [9036716-2]. Date of service: 04/24/2019 via email - Attorney for Appellee: Hayes; Attorney for Appellant: Walker [19-70002] (Peter James Walker) [Entered: 04/24/2019 03:45 PM]
81 pg, 2.71 MB
- 04/24/2019  OPPOSED MOTION filed by Appellant Mr. Joe Michael Luna to establish briefing notice[9036725-2]. Date of service: 04/24/2019 via email - Attorney for Appellee: Hayes; Attorney for Appellant: Walker [19-70002] (Peter James Walker) [Entered: 04/24/2019 03:49 PM]
5 pg, 97.69 KB
- 04/24/2019  APPEARANCE FORM for the court's review. Lead Counsel? No. [19-70002] (Stuart Lev) [Entered: 04/24/2019 03:54 PM]
1 pg, 137.83 KB
- 04/24/2019 BRIEF IN SUPPORT filed by Appellant Mr. Joe Michael Luna in support of Motion for certificate of appealability [9036716-2] (INCORPORATED IN MOTION FOR COA) Brief in Support deadline satisfied. [9037066-1] [19-70002] (MRW) [Entered: 04/25/2019 09:40 AM]

- 04/26/2019 APPEARANCE FORM FILED by Attorney(s) Stuart Lev for party(s) Appellant Joe Michael Luna, in case 19-70002 [19-70002] (MRW) [Entered: 04/26/2019 07:38 AM]
- 04/26/2019  COURT DIRECTIVE ISSUED The Court requests that Luna's counsel submit by May 1 a letter brief with any authority supporting its request to brief separately as a non-COA issue its argument that there was a denial of fair and independent review due to the state habeas court's near verbatim adoption of the State's proposed findings and conclusions of law." Unlike the first request (which is supported by Norman), this second issue is not one about the "district court's procedures." It instead is about the state court's procedures. So it is not readily apparent from the motion filed on April 24 that this second issue does not need a COA. [9038623-2]. [19-70002] (MRW) [Entered: 04/26/2019 03:45 PM]
1 pg, 99.57 KB
- 04/29/2019  RESPONSE/OPPOSITION [9039497-1] to the Motion establish briefing notice filed by Appellant Mr. Joe Michael Luna in 19-70002 [9036725-2] [19-70002]
11 pg, 154.2 KB
REVIEWED AND/OR EDITED - The original text prior to review appeared as follows:
RESPONSE/OPPOSITION filed by Ms. Lorie Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division [9039497-1] to the Motion filed by Appellant Mr. Joe Michael Luna [9036725-2] Date of Service: 04/29/2019 via email - Attorney for Appellee: Hayes; Attorney for Appellants: Lev, Walker. [19-70002] (Katherine D. Hayes) [Entered: 04/29/2019 01:36 PM]
- 04/30/2019  UNOPPOSED MOTION filed by Appellant Mr. Joe Michael Luna to extend the time to file a response to the Court directive of 4/26/19f [9038623-2] , Response/Opposition [9039497-2] filed by Appellee Ms. Lorie Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division until 05/08/2019 [9040978-2]. Date of service: 04/30/2019 via email - Attorney for Appellee: Hayes; Attorney for Appellants: Lev, Walker [19-70002] (Peter James Walker) [Entered: 04/30/2019 02:30 PM]
6 pg, 97.93 KB
- 05/01/2019  COURT ORDER granting Motion to extend time to respond to the court's directive and file and incorporated reply filed by Appellant Mr. Joe Michael Luna granted to 5/8/19 [9040978-2] [19-70002] (MRW) [Entered: 05/01/2019 08:30 AM]
3 pg, 110.35 KB
- 05/07/2019  LETTER BRIEF RESPONSE IN OPPOSITION filed by Mr. Joe Michael Luna [9046971-1] to the Court Order [9038623-2], Motion filed by Appellant Mr. Joe Michael Luna [9040978-2] Date of Service: 05/07/2019 via email - Attorney for Appellee: Hayes; Attorney for Appellants: Lev, Walker. [19-70002] (Peter James Walker) [Entered: 05/07/2019 01:23 PM]
12 pg, 109.55 KB
- 05/07/2019  REPLY filed by Appellant Mr. Joe Michael Luna [9047049-1] to the Response/Opposition filed by Appellee Ms. Lorie Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division in 19-70002 [9039497-2], to the Motion establish briefing notice filed by Appellant Mr. Joe Michael Luna in 19-70002 [9036725-2]. [19-70002] (MRW) [Entered: 05/07/2019 02:00 PM]
6 pg, 118.09 KB
- 05/16/2019  UNOPPOSED MOTION filed by Appellee Ms. Lorie Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division to extend the time to file a response to the Motion [9036716-2] filed by Appellant Mr. Joe Michael Luna until 06/24/2019 [9054639-2]. Date of service: 05/16/2019 via email - Attorney for Appellee: Hayes; Attorney for Appellants: Lev, Walker [19-70002] (Katherine D. Hayes) [Entered: 05/16/2019 01:54 PM]
6 pg, 145.01 KB
- 05/17/2019  COURT ORDER granting Motion to extend time to file a response until 6/24/19 filed by Appellee Ms. Lorie Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division [9054639-2] [19-70002] (MRW) [Entered: 05/17/2019 08:42 AM]
2 pg, 109.36 KB
- 05/17/2019 RESPONSE DUE to Motion for certificate of appealability filed by Appellant Mr. Joe Michael Luna in 19-70002 [9036716-2] Response/Opposition deadline updated to 06/24/2019 [19-70002] (MRW) [Entered: 05/17/2019 08:43 AM]
- 06/24/2019  RESPONSE/OPPOSITION filed by Ms. Lorie Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division [9082289-1] to the Motion filed by Appellant Mr. Joe Michael Luna [9036716-2] Date of Service: 06/24/2019 via email - Attorney for Appellee: Hayes; Attorney for Appellants: Lev, Walker. [19-70002] (Katherine D. Hayes) [Entered: 06/24/2019 10:33 AM]
71 pg, 394.12 KB
- 06/28/2019  UNOPPOSED MOTION filed by Appellant Mr. Joe Michael Luna to file reply to the response in opposition to the motion for certificate of appealability by 07/29/2019 [9086947-2]. Date of service: 06/28/2019 via email - Attorney for Appellee: Hayes; Attorney for Appellants: Lev, Walker [19-70002] (Peter James Walker) [Entered: 06/28/2019 02:56 PM]
5 pg, 97.55 KB
- 06/28/2019  COURT ORDER granting in part Motion for leave to file a reply filed by Appellant Mr. Joe Michael Luna [9086947-2] [19-70002] Appellant is allowed to file a reply, but it must be filed within 20 days from the date the response was filed (not from the date of this order). (MRW) [Entered: 06/28/2019 03:43 PM]
2 pg, 109.84 KB
- 07/15/2019  REPLY filed by Appellant Mr. Joe Michael Luna [9097691-1] to the Response/Opposition filed by Appellee Ms. Lorie Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division [9082289-2], to the Motion filed by Appellant Mr. Joe Michael Luna [9036716-2]. Date of Service: 07/15/2019 via email - Attorney for Appellee: Hayes; Attorney for Appellants: Lev, Walker. [19-70002] (Peter James Walker) [Entered: 07/15/2019 02:35 PM]
33 pg, 141.7 KB
- 10/24/2019  NON DISPOSITIVE UNPUBLISHED OPINION FILED. Judge: JLD , Judge: JEG , Judge: GJC; granting in part Motion for certificate of appealability filed by Appellant Mr. Joe Michael Luna [9036716-2]; [9036725-
14 pg, 192.55 KB

[2](#) [19-70002] (NFD) [Entered: 10/24/2019 11:43 AM]

- 10/24/2019  BRIEFING NOTICE ISSUED A/Pet's Brief Due on 12/03/2019 for Appellant Joe Michael Luna. [19-70002] (MRW) [Entered: 10/24/2019 01:04 PM]
4 pg, 129.61 KB
- 10/30/2019  COURT ORDER denying as moot Motion establish briefing notice filed by Appellant Mr. Joe Michael Luna [\[9036725-2\]](#) [19-70002] In light of the court's grant of a COA on one of Luna's claim, a schedule for merits briefing has issued. To the extent Luna desires to raise issues concerning the denial of a hearing in district court, or the state habeas court's procedure in making factual findings, that relate to the ineffective assistance claim that was authorized for appeal, he may do so in his merits brief. If the respondent believes any such issues required a separate COA, it may make that argument in its merits brief. (MRW) [Entered: 10/30/2019 10:46 AM]
3 pg, 111.47 KB
- 11/04/2019  APPEARANCE FORM for the court's review. Lead Counsel? Yes. [19-70002] (Kyle D. Highful) [Entered: 11/04/2019 10:07 AM]
1 pg, 107.3 KB
- 11/04/2019 APPEARANCE FORM FILED by Attorney(s) Kyle D. Highful for party(s) Appellee Lorie Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division, in case 19-70002 [19-70002] (MRW) [Entered: 11/04/2019 01:15 PM]
- 11/26/2019  UNOPPOSED MOTION to extend time to file brief as appellant until 01/02/2020 [9198413-2]. [19-70002] REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: UNOPPOSED MOTION filed by Appellant Mr. Joe Michael Luna to extend time to file brief as appellant until 01/02/2020 [9198413-2]. Date of service: 11/26/2019 via email - Attorney for Appellees: Hayes, Highful; Attorney for Appellants: Lev, Walker [19-70002] (Stuart Lev) [Entered: 11/26/2019 01:35 PM]
6 pg, 14.66 KB
- 11/26/2019  COURT ORDER granting Motion to extend time to file appellant's brief filed by Appellant Mr. Joe Michael Luna [\[9198413-2\]](#) A/Pet's Brief deadline updated to 01/02/2020 for Appellant Joe Michael Luna [19-70002] (MRW) [Entered: 11/26/2019 02:44 PM]
2 pg, 110.04 KB
- 12/23/2019  UNOPPOSED MOTION filed by Appellant Mr. Joe Michael Luna to file brief in excess of the word count limitation but not to exceed 20,000 words [9216054-2]. Date of service: 12/23/2019 via email - Attorney for Appellees: Hayes, Highful; Attorney for Appellants: Lev, Walker [19-70002] (Stuart Lev) [Entered: 12/23/2019 08:42 AM]
6 pg, 14.88 KB
- 12/23/2019  COURT ORDER. IT IS ORDERED that Appellant's unopposed motion to file their brief in excess of word count but not to exceed 20,000 words is GRANTED IN PART. The word limit is extended to 17,000 words, which should be more than enough given the remaining issues. [\[9216054-2\]](#) [19-70002] (MFY) [Entered: 12/23/2019 01:31 PM]
2 pg, 105.77 KB
- 01/02/2020  APPELLANT'S BRIEF FILED
A/Pet's Brief deadline satisfied. Appellee's Brief due on 02/03/2020 for Appellee Lorie Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division. Paper Copies of Brief due on 01/07/2020 for Appellant Joe Michael Luna. [19-70002]
REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: APPELLANT'S BRIEF FILED by Mr. Joe Michael Luna. Date of service: 01/02/2020 via email - Attorney for Appellees: Hayes, Highful; Attorney for Appellants: Lev, Walker [19-70002] (Stuart Lev) [Entered: 01/02/2020 02:31 PM]
82 pg, 273.07 KB
- 01/02/2020  SUFFICIENT RECORD EXCERPTS FILED. Sufficient Record Excerpts deadline satisfied. Paper Copies of Record Excerpts due on 01/07/2020 for Appellant Joe Michael Luna. [19-70002]
REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: RECORD EXCERPTS FILED. Record Excerpts NOT Sufficient as they require does not contain a cover page with the name of the court, the court's caption, lower court's information, title of the document and the attorney name, address and telephone number. Instructions to Attorney: PLEASE READ THE ATTACHED NOTICE FOR INSTRUCTIONS ON HOW TO REMEDY THE DEFAULT. Sufficient Record Excerpts due on 01/16/2020 for Appellant Joe Michael Luna [19-70002] REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: RECORD EXCERPTS FILED by Appellant Mr. Joe Michael Luna. Date of service: 01/02/2020 via email - Attorney for Appellees: Hayes, Highful; Attorney for Appellants: Lev, Walker [19-70002] (Stuart Lev) [Entered: 01/02/2020 02:35 PM]
130 pg, 1.69 MB
- 01/02/2020  PROPOSED SUFFICIENT RECORD EXCERPTS filed by Appellant Mr. Joe Michael Luna [\[9220979-2\]](#)
Date of service: 01/02/2020 via email - Attorney for Appellees: Hayes, Highful; Attorney for Appellants: Lev, Walker [19-70002] (Stuart Lev) [Entered: 01/02/2020 03:16 PM]
0 pg, 0 KB
- 01/08/2020 Paper copies of Appellant Brief filed by Appellant Mr. Joe Michael Luna in 19-70002 received. Paper copies match electronic version of document? Yes # of Copies Provided: 7. Paper Copies of Brief due deadline satisfied. [19-70002] (MRW) [Entered: 01/08/2020 12:08 PM]
- 01/08/2020 Paper copies of Record Excerpts filed by Appellant Mr. Joe Michael Luna in 19-70002 received. Paper copies match electronic version of document? Yes # of Copies Provided: 4. Paper Copies of Record Excerpts due deadline satisfied. [19-70002] (MRW) [Entered: 01/08/2020 12:11 PM]
- 01/21/2020  MOTION to extend time to file brief of appellee until 03/04/2020 [9234111-2]. [19-70002]
REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: UNOPPOSED
3 pg, 51.89 KB

- MOTION filed by Appellee Ms. Lorie Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division to extend time to file brief of appellee until 03/04/2020 [9234111-2]. Date of service: 01/21/2020 via email - Attorney for Appellees: Hayes, Highful; Attorney for Appellants: Lev, Walker [19-70002] (Kyle D. Highful) [Entered: 01/21/2020 03:34 PM]
- 01/22/2020  2 pg, 109.89 KB COURT ORDER granting Motion to extend time to file appellee's brief filed by Appellee Ms. Lorie Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division [9234111-2] E/Res's Brief deadline updated to 03/04/2020 for Appellee Lorie Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division [19-70002] (MRW) [Entered: 01/22/2020 08:46 AM]
- 02/21/2020  3 pg, 57.09 KB UNOPPOSED MOTION Appellee Ms. Lorie Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division to extend time to file brief of appellee [9256045-2]. [19-70002] REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: UNOPPOSED LEVEL 1 EXTENSION REQUESTED by Appellee Ms. Lorie Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division for filing Appellee's Brief until 03/11/2020 [19-70002] (Kyle D. Highful) [Entered: 02/21/2020 09:32 AM]
- 02/21/2020  2 pg, 105.41 KB COURT ORDER granting Motion to extend time to file appellee's brief filed by Appellee Ms. Lorie Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division [9256045-2] E/Res's Brief deadline updated to 03/11/2020 for Appellee Lorie Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division [19-70002] (MFY) [Entered: 02/21/2020 02:46 PM]
- 03/02/2020  112 pg, 497.16 KB OPPOSED MOTION filed by Appellee Ms. Lorie Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division to dismiss appeal for lack of jurisdiction [9261812-2]. Date of service: 03/02/2020 via email - Attorney for Appellees: Hayes, Highful; Attorney for Appellants: Lev, Walker [19-70002] (Kyle D. Highful) [Entered: 03/02/2020 01:43 PM]
- 03/05/2020  6 pg, 17.05 KB RESPONSE/OPPOSITION [9264846-1] to the Motion to dismiss appeal for lack of jurisdiction filed by Appellee Ms. Lorie Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division in 19-70002 [9261812-2] [19-70002] REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: RESPONSE/OPPOSITION filed by Mr. Joe Michael Luna [9264846-1] to the Motion filed by Appellee Ms. Lorie Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division [9261812-2] Date of Service: 03/05/2020 via email - Attorney for Appellees: Hayes, Highful; Attorney for Appellants: Lev, Walker. [19-70002] (Stuart Lev) [Entered: 03/05/2020 11:08 AM]
- 03/11/2020  54 pg, 401.56 KB APPELLEE'S BRIEF FILED # of Copies Provided: 0 E/Res's Brief deadline satisfied. Reply Brief due on 04/01/2020 for Appellant Joe Michael Luna. Paper Copies of Brief due on 03/17/2020 for Appellee Lorie Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division. [19-70002] REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: APPELLEE'S BRIEF FILED by Ms. Lorie Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division. Date of service: 03/11/2020 via email - Attorney for Appellees: Hayes, Highful; Attorney for Appellants: Lev, Walker [19-70002] (Kyle D. Highful) [Entered: 03/11/2020 03:54 PM]
- 03/13/2020 Paper copies of Appellee Brief filed by Appellee Ms. Lorie Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division in 19-70002 received. Paper copies match electronic version of document? Yes # of Copies Provided: 7. Paper Copies of Brief due deadline satisfied. [19-70002] (DLM) [Entered: 03/13/2020 12:30 PM]
- 03/31/2020  31 pg, 129.46 KB APPELLANT'S REPLY BRIEF FILED Reply Brief deadline satisfied [19-70002] REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: APPELLANT'S REPLY BRIEF FILED by Mr. Joe Michael Luna. Date of service: 03/31/2020 via email - Attorney for Appellees: Hayes, Highful; Attorney for Appellants: Lev, Walker [19-70002] (Peter James Walker) [Entered: 03/31/2020 01:56 PM]
- 06/03/2020  2 pg, 86.39 KB SUPPLEMENTAL AUTHORITIES (FRAP 28j) FILED by Appellee Ms. Lorie Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division Date of Service: 06/03/2020 via email - Attorney for Appellees: Hayes, Highful; Attorney for Appellants: Lev, Walker [19-70002] (Kyle D. Highful) [Entered: 06/03/2020 09:24 AM]
- 06/10/2020  2 pg, 121.02 KB COURT ORDER denying Motion to dismiss appeal for lack of jurisdiction filed by Appellee Ms. Lorie Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division [9261812-2] [19-70002] As the director now concedes, the appeal is timely in light of Banister v. Davis, 2020 WL 2814300 (U.S. June 1, 2020). (MRW) [Entered: 06/10/2020 07:35 AM]
- 06/26/2020  2 pg, 16.61 KB SUPPLEMENTAL AUTHORITIES (FRAP 28j) FILED by Appellant Mr. Joe Michael Luna Date of Service: 06/26/2020 via email - Attorney for Appellees: Hayes, Highful; Attorney for Appellants: Lev, Walker [19-70002] (Peter James Walker) [Entered: 06/26/2020 11:41 AM]
- 08/18/2020  3 pg, 110.49 KB LETTER OF ADVISEMENT. Reason: advising the parties that BOBBY LUMPKIN, DIRECTOR OF TDCJ has been substituted as the respondent in place of Lorie Davis [19-70002] (MRW) [Entered: 08/18/2020 02:58 PM]

10/22/2020	<input type="checkbox"/>  11 pg, 195.85 KB	UNPUBLISHED OPINION FILED. [19-70002 Affirmed] Judge: JLD , Judge: JEG , Judge: GJC. Mandate issue date is 11/13/2020 [19-70002] (NFD) [Entered: 10/22/2020 02:02 PM]
10/22/2020	<input type="checkbox"/>  1 pg, 50.56 KB	JUDGMENT ENTERED AND FILED. [19-70002] (NFD) [Entered: 10/22/2020 02:05 PM]
11/05/2020	<input type="checkbox"/>  30 pg, 219.32 KB	PETITION for rehearing [9436492-2] Mandate issue date canceled.. [19-70002] REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: PETITION filed by Appellant Mr. Joe Michael Luna for rehearing [9436492-2]. Date of Service: 11/05/2020 via email - Attorney for Appellees: Hayes, Highful; Attorney for Appellants: Lev, Walker [19-70002] (Peter James Walker) [Entered: 11/05/2020 11:28 AM]
11/09/2020	<input type="checkbox"/>	Paper copies of Petition for rehearing filed by Appellant Mr. Joe Michael Luna in 19-70002 received. Paper copies match electronic version of document? Yes # of Copies Provided: 4. [19-70002] (DMS) [Entered: 11/12/2020 04:15 PM]
03/17/2021	<input type="checkbox"/>  2 pg, 139.71 KB	COURT ORDER denying Petition for rehearing filed by Appellant Mr. Joe Michael Luna [9436492-2] Mandate issue date is 03/25/2021 [19-70002] (MFY) [Entered: 03/17/2021 08:14 AM]
03/25/2021	<input type="checkbox"/>  11 pg, 295.59 KB	MANDATE ISSUED. Mandate issue date satisfied. [19-70002] (MRW) [Entered: 03/25/2021 07:44 AM]