

CASE NO. \_\_\_\_\_ (CAPITAL CASE)

IN THE SUPREME COURT OF THE UNITED STATES

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JOHN LEZELL BALENTINE,  
*Petitioner,*

v.

BOBBY LUMPKIN, DIRECTOR,  
*Respondent.*

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

Petitioner, John Lezell Balentine, 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. Petitioner is a death sentenced prisoner in Texas.
3. On May 19, 2003, the United States District Court for the Northern District of Texas appointed counsel to represent Petitioner in this capital habeas proceeding. A copy of that Order is attached.
4. On May 27, 2016, the United States District Court for the Northern District of Texas appointed the Federal Community Defender Office for the Eastern District of Pennsylvania as co-counsel to represent Petitioner in this capital habeas proceeding. A copy of that Order is attached.

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 – Suite 545 West  
Independence Square West  
Philadelphia, PA 19106  
(215) 928-0520  
Stuart\_Lev@fd.org

Counsel for Petitioner, John Lezell Balentine

Dated: January 28, 2022

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
AMARILLO DIVISION

U.S. DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
**FILED**  
MAY 19 2003  
CLERK, U.S. DISTRICT COURT  
By Deputy

JOHN LEZELL BALENTINE,  
  
Petitioner,

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v.

2:03-CV-0039

JANIE COCKRELL, Director,  
Texas Department of Criminal  
Justice, Institutional Division,  
  
Respondent.

**ORDER GRANTING PETITIONER'S MOTION TO  
APPOINT OTHER COUNSEL PURSUANT TO 21 U.S.C. § 848(q)**

Came this day for consideration the above-entitled motion filed February 5, 2003 by petitioner JOHN LEZELL BALENTINE,<sup>1</sup> a state prisoner. By his motion, petitioner requests this Court appoint counsel to represent him in pursuing a petition for a federal writ of habeas corpus challenging his conviction for capital murder and the resultant death sentence.

On March 6, 2003, the undersigned entered an Order to Supplement therein ordering petitioner to supplement his motion and provide the Court with an application to proceed *in forma pauperis* together with an *In Forma Pauperis* Data Sheet, to set forth the justification why state appointed habeas counsel should not be appointed in this case and that alternate counsel should be appointed, and certain information related to the underlying state proceedings. On April 8, 2003, state habeas counsel Mr. Kent Birdsong filed a partial supplementation advising the Court why he should not be appointed and advising that further information would be submitted. To date, nothing additional has been received by this Court. As this is a pending

<sup>1</sup>The motion was filed by petitioner's court appointed state habeas counsel, Mr. Kent Birdsong.

application, and as state habeas counsel has stated justification why he should not be appointed, the Court is of the opinion that alternate counsel should be appointed.

The undersigned finds Ms. Lydia Brandt of Dallas should be and is appointed at the district court stage of this case pursuant to 21 U.S.C. § 848(q)(5)(7).

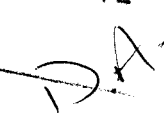
The undersigned hereby appoints Ms. Lydia Brandt as lead counsel to represent petitioner in this cause. Petitioner, through his appointed counsel, Ms. Lydia Brandt, shall file a petition for writ of habeas corpus with this Court on or before October 16, 2003. The Court has allowed more time than might usually be allowed in other death penalty cases since Ms. Brandt has had no involvement in this case prior to her appointment, and since state habeas counsel will no longer be an attorney of record in the case. Newly appointed counsel should, however, make such initial inquiries and investigation as necessary to satisfy herself that the petition due on or before October 16, 2003 is not time-barred.

State habeas counsel Mr. Kent Birdsong shall confer with counsel Brandt and shall arrange to deliver his file to Ms. Brandt on or before June 9, 2003.

IT IS SO ORDERED.

ENTERED this *19th* day of May 2003.

  
CLINTON E. AVERITTE  
UNITED STATES MAGISTRATE JUDGE

CLERK US DISTRICT COURT  
NORTHERN DIST. OF TX  
FILED  
2016 MAY 27 PM 2:12  
DEPUTY CLERK 

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
AMARILLO DIVISION

JOHN LEZELL BALENTINE,

Petitioner,

v.

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

Respondent.

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2:03-CV-00039  
**\*\*Capital Litigant\*\***

**ORDER APPOINTING CO-COUNSEL AND CONTINUING HEARING**

On April 22, 2016, petitioner, John Lezell Balentine filed a motion to appoint co-counsel (Motion, doc. 167), that was denied without prejudice (Order, doc. 179). On May 26, 2016, the undersigned conducted a hearing to reconsider the motion. Appearing by telephone conference at the hearing were Petitioner’s appointed counsel Lydia Brandt, Respondent’s counsel, Assistant Attorney General Katherine D. Hayes and Assistant Attorney General Jefferson David Clendenin, along with Jason Hawkins, the Federal Public Defender for the Northern District of Texas, and Shawn Nolan, representing the Federal Community Defender Office for the Eastern District of Pennsylvania.

Following the undersigned’s attempts to schedule oral arguments in 2015 (Order, doc. 154, Oct. 7, 2015, vacated by Order, doc. 157, Oct. 29, 2015), an evidentiary hearing was set for June 15, 2016, on (1) whether exceptional circumstances exist to warrant Rule 60(b) relief, (2) whether Balentine has set forth a substantial claim of ineffective assistance of trial counsel and (3) whether such claim was not properly presented to the state court because of the ineffective assistance of state

habeas counsel. (Order, doc. 158, April 1, 2016.) The undersigned subsequently granted in part Balentine's motion to modify the dates for disclosing experts (Order, doc. 162, April 15, 2016), granted a request for expedited approval of funding (Order, doc. 161, April 15, 2016), and issued a writ of habeas corpus ad testificandum for Balentine's presence at the hearing. (Writ, doc. 163.) Subsequently, following a telephone hearing on May 4, 2016, the undersigned rescheduled the hearing from June 15 until August 10, 2016, adjusted certain pre-hearing deadlines, and issued rulings on pre-hearing matters. (Order, doc. 179, May 5, 2016.) On May 23, 2016, the undersigned scheduled a telephone conference for Thursday, May 26, 2016 to reconsider his order denying the motion to appoint co-counsel. (Order, doc. 194.) At that telephone hearing, the undersigned granted the appointment of co-counsel, and after extensive consultation with counsel for both parties, rescheduled the evidentiary hearing from August 10 to September 7, 2016.

Accordingly, the office of the Federal Community Defender for the Eastern District of Pennsylvania is appointed as co-counsel to assist lead counsel in the representation of petitioner John Lezell Balentine in these proceedings. It is anticipated that the investigative and expert assistance of that office will be available to Balentine without further need for funding by this Court and that attorney Shawn Nolan will assist lead counsel Lydia Brandt and attend the hearing scheduled for September 7.

The hearing previously scheduled for August 10, 2016 is rescheduled to 9:00 a.m. on Wednesday, September 7, 2016, before U.S. Magistrate Judge Clinton E. Averitte, in the First Floor Courtroom, 205 E. Fifth Ave., Amarillo, Texas, on (1) whether exceptional circumstances exist to warrant Rule 60(b) relief, (2) whether Balentine has set forth a substantial claim of ineffective assistance of trial counsel and (3) whether such claim was not properly presented to the state court

because of the ineffective assistance of state habeas counsel. In determining whether petitioner Balentine is entitled to pursue claims of ineffective assistance of trial counsel, the Court is prepared to hear evidence on the question of whether trial counsel was ineffective at the sentencing stage by failing to investigate and present evidence on mitigation.

All other deadlines previously in effect shall remain in place and are undisturbed by this order.

The prior writ of habeas corpus ad testificandum (doc. 180) issued for Balentine to attend the evidentiary hearing in person is withdrawn and a new one shall issue for the September 7 hearing. All parties shall cooperate to ensure that the new writ, when issued, is properly carried out.

**IT IS SO ORDERED.**

ENTERED this 27<sup>th</sup> day of May, 2016.

  
CLINTON E AVERITTE  
UNITED STATES MAGISTRATE JUDGE