

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

**JASON DELACERDA,**  
**Petitioner**

**vs.**

**THE STATE OF TEXAS**  
**Respondent**

§ **IN THE SUPREME COURT OF THE**

§ **UNITED STATES OF AMERICA**

§ **WASHINGTON, D.C.**

## **MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS**

The petitioner, JASON DELACERDA, asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed in forma pauperis.

Attached is a copy of the order of the 356<sup>th</sup> District Court of Hardin County, Texas, in this case, Cause No. 21284, redacted to remove addresses and non-party personal information, appointing the undersigned counsel Douglas M. Barlow to represent petitioner Jason Delacerda for purposes of direct appeal of his conviction and sentence of death. Texas law provides that appointed counsel has a duty to

continue representation until the appellate process is completed:

“Art. 26.04. Procedures for Appointing Counsel.

(j) An attorney appointed under this article **shall**:

...

(2) **represent the defendant until** charges are dismissed, the defendant is acquitted, **appeals are exhausted**, or the attorney is permitted or ordered by the court to withdraw as counsel for the defendant after a finding of good cause is entered on the record;” (Emphasis added.)

Texas Code of Criminal Procedure, Art. 26.04(j)(2)

In Texas, consideration of the filing of a petition for writ of certiorari is part of that appellate process. In *White v. State*, 543 S.W.2d 366 (Tex. Crim. App. 1976), the Texas Court of Criminal Appeals addressed that issue and the appeal process, indicating that the process includes a petition for writ of certiorari, as reflected at page 368:

“Our research reveals that the word ‘appeal’ has not been construed in Texas by an appellate court having criminal jurisdiction since 1840. In that year, in *Republic v. Smith, Dallam* 407, the Supreme Court of the Republic of Texas defined an appeal (quoting Blackstone) as ‘a complaint to a superior court of injustice done by an inferior one.’ Mr. Black gives a similar definition. Black's Law Dictionary, *supra*, at 124. See also *Booth v. Tex.Emp.Ins.Assn.*, 132 Tex. 237, 123 S.W.2d 322 (1938); *Commercial Standard Ins. Co. v. Cotton*, 443 S.W.2d 423 (Tex.Civ.App. -- Eastland 1969, writ refused).

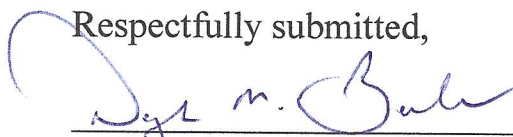
**“Following these definitional guidelines, it seems clear that a petition for certiorari, like a writ of error in Texas practice, is an ‘appeal,’ albeit a discretionary one.** *Hart v. State*, *supra*. Cf. 28 U.S.C. U.S. S. Ct. Rules 11, 19, 23; *Durham v. United States*, 401 U.S. 481, fn. at 483, 28 L. Ed. 2d 200, 91 S. Ct. 858, (1971). To say that review by certiorari does not constitute an appeal is to make a distinction without substance, since such a review necessarily involves an attempt to persuade a superior court to correct the error of a lower court.” (Emphasis added.)

Thus counsel herein, having been appointed by the trial court as appellate counsel following petitioner's conviction and sentence of death, has a duty to represent petitioner concerning the filing of a petition for writ of certiorari.

Based upon the indigency of the petitioner as set out herein and the appointment of the undersigned counsel, petitioner requests that this Court grant

leave to proceed with the filing of the petition for writ of certiorari accompanying this request, without prepayment of costs, and by and through appointed counsel of record herein.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Douglas M. Barlow", is written over a horizontal line.

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