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

#### IN THE SUPREME COURT OF THE UNITED STATES

BRENT BREWER, *Petitioner*,

v.

BOBBY LUMPKIN, DIRECTOR, Respondent.

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

Petitioner, Brent Brewer, 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. Brent Brewer is a death sentenced prisoner in Texas.
- 3. On February 26, 2015, the United States District Court for the Northern 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 March 28, 2016, the district court issued an order appointing the office of the Federal Community Defender for the Eastern District of Pennsylvania, with whom undersigned counsel are employed, as co-counsel for Mr. Brewer. A copy of that Order is attached.

5. On May 11, 2022, the Fifth Circuit docketed his appeal and allowed

him to proceed in forma pauperis, and appointed counsel. A copy of the docket sheet

is attached.

6. 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.

7. 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/ Shawn Nolan

Shawn Nolan\*

Chief, Capital Habeas Unit

Timothy Kane

Andrew Childers

Assistant Federal Defenders

Federal Community Defender Office

for the Eastern District of Pennsylvania

601 Walnut Street, Suite 545 West

Philadelphia, PA 19106

(215) 928-0520

Shawn\_Nolan@fd.org

 $*Counsel\ of\ Record$ 

Member of the Bar of the Supreme Court

Dated: August 21, 2023

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IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS AMARILLO DIVISION NORTHERN DISTRICT COUR FILED ST. OF TX 2015 FEB 26 PM 3: 08 EPUTY CLERK

		OLCRK X
BRENT RAY BREWER,	§	2.
	§	
Petitioner,	§	
	§	
V.	§	Civil Action No. 2:15-CV-50-J
	§	
WILLIAM STEPHENS, Director,	§	(Death Penalty Case)
Texas Department of Criminal Justice	§	
Correctional Institutions Division,	§	
	§	
Respondent.	§	

### **ORDER CONDITIONALLY APPOINTING COUNSEL**

On February 3, 2015, **Brent Ray Brewer** ("Petitioner") filed a motion for appointment of counsel ("Motion," ECF No. 1). Having reviewed the motion, the Court finds that Petitioner is entitled to the appointment of counsel by the provisions of 18 U.S.C. § 3599(a)(2). *See McFarland v. Scott*, 512 U.S. 849, 855-58 (1994). The Court further finds that attorney **Michael B. Charlton** possesses the background, knowledge, and experience to enable him to represent Petitioner with due consideration to the seriousness of the possible penalty and the unique and complex nature of the litigation, and is qualified and willing to accept this appointment as lead counsel. The Court further finds that Michael B. Charlton has requested the appointment of **Philip Alan Wischkaemper** as cocounsel to assist lead counsel in the representation of the petitioner in these proceedings, and that the said Philip Alan Wischkaemper is qualified and willing to accept this appointment as co-counsel.

Petitioner, however, has not paid the \$5 filing fee and has not filed an application to proceed in forma pauperis ("IFP") in accordance with local rules.<sup>1</sup> See LR 83.6; Misc. Order 13 at ¶ 9

<sup>&</sup>lt;sup>1</sup>The Motion references a "declaration of indigency" and "certified statement of Petitioner's inmate trust account," but none were filed. (Mot. at 3.)

(N.D.Tex. Feb. 1, 1977). Therefore, this appointment of counsel is conditioned upon the payment of the \$5 filing fee or the filing of an appropriate motion to proceed IFP within 60 days of the date of this order.

Petitioner's motion for appointment of counsel (ECF No. 1) is conditionally **GRANTED**, attorney **Michael B. Charlton** is appointed as lead counsel to represent Petitioner in this cause, and attorney **Philip Alan Wischkaemper** is appointed as co-counsel to assist lead counsel in this cause; provided however that Petitioner shall satisfy the filing-fee requirement within **60 days** of the date of this order or this proceeding shall be terminated and the appointment of counsel herein rendered null and void.<sup>2</sup>

Subject to the satisfaction of the filing-fee requirement set out above, appointed counsel are entitled to compensation (currently at the rate of \$181.00/hour) in accordance with Volume VII, Part A, Chapter 6, of the *Guide to Judiciary Policy*, which Counsel is directed to read along with the instructions for forms CJA 30 and CJA 31 in order to ensure proper compensation for time and expenses incurred herein, and the presumptive limits contained in the *Special Procedures for Reviewing Attorney Compensation Requests in Death Penalty Cases* by the Judicial Council of the Fifth Circuit. Counsel are also advised of the requirement of pre-approval for the use of associate counsel under the Criminal Justice Act (CJA) plan adopted by this district.<sup>3</sup> Counsel shall be entitled to interim payments for services rendered in this cause.

<sup>&</sup>lt;sup>2</sup>This does not prevent the Court from extending this deadline upon a proper motion.

<sup>&</sup>lt;sup>3</sup>The CJA plan provides that "An appointed counsel may not claim compensation for services furnished by a partner or associate, or counsel who is not a partner or associate, without prior authorization by the court." *See* Misc. Order 3 at VIII(B) (N.D.Tex. Sep. 15, 2000).

A copy of this order and CJA 30 forms shall be provided to appointed counsel at the following address:

LEAD COUNSEL Michael B. Charlton

P.O. BOX 51075 Eugene, OR 97405 541-636-2793

Texas Bar No. 04144800 charltonlegal@gmail.com

CO-COUNSEL Philip Alan Wischkaemper

1504 Main St.

Lubbock, TX 79401-2725

806-749-0007

Texas Bar No. 21802750

miglit@aol.com

SO ORDERED on this 24 day of February, 2015.

CLINTON E. AVERITTE

UNITED STATES MAGISTRATE JUDGE

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

CLERK US DISTRICT COURT NORTHERN DIST. OF TX FILED

2016 MAR 28 PM 3: 14

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BRENT RAY BREWER,	§	
	§	
Petitioner,	§	
	§	
v.	§	2:15-CV-0050
	§	
WILLIAM STEPHENS, Director,	§	
Texas Department of Criminal Justice,	§	
Correctional Institutions Division,	§	
	§	
Respondent.	§	

## ORDER GRANTING MOTION TO WITHDRAW AS COUNSEL

Came for consideration the above-entitled motion filed April 14, 2015 wherein appointed counsel Michael Charlton requests he be permitted to withdraw as counsel. Mr. Charlton's motion to withdraw is GRANTED.

Mr. Philip Wischkaemper shall be designated as lead counsel and the Federal Community Defender's Office for the Eastern District of Pennsylvania shall be designated as co-counsel or secondary counsel. Mr. Wischkaemper, Mr. Peter Walker, and Mr. Shawn Nolan shall all continue as counsel of record in this case.

IT IS SO ORDERED.

ENTERED this 284 day of March 2016.

CLINTON E AVERITTE

UNITED STATES MAGISTRATE JUDGE

#### **PACER fee: Exempt**

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

Court of Appeals Docket #: 22-70006 Docketed: 05/11/2022

Brewer v. Lumpkin

Appeal From: Northern District of Texas, Amarillo

Nature of Suit: 3535 Habeas Corpus - Death Penalty

Fee Status: In Forma Pauperis

#### **Case Type Information:**

1) Death Penalty w/ Counsel

2) State 3)

#### **Originating Court Information:**

District: 0539-2 : 2:15-CV-50

Originating Judge: Matthew Joseph Kacsmaryk, U.S. District Judge

Date Filed: 08/03/2015

**Date NOA Filed:**05/10/2022 **Date Rec'd COA:**05/10/2022

#### **Prior Cases:**

04-70034 Date Filed: 05/03/2007 Date Disposed: 12/27/2007 Disposition: Remanded

#### **Current Cases:**

None

Panel Assignment: Not available

Brent Ray Brewer Peter James Walker
Petitioner - Appellant Direct: 215-928-0520

Email: peter\_walker@fd.org

Fax: 215-928-0826

[COR LD NTC Fed Public Defender] Federal Community Defender Office Eastern District of Pennsylvania Termed: 04/27/2023

Suite 545-W. 601 Walnut Street Curtis Center

Philadelphia, PA 19106-0000

Philip Alan Wischkaemper Direct: 806-438-0437 Email: miglit@aol.com Fax: 806-763-9904

[COR NTC CJA Appointment] Snuggs & Wischkaemper 915 Texas Avenue Lubbock, TX 79401-0000

٧.

Bobby Lumpkin, Director, Texas Department of Criminal Justice,

Correctional Institutions Division

Respondent - Appellee

Craig William Cosper, Assistant Attorney General

Direct: 512-936-1400

Email: craig.cosper@oag.texas.gov

Fax: 512-936-1280

[COR LD NTC Government]
Office of the Attorney General
Criminal Appeals Division
P.O. Box 12548

Austin, TX 78711-2548

Brent Ray Brewer,

Petitioner - Appellant

٧.

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

Respondent - Appellee

05/11/2022	1 3 pg, 1.48 MB	DEATH PENALTY CASE docketed. NOA filed by Appellant Mr. Brent Ray Brewer [22-70006] (MRW) [Entered: 05/11/2022 07:49 AM]
05/11/2022	2 pg, 11.63 KB	CJA APPOINTMENT for Attorney Mr. Philip Alan Wischkaemper for Mr. Brent Ray Brewer. 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: NTX ORIGINATING CASE NUMBER: 2:15-CV-50
		DATE OF APPOINTMENT: 05/10/2022 [22-70006] (MRW) [Entered: 05/11/2022 07:54 AM]
05/11/2022	7 4 pg, 125.21 KB	INITIAL CASE CHECK by Attorney Advisor complete. Action: Case OK to Process. [7] Initial AA Check Due satisfied. [22-70006] (MRW) [Entered: 05/11/2022 08:56 AM]
05/11/2022	□ 8	ELECTRONIC RECORD ON APPEAL REQUESTED from District Court for 2:15-CV-50. Electronic ROA due on 05/26/2022. [22-70006] (MRW) [Entered: 05/11/2022 08:57 AM]
05/16/2022	9	ELECTRONIC RECORD ON APPEAL FILED. Admitted Exhibits on File in District Court? No. Video/Audio Exhibits on File in District Court? No State Court Papers included? Yes. Electronic ROA deadline satisfied. [22-70006] (MRW) [Entered: 05/16/2022 09:08 AM]
05/16/2022	10 4 pg, 123.71 KB	LETTER ISSUED. Motion for COA and brief in support are required. Motion due on 06/27/2022 for Appellant Brent Ray Brewer. Brief in Support due on 06/27/2022 for Appellant Brent Ray Brewer [22-70006] (MRW) [Entered: 05/16/2022 09:10 AM]
06/08/2022	1 pg, 136.56 KB	APPEARANCE FORM received from Mr. Woodson Erich Dryden, Esq. for Mr. Bobby Lumpkin, Director, Texas Department of Criminal Justice, Correctional Institutions Division for the court's review. Lead Counsel? Yes. [22-70006] (Woodson Erich Dryden) [Entered: 06/08/2022 03:40 PM]
06/09/2022	☐ <b>1</b> 5	APPEARANCE FORM FILED by Attorney Woodson Erich Dryden for Appellee Bobby Lumpkin, Director, Texas Department of Criminal Justice, Correctional Institutions Division in 22-70006 [22-70006] (MRW) [Entered: 06/09/2022 04:17 PM]
06/15/2022	17 1 pg, 129.37 KB	APPEARANCE FORM received from Mr. Peter James Walker for Mr. Brent Ray Brewer for the court's review. Lead Counsel? Yes. [22-70006] (Peter James Walker) [Entered: 06/15/2022 02:23 PM]
06/15/2022	18 5 pg, 142.08 KB	UNOPPOSED MOTION filed by Appellant Mr. Brent Ray Brewer to extend time to comply with COA requirements until 07/27/2022 [18]. Date of service: 06/15/2022 via email - Attorney for Appellee: Dryden; Attorney for Appellants: Walker, Wischkaemper [22-70006] (Peter James Walker) [Entered: 06/15/2022 02:32 PM]
06/17/2022	□ 21	APPEARANCE FORM FILED by Attorney(s) Peter James Walker for party(s) Appellant Brent Ray Brewer, in case 22-70006 [22-70006] (MFY) [Entered: 06/17/2022 12:55 PM]
06/17/2022	24 2 pg, 126.99 KB	COURT ORDER granting Motion to extend time to comply with COA requirements filed by Appellant Mr. Brent Ray Brewer [18] Motion due deadline updated to 07/27/2022 for Appellant Brent Ray Brewer. Brief in Support deadline updated to 07/27/2022 for Appellant Brent Ray Brewer [22-70006] (MFY) [Entered: 06/17/2022 03:24 PM]
07/18/2022	25 6 pg, 145.61 KB	UNOPPOSED MOTION filed by Appellant Mr. Brent Ray Brewer to extend time to comply with COA requirements until 08/08/2022 [25]. Date of service: 07/18/2022 via email - Attorney for Appellee: Dryden; Attorney for Appellants: Walker, Wischkaemper [22-70006] (Peter James Walker) [Entered: 07/18/2022 10:58 AM]
07/18/2022	30 2 pg, 128.24 KB	COURT ORDER granting Motion to extend time to comply with COA requirements filed by Appellant Mr. Brent Ray Brewer [25] Motion due deadline updated to 08/08/2022 for Appellant Brent Ray Brewer. Brief in Support deadline updated to 08/08/2022 for Appellant Brent Ray Brewer. NO FURTHER EXTENSIONS WILL BE GRANTED. [22-70006] (MFY) [Entered: 07/18/2022 04:14 PM]
08/08/2022	32 5 pg, 110.83 KB	UNOPPOSED MOTION filed by Appellant Mr. Brent Ray Brewer to file motion for a certificate of appealability in excess of the word count limitation but not to exceed 15,000 words [32]. Date of service: 08/08/2022 via email - Attorney for Appellee: Dryden; Attorney for Appellants: Walker, Wischkaemper [22-70006] (Peter James Walker) [Entered: 08/08/2022 02:43 PM]
08/08/2022	33 81 pg, 11.85 MB	DOCUMENT RECEIVED - NO ACTION TAKEN. No action will be taken at this time on the Motion for a Certificate of Appealability received from Appellant Mr. Brent Ray Brewer because the document should be filed as a separate document [22-70006] (MRW) [Entered: 08/08/2022 02:56 PM]
08/08/2022	34 80 pg, 307.5 KB	UNOPPOSED MOTION for certificate of appealability [34]. Document is insufficient for the following reasons: over word limitation Motion due deadline satisfied Sufficient Mtn/Resp/Reply due on 08/18/2022 for Appellant Brent Ray Brewer [22-70006] REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: UNOPPOSED MOTION filed by Appellant Mr. Brent Ray Brewer for certificate of appealability [34]. Date of service:

		08/08/2022 via email - Attorney for Appellee: Dryden; Attorney for Appellants: Walker, Wischkaemper [22-70006] (Peter James Walker ) [Entered: 08/08/2022 03:28 PM]
08/08/2022	35 80 pg, 11.76 MB	BRIEF IN SUPPORT filed by Appellant Mr. Brent Ray Brewer in support of Motion for certificate of appealability [34] (INCORPORATED IN MOTION FOR COA) Brief in Support deadline satisfied. [35] [22-70006] (MRW) [Entered: 08/08/2022 03:44 PM]
08/09/2022		COURT ORDER granting Motion to file motion for a COA in excess of the word count limitationsbut not to exceed 15,000 words filed by Appellant Mr. Brent Ray Brewer [32] [22-70006] (MRW) [Entered: 08/09/2022 11:30 AM]
08/09/2022	☐ <b>43</b>	The Motion for certificate of appealability filed by Appellant Mr. Brent Ray Brewer in 22-70006 [34] has been made sufficient. Sufficient Mtn/Resp/Rpl deadline satisfied. [22-70006] (MRW) [Entered: 08/09/2022 11:33 AM]
08/09/2022	☐ <b>44</b>	RESPONSE DUE to Motion for certificate of appealability filed by Appellant Mr. Brent Ray Brewer in 22-70006 [34]Response/Opposition due on 09/08/2022 [22-70006] (MRW) [Entered: 08/09/2022 11:34 AM]
08/24/2022	45 6 pg, 117.17 KB	UNOPPOSED MOTION filed by Appellee Mr. Bobby Lumpkin, Director, Texas Department of Criminal Justice, Correctional Institutions Division to extend the time to file a response to the [35] filed by Appellant Mr. Brent Ray Brewer until 10/11/2022 [45]. Date of service: 08/24/2022 via email - Attorney for Appellee: Dryden; Attorney for Appellants: Walker, Wischkaemper [22-70006] (Woodson Erich Dryden) [Entered: 08/24/2022 03:47 PM]
08/25/2022	<u>50</u> 2 pg, 124.11 KB	COURT ORDER granting Motion to extend time to file a response until 10/11/22 filed by Appellee Mr. Bobby Lumpkin, Director, Texas Department of Criminal Justice, Correctional Institutions Division [45] [22-70006] no further extensions will be approved (MRW) [Entered: 08/25/2022 10:40 AM]
08/25/2022	□ 52	RESPONSE DUE to Update/term response deadline [44]Response/Opposition deadline updated to 10/11/2022 [22-70006] (MRW) [Entered: 08/25/2022 10:44 AM]
09/29/2022	53 6 pg, 117.02 KB	UNOPPOSED MOTION filed by Appellee Mr. Bobby Lumpkin, Director, Texas Department of Criminal Justice, Correctional Institutions Division to file response in excess of the word count limitation but not to exceed 14,500 words [53]. Date of service: 09/29/2022 via email - Attorney for Appellee: Dryden; Attorney for Appellants: Walker, Wischkaemper [22-70006] (Woodson Erich Dryden) [Entered: 09/29/2022 05:57 PM]
10/11/2022	<u>58</u> 83 pg, 434.17 KB	RESPONSE/OPPOSITION [58] to the Motion for certificate of appealability filed by Appellant Mr. Brent Ray Brewer in 22-70006 [34]Response/Opposition deadline satisfied Sufficient Mtn/Resp/Reply due on 10/21/2022 for Appellee Bobby Lumpkin, Director, Texas Department of Criminal Justice, Correctional Institutions Division Document is insufficient for the following reasons: over word limitation [22-70006] REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: RESPONSE/OPPOSITION filed by Mr. Bobby Lumpkin, Director, Texas Department of Criminal Justice, Correctional Institutions Division [58] to the filed by Appellant Mr. Brent Ray Brewer [35] Date of Service: 10/11/2022 via email - Attorney for Appellee: Dryden; Attorney for Appellants: Walker, Wischkaemper. [22-70006] (Woodson Erich Dryden) [Entered: 10/11/2022 04:59 PM]
10/21/2022	60 2 pg, 124.27 KB	COURT ORDER granting Motion to file response in excess pages but not to exceed 14,500 words filed by Appellee Mr. Bobby Lumpkin, Director, Texas Department of Criminal Justice, Correctional Institutions Division [53] [22-70006] (MRW) [Entered: 10/21/2022 10:56 AM]
10/21/2022	□ 61	The Response/Opposition filed by Appellee Mr. Bobby Lumpkin, Director, Texas Department of Criminal Justice, Correctional Institutions Division in 22-70006 [58] has been made sufficient. Sufficient Mtn/Resp/Rpl deadline satisfied. [22-70006] (MRW) [Entered: 10/21/2022 11:02 AM]
10/26/2022	6 pg, 145.95 KB	UNOPPOSED MOTION filed by Appellant Mr. Brent Ray Brewer for leave to file a reply [63] to the for certificate of appealability filed by Appellant Mr. Brent Ray Brewer [34]. Date of service: 10/26/2022 via email - Attorney for Appellee: Dryden; Attorney for Appellants: Walker, Wischkaemper [22-70006] (Peter James Walker) [Entered: 10/26/2022 09:35 AM]
10/27/2022	68 2 pg, 124.13 KB	COURT ORDER granting Motion for leave to file a reply 11/10/22 filed by Appellant Mr. Brent Ray Brewer [63] [22-70006] (MRW) [Entered: 10/27/2022 03:28 PM]
11/10/2022	70 33 pg, 281.09 KB	REPLY filed by [70] to the response to motion for a COA [69]Reply to Resp/Opp due deadline satisfied Sufficient Mtn/Resp/Reply due on 11/15/2022 for Appellant Brent Ray Brewer. Document is insufficient for the following reasons: in excess of word count limitation [22-70006] REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: REPLY filed by Appellant Mr. Brent Ray Brewer [70] to the filed by Appellee Mr. Bobby Lumpkin, Director, Texas Department of Criminal Justice, Correctional Institutions Division [58]. Date of Service: 11/10/2022 via email - Attorney for Appellee: Dryden; Attorney for Appellants: Walker, Wischkaemper. [22-70006] (Peter James Walker) [Entered: 11/10/2022 02:37 PM]
01/05/2023	73 1 pg, 194.65 KB	APPEARANCE FORM for the court's review. Lead Counsel? Yes. [22-70006] (Craig William Cosper ) [Entered: 01/05/2023 11:46 AM]

01/05/2023	□ 74	APPEARANCE FORM FILED by Attorney(s) Craig William Cosper for party(s) Appellee Bobby Lumpkin, Director, Texas Department of Criminal Justice, Correctional Institutions Division, in case 22-70006 [22-70006] (MRW) [Entered: 01/05/2023 01:28 PM]
03/10/2023	□ 76	ATTORNEY NOT PARTICIPATING. Woodson Erich Dryden is designated as inactive in this case. Reason:he is no longer with the AG's Office. [22-70006] (AS) [Entered: 03/10/2023 08:15 AM]
04/27/2023		PUBLISHED OPINION FILED. [22-70006 Dismissed ] Judge: EHJ, Judge: ASO, Judge: CTW Mandate issue date is 05/19/2023; denying Motion for certificate of appealability filed by Appellant Mr. Brent Ray Brewer [34] [22-70006] (MRW) [Entered: 04/27/2023 03:10 PM]
04/27/2023	80 1 pg, 57.31 KB	JUDGMENT ENTERED AND FILED. [22-70006] (MRW) [Entered: 04/27/2023 03:15 PM]
05/11/2023	83 30 pg, 1.39 MB	PETITION for rehearing [83] Mandate issue date canceled [22-70006] REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: PETITION filed by Appellant Mr. Brent Ray Brewer for rehearing [83]. Date of Service: 05/11/2023 via email - Attorney for Appellee: Cosper; Attorney for Appellants: Walker, Wischkaemper [22-70006] (Peter James Walker) [Entered: 05/11/2023 01:01 PM]
05/23/2023	86 2 pg, 123.61 KB	COURT ORDER denying Petition for rehearing filed by Appellant Mr. Brent Ray Brewer [83] Mandate issue date is 05/31/2023 [22-70006] (MRW) [Entered: 05/23/2023 11:35 AM]
05/31/2023	<u>87</u> 17 pg, 3.2 MB	MANDATE ISSUED. Mandate issue date satisfied. [22-70006] (MRW) [Entered: 05/31/2023 08:42 AM]

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