

NO. 17-7506

**IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 2017**

**THOMAS WHITAKER AND PERRY WILLIAMS,
Petitioners,**

-v-

**BRYAN COLLIER, ET AL.,
Respondents.**

**PETITIONER WHITAKER'S APPLICATION FOR STAY OF
EXECUTION PENDING CONSIDERATION OF
PETITION FOR WRIT OF CERTIORARI**

**THIS IS A CAPITAL CASE:
MR. WHITAKER IS SCHEDULED TO BE EXECUTED ON
February 22, 2018**

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**TO THE HONORABLE JUSTICE SAMUEL ALITO, CIRCUIT
JUSTICE FOR THE FIFTH CIRCUIT:**

Petitioner Thomas Whitaker (“Mr. Whitaker” or “Petitioner”), hereby applies, pursuant to Supreme Court Rule 23 for a stay of his impending execution, currently scheduled for February 22, 2018. Petitioners’ Petition for Certiorari¹ was filed in this Court on December 4, 2018 and is scheduled to be considered in conference on February 23, 2018, *the day after Mr. Whitaker’s scheduled execution*. In order that the Court’s consideration of the meritorious issues presented will not become moot as to him, Mr. Whitaker respectfully requests this Court stay his execution.

Petitioners filed their original complaint raising a lethal injection challenge pursuant to 42 U.S.C. § 1983 in November 2013. The district court’s order granting Respondents’ motion to dismiss was reversed by the Fifth Circuit Court of Appeals, which remanded to permit Petitioners to “fully develop the claims based on the existing protocol for an appropriate trial on the merits.” *Whitaker v. Livingston*, 597 F. App’x 771, 774 (5th Cir. 2015). Despite this mandate, on remand the

¹ Petitioners seek review of the decision of the Fifth Circuit Court of Appeals, attached as Appendix 1 to the Petition for a Writ of Certiorari (hereafter “Pet. App. 1”).

district court permitted only the most minimal discovery, perfunctorily cancelled a trial that had been scheduled with three weeks warning, and again granted the state's motion to dismiss, relying on evidence outside the record, and faulting petitioners for either failing to produce evidence they sought and were denied in discovery, or were never given a chance to present.

On return to the Circuit Court of Appeals for the Fifth Circuit, two judges of the panel, while acknowledging the district court considered evidence outside the pleadings, found the clear error "harmless," and affirmed the lower court's decision. Judge Graves filed a lengthy dissent, stating "there is no authority for the application of a harmless error standard . . . The district court clearly erred, and this issue alone is sufficient to warrant reversal." *See* Pet. App. 1 at 21–22 (Graves, J, dissenting).

Texas leads the country in executions, yet stands alone in failing to permit meaningful discovery or even the most minimal trial on the question of the adequacy of the lethal injection drugs the state uses to carry out executions. The nature of the issue means that is not fixed, but changes over time, sometimes in a matter of days – yet the

judgments below effectively attempt to foreclose any future challenges to Texas's method of execution, no matter how egregious. Texas's drug supply is diminishing, aging, and deteriorating; evidence can be found in the increasing indicators that they cause pain and suffering in recent executions. Yet, the district court's action in this case—applying a clearly erroneous legal standard to defy the earlier mandate of the Court of Appeals—precludes Petitioners', and possibly all future condemned prisoners', ability to protect their rights to not be subjected to cruel and unusual punishment at the time of their executions.

Mr. Whitaker thus asks this Court for a stay to prevent Respondents from executing him until this Court has time to consider the issues presented by the pending Petition for a Writ of Certiorari.

Mr. Whitaker files this motion pursuant to Supreme Court Rules 22 and 23, and 28 U.S.C. § 2101(f).

STAY DECISION BELOW

In compliance with Supreme Court Rule 23.3, Petitioner sought a stay from the Court of Appeals below, which denied the request, with one judge dissenting. *See* App. A. The Execution Order scheduling Mr. Whitaker for execution on February 22, 2018, is attached as Appendix

B.

LEGAL STANDARD

The Court's standards for issuing a stay pending consideration of a petition for writ of certiorari are set forth in *Araneta v. United States*, 478 U.S. 131 (1986). A stay should issue if "(1) there is a reasonable probability that four Justices will vote to grant certiorari; (2) there is a fair prospect that a majority of the Justices will find the decision below erroneous; and (3) a balancing of the equities weighs in the applicant's favor. *Id.* at 1303 (citing cases). *See also Barefoot v. Estelle*, 463 U.S. 880, 895 (1983) (stays of execution); *Nelson v. Campbell*, 541 U.S. 637, 650 (2004) (stay in the course of a proceeding brought by a death-sentenced inmate pursuant to 42 U.S.C. § 1983; *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987) (in request for stay pending appeal, a four factor test is applied: (1) whether the applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.").

For the reasons discussed below, Petitioners' case readily meets those standards.

ARGUMENT

I. There is a Reasonable Probability Petitioners Will Prevail on the Merits.

For the reasons set forth in Petitioners' petition for writ of certiorari and reply, Mr. Whitaker has made a strong showing of a likelihood of success on the merits of this appeal such that a stay of his execution, set for the day prior to the date the Court is scheduled to conference his petition, is warranted. "Whitaker has shown a likelihood of success on the merits and a stay is necessary to ensure that his execution is not carried out in an unconstitutional manner." App. B at 3 (Graves, J., dissenting).

On October 1, 2013, Petitioners filed a complaint under 42 U.S.C. §1983, asserting violations of their rights to due process, access to courts, and the right to be free from cruel and unusual punishment, and an amended complaint on November 1, 2013. The State moved to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1) for a lack of jurisdiction, and the district court granted that motion on the basis

that the action was not “ripe” as, at that time, neither plaintiff was scheduled to be executed. The circuit court reversed on January 22, 2015, finding that the district court had “clearly erred,” and remanded the action to permit plaintiffs to “fully develop the claims based on the existing protocol for an appropriate trial on the merits.” *Whitaker v. Livingston*, 597 F. App’x 771, 774 (*Whitaker II*) (5th Cir. 2015).

Upon remand, in the wake of the circuit court’s mandate, Petitioners sought discovery, depositions, hearings, and a trial. The district court permitted only the most minimal and constrained discovery. *See* Pet. App. 1 at 19 (Graves, J., dissenting).

On September 11, 2015, Petitioners filed their second amended complaint. On September 14, 2015, Respondents filed a motion to dismiss for failure to state a claim, pursuant to Federal Rule of Civil Procedure 12(b)(6). Despite the Fifth Circuit’s prior mandate to permit plaintiffs to “fully develop the claims based on the existing protocol for an appropriate trial on the merits,” the district court either denied or failed to rule on Petitioners’ multiple motions for discovery and related motions, and granted Respondents’ motion to dismiss on June 6, 2016. Neither the full development nor “appropriate trial on the merits”

mandated by the circuit court's remand ever took place. *See also* Pet. App. 1 at n. 1 (Graves, J., dissenting). A panel majority upheld the district court's ruling; Judge Graves dissented.

In granting Respondents' motion to dismiss pursuant to Rule 12(b)(6), the district court utilized two clearly erroneous standards: first, the court considered evidence outside the complaint, and, second, the court applied a heightened—and erroneous—pleading standard. The Fifth Circuit panel majority found no error. It did so by applying an inapplicable harm standard, and by ignoring significant aspects of the district court's opinion. “Thus, the district court applied a standard which was clearly erroneous and there is no authority for the application of a harmless error standard. But, even if there was such authority, the error was not harmless because Whitaker's complaint was not deficient.” Pet. App. 1 at 21 (Graves, J., dissenting).

The district court's clear errors on these two issues alone require reversal, without consideration of the remaining issues. Not only do these errors contravene this Court's jurisprudence, reflecting the most fundamental and preliminary tenets of civil procedure and adjudication, they contaminate the rest of the district court's adjudication—and thus

the panel majority's affirmance. "Accordingly, the district court clearly erred and this issue alone is sufficient to warrant reversal." Pet. App. 1 at 22 (Graves, J., dissenting).

Additionally, the opinion of the panel majority deeming Petitioners' claims time-barred conflicts with earlier opinions of the Fifth Circuit, including the very case upon which that court relies. Petitioners' claims "are not time-barred because the cause of action did not accrue until the state began using compounded pentobarbital under the revised protocol in 2013." Pet. App. 1 at 22. Moreover, an assertion that Petitioners' claims are barred by the statute of limitations is an affirmative defense—yet Petitioners' case was dismissed under Rule 12(b)(6). Lastly, the district court's resolution of this issue—and the panel majority's affirmance—relies upon the district court's decision that faulted Petitioners for failing to produce information that was either precluded by the denial of discovery, or by the denial of an opportunity to present evidence at a trial on the merits. For these and the other reasons set forth by Petitioners in their briefing to the Court, the panel majority erred in affirming the district court's dismissal on

statute of limitations grounds and reversal is warranted. *See generally* Pet. App 1 at 22–25 (Graves, J., dissenting).

Finally, a stay should be granted and reversal is warranted because the panel majority’s opinion affirming the district court’s conclusion that Petitioners’ claims cannot survive a motion to dismiss is infected by reliance on erroneous and inapplicable standards. The district court’s decision and panel majority’s affirmance on the ground Petitioners failed to state a claim upon which relief may be granted relies on the heightened standards set forth in *Glossip v. Gross*, 135 S. Ct. 2726 (2015) and *Baze v. Rees*, 553 U.S. 35 (2008). *Glossip*, however, was before the Supreme Court after substantial litigation and record development in the lower courts; *Baze* was before the Court after a seven-day bench trial. Both are in stark contrast to the minimal proceedings that were begrudgingly permitted by the district court below. The *Glossip* standard cited by the panel majority is what is required to establish a likelihood of success for purposes of injunctive relief (a stay of execution). Petitioners here petition the Court from a denial of a motion to dismiss.

Although the elements of a method of execution claim—as

pleaded by Whitaker here—are relevant, the heightened standard of *Glossip* is not applicable because Whitaker must only plausibly allege his claims to survive a 12(b)(6) dismissal rather than establish a likelihood of success on the merits.

Pet. App 1 at 26 (Graves, J., dissenting).

For these reasons and the reasons set forth in Petitioners’ Petition and Reply, Mr. Whitaker has made a strong showing that he is likely to succeed on the merits of his appeal.

II. The Equities Tip Heavily in Mr. Whitaker’s Favor.

A. Mr. Whitaker Will Suffer Irreparable Injury if a Stay is Not Granted.

Death is the most obvious form of irreparable injury. Accordingly, Mr. Whitaker meets the *Barefoot* standard. The finality of the death penalty forces the conclusion that injury would be irreparable.

Additionally, if the stay is not granted, Mr. Whitaker faces a substantial likelihood of cruel and unusual punishment, which is *per se* irreparable harm. *Lee v. McManus*, 543 F. Supp. 386, 392 (D. Kan. 1982); *see also Deerfield Med. Ctr. v. City of Deerfield Beach* 661 F.2d 328, 338 (5th Cir. 1981) (holding that denial of fundamental rights can be irreparable harm *per se*). “If unconstitutionally executed, it goes

without saying that the injury to Whitaker is irreparable.” App. A at 1 (Graves, J., dissenting).

Indeed, on January 18, 2018, the State of Texas executed Anthony Shore. During the execution, witnesses stated Mr. Shore trembled, struggled to breathe, and cried out “Ohhh weee, I can feel that it does burn. Burning!”² During the execution of William Rayford on January 30, 2018, witnesses observed that Mr. Rayford attempted to raise his body, was shaking, exhibited signs of strained breathing, grimaced, and jerked his head into the gurney numerous times.³ The symptoms exhibited by Mr. Shore and Mr. Rayford correspond to those caused by the use of drugs that are beyond their use date. Texas’s supply of compounded drugs is of an unprecedented age, far beyond that condoned by any scientifically acceptable treatise or expert. The dangers presented by such drugs are ones that Petitioners have raised throughout this litigation.

In short, Mr. Whitaker will suffer irreparable injury if a stay is

² See Ed Pilkington, *Texas to execute third prisoner this year amid reports of botched killings*, THE GUARDIAN, Feb. 1, 2018, available at: <https://www.theguardian.com/us-news/2018/feb/01/texas-to-execute-third-prisoner-this-year-amid-reports-of-botched-killings>.

³ *Id.*

not granted.

B. Granting the Stay Will Not Substantially Harm either Respondents or the State.

There will be no significant harm to the State if this Court grants the requested stay. “[T]he requested stay is minor,” App. A at 1 (Graves, J., dissenting), giving the Court the time to conference the petition – scheduled for the day after Mr. Whitaker’s scheduled execution. Multiple years have passed since Mr. Whitaker’s conviction; the State will not be substantially harmed by a short delay, which “would not ‘substantially harm’ the State’s ability to carry out its judgment.” App. A at 2 (Graves, J., dissenting), quoting *In re Campbell*, 750 F. 3d 523,534 (5th Cir. 2014).⁴ The threatened injury to Mr.

⁴ Mr. Whitaker was convicted and sentenced to death for plotting the deaths of his family. His father survived, has forgiven his son, and is asking the State of Texas to grant his son clemency. “His father, a 69-year-old devout Christian and retired executive, says if that penalty is implemented, it will only intensify his pain. ‘I am going to be thrown into a deeper grief at the hands of the state of Texas, in the name of justice,’ Kent Whitaker said last week, after a 30-minute meeting with the chairman of the Texas Board of Pardons and Paroles in Austin.” Jon Herskovitz, *Father who forgave son for family’s murder asks Texas to spare his life*, REUTERS, February 18, 2018, available at: <https://www.reuters.com/article/us-texas-execution/father-who-forgave-son-for-familys-murder-asks-texas-to-spare-his-life-idUSKCN1G20IV>

Whitaker far outweighs any potential damage to the State from a slight delay in enforcing the judgment.

C. Granting the Stay Would Serve the Public Interest.

“The public interest is served by ensuring that a convicted prisoner is not unconstitutionally executed. ‘In a capital case, we must be particularly certain that the legal issues have been sufficiently litigated, and the criminal defendant accorded all the protections guaranteed him by the Constitution of the United States.’” App. A at 2 (Graves, J., dissenting), quoting *In re Campbell*, 750 F.3d at 535 (internal quotations omitted). Although the State has an interest in the finality of criminal convictions, the State’s overall interests are promoted, not disserved, by staying Mr. Whitaker’s execution.

D. There Was No Undue Delay In Bringing This Motion.

On February 8, 2018, this Court distributed Mr. Whitaker’s and Mr. Williams’ Petition for Writ of Certiorari for consideration by the Court on February 23, 2018 – the day after Mr. Whitaker’s scheduled execution. On January 31, 2018, counsel for Respondent provided Mr. Whitaker, per the stipulation made in the district court, the results of the testing of the drugs intended for use in Mr. Whitaker’s execution.

The test results provided are the same as those provided to counsel for William Rayford, whose highly problematic execution occurred on January 30, 2018.⁵ Thus, since that time, counsel – while meeting preexisting case demands (including discovery hearing, status conference, mediation, and trial preparation in other matters) – have been reviewing those results, and the events that transpired during Mr. Rayford’s execution. Moreover, there are other pending appeals filed on behalf of Mr. Whitaker (by other counsel), in addition to a pending petition for clemency, and counsel did not want to unnecessarily burden the courts with a motion for stay that might be rendered moot by another action. The culmination of those events and activities resulted in counsel filing a Motion for Stay of Execution with the Fifth Circuit Court of Appeals on February 16, 2018. The Circuit Court entered its order denying that request yesterday, February 19. Petitioner files this Motion a day later. Counsel have proceeded as expeditiously as possible, taking into consideration multiple moving parts. There has been no undue delay.

⁵ *See supra* at 11.

CONCLUSION

For all the foregoing reasons, Petitioner Thomas Whitaker respectfully requests the Court issue an Order staying his impending execution until such time as it can consider and resolve the issues raised by the Petition for a Writ of Certiorari, so that any potentially favorable resolution does not become moot as to Mr. Whitaker.

Dated: February 20, 2018

Respectfully submitted,

/s/ Bobbie L. Stratton

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WILLIAMS**

NO. 17-7506

**IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 2017**

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February 22, 2018**

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**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 16-20364

THOMAS WHITAKER; PERRY WILLIAMS,

Plaintiffs–Appellants,

versus

BRYAN COLLIER; WILLIAM STEPHENS;
JAMES JONES; UNKNOWN EXECUTIONERS,

Defendants–Appellees.

Appeal from the United States District Court
for the Southern District of Texas

Before SMITH, PRADO, and GRAVES, Circuit Judges.

JERRY E. SMITH, Circuit Judge:

In July 2017, a majority of this panel denied inmate Thomas Whitaker’s challenge, under 42 U.S.C. § 1983, to Texas’s method of execution, claiming violation of the First, Sixth, Eighth, and Fourteenth Amendments. Judge Graves dissented. *See Whitaker v. Collier*, 862 F.3d 490 (5th Cir. 2017), *petition for cert. filed* (Dec. 4, 2017) (No. 17-7506). With the petition for writ of

No. 16-20364

certiorari pending, Whitaker returns to this court seeking a stay of his execution that is scheduled for February 22, 2018.

In his well-crafted motion, Whitaker raises essentially the same objections that the panel majority rejected. Wisely, Whitaker asks for action by this court before the execution and before the Supreme Court is scheduled to conference on the certiorari petition, because that conference is set for the day after the day designated for execution.

In their Statement Pursuant to Fifth Circuit Rule 8.10, counsel for Whitaker recognize that Supreme Court Rules 22 and 23 require them to seek a stay in this court before they can approach the Supreme Court for relief. Counsel also helpfully explain why, under Fifth Circuit Rule 8.10, they are one day late in filing for a stay.

The doctrine of law of the case discourages this panel from ruling contrary to the dismissal announced in July. Moreover, the panel majority adheres to the reasoning set forth in that opinion. We accommodate counsels' request for action on the motion for stay, and we do so expeditiously to allow reasonable time for a motion in the Supreme Court before the date set for execution.

The motion for stay of execution is DENIED, essentially for the reasons set forth in this court's opinion, 862 F.3d at 494–502.

JAMES E. GRAVES, JR., Circuit Judge, Dissenting:

I respectfully dissent from the majority's denial of a stay of execution. Whitaker has shown a likelihood of success on the merits and a stay is necessary to ensure that his execution is not carried out in an unconstitutional manner.

"In deciding whether to issue a stay of execution, we are required to consider four factors: (1) whether the movant has made a showing of likelihood of success on the merits, (2) whether the movant has made a showing of irreparable injury if the stay is not granted, (3) whether the granting of the stay would substantially harm the other parties, and (4) whether the granting of the stay would serve the public interest." *In re Campbell*, 750 F.3d 523, 534 (5th Cir. 2014) (internal quotations omitted). All four factors weigh in favor of Whitaker.

First, for essentially the same reasons stated in my July 7, 2017, dissent, Whitaker has shown a likelihood of success on the merits. "[T]he district court improperly considered evidence outside the pleadings without converting the motion to dismiss into a motion for summary judgment." *Whitaker v. Collier*, 862 F.3d 490, 504 (5th Cir. 2017). "Thus, the district court applied a standard which was clearly erroneous and there is no authority for the application of a harmless error standard." *Id.* Further, "even if there was such authority, the error was not harmless because Whitaker's complaint was not deficient." *Id.*

Second, Whitaker is scheduled for execution the day before the Supreme Court is set to consider his appeal. If unconstitutionally executed, it goes without saying that the injury to Whitaker is irreparable. "[E]xecution is the most irremediable and unfathomable of penalties." *Ford v. Wainwright*, 477 U.S. 399, 411 (1986).

Third, while I recognize the State's interest in carrying out its criminal judgments, the requested stay is minor. Whitaker only seeks a stay for a single

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day to allow the Supreme Court to consider his appeal. To the extent this may cause some inconvenience to the State in re-scheduling the execution, that delay would not “substantially harm” the State’s ability to carry out its judgment. *See In re Campbell*, 750 F.3d at 534.

Fourth, Whitaker challenges his execution under the Eighth and Fourteenth Amendments of the U.S. Constitution. *See Whitaker*, 862 F.3d at 503. The public interest is served by ensuring that a convicted prisoner is not unconstitutionally executed. “In a capital case, we must be particularly certain that the legal issues have been sufficiently litigated, and the criminal defendant accorded all the protections guaranteed him by the Constitution of the United States.” *In re Campbell*, 750 F.3d at 535 (internal quotations omitted).

The balance of equities tips in favor of Whitaker. Because we should grant the requested stay to allow for Supreme Court review of this case, I respectfully dissent.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE
NEW ORLEANS, LA 70130

February 19, 2018

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 16-20364 Thomas Whitaker, et al v. Bryan Collier, et al
USDC No. 4:13-CV-2901

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk



By: _____
Monica R. Washington, Deputy Clerk
504-310-7705

Mr. David J. Bradley
Mr. Matthew Hamilton Frederick
Ms. Valerie Anne Henderson
Mr. Scott A. Keller
Ms. Maurie Levin
Mr. Edward Larry Marshall
Mr. Matthew Dennis Ottoway
Ms. Bobbie Leigh Stratton

STATE OF TEXAS	§	IN THE 400TH DISTRICT COURT
	§	
v.	§	OF
	§	
THOMAS BARTLETT WHITAKER	§	FORT BEND COUNTY, TEXAS

EXECUTION ORDER

The condemned person, THOMAS BARTLETT WHITAKER, was indicted by the Grand Jury of Fort Bend County, Texas, and charged with the offense of capital murder in cause number 05-DCR-042969. On March 5, 2007, a jury in this Court returned a verdict finding the condemned person guilty of the offense of capital murder. On March 8, 2007, the same jury in this Court returned answers to the special issues, submitted to the jury on punishment pursuant to Article 37.071 of the Texas Code of Criminal Procedure, and this Court, in accordance with the jury's findings on punishment, assessed the condemned person's punishment at death. The judgment of this Court was reviewed by the Texas Court of Criminal Appeals on direct appeal and it was affirmed by that court on June 24, 2009. Mandate issued on July 27, 2009. Subsequently, on June 30, 2010, the Court of Criminal Appeals denied the condemned person's initial application for writ of habeas corpus in cause number WR-73,421-01. Thereafter, the District Court for the Southern District of Texas, Houston Division, denied the condemned person's federal petition for writ of habeas corpus on February 17, 2015, and the United States Court of Appeals for the Fifth Circuit affirmed the judgment of the district court and denied the condemned person's application for a Certificate of Appealability on April 4, 2017. The Supreme Court of the United States denied the condemned person's petition for writ of certiorari on October 10, 2017. This Court now proceeds with the judgment and sentence in the condemned person's case and now enters the following order.

IT IS HEREBY ORDERED by this Court that the condemned person, THOMAS BARTLETT WHITAKER, having been adjudged guilty of capital murder and having been assessed punishment at death, in accordance with the findings of the jury and the judgment of this Court, shall at some time after the hour of 6:00 p.m. on the 22nd day of February 2018, be put to death by an executioner designated by the Director of the Correctional Institutions Division of the Texas Department of Criminal Justice, who shall cause a substance or substances in a lethal quantity to be intravenously injected into the condemned person's body sufficient to cause the condemned person's death, and until the condemned person's death, such execution procedure to be determined and supervised by the said Director of the Correctional Institutions Division of the Texas Department of Criminal Justice.

It is ORDERED that the Clerk of this Court shall, not later than the second business day after the date of this Order, issue a death warrant, in accordance with this sentence, to the Director of the Correctional Institutions Division of the Texas Department of Criminal Justice, and shall deliver such warrant and a certified copy of this order to the Sheriff of Fort Bend County, Texas to be immediately delivered by him to the Director of the Correctional Institutions Division of the Texas Department of Criminal Justice together with the condemned person, THOMAS BARTLETT WHITAKER, if not previously delivered. It is FURTHER ORDERED that the Clerk of this Court shall, not later than the second business day after the date of this Order and at the time the warrant is issued, send a certified copy of this Order and a certified copy of the warrant to the following:

Philip H. Hilder
James Rytting
Hilder and Associates
Attorneys for Defendant on federal post-conviction proceedings
819 Lovett Blvd
Houston, Texas 77006

Fred M. Felcman
Gail Kikawa McConnell
Fort Bend County District Attorney's Office
301 Jackson St
Richmond, TX 77469

Office of Capital Writs
Stephen F. Austin Building
1700 N. Congress Ave, Ste 460
Austin, TX 78701

The condemned person, THOMAS BARTLETT WHITAKER, is hereby remanded to the custody of the Sheriff of Fort Bend County, Texas, to await transfer to Huntsville, Texas, if not previously delivered, and the execution of this sentence of death.

DONE AND ENTERED this 01^{8C} day of November 2017.

FILED

2017 NOV -1 PM 3:47

Renee R. Elliott

CLERK DISTRICT COURT
FORT BEND CO., TX

Maggie Perez-Jaramillo
MAGGIE PEREZ-JARAMILLO
Presiding Judge
400th District Court
Fort Bend County, Texas