

NO. _____
(Capital Case)

**In the
Supreme Court of the United States**

JOHN DAVID BATTAGLIA, Petitioner,

v.

LORIE DAVIS, Respondent.

**On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Fifth Circuit**

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

**JOHN DAVID BATTAGLIA IS SCHEDULED TO BE
EXECUTED ON FEBRUARY 1, 2018 AT 6:00 P.M.**

Counsel for Petitioner Battaglia files this Motion for Leave to Proceed *In
Forma Pauperis*:

Motion

1. This motion meets the requirements of Supreme Court Rule 39.
2. Petitioner Battaglia seeks *in forma pauperis* status for the proceedings before this Court.
3. On June 13, 2016, undersigned counsel Michael Mowla, who is lead counsel in these proceedings, was appointed under 18 U.S.C. § 3599 by the United

States District Court, Northern District of Texas. See *Battaglia v. Davis*, No. 3:16-cv-00687-B (N.D. Tex. June 13, 2016, ECF 16) (see attached).

4. Previously, the same court determined that Battaglia is entitled to appointed counsel under 18 U.S.C. § 3599(a)(2) and appointed Margaret Schmucker, who was replaced by Michael C. Gross, *Battaglia v. Stephens*, No. 13-70035 (5th Cir. Apr. 1, 2014), and Gregory W. Gardner per *Battaglia v. Stephens*, 824 F.3d 470, 471-473 (5th Cir. 2016). See *Battaglia v. Davis*, No. 3:16-cv-00687-B (N.D. Tex. June 13, 2016, ECF 16) (attached). Thus, co-counsel Gregory Gardner was also appointed under 18 U.S.C. § 3599.

5. To undersigned counsel's knowledge, Battaglia remains indigent. And, undersigned counsel continues to act as CJA counsel for Battaglia.

6. Undersigned counsel asks that Battaglia be allowed to continue under *in forma pauperis* status for the proceedings before this Court.

Prayer

Counsel for Petitioner Battaglia prays that this Court grant this Motion for Leave to Proceed *In Forma Pauperis* and allow Petitioner Battaglia to continue under *in forma pauperis* status for the proceedings before this Court.

Respectfully submitted,



/s/ Michael Mowla
Michael Mowla

Michael Mowla
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Counsel of Record

Certificate of Service

I certify that on February 1, 2018, this motion was served on the following counsel by the method stated.



/s/ Michael Mowla
Michael Mowla

Erich Dryden
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Postconviction Litigation
P. O. Box 12548
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

JOHN DAVID BATTAGLIA ,	§	
	§	
Petitioner,	§	
	§	
VS.	§	
	§	NO. 3:16-CV-687-B
LORIE DAVIS, Director	§	
Texas Department of Criminal Justice,	§	(Death Penalty Case)
Correctional Institutions Division	§	
	§	
Respondent.	§	

ORDER APPOINTING CO-COUNSEL

On June 10, 2016, petitioner John David Battaglia ("Battaglia") filed motion to appoint co-counsel (Motion, doc. 15). Respondent is conditionally unopposed. (Mot. at 5.)

I.

This Court previously determined that Battaglia is entitled to appointed counsel under 18 U.S.C. § 3599(a)(2) and appointed Margaret Schmucker (doc. 2), who was replaced by Michael C. Gross, Order, doc. 00512581032 , *Battaglia v. Stephens*, No. 13-70035 (5th Cir. Apr. 1, 2014), and Gregory W. Gardner. *Battaglia v. Stephens*, No. 16-70009, 2016 WL 3084272, at *3-*4 (5th Cir. Mar. 30, 2016). The Court finds that attorney **Michael Mowla** is qualified and willing to be appointed as co-counsel to assist in the representation of Battaglia in these proceedings, and that upon his appointment "at least one attorney" appointed to represent Battaglia will have been admitted to practice in the court of appeals for not less than five years, and will have had not less than three years experience in the handling of appeals in that court in felony cases, as required by 18 U.S.C. § 3599(c).

II.

Petitioner John David Battaglia's motion to appoint co-counsel (doc. 15), is **GRANTED**. Appointed counsel is entitled to compensation (currently at the rate of \$183.00 per hour) in accordance with Volume VII, Part A, Chapter 6, of the *Guide to Judiciary Policy* ("Guide"), 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.

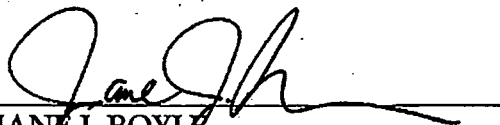
Appointed counsel are also advised of the requirement of pre-approval for the use of associate counsel under the Criminal Justice Act (CJA) plan adopted by this district.* Appointed counsel are entitled to interim payments for services rendered in this case.

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

CO-COUNSEL	Michael Mowla, Esquire PO Box 868 Cedar Hill, TX 75106 Phone: 972-795-2401 Email: michael@mowlalaw.com
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*The CJA plan provides: "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." Misc. Order 3 at VIII(B) (N.D. Tex. Sep. 15, 2000).

IT IS SO ORDERED this 13th day of June, 2016.



JANE J. BOYLE
UNITED STATES DISTRICT JUDGE