

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

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IN THE  
**Supreme Court of the United States**

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WILLIAM EARL RAYFORD,

*Petitioner*

V.

LORIE DAVIS,

*Respondent*

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ON PETITION FOR A WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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**APPLICATION FOR STAY OF EXECUTION**

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January 30, 2018

To the Honorable Samuel Alito, Associate Justice of the Supreme Court of the  
United States and Circuit Justice for the Fifth Circuit:

Today, January 30, 2018, at 6:00pm, the State of Texas seeks to execute William Rayford, in part because he lacked the funding and resources to substantiate his claims for federal habeas relief. On January 30, 2018, the Fifth Circuit affirmed the district court's denial of his Rule 60(b) motion and denied his request for a certificate of appealability. Mr. Rayford therefore moves this Court to stay his execution and grant his petition for certiorari to address the Fifth Circuit's unduly burdensome standard to grant a certificate of appealability and whether denial of funding guaranteed by 18 U.S.C. § 3599 may constitute an extraordinary circumstance justifying reopening the judgment in a death penalty case.

In his Rule 60(b)(6) motion, Mr. Rayford challenged a fundamental defect in his federal habeas corpus proceedings. That defect stemmed from the district court's denial of his request for expert funding and its subsequent denial of relief when Mr. Rayford was unable to present substantiating evidence for his claims, which occurred because he had been denied funding. Mr. Rayford enumerated several facts that made his case extraordinary so that reopening his judgment would be justified. Among these extraordinary facts, Mr. Rayford included that, had funding been granted, he could have established that (1) he may not be guilty of capital murder, and (2) he suffers from brain damage due to chronic exposure to lead and other environmental toxins.

Instead of considering all relevant facts as a whole, the district court treated Mr. Rayford's Rule 60(b) motion as a new habeas petition and delved into the merits of the underlying ineffective assistance of counsel (IAC) claims. The district court also

engaged in the “alternative analysis,” denied Rule 60(b) on the merits, and denied Certificate of Appealability (COA). The denial of the Rule 60(b) motion was based on the district court ignoring certain facts and placing an unreasonably high burden on the movant.

On appeal to the Fifth Circuit, Mr. Rayford asked for a remand because the district court erroneously determined that his Rule 60(b)(6) motion was a second or successive habeas petition requiring authorization. Mr. Rayford also applied for a Certificate of Appealability so he could address the full merits of his Rule 60(b)(6) motion.

Rather than considering the threshold question for a COA—whether reasonable jurists could disagree with the district court’s ruling—the Fifth Circuit instead reached the merits of his Rule 60(b) motion, faulting Mr. Rayford for failing to demonstrate extraordinary circumstances. Despite repeated admonitions from this Court, the Fifth Circuit again exceeded the limited scope of the COA analysis.

For these reasons, Mr. Rayford asks that this Court stay his execution.

### **BACKGROUND**

In his initial federal habeas petition, Mr. Rayford alleged that his trial counsel failed to effectively challenge the testimony of the State’s medical examiner and failed to conduct a reasonable mitigation investigation. To further develop these claims, he requested funding for investigative expenses and a mitigation specialist. Congress has specifically provided that funding should be given to indigent individuals like Mr. Rayford who are facing the death penalty for “investigative, expert, or other services”

that are “reasonably necessary for the representation” in the post-conviction phase. 18 U.S.C. § 3599(f). Furthermore, this Court has held that the statutory right to counsel “necessarily includes a right for that counsel *meaningfully to research and present* a defendant’s habeas claims.” *McFarland v. Scott*, 512 U.S. 849, 858 (1994) (emphasis added). “Where this opportunity is not afforded, ‘[a]pproving the execution of a defendant before his [petition] is decided on the merits would clearly be improper.’” *Id.* (quoting *Barefoot v. Estelle*, 463 U.S. 880, 889 (1983)).

Pursuant to § 3559, Mr. Rayford sought funds to investigate potential claims for his federal petition that prior counsel had failed to pursue. He sought to show that a medical examiner could have refuted the testimony of the State’s examiner, who the State relied on to secure the capital murder conviction. He also intended to have—for the first time—a mitigation specialist research his history and background to find evidence that would potentially have been mitigating to the jury.

The district court denied his requests. Hamstrung by the denial of funding, Mr. Rayford could not develop the evidence necessary to substantiate his claims of ineffective assistance of trial counsel. The district court then denied his claims on the basis that Mr. Rayford had failed to substantiate them. Mr. Rayford was deprived of resources guaranteed to him by Congress and was then, in effect, denied relief because he had been denied those resources.

However, just four months before his scheduled execution, Mr. Rayford finally received funding through other sources. First, Mr. Rayford’s counsel obtained funding to complete Mr. Rayford’s application for clemency. Second, the Capital Habeas Unit

of the Office of the Federal Public Defender for the Northern District of Texas was appointed as co-counsel for Mr. Rayford. The Capital Habeas Unit is independently funded and was able to retain experts that were previously unattainable to Mr. Rayford. Through these sources, Mr. Rayford found evidence that (1) he may not be guilty of capital murder, and (2) he was repeatedly exposed to environmental toxins resulting in brain damage.

The initial denial of funding in his case put Mr. Rayford at a distinct disadvantage compared to other petitioners who have the ability to properly investigate their cases and denied his right to effective assistance of counsel. He addressed that defect in the integrity of his federal habeas proceedings in his Rule 60(b) motion to the district court. The district court improperly construed his motion as a successive petition for habeas corpus relief and directed it to the Fifth Circuit. After finding that it lacked jurisdiction to consider Mr. Rayford's arguments, the district court alternatively, and inexplicably, ruled on the merits—finding that even if Mr. Rayford properly brought a Rule 60(b) motion, it should be denied because he failed to establish extraordinary circumstances. Mr. Rayford appealed the district court's transfer order and the Fifth Circuit Court erroneously denied a COA under its unduly burdensome standard. Mr. Rayford requests a stay so that this Court may consider his petition carefully and determine—as justice demands—whether reasonable jurists could disagree with the district court's ruling as to the merits of Rule 60(b) motion and whether denial of funding guaranteed by 18 U.S.C. § 3599 may

constitute an extraordinary circumstance justifying reopening the judgment in a death penalty case.

### JUSTIFICATIONS FOR STAY

The weightiness of the issues Mr. Rayford raises, in conjunction with the interests at stake, warrant a stay of execution. In deciding whether to grant a motion for stay, this Court considers (1) the likelihood of success on the merits, (2) whether the applicant faces irreparable injury if denied 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. *See Nken v. Holder*, 556 U.S. 418, 434 (2009) (internal citations and quotations omitted). As this Court held in *Barefoot v. Estelle*, 463 U.S. at 895, superseded on other grounds by 28 U.S.C. § 2253(c), a stay may be granted when there is “a reasonable probability that four members of the Court would consider the underlying issue sufficiently meritorious for the grant of certiorari or the notation of probable jurisdiction; . . . a significant possibility of reversal of the lower court’s decision; and . . . a likelihood that irreparable harm will result if that decision is not stayed.” Further, a stay should be granted when necessary to “give non-frivolous claims . . . the careful attention that they deserve” and when a court cannot “resolve the merits [of a claim] before the scheduled date of execution to permit due consideration of the merits.” *Id.* at 888-89. Mr. Rayford respectfully requests that this Court grant certiorari and stay his scheduled execution in order to address the critical question of whether he made the threshold showing for a certificate of appealability—that executing a person who was denied funding guaranteed by Congress to effectuate

effective assistance of counsel violates the constitution and whether denial of funding guaranteed by 18 U.S.C. § 3599 may constitute an extraordinary circumstance justifying reopening judgment in a death penalty case.

First, Mr. Rayford's claims have merit. As Mr. Rayford's petition for certiorari lays out in detail, numerous extraordinary circumstances justify reopening the judgment, thereby demonstrating that reasonable jurists could debate whether the district court erred in denying relief under Rule 60(b). The Fifth Circuit erroneously decided that Mr. Rayford did not demonstrate that his case was extraordinary, instead of mandating only a threshold inquiry into whether the district court's decision was debatable. *Buck v. Davis*, 137 S. Ct. 759, 765 (2017). Had the Fifth Circuit applied the proper standard, it would have determined that the district court failed to consider all the facts and unique circumstances that make Mr. Rayford's case exceptional, including those facts Mr. Rayford developed while investigating his clemency application—including his possible innocence of capital murder. Mr. Rayford should not be executed when, under a proper application of COA standard, he would be litigating the merits of his Rule 60(b) motion.

As to denial of funding, Mr. Rayford in essence has demonstrated that a petitioner with funding for experts and investigative tools can find significant evidence that casts doubt on his conviction and death sentence, while a petitioner without funding cannot. And yet, the Fifth Circuit held that the lack of reasonably necessary funding, made available for death-sentenced defendants under 18 U.S.C.

§ 3599, is not a defect in the integrity of the federal habeas proceedings that could justify reopening of the judgment.

Second, there is no question that Mr. Rayford would suffer irreparably if he were to be executed without adequate habeas proceedings. *See Gregg v. Georgia*, 429 U.S. 1301, 1301 (1976) (Powell, J., staying issuance of mandate). There is likewise no question that a temporary stay of execution, pending resolution of the important issues in his petition for certiorari, would not cause substantial harm to the State of Texas. Indeed, the State of Texas shares Mr. Rayford's interest in assuring the constitutional integrity of capital proceedings. *See Wood v. Collier*, 836 F.3d 534, 542 (5th Cir. 2016) ("The finality of a death sentence and, with it, the inherent risk of uncertainty demand diligent effort by all."). Finally, the public has a strong interest in preventing unconstitutional executions and thereby preserving the integrity and legitimacy of the federal courts. Thus, the public interest lies in granting the requested stay.

Mr. Rayford has, in addition, filed his petition for certiorari and requested this stay at the earliest possible time. *See Hill v. McDonough*, 547 U.S. 573, 584 (2006). Mr. Rayford filed his subsequent application for a writ of habeas corpus in state court as soon as practicable after he obtained funding for his clemency investigation. Texas state law disfavors litigating in both state and federal court at once. *See Ex parte Soffar*, 143 S.W.3d 804, 805 (Tex. Crim. App. 2004) (dismissing a subsequent state habeas petition while a federal petition was pending) The Texas Court of Criminal Appeals did not deny Mr. Rayford's application until the afternoon of Friday, January

26, 2018. Mr. Rayford filed his Rule 60(b) motion in the district court that same day, and he filed his certificate of appealability application and stay motion with the Fifth Circuit within hours of the receiving notice that the district court transferred his motion to the Fifth Circuit. Moreover, he filed his petition for certiorari and this Stay Motion immediately following the Fifth Circuit's denial of relief.

Lastly, Mr. Rayford's execution should be stayed pending this Court's decision in *Ayestas v. Davis*. In *Ayestas* this Court will rule upon a nearly identical question as that presented here: whether the Fifth Circuit's standard for providing resources in habeas proceedings is inappropriately onerous. Equitable considerations require that Mr. Rayford be given the benefit of this Court's decision in *Ayestas*.

#### **CONCLUSION AND PRAYER FOR RELIEF**

Mr. Rayford asks that the Court grant this motion, stay his execution, and grant any other relief that the Court may find just.

Respectfully submitted,

Bruce Anton  
Texas Bar No. 01274700  
Udashen & Anton  
2311 Cedar Springs Rd.  
Suite 250  
Dallas, TX 75201  
214-468-8100  
214-468-8104 (fax)  
ba@udashenanton.com

/s/ Nadia Wood

Nadia Wood (Sup. Ct. Bar # 291584)  
*Counsel of record*  
Jessica Graf (TX 24080615)  
Jeremy Schepers (TX 24084578)  
Assistant Federal Defenders  
Capital Habeas Unit  
Office of Federal Public Defender  
Northern District of Texas  
525 S. Griffin St., Ste. 629  
Dallas, TX 75202  
214-767-2746  
214-767-2886 (fax)  
Nadia\_Wood@fd.org

*Counsel for William Earl Rayford*