APPLICATION FOR STAY No. _____ (CAPITAL CASE)

IN THE

SUPREME COURT OF THE UNITED STATES

REINALDO DENNES,

Petitioner,

v.

STATE OF TEXAS,

Respondent.

On Petition for Writ of Certiorari
to the Texas Court of Criminal Appeals

APPLICATION FOR STAY OF EXECUTION

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OF EXECUTION PENDING DISPOSITION OF PETITION FOR WRIT OF CERTIORARI

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

INTRODUCTION

Petitioner Reinldo Dennes is scheduled for execution on November 19, 2026. Dennes requests that this Court stay his execution pending the disposition of his petition for writ of cert. That petition includes a powerful and potentially meritorious claim that Dennes's trial counsel failed to investigate and present mitigating evidence to the jury, violating Dennes's right to the effective assistance of counsel under the Sixth, Eighth, and Fourteenth Amendments.

In total, trial counsel presented only four witnesses during the punishment phase of trial, only two of whom had any kind of personal relationship with Dennes prior to his arrest for the instant offense. Petitioner's son acknowledged that Petitioner had supported him as he was growing up, *see* 34 RR 245–48, and Petitioner's mother testified that Petitioner was a loving father, 35 RR 14. These witnesses, however, were insufficient to give the jury a full picture of Dennes's devotion to his family, his past trauma, or his deficits in executive functioning.

Had trial counsel conducted an adequate and effective investigation, there is a reasonable probability that otherwise undiscovered evidence would have convinced at least one juror to vote for life instead of death. *See Wiggins v. Smith*, 539 U.S. 510, 537 (2003). This evidence, presented to the court for the first time in Dennes's subsequent application for habeas corpus, included a narrative of Dennes's arrival in

the United States as a young boy after escaping from Communist Cuba in 1961; accounts of heavy alcohol use and physical abuse in Dennes's home as a child; Dennes's dangerous voyage to rescue his cousin from Cuba in 1980; a traumatic event where Dennes saved his daughter from a fire and suffered severe injuries; and the results of Dennes's first and only neuropsychological exam to date, which shows severe deficits in executive functioning that impact his ability to focus, learn, and complete complex tasks.

Dennes presented this information to the Texas Court of Criminal Appeals ("TCCA") in a Subsequent Application for Writ of Habeas Corpus. In that petition, he alleged that met the requirements for proceeding on a subsequent state habeas application by showing, "by clear and convincing evidence, but for a violation of the United States Constitution no rational juror would have answered in the state's favor one or more of the special issues that were submitted to the jury in the applicant's trial..." *See* Tex. Code Crim. Proc. art. 11.071, § 5(a)(3). Despite the newly discovered mitigating evidence that Dennes presented in his petition, the TCCA found that he "failed to show that he satisfies the requirements of Article 11.071 § 5" and "dismiss[ed] his application as an abuse of the writ without reviewing the merits of his claims." App. A at 2–3.

REASONS PETITIONER IS ENTITLED TO A STAY

The standard for granting a stay of execution is well established. A stay of execution is justified pending the disposition of a petition for writ of certiorari. *Barefoot v. Estelle*, 463 U.S. 880, 889 (1983) ("Approving the execution of a defendant

before an appeal is decided on the merits would clearly be improper."). Courts consider the prisoner's likelihood of success on the merits, the relative harm to the parties, and the extent to which the prisoner has unnecessarily delayed his or her claims. *Hill v. McDonough*, 547 U.S. 573, 584 (2006); *Nelson v. Campbell*, 541 U.S. 637, 649-50 (2004). In the present context, there must be "a reasonable probability that four members of the Court would consider the underlying issue sufficiently meritorious for the grant of certiorari" and "a significant possibility of reversal of the lower court's decision," in addition to irreparable harm. *Barefoot v. Estelle*, 463 U.S. 880, 895 (1983) (citation omitted). These factors weigh in favor of staying Dennes's execution pending this Court's review of the issues raised in his petition for certiorari.

I. Dennes's petition is likely to succeed on the merits.

In his petition for writ of certiorari, Dennes has shown a likelihood of success on the merits of his claim. That petition explains why Dennes's right to the effective assistance of counsel was violated by trial counsel's failure to investigate and present mitigating evidence at his trial. Thus, Dennes's petition for writ of certiorari is tied to a weighty allegation pursuant to *Wiggins v. Smith*, 539 U.S. 510 (2003). Under these circumstances it is probable that four Justices will think review is necessary, so the Court should grant a stay to ensure review is possible.

II. If he is not granted a stay, Dennes will suffer irreparable harm.

Irreparable harm is indisputably present when a stay of execution is sought. As this Court has explained, "death is different"—"execution is the most irremediable and unfathomable of penalties." *Ford v. Wainwright*, 477 U.S. 399, 411 (1986)

(plurality op.); *see also Wainwright v. Booker*, 473 U.S. 935, 935 n.1 (1985) (Powell, J., concurring) ("The third requirement—that irreparable harm will result if a stay is not granted—is necessarily present in capital cases."). Because of the "irreversible nature of the death penalty," this factor "weighs heavily in the movant's favor." *O'Bryan v. Estelle*, 691 F.2d 706, 708 (5th Cir. 1982). This Court should not allow Dennes to be executed without affording him the opportunity to have his *Wiggins* claim meaningfully heard.

III. The public interest favors granting a stay.

In weighing the equities, the State's undoubted interest in carrying out the sentence must yield to the interests of the victim and the public. In this case, however, staying Dennes's execution would result in minimal injury to the other parties. The requested stay does not invalidate Dennes's conviction or sentence but instead is only a temporary measure to allow him an opportunity to litigate this potentially meritorious *Wiggins* claim. Thus, any injury to other parties is mitigated by the temporary nature of the requested relief.

CONCLUSION

For these reasons, this Court should enter an order staying Dennes's execution pending resolution of the issues raised in his petition for writ of certiorari.

Respectfully submitted,

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