

Statement of SOTOMAYOR, J.

SUPREME COURT OF THE UNITED STATES

No. 12–6760 (12A369)

ANTHONY CARDELL HAYNES *v.* RICK THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION

ON APPLICATION FOR STAY

[November 13, 2012]

Statement of JUSTICE SOTOMAYOR, with whom JUSTICE GINSBURG joins, respecting the grant of stay of execution.

In this case, a divided Fifth Circuit panel rejected Anthony Haynes’ application for a certificate of appealability on the ground that this Court’s decision in *Martinez v. Ryan*, 566 U. S. ____ (2012), “does not apply to Texas capital habeas petitioners.” No. 12–70030, 2012 WL 4858204, *2 (Oct. 15, 2012). We recently granted certiorari to address precisely the question whether *Martinez* applies to habeas cases arising from Texas courts. See *Trevino v. Thaler*, 568 U. S. ____ (2012).

The dissent observes that on federal habeas review in this case, the District Court, after first concluding that Haynes had procedurally defaulted his claim that his trial counsel was constitutionally ineffective, ruled in the alternative that the claim failed on the merits. *Post*, at 2–3. But the Court of Appeals has never addressed the District Court’s merits ruling, and has instead relied solely on procedural default. See 2012 WL 4858204, *2; *Haynes v. Quarterman*, 526 F.3d 189, 194–195 (CA5 2008). The only appellate judge to consider the merits of Haynes’ claim would have granted Haynes a certificate of appealability in his current case and stated that it was “difficult to conclude that Hayne[s] has not made a sufficient showing for a *Strickland* [*v. Washington*, 466 U. S. 668 (1984),]

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violation as to his trial counsel.” 2012 WL 4858204, *4 (Dennis, J., dissenting). Under these circumstances, rather than assume the correctness of the District Court’s unreviewed merits decision, I believe a stay of execution is warranted to allow Haynes to pursue his claim on remand if this Court in *Trevino* rejects the single ground relied upon by the Fifth Circuit for denying Haynes’ application for a certificate of appealability.