

EXHIBIT I

No.

07A265

CAPITAL CASE

SEP 25 2007

EXECUTION DATE

IN THE SUPREME COURT OF THE UNITED STATES

FILED

SEP 25 2007

OFFICE OF THE CLERK
SUPREME COURT U.S.

October Term, 2006

IN RE MICHAEL WAYNE RICHARD,

Petitioner

MOTION FOR STAY OF EXECUTION

THIS IS A DEATH PENALTY CASE.

MR. RICHARD IS SCHEDULED TO BE EXECUTED ON
SEPTEMBER 25, 2007.

Gregory W. Wierloch
Texas Defender Service
430 Jersey Street
San Francisco, California 94114
TEL (832) 741-6203
FAX (512) 477-2153

Member, Supreme Court Bar
Counsel of Record for Michael Wayne Richard

TO THE HONORABLE JUSTICES OF THIS COURT:

Petitioner Michael Richard requests that this Court grant a stay of execution pending the consideration and disposition of a petition for writ of *certiorari*.

A stay of execution is warranted where there is (1) 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; (2) a significant possibility of reversal of the lower court's decision; and (3) a likelihood that irreparable harm will result if no stay is granted. *Barefoot v. Estelle*, 463 U.S. 880, 895 (1983); *Moore v. Texas*, 535 U.S. 1110 (2002). All three criteria are met in this case.

First, four members of this Court should consider the underlying issue sufficiently meritorious for *certiorari*. Mr. Richard seeks to raise a challenge to the lethal injection protocol that the State of Texas intends to use in carrying out his execution. This morning, this Court agreed to review precisely the question that Mr. Richard seeks to raise. *Baze v. Rees*, No. 07-5439 (cert. granted, Sept. 25, 2007).

The State of Texas's highest court has previously indicated that where a death row inmate raises an issue before the Supreme Court that the Supreme Court agrees to review, it is impermissible to carry out that inmate's execution until the Supreme Court addresses the merits. See *Ex parte Herrera*, 828 S.W.2d 9 (Tex. Cr. App. 1992). Mr. Richard sought to file a writ in the state court, arguing that, in view of this Court's action this morning, coupled with the *Herrera* doctrine, Mr. Richard's execution should be stayed pending a ruling on the merits. Although he himself did not previously present the issue, the issue, as presented in *Baze*, is identical to the issue he seeks to present, and his execution therefore should not proceed. However, the clerk of the Court refused to

remain open past 5 o'clock to permit Mr. Richard's counsel to file the pleadings. Consequently, Mr. Richard filed the petition in a state district court, which, at this time, has not ruled.

Second, there is a significant possibility that this Court will reverse the lower court's judgment, if the lower court enters a judgment. Mr. Richard will seek review in the state's highest court, when that court reopens. If that court refuses to grant relief, this Court's decision to review the merits of the issue in another case, raising the identical issue, would surely warrant a reversal of the lower court's judgment.

Third and finally, Mr. Richard is entitled to a stay from this Court because there exists a likelihood that he will suffer irreparable injury if a stay of execution is denied. Without a stay of execution, Respondents will be free to inject plaintiff with superfluous chemicals that unnecessarily and intolerably increase the risk that he will experience a form of torture during the lethal injection process, in violation of the Eighth and Fourteenth Amendments.

CONCLUSION

Mr. Richard does not seek to avoid execution. He requests only that this Court order that his execution by lethal injection not include chemicals that are unnecessary to the effectuation of his death and that present a substantial risk that he will suffer excessive, unnecessary, and excruciating pain during the process of the execution. His right not having been protected by the courts below, Mr. Richard now requests a stay of execution from this Court, pending the consideration and disposal of a petition for writ of *certiorari*.

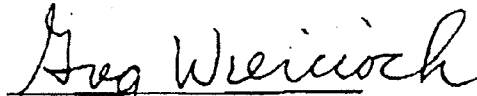
Respectfully Submitted,

09/25/2007
09/25/2007

17:13
17:10

TEXAS DEFENDER SERVICE-AUSTIN → 12024793026

NO. 346 005
NO. 252 005



GREGORY W. WIERCIOCH
Texas Bar No. 00791925
TEXAS DEFENDER SERVICE
430 Jersey Street
San Francisco, California 94114
TEL (832) 741-6203
FAX (512) 477-2153

DAVID R. DOW
Texas Bar No. 06064900
TEXAS DEFENDER SERVICE
412 Main St., #1150
Houston, TX 77007
TEL (713) 222-7788
FAX (713) 222-0260

Counsel for Michael Wayne Richard

EXHIBIT J

IN THE COURT OF CRIMINAL APPEALS OF TEXAS
IN AUSTIN, TEXAS
AND
IN THE 182nd JUDICIAL DISTRICT COURT
OF HARRIS COUNTY, TEXAS

EX PARTE

MICHAEL WAYNE RICHARD

)
)
)
)
)
)

Writ No.

CRIMINAL JUSTICE
SERVICE

FILED 2011 09 05

MOTION FOR STAY OF EXECUTION

Michael Wayne Richard asks this Court to stay his execution, scheduled for September 25th, 2007. In the accompanying Petition for Writ of Prohibition, Mr. Richard has demonstrated that his Eighth Amendment right to be free from “cruel and unusual punishment” will be violated if the State of Texas proceeds with his execution because the Texas lethal injection procedure creates and unnecessary and medically unacceptable risk that an inmate will experience excruciating pain and suffering. Because this method of execution has not been deemed constitutional by the United States Supreme Court, Mr. Richard seeks a stay of execution until such time as the merits of the dispute have been resolved.

The United States Supreme Court has today agreed to review the constitutionality of the manner that the State intends to use to administer Mr. Richard’s execution. *See Baze v. Rees*, 07-5439. This Court has recognized that

when the Supreme Court has agreed to review an issue presented by an inmate on death row, the State, out of respect for the Supreme Court's authoritative role, ought not to carry out the execution of that inmate until the Supreme Court has completed its review. *See Ex parte Herrera*, 828 S.W.2d 9 (Tex. Crim. App. 1992) (because the Supreme Court had granted the petition for writ of certiorari, "we find under the present circumstances that it would be improper for this Court to allow applicant's execution to be carried out before his petition for writ of certiorari is fully reviewed by the Supreme Court.")

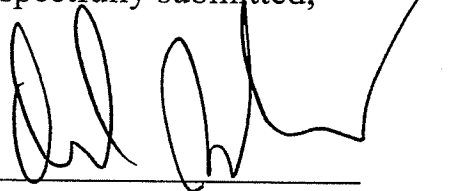
Although Mr. Richard did not himself present to the Supreme Court the legality of the State's lethal injection protocol, the Supreme Court, in a different case, has agreed to review precisely that question. That question, moreover, is as applicable to Mr. Richard's case as it is to the case of the inmate from Kentucky. Pursuant to the reasoning of *Herrera*, this Court should grant Mr. Richard a stay to insure that he not be executed pursuant to a protocol that the Supreme Court might declare to be unconstitutional.

For the foregoing reasons, this Court should stay Mr. Richard's execution pending the consideration of Mr. Richard's accompanying Petition for Writ of Prohibition, or alternatively, pending the Supreme Court's consideration on the merits of *Baze v. Rees*, 07-5439.

CONCLUSION

ACCORDINGLY, Mr. Richard asks that this Court stay his execution, currently scheduled for September 25, 2007.

Respectfully submitted,



GREGORY W. WIERCIOCH
Texas Bar No. 00791925
TEXAS DEFENDER SERVICE
430 Jersey Street
San Francisco, California 94114
TEL (832) 741-6203
FAX (512) 477-2153

DAVID R. DOW
Texas Bar No. 06064900
TEXAS DEFENDER SERVICE
412 Main St., #1150
Houston, TX 77007
TEL (713) 222-7788
FAX (713) 222-0260

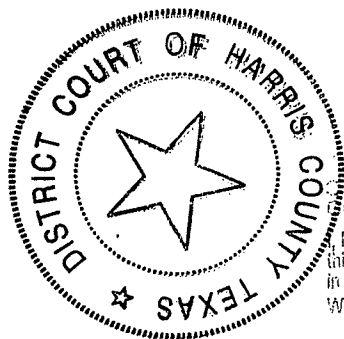
Counsel for Michael Wayne Richard

CERTIFICATE OF SERVICE

I, Gregory W. Wiercioch, hereby certify that true and correct electronic versions of Petitioner's Motion for Stay of Execution, was served on opposing counsel on September 25, 2007, via e-mail to:

Mr. Baxter R. Morgan
Office of the Attorney General
Capital Litigation Division
Price Daniel, Sr. Building, 7th Floor
209 West 14th Street
Austin, Texas 78701
Baxter.Morgan@oag.state.tx.us

/s/ Gregory W. Wiercioch
Gregory W. Wiercioch
Counsel of Record



STATE OF TEXAS
COUNTY OF HARRIS

Loren Jackson, District Clerk of Harris County, Texas, certify that
this is a true and correct copy of the original record filed and or recorded
in my office, electronically or hard copy, as it appears on this date.
Witness my official hand and seal of office this

23 FEB 2009

LOREN JACKSON, DISTRICT CLERK
HARRIS COUNTY, TEXAS

Deputy

EXHIBIT K

No. 07A265

Title: In Re Michael Wayne Richard, Applicant

v.

Docketed:

~~~~Date~~~~ Proceedings and Orders~~~~

Sep 25 2007 Application (07A265) for a stay of execution of sentence of death, submitted to Justice Scalia.

Sep 25 2007 Application (07A265) referred to the Court by Justice Scalia.

Sep 25 2007 Application (07A265) denied by the Court.

~~~~Name~~~~ ~~~~~Address~~~~ ~~~~~Phone~~~~

Attorneys for Petitioner:

| | | |
|---------------------------|---|----------------|
| Gregory William Wiercioch | 430 Jersey St.
San Francisco, CA 94114 | (832) 741-6203 |
|---------------------------|---|----------------|

Party name: Michael W. Richard

Attorneys for Respondent:

| | | |
|--------------|---|----------------|
| Gena B. Bunn | Assistant Attorney General
Office of the Attorney General
P.O. Box 12548, Capitol Station
Austin, TX 78711 | (512) 936-1400 |
|--------------|---|----------------|

Party name: Texas

(ORDER LIST: 551 U.S.)

TUESDAY, SEPTEMBER 25, 2007

ORDER IN PENDING CASE

07A265 IN RE MICHAEL W. RICHARD

The application for stay of execution of sentence of death presented to Justice Scalia and by him referred to the Court is denied.

No. 07-6705 *** CAPITAL CASE ***
 Title: In Re Michael Wayne Richard, Petitioner
 v.
 Docketed: September 24, 2007

| Date | Proceedings and Orders |
|-----------------|---|
| Sep 24 2007 | Petition for writ of habeas corpus and motion for leave to proceed in forma pauperis filed. |
| Sep 24 2007 | Application (07A259) for a stay of execution of sentence of death, submitted to Justice Scalia. |
| Sep 25 2007 | Brief of respondent in opposition filed. |
| Sep 25 2007 | Application (07A259) referred to the Court by Justice Scalia. |
| Sep 25 2007 | Reply of petitioner filed. |
| Sep 25 2007 | Application (07A259) denied by the Court. |
| Sep 25 2007 | Petition DENIED. |

| Name | Address | Phone |
|----------------------------------|---|------------------|
| Attorneys for Petitioner: | | |
| Gregory William Wiercioch | 430 Jersey St.
San Francisco, CA 94114 | (832) 741-6203 |
| Party name: | | |
| Attorneys for Respondent: | | |
| Gena B. Bunn | Assistant Attorney General
Office of the Attorney General
P.O. Box 12548, Capitol Station
Austin, TX 78711 | (512) 936-1400 |
| Party name: | | |

128 S.Ct. 37, 168 L.Ed.2d 803, 76 USLW 3153

Supreme Court of the United States
In re Michael Wayne RICHARD, applicant.

No. 07A265.
Sept. 25, 2007.

Application for stay of execution of sentence of death presented to Justice SCALIA and by him referred to the Court denied.

U.S.,2007
In re Richard
128 S.Ct. 37, 168 L.Ed.2d 803, 76 USLW 3153

END OF DOCUMENT

In re Richard 128 S.Ct. 37, 168 L.Ed.2d 803, 76 USLW 3153 (U.S.2007)

(ORDER LIST: 551 U.S.)

TUESDAY, SEPTEMBER 25, 2007

HABEAS CORPUS DENIED

07-6705
(07A259)

IN RE MICHAEL W. RICHARD

The application for stay of execution of sentence of death presented to Justice Scalia and by him referred to the Court is denied. The petition for a writ of habeas corpus is denied.

No. 07-6706 *** CAPITAL CASE ***
 Title: In Re Michael Wayne Richard, Petitioner
 v.
 Docketed: September 24, 2007

| ~Date~ | ~Proceedings and Orders~ |
|-------------|---|
| Sep 24 2007 | Petition for a writ of mandamus and motion for leave to proceed in forma pauperis filed.
(Response due October 24, 2007) |
| Sep 24 2007 | Application (07A260) for a stay of execution of sentence of death, submitted to Justice
Scalia. |
| Sep 25 2007 | Brief of respondent in opposition filed. |
| Sep 25 2007 | Application (07A260) referred to the Court by Justice Scalia. |
| Sep 25 2007 | Reply of petitioner filed. |
| Sep 25 2007 | Application (07A260) denied by the Court. |
| Sep 25 2007 | Petition DENIED. |

| ~Name~ | ~Address~ | ~Phone~ |
|----------------------------------|---|----------------|
| Attorneys for Petitioner: | | |
| Gregory William Wiercioch | 430 Jersey St.
San Francisco, CA 94114 | (832) 741-6203 |
| Party name: | | |
| Attorneys for Respondent: | | |
| Gena B. Bunn | Assistant Attorney General
Office of the Attorney General
P.O. Box 12548, Capitol Station
Austin, TX 78711 | (512) 936-1400 |
| Party name: | | |

(ORDER LIST: 551 U.S.)

TUESDAY, SEPTEMBER 25, 2007

MANDAMUS DENIED

07-6706 IN RE MICHAEL W. RICHARD
(07A260)

The application for stay of execution of sentence of death presented to Justice Scalia and by him referred to the Court is denied. The petition for a writ of mandamus and/or prohibition is denied.