



December 1, 2014

VIA EMAIL: dzimmerman@governor.state.tx.us

The Hon. Rick Perry
Governor, State of Texas
c/o David E. Zimmerman
Assistant General Counsel
P.O. Box 12428
Austin, Texas 78711-2428

Re: Request for a 30-day Reprieve for Scott Panetti. Mr. Panetti is scheduled to be executed on December 3, 2014.

Dear Governor Perry:

Questions about Scott Panetti's competency have been at the heart of this case since he decided to fire his attorneys and asked to be allowed to represent himself. The elected District Attorney, E. Bruce Curry, urged the judge not to let Mr. Panetti to do so, saying "We are concerned about protecting the Defendant's rights. I think they would be best served by leaving counsel in." The judge refused, and Mr. Panetti, dressed in a purple cowboy outfit while representing himself, frightened jurors and baffled witnesses with his floridly psychotic behavior. All who observed the trial described it as a "tragic farce" and a "circus."

On October 16, 2014, that same District Attorney no longer appeared concerned with protecting Mr. Panetti's rights. After asking the judge to set Mr. Panetti's execution for December 3, 2014, he deliberately failed to notify undersigned counsel, who have been representing Mr. Panetti in state and federal courts for nearly ten years.

The District Attorney has since refused to speak with undersigned counsel about modifying the execution date so that they would have enough time to review the mountain of prison records (over 8,500 pages) and try to hire a mental health expert to evaluate Mr. Panetti.

The District Attorney's actions are puzzling. Mr. Panetti stands on the razor's edge of sanity. The issue of his competence for execution went all the way to the United States Supreme Court. His execution competence has been in issue before and resulted in the Supreme Court's ground-breaking decision requiring the condemned to have a rational understanding of the connection between the crime and the punishment before they can be put to death. *See Panetti v. Quarterman*, 551 U.S. 930 (2007).

His condition has markedly deteriorated in the seven years since he was last evaluated. Yet, the District Attorney asked that the judge set the execution date only a month and a half out, leaving little time for counsel, even if they had received notice, to investigate Mr. Panetti's present mental state.

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The Hon. Rick Perry

December 1, 2014

Re: **Scott Louis Panetti: Mr. Panetti is scheduled
to be executed on Dec. 3, 2014**

Page 2

Instead, the District Attorney remained silent about the execution date. Fourteen critical days passed before undersigned counsel read an article in the newspaper about the scheduling of Mr. Panetti's execution. Fourteen days passed during which counsel could have been investigating the issues surrounding Mr. Panetti's competence – issues which the District Attorney surely knew would have to be litigated to ensure that Mr. Panetti's execution would not violate the Eighth Amendment.

The District Attorney's reckless conduct has forced the state and federal courts to review in an unseemly rush one of the most controversial death penalty cases in Texas.

The District Attorney's deliberate refusal to notify undersigned counsel has had additional legal implications: It deprived Mr. Panetti of the right to appeal the trial court's competency decision. A motion under Article 46.05 of the Texas Code of Criminal Procedure must be filed at least 21 days in advance of the execution date to invoke the jurisdiction of the Court of Criminal Appeals. However, by the time undersigned counsel found out about the execution date, on October 30, 2014, less than two weeks remained before the statutory deadline. Counsel simply did not have enough time to investigate and prepare the motion. The District Attorney was unmoved by counsel's plight.

Our visits to see Mr. Panetti over the past three weeks confirm that he remains delusional, that he is regularly experiencing auditory hallucinations, and that his psychiatric condition is worsening day by day. Without a 30-day reprieve so that we may investigate and litigate his competence to be executed, Mr. Panetti will go to the execution chamber convinced that he is being put to death for preaching the Gospel, not for the murder of his wife's parents.

Despite Mr. Panetti's longstanding and incurable mental illness, as well as his history of incompetence, the inexplicable fast-tracking of his execution means the question of his competence to be executed has not received the full and fair hearing that the Constitution requires. so that Scott Panetti's constitutional right to be competent when executed can be protected through further investigation and litigation.

The Eighth Amendment stands alone among all the Amendments to the Constitution dealing with criminal procedure, for its primary purpose is not concerned with protecting a criminal defendant from an unfair trial but with protecting us – society itself – from inflicting barbarous and uncivilized punishments. As the Supreme Court recognized, "The basic concept underlying the Eighth Amendment is nothing less than the dignity of man." *Trop v. Dulles*, 356 U.S. 86, 100 (1958). The Court relied on this rationale when it held that the Eighth Amendment forbids the execution of the incompetent, "protect[ing] the dignity of society itself from the barbarity of exacting mindless vengeance." *Ford v. Wainwright*, 477 U.S. 399, 410 (1986).

The Hon. Rick Perry

December 1, 2014

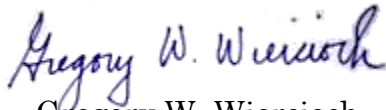
Re: **Request for 30-day Reprieve for Scott Louis Panetti: Mr. Panetti is scheduled to be executed on Dec. 3, 2014**

Page 3

The State has a constitutional obligation to pursue justice. The State has a duty to ensure that an abhorrent punishment that diminishes us, as a civilized community, is not carried out. The State must protect the Eighth Amendment ban on cruel and unusual punishments that is intended to preserve *our* humanity.

We respectfully request a 30-day reprieve.

Very truly yours,



Gregory W. Wiercioch



Kathryn M. Kase

Counsel for Scott Panetti