

No. \_\_\_\_\_ (CAPITAL CASE)

**IN THE SUPREME COURT OF THE UNITED STATES**

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**GARCIA GLENN WHITE,**

**Petitioner,**

**v.**

**BOBBY LUMPKIN, Director,  
Texas Department of Criminal Justice, Correctional Institutions Division,**

**Respondent.**

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On Petition for Writ of Certiorari  
To the United States Court of Appeals for the Fifth Circuit

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**APPENDIX TO MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS***

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MAUREEN FRANCO  
Federal Public Defender  
Western District of Texas

TIVON SCHARDL\*  
Chief, Capital Habeas Unit  
DONNA COLTHARP  
JOSHUA FREIMAN  
Assistant Federal Public Defenders  
919 Congress Avenue, Suite 950  
Austin, Texas 78701  
737-207-3007  
Tivon\_Schardl@fd.org  
\* Counsel of Record

<b>Appendix</b>	<b>TITLE OF DOCUMENT</b>	<b>Appendix Page</b>
<b>A</b>	United States District Court for the Southern District of Texas Order Granting Appointment of Counsel	App 001
<b>B</b>	United States District Court for the Southern District of Texas Order Granting Appointment of Co-Counsel	App 002
<b>C</b>	CJA 30 Appointment of Rosa Eliades	App 003
<b>D</b>	CJA 30 Appointment of Patrick McCann	App 004
<b>E</b>	September 11, 2024 Declaration of Garcia White	App 005
<b>F</b>	September 24, 2024 Declaration of Garcia White Authorizing Representation by the Federal Public Defender	App 009

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

UNITED STATES COURTS  
SOUTHERN DISTRICT OF TEXAS  
ENTERED

MAY 18 2001

MICHAEL N. MILBY, CLERK OF COURT

GARICA GLENN WHITE,  
Petitioner

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v.

Misc. # H-01-0095

GARY JOHNSON,  
Director, Texas  
Department of Criminal Justice  
Institutional Division, Respondent

ORDER GRANTING APPOINTMENT OF COUNSEL

After due consideration of Movant's Motion for Appointment of Counsel in a Death Penalty Case, pursuant to 21 U.S.C. 848(q)(4)(B), 848 (q)(7) and relevant case law, the Court hereby

GRANTS this motion and orders the following:

1. Patrick F. McCann is appointed as counsel of record for the Petitioner, Garcia Glenn White.

No co-counsel is required.

2. Counsel shall be compensated at the rate of \$125.00 per hour for all reasonable and necessary work performed upon submission of a properly itemized CJA form.

SIGNED AND ENTERED this day, the 17<sup>th</sup> of May, 2001.

John D. Rainey  
Judge Presiding

UNITED STATES COURTS  
SOUTHERN DISTRICT OF TEXAS  
ENTERED

NOV 07 2001

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

GARCIA GLEN WHITE,

Petitioner,

v.

GARY JOHNSON, Director Texas  
Department of Corrections Institutional  
Division,

Respondent.

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MICHAEL N. MILBY, CLERK OF COURT

MISC. NO. H-01-95


**ORDER**

Pending before the Court is Petitioner's Motion to Appoint Co-Counsel (Dkt. #4). After considering Petitioner's arguments and the applicable law, the Court is of the opinion that the Motion should be granted. Petitioner's primary counsel, Patrick F. McCann, is a Navy reservist. Mr. McCann has informed the Court that, due to the recent terrorist attacks in New York and the ongoing military action in Afghanistan, he has been informed by his Navy Reserve Unit that he is likely to be called up for active duty. Petitioner has requested that Rosa Eliades be appointed as co-counsel. Apparently Ms. Eliades has already assisted Mr. McCann in preparing this case. The Court finds that Ms. Eliades is competent to represent Petitioner in this matter and that under the circumstances Petitioner's request is reasonable.

Petitioner's Motion to Appoint Co-Counsel is GRANTED. The Court appoints Rosa Eliades as co-counsel in this case.

It is so ORDERED.

Signed this 6<sup>th</sup> day of November, 2001.

  
JOHN D. RAINEY  
UNITED STATES DISTRICT JUDGE

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SOUTHERN DISTRICT OF TEXAS  
FILED

CJA 30 DEATH PENALTY PROCEEDINGS: APPOINTMENT OF AND AUTHORITY TO PAY COURT APPOINTED COUNSEL (Rev. 5/99)

1. CIR./DIST / DIV. CODE	2. PERSON REPRESENTED GARCIA GLEN WHITE	VOUCHER NUMBER 11-6-01
3. MAG. DKT./DEF. NUMBER	4. DIST. DKT./DEF. NUMBER	5. APPEALS DKT./DEF. NUMBER
6. OTHER DKT. NUMBER H01-MC-95		
7. IN CASE/MATTER OF (Case Name) WHITE V. GARY JOHNSON		8. TYPE PERSON REPRESENTED <input type="checkbox"/> Adult Defendant <input type="checkbox"/> Appellant <input type="checkbox"/> Other <input checked="" type="checkbox"/> Habeas Petitioner <input type="checkbox"/> Appellee
9. REPRESENTATION TYPE <input checked="" type="checkbox"/> D1 28 U.S.C. § 2254 Habeas (Capital) <input type="checkbox"/> D3 28 U.S.C. § 2255 (Capital) <input type="checkbox"/> D2 Federal Capital Prosecution <input type="checkbox"/> D4 Other (Specify)		
10. OFFENSE(S) CHARGED (Cite U.S. Code, Title & Section) <i>If more than one offense, list (up to five) major offenses charged, according to severity of offense.</i>		
11. ATTORNEY'S NAME (First Name, M.I., Last Name, including any suffix), AND MAILING ADDRESS  ROSA A. ELIADES 801 CONGRESS STE 200 HOUSTON, TEXAS 77002  Telephone Number: 713-222-0610		12. COURT ORDER: <input type="checkbox"/> O Appointing Counsel <input checked="" type="checkbox"/> C Co-Counsel <input type="checkbox"/> F Subs For Federal Defender <input type="checkbox"/> R Subs For Retained Attorney <input type="checkbox"/> P Subs For Panel <input type="checkbox"/> Y Standby Counsel  Prior Attorney's Appointment (A) Because the above-named person represented has testified under oath or has otherwise satisfied this Court that he or she (1) is financially unable to employ counsel and (2) does not wish to waive counsel, and because the interests of justice so require, the attorney whose name appears in Item 11, who has been determined to possess the specific qualifications by law, is appointed to represent the person in this case. (B) The attorney named in Item 11 is appointed to serve <input type="checkbox"/> LEAD COUNSEL <input checked="" type="checkbox"/> CO-COUNSEL Name of Co-Counsel or Lead Counsel: PATRICK F MCCANN Appointment 5-17-01 (C) If you represented the defendant or petitioner in any prior proceeding related to this matter, attach to your initial claim a listing of those proceedings and describe your role in each (e.g., lead in counsel or co-counsel). <input type="checkbox"/> (D) Due to the expected length of this case, and the anticipated hardship on counsel in undertaking representation full-time, for such a period without compensation, interim payments of compensation and expenses are approved pursuant the attached order.  <i>Rosida A. Gonzalez</i> Signature of Presiding Judicial Officer or By Order of the Court 11-6-01 Date of Order Nunc Pro Tunc Date  (E) Repayment or partial repayment ordered from the person represented for this service at time of appointment. <input type="checkbox"/> YES <input type="checkbox"/> NO
13. NAME AND MAILING ADDRESS OF LAW FIRM (Only provide per instructions)		

**CLAIM FOR SERVICES AND EXPENSES**

14. STAGE OF PROCEEDING Check the box which corresponds to the stage of the proceeding during which the work claimed at Item 15 was performed even if the work is intended to be used in connection with a later stage of the proceeding. CHECK NO MORE THAN ONE BOX. Submit a separate voucher for each stage of the proceeding.

CAPITAL PROSECUTION	HABEAS CORPUS	OTHER PROCEEDING
a. <input type="checkbox"/> Pre-Trial	e. <input type="checkbox"/> Appeal	g. <input type="checkbox"/> Habeas Petition
b. <input type="checkbox"/> Trial	f. <input type="checkbox"/> Petition for the U.S. Supreme Court	h. <input type="checkbox"/> Evidentiary Hearing
c. <input type="checkbox"/> Sentencing	i. <input type="checkbox"/> Dispositive Motions	k. <input type="checkbox"/> Petition for the U.S. Supreme Writ of Certiorari
d. <input type="checkbox"/> Other Post Trial	j. <input type="checkbox"/> Appeal	l. <input type="checkbox"/> Stay of Execution
		m. <input type="checkbox"/> Appeal of Denial of Stay
		n. <input type="checkbox"/> Petition for Writ of Certiorari to the U.S. Supreme Court Regarding Denial of Stay

15. CATEGORIES (Attach itemization of services with dates)	HOURS CLAIMED	TOTAL AMOUNT CLAIMED	MATH/TECH ADJUSTED HOURS	MATH/TECH. ADJUSTED AMOUNT	ADDITIONAL REVIEW
a. In-Court Hearings (RATE PER HOUR = \$ )				IN COURT TOTAL	IN COURT TOTAL
b. Interviews and Conferences with Client				Category a	Category a
c. Witness Interviews					
d. Consultation with Investigators & Experts					
e. Obtaining & Reviewing the Court Record					
f. Obtaining & Reviewing Documents and Evidence				OUT OF COURT TOTAL	OUT OF COURT TOTAL
g. Consulting with Expert Counsel				Category b-j	Category b-j
h. Legal Research and Writing					
i. Travel					
j. Other (Specify on additional sheets)					
TOTALS: Categories b thru j (RATE PER HOUR = )					

CLAIM FOR TRAVEL AND EXPENSES (Attach itemization of expenses with dates)

16. Travel Expenses (lodging, parking, meals, mileage, etc.)	HOURS CLAIMED	TOTAL AMOUNT CLAIMED	MATH/TECH ADJUSTED HOURS	MATH/TECH. ADJUSTED AMOUNT	ADDITIONAL REVIEW
17. Other Expenses (other than expert, transcripts, etc.)					

**GRAND TOTALS (CLAIMED AND ADJUSTED):**

18. CERTIFICATION OF ATTORNEY/PAYEE FOR THE PERIOD OF SERVICE TO: _____	19. APPOINTMENT TERMINATION DATE IF OTHER THAN CASE COMPLETION	20. CASE DISPOSITION
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21. CLAIM STATUS  Final Payment  Interim Payment Number \_\_\_\_\_  Supplemental Payment

Have you previously applied to the court for compensation and/or reimbursement for this \_\_\_\_\_  YES  NO If yes, were you paid?  YES  NO  
Other than from the Court, have you, or to your knowledge has anyone else, received payment (compensation or anything of value) from any other source in connection with this representation?  YES  NO If yes, give details on additional sheets.  
I swear or affirm the truth or correctness of the above statements.  
Signature of Attorney \_\_\_\_\_ Date \_\_\_\_\_

**APPROVED FOR PAYMENT — COURT USE ONLY**

22. IN COURT COMP	23. OUT OF COURT COMP.	24. TRAVEL EXPENSES	25. OTHER EXPENSES	26. TOTAL AMT. APPROVED
27. SIGNATURE OF THE PRESIDING JUDICIAL OFFICER			DATE	27a. JUDGE CODE

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SCIA 30 DEATH PENALTY PROCEEDINGS: APPOINTMENT OF AND AUTHORITY TO PAY COURT APPOINTED COUNSEL (Rev. 5/99)

1. CIR./DIST./ DIV. CODE 0541/4	2. PERSON REPRESENTED GARCIA GLEN WHITE	VOUCHER NUMBER
3. MAG. DKT./DEF. NUMBER	4. DIST. DKT./DEF. NUMBER	5. APPEALS DKT./DEF. NUMBER
7. IN CASE/MATTER OF (Case Name) Garcia Glen White v. Director, TDCJ		6. OTHER DKT. NUMBER H-01-MC-95
8. TYPE PERSON REPRESENTED <input type="checkbox"/> Adult Defendant <input type="checkbox"/> Appellant <input type="checkbox"/> Other <input checked="" type="checkbox"/> Habeas Petitioner <input type="checkbox"/> Appellee		9. REPRESENTATION TYPE <input checked="" type="checkbox"/> D1 28 U.S.C. § 2254 Habeas (Capital) <input type="checkbox"/> D2 Federal Capital Prosecution <input type="checkbox"/> D4 Other (Specify)
10. OFFENSE(S) CHARGED (Cite U.S. Code, Title & Section) <i>If more than one offense, list (up to five) major offenses charged, according to severity of offense.</i> 28 U.S.C. Sec. 2254		MAR 13 2002
11. ATTORNEY'S NAME (First Name, M.I., Last Name, including any suffix), AND MAILING ADDRESS  Patrick F. McCann Attorney at Law 3700 N. Main Houston, Texas 77009  Telephone Number: 713-223-3805		12. COURT ORDER: <input checked="" type="checkbox"/> O Appointing Counsel <input type="checkbox"/> C Co-Counsel <input type="checkbox"/> F Subs For Federal Defender <input type="checkbox"/> R Subs For Retained Attorney <input type="checkbox"/> P Subs For Panel <input type="checkbox"/> Y Standby Counsel  Prior Attorney's _____ Appointment _____ (A) Because the above-named person represented has testified under oath or has otherwise satisfied this Court that he or she (1) is financially unable to employ counsel and (2) does not wish to waive counsel, and because the interests of justice so require, the attorney whose name appears in Item 11, who has been determined to possess the specific qualifications by law, is appointed to represent the person in this case. (B) The attorney named in Item 11 is appointed to serve <input checked="" type="checkbox"/> LEAD COUNSEL <input type="checkbox"/> CO-COUNSEL AS: Name of Co-Counsel _____ Appointment _____ or Lead Counsel: ROSA A ELIADES Appointment 11/6/01 (C) If you represented the defendant or petitioner in any prior proceeding related to this matter, attach to your initial claim a listing of those proceedings and describe your role in each (e.g., lead in counsel or co-counsel). <input type="checkbox"/> (D) Due to the expected length of this case, and the anticipated hardship on counsel in undertaking representation full-time, for such a period without compensation, interim payments of compensation and expenses are approved pursuant to the attached order.  <i>Joyce Richards</i> Signature of Presiding Judicial Officer or By Order of the Court MAY 17, 2001 Date of Order _____ Nunc Pro Tunc Date _____  (E) Repayment or partial repayment ordered from the person represented for this service at time of appointment. <input type="checkbox"/> YES <input type="checkbox"/> NO
13. NAME AND MAILING ADDRESS OF LAW FIRM (Only provide per instructions)		

**CLAIM FOR SERVICES AND EXPENSES**

14. STAGE OF PROCEEDING Check the box which corresponds to the stage of the proceeding during which the work claimed at Item 15 was performed even if the work is intended to be used in connection with a later stage of the proceeding. CHECK NO MORE THAN ONE BOX. Submit a separate voucher for each stage of the proceeding.

<input type="checkbox"/> CAPITAL PROSECUTION	<input type="checkbox"/> HABEAS CORPUS	<input type="checkbox"/> OTHER PROCEEDING
a. <input type="checkbox"/> Pre-Trial	c. <input type="checkbox"/> Appeal	g. <input type="checkbox"/> Habeas Petition
b. <input type="checkbox"/> Trial	f. <input type="checkbox"/> Petition for the U.S. Supreme Court Writ of Certiorari	h. <input type="checkbox"/> Evidentiary Hearing
c. <input type="checkbox"/> Sentencing	i. <input type="checkbox"/> Dispositive Motions	k. <input type="checkbox"/> Petition for the U.S. Supreme Court Writ of Certiorari
d. <input type="checkbox"/> Other Post Trial	j. <input type="checkbox"/> Appeal	l. <input type="checkbox"/> Stay of Execution
		m. <input type="checkbox"/> Appeal of Denial of Stay
		n. <input type="checkbox"/> Petition for Writ of Certiorari to the U.S. Supreme Court Regarding Denial of Stay

HOURS AND COMPENSATION CLAIMED			FOR COURT USE ONLY		
15. CATEGORIES (Attach itemization of services with dates)	HOURS CLAIMED	TOTAL AMOUNT CLAIMED	MATH/TECH. ADJUSTED HOURS	MATH/TECH. ADJUSTED AMOUNT	ADDITIONAL REVIEW
a. In-Court Hearings (RATE PER HOUR = \$ )				IN COURT TOTAL	IN COURT TOTAL
b. Interviews and Conferences with Client				Category a	Category a
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d. Consultation with Investigators & Experts					
e. Obtaining & Reviewing the Court Record					
f. Obtaining & Reviewing Documents and Evidence				OUT OF COURT TOTAL	OUT OF COURT TOTAL
g. Consulting with Expert Counsel				Categories b-j	Categories b-j
h. Legal Research and Writing					
i. Travel					
j. Other (Specify on additional sheets)					
TOTALS: Categories b thru j (RATE PER HOUR = )					
16. CLAIM FOR TRAVEL AND EXPENSES (Attach itemization of expenses with dates)					
17. Other Expenses (other than expert, transcripts, etc.)					
<del>GRAND JURORS CLAIMED AND ADJUSTED</del>					

18. CERTIFICATION OF ATTORNEY/PAYEE FOR THE PERIOD OF SERVICE TO: _____	19. APPOINTMENT TERMINATION DATE IF OTHER THAN CASE COMPLETION	20. CASE DISPOSITION
21. CLAIM STATUS <input type="checkbox"/> Final Payment <input type="checkbox"/> Interim Payment Number _____ <input type="checkbox"/> Supplemental Payment		
Have you previously applied to the court for compensation and/or reimbursement for this representation? <input type="checkbox"/> YES <input type="checkbox"/> NO If yes, were you paid? <input type="checkbox"/> YES <input type="checkbox"/> NO Other than from the Court, have you, or to your knowledge has anyone else, received payment (compensation or anything of value) from any other source in connection with this representation? <input type="checkbox"/> YES <input type="checkbox"/> NO If yes, give details on additional sheets. I swear or affirm the truth or correctness of the above statements. Signature of Attorney _____ Date _____		

APPROVED FOR PAYMENT — COURT USE ONLY					
22. IN COURT COMP.	23. OUT OF COURT COMP.	24. TRAVEL EXPENSES	25. OTHER EXPENSES	26. TOTAL AMT. APPROVED	
27. SIGNATURE OF THE PRESIDING JUDICIAL OFFICER			DATE	27a. JUDGE CODE	

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DECLARATION OF Garcia "Glenn" White

I, Garcia "Glenn" White state and declare as follows:

1. My name is Garcia "Glenn" White. My date of birth is 2/4/63,  
and my address is the Polunsky Unit in Livingston, TX.

1. On September 11, 2024, Donna Coltharp and Joshua Freiman, attorneys from the Federal Public Defender met with me at my request.

2. They informed me that they had reviewed some of my court records, including my recent state habeas application filed on August 23, 2024. They told me it raises a claim of intellectual disability.

3. They informed me that my attorney,

I have read and reviewed this 4 page declaration. (Initial) GGW

Patrick McCann, would have a conflict of interest if he raised an ID claim in federal court.

4. They told me that the conflict was because ~~it~~ when the ID claim would be raised for the first time, it would be barred by the statute of limitations.
5. They told me that the ~~claim~~<sup>bar</sup> could be excused because of Mr. McCann's conduct.
6. They showed me an order from a federal judge in Dexter Johnson's case where the judge excused the late filing of an ID claim because of Mr. McCann's conduct in that case.



7. I had not heard about the Dexter Johnson order. Mr. McCain had never showed it to me or discussed it. I did not know that my case might be similar to Dexter Johnson's.

8. I have asked Ms. Coltharp and Mr. Freiman to file a motion in federal court to replace Mr. McCain and investigate his representation of me.

I have read and reviewed this 4 page declaration. (Initial) GGW

I declare, under penalty of perjury, under the laws of the United States and the State of Texas that the foregoing is true and correct to the best of my knowledge and that this declaration was executed in the County of Polk, State of Texas, on the 11th day of September, 2024, in Livingston, Texas.

Garcia Glenn White  
Signature

999205

I have read and reviewed this 4 page declaration. (Initial) GGW

DECLARATION OF Garcia White

I, Garcia "Glenn" White state and declare as follows:

1. My name is Garcia "Glenn" White. My date of birth is 2/4/1963,  
and my address is the Polunsky Unit in Livingston, TX.

1. On September 11, 2024, Donna Coltharp and Joshua Freiman of the Federal Public Defender visited me at my request to speak about my case.

2. After they advised me about my case, I asked them to file a motion in federal court to replace my lawyer Pat McCann. I signed a declaration that day about what they told me and what I wanted them to do.

I have read and reviewed this 3 page declaration. (Initial) GGW

3. On September 24, 2024, Joshua Freiman visited me again. He told me that the federal district court had denied my request to replace Mr. McCann and to stay my execution.

4. I want the lawyers from the Federal Public Defender to represent me still. I want them to appeal the federal court's order.

I have read and reviewed this 3 page declaration. (Initial) GGW

I declare, under penalty of perjury, under the laws of the United States and the State of Texas that the foregoing is true and correct to the best of my knowledge and that this declaration was executed in the County of Polk, State of Texas, on the 24th day of September, 2024, in Livingston, Texas.

Garcia H. White 999205  
Signature

I have read and reviewed this 3 page declaration. (Initial) GGW