CAPITAL CASE
EXECUTION SCHEDULED FOR APRIL 23, 2025, 6:00PM CST
No. ___

IN THE

Supreme Court of the United States

MOISES SANDOVAL MENDOZA,

Petitioner,

v.

STATE OF TEXAS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF CRIMINAL APPEALS OF TEXAS

APPLICATION FOR STAY OF EXECUTION PENDING CONSIDERATION AND DISPOSITION OF PETITION FOR WRIT OF CERTIORARI IN *MENDOZA V. TEXAS*

Applicant Moises Sandoval Mendoza requests that this Court grant him a stay of execution pending the Court's consideration and disposition of his Petition for Writ of Certiorari in *Mendoza v. Texas*, filed on April 18, 2025. A stay is warranted for the reasons set forth below and in the Petition, which is hereby incorporated by reference.

Texas is scheduled to execute Mendoza by lethal injection after 6 p.m. CST on April 23, 2025. Mendoza requested authorization to file a subsequent application for habeas corpus pursuant to Texas Code of Criminal Procedure article 11.071, § 5(a)(1). The Texas Court of Criminal Appeals denied authorization and dismissed the application.

One of the claims in Mendoza's application—the one at issue in his Petition before this Court—asserts that Mendoza was denied effective assistance of habeas counsel. The Texas Court of Criminal Appeals has concluded, however, that criminal defendants have no right to effective assistance of habeas counsel, even where habeas proceedings represent the defendant's first opportunity to assert a claim of trial error. Mendoza's Petition for a Writ of Certiorari asks this Court to consider that rule—i.e., whether a defendant has a right to effective habeas counsel to assert a claim of ineffective assistance of trial counsel where, by operation of state law, the defendant's first meaningful opportunity to assert such a claim is in state habeas.

A stay of execution is warranted where there is: (1) a reasonable probability that four members of this 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. *See Barefoot* v. *Estelle*, 463 U.S. 880, 895 (1983). For the reasons expressed below and in the Petition, these criteria are satisfied in this case.

First, there is a reasonable probability that at least four members of the Court would consider the issue at stake—whether a defendant has a right to effective assistance of habeas counsel in these circumstances—suitable for the grant of certiorari. In fact, they already have. In *Martinez v. Ryan*, 566 U.S. 1 (2012), this Court granted certiorari to answer the question presented in Mendoza's Petition. As summarized by the *Martinez* Court: "whether a prisoner has a right to effective counsel in collateral proceedings which provide the first occasion to raise a claim of ineffective assistance at trial." *Id.* at 9. Since *Martinez*, the Court has acknowledged the concern "that meritorious claims of trial error receive review by at least one state or federal court." *Davila v. Davis*, 582 U.S. 521, 532 (2017). As the Petition explains, Texas's rule yields that untenable result: There is no forum in which to meaningfully litigate claims of attorney error that depend on evidence outside the state court record, even where state habeas counsel's ineffectiveness is the reason that evidence was not developed. Pet. at 14-20.

Moreover, the issue arises here in the context of a capital case, where review is particularly important and where the Court has traditionally granted certiorari at elevated rates.

Second, there is a significant possibility that Mendoza would prevail before this Court. As the Petition explains, Texas's rule cannot be squared with this Court's precedents establishing that criminal defendants have a right to effective counsel in their first appeal as of right. *See Evitts v. Lucey*, 469 U.S. 387 (1985); s*ee also Halbert v. Michigan*, 545 U.S. 605 (2005); *Douglas v. California*, 372 U.S. 353 (1963). It follows that defendants have a right to effective counsel in state habeas proceedings that represent the first opportunity to assert a federal claim. If a criminal defendant is entitled to effective counsel to reargue federal claims on direct appeal, then a criminal defendant must be entitled to an effective lawyer to raise those claims in the trial court in the first instance. As the Court observed in *Martinez*, where a state habeas "proceeding is the first designated proceeding for a prisoner to raise a claim of ineffective assistance at trial, the collateral proceeding is in many ways the equivalent of a prisoner's direct appeal as to the ineffective-assistance claim." 566 U.S. at 11. The same protections should apply.

Indeed, if indigent defendants were not afforded a right to counsel in those proceedings, they would have no way to vindicate their constitutional rights in state court whenever the state elects to channel federal claims into habeas. And for some defendants, whose constitutional claims depend on evidence outside the state court record, there would be no forum in which to vindicate their constitutional rights at all.

Finally, there is a likelihood that irreparable harm will result absent a stay. If a stay is denied, Mendoza will be executed. And he will be executed without ever having the opportunity to litigate the IATC claim he could have litigated if he had effective habeas counsel—an IATC claim that the Fifth Circuit recognized was "substantial." *Mendoza v. Lumpkin*, No. 12-70035 (5th Cir. Dec. 23, 2022), Dkt. 276. That distinguishes Mendoza's case from many others in which stays of execution have been denied. Often, a criminal defendant will come to this Court seeking to relitigate issues that have already been fully and finally decided. In those circumstances, the state's interest in finality may prevail. But here, the State intends to execute Mendoza even though he did not have the same meaningful opportunity to vindicate his "bedrock," *Martinez*, 566 U.S. at 12, right to counsel available to defendants with competent habeas counsel.

Lastly, the timing of Mendoza's application does not weigh against granting review. Mendoza could not have litigated his claim while his federal habeas case was pending under Texas's "two-forum[] rule." *See Ex parte Soffer*, 143 S.W.3d 804, 805 (Tex. Crim. App. 2004).[1] After this Court denied certiorari in 2024, Mendoza returned promptly to state court.

CONCLUSION

For these reasons and those set out in the Petition, the Court should grant a stay of execution pending consideration and disposition of Mendoza's Petition for Writ of Certiorari.

April 18, 2025

Respectfully Submitted,

/s/ Jason Zarrow

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[1] In fact, Mendoza tried to stay the federal litigation to return to Texas court in 2022, after this Court's decision in *Shinn v. Ramirez*, 596 U.S. 366 (2022), made clear that the affidavit supporting Mendoza's IATC claim was not admissible in federal habeas. But the Fifth Circuit denied Mendoza's request.