

No. \_\_\_\_\_

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IN THE  
SUPREME COURT OF THE UNITED STATES  
October Term, 2012

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DANIEL WAYNE COOK,

Petitioner,

v.

CHALES L. RYAN, Director, Arizona Department of Corrections,

Respondent.

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On Petition for a Writ of Certiorari to the  
United States Court of Appeals for the Ninth Circuit

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CAPITAL CASE  
EXECUTION SET FOR 10:00 A.M. MST  
(1:00 P.M. EDT) WEDNESDAY, AUGUST 8, 2012

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APPLICATION FOR STAY OF EXECUTION

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520-529-1969

*Counsel of Record for Petitioner*

To the Honorable Anthony J. Kennedy, Associate Justice of the Supreme Court of the United States, and Circuit Justice for the Ninth Circuit:

Daniel Wayne Cook respectfully requests a stay of his execution, which has been ordered for August 8, 2011, pursuant to a Writ of Execution issued by the Arizona Supreme Court.

This stay is sought in order to permit this Court to consider a Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit, to review the affirmance by that Court of a denial of habeas corpus relief by the United States District Court for the District of Arizona. Petitioner has filed the Petition for Certiorari concurrently with this Application for Stay of Execution. The Ninth Circuit issued its decision in this case on July 27, 2012, and concurrently denied a stay of execution. The District Court had previously denied a stay of execution when it issued its decision on July 9, 2012.

The order of the Arizona court sought to be reviewed is a final order of a state court, based upon resolution of a federal question, as is more fully explained in the accompanying Petition for Certiorari. That Petition has been timely filed. The Supreme Court will have jurisdiction to review that order under 28 U.S.C. § 1257(a). Pursuant to Supreme Court Rules 23.1 and 23.2, and under the authority of 28 U.S.C. § 2101(f), the stay applied for may lawfully be granted.

The question presented in the accompanying Petition is Whether the Ninth Circuit erred in determining that Petitioner's habeas corpus claim was not "substantial" as described in *Martinez v. Schriro*, 132 S. Ct. 1309 (2012), by

imposing a higher burden upon petitioner than would be necessary for the issuance of a certificate of appealability.

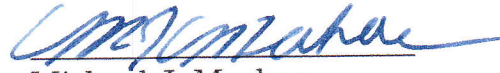
Petitioner asserts that the discussion in his Petition for Certiorari, about the importance of the issue and why this Court should grant certiorari, demonstrate that there is a reasonable probability that four members of the Court will consider the issue sufficiently meritorious to grant certiorari. *E.g. Multimedia Holdings v. Circuit Court of Fla.*, 544 U.S. 1301 (2005)(Kennedy, J.).

Petitioner further asserts that the discussion in his Petition for Certiorari demonstrates that, upon granting certiorari and resolving the issue presented, five Justices are likely to conclude that the case was erroneously decided below. *E.g. Barefoot v. Estelle*, 463 U.S. 880 (1983). As is more fully explained in the Petition, When this Court decided *Martinez v. Ryan*, 132 S. Ct. 1309 (2012), it held that not every potential “initial-review collateral proceeding” claim would qualify for the “cause and prejudice” excuse recognized for such claims. Although deciding as it did in *Martinez* this Court sought to insure the existence of a remedy for prisoners who had claims that trial counsel was ineffective, it also recognized that there should be a threshold determination that such a claim had “some merit,” and thus was “substantial,” before cause and prejudice would be allowed.

*Martinez* defined what it meant by a claim being substantial because it had “some merit.” It did so by citing to *Miller-El v. Cockrell*, 537 U.S. 322 (2003), and specifically its subject – determining the standard for the issuance of certificates of appealability. 132 S. Ct. at 1318.

It is respectfully requested that the stay be granted.

Respectfully submitted.



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August 2, 2012

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