IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

EDWARD HAROLD SCHAD	)	No. 07-99005
	)	**CAPITAL CASE**
Petitioner-Appellant	)	
	)	Reply On Emergency Motion
vs.	)	To Continue Stay Of Mandate
	)	Pending *En Banc* Proceedings
CHARLES RYAN, et al.,	)	In *Dickens v. Ryan*, 9th Cir. No.
	)	08-99017
Respondents-Appellees	)	

As an Article III tribunal, this Court has the inherent authority and discretion to do justice: Here, justice dictates a continued stay of the mandate pending *en banc* proceedings in *Dickens.* Where Schad's case will be controlled by *Dickens*, simple justice demands that Schad and Dickens be treated equally. Given the unique circumstances here – which are completely opposite of those in *Bell v. Thompson*, 545 U.S. 794 (2005) – this Court should grant Schad's motion.

I.
This Court Has Inherent Authority To Continue The Stay Of Mandate

As an Article III Court, this Court has "the inherent power to stay its mandate following the Supreme Court's denial of certiorari." *Beardslee v. Woodford*, 393 F.3d 899, 901 (9th Cir. 2004)(continuing stay of mandate in capital case following denial of certiorari). *See Bryant v. Ford Motor Co.*, 886 F.2d 1526, 1529 (9th Cir. 1989). It has this inherent power, because "until the mandate issues,

a circuit court retains jurisdiction of the case and may modify or rescind its opinion." *Beardslee*, 399 F.3d at 901.

Bell v. Thompson, 545 U.S. 794(2005) says nothing to the contrary. In *Thompson*, the Supreme Court *never* said that a mandate must issue upon denial of certiorari. Rather, the Court not only noted that Fed.R. App. 41 "may authorize a court to stay the mandate after certiorari is denied," but it also identified circumstances in which such action has been deemed appropriate. *Thompson*, 545 U.S. at 806, *citing First Gibraltar Bank, FSB v. Morales*, 42 F.3d 895 (5th Cir. 1995) and *Alphin v. Henson*, 552 F.2d 1033 (4th Cir. 1977). The Court thus emphasized that "the Federal Rules of Appellate Procedure ensure that litigation following the denial of certiorari will be *infrequent"* (*Thompson*, 545 U.S. at 806) – not non-existent, as Appellees urge.[1]

Under *Beardslee*, *Bryant*, and *Thompson*, therefore, this Court does indeed have the power and authority to continue the stay of the mandate. The only question is whether Schad's is one of the few cases, like *Beardslee,* where a continued stay of mandate is warranted in the interests of justice. It is.

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[1] It is also worth noting that had the Supreme Court taken the extreme position advocated by Appellees here, *viz*., that an Article III appellate has no inherent control over its mandate given a court *rule* (Fed.R.App.P. 41), the Supreme Court would have had to confront the constitutionality of Rule 41.

II.
This Court Appropriately Exercises Its Discretion And Inherent Authority To Continue The Stay Of Mandate Pending *Dickens*

As *Beardslee*, *Bryant*, and *Thompson* indicate, a court of appeals may exercise its discretion to continue a stay of mandate when there are exceptional or compelling reasons to do so. That is precisely the case here, given the grant of *en banc* review in *Dickens*.

A.
Schad Has Never Had His Fully-Developed Ineffectiveness Claim Addressed By Any Court, And This Court Did Not Have The Benefit Of *Martinez* When Earlier Ruling Against Schad

1.
On Initial Submission, Schad Has Been Denied Habeas Relief

Schad has maintained that he was denied the effective assistance of counsel at sentencing, because counsel failed to present voluminous mitigating evidence in support of a life sentence. *See Schad v. Ryan*, 671 F.3d 708, 721-722 (9th Cir. 2011) His federal court claim is supported by significant evidence which is markedly different from the minimal evidence presented by state habeas counsel in support of the markedly different state-court ineffectiveness claim actually presented and adjudicated by the state court. The evidence newly discovered in federal court painted a vivid picture of Ed Schad's traumatic upbringing in which he was routinely and brutally beaten by his schizophrenic and alcoholic father.

The evidence, which takes the form of witness declarations and corroborating medical and military records culminated with the expert opinion of Dr. Sanislaw. Dr. Sanislaw found that Schad was "born to a family environment marked with frequent physical abuse, emotional neglect and abandonment, mental illness, chemical dependency, and severe stresses at every stage of his life. These stressors had a profound impact on him and increased his susceptibility for developmental, psychological and debilitating mental disorders." ER Vol. II, Set 1, pp. 462-463, Sanislow Dec, pp. 6-7. As a result, Schad "exhibited many symptoms indicative of a severe and chronic mental illness," including "abuse, neglect, and abandonment." *Id*., p. 546. He suffers manic symptoms, chronic depression, and anxiety resulting from his traumatic background. *Id.*, p. 547 .

None of these facts, and more, that could have been discovered had postconviction counsel conducted the investigation into Schad's background that counsel was obligated to conduct were presented in Schad's postconviction proceedings. Faced with a bare claim, with no supporting evidence, the judge denied Schad a hearing, and relief.

On initial submission, this Court acknowledged that Schad's claim was significant, noting that the mitigating evidence presented to the federal court in support of his ineffectiveness claim "could have supplied that link [between his

past and this crime] and mitigated his culpability for this crime." *Schad*, 606 F.3d 1022, 1044 (9th Cir. 2010). As addressed above, Schad's post-conviction counsel, however, failed to investigate and present much of the available mitigating evidence in support of his federal court claim during state habeas proceedings. *Id*. Thus, this Court remanded for a determination whether Schad was "diligent in attempting to develop the state court record," and if so, whether his claim was ultimately meritorious. *Id*. at 1045. In doing so, this Court specifically rejected the district court's conclusion that Schad's mitigating evidence "could not justify relief" on his ineffectiveness claim. *Id*.[2]

The Supreme Court, however, vacated this Court's judgment and remanded for further consideration in light of *Cullen v. Pinholster*, 563 U.S. ___ (2011). *See Ryan v. Schad*, 563 U.S. ___ (2011). *Pinholster* held that, on claims adjudicated on the merits in state court and thus governed by 28 U.S.C. §2254(d)(1), a habeas court can only consider evidence presented to the state court in support of the federal claim. *Pinholster*, 563 U.S. at ___ (slip op. at 8-14).

On remand, this Court summarily concluded that Schad had to lose in light of *Pinholster*. *Schad v. Ryan*, 671 F.3d 708, 722 (9th Cir. 2011). In doing so, the

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[2] Appellees thus falsely claim that Schad has had a merits review of his claim. He has not.

Court implicitly concluded that even though Schad's federal court ineffectiveness claim was different from his state court claim (being based upon significantly different evidence), the ineffectiveness claim he raised in federal court had been "adjudicated on the merits" within the meaning of §2254(d).[3] This Court's final amended opinion was issued November 10, 2011.

2.
The Intervening Decision In *Martinez*

At the time, this Court was unaware of the impending Supreme Court decision in *Martinez v. Ryan*, 566 U.S. ___ (2012), which concluded that when a federal habeas petitioner has failed to properly present a claim of ineffective assistance of trial counsel to the state courts (as Schad has), the ineffective assistance of *post-conviction* counsel provides cause for any such failure. *See Id.* at ___ (slip op. at 11). This is so, provided that the ineffective assistance claim is substantial (as Schad's claim unquestionably is, a truth recognized by this Court

[3] This Court stated: "The state habeas court ruled that Schad's claim of ineffective assistance of counsel at sentencing lacked merit because he was unable to present any significant mitigating evidence. Although Schad sought to present such evidence in the district court, the Supreme Court has now ruled that when a state court has decided an issue on the merits, the federal courts may not consider additional evidence. *Cullen v. Pinholster*, ___ U.S. ___ (2011)("[R]eview under 28 U.S.C. §2254(d)(1) is limited to the record that was before the state court that adjudicated the claim on the merits.") It has vacated and remanded this case to us for reconsideration. *Ryan v. Schad*, ___ U.S. ___ (2011). Accordingly, the district court's denial of this claim must be affirmed." *Schad v. Ryan*, 671 F.3d at 722.

on initial submission). *Id*.

Martinez makes clear that, as an equitable matter, a federal habeas petitioner may not be denied relief on a substantial ineffectiveness claim when it was the fault of post-conviction counsel that the claim was not properly presented in state court. This rule is required, because without it, a petitioner would receive *no* review in *any* court of a substantial ineffectiveness claim:

> Allowing a federal habeas court to hear a claim of ineffective assistance of trial counsel when an attorney's errors . . . caused a procedural default in an initial-review collateral proceeding acknowledges, ***as an equitable matter***, that the initial-review collateral proceeding, if undertaken without counsel or with ineffective counsel, may not have been sufficient to ensure that proper consideration was given to a substantial claim.

Id. (emphasis supplied).

Martinez speaks directly to Ed Schad's case. Schad has received *no* review of his completely developed federal court ineffectiveness-at-sentencing claim solely because post-conviction counsel dropped the ball by failing to present the compelling mitigating evidence necessary to support his claim. Even though it was post-conviction counsel's fault – not Schad's – that his substantial claim was not properly developed and presented in state court (a fact repeatedly admitted by Respondent - *See e.g.*, Respondents' Petition for Rehearing, September 23, 2009, p. 9), Schad still faces execution, though the logic of *Martinez* makes clear that

such an outcome is wholly inequitable.

Thus, the crux of Schad's case before this Court is whether *Pinholster* still controls the disposition of the fully-developed ineffectiveness claim he has presented to this Court, or whether *Martinez* ameliorates the draconian rule of *Pinholster*. In other words, because *Martinez* recognizes as an equitable matter that a habeas petitioner must have effective counsel in state court to be heard on a substantial ineffective-assistance-of-trial-counsel claim, does *Martinez* entitle Schad to a full review of his properly developed federal claim as now presented in federal court, where it clearly appears that state habeas counsel was ineffective? Or does *Pinholster* categorically preclude Schad from receiving any review in any court of his fully developed claim as now presented in federal court?

B.
In *Dickens*, This Court Will Determine If *Schad* Was Wrongly Decided And/Or Whether *Martinez* Informs The Application Of *Pinholster* To Ineffectiveness Claims Like Schad's

The issues presented by Schad's case are *precisely* the issues which this Court shall be addressing *en banc* in *Dickens*. In *Dickens*, exactly as in *Schad*, state habeas counsel presented a very limited ineffectiveness-at-sentencing claim to the state courts, which the state court denied on the merits. *Dickens*, 688 F.3d 1054, 1068 (9th Cir. 2012)(Reinhardt, Rawlinson, Smith, JJ.). In federal court,

however, Dickens (exactly like Schad) then presented "new evidence that bears little resemblance to the naked *Strickland* claim raised before the state courts." Id. at 1069. This Court thus concluded that Dickens' "newly-enhanced *Strickland* claim is procedurally barred." Id.; Id. at 1070 ("Dickens's *Strickland* claim is procedurally barred, because the new evidence of prejudice was not fairly presented to the state courts.")

This Court concluded, however, that given the intervening decision in *Martinez*, Dickens might be able to establish cause for the default of his newly-enhanced ineffectiveness claim, where that claim that had not been presented to the state court and thus not adjudicated on the merits under 28 U.S.C. §2254(d):

> [T]he newly announced rule in *Martinez* may provide a path for Dickens to establish cause for the procedural default of his newly-enhanced claim of ineffective assistance of sentencing counsel, if he can show that the claim is substantial and that his PCR counsel was ineffective under *Strickland*. Thus, we vacate the district court's ruling regarding whether cause existed to overcome the procedural default of Dickens's newly-enhanced claim of ineffective assistance of sentencing counsel.

Id. at 1072.

The relief granted by the Dickens panel is precisely the relief which Schad is requesting here: Reconsideration of his ineffectiveness claim and a a remand for application of *Martinez* to his newly-enhanced claim – a claim that was never

heard by the state court, that was never "adjudicated on the merits" in state court, and that has never been heard or adjudicated by *any* court, state or federal.

This Court has granted *en banc* rehearing in *Dickens*. It has done so based (at least in part) upon the State's rehearing petition, which extensively argues that the panel decision in *Dickens* is at odds with this Court's decision in *Schad* and the Supreme Court's decision in *Pinholster*. The State couldn't have been clearer:

> **The Panel's decision . . . conflicts with this Court's application of *Pinholster* in *Schad v. Ryan*, 671 F.3d 708, 721-22 (9th Cir. 2011)(per curiam).**

Dickens v. Ryan, 9th Cir. No. 08-99017, Pet. For Rehearing, p. 1 (emphasis supplied).

In fact, relying on *Pinholster*, the state contends that Dickens' newly-enhanced claim can never be reviewed by any court, because *Pinholster* prevents it, as does the panel decision in *Schad*. *Dickens v. Ryan*, 9th Cir. No. 08-99017, Pet. For Rehearing, pp. 8-11. The State claims that even though Dickens' claim in federal court is unquestionably different from the claim presented in state court (as the panel concluded), it should be still be considered identical to the markedly different claim presented in state court which was adjudicated on the merits. Id. at 8-9. The State thus maintains that *Martinez* is completely irrelevant. Id. at 12-13.

But that makes no sense. Dickens – like Schad – has never received a merits

ruling on the fully-developed ineffectiveness claim now presented in federal court. When ruling on Schad's claim, this Court refused to consider his entire claim, believing itself limited to reviewing the incredibly weak claim actually presented by ineffective post-conviction counsel in state habeas proceedings. *Schad*, 671 F.3d at 722.

True, *Pinholster* and *Schad* seem to say: Tough luck, you still get executed without any review in any court of your fully-developed substantial ineffectiveness claim as presented for the first time in federal court. But *Martinez* makes clear that such reasoning is both wrong and unjust. *Martinez* makes manifest that that is NOT the law, and certainly not justice. Were that the law, that would result in the very injustice which *Martinez* seeks to eliminate, the situation (like Schad's) in which "no court will review the prisoner's claims." *Martinez*, 566 U.S. at ___ (slip op. at 7).

Suffice it to say, for purposes of Schad's motion, this Court has quite a bit of work to do in *Dickens* to resolve (as the State has requested) the obvious tension between *Schad* and *Dickens*, as well as the clear tension between *Pinholster* and *Martinez*. In *Dickens*, this Court will have to decide whether the *Dickens* panel was correct (which means that both Dickens and Schad are entitled to a *Martinez* remand), or whether the *Schad* panel was correct and *Pinholster*

controls (which would mean that both Dickens and Schad would lose).

It clearly appears that the *Dickens* panel properly balanced all the competing interests and principles by holding that the newly-enhanced claim presented in federal court is a "new claim" subject to *Martinez*, not a claim that was adjudicated on the merits under §2254(d) and subject to *Pinholster*, as this Court earlier held in *Schad*.[4] The reasoning of the *Dickens* panel means that substantial claims of ineffectiveness will – as held by *Martinez* – actually be heard by some court. This is the opposite of what this Court held in *Schad*, when it ruled without the benefit of *Martinez*, leaving Schad without any consideration of his fully-developed claim. If the *en banc* court agrees with the *Dickens* panel (as it should) not only will Dickens be entitled to relief, so will Ed Schad, as their cases are legally indistinguishable.

Simple justice means Schad and Dickens should be treated equally. This Court has granted *en banc* review in *Dickens* based upon the State's contention that the reasoning of *Schad* should control *Dickens*. But the *en banc* court may rule that it is the panel in *Dickens* that is correct, not *Schad*, such that *Schad* must

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[4] Unlike the panel in *Dickens*, which found the newly-enhanced ineffectiveness claim to be a "new claim" not subject to *Pinholster* but instead subject to *Martinez*, the Supreme Court has yet to weigh in on what, post-*Pinholster*, constitutes a "new claim" that was not presented to the state courts. *See Ryan v. Gonzales*, 568 U.S. ___, ___ (2013)(slip op. at 17 n. 17).

be discarded. Until these issues are finally resolved, it is appropriate for this Court to exercise its inherent discretion to continue to stay the mandate pending a final decision in *Dickens*.

Dickens and *Schad* must rise or fall together. A stay of mandate will ensure the fair application of law in both cases.

C.
This Court Would Not Abuse Its Discretion In Staying The Mandate Pending *En Banc* Proceedings In *Dickens*

Given both the intervening decision in *Martinez* (which was never considered by this Court in *Schad*) and the intervening decision and *en banc* grant in *Dickens*, Schad's request for a continued stay of mandate presents one of the rare situations in which a continued stay is fully justified. Indeed, while an intervening decision or event provides grounds for staying the mandate (*Beardslee*, 393 F.3d at 901), there are three such events here – *Martinez*, the panel decision in *Dickens*, and the *en banc* grant in *Dickens*. And when one considers that Schad's life is on the line, Schad's case is thus truly exceptional, one of the rare cases in which an appellate court exercises its discretion to continue a stay of mandate to allow thorny issues to be carefully resolved before issuing a final decision. *See Beardslee*, *supra*.

Indeed, Schad's case is much like *Beardslee*, where, after the panel decided

Beardslee's appeal and sought certiorari, this Court issued another panel opinion which affected his entitlement to relief. *Id*. at 901. After certiorari was denied, but before this Court's mandate issued, Beardslee requested a further stay of mandate, which this Court granted. The Court found the intervening case to be an exceptional circumstance warranting a stay of mandate, after which this Court undertook further proceedings on the issue implicated by the intervening decision. That is precisely the situation here. Just as a further stay of mandate was granted in *Beardslee*, it should be granted here as well.

With Schad (like Beardslee) having promptly (and openly) come to this court seeking relief *before* this Court's mandate actually issued and *before* the state ever set an execution date following the issuance of this Court's mandate (which remains pending), a continued stay of mandate is also well within this Court's discretion. It does not run afoul of *Bell v. Thompson*, 545 U.S. 794 (2005).

In *Thompson*, the Supreme Court denied Thompson's petition for writ of certiorari and his petition for rehearing. *Thompson*, 545 U.S. at 804. That is the only similarity between *Thompson* and *Schad.* In *Thompson*, after rehearing was denied on certiorari, Thompson never "sought an additional stay of the mandate," as Schad has. *Id*. at 804. Unbeknownst to anyone, however, the court of appeals in *Thompson* then reconsidered its original judgment, reversed that judgment, and

issued a mandate (with a completely new outcome) five months after rehearing had been denied by the Supreme Court. Because the court of appeals notified no one post-certiorari that it was actually "reviewing its original panel decision," the state secured an execution date, after which the parties engaged in state competency proceedings. *Id*. at 805.

Under these circumstances, the Supreme Court concluded that any discretion available to the court of appeals had been abused, given: the court of appeals' secrecy; the state's justifiable belief that denial of certiorari (and rehearing) signaled the conclusion of initial federal habeas proceedings; the fact that the state secured an execution date relying on the denial of certiorari (and rehearing); and the fact that the mandate based upon the newly-revised judgment came out of the blue months after rehearing was denied. *Id*. at 804-806. By implication, the Supreme Court indicated that had Thompson moved for an additional stay and shown exceptional circumstances, had the court of appeals promptly informed the parties that habeas proceedings were not in fact over, had the state not relied upon the court of appeals' silence, and had the court of appeals not unreasonably delayed issuance of the mandate without explanation, the outcome might have been different.

Ed Schad and this Court have made *none* of the gaffes made by the court of

appeals in *Thompson*. Schad has sought a continued stay of mandate promptly upon the *en banc* grant in *Dickens* and *before* an execution date was set. Schad promptly informed the Arizona Supreme Court not to set an execution date because this Court's mandate is stayed and he has requested a continued stay of mandate. *See* Exhibit A, Opposition to Motion for Warrant of Execution, and Exhibit B, Email exchange between counsel and the Capital Case Staff Attorney for the Arizona Supreme Court (confirming that the Justices had been made aware of the Motion to Continue Mandate Stay in Light of *Dickens*). The Arizona Supreme Court, however, ignored the critical fact that this federal court's mandate has not issued, which under federal law is the *first point* at which Arizona could justifiably move forward with seeking to execute its judgment. *See Calderon v. Thompson*, 523 U.S. 538, 556 (1998)(state's interest in finality becomes compelling once court of appeals issues its mandate). Unlike the situation in *Thompson*, Arizona is not under any misimpression that it can move forward because initial federal habeas proceedings are concluded. Schad's motion makes clear that they are not.

In sum, unlike the situation in *Thompson*, there are exceptional circumstances, the state has been fully informed of those circumstances, the mandate has not issued, and the state itself (as evidenced by its own rehearing

petition in *Dickens*) has been well aware that this Court's earlier ruling in *Schad* cannot survive if the panel decision in *Dickens* survives. Under these circumstances, this Court should grant a continued stay of mandate pending the *en banc* proceedings in *Dickens*.

CONCLUSION

Ed Schad's motion for continued stay of mandate should be granted. This Court should continue the stay of mandate pending the *en banc* proceedings in *Dickens*, and this Court should issue all orders appropriate and necessary to ensure the fair treatment of Ed Schad in light of the pending decision in *Dickens*.

Respectfully submitted this 11th day of January, 2013.

BY:*/s/ Kelley J. Henry*
Kelley J. Henry
Denise I. Young
Attorneys for Appellant Edward Schad

CERTIFICATE OF SERVICE

I hereby certify that on January 11, 2013, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate ECF system.

Participants in the case who are registered ECF users will be served by the appellate ECF system.

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ATTORNEY FOR EDWARD SCHAD

IN THE SUPREME COURT OF THE STATE OF ARIZONA

STATE OF ARIZONA,	)	
	)	No. CR-85-0246-AP
APPELLEE,	)	YAVAPAI COUNTY NO. 8752
	)	NINTH CIRCUIT NO. 07-99005
vs.	)	
	)	RESPONSE IN OPPOSITION TO
EDWARD H. SCHAD,	)	MOTION FOR WARRANT
	)	OF EXECUTION AND MOTION
APPELLANT	)	FOR APPOINTMENT OF COUNSEL
	)	
_____	)	

Edward Schad, by counsel, opposes the State of Arizona's request for a Warrant of execution for the following reasons:

First, Schad's motion for rehearing of the denial of his petition for writ of certiorari remains pending before the U.S. Supreme Court and as the State points out, the mandate of the Ninth Circuit remains stayed. This Court does not have jurisdiction to entertain the State's Motion at this time. 28 U.S.C. § 2251(b)(after granting of stay any further proceeding in State Court "shall be void.") This Court should not share the Attorney General's blatant, unprofessional and unabashed disrespect for the United States Court of Appeals for the Ninth Circuit.

Second, Mr. Schad, by counsel is contemporaneously filing a Notice of Post-Conviction Relief and Petition for Post-Conviction Relief with the Yavapai County Superior Court. The Petition raises six substantial claims of constitutional error which could not have been raised during Mr. Schad's previous post-conviction proceedings. A copy of the Petition is appended to this Opposition.

Third, newly discovered evidence has come to light raising new questions regarding the constitutionality of the State's lethal injection procedure. Attorney and witness to the Richard Stokely posted an online article regarding the irregularities in the Stokely execution. *Witness to an execution*, http://fpdaz.org/assets/CHU/Stokley/witness_fpd.org.pdf (last visited December 20, 2012). Counsel became aware of the posting in the past few days. Mr. Baich's observations raise serious concerns about the competency of the lethal injection team. Those questions could give rise to an Eighth and Fourteenth Amendment claim and must be investigated. The investigation requires counsel to examine the autopsy of Mr. Stokely as well as the photographs and toxicological reports. Counsel cannot conduct that investigation at this time because these items are not yet available. Such reports are not typically available until six weeks after the execution.

WHEREFORE, this Court should deny the State's request for an execution warrant, or in the alternative delay ruling on the motion, until such time as Mr. Schad has a full and fair opportunity to investigate questions surrounding the Stokely execution; litigate his post-conviction petition; and the Supreme Court

rules on his Petition for Rehearing. Further, this Court should appoint counsel, Denise I. Young, of Tucson, Arizona, as counsel for Mr. Schad, *nunc pro tunc* to the November 8, 2012, the day in which the State of Arizona requested the Warrant. Ms. Young has represented Mr. Schad in his federal habeas proceedings since 1998 and her assistance to Mr. Schad at this critical stage is necessary to a full and fair adjudication of his case.

DATED this 20th day of December, 2012.

Respectfully submitted

/s/ Denise I. Young
Denise I. Young

Copies of the foregoing emailed
this 20th day of December, 2012, to:

Kent Cattani
Jon Anderson
Assistant Attorneys General
1275 W. Washington
Phoenix, AZ 85007-2997

/s/ Denise I. Young
Denise I. Young

RE: Schad v. Ryan - Emergency Motion to Continue Stay of Mandate

Hallam, Donna to: 'Kelley Henry', 'Margaret Epler' , 'Kristine Fox' 01/07/2013 02:44 PM

Cc: "Anderson, Jon", "Cattani, Kent" , "'dyoung3@mindspring.com'"

Thank you. The Court wants to be kept informed of proceedings in other courts, so I will forward a copy to the Justices.
D. Hallam

-----Original Message-----
From: Kelley Henry [mailto:Kelley_Henry@fd.org]
Sent: Monday, January 07, 2013 1:27 PM
To: Margaret Epler; Kristine Fox; Hallam, Donna
Cc: Anderson, Jon; Cattani, Kent; dyoung3@mindspring.com
Subject: Schad v. Ryan - Emergency Motion to Continue Stay of Mandate

Attached please find the Emergency Motion just filed on behalf of Mr. Schad with the Ninth Circuit asking that the Mandate Stay be continued in light of the Rehearing En Banc grant in Dickens v. Ryan. Ms. Hallam, we would very much appreciate it if the Justices be made aware of the filing prior to their conference tomorrow.

Thank you.

Kelley

(See attached file: Continue Mandate Stay.pdf)

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