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17 Attorneys for Petitioner

18 **IN THE UNITED STATES DISTRICT COURT**  
19 **FOR THE DISTRICT OF ARIZONA**

20 Joseph Rudolph Wood, III,

21 Petitioner,

22 vs.

23 Charles L. Ryan, et al.,

24 Respondents.

CV-98-00053-TUC-JGZ

DEATH-PENALTY CASE

Motion for Stay of Execution

**Execution Scheduled for July 23,  
2014 at 10:00 a.m.**

25 Petitioner Joseph Rudolph Wood III asks this Court for an emergency order  
26 staying his execution scheduled for Wednesday, July 23, 2014, at 10:00 a.m. Mr.  
27 Wood moves for a stay pending the Court's resolution of his Motion for Relief  
28 from Judgment on Fed. R. Civ. P. 60(b)(6) and Claims VI, X.C.2, X.C.3, and XI  
of his Habeas Petition.

The Court has before it Mr. Wood's Motion pursuant to Fed. Rule Civ. P.

1 60(b)(6) which will permit it to entertain Mr. Wood's habeas claims VI (trial  
2 court's failure to grant funds for neuromapping as part of the mitigation  
3 presentation at sentencing), X.C.2 (trial counsel's failure to impeach the testimony  
4 of Officer Anita Sueme to rebut grave risk aggravator), XI (direct appeal  
5 counsel's conflict of interest), and X.C.3 (trial counsel's ineffectiveness in  
6 investigating, preparing for and presenting mitigating evidence at sentencing).  
7 (*See* ECF No. 24 at 81-88, 128-36, 148-64, and 136-47.)

8 For all the reasons stated herein, Mr. Wood respectfully requests that this  
9 Court grant him a stay of execution, pending the Court's ruling on his Rule 60(b)  
10 motion, and further, until resolution of Claims VI, X.C.2, X.C.3, and XI of his  
11 Habeas Petition.

12 While this case was pending on appeal, the Supreme Court of the United  
13 States decided in *Martinez v. Ryan*, 132 S. Ct. 1309, 1315 (2012), that  
14 "[i]nadequate assistance of counsel at initial-review collateral proceedings may  
15 establish cause for a prisoner's procedural default of a claim of ineffective  
16 assistance at trial." Mr. Wood filed a motion with the Ninth Circuit, on August  
17 15, 2012, pursuant to *Martinez*, seeking a remand to the district court for an  
18 evidentiary hearing after a full opportunity to investigate his ineffective assistance  
19 of counsel claims. The Ninth Circuit never granted that motion.

20 Additionally, before this Court, Mr. Wood diligently sought to vindicate his  
21 rights. He filed repeated requests for funds with the district court to enable him to  
22 investigate his ineffective assistance of counsel claims. While he received funds  
23 from this Court for a consultant, he never received funds for a mitigation  
24 investigator or for an expert or experts for an actual evaluation.

25 This Court permitted the Federal Public Defender to represent Mr. Wood as  
26 co-counsel on April 30, 2014. Assistant Federal Defenders Dale Baich and  
27 Jennifer Garcia entered their appearances on behalf of Mr. Wood on May 13,  
28 2014 and June 6, 2013, respectively. With the resources of the Federal

1 Defender's Office, Mr. Wood's counsel have finally conducted a mitigation  
2 investigation and had Mr. Wood evaluated by mental health experts. Clinical  
3 Psychologist and Certified Addiction Specialist Robert L. Smith, Ph.D. evaluated  
4 Mr. Wood on June 17, 2014. He was then evaluated by Dr. Kenneth Benedict, a  
5 neuropsychologist, on June 25 and 26, 2014. However, given the short time  
6 frame, Mr. Wood does not yet have reports from these doctors and he expects to  
7 supplement his Rule 60(b) Motion once he receives the reports.

8 Mr. Wood is filing this motion for a stay and his Rule 60(b) motion –  
9 without the reports – now because of the impending July 23, 2014 execution date.  
10 He has not been dilatory. He is filing his Rule 60(b) motion regarding these four  
11 claims now to avoid filing serial Rule 60(b) motions. The U.S. Supreme Court  
12 discourages piecemeal litigation. *Hill v. McDonough*, 547 U.S. 573, 584-85  
13 (2006).

14 In considering a request for a stay of execution, this Court considers “not  
15 only the likelihood of success on the merits and the relative harm to the parties,  
16 but also the extent to which the inmate has delayed unnecessarily in bringing the  
17 claim.” *Nelson v. Campbell*, 541 U.S. 637, 649-50 (2004).

18 As set forth in his 60(b) Motion, Mr. Wood has demonstrated a likelihood  
19 of success on the merits. He has demonstrated defects in the integrity of his  
20 federal habeas proceedings. *Gonzalez v. Crosby*, 545 U.S. 524, 532 (2005).  
21 Claims were procedurally barred because of post-conviction counsel's  
22 ineffectiveness. In addition, this Court prevented him from obtaining the proper  
23 resources to pursue relief in this habeas proceeding. The claims he raises are  
24 substantial and likely meritorious: the denial of expert neuromapping resources at  
25 trial, his counsel's failure to impeach an important State witness, his direct appeal  
26 counsel's conflict of interest and his counsel's failure to conduct a professionally  
27 adequate mitigation investigation.

28 As set forth, Mr. Wood is diligent in bringing his 60(b) motion. He has

1 only recently obtained counsel with the resources to conduct the mitigation  
2 investigation the case merits.

3 While the State is likely to argue that the interest in finality of judgment  
4 favors denial of Mr. Wood’s motions, it would be incorrect. This is a capital case  
5 in which Petitioner faces the more irreversible finality of death. *Thompson v.*  
6 *Bell*, 580 F.3d 423, 444 (6th Cir. 2009) (“In this case, the finality of the judgment  
7 against Thompson must be balanced against the more irreversible finality of his  
8 execution[.]”). See *Gonzalez*, 545 U.S. at 529 (“That policy consideration  
9 [finality], standing alone, is unpersuasive in the interpretation of a provision [Rule  
10 60(b)] whose whole purpose is to make an exception to finality.”).

11 As the Court considers Mr. Wood’s claims, it is important to note that  
12 Martinez does not require an adjudication on the merits of these claims. All it  
13 requires is a finding that the underlying claim is “substantial.” *Martinez*, 132 S.  
14 Ct. at 1318 (“[t]o overcome the default, a prisoner must also demonstrate that the  
15 underlying . . . claim is a substantial one, which is to say that the prisoner must  
16 demonstrate that the claim has some merit”).

17 For the reasons stated herein, Mr. Wood respectfully requests that this  
18 Court grant him a stay of execution, pending the Court’s ruling on his Rule 60(b)  
19 motion, and further, pending resolution of his Claims VI, X.C.2, X.C.3, and XI of  
20 his Habeas Petition.

21 Respectfully submitted this 17th day of July 2014.

22 Jon M. Sands  
23 Federal Public Defender  
24 Dale A. Baich  
25 Jennifer Y. Garcia

26 Julie S. Hall

27 s/ Jennifer Y. Garcia  
28 Counsel for Petitioner

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**Certificate of Service**

I hereby certify that on July 17, 2014, I electronically filed the foregoing Motion for Stay of Execution with the Clerk’s Office by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

s/ Robin Stoltze  
Legal Assistant  
Capital Habeas Unit