

URGENT ACTION

EXECUTION RESET DESPITE DELUSIONAL DISORDER

John Battaglia, aged 62, is due to be executed in Texas on 1 February. This date was set after a trial court judge rejected the opinions of three psychologists that a severe delusional disorder deprives the prisoner of a rational understanding of his execution.

In April 2002, a Dallas County jury convicted **John Battaglia** of shooting dead his six- and nine-year-old daughters on 2 May 2001. He was on probation for violence against his estranged wife, the girls' mother, and the state argued that the murders were revenge against her for threatening to have his probation revoked. At the sentencing, three psychiatrists testified for the defence, and one for the state, that John Battaglia had bipolar disorder. The defence lawyer argued he was "in the throes of a severe mental illness" at the time of the crime. The jury nevertheless voted for the death penalty.

With John Battaglia facing an execution date in December 2016, a Dallas County judge held an evidentiary hearing on 14-15 November to determine John Battaglia's "competency" for execution. Four psychologists assessed John Battaglia in this regard: one retained by the defence and one by the state, and two appointed by the court. Three concluded that he was incompetent because of a delusional disorder preventing his rational understanding of his punishment. The defence expert wrote that he "suffers from a serious, active condition characterized by severe and persisting delusional beliefs"; the state's expert concluded that he is "severely mentally ill due to a complicated persecutory delusional system"; and one of the two court-appointed experts concluded that John Battaglia believes that his "conviction was a sham", that "all of this is a conspiracy against him." The other court-appointed psychologist, however, testified that he believed John Battaglia was malingering and competent for execution. On 18 November 2016, the judge rejected the first three opinions and relied upon the fourth in deciding that the prisoner was competent. On 20 September 2017, over a detailed dissent which argued that the judge had erred in relying upon the sole expert who himself had "failed to consider the proper applicable law in reaching his conclusions", the Texas Court of Criminal Appeals upheld the competence ruling. It remanded the case to the trial court to schedule the execution. The date of 1 February 2018 was set.

The 1986 US Supreme Court decision, *Ford v. Wainwright*, bans the execution of those who cannot understand the reason for or reality of their punishment. In 2007, in *Panetti v. Quarterman*, the Supreme Court elaborated that under *Ford*, "A prisoner's awareness of the State's rationale for an execution is not the same as a rational understanding of it...Gross delusions stemming from a severe mental disorder may put an awareness of a link between a crime and its punishment in a context so far removed from reality that the punishment can serve no proper purpose."

Please write immediately in English or own language, including inmate number #999412 in your appeals:

- Calling for the execution of John Battaglia to be stopped and for his death sentence to be commuted;
- Noting that three psychologists have found he has a delusional disorder that leaves him without a rational understanding of his impending execution;
- Explaining that you do not wish to downplay the seriousness of the crime or deny the suffering caused.

PLEASE SEND APPEALS BEFORE 1 FEBRUARY 2018 TO:

Clemency Section, Board of Pardons and Paroles

8610 Shoal Creek Blvd., Austin,
Texas 78757-6814, USA

Fax: +1 512 467 0945

Email: bpp-pio@tdcj.state.tx.us

Salutation: Dear Board members

Governor Greg Abbott

Office of the Governor, P.O. Box 12428
Austin, Texas 78711-2428, USA

Fax: +1 512 463 1849

Email: <https://gov.texas.gov/apps/contact/opinion.aspx>

Salutation: Dear Governor

Also send copies to diplomatic representatives accredited to your country. Please insert local diplomatic addresses below:

HIS EXCELLENCY WOODY JOHNSON, Embassy of the United States of America, 24 Grosvenor Square W1A 6AE, Tel: 020 7499 9000,

Please check with your section office if sending appeals after the above date.

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ADDITIONAL INFORMATION

In 2011, a US District Court judge pointed to John Battaglia's "rambling and largely unintelligible missives to the court, together with his history of bipolar disorder" as raising concern that he "may not be mentally competent to knowingly and intelligently waive his right to counsel" as John Battaglia was seeking to do at that time. An example of such a "missive", dated 19 October 2009, includes the following text: "These facts and conclusions of law were dated August 6, 2008 and have been concealed from me as well as the name of the judge who wrote them as well as every record and piece of evidence submitted in my original trial in 2002 by both my trial and appeal attorneys. This was in part due to the fact that I had been married into a Klan or Cult of local Dallas racists who practiced a bizarre type of eugenics which involved the secretive and fraudulent in-breeding and conception of children by members of the same immediate families under the ruse of a normal domestic marriage".

The psychologist retained by the defence for the *Ford/Panetti* assessment conducted some 15 hours of interviews and multiple tests with John Battaglia and produced a detailed report on her findings that his delusional disorder rendered him incompetent for execution. In his decision on 18 November 2016, Judge Robert Burns of the Criminal District Court in Dallas County "disregard[ed] her opinion entirely" because of her "lack of experience working with a prison population", adding that "claims of wrongful prosecution and conspiracies by judges, witnesses, prosecutors and defense attorneys are common". He adopted a similar stance in relation to the state's expert, saying that he had "only limited experience" in the prison setting. On the court-appointed expert who found John Battaglia incompetent, the judge said little. Instead, he found that the other court-appointed psychologist, who had experience working in federal prisons, was "highly qualified to make a determination of competency in this context", and was "wholly credible". That psychologist conducted no testing of the prisoner, but based his initial assessment on an interview of him of under five hours. After he was provided the reports of the other three psychiatrists, he conducted another interview of the prisoner but still conducted no testing. His second report asserted that John Battaglia is "a highly intelligent person who has had the time and motivation to begin creating a complex, paranoid story line that he could have practiced over the years". The psychologist made a provisional diagnosis of malingering and concluded that "he is likely not to have a delusional disorder".

Judge Burns wrote that, given his imminent execution, "Battaglia has a motive to lie and/or exaggerate his symptoms of mental illness." The judge concluded that he did "not believe that Battaglia suffers from a severe mental illness", and that he "is both intellectually capable, sophisticated enough, and has every motivation to invalidate the mental health tests and create these delusions specifically related to his rational understanding of his connection to the offense as a means of preventing his execution. The Court believes that Battaglia is feigning or exaggerating his symptoms of mental illness."

The assertion that a condemned prisoner is faking or exaggerating mental disability to avoid execution has been made in other cases by state authorities – including in Texas and including about individuals who went to their execution displaying symptoms of serious delusional disorders (see <https://www.amnesty.org/en/documents/amr51/003/2006/en/>). It is also the case, as the Supreme Court put it in its *Panetti* ruling in 2007 that "a concept like rational understanding is difficult to define". In its 1986 *Ford* ruling, four of the Justices had similarly noted that the evidence of whether a prisoner is incompetent for execution "will always be imprecise". A fifth Justice had added that "unlike issues of historical fact, the question of [a] petitioner's sanity calls for a basically subjective judgment." For many people, one of the reasons to stop executions and to abolish the death penalty is precisely because of the impossibility of removing subjectivity and human error from application of an irrevocable punishment.

Texas accounts for 546 of the 1,446 executions in the USA since the Supreme Court approved new capital laws in 1976. International law and standards on the use of the death penalty hold that it may not be imposed or carried out on people with mental or intellectual disabilities. This applies whether the disability was relevant at the time of their alleged commission of the crime or developed after the person was sentenced to death. Amnesty International opposes the death penalty unconditionally.