

URGENT ACTION

MENTAL COMPETENCE AT ISSUE AS EXECUTION SET

John Battaglia, aged 61, is scheduled to be executed in Texas on 7 December. He was sentenced to death for killing his two young daughters in 2001. Three psychologists have concluded that a delusional disorder renders him incompetent for execution. On 18 November, a Texas judge ruled that he is feigning mental illness and can be executed.

In April 2002, a Dallas County jury convicted **John Battaglia** of killing his six- and nine-year-old daughters on 2 May 2001. According to the state's evidence at trial, he was on probation for violence against his estranged wife, the girls' mother, and the murders were revenge against her for threatening to have his probation revoked. The girls, at his home for a visit, were shot while their mother was on the phone with them. Three mental health experts testified for the defence, and one for the prosecution, that John Battaglia suffered from bipolar disorder.

John Battaglia's lawyer has lodged a claim under the 1986 US Supreme Court decision, *Ford v. Wainwright*, banning the execution of those who are mentally incompetent – those who cannot understand the reason for or reality of their punishment. In 2007, in *Panetti v. Quarterman*, a Texas case, 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." (<https://www.amnesty.org/en/documents/amr51/114/2007/en/>).

Three psychologists have concluded that John Battaglia is incompetent for execution as a result of a delusional disorder. The expert retained by the defence wrote that he "suffers from a serious, active condition characterized by severe and persisting delusional beliefs... Because of his persisting, longstanding, inflexible, delusional interpretation of his circumstances, Mr Battaglia does not have the capacity to rationally understand the connection between his crime and his punishment". The psychologist retained by the state reported that he is "severely mentally ill due to a complicated persecutory delusional system" and that "his understanding of the reason for his execution is irrational, as he views it as stemming from a vast, complicated conspiracy against him that is part of a large, multifaceted cover-up". A third expert, appointed by the court, wrote that John Battaglia believes that his "conviction was a sham, that he was drugged and does not recall the murders, that all of this is a conspiracy against him, that his daughters are not dead, that this 'whole thing' is much larger and is about faith and freedom..." The three experts testified to this effect in a hearing in a Dallas County court on 14 November. The next day, a fourth psychologist, also court-appointed, testified that he believed John Battaglia was competent for execution. On 18 November, the judge issued an order ruling John Battaglia competent, describing this fourth expert's opinion as "wholly credible" and "conclusive". The ruling is being appealed.

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

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

PLEASE SEND APPEALS BEFORE 7 DECEMBER 2016 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
Salutation: Dear Governor

Also send copies to diplomatic representatives accredited to your country.. HIS EXCELLENCY THE HONOURABLE MATTHEW BARZUN American Embassy, 24 Grosvenor Square, London W1A 6AE, tel: 020 7499 9000. Salutation: Your Excellency. **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 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* 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, 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 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."

While the assertion that a capital inmate is faking or exaggerating mental illness has often been made by state authorities (see <https://www.amnesty.org/en/documents/amr51/003/2006/en/>), it is also the case, as the Supreme Court put it in its 2007 *Panetti* ruling, that "a concept like rational understanding is difficult to define". In its 1986 *Ford v. Wainwright* 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 an irrevocable punishment.

Texas accounts for 538 of the 1,440 executions (37%) in the USA since the Supreme Court approved new capital statutes in 1976, and for seven of the 18 this year. Amnesty International opposes the death penalty in all cases, unconditionally. This is a punishment – regardless of questions of guilt, competence, or seriousness of the crime – incompatible with human dignity.