

THE STATE OF TEXAS	§	IN THE 299 <sup>th</sup> DISTRICT
	§	
vs.	§	COURT OF
	§	
CATHY LYNN HENDERSON	§	TRAVIS COUNTY, TEXAS

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**CAPITAL CASE: EXECUTION SET FOR APRIL 18, 2007**

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**MOTION TO VACATE EXECUTION DATE**

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**TO THIS HONORABLE JUDGE OF SAID COURT:**

COMES NOW the defendant in this cause, Cathy Lynn Henderson, through her undersigned counsel, and moves the Court to withdraw its Order of November 20, 2007, setting the date of execution of Ms. Henderson as April 18, 2007 or, in the alternative, to modify the prior Order and set a new date of execution not less than ninety days after April 18, 2007. This request is made pursuant to Texas Code of Criminal Procedure Article 43.141(d). Counsel for the State has declined our request to stipulate that this motion may be granted; hence we present it to this Court for its due consideration.

As more particularly appears in the accompanying Memorandum and Exhibits filed concurrently with this Motion, Ms. Henderson would respectfully show that:

1. There is newly available, credible scientific that the decedent herein (a baby aged 3.5 months) may well have died by reason of an accidental fall to the concrete floor of defendant's home, and thus did not die in the manner opined by the State's trial witnesses — Dr. Roberto Bayardo, the then-Chief Medical Examiner of Travis County, and Sparks Veasey, M.D., the then-Deputy Medical Examiner of Lubbock County — namely, that the infant *had* to have died as the result of a non-accidental, deliberate and murderous blow to the head allegedly administered by the defendant. Stated briefly, modern science in the physical and medical analysis of head trauma has come a very long way since the 1995 trial of this case, and undersigned counsel have located and retained an expert in this modern science, John J. Plunkett, M.D., to review and evaluate *all* the available evidence concerning the infant's death, and determine whether that death was indeed the product of an accidental fall to the concrete floor of Ms. Henderson's home.

2. Even in 1995, there was at least the beginnings of some science in this field, which is called “biomechanical” analysis because it draws from physics and engineering, and is not confined to traditional methods of treatment of head trauma injuries by physicians. However, even this beginning stage evidence was unavailable to defendant Henderson at the trial, because when defense counsel sought funds to retain an expert to “perform a biomedical investigation into the incident which caused the death of the victim,” this Court denied the motion. Ms. Henderson therefore had no one to speak for her against the opinion testimony of State's witnesses Bayardo and Veazey. See Exhibits 5 and 6 to this Motion.

3. Undersigned counsel have also engaged an eminent psychiatrist, Seth M. Silverman, M.D., P.A., to evaluate the current mental state of Ms. Henderson, and to assess her current risk of dangerousness as it stands on fresh evidence and

evaluation available today. Ms. Henderson should not be executed on the basis of a stale assessment of her supposed dangerousness, made by the jury almost twelve years ago, particularly if it cannot be substantiated today.

This motion is therefore bottomed upon the need for additional time for Drs. Plunkett and Silverman to complete their respective undertakings on behalf of defendant Ms. Henderson, in order that the same may be duly and completely presented to, and considered by, this Court and the Court of Appeals in a first subsequent application for state habeas relief and, if such relief be denied, considered also by the federal courts and the Governor and the Board of Pardons and Paroles.

WHEREFORE, premises considered, Ms. Henderson prays that this Court withdraw its prior Order of November 20, 2006, setting her execution date for April 18, 2007 and

1. Either set no new execution date at this time; or in the alternative
2. Set a new execution date not less than ninety days after April 18, 2007.

DATED: March 16, 2007

Respectfully submitted,

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JANI J. MASELLI  
Texas State Bar No. 00791195  
The Niels Esperson Building  
808 Travis Street, 24th Floor  
Houston, TX 77002  
Telephone: (713) 757-0684  
Facsimile: (713) 650-1602  
Internet: jjmaselli@aol.com

*Attorney for Defendant  
Cathy Lynn Henderson*

-and-

GEORGE A. CUMMING, JR.  
MOLLY MORIARTY LANE

MORGAN, LEWIS & BOCKIUS LLP  
One Market, Spear Tower  
San Francisco, CA 94105  
Telephone: (415) 442-1198  
Facsimile: (415) 442-1001  
Internet: [gcumming@morganlewis.com](mailto:gcumming@morganlewis.com)

*Of Counsel to Defendant  
Cathy Lynn Henderson*