

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 18-70005

United States Court of Appeals
Fifth Circuit

FILED

February 1, 2018

Lyle W. Cayce
Clerk

JOHN DAVID BATTAGLIA,

Plaintiff - Appellant

v.

BRYAN COLLIER, EXECUTIVE DIRECTOR, TEXAS DEPARTMENT OF
CRIMINAL JUSTICE; LORIE DAVIS, DIRECTOR, TEXAS DEPARTMENT
OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION;
JAMES JONES, Senior Warden, Huntsville Unit Huntsville, Texas;
UNKNOWN EXECUTIONERS,

Defendants - Appellees

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:18-CV-301

Before HIGGINBOTHAM, DENNIS, and GRAVES, Circuit Judges.

PER CURIAM:*

In 2002, John Battaglia was convicted and sentenced to death for shooting and killing his two young daughters.¹ On the date of his scheduled

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

¹ See *Battaglia v. State*, No. AP-74,348, 2005 WL 1208949, at *1 (Tex. Crim. App. 2005).

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execution, Battaglia filed a § 1983 lawsuit challenging Texas' method of carrying out his execution.² Battaglia's complaint raised three claims: (1) that there is a substantial risk he will suffer severe pain at the time of his execution, in violation of the Eighth and Fourteenth Amendments; (2) that the state failed to conduct adequate or competent testing of lethal injection drugs, which could subject him to a substantial risk of severe pain; and (3) that the constitution requires Texas to notify an inmate of any changes to the substances and protocols used to carry out lethal injection.

The district court denied Battaglia's motion for a temporary restraining order or preliminary injunction and dismissed his complaint with prejudice. For essentially the reasons stated by the able district court, with which we agree, we are not persuaded of the likelihood of Battaglia's success on the merits. Thus, we DENY the motion for stay pending appeal and for stay of execution.

² See *Battaglia v. Collier*, No. 4:18-cv-00301 (S.D. Tex. Feb. 1, 2018).