

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

JOHN RAMIREZ,

Petitioner,

v.

BRYAN COLLIER, Executive Director, Texas Department of Criminal Justice; BOBBY LUMPKIN, Director, Texas Department of Criminal Justice, Correctional Institutions Division; DENNIS CROWLEY, Warden, TDCJ, Huntsville, TX,

Respondents,

**On Petition for Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit**

APPLICATION FOR STAY OF EXECUTION

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APPOINTED ATTORNEY FOR JOHN RAMIREZ

<p>This is a capital case. Mr. Ramirez is set for execution September 8, 2021, 6 p.m. CT.</p>
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To the Honorable Samuel Alito, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Fifth Circuit:

The State of Texas has scheduled the execution of John Ramirez for September 8, 2021. Mr. Ramirez respectfully requests a stay of execution pending consideration and disposition of the petition for a writ of certiorari filed along with this application.

STANDARDS FOR A STAY OF EXECUTION

Mr. Ramirez respectfully requests that this Court stay his execution, pursuant to Supreme Court Rule 23 and 28 U.S.C. § 2101(f), pending consideration of his concurrently filed petition for a writ of certiorari (the “Petition”). *See Barefoot v. Estelle*, 463 U.S. 880, 889 (1983) (“Approving the execution of a defendant before his [petition] is decided on the merits would clearly be improper.”); *see also Lonchar v. Thomas*, 517 U.S. 314, 320 (1996) (court may stay execution if needed to resolve issues raised in initial petition).

The standards for granting a stay of execution are well-established. Relevant considerations include the prisoner's likelihood of success on the merits, the relative harm to the parties, the extent to which the prisoner has unnecessarily delayed his or her claims, and public interest. *See Hill v. McDonough*, 547 U.S. 573, 584 (2006); *Nelson v. Campbell*, 541 U.S. 637, 649-50 (2004); *Barefoot*, 463 U.S. at 895. All four factors weigh strongly in Mr. Ramirez's favor.

PETITIONER SHOULD BE GRANTED A STAY OF EXECUTION

1. Petitioner Is Likely To Succeed On the Merits

Since 2016, Ramirez has been ministered to by Rev. Dr. Dana Moore of the Second Baptist Church in Ramirez's hometown of Corpus Christi, Texas. *See* Graham, Ruth, "On Death Row in Texas, a Last Request: A Prayer and 'Human Contact'" NEW YORK TIMES August 30, 2021 (available online at <https://www.nytimes.com/2021/08/30/us/on-death-row-in-texas-a-last-request-a-prayer-and-human-contact.html>)

See also Sillman, Daniel, “*Can This Texas Pastor Lay Hands on an Inmate During Execution?*” CHRISTIANITY TODAY, (August 23, 2021) (online) (<https://www.christianitytoday.com/news/2021/august/ramirez-execution-death-row-dana-moore-prayer-hands-touch.html>);

In just the past two years, the TDCJ has prevaricated between four (4) different policies concerning spiritual advisors in the execution chamber; its conceded goal has been to find whatever version it believes would clear this Court’s irreducible minimum under the First Amendment and RLUIPA. The most recent version was promulgated in April 2021- months after the court signed Ramirez’s death warrant.

The first problem is that under the TDCJ’s most recent policy, Pastor Moore not lay hands on Ramirez during his death. The second problem is that Pastor Moore may not pray, speak, read Scripture, move his lips, or do anything at all. In other words, Pastor Moore is compelled to stand in his little corner of the room like a potted plant even though his notarized affidavit explains that laying his hands on a dying body- and vocalized prayers during the transformation from life to death- are intertwined with the ministrations he seeks to give Ramirez as part of their jointly subscribed system of faith.

In his order denying Ramirez’s motion to stay, the presiding federal district judge stated:

The instant case is one of ***first impression*** as to the specific question of whether a person set to be executed has the right, under RLUIPA and the Free Exercise Clause of the First Amendment, to have an approved spiritual advisor lay hands upon the person’s body and vocalize prayers during the execution.

(emphasis added).

In his dissent from the Fifth Circuit’s *per curiam* opinion affirming the denial of a stay, Judge Dennis went further:

Ramirez’s § 1983 suit implicates vitally important interests, and, at this stage of the litigation, he has made a ***strong showing that he is likely to succeed on the merits.***

2021 WL 404710, *3 (5th Cir. September 6, 2021) (emphasis added).

I strongly disagree that Ramirez has not shown his entitlement to a stay as to his RLUIPA claim.

Id. at *4.

2. Petitioner Has Been Timely And Diligent In His Litigation

In their response brief in the Fifth Circuit, the Respondents commended Ramirez’s alacrity in litigating his complaint: “Defendants acknowledge that he did not wait until the eleventh hour or the eve of his execution to file.”

Indeed, Ramirez has pressed his spiritual advisory issue for more than a year. More specifically, Ramirez first filed a 1983 “spiritual advisor” case in August 2020, when his execution was scheduled for September 2020. This case was assigned Southern District Of Texas cause number 2:20-cv-205. Less than one week later, the State and Ramirez reached a reciprocal agreement by which the former agreed to withdraw the death warrant and the latter agreed to nonsuit his section 1983 case along with a motion for funding under 18 U.S.C. § 3599(f). This agreement was made known to the presiding federal district court in a public filing on August 12, 2020:

On August 11, 2020, Ramirez’s counsel and AAG Morris reached agreement to 1) file an agreed motion to withdraw execution date and recall death warrant in the 94th Judicial District of Nueces County in exchange for 2) Ramirez filing a motion to non-suit without prejudice his recently filed Section 1983 suit in this Court; 2:20-cv-00205, *Ramirez v. Collier*.

Ramirez contends that he cannot be said to be dilatory when he filed a section 1983 case, 2:20- cv-205, thirteen months before the current execution date and only non-suited that case once he made an agreement with the State to do so in exchange for its agreement to withdraw the death warrant then pending.

Even looking only at the window in which the ‘new’ section 1983 case has been on file in anticipation of the September 2021 date, it must be said that Ramirez has been trying to push fast-forward while the State is trying to slow things down. Counsel for the Attorney General’s Office contacted Ramirez’s counsel when the ‘new’ section 1983 case was filed August 10, 2021. Yet the Attorney General’s Office has adamantly refused to file an answer- or accept service- in the month since.

Remaining diligent, Ramirez has tendered Pastor Moore’s *curriculum vitae* and offered him for deposition; the Respondents have never taken up this invitation.

3. Petitioner Will Be Irreparably Harmed If A Stay Is Not Granted

Irreparable injury “is necessarily present in capital cases.” *Wainwright v. Booker*, 473 U.S. 935, 935 n.1 (1985). This element presents in a very salient way in Ramirez’s case, because the Respondents have given strong indication that they will ultimately end up excluding Pastor Moore from the execution chamber no matter what.

Please recall that complete exclusion of all spiritual advisors from the execution chamber was Respondents official policy until a few weeks ago—and the one in which they truly believe.

Respondents appear ready to enforce this on-the-spot on the night of September 8, 2021. In *Dunn v. Smith*, this Court stated a desideratum:

The State can do a background check on the minister; it can interview him and his associates; it can seek a ***penalty-backed pledge that he will obey all rules.***

Dunn v. Smith, 141 S.Ct. 725, 726 (2021) (emphasis added).

Pastor Moore had no problem signing such a pledge, and he did so. The problem is that the pre-prepared form he was inveighed upon to sign purports to stipulate to criminal liability under two inapposite statutes that protect the confidentiality of members of the execution team who administer the poison. When Moore gave a copy to undersigned Counsel, the State declared him in breach of the pledge *a priori*, filed a motion to seal the form from the public record, and is at this very moment threatening to eject Moore from the execution chamber. Specifically, in their Response brief in the Fifth Circuit, the Respondents warned:

That neither the Warden nor the Director have decided to exclude Moore from the execution is ***of no legal consequence.***

In other words, Respondents are still mulling whether to allow or exclude Pastor Moore from the execution chamber during Wednesday's

execution. This is the paradigmatic example of irreparable injury — by the time Ramirez would be able to challenge Pastor Moore’s on-the-spot exclusion during Ramirez’s execution, he will be dead and the claim moot.

What the Respondents really seek is to hold a Sword of Damocles over Pastor Moore during this execution. If he even breathes through his mouth, the Warden may declare that Pastor Moore is trying to utter prohibited words of prayer. Pastor Moore will be ejected from the execution chamber by guards and referred for prosecution under the statutes cited in the pre-prepared form. Ramirez will be executed without the spiritual advisor guaranteed to him under the Constitution and RLUIPA.

4. Public Interest Militates In Favor Of A Stay

Both Congress and this Court have recognized the importance of protecting that liberty even for, and maybe especially for, incarcerated persons.

The questions concerning Texas’s latest policy prevarication have not been previously addressed.

The Respondents have vacillated through four versions of their protocols in just the past two years; the latest one issued months after the state district judge signed the current death warrant.

The importance of these issues militates in favor of a stay.

FOR THE FOREGOING REASONS, and those set forth in the Petition for a Writ of Certiorari, Petitioner respectfully requests that his application for a stay of execution be granted.

DATED this 7th day of September, 2021.

Respectfully submitted,

/s/ Seth Kretzer

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