

Nos. 18-6906, 18A578

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IN THE  
SUPREME COURT OF THE UNITED STATES

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DAVID EARL MILLER,  
Petitioner,

v.

TONY PARKER, et al.,  
Respondent.

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ON APPLICATION FOR STAY OF EXECUTION AND ON  
PETITION FOR WRIT OF CERTIORARI

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RESPONDENTS' APPENDIX

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HERBERT H. SLATERY III  
Attorney General and Reporter  
State of Tennessee

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Solicitor General

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Counsel for Respondents

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
AT NASHVILLE**

<b>DAVID EARL MILLER, et al.,</b>	)	
	)	<b>CAPITAL CASE</b>
<b>Plaintiffs,</b>	)	
	)	
<b>v.</b>	)	<b>No. 3:18-cv-01234</b>
	)	<b>JUDGE CAMPBELL</b>
<b>TONY PARKER, et al.,</b>	)	
	)	
<b>Defendants.</b>	)	

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**DEFENDANTS' SUPPLEMENTAL RESPONSE IN OPPOSITION TO  
PLAINTIFFS' "EMERGENCY MOTION" FOR DISCLOSURE  
OF INFORMATION ON METHOD OF EXECUTION**

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On November 21, 2018, Miller filed an "emergency" motion ("Motion") seeking "immediate disclosure" of information regarding the method the State of Tennessee will use to carry out his death sentence on December 6, 2018. Emergency Motion, Doc. No. 31. In it, he claimed that he needed detailed information from the Defendants about lethal injection and electrocution in order to make an "informed" decision about his method of execution. Miller also requested that he be granted a three-day extension of time until November 29, 2018, at 5:00 p.m. to complete an Affidavit Concerning Execution Method which was presented to his counsel. *Id.* at p. 12. This Court directed the Defendants to respond to the motion no later than Friday, November 23, 2018, Order, Doc. No. 32, and Defendants responded as directed. Response, Doc. No. 33.

This morning, Monday, November 26, 2018, undersigned counsel was notified by the Department that Miller had presented a signed document to officials at Riverbend Maximum Security Institution on November 23, 2018, which states, "I waive lethal injection and wish to be

electrocution [sic].” The document appears to be signed by Miller and is dated November 23, 2018. Copies of the document and cover envelope are attached.

Miller’s waiver renders moot his request for “immediate disclosure of information” regarding the method of execution that will be used to carry out his sentence on December 6, 2018, and his accompanying request for an extension of the deadline to elect his method of execution. The Motion should thus be denied as moot.

Respectfully submitted,

HERBERT H. SLATERY III  
Attorney General and Reporter

/s/ Scott C. Sutherland  
SCOTT C. SUTHERLAND  
Deputy Attorney General  
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/s/ Rob Mitchell  
ROB MITCHELL  
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### **CERTIFICATE OF SERVICE**

I certify that, on the 26th day of November 2018, a copy of the foregoing Supplemental Response was filed and served by operation of the Court's ECF/PACER system on the following counsel for the Plaintiffs: Stephen M. Kissinger, Asst. Federal Community Defender, 800 S. Gay Street, Suite 2400, Knoxville, TN 37929.

/s/ Scott C. Sutherland

SCOTT C. SUTHERLAND  
Deputy Attorney General



*I waive lethal injection and  
wish to be electrocuted*

November 21, 2018

**HAND DELIVERED**

David Earl Miller # 095792  
Riverbend Maximum Security Institution  
7475 Cockrill Bend Blvd.  
Nashville, TN 37209

*David E. Miller  
11/23/18  
UNIT 2 A204*

**RE: Method of Execution Scheduled for December 6, 2018**

Mr. Miller:

Pursuant to the Tennessee Supreme Court's Amended Order dated July 10, 2018, in Case No. E1982-00075-SC-DDT-DD, this letter is to notify you that the Tennessee Department of Correction (TDOC) will carry out your death sentence by lethal injection on December 6, 2018, unless you notify me in writing by Monday, November 26, 2018 at 5:00 p.m. CST of your waiver of execution by lethal injection, in which case your sentence will be carried out by electrocution. Unless you waive lethal injection, in accordance with the protocol and procedures in TDOC's Lethal Injection Manual, as amended on July 5, 2018, TDOC will use a three-drug combination consisting of Midazolam, Vecuronium Bromide, and Potassium Chloride. TDOC will not be relying upon the Capital Punishment Enforcement Act, T.C.A. 40-23-114.

Sincerely,

Tony Mays, Warden  
Riverbend Maximum Security Institution

Encl. form Affidavit Concerning Method of Execution

Cc via email: Stephen Kissinger, Attorney for Defendant  
Tony Parker, Tennessee Commissioner of Corrections  
Herbert H. Slatery III, Tennessee Attorney General and Reporter

Tennessee Department of Correction • Riverbend Maximum Security Institution • 7475 Cockrill Bend  
Bldg. • Nashville, TN 37209 • Tel: 615-350-1100 • Fax: 615-350-2400 • [www.tn.gov/correction](http://www.tn.gov/correction)

DAVID E. MILLER 95792  
UNIT 2 A204

URGENT

WARDEN MAYS

## CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Respondent's Appendix was forwarded by United States mail, first-class postage prepaid, and by email on the 4th day of December, 2018, to the following:

Stephen M. Kissinger  
Asst. Federal Community Defender  
800 S. Gay Street, Suite 2400  
Knoxville, TN 37929

  
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JENNIFER L. SMITH  
Associate Solicitor General