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September 22, 2021

Honorable Scott S. Harris
Clerk of the Court Supreme Court of the United States
One First Street, N.E.
Washington, D.C. 20543

Re: No. 21-5592 (Capital Case), *John H. Ramirez v. Bryan Collier, Executive Director, Texas Department of Criminal Justice, et al.*

Dear Mr. Harris:

Petitioner objects to the State's introduction of never-filed, new testimonial evidence created for use in the Court: several affidavits executed between September 14 and September 20, 2021. This new evidence comes after the stay decisions from the district court and court of appeals; in neither court did the State seek to offer such evidence to support its arguments under RLUIPA, the PLRA, or the equitable principles governing stays and pretrial injunctive relief. It now effectively seeks an evidentiary hearing at this Court, but with no opportunity for petitioner's counsel to depose, much less cross-examine, these surprise witnesses. As this Court has reiterated time and again—including in *Cutter v. Wilkinson*, a RLUIPA case—this Court is "mindful that we are a court of review, not of first view." 544 U.S. 709, n.7 (2005). This Court should disallow the newly created evidence the State wants to "lodge."

Although the State suggests "extraordinary circumstances" warrant this departure from established procedures on certiorari review in this Court, the request rings hollow. The State contends there is an "underdeveloped record" to completely address the issues the Court directed the parties to brief. But the State has been addressing these very same topics in both courts below and in its Brief in Opposition. *See, e.g.*, Br. Opp. at 12 (PLRA exhaustion); *id.* at 15-22 (RLUIPA substantial-burden analysis); *id.* at 22-29 (RLUIPA compelling-interest/least-restrictive-means analysis); *id.* at 31-39 (equitable-relief analysis). This is the first time the State has indicated it lacks evidence it now views as essential to support the arguments it has repeatedly made.

The 'underdevelopment' the State believes hampers its ability to carry its burden under RLUIPA, 42 U.S.C. § 2000c–2(b), or its arguments under the PLRA or the equities, reflects litigation strategy the State chose to pursue against petitioner. Having already presented arguments in its Brief in Opposition on every issue the Court directed the parties to address in merits briefs—and never even hinting that the record precludes meaningful consideration of these issues, much less requires providing the State a chance to develop new evidence essential to litigating petitioner's Free Exercise claims—the State has waived any argument that the Court should consider new evidence and permit a one-sided, mini-trial, in which none of the State's witnesses are subject to the "crucible of cross-examination." *Crawford v.*

Washington, 541 U.S. 36, 61 (2004). The State can request a continued stay and a remand the district court, which is the court in which trials belong. The Court should reject the State's request to lodge its newly created testimonial evidence.

Sincerely,

Seth Kretzer

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