

THE LAW OFFICES OF SETH KRETZER
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SKYPE: SETH.KRETZER

September 23, 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:

I write in response to the reply filed by Respondents September 23, 2021.

As an initial matter, the Respondents evade the implications of the “limited set of documents” with which they seek to supplement the record. They seek to provide the Court with unverified, non-party, redacted, anonymous statements the Respondents manufactured two weeks after the Court granted certiorari September 8, 2021. If the Respondents really want to stand on their recently manufactured evidence, they may request remand to the federal trial court, where those individuals may be cross-examined, without the benefit of anonymity and redaction.

But the Respondents should not be permitted to misstate the procedural history of this case. Respondents declare they have not had “occasion to respond on the merits to Petitioner’s complaint with a motion to dismiss or an answer.” They are incorrect. In fact, the Respondents refused to answer the lawsuit when requested by Rules of Civil Procedure to do so when the section 1983 lawsuit was filed August 2021.

The lawsuit was filed August 10, 2021. Minutes later, the lead Assistants Attorney General were served with a copy by the Federal Electronic Case Filing System and by email. The lawsuit was amended August 16. The next day, August 17, I delivered to the lead Assistants Attorney General: a request letter, a Form 5 *Notice of Lawsuit and Request to Waive Service of Summons*, and a Form 6 *Waiver of the Service of Summons*. See Exhibits A, B, C. The Assistants AG did not reply. They did not sign the waiver. The Respondents, therefore, cannot be permitted to assert they lacked occasion to respond to the suit.


Further indicating that an office of the Texas Attorney General is not talking to the other, one day after this Court’s September 8 grant of certiorari, the Attorney General’s Office *returned* to the undersigned Counsel the *signed* Form 6 waiver of summons. A copy of this document signed by Assistant Attorney General Leah O’Leary is attached as *Exhibit D*.

September 23, 2021

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In sum, the Respondents should not be allowed to “lodge” anonymous and redacted evidence they created this week on the pretext they were denied opportunity to answer the lawsuit, when their own attorney received notice the day suit was filed, and then waived service of summons the day after certiorari was granted.

Sincerely,

A handwritten signature in cursive script that reads "Seth Kretzer".

Seth Kretzer

Encls.

THE LAW OFFICES OF SETH KRETZER
9119 S. GESSNER ROAD, SUITE 105
HOUSTON, TX 77074

Exhibit A

TELEPHONE (713) 775-3050
SETH@KRETZERFIRM.COM

TELECOPIER (713) 929-2019
SKYPE: SETH.KRETZER

August 17, 2021

Ms. Leah O'Leary
Deputy Chief-Law Enforcement Defense Division
Ms. Jennifer Morris
Office of the Attorney General of Texas
300 W. 15th Street
Austin, TX 78701

Via Email

Re: **4:21-cv-02609 Ramirez v. Collier, et al**

Dear Ms. O'Leary and Ms. Morris:


The purpose of this letter is to address the Section 1983 case styled 4:21-cv-02609 *Ramirez v. Collier, et al*. The original complaint was filed August 10, 2021. An amended complaint was filed August 16, 2021. As you know, this federal civil rights case is filed appurtenant to my duties in the underlying habeas case, 2:12-cv-00410, to which I was appointed in April 2017. Mr. Ramirez is scheduled for execution September 9, 2021.

My intention is to file a motion to stay in the cv-00410 matter, *see Nken v. Holder*, 556 U.S. 418, 434 (2009) (quoting the four factors typically considered in the consideration of a request for stay of execution). This letter will likely be an exhibit to that pending motion.

Our initial email exchange established that your clients will sign waivers of service in exchange for the 60 days allowed under Rule 4(d):

August 17, 2021


Page 2 of 3

OL O'Leary, Leah <Leah.OLeary@oag.texas.gov> 

>
Thu 8/12/2021 10:18 AM
To: Seth Kretzer
Cc: Wren, Jennifer <Jennifer.Morris@oag.texas.gov>; Schmidt, Jenna <Jenna.Schmidt@oag.texas.gov>

I don't think that's necessary. You will receive signed waivers of service for each defendant for defendants' side of the agreement. An email confirmation from you for plaintiff's part of the agreement should be sufficient. Plaintiff is merely agreeing to what the rules already entitle Defendants-60 days to answer or otherwise engage in litigation (other than the stay issue) when they waive service. Thank you.

Leah O'Leary
Deputy Chief-Law Enforcement Defense Division
Office of the Attorney General of Texas
Leah.OLeary@oag.texas.gov
Phone: 512-936-1292



From: Seth Kretzer <Seth@kretzerfirm.com>
Sent: Thursday, August 12, 2021 10:11 AM
To: O'Leary, Leah <Leah.OLeary@oag.texas.gov>
Cc: Wren, Jennifer <Jennifer.Morris@oag.texas.gov>; Schmidt, Jenna <Jenna.Schmidt@oag.texas.gov>
Subject: Re: Ramirez v. Collier-4:21-cv-02609

Leah:

Once you confirm with your clients, should we file a Rule 11 agreement with Judge Hittner?


Thanks!

Seth

On August 16, 2021, I filed an amended complaint and sent you a copy by email. You responded as follows on August 17:

August 17, 2021

Page 3 of 3

OL O'Leary, Leah <Leah.OLeary@oag.texas.gov> 

>
Tue 8/17/2021 9:14 AM

To: Seth Kretzer; Wren, Jennifer <Jennifer.Morris@oag.texas.gov>

Thank you Seth. We are unable to appear on behalf of any named defendant until (1) you serve requests for waivers of service for each named defendant, and (2) you agree in an email to the conditions we previously discussed in exchange for our agreement to waive service (see August 12th email exchange). As of right now, my office does not have authority to waive service on behalf of any of the officials you have named as defendants.

Thank you.

Leah O'Leary

Deputy Chief-Law Enforcement Defense Division
Office of the Attorney General of Texas

Leah.OLeary@oag.texas.gov

Phone: 512-936-1292



As I understand, “A waiver of service of process operates as a substitute for formal service of process, allowing the plaintiff to avoid the unnecessary costs of formal service, while ensuring that the defendant obtains notice of the suit.” 1 MOORE'S FEDERAL PRACTICE § 4.10 (3d ed.). FED. R. CIV. P. 4(d)(4) provides, “A defendant who, before being served with process, timely returns a waiver need not serve an answer to the complaint until 60 days after the request was sent...” The first business day after sixty days from August 10, 2021 is **Monday, October 11, 2021**.

Obviously, this October 11 answer date is after the date of Mr. Ramirez’s scheduled September 9 execution. Separately, I have filed a Rule 5 request to waive service of summons, requesting your office to waive service for the Defendants, and to enter appearance now, concordant with Judge Hittner’s order today, for swift motions and responses. Respectfully, therefore, I request you to file a Rule 6 waiver of service of summons by **Thursday, August 19**, which appears appropriate under the circumstances, given the comity requirements of Rule 4(d), and as Texas Attorney General has already appeared in the underlying habeas action in cause 2:12-cv-00410.

Thank you for your gracious consideration to these important issues.

Sincerely,

A handwritten signature in cursive script that reads "Seth Kretzer".

Seth Kretzer
Counsel for Mr. Ramirez

cc: U.S. District Clerk (via ECF filing)



**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

JOHN HENRY RAMIREZ,	*	
		Civil Action No. 4:21-cv-2609
Petitioner,	*	
v.	*	
BRIAN COLLIER, et al.	*	
Respondent.	*	

**CAPITAL CASE
PENDING EXECUTION DATE:
September 8, 2021**

**NOTICE OF A LAWSUIT AND REQUEST
TO WAIVE SERVICE OF SUMMONS**

**TO: MS. LEAH O’LEARY, ASSISTANT TEXAS ATTORNEY GENERAL,
PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 5:**

A 1983 lawsuit has been filed August 10, 2021 against the state officials you represent, Bryan Collier, Bobby Lumpkin, and Dennis Crowley, in their official capacities. I have previously sent you copies of both the original complaint, and the amended complaint, in email correspondences to which you have replied.

This is not a summons or an official notice from the court. It is a request that, to avoid expenses, you waive formal service of a summons by signing and returning the enclosed waivers. To avoid these expenses, you must return the signed waivers within 60 days under Rule 4. Because of Mr. Ramirez’s impending execution, and

because the Texas Attorney General already represents the State in the associated federal habeas corpus action, I respectfully ask you to return such to me by **Thursday, August 19, 2021.**

If you return the signed waivers, I will file with the court. The action will then proceed as if your clients had been served on the date the waiver is filed, but no summons will be served on you. You would have 60 days under Rule 4, but considering the exigencies of the execution date, I respectfully ask you to answer the complaint by August 20, 2021.

I certify that this request is being sent you on the date below.

Seth Kretzer
LAW OFFICES OF SETH KRETZER
9119 S. Gessner; Suite 105
Houston, TX 77074
seth@kretzerfirm.com
[Tel.] (713) 775-3050
[Fax] (713) 929-2019

CERTIFICATE OF SERVICE

I certify that I have served the foregoing Notice via the Court's CM/ECF system on Counsel for Respondent, Ms. Leah O'Leary, on this the 17th day of August 2021.

/s/ Seth Kretzer
Seth Kretzer



**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

JOHN HENRY RAMIREZ,	*	
		Civil Action No. 4:21-cv-2609
Petitioner,	*	
v.	*	
BRIAN COLLIER, et al.	*	
Respondent.	*	

**CAPITAL CASE
PENDING EXECUTION DATE:
September 8, 2021**

**NOTICE OF A LAWSUIT AND REQUEST
TO WAIVE SERVICE OF SUMMONS**

**TO: MR. SETH KRETZER, COUNSEL FOR MR. RAMIREZ, PURSUANT TO
FEDERAL RULE OF CIVIL PROCEDURE 6:**

I have received your request to waive service of a summons in this action with a copy of the complaint. On behalf of the Defendants, I agree to save the expense of serving a summons and complaint in this case. I understand that the Defendants I represent will keep all defenses or objections to the lawsuit, the Court’s jurisdiction, and the venue of the action, but that Defendants waive any objections to the absence of a summons or of service. I also understand that the Defendants must file and serve an answer or a motion under Rule 12 within 60 days from August 17, 2021, the date

when this request was sent. If I fail to do so, a default judgment will be entered against the Defendants I represent.

Leah O’Leary
SBN: 24079074

Deputy Chief-Law Enforcement Defense
Division
Office of the Attorney General of Texas
300 W. 15th Street
Austin, TX 78701

CERTIFICATE OF SERVICE

I certify that I have served the foregoing pleading on all counsel of record on this day.

Leah O’Leary

Exhibit D

From: [Schmidt, Jenna](#)
To: [Seth Kretzer](#)
Cc: [O'Leary, Leah](#)
Subject: Signed Notice - Ramirez v. Collier; 4:21-CV-2609
Date: Thursday, September 9, 2021 3:51:58 PM
Attachments: [Signed Ntc of Lawsuit & Rqst to Waive Svc of Summons.pdf](#)

Please see attached signed Notice of a Lawsuit & Request to Waive Service of Summons. Thank you.

Jenna Schmidt
Legal Assistant
Law Enforcement Defense Division
Attorney General of Texas
512-463-1436

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

JOHN HENRY RAMIREZ,

*

Civil Action No. 4:21-cv-2609

Petitioner,

*

v.

*

BRIAN COLLIER, et al.

*

Respondent.

*

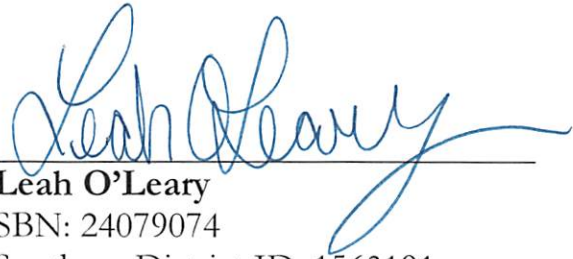
**CAPITAL CASE
PENDING EXECUTION DATE:
September 8, 2021**

**NOTICE OF A LAWSUIT AND REQUEST
TO WAIVE SERVICE OF SUMMONS**

**TO: MR. SETH KRETZER, COUNSEL FOR MR. RAMIREZ, PURSUANT TO
FEDERAL RULE OF CIVIL PROCEDURE 4:**

I have received your request to waive service of a summons in this action with a copy of the complaint. On behalf of the Defendants, I agree to save the expense of serving a summons and complaint in this case. I understand that the Defendants I represent will keep all defenses or objections to the lawsuit, the Court's jurisdiction, and the venue of the action, but that Defendants waive any objections to the absence of a summons or of service. I also understand that the Defendants must file and serve an answer or a motion under Rule 12 within 60 days from August 17, 2021, the date

when this request was sent. If I fail to do so, a default judgment will be entered against the Defendants I represent.



Leah O'Leary

SBN: 24079074

Southern District ID: 1563191

Deputy Chief-Law Enforcement Defense
Division

Office of the Attorney General of Texas

Leah.Oleary@oag.texas.gov

Phone: 512-936-1292

ATTORNEY FOR DEFENDANTS
COLLIER, LUMKIN, AND CROWLEY