

OCTOBER TERM 2019

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

RUBEN GUTIERREZ,
Petitioner,

v.

BRYAN COLLIER, Executive Director, Texas Department of Criminal Justice;
LORIE DAVIS, Director, Texas Department of Criminal Justice, Correctional
Institutions Division; BILLY LEWIS, Warden, Texas Department of Criminal Justice,
Huntsville Unit,
Respondents.

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

APPLICATION FOR STAY OF EXECUTION

--- CAPITAL CASE ---

EXECUTION SCHEDULED FOR AFTER
7:00 P.M. EASTERN TIME, TUESDAY, JUNE 16, 2020

Matthew C. Lawry*
Peter Walker
Assistant Federal Defenders
Federal Community Defender Office
for the Eastern District of Pennsylvania
601 Walnut Street, Suite 545 West
Philadelphia, PA 19106
(215) 928-0520
matthew_lawry@fd.org
** Counsel of Record for Petitioner*
Member of the Bar of the Supreme Court

Richard W. Rogers, III
3636 S. Alameda St., Ste. B,
#191
Corpus Christi, TX 78411
(361) 779-5281
rwrogersiii@aol.com

Counsel for Petitioner, Ruben Gutierrez

To the Honorable Samuel A. 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 Ruben Gutierrez for June 16, 2020. Mr. Gutierrez 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. Gutierrez 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. Gutierrez’s favor.

PETITIONER SHOULD BE GRANTED A STAY OF EXECUTION

1. Petitioner is likely to succeed on the merits.

Ruben Gutierrez believes that the presence of a Christian chaplain in the execution chamber will assist his passing from life to death and guide his path to the afterlife. Prior to April 2019, the state of Texas would have allowed this practice, as chaplains have been present for hundreds of executions in Texas. But Texas changed the rules. It did so, not because Mr. Gutierrez's beliefs were less significant, or because the presence of chaplains had created any security concerns over the years, but in order to negate a charge of religious discrimination brought by another inmate who practiced Buddhism. Texas decided to avoid the discrimination issue by taking away Mr. Gutierrez's religious freedoms. By precluding the presence of a prison-employed chaplain, the new rule imposes a substantial burden on Mr. Gutierrez's exercise of his religious beliefs.

After denying Respondents' motion to dismiss, the district court granted a stay of execution so that a full record could be developed and these important issues could be adjudicated, but the Fifth Circuit vacated the stay. For the reasons discussed in detail in the certiorari petition, Petitioner makes a strong case that Texas has violated the Religions Land Use and Institutionalized Persons Act of 2000 ("RLUIPA"), 42 U.S.C. §§ 2000cc-2000cc-5 as well as the Free Exercise Clause of the First Amendment. Thus, Petitioner's request to this Court to grant a stay of execution, grant the Petition, vacate the Fifth Circuit order, and remand to the district court to resolve the merits of this case is likely to be granted.

2. Petitioner has been timely and diligent in his litigation.

The events that give rise to this case did not occur until April, 2019, when Texas adopted its new rule that no religious advisors would be allowed in the execution chamber. As described in the Petition in more detail, shortly after the adoption of the new rule, Petitioner began the process of requesting the presence of a prison-employed Christian chaplain to be with him in the chamber as he is put to death. Petitioner filed a Complaint in the District Court alleging violations of his rights under RLUIPA and the First Amendment in September, 2019. The matter was briefly stayed after the state courts stayed a previous execution warrant to allow litigation of an unrelated claim. Once that litigation was completed in February, 2020, this case moved forward. Nevertheless, despite this pending action, Texas issued a new execution warrant for June 16, 2020.

Respondents moved to dismiss Petitioner's Complaint, but, on June 2, 2020, the district court denied that motion in relevant part due to the issues raised here. Because those issues needed further factual development, and because the district court determined that Petitioner's RLUIPA and First Amendment claims had substantial merit, the district court issued a stay on June 9, 2020.

In short, Petitioner has been timely and diligent in pursuing this litigation. The last-minute submission of this application stems not from any delay by Petitioner, but from Texas' decision to set an execution date after this case had been filed and while the matter was being litigated in the district court.

3. Petitioner will be irreparably harmed if a stay is not granted.

Mr. Gutierrez's execution will cause irreparable harm. Irreparable injury "is necessarily present in capital cases." *Wainwright v. Booker*, 473 U.S. 935, 935 n.1 (1985).

4. The public interest weighs in favor of granting a stay.

As the petition describes in detail, the religious freedom questions under the RLUIPA and the First Amendment are issues of great public importance. Both Congress and this Court have recognized the importance of protecting that liberty even for, and maybe especially for, incarcerated persons. The particular questions concerning Texas's new policies have not been previously addressed. The importance of these issues cuts 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.

Respectfully submitted,

/s/ Matthew C. Lawry

MATTHEW C. LAWRY*

PETER WALKER

Assistant Federal Defenders

Federal Community Defender Office for

the Eastern District of Pennsylvania

The Curtis – Suite 545 West

601 Walnut Street

Philadelphia, PA 19106

(215) 928-0520

Matthew_lawry@fd.org

**Counsel of Record*

Member of the Bar of the Supreme Court

Dated: June 15, 2020