

No. 21-5592

---

---

In The  
**Supreme Court of the United States**

—◆—  
JOHN H. RAMIREZ,

*Petitioner,*

v.

BRYAN COLLIER, Executive Director,  
Texas Department of Criminal Justice, et al.,

*Respondents.*

—◆—  
**On Writ Of Certiorari To The United States  
Court Of Appeals For The Fifth Circuit**

—◆—  
**JOINT APPENDIX VOLUME I**

SETH KRETZER  
*Counsel of Record*  
LAW OFFICE OF SETH KRETZER  
9119 S. Gessner, Suite 105  
Houston, TX 77074  
(713) 775-3050  
seth@kretzerfirm.com

ERIN GLENN BUSBY  
LISA R. ESKOW  
MICHAEL F. STURLEY  
UNIVERSITY OF TEXAS  
SCHOOL OF LAW  
SUPREME COURT CLINIC  
727 East Dean Keeton St.  
Austin, TX 78705  
(512) 232-1350

ERIC J. ALLEN  
ALLEN LAW OFFICES  
4200 Regent Street; Suite 200  
Columbus, Ohio 43219

*Counsel for Petitioner*

JUDD STONE  
*Counsel of Record*  
TEXAS ATTORNEY  
GENERAL'S OFFICE  
P.O. Box 12548 (MC 059)  
Austin, TX 78711-2548  
(512) 936-1700  
judd.stone@oag.texas.gov

JENNIFER WREN MORRIS  
TEXAS ATTORNEY  
GENERAL'S OFFICE  
300 W. 15th St.  
Austin, TX 78701  
(512) 936-2991

*Counsel for Respondents*

---

---

**Petition For Certiorari Filed September 7, 2021  
Certiorari Granted September 8, 2021**

TABLE OF CONTENTS

	Page
Relevant District Court Docket Entries .....	1
Relevant Court of Appeals Docket Entries.....	8
First Amended Complaint (filed Aug. 16, 2021) .....	14
Motion for Stay of Execution (filed 8/18/21) .....	73
Second Amended Complaint (filed Aug. 22, 2021) .....	84
Defendants’ Opposition to Plaintiff’s Motion for a Stay of Execution (filed August 23, 2021) .....	105
Defendants’ Surreply on Plaintiff’s Motion for a Stay of Execution (filed Aug. 30, 2021).....	157
Affidavit for Prove-Up of Photographs (filed Aug. 31, 2021).....	170
Order Denying Stay, United States District Court for the Southern District of Texas, Hou- ston Division (filed Sep. 2, 2021) .....	175
Opinion, United States Court of Appeals for the Fifth Circuit (filed Sep. 6, 2021) .....	184
Order Granting Petition and IFP Status, United States Supreme Court (filed Sep. 8, 2021) .....	202
 The following document appears as a separate, sealed volume:	
Ramirez’s Reply to State’s Response to Motion for Stay of Execution (filed Aug. 26, 2021) .....	S. JA 1

**U.S. District Court  
SOUTHERN DISTRICT OF TEXAS (Houston)  
CIVIL DOCKET FOR CASE #: 4:21-cv-02609**

**Ramirez v. Collier et al**  
**Assigned to: Judge David Hittner**  
**Related Case: 2:21-cv-00167**  
**Cause: 42:1983 Prisoner Civil Rights**

Date Filed	#	Docket Text
08/10/2021	1	Prisoner Civil Rights COMPLAINT against All Defendants (Filing fee \$ 402) filed by John Henry Ramirez. (vrios, 2) (Entered: 08/10/2021)
08/10/2021	2	NOTICE of Exclusion, filed. (vrios, 2) (Entered: 08/10/2021)
08/11/2021	3	ORDER TO TRANSFER CASE to Houston Division.(Sigied by Judge Nelva Gonzales Ramos) Parties notified.(vrios, 2) (Entered: 08/11/2021)
08/11/2021		Case transferred in from Corpus Christi Division on 8/11/21; Case Number 2:21-cv-167. (hien, 4) (Entered: 08/11/2021)
08/12/2021	4	CLERKS NOTICE OF DEFICIENT PLEADING as to John Henry Ramirez. Parties notified Notice of Compliance due by 9/13/2021, filed. (Attachments: #1 Appendix) (bgoolsby, 4) (Entered: 08/12/2021)
08/15/2021	6	ORDER that Ramirez will file any motion for a stay of execution or for a preliminary injunction on or before August 18, 2021. Defendants will file

any dispositive motions and any response to Ramirez's motion to stay or for an injunction on or before August 23, 2021. The parties will file all replies or other papers on or before August 26, 2021. (Signed by Judge David Hittner) Parties notified. (ealexander, 4) (Entered: 08/17/2021)

- 08/16/2021 5 First AMENDED COMPLAINT against All Defendants filed by John Henry Ramirez. (Kretzer, Seth) (Entered: 08/16/2021)
- 08/17/2021 7 NOTICE of Appearance by Jennifer Morris on behalf of Bryan Collier, Dennis Crowley, Bobby Lumpkin, filed. (Morris, Jennifer) (Entered: 08/17/2021)
- 08/17/2021 8 MOTION for Clarification by John Henry Ramirez, filed. Motion Docket Date 9/7/2021. (Attachments: # 1 Proposed Order)(Kretzer, Seth) (Entered: 08/17/2021)
- 08/17/2021 9 ADVISORY by John Henry Ramirez, filed. (Attachments: #1 Exhibit letter to opposing counsels dated August 17, 2021, # 2 Exhibit Rule 5 request, # 3 Exhibit Rule 6 sent to opposing counsels in Word format)(Kretzer, Seth) (Entered: 08/17/2021)
- 08/17/2021 10 ORDER regarding 8 Motion for Clarification. The Court clarifies that its August 15 scheduling order only pertains to any anticipated motion for a preliminary injunction or stay of execution based on Ramirez's civil rights

complaint. The Court will consider the proper schedule for the remainder of this case after resolving any questions concerning the Ramirez's execution. (Signed by Judge David Hittner) Parties notified.  
(ealexander, 4) (Entered: 08/17/2021)

- 08/18/2021 11 Opposed MOTION to Stay *Execution* by John Henry Ramirez, filed. Motion Docket Date 9/8/2021. (Attachments: # 1 Proposed Order)(Kretzer, Seth) (Entered: 08/18/2021)
- 08/22/2021 12 Second AMENDED COMPLAINT against John Henry Ramirez filed by John Henry Ramirez.(Kretzer, Seth) (Entered: 08/22/2021)
- 08/23/2021 13 RESPONSE in Opposition to 11 Opposed MOTION to Stay *Execution*, filed by Bobby Lumpkin. (Attachments: #1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3)(Morris, Jennifer) (Entered: 08/23/2021)
- 08/26/2021 14 REPLY in Support of 11 Opposed MOTION to Stay *Execution*, filed by John Henry Ramirez. (Attachments: # 1 Exhibit Pastor Dr. Moore's CV) (Kretzer, Seth) (Entered: 08/26/2021)
- 08/30/2021 15 MOTION for Leave to File Surreply by Bryan Collier, Dennis Crowley, Bobby Lumpkin, filed. Motion Docket Date 9/20/2021. (Attachments: # 1 Exhibit)(Morris, Jennifer) (Entered: 08/30/2021)

- 08/30/2021 16 Opposed MOTION to Seal Plaintiffs Reply by Bryan Collier, Dennis Crowley, Bobby Lumpkin, filed. Motion Docket Date 9/20/2021. (Morris, Jennifer) (Entered: 08/30/2021)
- 08/31/2021 17 ORDER granting 15 Motion for Leave to File Sur-Reply.(Signed by Judge David Hittner) Parties notified. (ealexander, 4) (Entered: 08/31/2021)
- 08/31/2021 18 SURREPLY toll Opposed MOTION to Stay *Execution*, filed by Bryan Collier, Dennis Crowley, Bobby Lumpkin. (ealexander, 4) (Entered: 08/31/2021)
- 08/31/2021 19 ORDER granting 16 Motion to Seal Plaintiffs Reply.(Signed by Judge David Hittner) Parties notified.(ealexander, 4) (Entered: 08/31/2021)
- 08/31/2021 20 NOTICE OF APPEAL to US Court of Appeals for the Fifth Circuit by John Henry Ramirez, filed.(Kretzer, Seth) (Entered: 08/31/2021)
- 08/31/2021 21 SUPPLEMENT to 18 Surreply to Motion by Bryan Collier, Dennis Crowley, Bobby Lumpkin, filed. (Attachments: # 1 Exhibit 1A)(Morris, Jennifer) (Entered: 08/31/2021)
- 09/01/2021 22 Clerks Notice of Filing of an Appeal. The following Notice of Appeal and related motions are pending in the District Court: 11 Opposed MOTION to Stay *Execution*, 20 Notice of Appeal. Fee status: Not Paid, filed. (Attachments: # 1 NOA) (scastillo, 1)

- (Main Document 22 replaced on 9/1/2021) (scastillo, 1). (Entered: 09/01/2021)
- 09/01/2021 Appeal Review Notes re: 20 Notice of Appeal. Fee status: Not Paid. The appeal filing fee has not been paid, and the appellant is represented by counsel.No hearings were held in the case – no transcripts. Number of DKT-13 Forms expected: 1, filed.(scastillo, 1) (Entered: 09/01/2021)
- 09/01/2021 Notice of Assignment of USCA No. 21-70004 re: 20 Notice of Appeal, filed.(scastillo, 1) (Entered: 09/01/2021)
- 09/02/2021 23 ORDER denying 11 Motion to Stay of Execution.(Signed by Judge David Hittner) Parties notified.(ealexander, 4) (Entered: 09/02/2021)
- 09/02/2021 24 Amended NOTICE OF APPEAL to US Court of Appeals for the Fifth Circuit re: 23 Order on Motion to Stay by John Henry Ramirez, filed.(Kretzer, Seth) (Entered: 09/02/2021)
- 09/03/2021 25 Clerks Notice of Filing of an Appeal. The following Notice of Appeal and related motions are pending in the District Court: 24 Notice of Appeal – Amended. Fee status: Not Paid, filed. (Attachments: # 1 NOA) (scastillo, 1) (Entered: 09/03/2021)\_
- 09/03/2021 Appeal Review Notes re: 24 Notice of Appeal – Amended. Fee status: Not Paid. The appeal filing fee has not

been paid, and the appellant is represented by counsel.No hearings were held in the case – no transcripts. Number of DKT-13 Forms expected: 1, filed. (scastillo, 1) (Entered: 09/03/2021)

- 09/06/2021 26 Order of USCA PER CURIAM; Judgment issued as mandate 9/6/2021 re: 20 Notice of Appeal, 24 Notice of Appeal – Amended ; USCA No. 21-70004. Ramirez sought a stay of his execution and the district court denied that motion. Ramirez has appealed. We deny the motion for a stay of execution, filed.(JenniferLongoria, 1) (Entered: 09/07/2021)
- 09/07/2021 Electronic record on appeal certified to the Fifth Circuit Court of Appeals re: 24 Notice of Appeal – Amended USCA No. 21-7004, filed.(scastillo, 1) (Entered: 09/07/2021)
- 09/07/2021 Electronic Access to Record on Appeal Provided re: 24 Notice of Appeal – Amended, 20 Notice of Appeal to Seth Kretzer. Attorneys of record at the Circuit may download the record from the Court of Appeals. (USCA No. 21-70004), filed.(scastillo, 1) (Entered: 09/07/2021)
- 09/15/2021 Electronic Access to Record on Appeal Provided re: 24 Notice of Appeal – Amended to Jennifer Wren. Attorneys of record at the Circuit may download the record from the Court of Appeals.

(USCA No. 21-70004), filed.(scastillo,  
1) (Entered: 09/15/2021)

---

**General Docket  
United States Court of Appeals  
for the Fifth Circuit**

**Court of Appeals Docket #: 21-70004**

**John H. Ramirez  
Plaintiff - Appellant**

**v.**

**Bryan Collier, Executive Director,  
Texas Department of Criminal Justice  
Defendant - Appellee**

**Bobby Lumpkin, Director, Texas  
Department of Criminal Justice,  
Correctional Institutions Division  
Defendant - Appellee**

**Dennis Crowley, Warden, TDCJ, Huntsville, TX  
Defendant - Appellee**

- 09/01/2021 DEATH PENALTY CASE docketed. NOA filed by Appellant Mr. John H. Ramirez [21-70004] (MRW) [Entered: 09/01/2021 09:01 AM]
- 09/01/2021 INITIAL CASE CHECK by Attorney Advisor complete. Action: Case OK to Process. [9656368-2] Initial AA Check Due satisfied. [21-70004] (MRW) [Entered: 09/01/2021 02:25 PM]
- 09/02/2021 CASE CAPTION updated. Additional appeal filed. [9656929-2] NOA filed by Appellant Mr. John H. Ramirez.

[9656929-1] [21-70004] (MRW) [Entered: 09/02/2021 02:11 PM]

09/02/2021 CJA APPOINTMENT for Attorney Mr. Seth Kretzer for Mr. John H. Ramirez. Counsel must use the eVoucher system to file the voucher at disposition of the case. Please see the attached document for further guidance.

ORIGINATING COURT DISTRICT: STX  
ORIGINATING CASE NUMBER: 4:21-CV-2609

DATE OF APPOINTMENT: 08/31/2021  
[21-70004] (MRW) [Entered: 09/02/2021 02:18 PM]

09/02/2021 INITIAL CASE CHECK by Attorney Advisor complete. Action: Case OK to Process. [9657112-2] Initial AA Check Due satisfied.. Fee due on 09/17/2021 for Appellant John H. Ramirez [21-70004] (MRW) [Entered: 09/02/2021 04:26 PM]

09/02/2021 SUFFICIENT APPELLANTS BRIEF FILED  
Sufficient Brief deadline satisfied [21-70004]  
REVIEWED AND/OR EDITED – The original text prior to review appeared as follows: APPELLANT’S BRIEF FILED Additionally the Brief requires caption does not match the court’s caption, correct title of Table of Contents not (Contents), need signature on certificate of interested parties, certificate of

compliance and certificate of service out of order. Instructions to Attorney: PLEASE READ THE ATTACHED NOTICE FOR INSTRUCTIONS ON HOW TO REMEDY THE DEFAULT. Sufficient Brief due on 09/03/2021 for Appellant John H. Ramirez. [21-70004] REVIEWED AND/OR EDITED – The original text prior to review appeared as follows: APPELLANT’S BRIEF FILED by Mr. John H. Ramirez. Date of service: 09/02/2021 via email – Attorney for Appellant: Kretzer; Attorney for Appellee: Morris [21-70004] (Seth Kretzer ) [Entered: 09/02/2021 11:59 PM]

- 09/02/2021 MOTION filed by Appellant Mr. John H. Ramirez to stay execution (INCORPORATED IN APPELLANTS BRIEF) [9657215-2] set for 09/08/2021.. [21-70004] (MRW) [Entered: 09/03/2021 08:18 AM]
- 09/03/2021 PROPOSED SUFFICIENT BRIEF filed by Appellant Mr. John H. Ramirez [9657184-2] Date of service: 09/03/2021 via email – Attorney for Appellant: Kretzer; Attorney for Appellee: Morris [21-70004] (Seth Kretzer ) [Entered: 09/03/2021 09:25 AM]
- 09/03/2021 ELECTRONIC RECORD ON APPEAL REQUESTED from District Court for 4:21-CV-2609. Electronic ROA due on 09/20/2021. [21-70004] (MRW) [Entered: 09/03/2021 10:47 AM]

- 09/03/2021 APPEARANCE FORM received from Ms. Jennifer Wren Morris for Mr. Bryan Collier, Executive Director, Texas Department of Criminal Justice, Mr. Dennis Crowley and Mr. Bobby Lumpkin, Director, Texas Department of Criminal Justice, Correctional Institutions Division for the court's review. Lead Counsel? Yes. [21-70004] (Jennifer Wren ) [Entered: 09/03/2021 06:23 PM]
- 09/03/2021 APPELLEE'S BRIEF FILED [21-70004] REVIEWED AND/OR EDITED – The original text prior to review appeared as follows: APPELLEE'S MEMORANDUM BRIEF FILED by Mr. Bryan Collier, Executive Director, Texas Department of Criminal Justice, Mr. Dennis Crowley and Mr. Bobby Lumpkin, Director, Texas Department of Criminal Justice, Correctional Institutions Division. Date of service: 09/03/2021 via email – Attorney for Appellant: Kretzer; Attorney for Appellee: Morris [21-70004] (Jennifer Wren ) [Entered: 09/03/2021 06:24 PM]
- 09/03/2021 ELECTRONIC RECORD ON APPEAL FILED. Admitted Exhibits on File in District Court? No. Video/Audio Exhibits on File in District Court? No State Court Papers included? No. Electronic ROA deadline satisfied. [21-70004] (MRW) [Entered: 09/03/2021 08:25 PM]

- 09/04/2021 APPELLANT'S REPLY BRIEF FILED [21-70004]  
REVIEWED AND/OR EDITED – The original text prior to review appeared as follows: APPELLANT'S REPLY BRIEF FILED by Mr. John H. Ramirez. Date of service: 09/04/2021 via email – Attorney for Appellant: Kretzer; Attorney for Appellee: Morris [21-70004] (Seth Kretzer ) [Entered: 09/04/2021 05:05 PM]
- 09/06/2021 PUBLISHED OPINION FILED. [21-70004 Affirmed ]  
Judge: PRO, Judge: PEH, Judge: JLD; denying Motion to stay execution filed by Appellant Mr. John H. Ramirez [9657215-2] [21-70004] (MRW) [Entered: 09/06/2021 12:59 AM]
- 09/06/2021 MANDATE ISSUED. [21-70004] (MRW) [Entered: 09/06/2021 10:39 AM]
- 09/09/2021 SUPREME COURT NOTICE that petition for writ of certiorari [9659743-2] was filed by Appellant Mr. John H. Ramirez on 09/07/2021. Supreme Court Number: 21-5592. [21-70004] (SMC) [Entered: 09/09/2021 08:26 AM]
- 09/14/2021 APPEARANCE FORM FILED by Attorney Jennifer Wren for Appellee Dennis Crowley in 21-70004, Attorney Jennifer Wren for Appellee Bobby Lumpkin, Director, Texas Department of Criminal Justice, Correctional Institutions Division in 21-70004, Attorney Jennifer Wren for Appellee Bryan

Collier, Executive Director, Texas  
Department of Criminal Justice in  
21-70004 [21-70004] (MRW) [Entered:  
09/14/2021 02:24 PM]

---

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

<b>JOHN HENRY RAMIREZ,</b>	§	
Plaintiff,	§	
vs.	§	
<b>BRYAN COLLIER,</b>	§	
Executive Director, Texas	§	
Department of Criminal	§	<b>No. 4:21-cv-2609</b>
Justice, Huntsville, Texas,	§	<b>This is a Capital</b>
<b>BOBBY LUMPKIN,</b>	§	<b>Case.</b>
Director, Texas Department	§	<b>Mr. Ramirez is</b>
of Criminal Justice,	§	<b>scheduled to be</b>
Correctional Institutions	§	<b>executed on</b>
Division, Huntsville, Texas,	§	<b>September 8, 2021.</b>
<b>DENNIS CROWLEY,</b>	§	
Warden, Texas Department	§	
of Criminal Justice, Huntsville,	§	
Unit, Huntsville, Texas,	§	
Defendants.	§	

**FIRST AMENDED COMPLAINT  
PURSUANT TO 42 U.S.C. § 1983**

(Filed Aug. 16, 2021)

Seth Kretzer  
Law Office of Seth Kretzer  
9119 South Gessner, Suite 105  
Houston, Texas 77074  
Tel. (713) 775-3050  
seth@kretzerfirm.com

*Counsel for John Henry Ramirez, Plaintiff*

**INTRODUCTION**

1. Plaintiff John Henry Ramirez is a devout Christian. He is also incarcerated at the Polunsky Unit of the Texas Department of Criminal Justice (“TDCJ”) under a sentence of death.
2. The State of Texas intends to execute Mr. Ramirez by lethal injection on September 8, 2021, at the Walls Unit in Huntsville, Texas, under conditions that violate the First Amendment’s Free Exercise Clause and substantially burden the exercise of his religion in violation of the Religious Land Use and Institutionalized Persons Act of 2000 (“RLUIPA”), 42 U.S.C. § 2000cc et seq.
3. Through the requisite TDCJ administrative channels, Mr. Ramirez has requested the presence of his spiritual advisor in the execution chamber before and during his execution, and he has requested that his spiritual advisor lay his hands upon him at the time of his death, a long-held and practiced tradition in Christianity in general and in the Protestant belief system Mr. Ramirez adheres to. Mr. Ramirez’s request was denied, and he has properly exhausted all administrative remedies available to him under institutional policy.
4. Relief is necessary to ensure that Mr. Ramirez is executed only in a manner that does not substantially burden the exercise of his religious beliefs and does not violate his rights under the Free Exercise Clause or RLUIPA.

### **JURISDICTION**

5. This Court has jurisdiction under 42 U.S.C. §§ 2000cc-1, 28 U.S.C. §§ 1343, 1651, 2201, and 2202, and under 42 U.S.C. § 1983.

### **VENUE**

6. Venue lies in this Court under 28 U.S.C. § 1391 because Defendants maintain offices in the Southern District of Texas. Venue is also proper because the execution will occur in this district.

### **PARTIES**

7. Plaintiff John Henry Ramirez is incarcerated under a sentence of death at the Polunsky Unit of TCDJ in Livingston, Texas. He is scheduled to be executed on September 8, 2021.
8. Defendant Bryan Collier is the Executive Director of TDCJ. He is being sued in his official capacity.
9. Defendant Bobby Lumpkin is the director of the Correctional Institutions Division of TDCJ. He is being sued in his official capacity. Mr. Lumpkin is the individual the trial court ordered to carry out the execution.
10. Defendant Dennis Crowley is the senior warden of the Huntsville Unit, which is the unit where executions take place. He is being sued in his official capacity. Because Mr. Crowley is the warden of the Huntsville Unit, he supervises executions in Texas.

**FACTUAL BACKGROUND**

11. For approximately five years, since 2016, Pastor Dana Moore has ministered to Plaintiff Ramirez. Pastor Moore is an ordained minister who leads a congregation of roughly 200 people at Second Baptist in Corpus Christi, Texas. Pastor Moore and Plaintiff Ramirez have corresponded and visited over the years and Pastor Moore has guided Mr. Ramirez in his practice of his religious faith. See Exhibit 2; affidavit of Pastor Moore.
12. Until April 2019, and consistent with longstanding tradition nationwide, TDCJ allowed TDCJ-approved chaplains in the execution chamber to guide persons being executed into the afterlife according to their religious beliefs. Between 1982 and March 2019, Texas conducted 560 executions pursuant to this policy.
13. In March 2019, TDCJ refused inmate Patrick Murphy's request that his Buddhist spiritual advisor accompany him in the chamber during the scheduled execution. *See Murphy v. Collier*, 139 S. Ct. 1475 (2019) (mem.). After TDCJ refused Murphy's request, Murphy filed a request for a stay of execution in the Supreme Court and sought to challenge TDCJ's decision on equal protection and First Amendment grounds. *See id.*
14. On March 28, 2019, the Supreme Court granted a stay of execution and issued an order prohibiting TDCJ from carrying out the execution "pending the timely filing and disposition of a petition for a writ of certiorari unless the State permits Murphy's Buddhist spiritual advisor or another Buddhist reverend of the State's choosing to

accompany Murphy in the execution chamber during the execution.” *Murphy*, 139 S. Ct. at 1475. Justice Kavanaugh wrote a concurring opinion in which he expressed the view that “the Constitution prohibits [the]denominational discrimination” of the then-existing TDCJ policy. *Id.* at 1475-76. Justice Kavanaugh observed that a potential remedy for this denominational discrimination would be to ban *all* spiritual advisors of *any* denomination from the chamber.

15. On April 2, 2019, TDCJ adopted another, revised execution procedure to provide that “TDCJ Chaplains and Ministers/Spiritual Advisors designated by the offender may observe the execution only from the witness rooms.” Ex. 1, Tex. Dep’t Crim. Just., Execution Procedure at 8 (Apr. 2019).
16. On April 21, 2021 TDCJ adopted a new protocol. Under this new protocol, the condemned may be accompanied into the execution chamber by their personal religious advisor, who may minister to the condemned prisoner during the execution. TDCJ also requires that the advisors be verified and pass a background check.
17. For the past five years, since approximately 2016, Plaintiff Ramirez has received religious counseling and spiritual advice from his spiritual advisor, Pastor Dana Moore. Mr. Ramirez has asked Pastor Moore to be present at the time of his execution to pray with him and provide spiritual comfort and guidance in the final moments of his life. Pastor Moore has agreed to accompany Mr. Ramirez in the execution chamber when he is executed, to pray with him and to help guide him into the

afterlife. Pastor Moore needs to lay his hands on Mr. Ramirez in accordance with his and Mr. Ramirez's faith tradition. This belief is set forth in the affidavit of Pastor Moore. Ex. 2, Declaration of Pastor Dana Moore.

18. The laying on of hands is a symbolic act in which religious leaders place their hands on a person in order to confer a spiritual blessing. This contact is necessary to bless Mr. Ramirez at the moment of his death.
19. This practice has its basis in Christian scripture. The Apostle Philip's preaching in Samaria where a mass of people "listened eagerly . . . believed . . . [and] were baptized" (Acts 8:11, 12) Yet these new converts did not "receive the Holy Spirit" until after "Peter and John" came to Samaria from Jerusalem and "laid their hands on them" (8:17). Similarly, when Paul later baptized a group of Ephesian disciples, it was not until he "had laid his hands on them" that "the Holy Spirit came upon them" (Paul 19:1-6).
20. Already, TDCJ has in place specific protocols to take place prior to Pastor Moore's entry into the Walls Unit. Pastor Moore will undergo a rigorous screening process including being screened by a metal detector and having any items he carries with him screened by an x-ray. He will be required to remove his shoes and belt for inspection. Pastor Moore also is willing to undergo additional security screening, if necessary, in order to be present in the execution chamber and to have physical contact necessary to confer a blessing on Mr. Ramirez at the time of his death.

21. On June 8, 2021, a lawyer contacted Kristen Worman, general counsel of TDCJ, through email. That email inquired about whether Ms. Worman and TDCJ had made a decision regarding the presence of Plaintiff Ramirez's minister in the execution chamber and direct personal contact between the condemned and the pastor. Ex. 3, E-mail correspondence with Kristen Worman, General Counsel for TDCJ.
22. On June 17, 2021, Ms. Worman responded via e-mail, stating that Pastor Moore would not be allowed to have direct, personal contact with Plaintiff Ramirez in the execution chamber. *See* Ex. 3.
23. Plaintiff Ramirez submitted an Offender Form I-60 "Offender Request to Official" to TDCJ on or about July 15, 2020. In the grievance, he requested that TDCJ allow Pastor Moore to be present in the execution chamber. He further requested that Pastor Moore be allowed to have direct, personal contact with him during the execution. *See* Ex. 4.
24. Mr. Ramirez's grievance was denied, and he filed an appeal of that denial. The appeal has yet to be decided. *See* Ex. 4.

### **PROCEDURAL HISTORY**

25. John Henry Ramirez was convicted and sentenced to death in 2008 for the 2004 killing of Pablo Castro in Nueces County, Texas. The Texas Court of Criminal Appeals ("TCCA") affirmed the conviction and death sentence on direct appeal. *Ramirez v. State*, No. AP-76,100 (Tex. Crim. App., March 16,

2011). In 2012, the TCCA denied state post-conviction relief, after evidentiary hearing and upon the trial court's report and recommendation. *Ex parte Ramirez*, No. WR-72,735-03 (Tex. Crim. App., October 10, 2012). Mr. Ramirez timely filed a petition for writ of habeas corpus in the federal district court. The district court denied relief and a certificate of appealability. *Ramirez v. Stephens*, No. 2-12-CV-410 (S.D. Tex., June 10, 2015).

26. Mr. Ramirez filed a timely notice of appeal to the United States Court of Appeals for the Fifth Circuit. That court denied a request for certificate of appealability on February 4, 2016. The Supreme Court denied a request for certiorari review on October 3, 2016.
27. The State of Texas set an execution date on February 2, 2017. On January 27, 2017, Mr. Ramirez moved to substitute counsel and stay the execution date. This Court granted Mr. Ramirez's motion on January 31, 2017. On August 20, 2018, Mr. Ramirez filed a motion for relief from judgment in the United States District Court. The Court denied this motion on January 3, 2019. Mr. Ramirez appealed to the Fifth Circuit, which denied the request for a certificate of appealability on June 26, 2019. The Supreme Court again denied certiorari review, on March 2, 2020, and it denied rehearing on May 18, 2020.
28. The State of Texas set another execution date of September 9, 2020. In August 2020, Mr. Ramirez filed a 'spiritual advisor' claim under Section 1983. This was assigned Southern District cause

number 2:20-cv-205. A copy of this previous 1983 complaint is attached Exhibit 5.

29. Thereafter, a bilateral ‘deal’ was struck between Rodriguez and the Attorney General’s Office to withdraw the death warrant in exchange for Rodriguez’s withdrawal of then-pending civil litigation.
30. More specifically, the Attorney General’s Office and Rodriguez reached bargain in which the state agreed to withdraw the execution date in exchange for Rodriguez’s agreement to non-suit without prejudice his 1983 case- and to dismiss a funding request under 18 U.S.C. § 3599(f).
31. The August 12, 2020 filing in the underlying habeas case is attached as Exhibit 6, and reads in relevant part:

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*.
32. On August 14, 2020, Nueces County District Court Judge Bobby Galvan of the 94th Criminal District Court withdrew the September execution date in an order in accord with the joint motion to cancel the execution. Subsequently, Rodriguez withdrew his funding motion and filed a motion to non-suit with prejudice his matters pending in federal court.

33. On February 3, 2021 the State moved to set a new execution date, and on February 5, 2021, Judge Galvan signed an order setting an execution date for Mr. Ramirez of September 8, 2021.
34. As envisaged under the August 11, 2020 agreement, Ramirez filed a new funding request, and on July 13, 2021, Judge Ramos granted in part this motion for funding under 18 U.S.C. § 3599(f).
35. Similarly, the instant (new) 1983 lawsuit fits the August 11, 2020 agreement that Ramirez would not be prejudiced to resurrecting his federal civil rights lawsuit on religious grounds.

#### **CLAIMS FOR RELIEF**

36. Mr. Ramirez re-alleges and incorporates by reference and the allegations contained in the previous paragraphs of this Complaint.

#### **CLAIM ONE: FIRST AMENDMENT FREE EXERCISE OF RELIGION**

37. The First Amendment requires that “Congress shall make no law . . . prohibiting the free exercise of” religion. U.S. Const., amend. I. Like the Establishment Clause, the Free Exercise Clause is binding on the states. *See Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940) (holding that the protections of the Free Exercise Clause are incorporated by the Fourteenth Amendment against the States).
38. According to its April 2021 revised protocol, TDCJ no longer precludes TDCJ-approved spiritual advisors from entering the execution chamber.

Further, in spite of this protocol, which does not address whether or not the spiritual advisor can have direct, personal contact with the condemned, Defendants have informed Mr. Ramirez that his spiritual advisor will not be allowed to be present at the moment of his execution and to confer a spiritual blessing at the moment of his death via the laying on of hands. In fact, the TDCJ has not indicated it will accede to Mr. Ramirez's request that his requested spiritual advisor be allowed to be present at all in the execution chamber.

39. Many Baptist ministers see the laying on of hands as a vitally important affirmation by God's people of their calling. This laying on of hands at the time of death is the affirmation of faith at the time between life and afterlife.
40. TDCJ's intent to deny Mr. Ramirez access spiritual counseling during the moments leading up to and including his execution as well as the direct personal contact violates his First Amendment rights under the Free Exercise clause and cannot be justified by a vague citation to illusory security concerns. Furthermore, TDCJ cannot demonstrate that its current security and screening protocols are inadequate, or that it could not address security concerns with further screening measures, to which Pastor Moore has indicated he is willing to submit.
41. TDCJ's current policy with regard to the presence of spiritual advisors in the execution chamber burdens Mr. Ramirez's free exercise of his Christian faith in the moments just prior to and including his execution. It burdens his free exercise of faith

at his exact time of death, when most Christians believe they will either ascend to heaven or descend to hell – in other words, when religious instruction and practice is most needed. *See*, 2 Timothy 1:6, “For this reason I remind you to kindle afresh the gift of God which is in you through the laying on of my hands.” (2 Timothy 1:6). This is the most important at the moment of his death.

42. When a state hinders a prisoner’s ability to freely exercise his religion, reviewing courts must determine whether the law or policy is neutral and generally applicable. *Church of the Lukumi Baboo Aye, Inc. v. Hialeah*, 508 U.S. 520, 531 (1993). If it is neutral and generally applicable, it can have an “incidental effect of burdening a particular religious practice.” *Ibid.* If it is not neutral and generally applicable, it must show a “compelling governmental interest” that is “narrowly tailored to advance that interest.” *Ibid.*
43. Here, TDCJ’s policy is not neutral. It is hostile toward religion, denying religious exercise at the precise moment it is most needed: when someone is transitioning from this life to the next. The policy is thus permissible only if it can survive strict scrutiny, which it could not. Any argument that security concerns constitute a “compelling governmental interest” necessitating the exclusion of Mr. Ramirez’s spiritual advisor from the execution chamber and preventing him from touching the condemned withers when subjected to strict scrutiny, as the Constitution requires.
44. As a federal judge in this district recently noted, when making fact-findings relevant to a recent

challenge to TDCJ's previous execution policy excluding all religious advisors from the execution chamber, "Speculative hypotheticals without evidentiary support do not create an unmanageable security risk." *Gutierrez v. Saenz*, No. 1:19-cv-00185 (S.D. Tex. Nov. 24, 2020), ECF Doc. 124 at \*29.

45. For these reasons, TDCJ's amended policy precluding Mr. Ramirez's spiritual advisor from being present at the moment of his execution and administering a final blessing via the laying on of hands, in accordance with Mr. Ramirez's faith tradition, violates his rights under the First Amendment's Free Exercise Clause.

**CLAIM TWO: THE RELIGIOUS  
LAND USE AND INSTITUTIONALIZED  
PERSONS ACT ("RLUIPA")**

46. Mr. Ramirez incorporates paragraphs 1-39, above.
47. Even if this Court finds that TDCJ's policy does not violate Plaintiff Ramirez's First Amendment rights, it should find that the policy violates RLUIPA. RLUIPA provides in part, "No government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution," unless the burden furthers "a compelling governmental interest," and does so by "the least restrictive means." RLUIPA "alleviates exceptional government-created burdens on private religious exercise." *Cutter v. Wilkinson*, 544 U.S. 709, 720 (2005).

## 48. Specifically, RLUIPA states:

No government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution, as defined in section 1997 of this title, even if the burden results from a rule of general applicability, unless the government demonstrates that imposition of the burden on the person-(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling interest.<sup>41</sup> U.S.C. 2000cc-1 (a)RLUIPA thus “alleviates exceptional government-created burdens on private religious exercise,” without “elevat[ing] accommodation of religious observances over an institution’s need to maintain order and safety.

*Cutter*, 544 U.S. at 720.

49. “In RLUIPA, in an obvious effort to effect a complete separation from the First Amendment case law, Congress deleted reference to the First Amendment and defined the ‘exercise of religion’ to include ‘any exercise of religion, whether or not compelled by, or central to, a system of religious belief.’” *Burwell v. Hobby Lobby Stores*, 573 U.S. 682, 696 (quoting 42 U.S.C. § 2000cc-5(7)(A)). RLUIPA thus provides more “expansive protection” for religious liberty than the United States Supreme Court case law. *Holt v. Hobbs*, 574 U.S. 352, 358 (2015).

50. Prohibiting Mr. Ramirez from engaging in vitally important religious practices with a chaplain at the end of his life and including the moment of his death substantially burdens his practice of religion. *See, e.g., id.*, 135 S. Ct. at 862 (2015) (determining that where a prisoner shows the exercise of religion “grounded in a sincerely held religious belief,” enforced prohibition “substantially burdens his religious exercise”).
51. Under RLUIPA, a prison may not impose a substantial burden on a prisoner’s religious exercise unless doing so satisfies the Supreme Court’s “strict scrutiny” test; the challenged policy must be “the least restrictive means of furthering [a] compelling governmental interest.” 42 U.S.C. §2000cc-1(a).
52. The strict scrutiny standard is “exceptionally demanding.” *Holt*, 574 U.S. 352, 353, quoting *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. at 728.
53. Defendants have not employed the least restrictive means to further a compelling interest. Defendants have the burden to prove this defense. *See, Holt*, 574 U.S. at 357, 362.
54. As a federal judge in this district recently noted, when making fact-findings relevant to a recent challenge to TDCJ’s execution policy excluding all religious advisors from the execution chamber, “Speculative hypotheticals without evidentiary support do not create an unmanageable security risk.” *Gutierrez v. Saenz, supra*, ECF Doc. 124 at \*29.

55. TDCJ's amended policy places a substantial burden on Mr. Ramirez's practice of a sincerely-held religious belief in the "spiritually charged final moments of life," leading up to and including his execution, when religious observance and spiritual guidance are most critical. No compelling security interest justifies the burden on his religious exercise.
56. Accordingly, if the Court concludes that TDCJ's revised policy does not violate the First Amendment, it should decide that the policy violates RLUIPA.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff John Henry Ramirez prays that this Court provide relief as follows:

1. A declaratory judgment that TDCJ's amended policy violates Mr. Ramirez's First Amendment rights under the Free Exercise Clause;
2. A declaratory judgment that TDCJ's amended policy violates Mr. Ramirez's rights under RLUIPA; and
3. A preliminary and permanent injunction prohibiting Defendants from executing Mr. Ramirez

until they can do so in a way that does not violate his rights.

Respectfully submitted,

*/s/ Seth Kretzer*

\_\_\_\_\_  
Seth Kretzer

TBN: 24043764

LAW OFFICE OF

SETH KRETZER

9119 South Gessner, Suite 105

Houston, Texas 77074

Tel. (713) 775-3050

seth@kretzerfirm.com

\_\_\_\_\_  
**VERIFICATION**

I, Seth Kretzer, attorney for the Plaintiff in the above-titled action, state that to the best of my knowledge and belief, the facts set forth in this Complaint are true.

Dated: August 16, 2021.

*/s/ Seth Kretzer*

\_\_\_\_\_  
Seth Kretzer

[Certificate Of Service Omitted]

\_\_\_\_\_

**EXHIBIT 1**

---

---

**TEXAS DEPARTMENT  
OF CRIMINAL JUSTICE**  
**Correctional Institutions Division**  
[SEAL]  
**EXECUTION PROCEDURE**  
**April 2019**

---

---

*ADOPTION OF EXECUTION PROCEDURE*

In my duties as Division Director of the Correctional Institutions Division, I hereby adopt the attached Execution Procedure for use in the operation of the Texas Department of Criminal Justice Death Row housing units and perimeter functions. This Procedure is in compliance with Texas Board of Criminal Justice Rule §152.51; §§492.013(a), 493.004, Texas Government Code, and Article 43.14 – 43.20, Code of Criminal Procedure.

/s/ Lorie Davis  
Lorie Davis  
Director, Correctional  
Institutions Division

4-2-19  
Date

\_\_\_\_\_

## **EXECUTION PROCEDURES**

### **PROCEDURES**

#### **I. Procedures Upon Notification of Execution Date**

- A. The clerk of the trial court pursuant to Tex Code of Criminal Procedure art. 43.15 shall officially notify the Correctional Institutions Division (CID) Director, who shall then notify the Death Row Unit Warden, and the Huntsville Unit Warden of an offender's execution date. Once an execution date is received, the Death Row Unit Warden's office shall notify the Unit Classification Chief, and the Death Row Supervisor.
- B. The Death Row Supervisor shall schedule an interview with the condemned offender and provide him with the Notification of Execution Date (Form 1). This form provides the offender with a list of the information that shall be requested from him (2) two weeks prior to the scheduled execution.
- C. The condemned offender may be moved to a designated cell. Any keep-on-person (KOP) medication shall be confiscated and administered to the offender as needed by Unit Health Services staff.

#### **II. Stays of Execution**

- A. Official notification of a stay of execution shall be delivered to the CID Director, the

Death Row Unit Warden, and the Huntsville Unit Warden through the Huntsville Unit Warden's Office. Staff must not accept a stay of execution from the offender's attorney. After the official stay is received, the Death Row Unit Warden's office shall notify the Unit Classification Chief and Death Row Supervisor.

- B. Designated staff on the Death Row Unit shall notify the offender that a stay of execution has been received.

### **III. Preparation of the Execution Summary and Packet**

- A. Two Weeks (14 days) Prior to the Execution
  - 1. The Death Row Unit shall begin preparation of the Execution Summary. The Execution Summary (Form 2) and the Religious Orientation Statement (Form 3) shall be forwarded to the Death Row Supervisor or Warden's designee for completion. A copy of the offender's current visitation list and recent commissary activity shall also be provided.
  - 2. The Death Row Supervisor shall arrange an interview with the condemned offender to gather the information necessary to complete the Execution Summary and Religious Orientation Statement.

3. An offender may request to have his body donated to the Texas State Anatomical Board for medical education and research. The appropriate paperwork shall be supplied to the offender upon request.
4. The Execution Summary must be completed and returned by the Death Row Supervisor or Warden's designee in sufficient time to be forwarded to the CID Director's Office by noon of the 14th day. After approval by the CID Director, the summary shall be forwarded to the Death Row Unit Chaplain, the Huntsville Unit Warden's Office, and the Communications Department.
5. If the offender wishes to change the names of his witnesses, and it is less than fourteen (14) days prior to the scheduled execution, the offender shall submit a request in writing to the CID Director through the Death Row Unit Warden, who shall approve or disapprove the changes.
6. The Death Row Unit is responsible for completion of the Execution Packet which shall include:
  - a. Execution Summary;
  - b. Religious Orientation Statement;
  - c. Copy of the Offender Travel Card;

- d. Current Visitation List;
  - e. Execution Watch Notification;
  - f. Execution Watch Logs;
  - g. 1-25 Offender's Request for Trust Fund Withdrawal;
  - h. Offender Property Documentation (PROP-05 and PROP-08); and
  - i. Other documents as necessary.
7. The Death Row Supervisor or the Warden's designee shall notify staff (Form 4) to begin the Execution Watch Log (Form 5).
  8. The Execution Watch Log shall begin at 6:00 a.m. seven (7) days prior to the scheduled execution. The seven (7) day timeframe shall not include the day of the execution. The offender shall be observed, logging his activities every 30 minutes for the first six (6) days and every 15 minutes for the remaining 36 hours. The Communications Department may request information from the Execution Watch Log on the day of execution.
  9. The original Execution Packet and the offender's medical file shall be sent with the condemned offender in the transport vehicle to the Huntsville Unit or the Goree Unit for a female offender. The Death Row Unit

Warden shall maintain a copy of the Execution Packet on the Death Row Unit.

10. If there are any changes necessary to the Execution Packet, staff shall notify the CID Director's Office and the Huntsville Unit Warden's Office.

B. The Day of Execution

1. On the morning of the day of the execution prior to final visitation, all of the offender's personal property shall be packed and inventoried. The property officer shall complete an "Offender Property Inventory" (PROP-05) detailing each item of the offender's property. The property officer shall also complete a "Disposition of Confiscated Offender Property" (PROP-08) indicating the offender's choice of disposition of personal property.
  - a. If disposition is to be made from the Huntsville Unit a copy of the property forms should be maintained by the Death Row Unit Property Officer and the originals forwarded to the Huntsville Unit with the property.
  - b. If disposition is to be made from the Death Row Unit a copy of the property forms will be placed in the Execution Packet and the

original forms maintained on the Death Row Unit through the completion of the disposition process.

- c. The Mountain View Unit Warden shall ensure that a female offender brings personal hygiene and gender-specific items to the Huntsville Unit as appropriate.
2. Designated staff shall obtain the offender's current Trust Fund balance and prepare the Offender's Request for Trust Fund Withdrawal (1-25) for completion by the offender.
    - a. The following statement should be written or typed on the reverse side of the 1-25, "In the event of my execution, please distribute the balance of my Inmate Trust Fund account as directed by this Request for Withdrawal." The offender's name, number, signature, thumbprint, date, and time should be below this statement. Two (2) employees' names and signatures should be below the offender's signature as witnesses that the offender authorized the form.
    - b. This Request for Withdrawal form shall be delivered to the Inmate Trust Fund for processing

by 10:00 a.m. CST the next business day following the execution.

3. A female offender may be transported to the Goree unit prior to the day of the execution. The Execution Transport Log for Female Offenders (Form 7) shall be initiated at the Mountain View Unit. The Goree Unit staff will initiate the Execution Watch Log upon arrival on the Goree Unit, permit visitation as appropriate and transport the offender to the Huntsville Unit. The Transport Log shall resume when the offender departs the Goree Unit.
4. The condemned offender shall be permitted visits with family and friends on the morning of the day of the scheduled execution. No media visits shall be allowed at the Goree Unit.

NOTE: Special visits (minister, relatives not on the visitation list, attorney, and other similar circumstances) shall be approved by the Death Row or Goree Unit Warden or designee. Exceptions may be made to schedule as many family members to visit prior to the offender's scheduled day of execution. These are considered to be special visits. No changes shall be made to the offender's visitation list.

5. The Execution Watch Log shall be discontinued when the Execution

Transport Log for Male Offenders (Form 6) is initiated.

6. When appropriate the offender shall be escorted to 12 building at the Polunsky or the designated area at the Mountain View or Goree Unit and placed in a holding cell. The appropriate Execution Transport Log shall be initiated and the offender shall be prepared for transport to the Huntsville Unit. The offender shall be removed from the transport vehicle at the Huntsville Unit and escorted by Huntsville Unit security staff into the execution holding area:
7. Any transportation arrangements for the condemned offender between units shall be known only to the Wardens involved, the CID Director, as well as those persons they designate as having a need to know. No public announcement shall be made concerning the exact time, method, or route of transfer. The CID Director's Office and the Communications Department shall be notified immediately after the offender arrives at the Huntsville Unit
8. When the offender enters the execution holding area the Execution Watch Log shall immediately resume. The restraints shall be removed and the offender strip-searched.

9. The offender shall be fingerprinted, placed in a holding cell, and issued a clean set of TDCJ clothing.
10. The Warden shall be notified after the offender has been secured in the holding cell. The Warden or designee shall interview the offender and review the information in the Execution Packet.
11. Staff from the Communications Department shall also visit with the offender to determine if he wishes to make a media statement and to obtain authorization, if necessary, to release the statement.
12. The offender may have visits with a TDCJ Chaplain(s), a Minister/Spiritual Advisor who has the appropriate credentials and his attorney(s) on the day of execution at the Huntsville Unit; however, the Huntsville Unit Warden must approve all visits.
13. There shall be no family or media visits allowed at the Huntsville Unit.

#### **IV. Drug Team Qualifications and Training**

- A. The drug team shall have at least one medically trained individual. Each medically trained individual shall at least be certified or licensed as a certified medical assistant, phlebotomist, emergency medical technician, paramedic, or military corpsman. Each medically trained individual

shall have one year of professional experience before participating as part of a drug team, shall retain current licensure, and shall fulfill continuing education requirements commensurate with licensure. Neither medically trained individuals nor any other members of the drug team shall be identified.

- B. Each new member of the drug team shall receive training before participating in an execution without direct supervision. The training shall consist of following the drug team through at least two executions, receiving step-by-step instruction from existing team members. The new team member will then participate in at least two executions under the direct supervision of existing team members. Thereafter, the new team member may participate in executions without the direct supervision of existing team members.
- C. The Huntsville Unit Warden shall review annually the training and current licensure, as appropriate, of each team member to ensure compliance with the required qualifications and training.

## **V. Pre-execution Procedures**

- A. The Huntsville Unit Warden's Office shall serve as the communication command post and entry to this area shall be restricted.

B. Inventory and Equipment Check

1. Designated staff on the Huntsville Unit are responsible for ensuring the purchase, storage, and control of all chemicals used in lethal injection executions for the State of Texas.
2. The drug team shall obtain all of the equipment and supplies necessary to perform the lethal injection from the designated storage area.
3. An inventory and equipment check shall be conducted.
4. Expiration dates of all applicable items are to be checked on each individual item. Outdated items shall be replaced immediately.

C. Minister/Spiritual Advisor and attorney visits shall occur between 3:00 and 4:00 p.m. CST unless exceptional circumstances exist. Exceptions may be granted under unusual circumstances as approved by the Huntsville Unit Warden.

D. The offender shall be served his last meal at approximately 4:00 p.m. CST.

E. The offender shall be afforded an opportunity to shower and shall be provided with clean clothes at some time prior to 6:00 p.m. CST.

F. Only TDCJ security personnel shall be permitted in the execution chamber. The CID Director or designee and the

Huntsville Unit Warden or designee shall accompany the offender while in the Execution Chamber. TDCJ Chaplains and Ministers/Spiritual Advisors designated by the offender may observe the execution only from the witness rooms.

**VI. Set up Preparations for the Lethal Injection**

- A. One (1) syringe of normal saline shall be prepared by members of the drug team.
- B. The lethal injection drug shall be mixed and syringes shall be prepared by members of the drug team as follows:

Pentobarbital 100 milliliters of solution containing 5 grams of Pentobarbital.

- C. The drug team shall have available a back-up set of the normal saline syringe and the lethal injection drug in case unforeseen events make their use necessary.

**VII. Execution Procedures**

- A. After 6:00 p.m. CST and after confirming with the Office of the Attorney General and the Governor's Office that no further stays, if any, will be imposed and that imposition of the court's order should proceed, the CID Director or designee shall give the order to escort the offender into the execution chamber.
- B. The offender shall be escorted from the holding cell into the Execution Chamber and secured to the gurney.

- C. A medically trained individual shall insert intravenous (IV) catheters into a suitable vein of the condemned person. If a suitable vein cannot be discovered in an arm, the medically trained individual shall substitute a suitable vein in another part of the body, but shall not use a “cut-down” procedure to access a suitable vein. The medically trained individual shall take as much time as is needed to properly insert the IV lines. The medically trained individual shall connect an IV administration set, and start a normal saline solution to flow at a slow rate through one of the lines. The second line is started as a precaution and is used only if a potential problem is identified with the primary line. The CID Director or designee, the Huntsville Unit Warden or designee, and the medically trained individual shall observe the IV to ensure that the rate of flow is uninterrupted.
- D. Witnesses to the execution shall be brought into the appropriate viewing area ONLY AFTER the Saline IV has been started and is running properly, as instructed by the Huntsville Unit Warden or designee.
- E. The CID Director or designee shall give the order to commence with the execution.
- F. The Huntsville Unit Warden or designee shall allow the condemned person to make a brief, last statement.

- G. The Huntsville Unit Warden or designee shall instruct the drug team to induce, by syringe, substances necessary to cause death.
- H. The flow of normal saline through the IV shall be discontinued.
- I. The lethal dose of Pentobarbital shall be commenced. When the entire contents of the syringe have been injected, the line shall be flushed with an injection of normal saline.
- J. The CID Director or designee and the Huntsville Unit Warden or designee shall observe the appearance of the condemned individual during application of the Pentobarbital. If, after a sufficient time for death to have occurred, the condemned individual exhibits visible signs of life, the CID Director or designee shall instruct the drug team to administer an additional 5 grams of Pentobarbital followed with a saline flush.
- K. At the completion of the process and after a sufficient time for death to have occurred, the Warden shall direct the physician to enter the Execution Chamber to examine the offender, pronounce the offender's death, and designate the official time of death.
- L. The body shall be immediately removed from the Execution Chamber and transported by a coordinating funeral home.

Arrangements for the body should be concluded prior to execution.

- VIII.** Employee participants in the Execution Process shall not be identified or their names released to the public. They shall receive an orientation with the Huntsville, Goree, Polansky, or Mountain View Unit Wardens, who shall inform the employees of the TDCJ ED-06.63, "Crisis Response Intervention Support Program" (CRISP). The employees shall be encouraged to contact the Regional CRISP Team Leader following the initial participation in the execution process.

---

**EXHIBIT 2**

**AFFIDAVIT OF DANA MOORE**

State of Texas

SS:

County of Nueces

Now comes the Affiant being first duly sworn and warned of the penalties of perjury and states the following is true and accurate to the best of his knowledge and understanding

1. I am a Baptist minister who was ordained in 1983 by Long Point Baptist Church in Houston, Texas. I am currently the pastor of the Second Baptist Church in Corpus Christi, Texas and have been in this position since 2007. This is a congregation of some two hundred members.

2. John Henry Ramirez, is a member of this church despite being on death row in Livingston, Texas. He was welcomed by all members of the church and is a member in good standing.
3. I have visited John Ramirez for the past four years at Livingston, Texas as his spiritual advisor. He has asked that I be his spiritual advisor in the execution chamber on September 8, 2021. I have accepted this request from Mr. Ramirez. He has further requested that I touch him while he is being executed.
4. As the spiritual advisor for John Ramirez, I understand that I will be able to stand in the same room with John during his execution, but I will not be able to physically touch him. Human touch has significance and power. Many miracles of Jesus were performed by touching such as found in Matthew 8:3. The Bible teaches to anoint the sick with oil which is done via touch (James 5:14). In Mark 10:14-16 Jesus touched and blessed the children. Whenever I pray with others in a crisis situation I hold their hand or put my hand on their shoulder. In other words, I touch them. That is a significant part of our faith tradition as Baptists. I need to be in physical contact with John Ramirez during the most stressful and difficult time of his life in order to give him comfort.
5. I would request that I be allowed to touch Mr. Ramirez as he is executed as his spiritual advisor.

AFFIANT FURTHER SAYETH NAUGHT

/s/ Dana Moore  
Dana Moore

\_\_\_\_\_

NOTARY CERTIFICATION

I hereby swear and affirm that Affiant appeared before me, was sworn and stated the above is true and accurate to the best of his understanding and knowledge.

/s/ Deborah Guerrero  
Notary Public

<p>DEBORAH GUERRERO Notary Public, State of Texas Comm. Expires 03-21-2025 Notary ID 10752241</p>
---

\_\_\_\_\_

**EXHIBIT 3**

**From:** Amy Lee <[Amy.Lee@tdcj.texas.gov](mailto:Amy.Lee@tdcj.texas.gov)>  
**Date:** March 12, 2021 at 4:56:03 PM EST  
**To:** Eric Allen <[eric@eallenlaw.com](mailto:eric@eallenlaw.com)>  
**Cc:** Kristen Worman <[Kristen.Worman@tdcj.texas.gov](mailto:Kristen.Worman@tdcj.texas.gov)>  
**Subject: RE: John Ramirez 999544**

Mr. Allen,

TDCJ policy does not currently permit a non-TDCJ employee to be present in the execution chamber during an execution procedure. The only persons allowed inside the execution chamber during an execution are

the TDCJ Correctional Institutions Division Director and the Huntsville Unit Warden. If Mr. Ramirez adds his spiritual advisor to his execution witness list, TDCJ will permit his spiritual advisor to observe the execution from the witness room. If Mr. Ramirez would like to visit with his spiritual advisor prior to the execution, the TDCJ will allow for visitation to take place at the Huntsville Unit beginning at 3:00 p.m. and ending no later than 4:00 p.m. on the day of the execution.

Amy Lee  
Project Coordinator  
Office of the General Counsel – TDCJ

*The information contained in this email and any attachments is intended for the exclusive use of the addressee(s) and may contain confidential, privileged, or proprietary information. Any other use of these materials is strictly prohibited. This email shall not be forwarded outside the Texas Department of Criminal Justice, Office of the General Counsel, without the permission of the original sender. If you have received this material in error, please notify me immediately by telephone and destroy all electronic, paper, or other versions.*

---

EXHIBIT 4



Case 4:21-cv-02609 Document 5 Filed on 08/16/21 in TXSD Page 36 of 63  
Texas Department of Criminal Justice

STEP 1 OFFENDER GRIEVANCE FORM

OFFICE USE ONLY	
Grievance #:	2021095145
Date Received:	APR 12 2021
Date Due:	5-22-21
Grievance Code:	300
Investigator ID #:	I2731
Extension Date:	
Date Retd to Offender:	APR 14 2021

Offender Name: John Henry Ramirez TDCJ # 999544  
Unit: Polunsky Unit Housing Assignment: 12AA01  
Unit where incident occurred: Polunsky Unit

You must try to resolve your problem with a staff member before you submit a formal complaint. The only exception is when appealing the results of a disciplinary hearing.  
Who did you talk to (name, title)? Chaplain Gay/ Head Chaplain When? April 2, 2021  
What was their response? We're NOT allowed to have our spiritual advisor in the death chamber w/ us at the time of execution!  
What action was taken? NONE!

State your grievance in the space provided. Please state who, what, when, where and the disciplinary case number if appropriate

I am scheduled to be executed on Sept. 8, 2021 & have requested that I be allowed to have my spiritual advisor present in the death chamber w/ me during my execution by State. I was told I was NOT allowed that, & that is a violation of my Constitutional Rights's!

---



---



---



---



---



---



---



---

**Action Requested to resolve your Complaint.** That I be allowed to have my spiritual advisor in the death chamber w/ me at the time of my execution? THANK YOU!

Offender Signature: [Signature] Date: 4-11-21

Grievance Response:

Your grievance has been investigated. At this time, a religious authority is not permitted to be present in the execution chamber with an inmate. No further action is warranted by this office.

Signature Authority: [Signature] B. Rigsby, AW Date: APR 14 2021

If you are dissatisfied with the Step 1 response, you may submit a Step 2 (I-128) to the Unit Grievance Investigator within 15 days from the date of the Step 1 response. State the reason for appeal on the Step 2 Form.

Returned because: \*Resubmit this form when the corrections are made.

- 1. Grievable time period has expired.
- 2. Submission in excess of 1 every 7 days. \*
- 3. Originals not submitted. \*
- 4. Inappropriate/Excessive attachments. \*
- 5. No documented attempt at informal resolution. \*
- 6. No requested relief is stated. \*
- 7. Malicious use of vulgar, indecent, or physically threatening language. \*
- 8. The issue presented is not grievable.
- 9. Redundant, Refer to grievance # \_\_\_\_\_
- 10. Illegible/Incomprehensible. \*
- 11. Inappropriate. \*

UGI Printed Name/Signature: \_\_\_\_\_

Application of the screening criteria for this grievance is not expected to adversely affect the offender's health.

Medical Signature Authority: \_\_\_\_\_

OFFICE USE ONLY	
Initial Submission	UGI Initials: _____
Grievance #:	_____
Screening Criteria Used:	_____
Date Recd from Offender:	_____
Date Returned to Offender:	_____
<b>2<sup>nd</sup> Submission</b>	UGI Initials: _____
Grievance #:	_____
Screening Criteria Used:	_____
Date Recd from Offender:	_____
Date Returned to Offender:	_____
<b>3<sup>rd</sup> Submission</b>	UGI Initials: _____
Grievance #:	_____
Screening Criteria Used:	_____
Date Recd from Offender:	_____
Date Returned to Offender:	_____



Texas Department of Criminal Justice  
Accept as original  
STAFF GRIEVANCE FORM

Grievance #:	2021122334
Date Received:	JUN 14 2021
Date Due:	7-24-21
Grievance Code:	306
Investigator ID #:	I 2731
Extension Date:	
Date Retd to Offender:	JUL 05 2021

Offender Name: John Henry Ramirez TDCJ #: 999544  
 Unit: Polunsky Housing Assignment: 12AA01  
 Unit where incident occurred: Polunsky

You must try to resolve your problem with a staff member before you submit a formal complaint. The only exception is when appealing the results of a disciplinary hearing.  
 Who did you talk to (name, title)? Chaplain Hazelwood (Director of Chaplaincy TDCJ) When? June 8, 2021  
 What was their response? That I would NOT be allowed to have our Spiritual Advisor "touch" me during my execution!  
 What action was taken? NONE!

State your grievance in the space provided. Please state who, what, when, where and the disciplinary case number if appropriate

I requested to have my Spiritual Advisor "lay hands on me" during my upcoming execution, & was told that he would NOT be allowed to do so. It is part of my faith to have my spiritual advisor lay hands on me anytime I am sick or dying. TDCJ not allowing me that, is a violation of my Constitutional rights to practice my Religious Freedoms.

\_\_\_\_\_

\_\_\_\_\_

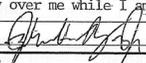
\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Action Requested to resolve your Complaint. That I be ALLOWED to have my Spiritual Advisor "lay hands on me" & pray over me while I am being executed? THANK YOU!

Offender Signature:  Date: 6-11-21

Grievance Response:  
 Your grievance has been investigated. At this time, a Spiritual Advisor is not allowed to touch an inmate while inside the execution chamber. No further action is warranted.

Signature Authority:  Date: JUL 02 2021

If you are dissatisfied with the Step 1 response, you may submit a Step 2 (4-128) to the Unit Grievance Investigator within 15 days from the date of the Step 1 response. State the reason for appeal on the Step 2 Form.

Returned because: \*Resubmit this form when the corrections are made.

- 1. Grievable time period has expired.
- 2. Submission in excess of 1 every 7 days. \*
- 3. Originals not submitted. \*
- 4. Inappropriate/Excessive attachments. \*
- 5. No documented attempt at informal resolution. \*
- 6. No requested relief is stated. \*
- 7. Malicious use of vulgar, indecent, or physically threatening language. \*
- 8. The issue presented is not grievable.
- 9. Redundant, Refer to grievance # \_\_\_\_\_
- 10. Illegible/incomprehensible. \*
- 11. Inappropriate. \*

UGI Printed Name/Signature: \_\_\_\_\_

Application of the screening criteria for this grievance is not expected to adversely affect the offender's health.

Medical Signature Authority: \_\_\_\_\_

I-127 Back (Revised 11-2010)

<b>OFFICE USE ONLY</b>	
Initial Submission:	UGI Initials: _____
Grievance #:	_____
Screening Criteria Used:	_____
Date Recd from Offender:	_____
Date Returned to Offender:	_____
2 <sup>nd</sup> Submission:	UGI Initials: _____
Grievance #:	_____
Screening Criteria Used:	_____
Date Recd from Offender:	_____
Date Returned to Offender:	_____
3 <sup>rd</sup> Submission:	UGI Initials: _____
Grievance #:	_____
Screening Criteria Used:	_____
Date Recd from Offender:	_____
Date Returned to Offender:	_____

Appendix F



Texas Department of Criminal Justice  
**STEP 2** OFFENDER  
GRIEVANCE FORM

OFFICE USE ONLY	
Grievance #	2021095145
UGI Recd Date:	APR 21 2021
HQ Recd Date:	APR 26 2021
Date Due:	5-31
Grievance Code:	300
Investigator ID#:	12620
Extension Date:	

Offender Name: John Henry Ramirez TDCJ # 999544  
 Unit: Polunsky Unit Housing Assignment: 12AA01  
 Unit where incident occurred: Polunsky Unit

*You must attach the completed Step 1 Grievance that has been signed by the Warden for your Step 2 appeal to be accepted. You may not appeal to Step 2 with a Step 1 that has been returned unprocessed.*

Give reason for appeal (Be Specific). *I am dissatisfied with the response at Step 1 because...*

I am dissatisfied w/ the response to my Step 1 grievance because the issue was not addressed or remedied, on the violation of my Constitutional rights. NOT being allowed a spiritual advisor in the death chamber w/ me during execution IS a violation of my right's to exercise my religious right's! I ask that I be allowed my spiritual advisor in the death chamber present at the time of execution? THANK YOU!

Offender Signature: [Signature] Date: 4-18-21  
Grievance Response:

An investigation has been conducted by the Central Grievance Office. The Texas Department of Criminal Justice (TDCJ) Execution Procedure was amended in April 2021. Section I reads:  
“(D) Upon the inmate’s receipt of the Notification of Execution Date (Form 1), the inmate shall have thirty (30) days to submit a request in writing to the Death Row Unit Warden to have a TDCJ Chaplain or the inmate’s spiritual advisor present inside the execution chamber during the inmate’s scheduled execution.  
(E) The inmate’s requested spiritual advisor must be included on the inmate’s visitation list and have previously established an ongoing spiritual relationship with the inmate demonstrated by regular communications or in-person visits with the inmate before the inmate’s scheduled execution date.  
(F) If an inmate requests to have a spiritual advisor present inside the execution chamber during the inmate’s scheduled execution, the inmate will provide the Death Row Unit Warden with contact information for the spiritual advisor. Upon receipt of the spiritual advisor’s contact information, the Death Row Unit Warden shall contact the spiritual advisor.”  
You will need to follow the process described above. Given the time constraints, the 30-day requirement to submit a request in Section I(F) will not be enforced against you. However, you must submit a request as soon as possible. No further relief can be granted by this department.

Signature Authority [Signature] J. RILEY Date: 5/4/2021

Returned because: \*Resubmit this form when corrections are made.

- 1. Grievable time period has expired.
- 2. Illegible/Incomprehensible.\*
- 3. Originals not submitted.\*
- 4. Inappropriate/Excessive attachments.\*
- 5. Malicious use of vulgar, indecent, or physically threatening language.
- 6. Inappropriate.\*

CGO Staff Signature: \_\_\_\_\_

OFFICE USE ONLY	
Initial Submission	CGO Initials: _____
Date UGI Recd: _____	
Date CGO Recd: _____	
(check one) <input type="checkbox"/> Screened <input type="checkbox"/> Improperly Submitted	
Comments: _____	
Date Returned to Offender: _____	
2 <sup>nd</sup> Submission	CGO Initials: _____
Date UGI Recd: _____	
Date CGO Recd: _____	
(check one) <input type="checkbox"/> Screened <input type="checkbox"/> Improperly Submitted	
Comments: _____	
Date Returned to Offender: _____	
3 <sup>rd</sup> Submission	CGO Initials: _____
Date UGI Recd: _____	
Date CGO Recd: _____	
(check one) <input type="checkbox"/> Screened <input type="checkbox"/> Improperly Submitted	
Comments: _____	
Date Returned to Offender: _____	

**EXHIBIT 5**

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

**JOHN HENRY RAMIREZ,** §  
Plaintiff, §

vs. §

**BRYAN COLLIER,** §  
Executive Director, Texas §  
Department of Criminal §  
Justice, Huntsville, Texas, §

§ No. 2:20-cv-205

**LORIE DAVIS,** Director, §  
Texas Department of §  
Criminal Justice, §  
Correctional Institutions §  
Division, Huntsville, Texas, §

§ **This is a Capital  
Case.**

**BILLY LEWIS,** Warden, §  
Texas Department of §  
Criminal Justice, Huntsville, §  
Unit, Huntsville, Texas, §  
Defendants. §

§ **Mr. Ramirez is  
scheduled to be  
executed on  
September 9, 2020.**

**RELATED CASE: Civil Action No. 2:12-CV-410;  
The Honorable Judge v. Nelva Gonzalez Ramos**

**COMPLAINT PURSUANT TO 42 U.S.C. § 1983**

Eric J. Allen  
ALLEN LAW OFFICES  
4200 Regent Street; Suite 200  
Columbus, Ohio 43219  
tel. (614) 443-4840  
eric@eallenlaw.com

Seth Kretzer  
LAW OFFICE OF  
SETH KRETZER  
440 Louisiana; Suite 1440  
Houston, Texas 77002  
Tel. (713) 775-3050  
seth@kretzerfirm.com

*Appointed Counsel for John Henry Ramirez, Plaintiff*

## INTRODUCTION

1. On September 9, 2020, Plaintiff John Henry Ramirez is scheduled to be executed by lethal injection.

2. For approximately four years, Pastor Dana Moore has ministered to Plaintiff Ramirez. Pastor Moore is an ordained Christian minister. He is the minister at Second Baptist Church in Corpus Christi, Texas.

3. Plaintiff Ramirez wants Pastor Moore to be present in the execution chamber before and during his execution and has submitted grievance forms to posit this request.

4. According to its stated, recently amended policy regarding the presence of spiritual advisors in the execution chamber, the Texas Department of Criminal Justice (“TDCJ”) intends to deny Plaintiff Ramirez’s request to have a chaplain present in the execution chamber at his execution. The execution violates the Free Exercise and Establishment Clauses of the First Amendment to the United States Constitution and substantially burdens the exercise of his religious beliefs protected by the Religious Land Use and Institutionalized Persons Act of 2000 (“RLUIPA”), 42 U.S.C. § 2000cc et seq.

5. Plaintiff Ramirez respectfully asks this Court to provide preliminary and permanent injunctive relief, barring TDCJ from executing Mr. Ramirez until that execution comports with the First Amendment and RLUIPA.

### **JURISDICTION**

6. This Court has jurisdiction under 28 U.S.C. §§ 1331, 1343, 1651, 2201, and 2202, and under 42 U.S.C. § 1983.

### **VENUE**

7. Venue is proper under 28 U.S.C. § 1391 because Defendants Collier, Davis, and Jones maintain offices in Huntsville, Texas.

8. Defendants are being sued in their official capacities.

9. Venue is also proper because Plaintiff Ramirez's execution will occur in Huntsville, Texas.

### **PARTIES**

10. Plaintiff John Henry Ramirez is incarcerated under a sentence of death at the Polunsky Unit of TCDJ in Livingston, Texas. He is scheduled to be executed on September 9, 2020.

11. Defendant Bryan Collier is the Executive Director of TDCJ. He is being sued in his official capacity.

12. Defendant Lorie Davis is the Director of the Correctional Institutions Division of TDCJ. She is being sued in her official capacity. Ms. Davis is the individual the trial court ordered to carry out the execution.

13. Defendant Billy Lewis is the Senior Warden of the Huntsville Unit, which is the unit where

executions take place. He is being sued in his official capacity. Because Mr. Lewis is the Warden of the Huntsville Unit, he supervises executions in Texas.

### PROCEDURAL HISTORY

14. Plaintiff Ramirez was indicted for capital murder, convicted, and sentenced to death. The Texas Court of Criminal Appeals affirmed the conviction and sentence on direct appeal. *Ramirez v. State*, No. AP-76,100 (Tex. Crim. App., March 16, 2011). A state writ was filed, a hearing was held, and the TCCA denied relief. *Ex parte Ramirez*, No. WR-72,735-03 (Tex. Crim. App., October 10, 2012).

15. A federal writ was timely filed, and the district court denied relief and a certificate of appealability. *Ramirez v. Stephens*, No. 2-12-CV-410 (S.D. Tex., June 10, 2015).

16. Plaintiff Ramirez filed a timely notice of appeal to the United States Court of Appeals for the Fifth Circuit. That court denied Mr. Ramirez's request for a certificate of appealability on February 4, 2016. Mr. Ramirez then requested a writ of certiorari from the Supreme Court on May 4, 2016. It denied that request on October 3, 2016.

17. The State of Texas set an execution date on February 2, 2017.

18. On January 27, 2017, Plaintiff Ramirez moved to substitute counsel and stay the execution date. This Court granted Mr. Ramirez's motion on

January 31, 2017. Mr. Ramirez requested counsel and was given a briefing schedule on February 12, 2018. On August 20, 2018, Mr. Ramirez filed a motion for relief from judgment in the United States District Court.

19. The District Court denied this motion on January 3, 2019. Plaintiff Ramirez timely filed a notice of appeal to the Fifth Circuit. The Fifth Circuit denied the request on June 26, 2019. Mr. Ramirez requested and was granted an extension to file a petition for a writ of certiorari no later than October 24, 2019. That request was granted. But the Court denied Mr. Ramirez's request to grant certiorari.

20. The State of Texas subsequently set an execution date of September 9, 2020.

### **FACTUAL BACKGROUND**

21. On April 2, 2019, TDCJ adopted a revised execution procedure prohibiting any religious or spiritual advisors from entering the execution chamber at the time of the execution: "TDCJ Chaplains and Ministers/Spiritual Advisors designated by the offender may observe the execution only from the witness rooms." Ex. 1 at 8.

22. The previous execution policy had allowed TDCJ-approved chaplains in the execution chamber, consistent with longstanding tradition in Texas and nationwide. The amendment appears to be in response to the Supreme Court's order staying an execution in *Murphy v. Collier*, 139 S. Ct. 1475 (2019). In *Murphy*,

the Supreme Court halted an execution after finding the TDCJ policy discriminate by denomination. In response, TDCJ changed its stated policy, not to approve spiritual advisors of all faiths but to bar all spiritual advisors.

23. Since approximately 2016, Plaintiff Ramirez has received religious counseling and spiritual advice from his spiritual advisor, Pastor Dana Moore. Mr. Ramirez wants Pastor Moore to be present at the time of his execution to pray with him and provide spiritual comfort and guidance in his final moments. Pastor Moore is willing to be in the execution chamber with Plaintiff Ramirez when he is executed.

24. When Plaintiff Ramirez is executed, Pastor Moore will pray with him. Pastor Moore need not touch Mr. Ramirez at any time in the execution chamber.

25. TDCJ previously cleared Pastor Moore to be in its execution chamber when another condemned prisoner, Joseph Christopher Garcia, was executed in December 2018.

26. Pastor Moore is willing to undergo additional security screening, if necessary, in order to be present in the execution chamber.

27. On July 13, 2020, undersigned counsel contacted Kristen Worman, General Counsel of TDCJ, through email. That email inquired about whether Ms. Worman and TDCJ had made a decision regarding the presence of Plaintiff Ramirez's minister in the execution chamber. Ex. 2.

28. On July 31, 2020, undersigned counsel followed up on his previous email. Through follow-up email, counsel informed Ms. Worman that Plaintiff Ramirez requested the presence of his Christian chaplain, Pastor Dana Moore and that Pastor Moore has ministered to Mr. Ramirez for approximately four years. The email informed Ms. Worman that TDCJ previously allowed Pastor Moore to be present in the death chamber for another condemned prisoner, Joseph Garcia. Finally, counsel informed Ms. Worman that Pastor Moore is willing to undergo additional security screening if necessary to enter the death chamber. Ex. 3.

29. At the time of filing, General Counsel Worman had not responded to undersigned counsel's emails.

30. Plaintiff Ramirez submitted a grievance to TDCJ on or about July 15, 2020. In the grievance, he requested that TDCJ allow Pastor Moore to be present in the execution chamber. TDCJ had not processed the grievance at the time of filing. It eventually should be returned to Plaintiff Ramirez with a response. Until then, Mr. Ramirez has no copy to present as an exhibit. If TDCJ responds, Mr. Ramirez can supplement this pleading.

31. Plaintiff Ramirez also submitted an I-60 Offender Request to Official on or about August 7, 2020. He directed this request to the Warden of the Polunsky Unit. In that form, Mr. Ramirez again requested the presence of Pastor Moore in the execution chamber. The Warden has not responded to Mr. Ramirez's

request. If he does, Mr. Ramirez can supplement this pleading.

### **CLAIMS FOR RELIEF**

32. Plaintiff Ramirez re-alleges and incorporates by reference and the allegations contained in the previous paragraphs of this Complaint.

#### **CLAIM ONE: FIRST AMENDMENT ESTABLISHMENT CLAUSE**

33. The First Amendment to the United States Constitution commands that “Congress shall make no law respecting an establishment of religion.” U.S. Const., amend. I. This command also is binding on the states. *See Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940).

34. The Establishment Clause also forbids governmental entities from passing laws that prefer one religion over another, and it also forbids them from demonstrating hostility toward a religion. *See Larson v. Valente*, 456 U.S. 228, 246 (1982); *Zorach v. Clauson*, 343 U.S. 306, 313-15 (1952); *Everson v. Bd. of Ed. of Ewing Twp.*, 330 U.S. 1, 15 (1947) (“Neither a State nor the Federal Government . . . can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion.”)

35. TDCJ’s amended policy precluding chaplains and spiritual advisors from the execution chamber violates the Establishment Clause, because the policy

gives preference to non-religion while inhibiting the practice of religion. *See Comm. for Public Ed. & Religious Liberty v. Nyquist*, 413 U.S. 756. 788 (1973) (noting that neutrality toward religion forbids the government from inhibiting religion).

36. Laws or policies that are not neutral between religion and non-religion are inherently suspect. *See Larson*, 456 U.S. at 246. These types of laws or policies are upheld only if they survive strict scrutiny. And strict scrutiny requires the law or policy to be narrowly tailored to achieve a compelling interest. *Id.* at 246-47.

37. In *Murphy v. Collier*, 139 S. Ct. 1475 (2019), the Supreme Court stayed an execution under TDCJ's previous execution policy. Under that policy, TDCJ followed a procedure to approve chaplains to be present in the execution chamber if they were not deemed a security threat. The Court stayed Murphy's execution, determining that the policy discriminated based on religious denomination. Afterward, TDCJ did not create a policy that applied the same clearance rules to all spiritual advisors. Instead, it chose to bar all spiritual advisors from the execution chambers. Ex. 1 at 8.

38. This amended protocol denying all spiritual advisors favors nonreligious prisoners who do not want or require spiritual advisors present in the chamber at their executions.

39. The Supreme Court previously has stayed an execution under TDCJ's current execution policy. In *Gutierrez v. Saenz*, 590 U.S. \_\_\_ (2020), Gutierrez attacked TDCJ policy of not allowing any spiritual

advisors into the execution chamber. He challenged that policy on First Amendment and RLUIPA grounds. The Court stayed the execution “pending the disposition of his writ of certiorari” and ordered the district court to promptly conduct fact finding on “whether serious security problems” would result from allowing a spiritual advisor of the prisoner’s choice in the execution chamber.

40. Plaintiff Ramirez raises the same challenge to the execution protocol that Mr. Gutierrez did. Because the United States Supreme Court stayed Mr. Gutierrez’s execution and ordered the district court to conduct further fact-finding about his challenge to the execution protocol, this Court must grant the injunctive relief Plaintiff Ramirez seeks.

41. TDCJ’s intent to deny Mr. Ramirez access spiritual counseling during the moments leading up to and including his execution cannot be justified by a citation to security concerns. Any argument that security concerns justify such a burden on Mr. Ramirez’s religious observance is belied by the fact that TDCJ has previously allowed Mr. Ramirez’s spiritual advisor—Pastor Moore—to be in the execution chamber during the execution of another prisoner, Joseph Garcia, in December 2018. Furthermore, TDCJ cannot demonstrate that its current security and screening protocols are inadequate, or that it could not address security concerns with further screening measures, to which Pastor Moore has indicated he is willing to submit.

**CLAIM TWO: FIRST AMENDMENT  
FREE EXERCISE OF RELIGION**

42. The First Amendment also requires that “Congress shall make no law . . . prohibiting the free exercise of” religion. U.S. Const., amend. I. Like the Establishment Clause, the Free Exercise Clause is binding on the states. *See Cantwell*, 310 U.S. at 303.

43. TDCJ’s policy burdens Plaintiff Ramirez’s free exercise of his Christian faith in the moments just prior to and including his execution.

44. When a state hinders a prisoner’s ability to freely exercise his religion, reviewing courts must determine whether the law or policy is neutral and generally applicable. *Church of the Lukumi Babao Aye, Inc. v. Hialeah*, 508 U.S. 520, 531 (1993). If it is neutral and generally applicable, it can have an “incidental effect of burdening a particular religious practice.” *Ibid.* If it is not neutral and generally applicable, it must show a “compelling governmental interest” that is “narrowly tailored to advance that interest.” *Ibid.*

45. Here, TDCJ’s policy is not neutral. It is hostile toward religion, favoring non-religious prisoners over religious prisoners. If Plaintiff Ramirez was non-religious, TDCJ would grant his request to not have a religious advisor in the execution chamber. And no compelling governmental interest justifies the exclusion of Mr. Ramirez’s spiritual advisor from the execution chamber, as demonstrated by the fact that TDCJ

previously allowed Pastor Moore into the chamber during Joseph Garcia's execution.

46. Any argument that security concerns constitute a "compelling governmental interest" necessitating the exclusion of Mr. Ramirez's spiritual advisor from the execution chamber withers when subjected to strict scrutiny, as the Constitution requires. This is especially true in Plaintiff Ramirez's case. Here security concerns are less than compelling in light of the fact that in 2018, TDCJ allowed Pastor Moore to be present in the execution chamber during the execution of Joseph Garcia's execution. TDCJ also has previously allowed prison chaplains who have served as spiritual advisors to be present in the chamber during executions. *See Murphy*, 139 S. Ct. at 1475.

47. For these reasons, TDCJ's amended policy it violates the First Amendment's Free Exercise Clause cannot survive strict scrutiny.

### **CLAIM THREE: RLUIPA**

48. If this Court finds TDCJ's policy does not violate Plaintiff Ramirez's First Amendment rights, it should rule that the policy violates RLUIPA.

49. Separate and apart from the First Amendment, the Religion Land Use protects the rights of those who are incarcerated to worship as they please. RLUIPA does not follow First Amendment caselaw. Instead of referring to the First Amendment, RLUIPA defines the "exercise of religion" to include "any exercise

of religion, whether or not compelled by, or central to, a system of religious belief.” *Burwell v. Hobby Lobby Stores*, 573 U.S. 682, 696 (quoting 42 U.S.C. § 2000cc-5(7)(A)).

50. Even if TDCJ’s amended policy does not violate the First Amendment, it violates RLUIPA because it burdens Mr. Ramirez’s right to religious worship in the final moments leading up to and including his execution. Preventing Plaintiff Ramirez from religious worship with a chaplain at the end of his life and including the moment of his death substantially burdens his practice of religion. *See, e.g., Holt v. Hobbs*, 135 S. Ct. 853, 862 (2015) (determining that where a prisoner shows the exercise of religion “grounded in a sincerely held religious belief,” enforced prohibition “substantially burdens his religious exercise”).

51. TDCJ has not employed the least restrictive means to further a compelling interest. TDCJ has the burden to show this defense. *See id.* at 859. In *Gutierrez*, the Supreme Court remanded for fact finding about the security issues of allowing a spiritual advisor in the execution chamber. This directive requires TDCJ to demonstrate that it has a “serious security problem” if the advisors are present. Here, TDCJ has allowed Plaintiff Ramirez’s spiritual advisor into the execution chamber recently. Because it did so, TDCJ cannot plausibly claim to have such a compelling security interest when they remove a security-cleared spiritual advisor in this manner. In either event, fact finding is occurring at the Supreme Court’s direction. This Court should stay Mr. Ramirez’s execution and

allow this fact finding to occur. Then it can factor Mr. Ramirez's potentially unique circumstances into its finding.

52. TDCJ's amended policy places a substantial burden on Plaintiff Ramirez's practice of a sincerely held religious belief at the moment of his death, when religious observance and spiritual guidance are most critical; therefore, it violates his rights under the RLUIPA.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff John Henry Ramirez prays that this Court provide relief as follows:

1. A declaratory judgment that TDCJ's amended policy violates Mr. Ramirez's First Amendment rights under the Establishment Clause;
2. A declaratory judgment that TDCJ's amended policy violates Mr. Ramirez's First Amendment rights under the Free Exercise Clause;
3. A declaratory judgment that TDCJ's amended policy violates Mr. Ramirez's rights under RLUIPA; and
4. A preliminary and permanent injunction prohibiting Defendants from executing Mr. Ramirez

until they can do so in a way that does not violate his rights.

*/s/ Seth Kretzer*

---

Seth Kretzer  
seth@kretzerfirm.com  
440 Louisiana, Suite 1440  
(713) 775-3050 (Direct)  
(713) 929-2019 (Fax)

---

**VERIFICATION**

I, Seth Kretzer, attorney for the Plaintiff in the above-titled action, state that to the best of my knowledge and belief, the facts set forth in this Complaint are true.

Executed on August 7, 2020.

*/s/ Seth Kretzer*

---

Seth Kretzer

[Certificate Of Service Omitted]

---

**EXHIBIT 6**

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

<b>JOHN HENRY RAMIREZ,</b>	*
<b>Petitioner,</b>	*
<b>v.</b>	<b>*Civil Action No.</b>
<b>LORIE DAVIS, Director,</b>	<b>*2:12-CV-410</b>
<b>Texas Department</b>	<b>*The Honorable Judge</b>
<b>of Corrections,</b>	<b>*Nelva Gonzalez Ramos</b>
<b>Correctional Institutions</b>	<b>*</b>
<b>Respondent.</b>	<b>*</b>

**CAPITAL CASE  
PENDING EXECUTION DATE:  
September 9, 2020**

**ADVISORY TO THE COURT**

COMES NOW, Petitioner Ramirez, and files this Advisory concerning developments in state court pertaining to his scheduled execution.

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*.

The Agreed Motion is attached as exhibit 1; the proposed order is attached as Exhibit 2.

Judge Galvan has set this agreed motion for hearing on Friday, August 14 at 10:00 a.m. In the COVID paradigm, this hearing will be conducted on Zoom and it would not be practicable to transport Ramirez. See Exhibit 3.

A court-reporter has been requested along with immediate transcription.

If the ruling is adverse, the undersigned will file mandamus with the Court of Criminal Appeals (likely also to be filed Friday) and will submit a copy to this Court also by way of Advisory.

/s/ Seth Kretzer  
\_\_\_\_\_  
Seth Kretzer  
seth@kretzerfirm.com  
TBN: 240437694  
440 Louisiana, Suite 1440  
Ph: 713 775 3050  
Fax: 713 929 2019

[Certificate Of Service Omitted]

---

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

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

---

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

**MOTION FOR STAY OF EXECUTION PENDING  
DISPOSITION OF PLAINTIFF'S COMPLAINT  
FILED PURSUANT TO 42 U.S.C. § 1983**

(Filed Aug. 18, 2021)

Plaintiff Ramirez respectfully requests that this Court grant him a stay of execution pending the resolution of his complaint filed pursuant to 42 U.S.C. § 1983. Defendants have denied Ramirez's request to have his pastor, Dana Moore, lay his hands on him as he is executed, *see Exhibit 2* to First Amended Complaint, even though Pastor Moore will be allowed in the execution chamber under the policy revised by the TDCJ in response to the Supreme Court's opinion in *Murphy v. Collier*, 139 S. Ct. 1475 (2019).

## I. LEGAL STANDARDS

“[A] stay of execution is an equitable remedy, and an inmate is not entitled to a stay of execution as a matter of course.” *Hill v. McDonough*, 547 U.S. 573 (2006). In deciding whether to issue a stay of execution, a court must consider: (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other party interested in the proceeding; and (4) where the public interest lies. *See Nken v. Holder*, 556 U.S. 418 (2009). A motion for a stay, however, depends on the operation of equity. *See Hill*, 547 U.S. at 584, 126 S. Ct. at 2104. In the balance of equity, “dilatatory behavior” may weigh heavily against a plaintiff. *Ramirez v. McCraw*, 715 F. App’x 347, 351 (5th Cir. 2017).

In a capital case, the likelihood of success factor is satisfied when the plaintiff makes a “substantial showing of the denial of a federal right.” *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983) (citation and quotation marks omitted). That showing is made if the plaintiff shows that the “issues are debatable among jurists of reason; that a court could resolve the issues in a different manner; or that the questions are adequate to deserve encouragement to proceed further.” *Id.* at 893 n.4 (citation and quotation marks omitted).

## II. ARGUMENT

### A. Ramirez Shows Irreparable Injury

Ramirez will be irreparably injured if he is executed before this case can be litigated. As the Fifth Circuit has recognized, “In a capital case, the possibility of irreparable injury weighs heavily in the movant’s favor.” *O’Bryan v. Estelle*, 691 F.2d 706, 708 (5th Cir. 1982) (*per curiam*). In a capital case, the movant “must present a substantial case on the merits when a serious legal question is involved and show that the balance of equities weighs heavily in favor of granting the stay.” *Celestine v. Butler*, 823 F.2d 74, 77 (5th Cir. 1987) (*per curiam*).

### B. Ramirez Has Assertively Litigated His Claim

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 cause number 2:20-cv-205. Thereafter, 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.*

*See Amended Petition, Exhibit 6.*

Ramirez 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.

Even looking only at the window in which the 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 promptly when the new section 1983 case was filed August 10. Yet the attorney refused to accept service on behalf of her clients, or even enter an appearance in the case *sub judice*. Below is Ms. O'Leary's first email dated August 12, 2021:

---

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@

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

[SEAL]

---

**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 be file a Rule 11 agreement with Judge Hittner?

Thanks!

Seth

Here is Ms. O'Leary's second email dated August 17:

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 waiver 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](mailto:Leah.Oleary@oag.texas.gov)

Phone: 512 936 1292

[SEAL]

Another email from Ms. O'Leary arrived later August 17:

---

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

>

Tue 8/17/2021 3:57 PM

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

Cc: Schmidt, Jenna <Jenna.Schmidt@oag.texas.gov>

Seth:

Your request asks that Defendants answer the complaint by August 20th. As I explained on the phone and in my previous emails, Defendants only benefit to waiving service is to get 60 days before we have to answer or otherwise respond to plaintiff's complaint. So we will not agree to any shorter time line. The proposed "notice" that you sent for me to sign states that we would have the full 60 days. So I am not clear what you are requesting—an expedited answer by August 20th or 60 days out.

Regardless, we will comply with Judge Hittner's scheduling order, as it relates *only* to the stay briefing. Should the litigation proceed beyond the stay briefing, defendants agreement to waive service will set out answer or responsive pleading deadline 60 days from today.

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

Indicating, "We are unable to appear on behalf of any named defendant," Ms. O'Leary, Deputy Chief with the Attorney's General's Office, indicates she speaks

for the three defendants and her clients seek the full sixty-days to respond to Ramirez’s suit, by which time he will be executed unless this Court grants the instant motion for stay.

A few hours later yesterday, however, the Assistant Attorney General who has long handled Ramirez’s habeas proceedings, Ms. Jennifer Morris, filed a notice of appearance for all the Defendants- which are referred to below in the plural as “Respondents”:

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

JOHN HENRY RAMIREZ, § Petitioner, §	Civil Action No. 4:21-cv-2609
v. §	
BRIAN COLLIER, et al. § <u>                  Respondent.</u> §	

**RESPONDENT’S NOTICE OF  
APPEARANCE OF COUNSEL**

This is a habeas corpus case brought by a Texas state prisoner, John Henry Ramirez, under 28 U.S.C. §§ 2241, 2254. The undersigned attorney hereby enters this appearance of counsel on behalf of Respondents and respectfully requests that a copy of all future pleadings, orders, and other correspondence be served at the address below.

Meanwhile, Ramirez has pressed steadily ahead on his claim during the past week since filing his

August 10 section 1983 suit. He has therefore demonstrated he has not been dilatory.

### **C. Issuance of a Stay Will Not be Detrimental to the State**

Ramirez's execution was stayed by Judge Ramos in 2017, and then again incident to the State's own agreement in 2020 so that section 1983 doctrine in the spiritual advisory context could develop. Therefore, one may conclude that a stay in 2021 will not be detrimental to the State when it agreed to one in 2020.

### **D. Analysis**

The State will contend that Ramirez cannot demonstrate likelihood of success on the merits of his spiritual advisor claim. As an initial matter, one should note that the State made the same contention in *Murphy*, which resulted in an opinion by Justice Kavanaugh against TDCJ's blatantly unconstitutional policy in force at the time.

Further, given that the Rule 12(b)(6) standard precludes dismissal if the plaintiff presents a facially plausible claim, the *Barefoot* standard is satisfied when the complaint survives a motion to dismiss. Where that standard is met, courts have granted stays of execution. *See, e.g., Bartee v. Reed*, No. SA-12-CA-420-FB, Order Granting Motion for Stay of Execution (W.D. Tex. May 2, 2012) (granting stay in § 1983 action alleging unconstitutional denial of access to DNA

testing); *see also Skinner v. Switzer*, 559 U.S. 1033 (2010) (granting stay pending disposition of petition for writ of certiorari). Had the State taken up Ramirez’s entreaty earlier in August, waived service, filed an answer, and commenced litigation immediately, the State could have already filed a 12(b)(6) motion.

Finally, the public interest is “in having a just judgment,” *Arizona v. Washington*, 434 U.S. 497, 512 (1978), not simply in having an execution.

### III. CONCLUSION

There is a likelihood that this Court will find that Ramirez’s execution on September 9, 2021, pursuant to Defendants’ policy, would violate both the First Amendment and the RLUIPA. If a stay is not granted, Ramirez will suffer an irreparable injury. He will be executed while being denied his right to exercise his religion. This injury outweighs the costs, if any, incurred by the Defendants if they are forced to reschedule Ramirez’s execution for a later date, just as they did last year. Accordingly, Ramirez is entitled to a stay of execution so this Court can consider his complaint filed pursuant to 42 U.S.C. § 1983; Ramirez is also entitled to a stay until the Defendants are able to and agree to carry out his execution in a manner consistent with the U.S. Constitution and federal law.

Respectfully submitted this August 18, 2021,

*/s/ Seth Kretzer*

---

Seth Kretzer  
seth@kretzerfirm.com  
TBN: 24043764  
9119 South Gessner, Suite 105  
Houston, Texas 77054  
Ph. 713 775 3050  
Fax: 713 929 2019

---

**CERTIFICATE OF SERVICE**

I certify that I have served the foregoing Motion via the Court's CM/ECF system on Counsel for Respondent, Ms. Leah O'Leary and Ms. Jennifer Morris, on this the 18th day of August 2021.

*/s/ Seth Kretzer*

---

Seth Kretzer

---

**CERTIFICATE OF CONFERENCE**

Counsel for Attorney General have indicated they oppose stay of Mr. Ramirez's execution on the grounds sought.

*/s/ Seth Kretzer*

---

Seth Kretzer

---

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

<b>JOHN HENRY RAMIREZ,</b>	§	
Plaintiff,	§	
vs.	§	
<b>BRYAN COLLIER,</b>	§	
Executive Director, Texas	§	
Department of Criminal	§	<b>No. 4:21-cv-2609</b>
Justice, Huntsville, Texas,	§	<b>This is a Capital</b>
<b>BOBBY LUMPKIN,</b>	§	<b>Case.</b>
Director, Texas Department	§	<b>Mr. Ramirez is</b>
of Criminal Justice,	§	<b>scheduled to be</b>
Correctional Institutions	§	<b>executed on</b>
Division, Huntsville, Texas,	§	<b>September 8, 2021.</b>
<b>DENNIS CROWLEY,</b>	§	
Warden, Texas Department	§	
of Criminal Justice, Huntsville,	§	
Unit, Huntsville, Texas,	§	
Defendants.	§	

**SECOND AMENDED COMPLAINT  
PURSUANT TO 42 U.S.C. § 1983**

(Filed Aug. 22, 2021)

Seth Kretzer  
LAW OFFICE OF SETH KRETZER  
9119 South Gessner, Suite 105  
Houston, Texas 77074  
Tel. (713) 775-3050  
seth@kretzerfirm.com

*Counsel for John Henry Ramirez, Plaintiff*

## INTRODUCTION

1. Plaintiff John Henry Ramirez is a devout Christian. He is also incarcerated at the Polunsky Unit of the Texas Department of Criminal Justice (“TDCJ”) under a sentence of death.
2. The State of Texas intends to execute Mr. Ramirez by lethal injection on September 8, 2021, at the Walls Unit in Huntsville, Texas, under conditions that violate the First Amendment’s Free Exercise Clause and substantially burden the exercise of his religion in violation of the Religious Land Use and Institutionalized Persons Act of 2000 (“RLUIPA”), 42 U.S.C. § 2000cc, *et seq.*
3. Through the requisite TDCJ administrative channels, Mr. Ramirez has requested the presence of his spiritual advisor, Pastor Dr. Dana Moore, in the execution chamber before and during his execution, and he has requested that Pastor More lay his hands upon him at the time of his death and pray verbally.
4. The verbalization of prayer is a long-held and practiced tradition in Christianity in general. The vocalization of Scripture is also specific to the Protestant belief system to which Mr. Ramirez adheres.
5. Mr. Ramirez’s request was denied. He has properly exhausted all administrative remedies available to him under institutional policy.
6. On August 19, 2021, General Counsel for TDCJ, Ms. Kristen Worman, delivered a letter stating that the approved spiritual advisor will be prohibited from touching Ramirez or vocalizing during

the execution. That means that Pastor Moore will not be able to pray aloud. Pastor Moore will not be able to read or quote Scripture verbally. Because of this spiritual “gag order” that TDCJ is placing on Pastor Moore’s voice, Ramirez will not be able to hear the liturgy- or the Word- or the prayers- of his spiritual minister as he dies and departs this world.

7. In other words, TDCJ is imposing an unholy Trinity of Constitutional violations; 1) vocal *prayer* by a spiritual minister is prohibited as a member of his Church and his flock is dying; 2) a pastor may not *read Scripture* from the *Bible* aloud to his dying parishioner, and 3) Ramirez will not be able to *hear* any of the spiritual words of comfort by his Church and minister, or the Word of God, or the Holy Scriptures, all banned by the Defendants.
8. Relief is necessary to ensure that Mr. Ramirez is executed only in a manner that does not substantially burden the exercise of his religious beliefs and does not violate his rights under the Free Exercise Clause or RLUIPA.

### **JURISDICTION**

9. This Court has jurisdiction under 42 U.S.C. §§ 2000cc-1, 28 U.S.C. §§ 1343, 1651, 2201, and 2202, and under 42 U.S.C. § 1983.

### **VENUE**

10. Venue lies in this Court under 28 U.S.C. § 1391 because Defendants maintain offices in the Southern

District of Texas. Venue is also proper because the execution will occur in this district.

### **PARTIES**

11. Plaintiff John Henry Ramirez is incarcerated under a sentence of death at the Polunsky Unit of TCDJ in Livingston, Texas. He is scheduled to be executed September 8, 2021.
12. Defendant Bryan Collier is the Executive Director of TDCJ. He is being sued in his official capacity.
13. Defendant Bobby Lumpkin is the director of the Correctional Institutions Division of TDCJ. He is being sued in his official capacity. Mr. Lumpkin is the individual the trial court ordered to carry out the execution.
14. Defendant Dennis Crowley is the senior warden of the Huntsville Unit, which is the unit where executions take place. He is being sued in his official capacity. Because Mr. Crowley is the warden of the Huntsville Unit, he supervises executions in Texas.

### **FACTUAL BACKGROUND**

15. For approximately five years, since 2016, Pastor Dr. Dana Moore has ministered to Plaintiff Ramirez. Pastor Moore is an ordained minister who leads a congregation of roughly 200 people at Second Baptist Church in Corpus Christi, Texas. See <https://2bc.org/about-us/>. Dr. Moore is a graduate of Baylor University (B.A. in religion and history) and Southwestern Baptist Theological

Seminary (Masters of Divinity and Ph.D. in Old Testament).

16. Pastor Moore and Plaintiff Ramirez have corresponded and visited over the years. Pastor Moore has guided Mr. Ramirez in his practice of his religious faith. *See Exhibit 2*, Affidavit of Pastor Moore. Ramirez is a member of Second Baptist Church. *See 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>).
17. Until April 2019, and consistent with longstanding tradition nationwide, TDCJ allowed TDCJ-approved chaplains in the execution chamber to guide persons being executed into the afterlife according to their religious beliefs. Between 1982 and March 2019, Texas conducted 560 executions pursuant to this policy.
18. In March 2019, TDCJ refused inmate Patrick Murphy’s request that his Buddhist spiritual advisor accompany him in the chamber during the scheduled execution. *See Murphy v. Collier*, 139 S. Ct. 1475 (2019) (mem.). After TDCJ refused Murphy’s request, Murphy filed a request for a stay of execution in the Supreme Court and sought to challenge TDCJ’s decision on equal protection and First Amendment grounds. *See id.*
19. On March 28, 2019, the Supreme Court granted a stay of execution and issued an order prohibiting TDCJ from carrying out the execution “pending the timely filing and disposition of a petition for a

writ of certiorari unless the State permits Murphy's Buddhist spiritual advisor or another Buddhist reverend of the State's choosing to accompany Murphy in the execution chamber during the execution." *Murphy*, 139 S. Ct. at 1475. Justice Kavanaugh wrote a concurring opinion in which he expressed the view that "the Constitution prohibits [the] denominational discrimination" of the then-existing TDCJ policy. *Id.* at 1475-76. Justice Kavanaugh observed that a potential remedy for this denominational discrimination would be to ban *all* spiritual advisors of *any* denomination from the chamber.

20. On April 2, 2019, TDCJ adopted another, revised execution procedure to provide that "TDCJ Chaplains and Ministers/Spiritual Advisors designated by the offender may observe the execution only from the witness rooms." *Ex. 1*, Tex. Dep't Crim. Just., Execution Procedure at 8 (Apr. 2019).
21. On April 21, 2021 TDCJ adopted a new protocol. Under this new protocol, the condemned may be accompanied into the execution chamber by their personal religious advisor, who may minister to the condemned prisoner during the execution. TDCJ also requires that the advisors be verified and pass a background check.
22. For the past five years, since approximately 2016, Plaintiff Ramirez has received religious counseling and spiritual advice from his spiritual advisor, Pastor Dana Moore. Mr. Ramirez has asked Pastor Moore to be present at the time of his execution to pray with him and provide spiritual comfort and guidance in the final moments of his life. Pastor

Moore has agreed to accompany Mr. Ramirez in the execution chamber when he is executed, to pray with him, and to help guide him into the afterlife. Pastor Moore needs to lay his hands on Mr. Ramirez in accordance with his and Mr. Ramirez's faith tradition. This belief is set forth in the affidavit of Pastor Moore. *Ex. 2, Declaration of Pastor Dana Moore.*

23. Every minister of every faith in the world vocalizes his or her liturgy and prayers. But TDCJ has apparently amended its policies so as to impose a spiritual 'gag order' on religious advisors in the execution chamber.
24. The laying on of hands is a symbolic act in which religious leaders place their hands on a person in order to confer a spiritual blessing. This contact is necessary to bless and guide Mr. Ramirez at the moment of his death.
25. This practice has its basis in Christian scripture. The Apostle Philip's preaching in Samaria where a mass of people "listened eagerly . . . believed . . . [and] were baptized" (Acts 8:11, 12) Yet these new converts did not "receive the Holy Spirit" until after "Peter and John" came to Samaria from Jerusalem and "laid their hands on them" (8:17). Similarly, when Paul later baptized a group of Ephesian disciples, it was not until he "had laid his hands on them" that "the Holy Spirit came upon them" (Paul 19:1-6).
26. Already, TDCJ has in place specific protocols to take place prior to Pastor Moore's entry into the Walls Unit. On August 26, 2021, Pastor Moore is scheduled to drive from his home in Corpus

Christi to Huntsville to receive a nebulous “spiritual advisor training” at an office maintained by the Defendants at a shopping mall in that city.

27. On August 19, 2021, an attorney with the Texas Attorney General’s Office who has not made an appearance in the case *sub judice* (Ms. Leah O’Leary) sent an email to the undersigned counsel which reads:

This email is to advise you that only Mr. Ramirez’s spiritual advisor will be permitted to attend the orientation. The orientation is not an open forum and *attorneys will not be permitted to attend*.

Obviously, the undersigned was appointed to represent Ramirez, not Pastor Moore. But the State has made its point clearly: the security around this “orientation” is so strict that this citizen could not be accompanied by a lawyer even if requested to do so.

28. Pastor Moore will undergo a rigorous screening process including being screened by a metal detector and having any items he carries with him screened by an X-ray. He will be required to remove his shoes and belt for inspection. Pastor Moore also is willing to undergo additional security screening, if necessary, in order to be present in the execution chamber and to have physical contact necessary to confer a spiritual blessing and offer audible prayers that Mr. Ramirez will hear, as Mr. Ramirez is executed.
29. On June 8, 2021, inquiry was made to Ms. Kristen Worman, TDCJ General Counsel, through email whether Ms. Worman and TDCJ had made a

decision regarding the presence of Ramirez's minister in the execution chamber and direct personal contact between the condemned and the pastor. *See Ex. 3*, Email correspondence with Ms. Kristen Worman, General Counsel for TDCJ.

30. On June 17, 2021, Ms. Worman responded via e-mail, stating that, pursuant to TDCJ policy, Pastor Moore would not be allowed to have direct, personal contact with Plaintiff Ramirez in the execution chamber. *See Ex. 3*.
31. Plaintiff Ramirez submitted an Offender Form I-60 "Offender Request to Official" to TDCJ on or about July 15, 2020. In the grievance, he requested that TDCJ allow Pastor Moore to be present in the execution chamber. He further requested that Pastor Moore be allowed to have direct, personal contact with him during the execution. *See Ex. 4*.
32. Mr. Ramirez's grievance was denied, and he filed an appeal of that denial. The appeal has yet to be decided, as best as anyone can tell. *See Ex. 4*.
33. More recently, on August 19, 2021, Ms. Worman sent a letter on official TDCJ letterhead. Pursuant TDCJ policy, the approved spiritual advisor will additionally be prohibited from vocalizing any audible spiritual prayers or scriptures during the execution. *See Ex. 7*.

### **PROCEDURAL HISTORY**

34. John Henry Ramirez was convicted and sentenced to death in 2008 for the 2004 killing of Pablo Castro in Nueces County, Texas. The Texas Court of Criminal Appeals ("TCCA") affirmed the conviction

and death sentence on direct appeal. *Ramirez v. State*, No. AP-76,100 (Tex. Crim. App., March 16, 2011). In 2012, the TCCA denied state post-conviction relief, after evidentiary hearing and upon the trial court's report and recommendation. *Ex parte Ramirez*, No. WR-72,735-03 (Tex. Crim. App., October 10, 2012). Mr. Ramirez timely filed a petition for writ of habeas corpus in the federal district court. The district court denied relief and a certificate of appealability. *Ramirez v. Stephens*, No. 2-12-CV-410 (S.D. Tex., June 10, 2015).

35. Mr. Ramirez filed a timely notice of appeal to the United States Court of Appeals for the Fifth Circuit. That court denied a request for certificate of appealability on February 4, 2016. The Supreme Court denied a request for certiorari review on October 3, 2016.
36. The State of Texas set an execution date on February 2, 2017. On January 27, 2017, Mr. Ramirez moved to substitute counsel and stay the execution date. This Court granted Mr. Ramirez's motion on January 31, 2017. On August 20, 2018, Mr. Ramirez filed a motion for relief from judgment in the United States District Court. The Court denied this motion on January 3, 2019. Mr. Ramirez appealed to the Fifth Circuit, which denied the request for a certificate of appealability on June 26, 2019. The Supreme Court again denied certiorari review, on March 2, 2020, and it denied rehearing on May 18, 2020.
37. The State of Texas set another execution date of September 9, 2020. In August 2020, Mr. Ramirez filed a 'spiritual advisor' claim under Section 1983.

This was assigned Southern District cause number 2:20-cv-205. A copy of this previous 1983 complaint is attached *Exhibit 5*.

38. Thereafter, Ramirez and the Texas Attorney General's Office agreed to withdraw the death warrant in exchange for Ramirez's withdrawal of then-pending civil litigation.
39. More specifically, the Attorney General's Office and Ramirez reached bargain in which the state agreed to withdraw the execution date in exchange for Ramirez's agreement to non-suit without prejudice his section 1983 case and to dismiss a funding request under 18 U.S.C. § 3599(f).
40. The August 12, 2020 filing in the underlying habeas case is attached as *Exhibit 6*, and reads in relevant part:

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*.
41. On August 14, 2020, Nueces County District Court Judge Bobby Galvan of the 94th Criminal District Court withdrew the September execution date in an order in accord with the joint motion to cancel the execution. Subsequently, Ramirez withdrew his funding motion and filed a motion to non-suit with prejudice his matters pending in federal court.

42. On February 3, 2021 the State moved to set a new execution date, and on February 5, 2021, Judge Galvan signed an order setting an execution date for Mr. Ramirez of September 8, 2021.
43. As envisaged under the August 11, 2020 agreement, Ramirez filed a new funding request, and on July 13, 2021, Judge Ramos granted in part this motion for funding under 18 U.S.C. § 3599(f).
44. Similarly, the current 1983 lawsuit is concordant with the August 11, 2020 agreement that Ramirez would not be prejudiced to resurrecting his federal civil rights lawsuit on religious grounds.

#### **CLAIMS FOR RELIEF**

45. Mr. Ramirez re-alleges and incorporates by reference and the allegations contained in the previous paragraphs of this Complaint.

#### **CLAIM ONE: FIRST AMENDMENT FREE EXERCISE OF RELIGION**

46. The First Amendment requires that “Congress shall make no law . . . prohibiting the free exercise of” religion. U.S. Const., amend. I. Like the Establishment Clause, the Free Exercise Clause is binding on the states. *See Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940) (holding that the protections of the Free Exercise Clause are incorporated by the Fourteenth Amendment against the States).
47. According to its April 2021 revised protocol, TDCJ no longer precludes TDCJ-approved spiritual advisors from entering the execution chamber. Further,

in spite of this protocol, which does not address whether or not the spiritual advisor can have direct, personal contact with the condemned, Defendants have informed Mr. Ramirez that his spiritual advisor will not be allowed to be present at the moment of his execution and to confer a verbal spiritual blessing or consolation by prayer at the moment of his death via the laying on of hands and praying audibly. In fact, the TDCJ has not indicated it will accede to Mr. Ramirez's request that his requested spiritual advisor be allowed to be present at all in the execution chamber.

48. Many Baptist ministers see the laying on of hands as a vitally important affirmation by God's people of their calling. This laying on of hands at the time of death is the affirmation of faith at the time between life and afterlife.
49. TDCJ's intent to deny Mr. Ramirez access spiritual counseling during the moments leading up to and including his execution as well as the direct personal contact and verbal audible praying violates his First Amendment rights under the Free Exercise clause and cannot be justified by a vague citation to illusory security concerns. Furthermore, TDCJ cannot demonstrate that its current security and screening protocols are inadequate, or that it could not address security concerns with further screening measures, to which Pastor Moore has indicated he is willing to submit.
50. TDCJ's current policy with regard to the presence of spiritual advisors in the execution chamber burdens Mr. Ramirez's free exercise of his Christian faith in the moments just prior to and including

his execution. It burdens his free exercise of faith at his exact time of death, when most Christians believe they will either ascend to heaven or descend to hell – in other words, when religious instruction and practice are most needed. *See, e.g.*, 2 Timothy 1:6, “For this reason I remind you to kindle afresh the gift of God which is in you through the laying on of my hands.” This is the most important at the moment of his death. To Christians, the messages conveyed by God are known as the Word. The Word is God. (*See* John 1:1 “In the beginning was the Word, and the Word was with God, and the Word was God.” (King James).) The vocalization of prayers and exhortations are integral to the Christian faith. (*See, e.g.*, John 1:23 (“He [John the Baptist] said, I am the voice of one crying in the wilderness, Make straight the way of the Lord, as said the prophet Esaias.” (King James).))

51. When a state hinders a prisoner’s ability to freely exercise his religion, reviewing courts must determine whether the law or policy is neutral and generally applicable. *Church of the Lukumi Babba Aye, Inc. v. Hialeah*, 508 U.S. 520, 531 (1993). If it is neutral and generally applicable, it can have an “incidental effect of burdening a particular religious practice.” *Ibid.* If it is not neutral and generally applicable, it must show a “compelling governmental interest” that is “narrowly tailored to advance that interest.” *Ibid.*
52. Here, TDCJ’s policy is not neutral. It is hostile toward religion, denying religious exercise at the precise moment it is most needed: when someone is transitioning from this life to the next. The policy is thus permissible only if it can survive strict

scrutiny, which it cannot. Any argument that security concerns constitute a “compelling governmental interest” necessitating the exclusion of Mr. Ramirez’s spiritual advisor from the execution chamber and preventing him from touching the condemned or praying audibly withers when subjected to strict scrutiny, as the Constitution requires.

53. As a federal judge in this district recently noted, when making fact-findings relevant to a recent challenge to TDCJ’s previous execution policy excluding all religious advisors from the execution chamber, “Speculative hypotheticals without evidentiary support do not create an unmanageable security risk.” *Gutierrez v. Saenz*, No. 1:19-cv-00185 (S.D. Tex. Nov. 24,2020), ECF Doc. 124 at \*29.
54. For these reasons, TDCJ’s amended policy precluding Mr. Ramirez’s spiritual advisor from being present at the moment of his execution and administering a final blessing via the laying on of hands and praying audibly, in accordance with Mr. Ramirez’s faith tradition, violates his rights under the First Amendment’s Free Exercise Clause.

**CLAIM TWO: THE RELIGIOUS LAND  
USE AND INSTITUTIONALIZED  
PERSONS ACT (“RLUIPA”)**

55. Mr. Ramirez incorporates paragraphs 1-54, above.
56. Even if this Court finds that TDCJ’s policy does not violate Plaintiff Ramirez’s First Amendment rights, it should find that the policy violates RLUIPA. RLUIPA provides in part, “No government shall

impose a substantial burden on the religious exercise of a person residing in or confined to an institution,” unless the burden furthers “a compelling governmental interest,” and does so by “the least restrictive means.” RLUIPA “alleviates exceptional government-created burdens on private religious exercise.” *Cutter v. Wilkinson*, 544 U.S. 709, 720 (2005).

57. Specifically, RLUIPA states:

No government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution, as defined in section 1997 of this title, even if the burden results from a rule of general applicability, unless the government demonstrates that imposition of the burden on the person-(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling interest.<sup>41</sup> U.S.C. 2000cc-1(a)RLUIPA thus “alleviates exceptional government-created burdens on private religious exercise,” without “elevat[ing] accommodation of religious observances over an institution’s need to maintain order and safety.

*Cutter*, 544 U.S. at 720.

58. “In RLUIPA, in an obvious effort to effect a complete separation from the First Amendment case law, Congress deleted reference to the First Amendment and defined the ‘exercise of religion’ to include ‘any exercise of religion, whether or not compelled by, or central to, a system of religious belief.’” *Burwell v. Hobby Lobby Stores*, 573 U.S. 682, 696 (quoting 42 U.S.C. § 2000cc-5(7)(A)). RLUIPA thus provides more “expansive protection” for religious

liberty than the United States Supreme Court case law. *Holt v. Hobbs*, 574 U.S. 352, 358 (2015).

59. Prohibiting Mr. Ramirez from engaging in vitally important religious practices with a chaplain at the end of his life and including the moment of his death substantially burdens his practice of religion. *See, e.g., id.*, 135 S. Ct. at 862 (2015) (determining that where a prisoner shows the exercise of religion “grounded in a sincerely held religious belief,” enforced prohibition “substantially burdens his religious exercise”).
60. Under RLUIPA, a prison may not impose a substantial burden on a prisoner’s religious exercise unless doing so satisfies the Supreme Court’s “strict scrutiny” test; the challenged policy must be “the least restrictive means of furthering [a] compelling governmental interest.” 42 U.S.C. §2000cc-1(a).
61. The strict scrutiny standard is “exceptionally demanding.” *Holt*, 574 U.S. 352, 353, quoting *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. at 728.
62. Defendants have not employed the least restrictive means to further a compelling interest. Defendants have the burden to prove this defense. *See, Holt*, 574 U.S. at 357, 362.
63. As a federal judge in this district recently noted, when making fact-findings relevant to a recent challenge to TDCJ’s execution policy excluding all religious advisors from the execution chamber, “Speculative hypotheticals without evidentiary support do not create an unmanageable security

risk.” *Gutierrez v. Saenz, supra*, ECF Doc. 124 at \*29.

64. TDCJ’s amended policy, including as stated by Ms. Worman’s, General Counsel’s August 19, 2021 letter, places a substantial burden on Mr. Ramirez’s practice of a sincerely-held religious belief in the “spiritually charged final moments of life,” leading up to and including his execution, when religious observance and spiritual guidance are most critical. No compelling security interest justifies the burden on his religious exercise.
65. Accordingly, if the Court concludes that TDCJ’s revised policy does not violate the First Amendment, it should decide that the policy violates RLUIPA.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff John Henry Ramirez prays that this Court provide relief as follows:

1. A declaratory judgment that TDCJ’s amended policy, including as stated by Ms. Worman’s, General Counsel’s August 19, 2021 letter, violates Mr. Ramirez’s First Amendment rights under the Free Exercise Clause;
2. A declaratory judgment that TDCJ’s amended policy violates Mr. Ramirez’s rights under RLUIPA; and
3. A permanent injunction prohibiting Defendants from executing Mr. Ramirez until they can do so in a way that does not violate his rights.

4. More specifically, such injunction must require the TDCJ to allow the approved spiritual advisor to both lay his hands on Ramirez's body and vocalize any prayers or scriptures, during the execution.

Respectfully submitted,

*/s/ Seth Kretzer*

\_\_\_\_\_  
Seth Kretzer

TBN: 24043764

LAW OFFICE OF

SETH KRETZER

9119 South Gessner, Suite 105

Houston, Texas 77074

Tel. (713) 775-3050

seth@kretzerfirm.com

\_\_\_\_\_  
**VERIFICATION**

I, Seth Kretzer, attorney for the Plaintiff in the above-titled action, state that to the best of my knowledge and belief, the facts set forth in this Complaint are true.

Dated: August 22, 2021.

*/s/ Seth Kretzer*

\_\_\_\_\_  
Seth Kretzer

[Certificate Of Service Omitted]

\_\_\_\_\_  
[Exhibits 1-6 were included previously at pages 31-72.]

**EXHIBIT 7**

[SEAL] Texas Department of Criminal Justice  
Bryan Collier  
Executive Director

*Via: eric@eallenlaw.com*

August 19, 2021

Eric Allen  
Eric Allen Law  
4200 Regent, Suite 200  
Columbus, OH 473219

RE: John Henry Ramirez, TDCJ# 00999544

Mr. Allen:

The Texas Department of Criminal Justice (TDCJ) received your correspondence dated August 16, 2021, asking whether Mr. Ramirez's spiritual advisor is to remain silent upon entering the execution chamber and where the spiritual advisor will be standing throughout the procedure.

At this time, the TDCJ does not allow the spiritual advisor to pray out loud with the inmate once inside the execution chamber. In accordance with the TDCJ Execution Procedure policy, visitation with Mr. Ramirez's spiritual advisor may take place the morning of the scheduled execution at the Polunsky Unit. Mr. Ramirez may also request visitation with his spiritual advisor from 3:00 to 5:00 p.m. at the Huntsville Unit. During these times, the spiritual advisor will be permitted to pray out loud and provide spiritual guidance to Mr. Ramirez.

Once inside the execution chamber, the spiritual advisor will be positioned in a corner of the room where the individual must remain for the entirety of the procedure. Due to security concerns, the TDCJ will not disclose the precise distance of the spiritual advisor from the inmate while inside the execution chamber.

If you have further questions, please do not hesitate to contact this office.

Sincerely,

/s/ Kristen Worman  
Kristen Worman  
General Counsel  
KLW/AML

---

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

JOHN HENRY RAMIREZ,	§	
<i>Plaintiff,</i>	§	CIVIL ACTION
v.	§	NO. 4:21-cv-2609
	§	*DEATH PENALTY
BRYAN COLLIER, et al.,	§	CASE*
<i>Defendants.</i>	§	

---

**DEFENDANTS' OPPOSITION TO PLAINTIFF'S  
MOTION FOR A STAY OF EXECUTION**

---

(Filed Aug. 23, 2021)

KEN PAXTON Attorney General of Texas	JENNIFER WREN MORRIS Assistant Attorney General State Bar No. 24088680 <i>Counsel of Record</i> P.O. Box 12548, Capitol Station Austin, Texas 78711 Tel.: (512) 936-1400 Fax: (512) 320-8132 Email: <i>jennifer.wren@ oag.texas.gov</i>
BRENT WEBSTER First Assistant Attorney General	
JOSH RENO Deputy Attorney General For Criminal Justice	
EDWARD L. MARSHALL Chief, Criminal Appeals Division	

*Counsel for Defendants*

## TABLE OF CONTENTS

TABLE OF CONTENTS .....	i
TABLE OF AUTHORITIES .....	ii
DEFENDANTS’ OPPOSITION TO PLAINTIFF’S MOTION FOR A STAY OF EXECUTION .....	1
I. TDCJ’s Execution Procedures .....	2
A. Post- <i>Murphy</i> policy .....	3
B. Current policy .....	4
C. Ramirez’s requests for TDCJ’s accom- modations .....	5
II. The Court Should Deny Plaintiff’s Motion for a Stay of Execution .....	7
A. Standard of review .....	8
B. Ramirez fails to show likely success or make a substantial case on their mer- its of his claims .....	9
1. RLUIPA claim .....	10
2. The Free Exercise Clause claim .....	16
C. The balance of the equities weighs heavily in the State’s favor .....	17
1. Delay, opportunism, and a pre- sumption against a stay .....	18
5. The parties’ respective interests .....	21
CONCLUSION .....	23
CERTIFICATE OF SERVICE .....	24

**TABLE OF AUTHORITIES**

<b>Cases</b>	<b>Page</b>
<i>Adkins v. Kaspar</i> , 393 F.3d 559 (5th Cir. 2004) ...	10, 11
<i>Barefoot v. Estelle</i> , 463 U.S. 880 (1983) .....	8
<i>Board of Educ. of Kiryas Joel Village School Dist. v. Grumet, et al.</i> , 512 U.S. 687 (1994) .....	16
<i>Brown v. Collier</i> , 929 F.3d 218 (5th Cir. 2019)	10, 12, 17
<i>Cutter v. Wilkinson</i> , 544 U.S. 709 (2005) ..	12, 13, 14, 16
<i>Dunn v. Smith</i> , 141 S. Ct. 725 (2021) .....	3
<i>Garcia v. Castillo</i> , 431 F. App'x 350 (5th Cir. 2011) .....	8
<i>Gates v. Cook</i> , 376 F.3d 323 (5th Cir. 2004) .....	14
<i>Gutierrez v. Saenz</i> , 141 S. Ct. 127 (2020) .....	<i>passim</i>
<i>Harris v. Johnson</i> , 376 F.3d 414 (5th Cir. 2004) .....	7
<i>Hill v. McDonough</i> , 547 U.S. 573 (2006) .....	8, 22
<i>Hilton v. Braunskill</i> , 481 U.S. 770 (1987) .....	8
<i>Holt v. Hobbs</i> , 574 U.S. 352 (2015) .....	11, 14
<i>Lewis v. Casey</i> , 518 U.S. 343 (1996) .....	14
<i>Lyng v. Nw. Indian Cemetery Protective Assoc.</i> , 485 U.S. 439 (1988) .....	11, 12
<i>Murphy v. Collier</i> , 139 S. Ct. 1475 (2019) .....	<i>passim</i>
<i>Nelson v. Campbell</i> , 541 U.S. 637 (2004) .....	8, 9, 21, 22
<i>Nken v. Holder</i> , 556 U.S. 418 (2009) .....	8
<i>O'Bryan v. Estelle</i> , 691 F.2d 706 (5th Cir. 1982) .....	21
<i>O'Bryan v. McKaskle</i> , 729 F.2d 991 (5th Cir. 1984) .....	18

<i>Ochoa v. Collier</i> , 802 Fed. App'x 101 (5th Cir. 2020) .....	21
<i>Odneal v. Pierce</i> , 2009 WL 2982781 (S.D. Tex. Aug. 27, 2009) .....	14
<i>O'Lone v. Estate of Shabazz</i> , 482 U.S. 342 (1987) .....	16
<i>Sells v. Livingston</i> , 561 F. App'x 342 (5th Cir. 2014) .....	8
<i>Sherbert v. Verner</i> , 374 U.S. 398 (1963) .....	10
<i>Turner v. Safley</i> , 482 U.S. 78 (1987) .....	16, 17
<i>Udey v. Kastner</i> , 805 F.2d 1218 (5th Cir. 1986) .....	14
<i>United States v. Emerson</i> , 270 F.3d 203 (5th Cir. 2001) .....	22
<i>Walker v. Epps</i> , 287 Fed. App'x 317 (5th Cir. 2008) .....	21, 22
<i>Walker v. Epps</i> , 287 Fed. App'x 371 (5th Cir. 2008) .....	7, 20
<i>Waters v. Texas</i> , 747 F. App'x 259 (5th Cir. 2019) .....	9
<i>Whitley v. Albers</i> , 475 U.S. 312 (1986) .....	14
 <b>Statutes</b>	
18 U.S.C. § 3626(a)(1)(A) .....	15
42 U.S.C. § 2000cc .....	1
42 U.S.C. § 2000cc-1(a) .....	10

[1] IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

JOHN HENRY RAMIREZ,	§	
<i>Plaintiff,</i>	§	CIVIL ACTION
v.	§	NO. 2:21-cv-167
	§	*DEATH PENALTY
BRYAN COLLIER, et al.,	§	CASE*
<i>Defendants.</i>	§	

**DEFENDANTS' OPPOSITION TO PLAINTIFF'S  
MOTION FOR A STAY OF EXECUTION**

Plaintiff John Henry Ramirez is a Texas death row inmate who is currently scheduled to be executed after 6:00 p.m. (CDT) on September 8, 2021. Ramirez filed an amended civil-rights complaint<sup>1</sup> asserting a denial of his rights under the First and Fourteenth Amendments and the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA).<sup>2</sup> Docket Entry (DE) 5. Thereafter, Ramirez filed the instant motion for stay of execution pending disposition of his § 1983 complaint.<sup>3</sup> DE 11. Defendants' opposition to Plaintiff's motion for stay follows.

---

<sup>1</sup> On Sunday, August 22, 2021, Plaintiff filed a Second Amended Complaint. DE 12. Plaintiff, however, has not sought or been granted leave to amend his complaint as required under Fed. R. Civ. P. 15(a)(2). Plaintiff's third attempt to plead his case without leave should be stricken.

<sup>2</sup> 42 U.S.C. § 2000cc et seq.

<sup>3</sup> Ramirez filed an Advisory relating to communications with the Office of the Attorney General regarding waiver of service. DE

**[2] I. TDCJ's Execution Procedures**

The Supreme Court stayed TDCJ Inmate Patrick Murphy's execution based on his claims challenging TDCJ's refusal to permit a Buddhist spiritual advisor in the execution chamber while permitting Christian or Muslim chaplains to be present during an execution. *Murphy v. Collier*, 139 S. Ct. 1475 (2019). Finding TDCJ's former policy unconstitutional for its denominational discrimination, Justice Kavanaugh provided two potential solutions: TDCJ could allow all inmates to have an advisor of their religion in the execution chamber, or it could exclude all such advisors from the

---

9. Plaintiff served requests for waiver on August 17, 2021, a week after filing his lawsuit on August 10, 2021. Plaintiff's calculation of 60 days is incorrect and inconsistent. In one "notice," Plaintiff acknowledges that Defendants have 60 days from August 17, 2021. *See* DE 9-3 at 1. *But see* DE 9-1 at 3 (asserting that Defendants' 60 day began to run on August 10, 2021). It is also unclear whether Plaintiff demands that Defendants waive their entitlement to 60 days before answering. In one "notice," Plaintiff acknowledges that Defendants shall have 60 days to answer pursuant to Rule 4. DE 9-3 at 1-2. But in another "notice," Plaintiff asks Defendants to answer the complaint within 3 days of receiving requests for waiver of service. DE 9-2 at 2 ("I respectfully ask that you answer the complaint by August 20, 2021).

Regardless, Defendants have not acted to delay litigation by adhering to the Rules of Civil Procedure. Defendants notified Plaintiff that (1) the Office of the Attorney General would accept waivers of service on defendants' behalf and would waive service in exchange for 60 days to answer as they are entitled under Rule 15; and (2) they would comply with the Court's scheduling order as it relates to expedited briefing on Plaintiff's motion for a stay of execution. Should this litigation proceed, Defendants reserve the right to file an answer or 12b motion, asserting their entitlement to applicable immunities and affirmative defenses by October 16, 2021.

chamber, allowing them in the witness viewing room instead. *Murphy v. Collier*, 139 S. Ct. at 1475–76 (Kavanaugh, J., concurring).

**[3] A. Post-*Murphy* policy**

Shortly after Murphy’s execution was stayed, TDCJ changed its protocol such that no religious advisors were permitted in the execution chamber. DE 1-1 at 8. To accommodate inmates’ religious practices, TDCJ facilitated visitation on execution day with a TDCJ chaplain or an outside spiritual advisor (subject to restrictions). DE 1-1 at 8. During the execution, the advisor was allowed to be present in the witness viewing room. DE 1-1 at 8.

TDCJ’s post-*Murphy* policy formed the basis of several § 1983 complaints—including Ramirez’s in August last year—alleging that their spiritual advisor’s exclusion from the chamber violated RLUIPA and the First Amendment. DE 1; Complaint, *Gutierrez v. Saenz, et al.*, No. 1:19-cv-185, DE 1 (S.D. Tex. Sept. 26, 2019); Complaint, *Busby v. Collier, et al.*, No. 4:21-cv-297, DE 1 (S.D. Tex. Jan. 29, 2021) (with intervenor plaintiffs Quintin Jones and Ramiro Ibarra); Complaint, *Gonzales v. Collier*, No. 4:21-cv-828, DE 1 (S.D. Mar. 12, 2021).<sup>4</sup> Gutierrez obtained a stay of execution based on his § 1983 complaint. *Gutierrez v. Saenz*, 141

---

<sup>4</sup> Relevant to the instant proceedings, Ramirez explicitly disavowed any need for his pastor to touch him in the execution chamber. Complaint at 5, *Ramirez v. Collier*, No. 2:20-cv-205, DE 1 (S.D. Tex. Aug. 7, 2020).

S. Ct. 127 (2020). And after the Supreme Court declined to vacate a stay based on Alabama’s similar policy,<sup>5</sup> the State agreed to withdraw Ramirez’s previous execution date in exchange for his [4] nonsuit of his § 1983 complaint. TDCJ’s adoption of its current execution policy followed.

### **B. Current policy**

TDCJ released a revised Execution Procedure on April 21, 2021, which delineates a process for the approval of an inmate’s spiritual advisor to be present in the execution chamber at the time of the execution. Def. Exhibit 1. The following process applies:

- “Upon the inmate’s receipt of the Notification of Execution Date . . . , the inmate shall have thirty (30) days to submit a request in writing to the Death Row Unit Warden to have a TDCJ Chaplain or the inmate’s spiritual advisor present inside the execution chamber during the inmate’s scheduled execution.”
- “The inmate’s spiritual advisor must be included on the inmate’s visitation list and have previously established an ongoing spiritual relationship with the inmate demonstrated by regular communications or in-person visits with the inmate before the inmate’s scheduled execution date.”

---

<sup>5</sup> See *Dunn v. Smith*, 141 S. Ct. 725 (2021).

- The death-row inmate must provide the Death Row Unit Warden with contact information for the spiritual advisor, after which the warden will contact the spiritual advisor.
- Within fourteen (14) days of being contacted by the Death Row Unit Warden, the spiritual advisor will provide specific credentials demonstrating his official status as a spiritual advisor.
- TDCJ will perform a background check on the spiritual advisor.
- Before approval to be in the execution chamber, “the spiritual advisor must satisfactorily complete a two (2) hour, in-person orientation with a staff member of the Rehabilitation Programs [5] Division a minimum of ten (10) days before the inmate’s scheduled execution date.”

If denied the presence of his requested spiritual advisor, the inmate may appeal to the Director of the TDCJ Criminal Institutions Division. *Id.* at 4.

### **C. Ramirez’s requests for TDCJ’s accommodations**

On February 5, 2021, the 94th District Court of Nueces County issued an order setting Ramirez’s execution for September 8, 2021. The court’s order released Ramirez from any obligation he had pursuant to his agreement with the State:

On August 12, 2020, Judge Tagle entered an order granting discovery in *Gutierrez v. Saenz et al.*, 1:19-cv-00185. The state of law regarding § 1983 actions alleging . . . RLUIPA violations will certainly be in a different place by the time any future death warrant is entered against Ramirez; at that point, Ramirez will re-calibrate any new 1983 petition he seeks to bring.

Notice of Non-Suit Without Prejudice at 2, *Ramirez v. Collier et al.*, No. 2:20- cv-205, DE 2 (S.D. Tex. Aug. 14, 2020).

On April 12, 2021, Ramirez submitted a step 1 grievance to TDCJ, in which he complained as he did in preparation for his previous § 1983 complaint about his pastor's exclusion from the execution chamber. Pl. Exhibit 4 at 1. While this policy necessarily prohibits Ramirez's pastor's physical contact with him during the execution, Ramirez said nothing about a need for physical contact. On April 14, 2021, TDCJ denied his step 1 grievance. Pl. Exhibit 4 at 2. On April 16, Ramirez filed a step 2 grievance. Pl. Exhibit 4 at 5. And on May [6] 4, 2021, TDCJ responded, providing him with instructions on how to proceed to ensure his spiritual advisor's presence in the chamber with him. Pl. Exhibit 4 at 6.

On June 8, 2021, Ramirez's counsel emailed TDCJ General Counsel, Kristen Worman, requesting that Pastor Moore be allowed to make physical contact with Ramirez during his execution. Def. Exhibit 2. Nine days later, Ms. Worman responded that TDCJ does not

allow an inmate's spiritual advisor to touch him after they enter the execution chamber. Def. Exhibit 2.

On June 14, 2021, Ramirez filed a step 1 grievance complaining that his advisor would not be able to make physical contact with him during his execution, and, on July 2, 2021, TDCJ denied it. Pl. Exhibit 4 at 3–4. Thereafter, Ramirez filed a step 2 grievance and filed the instant § 1983 complaint in this Court. *See* Def. Exhibit 3; DE 1.

On June 17, 2021, Ramirez submitted a written request to the warden for his spiritual advisor, Pastor Dana Moore, to be present with him in the chamber during his execution. After verifying Pastor Moore's credentials and completing his background check, TDCJ approved his presence in the execution chamber, subject only to Pastor Moore's attendance of TDCJ's two-hour orientation on August 26, 2021. Upon completion, Pastor Moore will be cleared to go into the chamber with Ramirez during his execution. *See* DE 11 at 1.

## **[7] II. The Court Should Deny Plaintiff's Motion for a Stay of Execution.**

Ramirez requests a stay of execution. He begins with the wrong standard of review<sup>6</sup> and ends with

---

<sup>6</sup> On the second page of his motion, Plaintiff argues incorrectly that the Court may stay his execution if he satisfies the COA standard, i.e., that jurists of reason could debate his claims. *See* DE 11 at 2; *Walker v. Epps*, 287 F. App'x 371, 374 (5th Cir. 2008) (stating that COA standard is not stay standard). Then, he

conclusory allegations, which he takes to balance the equities in his favor. *See* DE 11 at 2, 9–10. In between, he cuts and pastes emails showing the State’s expression of its expectation of his compliance with the governing rules and of its intention to take the time it is statutorily entitled to file a motion to dismiss. Interpreting the emails to be damning to the State or somehow supportive of his motion for a stay of execution, Ramirez reveals more of his own confusion about the suit he filed in this Court. In the few paragraphs he dedicates to relevant stay considerations, he claims he will be irreparably harmed if his spiritual advisor, who will be present in the execution chamber, is not allowed to make physical contact with him during his execution and that the equities weigh in favor of a stay. *See* DE 11 at 10. Wrong about both, Ramirez fails to establish an entitlement to a stay of execution.

**[8] A. Standard of review**

“Filing an action that can proceed under § 1983 does not entitle the [plaintiff] to an order staying an execution as a matter of course.” *Hill v. McDonough*, 547 U.S. 573, 584 (2006). A request for a stay “is not available as a matter of right, and equity must be

---

argues incorrectly that the Court may stay his execution if he presents a facially plausible claim sufficient to survive a Rule 12(b)(6) motion. *See* DE 11 at 9. The cases he cites do not support his contention, and the applicable standard refutes it. Part II.A *infra* (requiring a petitioner to establish likely success or a substantial case on the merits of his claim); *see also Harris v. Johnson*, 376 F.3d 414, 416–17 (5th Cir. 2004).

sensitive to the State’s strong interest in enforcing its criminal judgments without undue interference from the federal courts.” *Id.* (citing *Nelson v. Campbell*, 541 U.S. 637, 649–50 (2004)). Rather, Plaintiff must satisfy all the requirements for a stay, including a showing of a significant possibility of success on the merits. *Id.* (citing *Barefoot v. Estelle*, 463 U.S. 880, 895–96 (1983)). When the requested relief is a stay of execution, a court must consider:

- (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits;
- (2) whether the applicant will be irreparably injured absent a stay;
- (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding;
- and (4) where the public interest lies.

*Nken v. Holder*, 556 U.S. 418, 434 (2009) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)). “In a capital case, the movant is not always required to show a probability of success on the merits, but he must present a substantial case on the merits when a serious legal question is involved and show that the balance of the equities[,] i.e., the other three factors[,] weighs heavily in favor of granting a stay.” *Garcia v. Castillo*, 431 F. App’x 350, 355 (5th Cir. 2011) (cleaned up); see *Sells v. Livingston*, 561 F. App’x 342, 344 (5th Cir. 2014).

[9] A federal court must also consider “the State’s strong interest in proceeding with its judgment” and “attempt[s] at manipulation,” as well as “the extent to which the inmate has delayed unnecessarily in

bringing the claim.” *Nelson*, 541 U.S. at 649–50. Indeed, “there is a strong presumption against the grant of a stay where a claim could have been brought at such a time as to allow consideration of the merits without requiring entry of a stay.” *Id.* at 650.

**B. Ramirez fails to show likely success or make a substantial case on their merits of his claims.**

Ramirez correctly anticipates Defendants’ argument regarding his failure to demonstrate a likelihood of success or a substantial case on the merits of his First Amendment and RLUPIA claims.<sup>7</sup> Notably, though, he does not say Defendants are wrong about that in his analysis of the issue. *See* DE 9. Nor does he acknowledge the elements his claims require for such a showing. Instead, he poses to the Court the possibility that he might meet the substantial-case burden because Murphy did. *See* DE 11 at 9. But Plaintiff’s claims are not Murphy’s.

The current TDCJ protocol, which allows inmates’ spiritual advisors’ presence in the execution chamber, is what Murphy asked for. It remedies the [10] denominational discrimination of the pre-*Murphy* protocol, while also accommodating inmate requests that the

---

<sup>7</sup> Defendants note that Plaintiff does not specifically address whether his claims call for mandamus relief beyond this Court’s jurisdiction. *See Waters v. Texas*, 747 F. App’x 259, 260 (5th Cir. 2019). Consequently, Plaintiff cannot establish he is likely to succeed on the merits of his claims.

post-*Murphy* protocol did not. Yet Plaintiff complains that the neutral and accommodating protocol is not accommodating enough, as it does not allow the hands-on Protestant blessing (that he recently decided his religious beliefs require). If any court has ever found a prison’s prohibition of spiritual advisors’ physical contact with inmates during executions violative of RLUIPA or the First Amendment, Ramirez has not found it. And the Defendants have not either.

### 1. RLUIPA claim

To establish a claim under RLUIPA, Plaintiff must show that the challenged government conduct substantially burdens his religious exercise. 42 U.S.C. § 2000cc-1(a); *see also Brown v. Collier*, 929 F.3d 218, 228–29 (5th Cir. 2019). A substantial burden is one that forces a person to choose between following the precepts of his religion or receiving some otherwise available benefit and truly pressures him to substantially modify his religious behavior. *Adkins v. Kaspar*, 393 F.3d 559, 569–70 (5th Cir. 2004) (citing *Sherbert v. Verner*, 374 U.S. 398 (1963)). But a policy “does not rise to the level of a substantial burden on religious exercise if it merely prevents the adherent from either enjoying some benefit . . . not . . . generally available or acting in a way that is not otherwise generally allowed.” *Adkins*, 393 F.3d at 570. “Incidental effects” of policies, “which may make it more difficult to practice [11] certain religions, but which have no tendency to coerce individuals into acting contrary to their religious beliefs” are not a substantial burden within the

meaning of RLUIPA. *Lyng v. Nw. Indian Cemetery Protective Assoc.*, 485 U.S. 439, 450–51 (1988).

As in the Federal Bureau of Prisons (BOP),<sup>8</sup> TDCJ allows outside spiritual advisors into the execution chamber but does not allow their physical contact with inmates therein. Without a word on the BOP’s policy, Ramirez argues that TDCJ’s policy prohibits him from “engaging in vitally important religious practices . . . at the end of his life” that “substantially burden[] his practice of religion.” DE 1 at 13. Likening his instant claim to unrelated religious challenges to an Arkansas prison’s grooming policy, Ramirez alleges a substantial burden. *See* DE 5 at 13 (citing *Holt v. Hobbs*, 574 U.S. 352, 358 (2015)). But TDCJ’s limitation of accommodations believed to enhance an inmate’s blessing is different than forcing an inmate to do what his religious tenants forbid. The former does not impose a substantial burden on religious practice. *See Adkins*, 393 F.3d at 570 (stating that policy that prevents adherent from enjoying some benefit that is not generally available is not a substantial burden). The latter does. *Hobbs*, 574 U.S. at 358.

[12] TDCJ is not forcing or enticing Ramirez to do anything. In fact, the current protocol accommodates his religious needs by allowing his pastor to visit and pray out loud with him for up to two hours immediately prior to his execution. But when they both enter

---

<sup>8</sup> *See* Order Finding TDCJ’s Security Concerns Insufficient to Exclude Outside Spiritual Advisors from Chamber at 12–13, *Gutierrez v. Saenz et al.*, No. 1:19-cv-185, DE 124 (citing BOP memorandum outlining its execution procedure).

the chamber, security concerns require restrictions. Strapped to a gurney in restraints, Ramirez's religious behavior before he passes will be the same wherever his pastor's hands may fall. Nor does Ramirez allege that passing without spiritual hands upon him violates his religion. Absent TDCJ imposed pressure or coercion to behave in a manner that violates his religious beliefs, Ramirez cannot establish the substantial burden that he must. *See Brown*, 929 F.3d at 229; *Lyng*, 485 U.S. at 450–51. Such is futile to his RLUIPA claim and his stay motion as it relates to same, as the likelihood of a futile claim's success on the merits is low, to say the least.

Even if Ramirez demonstrates that TDCJ's current protocol imposes a substantial burden on his religious exercise, he cannot make a strong showing that it is not the "least restrictive means" of furthering its compelling security interest. *See Cutter v. Wilkinson*, 544 U.S. 709, 720 (2005). RLUIPA is particularly sensitive to prison security concerns. *Id.* at 723. And courts must apply its provisions "with due deference to the experience and expertise of prison administrators in establishing necessary regulations and procedures to maintain good order, security and discipline, consistent with consideration of costs and limited resources." *Id.* at 723.

[13] Plaintiff suggests that the security interests that inform TDCJ's current execution protocol are speculative and hypothetical because a district court found that the interests informing its previous policy were. DE 5 at 12–13, 15 (citing Order Finding TDCJ's

Security Concerns Insufficient to Exclude Outside Spiritual Advisors from Chamber at 29, *Gutierrez v. Saenz et al.*, No. 1:19-cv-185, DE 124). But the previous court’s assessment of the risks associated with an outside spiritual advisor’s presence in the chamber hinged upon TDCJ’s ability to mitigate those risks, as the BOP had done with its no-contact policy and other restrictions. *See* Order at 12–13, 15, *Gutierrez v. Saenz et al.*, No. 1:19-cv-185. Now that TDCJ has revised its policy to accommodate an outside spiritual advisor’s presence in the chamber and used its resources to mitigate the associated risks, Ramirez calls TDCJ’s concerns “illusory.” DE 5 at 11. The BOP’s policy, however, underscores that experienced prison officials believe the risk associated with an outsider’s physical contact with an inmate in the chamber is real. *See* Order at 13, *Gutierrez v. Saenz et al.*, No. 1:19-cv-185.

In any event, deference is owed to TDCJ’s administrators, not to a district court’s assessment of TDCJ’s security risks or opinions on how TDCJ should allocate its resources to mitigate same. *See Cutter*, 544 U.S. at 723. And RLUIPA allows prison administrators to take prophylactic measures to [14] prevent or reduce security breaches before they occur. *See, e.g., Whitley v. Albers*, 475 U.S. 312, 322 (1986).

Consistent with the Supreme Court’s guidance, TDCJ has designed the least restrictive means of furthering its compelling security interest. Plaintiff fails to identify any other state that allows outside spiritual advisors to enter and make physical contact with inmates in the execution chamber, whereas the

Defendants demonstrate that the federal government does not. *See Holt*, 574 U.S. at 368 (comparing complained-of practice to practice of other jurisdictions). If the Court overrides TDCJ prison administrators' execution policy, it is sure to entangle itself and its sister courts in the execution process. *But see Cutter*, 544 U.S. at 726 ("Should inmate requests for religious accommodations . . . jeopardize the effective functioning of an institution, the facility would be free to resist the imposition."); *Lewis v. Casey*, 518 U.S. 343, 362 (1996) (noting that federal courts are not to become "enmeshed in the minutiae of prison operations"); *Odneal v. Pierce*, 2009 WL 2982781, at \*5 (S.D. Tex. Aug. 27, 2009) ("The Fifth Circuit has explained that federal courts 'are not to micromanage state prisons.'") (quoting *Gates v. Cook*, 376 F.3d 323, 338 (5th Cir. 2004)); *cf. Udey v. Kastner*, 805 F.2d 1218, 1221 (5th Cir. 1986) ("We believe that the probable proliferation of claims, and the concomitant entanglement with religion that processing *multiple* claims would require, does constitute a problem that the state has a good reason to avoid.") (emphasis [15] in original).<sup>9</sup> More inmate

---

<sup>9</sup> For the same reason, Plaintiff is not entitled under the PLRA to the relief he seeks because "[p]rospective relief in any civil action with respect to prison conditions shall extend no further than necessary to correct the violation of the Federal right of a particular plaintiff or plaintiffs." 18 U.S.C. § 3626(a)(1)(A). "The Court shall not grant or approve any prospective relief unless the court finds such relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right." *Id.* Moreover, "[t]he Court shall give substantial

accommodation requests would be sure to follow, in which federal courts would be asked to micromanage the details of where a spiritual advisor may stand, what they may say, what they may touch, and how they may be guarded. Courts should not become entangled in the minutia of a highly sensitive and secure process that requires elevated control and precision by prison administrators.<sup>10</sup>

Finally, the relief Plaintiff seeks will require TDCJ to accommodate blessing rituals from other religions, too. Where a Protestant may request his pastor's hands upon him as he passes, a Muslim may prefer for his body to be washed and shrouded immediately upon his passing, and a Buddhist, that his body be untouched for seven days after his death. True, the non-Protestant blessings above are likely to involve different security risks and/or costs. But also true is that TDCJ's accommodation of one religion's blessing in the chamber, to the exclusion of others, effectively reintroduces the denominational discrimination that the Supreme Court required TDCJ to remove. *See Murphy*, 139 S. Ct. at 1475; *see also Cutter*, 544 U.S. at 709 (citing *Board of Educ. of Kiryas Joel Village School Dist. v. Grumet et al.*, 512 U.S. 687 (1994)) (indicating that

---

weight to any adverse impact on public safety or the operation of a criminal justice system caused by the relief." *Id.*

<sup>10</sup> *See, e.g.*, Order at 3, *Gutierrez v. Saenz, et al.*, No. 1:19-cv-185, DE 172 (addressing Gutierrez's request for his advisor to pray uninterrupted for several minutes while touching his shoulder before the lethal injection is administered until he is pronounced dead).

RLUIPA's prescriptions must "be administered neutrally among different faiths").

Plaintiff fails to make a substantial case on the merits of his RLUIPA claim because TDCJ's execution protocol does not substantially burden his exercise of religion. And even if it did, the policy is the least restrictive means of furthering TDCJ's compelling interest in prison security. *See Cutter*, 544 U.S. at 720. Consequently, Plaintiff is not entitled to a stay of execution for his RLUIPA claim.

## **2. The Free Exercise Clause claim**

Plaintiff also claims that TDCJ's policy violates the First Amendment's Free Exercise Clause. DE 5 at 10–12. And again, he applies the wrong standard to prove it. *See* DE 5 at 12 (asserting strict scrutiny standard applies). The reasons RLUIPA requires courts to defer to prison-administrator-authored prison policies apply equally in the context of Free Exercise claims. *See O'Lone v. Estate of Shabazz*, 482 U.S. 342, 349 (1987). Where a prison regulation forms the basis of such a claim, "the regulation is valid if it is reasonably related to legitimate penological interests." *O'Lone*, 482 U.S. at 349 (citing *Turner v. [17] Safley*, 482 U.S. 78, 89 (1987)); *Brown v. Collier*, 929 F.3d 218, 232 (5th Cir. 2019).

Ramirez's claim plainly fails to satisfy *Turner's* test. First, Ramirez cannot show that TDCJ's revised protocol is not rationally connected to its security interest. *See Turner*, 482 U.S. at 89. Second, he cannot

show there are no alternative means for him to exercise his religion, as TDCJ is allowing his pastor to enter the chamber to pray with him.<sup>11</sup> Third, Ramirez is not likely to succeed on the merits of his claim considering the impact the accommodation—i.e., the “ripple effect”—would have on prison resources. *Turner*, 482 U.S. at 90. Lastly, Plaintiff is not likely to succeed in showing the existence of a readily available alternative, where he offers none, and the only alternative policy before the Court is the BOP’s, which imposes the same no-contact restriction for outside advisors. Because Ramirez fails to make a substantial case on the merits of his Free Exercise Claim, he is not entitled to a stay of execution to pursue it.

**C. The balance of the equities weighs heavily in the State’s favor.**

If Ramirez manages to make a substantial case of his futile claims, he must also show that the balance of the equities weighs heavily in favor of a [18] stay. *O’Bryan v. McKaskle*, 729 F.2d 991, 993 (5th Cir. 1984). He tries by plugging his conclusory allegations into the conclusory paragraph of his motion. DE 11 at 10. Defendants offer evidence for their side of the scale.

---

<sup>11</sup> As noted above, TDCJ’s revised protocol also allows Ramirez’s spiritual advisor to visit and pray with him for up to two hours immediately prior to his execution from 3:00 to 5:00 p.m.

### **1. Delay, opportunism, and a presumption against a stay**

Plaintiff proclaims his diligence in filing his instant § 1983 complaint based on the § 1983 complaint he nonsuited last year. DE 11 at 3–4. Defendants agree that the nonsuited suit bears on the equities before the Court today, but they interpret its impact to the balance differently.

Perhaps if Ramirez’s previous and now-pending § 1983 complaints raised the same claims, he could make his recycled-diligence argument with some level of credibility. But his claims in the respective complaints are different in a way that undermines his credibility and evinces a dilatory motive rather than a sincere one. Indeed, his asserted religious beliefs change when TDCJ accommodates them. Last year, his religious beliefs required only Pastor Moore’s presence in the execution chamber for prayer and spiritual guidance during his execution. In fact, he explicitly stated, “Pastor Moore need not touch [him] at any time in the execution chamber.” Complaint at 5, *Ramirez v. Collier*, No. 2:20-cv-205, DE 1 (S.D. Tex. Aug. 7, 2020). When TDCJ adopted its current protocol to accommodate Ramirez’s request, it also mooted claims like those in his 2020 complaint. *See* Order Dismissing Spiritual Advisor Claim as Moot and Denying Leave to Amend at 8–9, *Gutierrez v. Saenz, et al.*, No. [19] 1:19-cv-185, DE 172 (“The 2021 Execution Procedure moots Gutierrez’s . . . claims” regarding the exclusion of his chaplain from the chamber). Having been accommodated as to his earlier claims, Ramirez’s “sincerely-held

religious beliefs” changed to require the physical touch he previously claimed was not required. *Compare* Complaint at 5, *Ramirez v. Collier*, No. 2:20-cv-205, DE 1 (S.D. Tex. Aug. 7, 2020) (“Pastor Moore need not touch [him] at any time in the execution chamber.”), *with* Complaint at 5, *Ramirez v. Collier*, No. 2:20-cv-205, DE 1 (S.D. Tex. Aug. 7, 2020), *with* DE 5 at 5 (“Pastor Moore needs to lay his hands on Mr. Ramirez in accordance with his and Mr. Ramirez’s faith tradition.”).

Disregarding his disavowal of any need for physical contact, Ramirez directs the Court to the Bible and the historical practice of “[t]he laying on of hands” at the time of death. *See, e.g.*, DE 5 at 1, 3, 5, 11. A “long-held and practiced tradition . . . in the Protestant belief system . . . Ramirez adheres to,” one would expect Ramirez to seek accommodations for it under the previous policy that necessarily precluded it. With no explanation from Ramirez, his change in religious needs reflects dilatory opportunism. If the Court stays Ramirez’s execution so that TDCJ may once again amend its policy to allow physical contact, Defendants can reasonably expect that Ramirez would move the goalposts yet again. “The onus is not on the [ ] Defendants to guess or assume what claims [Ramirez] will ultimately seek. The onus was on [Ramirez] [20] to request the specific relief he needed from the beginning.” *See* Order Dismissing Spiritual Advisor Claim as Moot and Denying Leave to Amend at 10, *Gutierrez v. Saenz, et al.*, No. 1:19-cv-185, DE 172.

Turning now to Ramirez’s filing of his now-pending § 1983 complaint, Defendants acknowledge

that he did not wait until the eleventh hour or the eve of his execution to file. But he also did not file in time for the pre-execution resolution he seems to believe he is entitled to. Shifting the blame, Plaintiff suggests that his agreement to nonsuit his previous complaint somehow absolves him of his future obligation to file any subsequent complaint to allow sufficient time for its resolution without a stay. *See* DE 5 at 4. But that was not part of the agreement (nor does it make sense standing alone). *See* Notice of Non-Suit Without Prejudice at 2, *Ramirez v. Collier et al.*, No. 2:20-cv-205, DE 2.

The state court's February 5, 2021, order resetting Ramirez's execution terminated any obligation he may have had to the State. Yet Ramirez waited four months before requesting from TDCJ the accommodation he now seeks. For Ramirez's delay, he expects the Defendants to make up for his lost time by waiving their entitlement to service and time to answer or plead in exchange for waiver. *See* DE 11 at 5–7. Additionally, on the eve of Defendant's deadline to file a response to Plaintiff's motion to stay execution, Ramirez files a second amended complaint, without seeking or receiving leave as required under Rule [21] 15. Ramirez—not the State—is responsible for the timing of his suit, along with the briefing schedule and resolution that follows. And because he failed to file his complaint in time to “allow [for] consideration of the merits without . . . a stay,” he invokes the “strong presumption against the grant of a stay.” *Nelson*, 541 U.S. at 649–50.

## 2. The parties' respective interests

Ramirez claims he will be irreparably injured if a stay does not issue because his is a capital case. *See* DE 11 at 3 (citing *O'Bryan v. Estelle*, 691 F.2d 706, 708 (5th Cir. 1982)). While this factor is initially weighted in his favor, it is not the freebie he needs it to be. DE 11 at 3. It applies to every capitally sentenced inmate seeking a stay of execution, but most do not meet it. So where Ramirez's analysis ends, the irreparable injury inquiry begins. *See* DE 11 at 3. He cannot show that he will suffer irreparable injury if his case is not stayed because his claims will undoubtedly fail. *See, e.g., Ochoa v. Collier*, 802 Fed. App'x 101, 106 (5th Cir. 2020); *Walker v. Epps*, 287 F. App'x at 375.

Further, Ramirez will not be irreparably injured, as TDCJ is providing him with precisely what he asked for just one year ago—Pastor Moore's presence in the execution chamber. However long-standing the religious tradition, such is insufficient to establish a harm personal to Ramirez, who only began to prioritize the practice when it provided a basis for stalling his execution. And even if the sincerity of Ramirez's request were not undermined [22] by his dilatoriness in making it, TDCJ's accommodations adequately mitigate whatever speculative harm he may claim based on his unfulfilled request for physical touch. *See Walker v. Epps*, 287 Fed. App'x 317, 376 (5th Cir. 2008) (quoting *United States v. Emerson*, 270 F.3d 203, 262 (5th Cir. 2001) (stating that "[s]peculative injury is not sufficient" to demonstrate irreparable harm)).

Any potential harm that may result from TDCJ's refusal to accommodate Ramirez's opportunism is not substantial enough to overcome the State's and victims' interest "in the timely enforcement of [Plaintiff's] sentence." *Hill*, 547 U.S. at 548; *Nelson*, 541 U.S. at 649–50. Controlling caselaw notwithstanding, Ramirez argues the State has no such interest because it agreed last year to withdraw his execution date. DE 11 at 9. The suggestion that the State's agreement in this case one year ago dissolves its interest today (or perhaps forever) is as untenable as it is conclusory.

The State's agreement in this case last year was based on TDCJ's previous policy that was under constitutional scrutiny. While the State maintains its general interest in the timely enforcement of its sentences, that interest yields to a case that raises an apparently valid constitutional claim. Defendants are confident that TDCJ's current policy will withstand Ramirez's constitutional and statutory challenges and maintain their interest in enforcing Ramirez's sentence.

[23] **CONCLUSION**

For these reasons, Plaintiff's request for a stay should be denied.

Respectfully submitted,

KEN PAXTON  
Attorney General of Texas

BRENT WEBSTER  
First Assistant  
Attorney General

JOSH RENO  
Deputy Attorney General  
For Criminal Justice

EDWARD L. MARSHALL  
Chief, Criminal  
Appeals Division

s/ Jennifer Wren Morris  
JENNIFER WREN MORRIS  
Assistant Attorney General  
State Bar No. 24088680  
Southern District No. 2237541

P.O. Box 12548,  
Capitol Station  
Austin, Texas 78711  
Tel.: (512) 936-1400  
Fax: (512) 320-8132  
email: jennifer.wren@  
oag.texas.gov

*Counsel for Defendants*

[Certificate Of Service Omitted]

---

**EXHIBIT 1**

---

---

**TEXAS DEPARTMENT OF CRIMINAL JUSTICE**

**Correctional Institutions Division**

[SEAL]

**EXECUTION PROCEDURE**

**April 2021**

---

---

***ADOPTION OF EXECUTION PROCEDURE***

In my duties as Division Director of the Correctional Institutions Division, I hereby adopt the attached Execution Procedure for use in the operation of the Texas Department of Criminal Justice Death Row housing units and perimeter functions. This Procedure complies with Texas Board of Criminal Justice Rule §152.51; §§492.013(a), 493.004, Texas Government Code; and Articles 43.14 – 43.20, Texas Code of Criminal Procedure.

/s/ Bobby Lumpkin	4.21.2021
_____	_____
Bobby Lumpkin	Date
Director, Correctional	
Institutions Division	

\_\_\_\_\_

**EXECUTION PROCEDURES****I. Notification of a Scheduled Execution Date**

- A. Pursuant to Article 43.15, Texas Code of Criminal Procedure, the clerk of the trial court shall officially notify the Correctional Institutions Division (CID) Director, who shall then notify the Death Row Unit Warden and the Huntsville Unit Warden, of an inmate's scheduled execution date. Once a scheduled execution date is received, the Death Row Unit Warden's office shall notify the unit's Chief of Classification and the Death Row Supervisor.
- B. The Death Row Supervisor shall schedule an interview with the inmate and provide the inmate with the Notification of Execution Date (Form 1). This form provides the inmate with a list of the information that shall be requested from the inmate two (2) weeks before the scheduled execution.
- C. The inmate may be moved to a designated cell. Any keep-on-person (KOP) medication shall be confiscated and administered to the inmate as needed by medical staff on the unit.
- D. Upon the inmate's receipt of the Notification of Execution Date (Form 1), the inmate shall have thirty (30) days to submit a request in writing to the Death Row Unit Warden to have a TDCJ Chaplain or the inmate's spiritual advisor present inside the

execution chamber during the inmate's scheduled execution.

- E. The inmate's requested spiritual advisor must be included on the inmate's visitation list and have previously established an ongoing spiritual relationship with the inmate demonstrated by regular communications or in-person visits with the inmate before the inmate's scheduled execution date.
- F. If an inmate requests to have a spiritual advisor present inside the execution chamber during the inmate's scheduled execution, the inmate will provide the Death Row Unit Warden with contact information for the spiritual advisor. Upon receipt of the spiritual advisor's contact information, the Death Row Unit Warden shall contact the spiritual advisor.
  - 1. The spiritual advisor shall have fourteen (14) days from the date of contact with the Death Row Unit Warden to provide credentials to the Death Row Unit Warden verifying the individual's official status as a spiritual advisor. As required in TDCJ Chaplaincy Manual Policy 11.09, "Inmate Ministerial and Spiritual Advisor Visits," the credentials shall be at least one of the following:
    - a. Minister Identification Card supplied by the authorizing denomination or religious group;

- b. License or ordination certificate;
  - c. Official letter from an organized religious body or congregation indicating the status of the letter holder as an official representative of the religious body or congregation for all religious functions or for specific prison-related religious functions; or
  - d. A current listing as a clergy person in an official listing of ministers and clergy from an organized religious body.
2. The TDCJ will perform a background check, including but not limited to a criminal background check, on the spiritual advisor.
  3. If the spiritual advisor is approved to be present inside the execution chamber during the inmate's scheduled execution, the spiritual advisor must satisfactorily complete a two (2) hour, in-person orientation with a staff member of the Rehabilitation Programs Division a minimum of ten (10) days before the inmate's scheduled execution date.
  4. If the spiritual advisor is determined to be a security risk, the Huntsville Unit Warden or designee may deny the inmate's request for the spiritual advisor to be present inside the

execution chamber during the inmate's scheduled execution.

5. The inmate or spiritual advisor may appeal the denial of the inmate's request to have the spiritual advisor present inside the execution chamber during the inmate's scheduled execution by submitting a request in writing to the CID Director. The decision of the CID Director is final.

## **II. Preparation of the Execution Summary and Packet**

- A. Two Weeks (14 days) Before the Scheduled Execution
  1. The Death Row Unit is responsible for completion of the Execution Packet which shall include:
    - a. Execution Summary;
    - b. Religious Orientation Statement;
    - c. Current Visitation List;
    - d. Execution Watch Notification;
    - e. Execution Watch Log;
    - f. Inmate Request for Withdrawal (1-25);
    - g. Inmate Property Documentation (PROP-05 and PROP-08); and
    - h. Other documents as necessary.

2. The Execution Summary (Form 2) and the Religious Orientation Statement (Form 3) shall be forwarded to the Death Row Supervisor or the Death Row Unit Warden's designee for completion. A copy of the inmate's current visitation list and recent commissary activity shall also be provided.
3. The Death Row Supervisor shall arrange an interview with the inmate to gather the information necessary to complete the Execution Summary and Religious Orientation Statement.
4. The Execution Summary must be completed and returned by the Death Row Supervisor or the Death Row Unit Warden's designee in sufficient time to be forwarded to the CID Director's Office by noon of the fourteenth (14th) day. After approval by the CID Director, the Execution Summary shall be forwarded to the Death Row Unit Chaplain, the Huntsville Unit Warden's Office, and the Communications Department.
5. If the inmate wishes to change the names of the inmate's witnesses, and it is less than fourteen (14) days before the scheduled execution date, the inmate shall submit a request in writing to the CID Director, through the Death Row Unit Warden, who shall approve or disapprove the changes.

6. While completing the Religious Orientation Statement, staff shall confirm if the inmate still requests the presence of a TDCJ Chaplain or the inmate's approved spiritual advisor in the execution chamber during the inmate's scheduled execution.
  7. An inmate may request to have the inmate's body donated to the Texas State Anatomical Board for medical education and research. The appropriate paperwork shall be supplied to the inmate upon request.
- B. One Week (7 days) Before the Scheduled Execution
1. The Death Row Supervisor or the Death Row Unit Warden's designee shall notify staff (Form 4) to begin the Execution Watch Log (Form 5).
  2. The Execution Watch Log shall begin at 6:00 a.m. Central Time seven (7) days before the inmate's scheduled execution. The seven (7) day timeframe shall not include the day of the inmate's scheduled execution. The inmate shall be observed, logging the inmate's activities every 30 minutes for the first six (6) days and every 15 minutes for the remaining 36 hours.
  3. The Communications Department may request information from the

Execution Watch Log on the day of the inmate's scheduled execution.

4. The original Execution Packet and the inmate's medical file shall be sent with the inmate in the transport vehicle to the Huntsville Unit or the Goree Unit for a female inmate.
  - a. The Death Row Unit Warden shall maintain a copy of the Execution Packet on the Death Row Unit.
  - b. If there are any changes necessary to the Execution Packet, staff shall notify the CID Director's Office and the Huntsville Unit Warden's Office.

C. The Day of the Scheduled Execution

1. On the morning of the day of the scheduled execution, before final visitation, all the inmate's personal property shall be packed and inventoried. The property officer shall complete an "Inmate Property Inventory" (PROP-05) detailing each item of the inmate's property. The property officer shall also complete a "Disposition of Confiscated Inmate Property" (PROP-08) indicating the inmate's choice of disposition of personal property.
  - a. If disposition is to be made from the Huntsville Unit, a copy of the property forms shall be

maintained by the Death Row Unit Property Officer, and the original property forms shall be forwarded to the Huntsville Unit with the inmate's property.

- b. If disposition is to be made from the Death Row Unit, a copy of the property forms shall be placed in the Execution Packet, and the original forms shall be maintained on the Death Row Unit through the completion of the disposition process.
  - c. The Mountain View Unit Warden shall ensure that a female inmate brings personal hygiene and gender-specific items to the Huntsville Unit as appropriate.
2. Designated staff shall obtain the inmate's current trust fund balance and prepare the Inmate Request for Withdrawal (I-25) for completion by the inmate.
    - a. The following statement shall be written or typed on the reverse side of the 1-25 form, "In the event of my execution, please distribute the balance of my Inmate Trust Fund account as directed by this Request for Withdrawal." The inmate's name, number, signature, thumbprint, and the date and time of the inmate's signature

shall be included below this statement. Two (2) employees' names and signatures shall be printed and signed below the inmate's signature as witnesses that the inmate authorized the form.

- b. The 1-25 form shall be delivered to the Commissary and Trust Fund Department for processing by 10:00 a.m. Central Time the next business day following the completed execution.
3. The inmate shall be permitted visitation with individuals designated on the inmate's approved visitation list on the morning of the day of the scheduled execution.
  - a. Exceptions may be made to schedule as many visits as possible before the inmate is transported to the Huntsville Unit. These visits are considered "Special Visits."
  - b. Special visits (spiritual advisor, attorney(s), and individuals not on the inmate's approved visitation list) shall be approved by the Death Row or Goree Unit Warden or designee. No changes shall be made to the inmate's approved visitation list.
  - c. No media visits shall be allowed at the Goree Unit.

4. When appropriate, a male inmate shall be escorted to a holding cell at the Polunsky Unit. The Execution Transport Log for Male Inmates (Form 6) shall be initiated, and the inmate shall be prepared for transport to the Huntsville Unit. The Execution Watch Log shall be discontinued when the Execution Transport Log for Male Inmates is initiated.
5. A female inmate may be transported to the Goree Unit before the day of the inmate's scheduled execution. The Execution Transport Log for Female Inmates (Form 7) shall be initiated at the Mountain View Unit. The Goree Unit staff will initiate the Execution Watch Log upon arrival at the Goree Unit, permit visitation as appropriate, and transport the female inmate to the Huntsville Unit. The Execution Watch Log shall be discontinued, and the Execution Transport Log for Female Inmates shall resume when the female inmate departs the Goree Unit.
6. Any transportation arrangements for the inmate between units shall be known only to the Wardens involved, the CID Director, as well as those persons they designate as having a need to know. No public announcement shall be made concerning the exact time, method, or route of transfer.

7. Upon arrival at the Huntsville Unit, the inmate shall be removed from the transport vehicle and escorted by Huntsville Unit security staff into the execution holding area. The CID Director's Office and the Communications Department shall be notified immediately after the inmate arrives at the Huntsville Unit.
8. The Execution Watch Log shall immediately resume when the inmate enters the pre-execution holding area.
9. The inmate's restraints shall be removed, and the inmate shall be fingerprinted and strip-searched.
10. The inmate shall be placed in a holding cell and issued a clean set of TDCJ clothing.
11. The Huntsville Unit Warden shall be notified after the inmate has been secured in the holding cell. The Huntsville Unit Warden or designee shall interview the inmate and review the information in the Execution Packet.
12. The inmate shall be permitted visitation with a TDCJ Chaplain(s), the inmate's approved spiritual advisor, and the inmate's attorney(s) on the day of the scheduled execution at the Huntsville Unit. The Huntsville Unit Warden must approve all visits.

13. There shall be no family or media visits allowed at the Huntsville Unit.

### **III. Drug Team Qualifications and Training**

- A. The drug team shall have at least one medically trained individual. Each medically trained individual shall at least be certified or licensed as a certified medical assistant, phlebotomist, emergency medical technician, paramedic, or military corpsman. Each medically trained individual shall have one year of professional experience before participating as part of the drug team, shall retain current licensure, and shall fulfill continuing education requirements commensurate with licensure. Neither medically trained individuals nor any other members of the drug team shall be identified.
- B. Each new member of the drug team shall receive training before participating in an execution without direct supervision. The training shall consist of following the drug team through at least two (2) executions, receiving step-by-step instruction from existing team members. The new team member will then participate in at least two (2) executions under the direct supervision of existing team members. Thereafter, the new team member may participate in executions without the direct supervision of existing team members.
- C. The Huntsville Unit Warden shall review annually the training and current

licensure, as appropriate, of each drug team member to ensure compliance with the required qualifications and training.

#### **IV. Pre-execution Procedures**

- A. The Huntsville Unit Warden's Office shall serve as the communication command post, and entry to the office area shall be restricted.
- B. Inventory and Equipment Check
  - 1. Designated Huntsville Unit staff are responsible for ensuring the purchase, storage, and control of all chemicals used in lethal injection executions for the State of Texas.
  - 2. The drug team shall obtain all equipment and supplies necessary to perform the lethal injection from the designated storage area.
  - 3. An inventory and equipment check shall be conducted.
  - 4. Expiration or beyond use dates of all applicable items are to be checked on each individual item. Outdated items shall be replaced immediately.
- C. Attorney visits shall occur between 3:00 and 4:00 p.m. Central Time, and spiritual advisor visits shall occur between 3:00 and 5:00 p.m. Central Time. The attorney and spiritual advisor may not meet with the inmate at the same time. Exceptions may be granted under unusual circumstances and

must be approved by the Huntsville Unit Warden.

1. The inmate's attorney or the inmate's approved spiritual advisor must arrive at the Huntsville Unit no later than 2:30 p.m. Central Time on the day of the scheduled execution to participate in an attorney or spiritual advisor visit with the inmate.
  2. The inmate's approved spiritual advisor must arrive at the Huntsville Unit no later than 5:00 p.m. Central Time on the day of the scheduled execution to accompany the inmate in the execution chamber.
  3. The failure of an inmate's approved spiritual advisor to arrive at the Huntsville Unit before 5:00 p.m. Central Time on the day of the scheduled execution will not prevent the execution from proceeding.
- D. The inmate shall be served a last meal at approximately 5:00 p.m. Central Time.
- E. The inmate shall be afforded an opportunity to shower and shall be issued a clean set of TDCJ clothing at some time before 6:00 p.m. Central Time.

**V. Preparations for the Lethal Injection**

- A. One (1) syringe of normal saline shall be prepared by members of the drug team.

- B. The lethal injection drug shall be mixed and syringes shall be prepared by members of the drug team as follows: Pentobarbital – 100 milliliters of solution containing 5 grams of Pentobarbital.
- C. The drug team shall have available a back-up set of the normal saline syringe and the lethal injection drug in case unforeseen events make their use necessary.

**VI. Execution Procedures**

- A. After 6:00 p.m. Central Time and after confirming with the Office of the Attorney General and the Governor's Office that no further stays of execution, if any, will be imposed and that imposition of the court's order should proceed, the CID Director or designee shall give the order to escort the inmate into the execution chamber.
- B. The inmate shall be escorted from the holding cell into the execution chamber and secured to the gurney.
- C. A medically trained individual shall insert intravenous (IV) catheters into a suitable vein of the inmate. If a suitable vein cannot be discovered in an arm, the medically trained individual shall substitute a suitable vein in another part of the body but shall not use a "cut-down" procedure to access a suitable vein. The medically trained individual shall take as much time as is needed to properly insert the IV lines. The medically trained individual shall connect

an IV administration set and start a normal saline solution to flow at a slow rate through one of the lines. The second line is started as a precaution and is used only if a potential problem is identified with the primary line. The CID Director or designee, the Huntsville Unit Warden or designee, and the medically trained individual shall observe the IV lines to ensure that the rate of flow is uninterrupted.

- D. After the normal saline solution IV has been started and is running properly, the following shall occur as instructed by the Huntsville Unit Warden or designee:
1. If requested by the inmate and previously approved by the TDCJ, a TDCJ Chaplain or the inmate's approved spiritual advisor will be escorted into the execution chamber by an agency representative to observe the inmate's execution.
  2. Witnesses to the execution shall be escorted into the appropriate witness rooms.

NOTE: Any behavior by the spiritual advisor or witnesses deemed by the CID Director or designee to be disruptive to the execution procedure shall be cause for immediate removal from the Huntsville Unit.

- E. The CID Director or designee shall give the order to commence with the execution.

- F. The Huntsville Unit Warden or designee shall allow the inmate to make a brief, last statement.
- G. The Huntsville Unit Warden or designee shall instruct the drug team to induce, by syringe, substances necessary to cause death.
- H. The flow of normal saline solution through the IV shall be discontinued, and the lethal dose of Pentobarbital shall be commenced.
- I. When the entire contents of the syringe have been injected, the line shall be flushed with an injection of normal saline solution.
- J. The CID Director or designee and the Huntsville Unit Warden or designee shall observe the appearance of the inmate during application of the Pentobarbital. If, after a sufficient time for death to have occurred, the inmate exhibits visible signs of life, the CID Director or designee shall instruct the drug team to administer an additional 5 grams of Pentobarbital followed with a normal saline solution flush.
- K. At the completion of the process and after a sufficient time for death to have occurred, the Huntsville Unit Warden or designee shall direct the physician to enter the execution chamber to examine the inmate, pronounce the inmate death, and designate the official time of death. After the inmate is pronounced deceased, the spiritual advisor will be escorted from the execution

chamber, and the witnesses shall be escorted from the witness rooms.

- L. The inmate's body shall be immediately removed from the execution chamber and transported by a coordinating funeral home. Arrangements for the inmate's body shall be concluded before the execution.

#### **VII. Stays of Execution**

- A. Official notification of a stay of execution shall be delivered to the CID Director, the Death Row Unit Warden, and the Huntsville Unit Warden. Staff must not accept a stay of execution from the inmate's attorney. After the official stay of execution is received, the Death Row Unit Warden's office shall notify the unit's Chief of Classification and Death Row Supervisor.
- B. Designated staff on the Death Row Unit shall notify the inmate that a stay of execution has been received.

#### **VIII. Confidentiality of Participants**

- A. Participants in the execution process shall not be identified, nor shall their names be released to the public.
- B. Before participating in a scheduled execution, the inmate's approved spiritual advisor must sign a nondisclosure agreement and agree to keep confidential all information, including but not limited to the identities of TDCJ employees, members of the drug team, and any other participant in

the execution, obtained or learned by the inmate's approved spiritual advisor when participating in the inmate's scheduled execution.

- C. Violation of the nondisclosure agreement may subject the inmate's approved spiritual advisor to civil or criminal penalties under state law.

**IX. TDCJ Employee Orientation**

- A. TDCJ employees shall receive an orientation with the Huntsville, Goree, Polunsky, or Mountain View Unit Wardens, who shall inform the employees of TDCJ Executive Directive 06.63, "Crisis Response Intervention Support Program," (CRISP).
  - B. TDCJ employees shall be encouraged to contact the Regional CRISP Team Leader following their initial participation in the execution process.
-

**EXHIBIT 2**

**From:** Kristen Worman  
**To:** Eric Allen  
**Subject:** RE: Spiritual advisor request for Inmate Ramirez 999544  
**Date:** Thursday, June 17, 2021 11:20:10 AM

---

Mr. Allen,

At this time the Texas Department of Criminal Justice (TDCJ) does not allow the spiritual advisor to touch the inmate once inside the execution chamber. Therefore, TDCJ will not honor your client's request.

Best regards,

Kristen Worman  
TDCJ General Counsel  
(512) 475-4852

**From:** Eric Allen <eric@eallenlaw.com>  
**Sent:** Tuesday, June 8, 2021 2:48 PM  
**To:** Kristen Worman <Kristen.Worman@tdcj.texas.gov>  
**Subject:** Spiritual advisor request for Inmate Ramirez 999544

<p><b>CAUTION:</b> This email was received from an EXTERNAL source, use caution when clicking links or opening attachments. If you believe this to be a malicious and/or phishing email, please contact the Information Security Office (ISO).</p>
--

Ms. Worman,

Mr. Ramirez would like to have his spiritual advisor to be able to touch him during the execution. This laying on of hands during the final moments of a person's life has a long history in his faith. Will you allow his request?

Thank you

Eric Allen

The Law Office of Eric J. Allen, LTD

4200 Regent Street, Suite 200

Columbus, Ohio 43219

Ph: 614-443-4840 (office)

614-309-0924 (cell)

Fax: 614-473-2924

Email: [eric@eallenlaw.com](mailto:eric@eallenlaw.com)

---

**EXHIBIT 3**



Texas Department of Criminal Justice  
**STEP 2** OFFENDER  
GRIEVANCE FORM

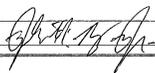
OFFICE USE ONLY	
Grievance #:	202122334
UGI Recd Date:	JUL 12 2021
HQ Recd Date:	JUN 19 2021
Date Due:	5-7-21
Grievance Code:	300
Investigator ID#:	
Extension Date:	

Offender Name: John Henry Ramirez TDCJ # 999544  
 Unit: Polunsky Housing Assignment: 12AA01  
 Unit where incident occurred: Polunsky

*You must attach the completed Step 1 Grievance that has been signed by the Warden for your Step 2 appeal to be accepted. You may not appeal to Step 2 with a Step 1 that has been returned unprocessed.*

Give reason for appeal (Be Specific). I am dissatisfied with the response at Step 1 because...

The entire issue of my Constitutional Rights being violated by TDCJ NOT allowing me to have my Spiritual Advisor "lay hands on me" at the time of my upcoming execution, WAS NOT addressed, nor remedied! The laying on of hands during a time of sickness OR at the time of death, is a practice in my Faith & denying me my religious freedoms to practice my Faith, is in direct violation of my Constitutional Rights. I am dissatisfied because I wish to have my Spiritual Advisor "lay hands on me" to pray over me during my upcoming execution.

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 Offender Signature:  Date: July 8, 2021  
 Grievance Response: \_\_\_\_\_

Signature Authority: \_\_\_\_\_ Date: \_\_\_\_\_

Returned because: \*Resubmit this form when corrections are made.

- 1. Grievable time period has expired.
- 2. Illegible/Incomprehensible.\*
- 3. Originals not submitted. \*
- 4. Inappropriate/Excessive attachments.\*
- 5. Malicious use of vulgar, indecent, or physically threatening language.\*
- 6. Inappropriate.\*

CGO Staff Signature: \_\_\_\_\_

OFFICE USE ONLY	
Initial Submission	CGO Initials: _____
Date UGI Recd: _____	
Date CGO Recd: _____	
(check one) <input type="checkbox"/> Screened <input type="checkbox"/> Improperly Submitted	
Comments: _____	
Date Returned to Offender: _____	
2 <sup>nd</sup> Submission	CGO Initials: _____
Date UGI Recd: _____	
Date CGO Recd: _____	
(check one) <input type="checkbox"/> Screened <input type="checkbox"/> Improperly Submitted	
Comments: _____	
Date Returned to Offender: _____	
3 <sup>rd</sup> Submission	CGO Initials: _____
Date UGI Recd: _____	
Date CGO Recd: _____	
(check one) <input type="checkbox"/> Screened <input type="checkbox"/> Improperly Submitted	
Comments: _____	
Date Returned to Offender: _____	

IN THE UNITED STATES DISTRICT COURT  
 FOR THE SOUTHERN DISTRICT OF TEXAS  
 CORPUS CHRISTI DIVISION

JOHN HENRY RAMIREZ,	§	
<i>Plaintiff,</i>	§	CIVIL ACTION 4:21-
v.	§	cv-2609
BRYAN COLLIER, et al.,	§	* DEATH PENALTY
<i>Defendants.</i>	§	CASE *

---

**DEFENDANTS’ SURREPLY ON PLAINTIFF’S  
 MOTION FOR A STAY OF EXECUTION**

(Filed Aug. 30, 2021)

Plaintiff John Henry Ramirez is a Texas death row inmate who is currently scheduled to be executed after 6:00 p.m. (CDT) on September 8, 2021. Ramirez filed a motion for stay of execution pending disposition of his § 1983 complaint. DE 11. Without obtaining leave of the Court, Ramirez filed a second amended § 1983 complaint, raising new and unexhausted claims. DE 12. Defendants filed a response in opposition to Plaintiff’s motion for stay of execution, DE 13, to which Plaintiff replied. DE 14. To address arguments Plaintiff raised for the first time in his reply, Defendants file the instant surreply.

**I. TDCJ's Current Protocol Allows Ramirez to Spend Up to Six Hours with His Pastor on Execution Day.**

Lost in Eastern religion and Fyodor Dostoevsky's philosophies on crime and repentance, *see* DE 14 at 3, 6, Ramirez overlooks the more relevant considerations, such as the ways in which TDCJ is accommodating his religious needs. TDCJ's current policy allows Ramirez to visit with his pastor (or his family members) from 8:00 a.m. to 12:00 p.m. at the Polunsky Unit on the morning of his execution, and then again at the Huntsville Unit from 3:00 to 5:00 p.m. prior to his execution. DE 13-1 at 7–8; DE 14 at 11. During those six hours, Ramirez's pastor may read scriptures and pray aloud with him. *See* DE 14 at 11.

**II. Ramirez's Pastor Will Be in His Immediate Presence in the Execution Chamber.**

The Supreme Court's decision to grant of a stay in *Gutierrez v. Saenz*, 141 S. Ct. 127 (2021), and refusal to vacate a stay in and *Dunn v. Smith*, 141 S. Ct. 725 (2021), turned upon prison policies that excluded an inmate's spiritual advisor from the execution chamber. Ramirez bolds, italicizes, and underlines the Court's (insignificant) language in *Gutierrez* and Justice Kagan's figure of speech in *Smith* to suggest that they turned—not on the walls between the inmate and his advisor—but on the number of inches that separated them. *See* DE 14 at 13.

From there, Ramirez asserts—in quotations—that TDCJ insists upon “substantial physical distance” between him and his pastor in the execution chamber. DE 14 at 13. But if the quotes Ramirez places around “substantial physical distance” signify anything, it is his own hyperbole, as TDCJ has not used the term in its policy or anywhere. And the size of the execution chamber exposes Ramirez’s hyperbole for what it is, as the chamber leaves no room for “substantial physical distance” between any of its occupants. As can be seen from the photographs of the chamber, Ramirez will be on a gurney in the middle of the chamber,<sup>1</sup> while his pastor stands in his “immediate physical presence” in the corner of the room. *See* Def. Exhibit 1; DE 14 at 12 (citing *Gutierrez v. Saenz*, 141 S. Ct. 127, 128 (2021)).

### **III. Both the BOP and TDCJ Impose No-Contact and No-Speaking Restrictions to Mitigate the Risk of Allowing an Outside Spiritual Advisor into the Execution Chamber.**

While repeatedly calling TDCJ’s security concerns illusory, DE 5 at 11; DE 12 at 13, Ramirez also attests

---

<sup>1</sup> These photographs were taken in 2019 and filed by Defendants as exhibits in Murphy’s and Gutierrez’s § 1983 civil-rights proceedings. Due to the last-minute nature of Ramirez’s complaint, Defendants were unable to provide a new photograph of the chamber in time to include with the instant surreply. Since the picture was taken, the gurney has been rotated 180 degrees, such that the head is against the wall. Because the size of the chamber remains the same, Defendants believe this photograph is adequate for the limited purpose they present it for.

to his pastor’s willingness to submit to further screening measures to address those concerns. DE 12 at 9–10, 13. Now, in his reply brief, Ramirez reveals that his pastor has already breached the only promise that he has had the opportunity to breach: Pastor Moore signed a non-disclosure agreement on August 26, 2021, in which he represented he would “not disclose any information, including but not limited to the identities of [TDCJ] employees” learned “through [his] participation as a spiritual advisor in [Ramirez’s] execution.” DE 14 at 8. And yet, upon signing the agreement, Pastor Moore sent a photograph of it to counsel, complete with the printed name and signature of a TDCJ employee he learned of during his participation at the orientation (that counsel was not allowed to attend).<sup>2</sup> See DE 14 at 7. While Ramirez is sure to claim that TDCJ has no interest in protecting the anonymity of its employees who play a role in the process, it is not up to him or his pastor to violate protocol if they perceive the risk to be benign. Pastor Moore signed a nondisclosure agreement and then did precisely what its terms forbid. His violation of the agreement raises questions about his trustworthiness in complying with TDCJ’s prohibitions against physical contact and audible prayer in the execution chamber—which are also

---

<sup>2</sup> Apparently eager to disclose the name of a second “witness,” Ramirez explains that he cannot because the name is illegible “in its cursive signature.” DE 14 at 7. The nondisclosure agreement reflects, however, that there was only one witness who signed his name and then printed it, as such documents typically call for. See DE 14 at 8

driven by security interests Ramirez does not respect. *See, e.g.*, DE 5 at 11; DE 12 at 13.

Whether Ramirez believes it or not, prisons have a strong interest in “controlling access to” their execution chambers and in ensuring “that the execution occurs without any complications, distractions, or disruptions.” *Murphy v. Collier*, 139 S. Ct. 1475, 1475-76 (2021) (Kavanaugh, J., concurring); *see also* Order on Security Concerns Associated with Outside Spiritual Advisor’s Presence in Chamber at 19, 24, *Gutierrez v. Saenz*, No. 1:19-cv-185, DE 124. Indeed, all five of the Justices who have written or signed an opinion on the issue have acknowledged that allowing an outsider into the execution chamber poses a security risk. *See Murphy*, 139 S. Ct. at 1475–76 (Kavanaugh, J., concurring); *Smith*, 141 S. Ct. at 725–26 (Kagan, J., concurring, joined by Breyer, J., Sotomayor, J., and Barrett, J.) and (Kavanaugh, J., dissenting); *accord Gutierrez*, at 19 (recognizing that “precaution requires precisely crafted policy” for executions). To mitigate the risk, the Justices have offered potential solutions, sanctioning the BOP’s execution policy as one of them. *Id.*

Following the Justices’ advice, TDCJ implemented its current policy, which tracks the BOP’s risk-mitigation protocol for executions involving outside spiritual advisors in the chamber. Where the BOP prohibits outside advisors from making physical contact with an inmate prior to and during his execution, so too does TDCJ. *Compare* Order on Security Concerns Associated with Outside Spiritual Advisor’s Presence in Chamber at 13, *Gutierrez v. Saenz*, No. 1:19-cv-185, DE

124 (citing BOP memorandum indicating spiritual advisor will not be allowed to touch inmate upon entering execution chamber and is subject to removal for any disruptive physical contact), *with* DE 13-2 (declining Ramirez’s request for his pastor to touch him “during [his] execution”). Where the BOP prohibits outside advisors from verbally disrupting the execution, Ramirez calls TDCJ’s similar prohibition an “unholy trinity of constitutional violations.” *Compare* Order on Security Concerns Associated with Outside Spiritual Advisor’s Presence in Chamber at 13, *Gutierrez*, No. 1:19-cv-185, DE 124, *with* DE 14 at 11.<sup>3</sup> And where the BOP warns that a spiritual advisor’s violation of either of these rules will result in his removal from the execution chamber, Ramirez claims TDCJ’s warning on same evinces its intent to “hide” its unconstitutional policy.” DE 14 at 9. Finally, where Justice Kagan suggested that states might mitigate risks by requiring outside advisors to take a penalty-backed pledge before entering the chamber,<sup>4</sup> Ramirez asserts that TDCJ cannot “get away with” requiring his pastor do so. According to Ramirez, a penalty-backed pledge is really a “religious gag order” that “violat[es] the First Amendment’s

---

<sup>3</sup> The Director notes that the claims Ramirez raises in his second amended complaint must be dismissed, as he has not exhausted administrative remedies therefor. *See* DE 12; 42 U.S.C. § 1997e(a). *Booth v. Churner*, 532 U.S. 731, 739, 740–40 n.6 (2001); *see Gonzalez v. Seal*, 702 F.3d 785, 788 (5th Cir. 2012) (citing *Woodford v. Ngo*, 548 U.S. 81 (2006)); *Jones v. Bock*, 549 U.S. 199 (2007)).

<sup>4</sup> *Dunn v. Smith*, 141 S. Ct. at 726 (Kagan, J., concurring).

religious protections by violating its free speech protections.” DE 14 at 9–10.

To substantiate his allegations of a constitutional violation, Ramirez needs more than biblical analogies and hyperbole. He needs a policy less restrictive than the one he complains of. DE 14 at 11.<sup>5</sup> Because he offers none, the Court is left again with TDCJ’s and the BOP’s policies. Both mitigate the risk of an outsider’s presence in the chamber by imposing physical contact and verbal restrictions that preclude the accommodations Ramirez seeks. Ramirez fails to acknowledge the BOP’s policy at all, much less that it is, in all relevant parts, the same as the one he complains of. If TDCJ is imposing an “unholy trinity of constitutional violations” as he alleges, then the BOP must also be. The Justices’ recent discussion of the BOP’s policy, however, leaves a different impression, as they cite it as the “less restrictive” model policy that effectively mitigates the risk of an outsider’s presence in the chamber (through its restrictions). If the Justices knew of a policy less restrictive than the BOP’s, none mentioned it. *See Smith*, 141 S. Ct. at 725–26. And because Ramirez does not either, he fails to establish a single—much less triple—constitutional violation based on TDCJ’s policy imposing the same restrictions.

---

<sup>5</sup> He also needs to and fails to show that TDCJ’s policy substantially burdens his religious exercise. *See* DE 13 at 10.

**CONCLUSION**

For these reasons, Plaintiff's request for a stay should be denied.

Respectfully submitted,

KEN PAXTON  
Attorney General of Texas

BRENT WEBSTER  
First Assistant  
Attorney General

JOSH RENO  
Deputy Attorney General  
For Criminal Justice

EDWARD L. MARSHALL  
Chief, Criminal  
Appeals Division

s/ Jennifer Wren Morris  
JENNIFER WREN MORRIS  
Assistant Attorney General  
State Bar No. 24088680  
Southern District No. 2237541

P.O. Box 12548, Capitol Station  
Austin, Texas 78711  
Tel.: (512) 936-1400

Fax: (512) 320-8132  
email: jennifer.wren@  
oag.texas.gov

*Counsel for Defendants*

---

AFFIDAVIT FOR PROVE-UP OF PHOTOGRAPHS

EXHIBIT 1

AFFIDAVIT FOR PROVE-UP OF PHOTOGRAPHS

THE STATE OF **TEXAS** §

COUNTY OF **WALKER** §

BEFORE ME, the undersigned authority, on this day personally appeared Jeremy Desel, who, being by me duly sworn, deposed as follows:

My name is Jeremy Desel and I am an employee of the Texas Department of Criminal Justice (TDCJ), a governmental agency. I am over 21 years of age, of sound mind, capable of making this affidavit, and personally acquainted with the facts herein stated.

I have personally observed the TDCJ Executive Chamber at the Huntsville Unit on many occasions and am familiar with the layout and proportions. The attached photographs are true and accurate representation of the TDCJ Execution Chamber as it exists today. The photographs depict the gurney in the chamber, the plexiglass windows separating the execution chamber from the two adjacent viewing rooms, and photographs taken from inside the offender witness viewing room looking into the execution chamber. The photograph taken from inside the offender witness viewing room looking into the execution chamber depicts the gurney and the back wall of the execution chamber.

I declare under penalty of perjury that the foregoing is true and correct.

“Further Affiant sayeth not.”

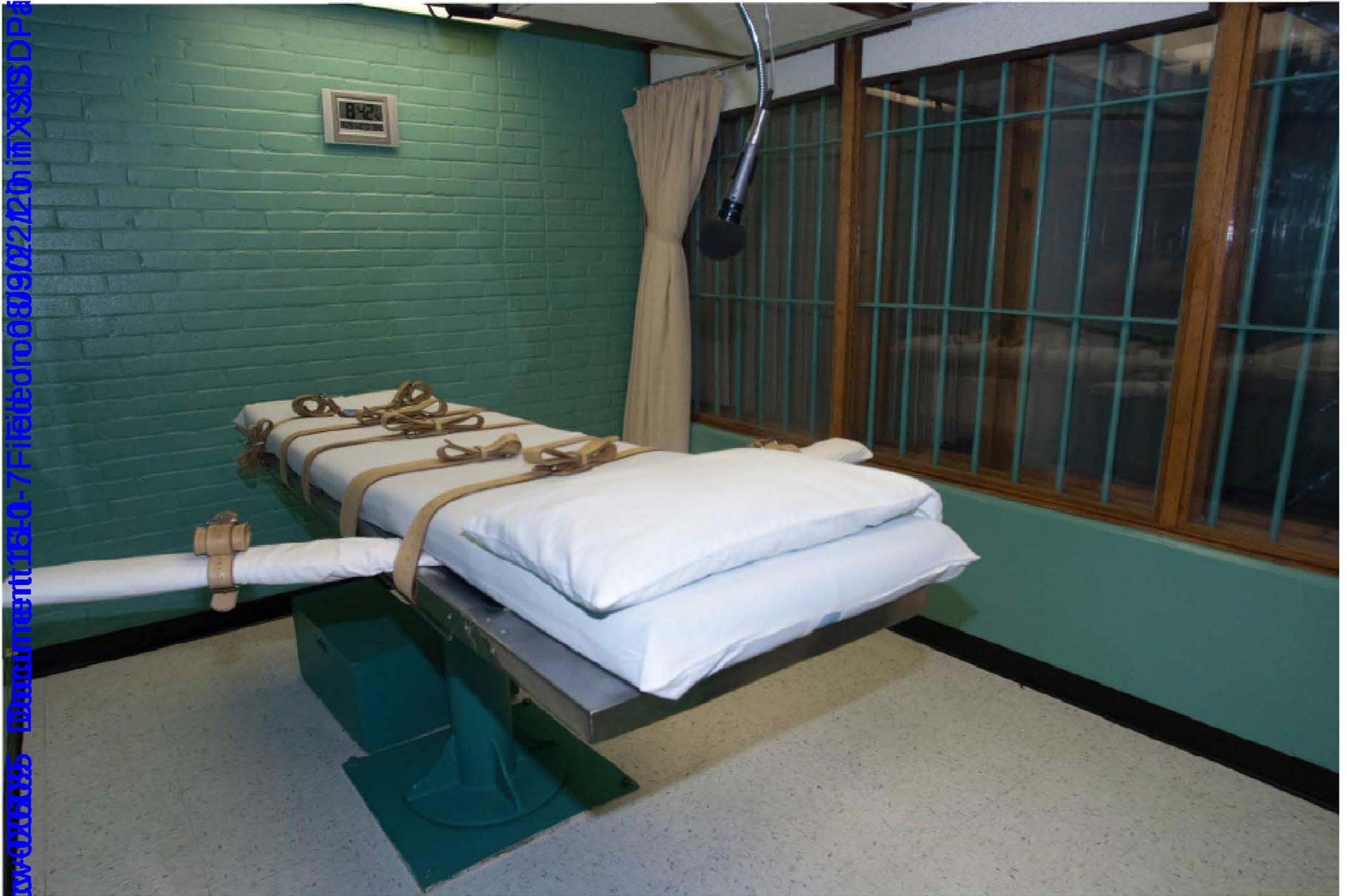
/s/ Jeremy Desel  
**Jeremy Desel**  
Director  
Communications, EAS  
Texas Department of  
Criminal Justice

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned notary public, on the 10th day of July, 2019.

/s/ Ashley Dixon  
\_\_\_\_\_  
NOTARY PUBLIC,  
STATE OF TEXAS  
Ashley Dixon  
Notary’s Printed Name  
My Commission Expires:  
10/12/2020

ASHLEY DIXON  
Notary Public-  
State of Texas  
[SEAL] Notary ID  
#12592190-2  
Commission Exp.  
OCT. 12, 2020

\_\_\_\_\_



Gutierrez Defs' Exh. F 002 Murphy 1733





**Gutierrez Defs' Exh. F    004    Murphy 1736**

AFFIDAVIT FOR PROVE-UP OF PHOTOGRAPHS

(Filed Aug. 31, 2021)

THE STATE OF TEXAS    §  
  §  
COUNTY OF WALKER    §

BEFORE ME, the undersigned authority, on this day personally appeared Jeremy Desel, who, being by me duly sworn, deposed as follows:

“My name is Jeremy Desel and I am an employee of the Texas Department of Criminal Justice (TDCJ), a governmental agency. I am over 21 years of age, of sound mind, capable of making this affidavit, and personally acquainted with the facts herein stated.

I have personally observed the TDCJ Execution Chamber at the Huntsville Unit on many occasions, and I am familiar with the layout and proportions. The attached photographs are true and accurate representations of the TDCJ Execution Chamber as it exists today. The photographs depict the gurney in the chamber and the plexiglass windows separating the execution chamber from the two adjacent viewing rooms. These photographs were taken from inside the execution chamber.

I declare under penalty of perjury that the foregoing is true and correct.

Further Affiant sayeth not.”

/s/ Jeremy Desel  
**Jeremy Desel**  
Director  
Communications, EAS  
Texas Department of  
Criminal Justice

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned notary public, on the 31st day of August, 2021.

[SEAL] 

KARA ELAINE COFFEY Notary Public- State of Texas Notary ID #12877829-6 Commission Exp. OCT. 19, 2023
---

 /s/ Kara Elaine Coffey  
NOTARY PUBLIC,  
STATE OF TEXAS  
Kara Elaine Coffey  
Notary's Printed Name  
My Commission Expires:  
10/19/2023  
Notary without Bond

\_\_\_\_\_







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

JOHN HENRY RAMIREZ,	§	
<i>Plaintiff,</i>	§	
v.	§	CIVIL ACTION NO.
BRYAN COLLIER, et al.,	§	H-21-2609
<i>Defendants.</i>	§	

**ORDER DENYING STAY OF EXECUTION**

(Filed Sep. 2, 2021)

In 2008, a Texas jury convicted John Ramirez of capital murder for killing Pablo Castro. As part of a robbery spree to get money for drugs, Ramirez confronted Castro outside a convenience store in Corpus Christi, stabbed him 29 times, and then robbed him of \$1.25. *See Ramirez v. Stephens*, 641 F. App'x 312, 314 (5th Cir. 2016). For over a decade, Ramirez has challenged his conviction and sentence in state and federal court. The State of Texas has set an execution date of September 8, 2021. No litigation remains pending that challenges the state court judgment against Ramirez.

Ramirez has filed a lawsuit under 42 U.S.C. § 1983 alleging that Texas will execute him in a manner that will violate his religious rights. (Docket Entry No. 1). TDCJ previously had a policy of excluding all spiritual advisors from the execution chamber itself. In response to litigation, TDCJ implemented its current policy of allowing an outside spiritual advisor in the execution

chamber, but requiring that the advisor not touch the prisoner or pray out loud.

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 the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc, et seq. (“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. Specifically, Ramirez has filed suit because he would like his chosen spiritual advisor—Pastor Dana Moore, an ordained Christian minister at Second Baptist Church in Corpus Christi, Texas—to lay his hands on Ramirez and pray with him during the execution.

Ramirez has moved to stay his execution. (Docket Entry No. 11). The Defendants oppose Ramirez’s motion. (Docket Entry Nos. 13, 18). For the reasons discussed below, the Court will **DENY** Ramirez’s motion.

### **I. Stay of Execution Standard**

Given the short time remaining, this case can only proceed if this Court intervenes in the State’s execution of its otherwise-valid judgment against Ramirez. A prisoner condemned to death, however imminent that death may be, has no automatic entitlement to a stay of execution. *See McFarland v. Scott*, 512 U.S. 849, 858 (1994). “A stay of execution is an equitable remedy that is not available as a matter of right.” *Wood v. Collier*, 836 F.3d 534, 538 (5th Cir. 2016). A court

considering a motion to stay an execution must consider the four factors outlined in *Nken v. Holder*, 556 U.S. 418 (2009): “(1) whether the movant has made a showing of likelihood of success on the merits, (2) whether the movant has made a showing of irreparable injury if the stay is not granted, (3) whether the granting of the stay would substantially harm the other parties, and (4) whether the granting of the stay would serve the public interest.” *In re Campbell*, 750 F.3d 523, 534 (5th Cir. 2014) (quotation omitted).

## II. The Law

Ramirez claims he will be executed under conditions that violate RLUTPA and the First Amendment. RLUTPA provides in part: “No government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution,” unless the burden furthers “a compelling governmental interest,” and does so by “the least restrictive means.” RLUTPA “alleviates exceptional government-created burdens on private religious exercise.” *Cutter v. Wilkinson*, 544 U.S. 709, 720 (2005). Specifically, RLUTPA states:

No government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution, as defined in section 1997 of this title, even if the burden results from a rule of general applicability, unless the government demonstrates that imposition of the burden on that person-

- (1) is in furtherance of a compelling governmental interest; and

- (2) is the least restrictive means of furthering that compelling governmental interest.

42 U.S.C. § 2000cc-1(a). RLUIPA “alleviates exceptional government-created burdens on private religious exercise,” without “elevat[ing] accommodation of religious observances over an institution’s need to maintain order and safety.” *Cutter*, 544 U.S. at 720.

Ramirez also claims that the prison policy violates his rights under the Free Exercise Clause of the First Amendment. Courts in this circuit look to the reasonableness test from *Turner v. Salley*, 482 U.S. 78 (1987) to decide such claims. See *Gutierrez v. Saenz*, 818 F. App’x 309, 313 (5th Cir. 2020); *Brown v. Collier*, 929 F.3d 218, 243 (5th Cir. 2019). Under *Turner*, a court considers:

- (1) whether a “valid, rational connection [exists] between the prison regulation and the legitimate governmental interest put forward to justify it,”
- (2) whether there exist “alternative means of exercising the fundamental right that remain open to prison inmates,”
- (3) what “impact accommodation of the asserted constitutional right will have on guards and other inmates, and on the allocation of prison resources generally,” and
- (4) whether there is an “absence of ready alternatives” to the regulation in question.

*Adkins v. Kaspar*, 393 F.3d 559, 564 (5th Cir. 2004) (quoting *Turner*, 482 U.S. at 89-90).

### III. Analysis

Ramirez has not shown that a stay of execution is appropriate in this case. Of the stay-of-execution factors, the likelihood of success is often “the most critical.” *Nken*, 556 U.S. at 434. Courts describe the movant’s burden as requiring a “strong” or “substantial” likelihood of success. *See In re Garcia*, 756 F. App’x 391, 396 (5th Cir. 2018); *Sells v. Livingston*, 561 F. App’x 342, 343 (5th Cir. 2014); *Sepulvado v. Jindal*, 729 F.3d 413, 417 (5th Cir. 2013). Ramirez has not met that burden.

The parties focus much of their briefing on Ramirez’s RLUIPA claim. RLUIPA provides in part that: “No government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution,” unless the burden furthers “a compelling governmental interest,” and does so by the “least restrictive means.” *Cutter*, 544 U.S. at 720 (quoting 42 U.S.C. § 2000cc-1(a)(1)-(2)). Ramirez’s pleadings do not give any reason to doubt his sincerely held religious beliefs. The parties debate whether TDCJ’s limitations on Ramirez’s spiritual advisor substantially burden his religious observance. In particular, the Defendants argue that Ramirez has not shown that TDCJ policy “creates a ‘substantial burden’ on a religious exercise [that] truly pressures [him] to significantly modify his religious behavior and significantly violate his religious beliefs.” *Adkins*, 393 F.3d at 567.

The recent changes in TDCJ policy accommodate Ramirez’s religious needs. Ramirez may visit with his spiritual advisor for several hours on the day of his

execution. During that time, Ramirez may pray aloud with his pastor. TDCJ's policy allows his pastor to stand in his presence while the execution team carries out Ramirez's sentence. Ramirez has not identified any case requiring more or specifically finding a right to vocal prayer and holding the condemned man's hand during an execution.

The Defendants argue that the current TDCJ policy serves a "a compelling governmental interest"—minimizing risk and maintaining order during the execution procedure—and that it "is the least restrictive means of furthering that compelling governmental interest." TDCJ has a compelling interest in maintaining an orderly, safe, and effective process when carrying out an irrevocable, and emotionally charged, procedure. Prison administrators understandably create intricate and exacting execution protocols to minimize the unknowns and reduce risk. Issues of prison administration are "peculiarly within the province and professional expertise of corrections officials, and, in the absence of substantial evidence . . . that the officials have exaggerated their response to these considerations, courts should ordinarily defer to their expert judgment in such matters." *Pell v. Procunier*, 417 U.S. 817, 827 (1974); see also *O'Lone v. Estate of Shabazz*, 482 U.S. 342, 349 (1987) ("[W]e have often said that evaluation of penological objectives is committed to the considered judgment of prison administrators. . . .").

Prison officials have a strong interest in "controlling access to" their execution chambers and in ensuring "that the execution occurs without any

complications, distractions, or disruptions.” *Murphy v. Collier*, 139 S. Ct. 1475, 1475-76 (2021) (Kavanaugh, J., concurring). TDCJ will accommodate Ramirez’s religious beliefs by giving Ramirez access to his pastor on the day of execution and allowing him to stand nearby during the execution. As argued by the Defendants, further calling into question the prison officials’ decisions about the execution process would entangle courts “in the minutia of a highly sensitive and secure process that requires elevated control and precision by prison administrators.” (Docket Entry No. 13 at 15).

Concerns about maintaining precise order in the execution chamber are not hypothetical. The course of this lawsuit has already raised serious questions about whether Ramirez’s spiritual advisor will abide by TDCJ’s physical contact and verbal restrictions. TDCJ policy requires an inmate’s chosen spiritual advisor to sign an agreement to “not disclose any information, including but not limited to the identities of [TDCJ] employees” learned “through [his] participation as a spiritual advisor in [Ramirez’s] execution.” (Docket Entry No. 14 at 8). Pastor Moore, however, took a photograph of the agreement—which contained the name of a TDCJ employee—and sent it to Ramirez’s attorney, Seth H. Kretzer. Mr. Kretzer then intentionally included that photograph in a public court filing. (Docket Entry No. 14 at 7).<sup>1</sup> The Defendants now properly argue: “His violation of the agreement raises

---

<sup>1</sup> At the Defendants’ request, and over Kretzer’s objection, the Court sealed the document due to such unauthorized disclosure.

questions about his trustworthiness in complying with TDCJ's prohibitions against physical contact and audible prayer in the execution chamber—which was also driven by security interests Ramirez does not respect.” (Docket Entry No. 15 at 4).

Even if Ramirez could demonstrate that TDCJ's current protocol imposes a substantial burden on his religious exercise, he has not made a strong showing that it is not the “least restrictive means” of furthering its compelling interests. *Cutter*, 544 U.S. at 720. The Court finds that Ramirez has not made a strong or substantial showing of success on his RLUIPA claim.

For the same reasons discussed above, Ramirez has not met the first *Nken* factor regarding his First Amendment claim. TDCJ's protocol is rationally related to its legitimate penological interest in security and in an orderly execution process. The Court finds that Ramirez has not made a strong showing of a potential First Amendment violation. In sum, the Court finds that Ramirez has not met the first *Nken* factor.

The remaining *Nken* factors do not tip the scales in his favor. By not making a strong showing that his claims have merit, Ramirez has likewise not shown a possibility of irreparable injury. Granting of a stay would harm the Defendants by disallowing the execution of an otherwise-valid judgment against Ramirez in a timely manner. Finally, while the “[p]ublic interest is never served by a state's depriving an individual of a constitutional right,” *Kite v. Marshall*, 454 F. Supp. 1347, 1351 (S.D. Tex. 1978), the public has an “in timely

enforcement of the death sentence.” *United States v. Vialva*, 976 F.3d 458, 462 (5th Cir. 2020). The Court, therefore, finds that Ramirez has not shown entitlement to a stay of his execution.

#### **IV. Conclusion**

For the reasons discussed above, the Court DENIES Ramirez’s motion to stay his execution. (Docket Entry No. 11).

SIGNED at Houston, Texas, on this the 2 day of September, 2021.

/s/ David Hittner  
DAVID HITTNER  
United States District Judge

---

United States Court of Appeals  
for the Fifth Circuit

---

No. 21-70004

---

JOHN H. RAMIREZ,

*Plaintiff—Appellant,*

*versus*

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,

*Defendants—Appellees.*

---

Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 4:21-CV-2609

---

(Filed Sep. 6, 2021)

Before OWEN, *Chief Judge*, HIGGINBOTHAM and DENNIS,  
*Circuit Judges.*

PER CURIAM:

John Henry Ramirez was convicted in a Texas state court of capital murder and was sentenced to death. He exhausted his state-court appeals, then sought and was denied habeas corpus relief in the state and federal courts. The State of Texas set an execution

date of September 8, 2021. Ramirez has filed suit under 42 U.S.C. § 1983, contending that the manner in which Texas plans to execute him will violate the Free Exercise Clause of the First Amendment and the Religious Land Use and Institutionalized Persons Act of 2000 (“RLUIPA”).<sup>1</sup> Ramirez sought a stay of his execution, and the district court denied that motion. Ramirez has appealed.

We DENY the motion for a stay of execution.

---

PRISCILLA R. OWEN, *Chief Judge*, concurring:

I concur in the denial of the motion to stay the execution.

With regard to Ramirez’s claims that his rights under the Free Exercise Clause of the First Amendment will be violated, I agree with the analysis in JUDGE DENNIS’s opinion and in the district court’s Order Denying Stay of Execution. The district court did not abuse its discretion in concluding that Ramirez failed to establish a likelihood of success on the merits of his First Amendment claims.<sup>2</sup>

I part company with JUDGE DENNIS’s opinion as to Ramirez’s claims under the Religious Land Use and Institutionalized Persons Act of 2000 (“RLUIPA”).<sup>3</sup> As

---

<sup>1</sup> 42 U.S.C. §§ 2000cc *et seq.*

<sup>2</sup> Slip Op. at 8.

<sup>3</sup> 42 U.S.C. §§ 2000cc *et seq.*

JUDGE HIGGINBOTHAM’s opinion explains, the administration of the drugs to cause demise is far from simple.

I note additionally that the State has asserted in its briefing that the Federal Bureau of Prisons (“BOP”) does not permit spiritual advisors to have physical contact with a person condemned to death while the advisor is present in an execution chamber during an execution, and the BOP places restrictions on verbal communications by spiritual advisors while in the execution chamber. Given the time constraints under which our court is operating, I have not been able to locate documentation of the State’s assertions. But Ramirez has had the opportunity to challenge those assertions in the district court and in this court and has not done so. Ramirez has not pointed to any jurisdiction in which spiritual advisors are permitted to have physical contact with a person while he or she is executed, or any jurisdiction that permits a spiritual adviser, while in the death chamber during the actual execution process, to talk to the prisoner or otherwise vocalize. Courts, including the Supreme Court, often consider practices and policies implemented in state and federal prisons in conducting a least-restrictive-means analysis.<sup>4</sup> The State met its

---

<sup>4</sup> See, e.g., *Dunn v. Smith*, 141 S.Ct. 725, 726 (2021) (KAGAN, J., concurring in the denial of an application to vacate an injunction) (“In the last year, the Federal Government has conducted more than 10 executions attended by the prisoner’s clergy of choice—exactly what Smith requests.”); *id.* at 726-27 (KAVANAUGH, J., dissenting from the denial of an application to vacate an injunction) (“[I]t seems apparent that States that want to

burden of establishing that its current policy regarding spiritual advisers is the least restrictive means of furthering its compelling government interest “in maintaining an orderly, safe, and effective process when carrying out an irrevocable, and emotionally charged, procedure.”<sup>5</sup>

I also note that in Ramirez’s prior 42 U.S.C. § 1983 suit, he asserted that “Pastor Moore need not touch [Ramirez] at any time in the execution chamber.” Ramirez’s present demand that Pastor Moore be permitted to lay hands on him throughout the execution process and until death has occurred, raises the concern that Ramirez’s change in position has been asserted to delay his execution. Though I do not doubt the sincerity of Ramirez’s religious beliefs or those of his pastor, the shifting of Ramirez’s litigation posture indicates that the change in position is strategic and that delay is the goal. I do not doubt that Ramirez desires his spiritual adviser to touch him and to pray with and over him until Ramirez’s life is ended. But to raise this desire as a constitutional or statutory violation after previously disavowing the need for physical contact during the execution process means that the district court’s exercise of discretion was not an abuse of that discretion.

---

avoid months or years of litigation delays because of this RLUIPA issue should figure out a way to allow spiritual advisers into the execution room, as other States and the Federal Government have done.”).

<sup>5</sup> Slip. Op. at 6.

HIGGINBOTHAM, J. concurring in the denial of the motion for a stay of execution.

John Henry Ramirez claims that denial of his request to allow his spiritual advisor to lay his hands on him during his execution by lethal injection violates his rights under the Religious Land Use and Institutionalized Persons Act of 2000 (“RLUIPA”).<sup>6</sup> Such denials are reviewed under a standard of strict scrutiny requiring the state to employ the least restrictive means to further a compelling governmental interest.

TDCJ revised its Execution Procedure on April 21, 2021 to allow spiritual advisors to be present in the execution chamber but does not allow them to physically touch prisoners in the execution chamber.<sup>7</sup> Looking at the execution procedure implemented by Texas along with the procedures of the Federal Bureau of Prisons (“BOP”) and other states with death by lethal injection, we find a nigh universal reluctance to allow individuals access to the execution chamber beyond the medical team—persons immediately required for medical and security purposes.<sup>8</sup> Mindful that the

---

<sup>6</sup> 42 U.S.C. § 2000cc *et seq.*

<sup>7</sup> Texas Department of Criminal Justice, Correctional Institutions Division, Execution Procedure (Apr. 21, 2021).

<sup>8</sup> *See* 28 C.F.R. § 26.4 (2020); Nevada Department of Corrections, Execution Manual (Jun. 9, 2021); Idaho Department of Correction, Execution Procedure (Mar. 30, 2021); North Carolina Department of Public Safety, Execution Procedure Manual for Single Drug Protocol (Oct. 24, 2013); State of Louisiana Department of Public Safety and Corrections, Field Operations Adult Institutions Death Penalty (Mar. 12, 2014).

execution chamber is the last step. A prisoner is prepared for the execution chamber in an adjacent room. There he is undressed (shorts and socks) and placed on a gurney. Here spiritual advisors are allowed but not in the execution chamber. This is the general statutory response: prisoners have access to spiritual advisors. Texas went further in not only allowing the prisoner to be with a spiritual advisor for the two hours leading up to the execution in the first chamber but also allowing the spiritual advisor to be present in the execution chamber itself albeit only hands of the medical team touch the prisoner.

While lethal injection may seem straightforward, the actual administration of the drugs and pronouncement of death is both delicate and fraught with difficulties as evidenced by the responses of regulatory bodies and the experience of this Court with mishaps in execution by lethal injection. The Texas Execution Procedure demonstrates the logistical complexities involved, setting forth a detailed schedule for the weeks and days leading up to an execution and requirements for the medical personnel present with precise detail of each step of the medical team. In short, the complexities attending the administration of drugs in the execution procedure and its failures expose the risks of non-medical hands on the body of a person undergoing the procedure. This is plainly a humane effort with constitutional footing with steps long side those of spiritual needs. But of course the state must also demonstrate that there is not an alternative means of

serving its compelling interest. No hands means no hands.

I concur in the order denying the stay of execution.

---

JAMES L. DENNIS, *Circuit Judge*, dissenting:

Texas inmate John Henry Ramirez is scheduled to be executed on September 8, 2021. Currently, Ramirez has pending in district court a § 1983 lawsuit challenging the Texas Department of Criminal Justice’s (“TDCJ”) current execution policy (“the policy”). Ramirez asserts that, pursuant to the policy, he will be executed in a manner that violates his religious rights. Under the policy, Ramirez’s spiritual advisor, Pastor Dana Moore, will be permitted to be present in the execution chamber during Ramirez’s execution. However, Pastor Moore will not be permitted to (1) audibly pray, or (2) physically touch Ramirez to confer ministrations and a spiritual blessing upon him. Ramirez contends that audible prayer and physical touch are components of his religious faith and that the policy prohibiting him from exercising these practices violates his rights under the First Amendment’s Free Exercise Clause and the Religious Land Use and Institutionalized Persons Act (RLUIPA). On August 18, 2021, Ramirez filed a motion for a stay of execution in the district court. On September 2, 2021, the district court denied Ramirez’s motion.

Today, the majority affirms that decision and denies Ramirez a stay. In doing so, the majority fails to follow the most recent Supreme Court guidance in this evolving area. 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. I would grant a stay of execution and remand the case for further proceedings. Therefore, I dissent from the court’s denial of Ramirez’s motion for a stay of execution.

### I.

In 2008, Ramirez was convicted by a Texas jury of capital murder and sentenced to death. *See generally Ramirez v. Stephens*, 641 F. App’x 312, 314 (5th Cir. 2016). Relevant to this appeal, on February 5, 2021, the execution date of September 8, 2021 was set. On April 21, 2021, TDCJ adopted the policy. On August 10, 2021, Ramirez filed the instant lawsuit under 42 U.S.C. § 1983 challenging the policy.

### II.

An inmate’s filing of a § 1983 action does not result in a stay of execution as a matter of course. *Hill v. McDonough*, 547 U.S. 573, 583–84 (2006). “[A] stay of execution is an equitable remedy.” *Id.* at 584. “The party requesting a stay bears the burden of showing that the circumstances justify an exercise of [judicial] discretion.” *Nken v. Holder*, 556 U.S. 418, 433–34 (2009). “In deciding whether to grant a stay of execution, the

district court was required to consider four factors: ‘(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.’” *Green v. Thaler*, 699 F.3d 404, 411 (5th Cir. 2012) (quoting *Nken*, 556 U.S. at 434). The first two factors are the most significant. *Nken*, 566 U.S. at 434.

### III.

The district court determined that Ramirez was not entitled to a stay either as to his Free Exercise Clause claim or his RLUIPA claim. While I agree that Ramirez is not entitled to a stay on his Free Exercise Clause claim under the deferential standard established by the Supreme court in *Turner v. Safley*, 482 U.S. 78 (1987), I strongly disagree that Ramirez has not shown his entitlement to a stay as to his RLUIPA claim. Therefore, unlike the majority, I would grant a stay of execution and remand for the district court to consider the merits of Ramirez’s challenge.

RLUIPA grants “expansive protection for religious liberty,” affording an inmate with “greater protection” than the Supreme Court’s relevant First Amendment precedents. *Holt v. Hobbs*, 574 U.S. 352, 358, 361 (2015). RLUIPA provides that the government shall not “impose a substantial burden” on an inmate’s “religious exercise” unless the government shows that

imposing such a burden can withstand strict scrutiny, meaning the policy “(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.” 42 U.S.C. § 2000cc-1(a). Importantly, RLUIPA utilizes a burden-shifting framework. *Holt*, 574 U.S. at 360–62. First, the inmate, Ramirez, bears the initial burden of showing that a government policy substantially burdens his religious exercise. *Id.* at 360–61. If he does so, then the burden shifts to the State to show that its policy can withstand RLUIPA’s strict scrutiny standard. *Id.* at 362. The Supreme Court has characterized this standard as “exceptionally demanding.” *Id.* at 364. “[I]f a less restrictive means is available for the Government to achieve its goals, the Government must use it.” *Id.* at 365 (alteration in original).

#### A.

Under RLUIPA, “religious exercise” is defined broadly to include “any exercise of religion, whether or not compelled by, or central to, a system of religious belief.” 42 U.S.C. § 2000cc-5(7)(A). “[A] prisoner’s request for an accommodation must be sincerely based on a religious belief and not some other motivation.” *Holt*, 574 U.S. at 360–61. Ramirez’s receipt of audible prayer and physical touching by a pastor to convey a spiritual blessing when death is imminent are clearly “exercise[s] of religion,” and, like the district court, I see no reason to question the sincerity of Ramirez’s religious beliefs.

The next question is whether the TDCJ policy results in a substantial burden on that religious exercise. Recently, the Supreme Court has considered a number of cases regarding spiritual advisors and executions. See *Dunn v. Ray*, 139 S. Ct. 661 (2019); *Murphy v. Collier*, 139 S. Ct. 1475 (2019); *Gutierrez v. Saenz*, 141 S. Ct. 127 (2020); *Dunn v. Smith*, 141 S. Ct. 725 (2021). The two most recent cases—*Gutierrez v. Saenz* and *Dunn v. Smith*—address spiritual advisor claims brought pursuant to RLUIPA and are especially relevant to this case. In both cases, the Supreme Court addressed policies—one in Texas and one in Alabama—that prohibited the presence of any spiritual advisor in the execution chamber. Of course, Ramirez’s challenge to the current TDCJ policy is related, though not identical, to Gutierrez’s or Smith’s; after the *Gutierrez* case, Texas changed its policy to allow the presence of a spiritual advisor in the execution chamber. Regardless, because the material facts in all three cases are substantially similar, both *Gutierrez* and *Smith* support the conclusion that Ramirez has made a strong showing that the current policy imposes a substantial burden on his religious exercise.

In *Gutierrez*, a panel of our court vacated the district court’s grant of a stay of execution. The panel determined that, while a policy prohibiting the presence of a spiritual advisor in the execution chamber may have “denied the final measure of spiritual comfort that might be available,” such a policy “does not rise to the level of a substantial burden on religious exercise if it merely prevents the adherent from enjoying some

benefit that is not otherwise generally available.” *Gutierrez v. Saenz*, 818 F. App’x 309, 314–15 (citing *Adkins v. Kaspar*, 393 F.3d 559, 571 (5th Cir. 2004), *vacated*, 141 S. Ct. 1260 (2021)). Days later, the Supreme Court granted Gutierrez a stay and directed the district court in that case to make factual findings regarding “whether serious security problems would result if a prisoner facing execution is permitted to choose the spiritual adviser the prisoner wishes to have in his immediate presence during the execution.” *Gutierrez*, 141 S. Ct. at 127.

The Court did not provide reasons. However, the grant of a stay and the scope of the Court’s directive to the district court strongly suggests that the Court determined that Gutierrez had satisfied his initial burden of showing a substantial burden on his religious exercise. After the district court made findings that no security problem would result, the Supreme Court granted certiorari, vacated our court’s panel decision, and remanded the case for consideration on the merits. *Gutierrez*, 141 S. Ct. 1260, 1261 (2021). Again, had the Court thought that the policy did not impose a substantial burden on religious exercise, there would have been no reason for vacatur or remand. The Supreme Court’s rulings in *Gutierrez* are thus necessarily a rejection of the panel’s reasoning in that case.

In *Smith*, the Court denied Alabama’s motion to vacate an injunction prohibiting the execution of Willie Smith without his minister present in the execution chamber. 141 S. Ct. at 725. While the Court did not provide reasons, Justice Kagan did so in a concurrence

joined by Justices Breyer, Sotomayor, and Barrett. The concurrence stated that, by barring the presence of his minister in the execution chamber, “Alabama’s policy substantially burden[ed] Smith’s exercise of religion” because Smith understood his minister’s presence in the execution chamber as integral to his faith and part of his spiritual search for redemption, and because “[t]he sincerity of those religious beliefs is not in doubt.” *Id.* at 725 (Kagan, J., concurring). The concurrence concluded with the broad statement that “[t]he law guarantees Smith the right to practice his faith free from unnecessary interference, including at the moment the State puts him to death.” *Id.* at 726.

Similar to *Smith*, in this case Ramirez alleged, *inter alia*, that the laying on of hands by Pastor Moore is “in accordance with” his “faith tradition,” is “necessary to bless [him] at the moment of his death,” and that the practice of audible prayer combined with physical touch is based in “Christian scripture.” First Amended Complaint at 5-6, ¶17-19. Additionally, Ramirez submitted an affidavit from Pastor Moore stating that the practice of touch has “significance and power,” that when he “pray[s] with others in a crisis situation, [he] holds their hand or put[s] [his] hand on their shoulder,” and that this is “a significant part of our faith tradition.” First Amended Complaint, Exh 2. Similar to *Smith*, the district court in this case did not question the sincerity of Ramirez’s religious beliefs, and neither do I. Thus, following *Gutierrez* and *Smith*, because the current policy prohibits Ramirez from engaging in

sincerely-held religious practices, it also imposes a substantial burden on his religious exercise.

In light of *Gutierrez* and *Smith*, it was an abuse of discretion for the district court to determine that Ramirez had not made a strong showing that the TDCJ policy imposes a substantial burden on his religious exercise.<sup>9</sup> For the same reasons, both *Gutierrez* and *Smith* support Ramirez’s argument that he has made a strong showing of likely success on the merits and is therefore entitled to a stay. Crucially, once Ramirez makes his initial showing under RLUIPA, the burden shifts to the State to prove that the policy satisfies the statute’s strict scrutiny test. *See Holt*, 547 U.S. at 362.

---

<sup>9</sup> The district court also abused its discretion by improperly relying on the fact that Ramirez would be able to meet and pray with Pastor Moore for several hours on the day of his execution and the fact that Pastor Moore would be present in the execution chamber in determining that the current policy preventing audible prayer and physical touch during the execution imposed no substantial burden. The Supreme Court made clear in *Holt* that this type of analysis—considering the availability of alternative means of practicing religion—is not relevant in the RLUIPA context. 574 U.S. at 361–62. This “alternative means” analysis derives from the Court’s precedents concerning prisoners’ First Amendment rights, but RLUIPA provides prisoners with “greater protection” than the First Amendment, and RLUIPA’s substantial burden inquiry asks whether the government has burdened a specific religious exercise, not whether the prisoner is able to engage in other forms of religious exercise. *Id.* As explained above, utilizing the proper analysis, Ramirez has made a strong showing that the TDCJ policy imposes a substantial burden on his religious exercise.

**B.**

As explained in the preceding section, Ramirez has made a strong showing that the policy imposes a substantial burden on his religious exercise. Further, he has proffered that Pastor Moore is willing to submit to additional security measures. *See* Complaint at 6, ¶20. After a claimant makes an initial showing of a substantial burden, the burden then shifts to the government to prove that its policy satisfies RLUIPA's strict scrutiny standard. *See Holt*, 574 U.S. at 362. In this phase of the litigation, the State has not met its burden.

The district court stated that, even if Ramirez could show that the policy imposed a substantial burden, he had not made a strong showing that it is not the "least restrictive means." This was legal error, and therefore an abuse of discretion, because the district court placed the burden on the wrong party. According to relevant Supreme Court precedents, it is not Ramirez's burden—even at this early stage of litigation—to disprove that the State is utilizing the least restrictive means; rather, it is the State's burden to show that its policy utilizes the least restrictive means and therefore satisfies RLUIPA's strict scrutiny standard. *See Gonzales v. O'Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 429 (2006) (holding that, in the analogous context of a preliminary injunction under the Religious Freedom Restoration Act, "the burdens at the preliminary injunction stage track the burdens at trial" such that it was the government's burden to satisfy RFRA's strict scrutiny

standard and not the plaintiff's burden to disprove it) (citing *Ashcroft v. ACLU*, 542 U.S. 656, 666 (2004)).

As for the State's burden, there is no doubt that security of an execution is a "compelling governmental interest." See, e.g. *Smith*, 141 S. Ct. at 725 (Kagan, J., concurring) ("[P]rison security is, of course, a compelling state interest."). But to satisfy RLUIPA, the State must also meet the "exceptionally demanding" standard of showing that the policy is truly the "least restrictive means" available, which "requires the government to 'sho[w] that it lacks other means of achieving its desired goal without imposing a substantial burden on the exercise of religion by the objecting part[y].'" *Holt*, 574 U.S. at 364-65 (quoting *Burwell v. Hobby Lobby*, 573 U.S. 682, 728 (2014)) (alterations in original). In other words, the burden is on the State to specifically show that its "'application of the challenged law to the person—the particular claimant whose sincere exercise of religions is being substantially burdened'" can satisfy RLUIPA's strict scrutiny standard. *Id.* at 363 (quoting *Hobby Lobby*, 573 U.S. at 726).

At least at this early stage in the litigation, the State has not met that demanding and specific burden. The State has not shown why its policy of prohibiting even a brief audible prayer and any physical touching is the least restrictive means of achieving its compelling interest in this specific case. Rather, the State has largely offered general concerns about security. I do not doubt that these concerns are legitimate and important. But that is not enough to satisfy RLUIPA's "exceptionally demanding" standard. *Holt*, 574 U.S. at

364. In my view, the concurring opinions of CHIEF JUDGE OWEN and JUDGE HIGGINBOTHAM, like the district court, do not hold the State to the burden that Congress mandated in RLUIPA. It is not enough, as CHIEF JUDGE OWEN and JUDGE HIGGINBOTHAM suggest, for the State to argue that its policy is consistent with the Federal Bureau of Prisons' policy. Under RLUIPA and pertinent Supreme Court precedent, the State needs to show why its policy disallowing Pastor Moore from uttering any audible prayer or engaging in any touching, as applied specifically to Ramirez, is the least restrictive means of achieving its compelling interest. *See Holt*, 574 U.S. at 363-65. The religious utility and importance of Ramirez having his pastor with him in the execution room will be diminished by the State's policy, and the State has not shown why having a spiritual advisor in the room, but requiring that advisor to remain mute and refrain from showing signs of comfort or religious concern, is essential and the least restrictive means available for the State to carry out the execution.

Thus, at this point in the litigation, I conclude that Ramirez has made a strong showing that he is likely to succeed on the merits of his RLUIPA claim because he has carried his burden of showing that the policy imposes a substantial burden on his religious exercise, while the State has not carried its burden of showing that the policy utilizes the least restrictive means available to achieve its compelling governmental interest in a secure execution. In light of this conclusion, I further conclude that the other stay factors weigh in

Ramirez's favor, such that a stay of execution is warranted so that the district court can consider these important issues.

\* \* \*

What purpose is there for allowing a spiritual advisor, like a pastor, to be present in the execution chamber if that pastor is prohibited from attending to the spiritual needs of the condemned during the final moments of his life, through audible prayer, physical touch, or otherwise? At the end of life, what does a pastor do but minister to and comfort his parishioner? Ramirez is raising these pressing questions, which were arguably implicit in the Supreme Court's recent decisions in *Gutierrez* and *Smith*, even if they were not squarely presented. If a stay were granted, Ramirez may or may not ultimately prevail on the merits of his RLUIPA claim. On the merits, the State may or may not be able to prove that the policy satisfies RLUIPA's demanding standards. In denying a stay of execution, the majority fails to heed the Supreme Court's recent guidance, with the troubling result that Ramirez may very well suffer the irreparable injury of being executed in a manner that violates his religious rights before a court is able to adjudicate his claims on the merits. Therefore, respectfully, I dissent from the court's denial of Ramirez's motion for a stay of execution.

---

(ORDER LIST: 594 U.S.)

WEDNESDAY, SEPTEMBER 8, 2021

CERTIORARI GRANTED

21-5592 RAMIREZ, JOHN H. V. COLLIER, BRYAN,  
(21A33) ET AL.

The application for stay of execution of sentence of death presented to Justice Alito and by him referred to the Court is granted. The motion for leave to proceed in forma pauperis and the petition for a writ of certiorari are granted. The Clerk is directed to establish a briefing schedule that will allow the case to be argued in October or November 2021.

---