

IN THE SUPREME COURT OF THE UNITED STATES

No. 21-5592

JOHN H. RAMIREZ, PETITIONER

v.

BRYAN COLLIER, EXECUTIVE DIRECTOR,
TEXAS DEPARTMENT OF CRIMINAL JUSTICE, ET AL.

(CAPITAL CASE)

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

MOTION OF THE UNITED STATES FOR LEAVE TO PARTICIPATE
IN ORAL ARGUMENT AS AMICUS CURIAE, FOR DIVIDED ARGUMENT,
AND FOR ENLARGEMENT OF TIME FOR ARGUMENT

Pursuant to Rule 28 of the Rules of this Court, the Acting Solicitor General, on behalf of the United States, respectfully moves that the United States be granted leave to participate in the oral argument in this case as an amicus curiae supporting neither party; that the time allotted for oral argument be enlarged to 65 minutes; and that the United States be allowed 15 minutes of argument time. Petitioner and respondents have each consented to this motion and have each agreed to cede five minutes of argument time to the United States.

Petitioner is a Texas capital inmate who alleges that state policies restricting his spiritual adviser's ability to pray audibly or physically touch him in the execution chamber violate his rights under, inter alia, the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 42 U.S.C. 2000cc et seq. After granting certiorari and a stay of execution, this Court directed the parties to address whether petitioner adequately exhausted his audible-prayer claim under the Prison Litigation Reform Act of 1995 (PLRA), 42 U.S.C. 1997e(a); two issues related to the merits of petitioner's RLUIPA claim; and his entitlement to equitable relief.

The United States has a substantial interest in the questions on which this Court has requested briefing. The exhaustion requirement of the PLRA applies to claims by federal prisoners. The Attorney General may bring actions to enforce RLUIPA, see 42 U.S.C. 2000cc-2(f), and the Religious Freedom Restoration Act of 1993, 42 U.S.C. 2000bb et seq., imposes the same substantive standard on federal prisons that RLUIPA imposes on their state counterparts. In addition, respondents and the court of appeals have relied on their understanding of the relevant recent practices of the Federal Bureau of Prisons, and the United States has a substantial interest in clarifying those practices.

The United States has filed an amicus brief in support of neither party addressing the issues on which the Court requested briefing. The brief takes the position that petitioner may have

exhausted his audible-prayer claim as required by the PLRA; that petitioner has established that the challenged state policies substantially burden the exercise of his sincere religious beliefs; and that while restrictions on audible prayer and physical contact by spiritual advisers in the execution chamber advance compelling governmental interests, the lower courts erred in viewing the record below as sufficient to carry the State's burden to show that a categorical ban on those activities is likely the least restrictive means of furthering those interests. The brief observes that the State could, however, submit additional evidence on that and other issues. The brief accordingly suggests that, with no execution date imminent, the Court should remand the case to allow the lower courts to take additional evidence and reassess the claim to equitable relief in the first instance.

The United States has previously presented oral argument as an amicus curiae in cases involving issues like those presented here. For example, the United States addressed a RLUIPA claim in Holt v. Hobbs, 574 U.S. 352 (2015); the PLRA's exhaustion requirement in Ross v. Blake, 578 U.S. 632 (2016); and the relief available to a state capital inmate challenging aspects of execution procedure in Hill v. McDonough, 547 U.S. 573 (2006). In light of the substantial federal interest in the questions presented and issues on which this Court has directed briefing, the United States' participation at oral argument would materially assist the Court in its consideration of this case.

Respectfully submitted.

BRIAN H. FLETCHER
Acting Solicitor General
Counsel of Record

SEPTEMBER 2021