



## Memorandum

Kenneth Biros, by and through undersigned counsel, hereby gives notice of recent federal court developments that directly impact his case.

First, the U.S. Sixth Circuit Court of Appeals has remanded the appeal of the Preliminary Injunction that was issued December 21, 2006 to the U.S. District Court for further proceedings in light of Baze v. Rees, 128 S.Ct. 1520 (2008).

In other words, the Preliminary Injunction prohibiting the State of Ohio from executing Kenneth Biros remains in place and in effect. (See attached order from the Sixth Circuit)

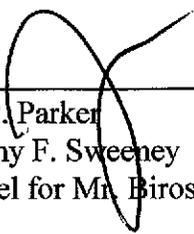
If this court sets an execution date and the State of Ohio proceeds toward executing Mr. Biros, then it will be in direct defiance of a federal court order issued by U.S. District Court Judge Frost.

Secondly, Mr. Biros has pending in the U.S. Supreme Court a Petition for Writ of Certiorari. (See attached docket of Case Number 08-5074)

It would be fundamentally unfair for this Court to set an execution date while Mr. Biros has pending a case in the U.S. Supreme Court challenging his death sentence.

This Court must deny the Motion to Set an Execution date pending resolution of the above stated matters.

Respectfully submitted,

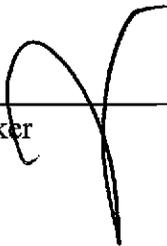


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John P. Parker  
Timothy F. Sweeney  
Counsel for Mr. Biros

Certificate of Service

A copy of the foregoing Notice was served on Dennis Watkins, Esq., Trumbull County Prosecutor, Administration Building, 4<sup>th</sup> Floor, 160 High Street, Warren, Ohio 44481 this 24<sup>th</sup> day of July 2008 via regular U.S. Mail postage prepaid.



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John P. Parker

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

**FILED**  
Jul 08, 2008  
LEONARD GREEN, Clerk

RICHARD WADE COOEY II, et al., )  
 )  
Plaintiff, )  
 )  
KENNETH BIROS, )  
 )  
Plaintiff-Appellee, )  
 )  
v. )  
 )  
TED STRICKLAND, Governor; REGINALD A. )  
WILKINSON, Director; JAMES S. HAVILAND, )  
Warden, )  
 )  
Defendants-Appellants. )

ORDER

Before: SUHRHEINRICH, SILER, and GILMAN, Circuit Judges.

Defendants appeal an order of the district court in this civil rights action granting plaintiff Biros's motion for a preliminary injunction staying his execution pending further order of that court. The defendants have now filed a renewed motion to vacate the preliminary injunction in light of the recent decision of the United States Supreme Court in *Baze v. Rees*, - U.S. -, 128 S. Ct. 1520 (2008). Plaintiff Biros opposes the motion.

Upon consideration, we conclude the question of whether the preliminary injunction should remain in effect following the *Baze* decision is an issue that should be addressed initially by the district court.

It therefore is **ORDERED** that this appeal is remanded to the district court in order to permit that court to address the issue of whether the preliminary injunction issued on December 21, 2006,

should be vacated in light of the *Baze* decision. Such remand is final for purposes of jurisdiction in this court, and the district court may schedule whatever briefing and hearing schedules it deems necessary for its consideration of this matter. Following a ruling by the district court, any aggrieved party must file a new notice of appeal in order to secure further appellate review in this court.

ENTERED BY ORDER OF THE COURT

A handwritten signature in cursive script, appearing to read "Leonard Green".

Leonard Green  
Clerk

