IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

DAVID P. WILSON, Plaintiff v. JOHN Q. HAMM, Commissioner, Alabama Department of Corrections, Defendant.	)	Case No. 2:24-cv-00111-ECM *** DEATH PENALTY CASE ***

PLAINTIFF'S RESPONSE TO DEFENDANT'S SECOND MOTION TO DISMISS

PURSUANT to this Court's orders (Doc. 39 and 41), Plaintiff David P. Wilson hereby submits a response to the Defendant's motion to dismiss regarding Counts III and IV of Plaintiff's First Amended Complaint.

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STATEMENT OF FACTS

1. Plaintiff David P. Wilson filed the initial Complaint in this § 1983 civil rights lawsuit on February 15, 2024 (Doc. 1). Plaintiff raised two claims: a facial (Count I) and as applied (Count II) challenge to nitrogen gas mask asphyxiation under the U.S. Constitution. Plaintiff also raised two international law claims, alleging (1) that the nitrogen gas asphyxiation protocol violates the international law right to be free from torture (Doc. 1, p. 11); and (2) that the constitutional requirement that plaintiff develop his preferred method of execution is "a form of torture under international law" in violation of "*jus cogens*" (Doc. 1, pp. 21-22).

2. Defendant filed a motion to dismiss Mr. Wilson's initial Complaint on April 16, 2024 (Doc. 16). In that motion, Defendant specifically challenged the two international law claims. Defendant argued that the international law claims were improper and should be stricken. Defendant wrote:

> Identifying an alternative method of execution is plainly unlike forcing a man to dig his own grave, the persecution of Jewish concentration camp prisoners in World War II, or other torture under international law. (Id. ¶ 49.) These allegations are immaterial, impertinent, and scandalous and may be stricken. See Fed. R. Civ. P. 12(f); *Oaks v. City of Fairhope*, 515 F. Supp. 1004, 1032 (S.D. Ala. 1981); *Lipsky v. Commonwealth United Corp*., 551 F.2d 887 (2d Cir. 1976).

Doc. 16, p. 16; *see also* Doc. 16, p. 17 (addressing the question whether it amounts to "a 'form of torture under international law.'")

3. This Court denied Defendant's motion to dismiss on March 12, 2024, in its entirety (Doc. 25).

4. Mr. Wilson filed a Motion for Leave to File a First Amended Complaint on March 20, 2025 (Doc. 29). For clarificatory purposes, Plaintiff proposed to state the two international law claims as separate causes of action. Plaintiff proposed to plead those as two separate counts (Count III and IV) of the amended complaint (Doc. 29, ¶ 12). Mr. Wilson attached his First Amended

Complaint, with the four separate causes of action, to his motion to amend as an appendix (Doc. 29-1). Defendant did not oppose Plaintiff's motion to amend (Doc. 29, p. 1).

5. Given Plaintiff's filing of a motion to amend his complaint, Defendant filed on March 25, 2025, a Motion to Stay Deadline Under Rule 12(a)(4), seeking to stay the deadline to file his answer (Doc. 30, p. 2) ("Defendant Hamm prays that this Honorable Court will suspend the time for serving an answer until such time this Court disposes of Wilson's motion for leave to file an amended complaint").

6. Later that same day, March 25, 2025, this Court granted Plaintiff's motion to amend his complaint (Doc. 31).

7. The Court also entered a text order granting Defendant's motion to suspend the deadline to file an answer (Doc. 32).

8. By so doing, the Court effectively set the time for the Defendant to file his answer once the Plaintiff filed his First Amended Complaint.

9. On March 31, 2025, Plaintiff filed his First Amended Complaint (Doc. 35). As previously indicated, Plaintiff included in that amended complaint the original two constitutional challenges to the nitrogen gas protocol (the facial challenge in Count I and the as applied challenge in Count II), as well as the two international law claims for relief as separate counts (Count III and IV).

10. Pursuant to Fed. R. Civ. P. 12(a)(1)(A), Defendant had 21 days from the time of the filing of Plaintiff's First Amended Complaint to file an answer to Counts I and II of the amended complaint, which had withstood Defendant's motion to dismiss. That would have fallen on April 21, 2025.

11. To date, Defendant has not filed an answer to Counts I and II of Plaintiff's First Amended Complaint.

12. On April 21, 2025, Defendant instead filed a second Motion to Dismiss (Doc. 38), moving for a second time to dismiss Counts I and II of the amended complaint, and moving for the first time to dismiss the two international law claims, Counts III and IV of Mr. Wilson's amended complaint.

13. The following day, on April 22, 2025, this Court ordered Mr. Wilson to file a response to Defendant's motion, insofar as the motion seeks dismissal of Counts III and IV of Mr. Wilson's First Amended Complaint (Doc. 39).

14. In its order, the Court reaffirmed its rejection of Defendant's attempts to dismiss Counts I and II of the amended complaint, stating that "the Defendant's current arguments for dismissal of Counts 1 and 2 amount to little more than restatements of arguments the Court already considered and rejected in its March 12 opinion (*see* doc. 25). Consequently, the Court in its discretion will focus its review on the arguments for dismissal of Counts 3 and 4, and the Court will require the Plaintiff to respond only to those arguments and not any arguments regarding Counts 1 and 2" (Doc. 39, pp. 1-2).

ARGUMENT

I. MR. WILSON'S INTERNATIONAL LAW CLAIMS, LIKE HIS U.S. CONSTITUTIONAL CLAIMS, ARE TIMELY

15. Defendant first contends that Mr. Wilson's claims that the nitrogen gas method of execution violates international law accrued when his state post-conviction review became complete or when he signed the nitrogen gas form, and that therefore those claims are "time barred" (Doc. 7, page 6, line 1).

16. The Court has already addressed and rejected this argument regarding statutory and equitable time bars. As this Court made plain in its memorandum opinion order, the legal claims in this case began to accrue "in August 2023 when Alabama released its nitrogen hypoxia protocol for the first time" (Doc. 25, p. 13).

17. In effect, Defendant misconstrues the nature of this lawsuit. Defendant states that Mr. Wilson "challenges the method of execution rather than the protocol" (Doc. 38, n.2). But this Court has already rejected that argument, expressly holding in its memorandum opinion order on March 12, 2025, that "as noted herein, Wilson's complaint challenges the current nitrogen hypoxia *protocol*" (Doc. 25, page 16, line 1-2) (emphasis in original).

II. MR. WILSON'S INTERNATIONAL LAW CLAIMS ARE ACTIONABLE

18. Defendant contends, second, that Counts III and IV must be dismissed because no legal authority "provides for a right to action for violation of international law" (Doc. 38, p. 7, ¶ 2). This argument has no merit.

19. Mr. Wilson brings this civil rights lawsuit against an official of the State of Alabama, in his official capacity, under §1983. §1983 provides a private right of action to litigants who have been subject to the "deprivation of any rights, privileges, or immunities secured by the Constitution and laws" as a result of actions taken by a state actor under color of state law. The right against torture, a self-executing *jus cogens* norm, has been incorporated into federal common law and confers federal rights. Thus, the right against torture may be enforced through the private right of action provided by §1983 against a state defendant.

A. *The Right Against Torture is a* Jus Cogens *Norm*

20. The State of Alabama's nitrogen gas asphyxiation method of execution violates the right to be free from torture, which forms part of *jus cogens*. *Jus cogens* are peremptory norms sitting at the highest echelon of the hierarchy of international law. They are the highest law of the land—of all land, including the United States. Literally, the term means the laws (*jus*) that compel (*cogens*) everywhere on earth. They constitute norms from which *no* nation can derogate, even by agreement or reservation, and they preempt any conflicting rule or agreement. *See* United Nations, *International Norms and Standards Relating to Disability*, Part I, §1.2 ("There also exists a class of customary international law, *jus cogens*, that has peremptory force and cannot be abrogated by domestic law or treaty"); *Vienna Convention on the Law of Treaties*, Art. 53, 1155 U.N.T.S. 331, 344.[1] They permit no derogation and may be modified only by a subsequent rule of the same character. *Id*; *Kashef v. BNP Paribas S.A., 925 F.3d 53, 61* (2d Cir. 2019) ("[T]hese norms may not be violated, irrespective of the consent or practice of a given State" (citation omitted)); International Law Commission, *Guide to Practice on Reservations to Treaties*, Guideline 4.4.3 (stating that "A reservation to treaty which reflects a peremptory norm of general international law (*jus cogens*) does not affect the binding nature of that norm, which shall continue to apply as such"). They trace back in human history to Roman Law, which already provided that a limited number of fundamental legal rights could never be contracted out, given how fundamental the values were that they uphold.

[1] Article 53 of the Vienna Convention, "Treaties conflicting with a peremptory norm of general international law ("jus cogens")" provides that "A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character." Available online here https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf.

21. As a technical matter, *jus cogens* are peremptory norms of international law that concern matters that satisfy the following criteria: (a) they fall within the highest echelons of the hierarchy of international law; (b) they are demonstrated to shock the consciousness of humankind; (c) they are contrary to the fundamental values, spirit and aims of the United Nations; (d) they are rejected by the general practice of states (*opinio juris*); and they attract the *erga omnes* responsibility of states. *See*, *generally*, *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, I.C.J. Reports 1951*, p. 15, at p. 23 (denial of a protection which "shocks the conscience of mankind"); *Michael Domingues v. United States* (Case 12.285, Merits, Judgment of 22 October 2002, Inter-American Commission on Human Rights, *Report No. 62/02*, para. 49) (stating that the peremptory norms of general international law (*jus cogens*) "derive their status from fundamental values held by the international community," noting that violations of *jus cogens* "shock the conscience of humankind.")

22. As set out in the *Third Restatement of the Foreign Relations Law of the United States* and recognized by both domestic federal legal precedent and international legal precedent, the right to be free from torture is the quintessential *jus cogens* norm.[2] For example, since the Nuremberg trials

[2] *See* Amnesty International, UNIVERSAL JURISDICTION: THE DUTY OF STATES TO ENACT AND ENFORCE LEGISLATION: CHAPTER 9: TORTURE: THE LEGAL BASIS FOR UNIVERSAL JURISDICTION 11 (2021), available at https://www.amnesty.org/en/documents/ior53/012/2001/en/ ("That the prohibition of torture is part of jus cogens is recognized both by scholarly authority and national courts: *See, for example, Restatement (Third) of the Foreign Relations Law of the United States* § 702, comment n (prohibition of torture is jus cogens) (1986); [*R. V. Bow Street Metropolitan Stipendiary Magistrate and others, ex parte Pinochet Ugarte (Amnesty International and others intervening)* (*Pinochet* No. 3) , [1999] 2 All ER 97], Browne-Wilkinson, 108 (noting that Chile had accepted that "the international law prohibiting torture has the character of jus cogens or a peremptory norm"); Hutton ("the prohibition of torture had [ac]quired the status of jus cogens by that date [1988]"); Hope ("there was already widespread agreement that the prohibition against official torture had achieved the status of a jus cogens norm" by 1988); *In re Estate of Ferdinand Marcos, Human Rights Litigation* (*Hilao v. Estate of Marcos*), 25 F.3d 1467, 1473, 1475 (2d Cir. 1994); *Siderman de Blake v. Republic of Argentina*, 965 F.2d 699, 717 (9th Cir. 1992), *cert. denied*, 507 U.S. 1017 ("[T]he right to be free from official torture is fundamental and universal, a right deserving of the highest stature under international law, a norm of jus cogens.").")

in the aftermath of World War II, it has been universally recognized that it is unacceptable to torture a civilian population.[3] The Ninth Circuit has held that "[T]he right to be free from official torture is fundamental and universal, a right deserving of the highest stature under international law, a norm of *jus cogens*." *Siderman de Blake v. Republic of Argentina*, 965 F.2d 699, 717 (9th Cir. 1992), *cert. denied*, 507 U.S. 1017. As the Second Circuit stated in *Filártiga v. Peña-Irala*, 630 F.2d 876, 878 (2d Cir. 1980), "deliberate torture perpetrated under color of official authority violates universally accepted norms of the international law of human rights, regardless of the nationality of the parties." The torturer is likened to a pirate and slave trader of old, "an enemy of all mankind." *Id.* at 890; *see also Presbyterian Church of Sudan v. Talisman Energy*, 582 F.3d 244, 254 (2d Cir. 2009).

23. *Jus cogens* include a very limited set of international legal rights, but the right to be free of torture is one of them. As the *Filártiga* court noted, "the requirement that a rule command the 'general assent of civilized nations' to become binding upon them all is a stringent one." *Filártiga v. Peña-Irala*, 630 F.2d at 890. The court further noted that "courts must interpret international law not as it was in 1789, but as it has evolved and exists among the nations of the world today." *Id.* at 881. As the court noted there, the right to be free from torture qualifies. *See also Presbyterian Church of Sudan*, 582 F.3d at 254.

24. This is recognized at the international level as well. In the case concerning *Questions relating to the Obligation to Prosecute or Extradite*, the International Court of Justice recognized the prohibition of torture as "part of customary international law" that "has become a peremptory norm (*jus cogens*)". *Questions relating to the Obligation to Prosecute or Extradite (Belgium v.*

[3] Nuremberg Control Council Law No. 10, art. II, § 1(c), available at https://avalon.law.yale.edu/imt/imt10.asp.

Senegal), Judgment, *I.C.J. Reports 2012*, p. 422, at p. 457, para. 99. The International Criminal Tribunal for the Former Yugoslavia also held that a feature of the prohibition of torture "relates to the hierarchy of rules in the international normative order" and that the prohibition "has evolved into a peremptory norm or *jus cogens*, that is, a norm that enjoys a higher rank in the international hierarchy than treaty law and even 'ordinary' customary rules." *Prosecutor v. Anto* (*Case No. IT-95-17/1-T), Judgment of 10 December 1998*, Trial Chamber, International Criminal Tribunal for the Former Yugoslavia, *Judicial Reports 1998*, vol. 1, at p. 569, para. 153.

B. *Jus Cogens are self-executing and are thus domestically enforceable without an enacting statute.*

25. There is a difference between ordinary customary international law and *jus cogens*: by contrast to customary international law, *jus cogens* do not require the consent of states to be litigable.

26. In general, regarding customary international law, courts need to determine whether it is self-executing, i.e. whether it is domestically enforceable without legislation (in the United States by the U.S. Congress). Not all customary international law is self-executing. Those parts of international law that are treaties-based are not always self-executing and may require a statute creating a cause of action (in the United States, a federal statute).

27. By contrast, *jus cogens* norms are always self-executing because they represent the highest pinnacle of the law of all nations and do not require the consent of states. *Jus cogens* represent the highest subset of international legal rights that are by definition self-executing. *See* United Nations, *International Norms and Standards Relating to Disability*, Part I, §1.2 ("*Jus cogens* is generally deemed self-executing."); *Fernandez v. Wilkinson, 505 F. Supp. 787 (D. Kan. 1980)* (enforcing

the international law right not to be detained indefinitely). As Judge Fletcher explained in *Siderman de Blake v. The Republic of Argentina*, 965 F.2d 699, 714 (9th Cir. 1992):

> While *jus cogens* and customary international law are related, they differ in one important respect. Customary international law, like international law defined by treaties and other international agreements, rests on the consent of states. A state that persistently objects to a norm of customary international law that other states accept is not bound by that norm.
>
> In contrast, *jus cogens* embraces customary laws considered binding on all nations […] and is derived from values taken to be fundamental by the international community, rather than from the fortuitous or self-interested choices of nations…. Whereas customary international law derives solely from the consent of states, the fundamental and universal norms constituting *jus cogens* transcend such consent.

In other words, a state cannot opt out of being bound by *jus cogens* norms, such as the prohibition against torture.

28. Therefore, the right against torture as part of *jus cogens* is enforceable within the United States, without express legislation by Congress, and any violation of such a right is domestically redressable.

C. *Jus cogens are part of federal common law, and thus falls under the "... and laws" clause of §1983.*

29. It is well established that international law is federal common law. It is a "settled proposition that federal common law incorporates international law." *Kadic v. Karadzic*, 70 F.3d 232, 246 (2d Cir. 1995).

30. Note that all international law is part of the federal common law, even if it is not all self-executing. As the Supreme Court noted in *Sosa v. Alvarez-Machain*, 542 U.S. 692, 729-730 (2004), regarding international law: "For two centuries we have affirmed that the domestic law of the United States recognizes the law of nations. *See, e.g., Sabbatino*, 376 U.S., at 423 ("[I]t is, of course, true that United States courts apply international law as a part of our own in appropriate circumstances"); *The Paquete Habana*, 175 U.S., at 700 ("International law is part of our law, and

must be ascertained and administered by the courts of justice of appropriate jurisdiction, as often as questions of right depending upon it are duly presented for their determination"); *The Nereide*, 9 Cranch 388, 423 (1815) (Marshall, C.J.) ("[T]he Court is bound by the law of nations which is a part of the law of the land")."

31. In *The Paquete Habana*, 175 U.S. 677, 700 (1900), the United States Supreme Court explained that international law is part of federal law and explained how to determine it: "International law is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction, as often as questions of right depending upon it are duly presented for their determination. For this purpose, where there is no treaty, and no controlling executive or legislative act or judicial decision, resort must be had to the customs and usages of civilized nations; and, as evidence of these, to the works of jurists and commentators, who by years of labor, research and experience, have made themselves peculiarly well acquainted with the subjects of which they treat. Such works are resorted to by judicial tribunals, not for the speculations of their authors concerning what the law ought to be, but for trustworthy evidence of what the law really is."

32. In case there is any doubt, the *Third Restatement of Foreign Affairs* states that customary international law is federal common law. And "as international law has evolved to incorporate *jus cogens* norms, so too has federal common law." *Al Shimari v. CACI Premier Tech., Inc.*, 368 F. Supp. 3d 935, 959 (E.D. Va. 2019) (citation omitted).

33. Moreover, although the scope of federal common law had been left in an uncertain state after *Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938), federal courts have consistently and

continuously made federal common law in areas "federalized by force of the Constitution itself,"[4] such as those concerning the country's obligations under international law. *See Sosa v. Alvarez-Machain*, 542 U.S. 692, 725 (2004) ("We assume, too, that no development in the two centuries from the enactment of §1350 to the birth of the modern line of cases beginning with *Filartiga v. Pena-Irala*, 630 F. 2d 876 (CA2 1980), has categorically precluded federal courts from recognizing a claim under the law of nations as an element of common law…"); *see also* Philip C. Jessup, *The Doctrine of* Erie Railroad v. Tompkins *Applied to International Law*, 33 Am. J. Int'l L. 740, 741 (1939) (analyzing how applying the *Erie* prohibition of federal general common law to international law would put state courts in the position of making final determinations about international law, unreviewable by the Supreme Court, which would be an untenable scheme).

D. *§1983 is used as a private right of action to vindicate federal rights conferred by "the Constitution and laws" of the United States.*

34. In order for a private litigant to sue under §1983, they must allege a "federal right, not merely a violation of federal law." *Blessing v. Freestone*, 520 U.S. 329, 340 (1997), quoting *Golden State Transit Corp. v. Los Angeles*, 493 U. S. 103, 106 (1989).

E. *The right against torture as jus cogens confers actionable rights, and as federal common law, such rights are federal rights*

35. Under Supreme Court precedent, when federal courts recognize private claims under federal common law for violations of an international law norm, it must ensure that the norm has as much "definite content and acceptance" as historical paradigms such as piracy, which are defined in a highly specific manner. *Sosa v. Alvarez-Machain*, 542 U.S. 692, 732 (2004). The norm

[4] Alfred Hill, The Law-Making Power of the Federal Courts: Constitutional Preemption, 67 COLUM. L. REV. 1024, 1031 (1967).

violation must be "specific, universal, and obligatory." *In re Estate of Marcos Human Rights Litigation*, 25 F.3d 1467, 1475 (C.A.9 1994). In sum, as the Court held in *Sosa v. Alvarez*-Machain, 542 U.S. at 724-725: "[W]e think courts should require any claim based on the present-day law of nations to rest on a norm of international character accepted by the civilized world and defined with a specificity comparable to the features of the 18th-century paradigms we have recognized [such as piracy]."

36. The right against torture as *jus cogens* conforms with the requirements of this rights analysis perfectly. It is completely unambiguous as a prohibition against a clearly defined practice: torture. And as *jus cogens*, it is both universal and obligatory.

37. There is no question: torture is rejected by the general practice of states (*opinio juris*). *See, e.g., Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), Judgment, I.C.J. Reports 2012,* at p. 457, para. 99 ("[t]hat prohibition is grounded in a widespread international practice and on the *opinio juris* of States. It appears in numerous international instruments of universal application (in particular the Universal Declaration of Human Rights of 1948, the 1949 Geneva Conventions for the protection of war victims; the International Covenant on Civil and Political Rights of 1966; General Assembly resolution 3452/30 of 9 December 1975 on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment), and it has been introduced into the domestic law of almost all States; finally, acts of torture are regularly denounced within national and international fora.")

38. The prohibition of torture also gives rise to an *erga omnes* obligation, see *Prosecutor v. Anto Furundzija*, Judgment of 10 December 1998, Case No. IT-95-17/1, Trial Chamber II, ILR, vol. 121 (2002), p. 260, para. 151 ("the prohibition of torture imposes upon States obligations *erga omnes*, that is, obligations owed towards all the other members of the international community,

each of which then has a correlative right"); *Kane v. Winn*, 319 F. Supp. 2d 162, 199 (D. Mass. 2004) ("the prohibition against torture and cruel or unusual punishment and the requirement that remedies be provided for violations are obligations *erga omnes,* in which, '[i]n view of the importance of the rights involved, all States can be held to have an interest.' *Barcelona Traction, Light & Power Co., (Belg. v. Spain)*, 1970 I.C.J. 3, 32 (Feb. 5).

39. In addition, as *jus cogens* norms, these obligations are 'nonderogable and peremptory, enjoy the highest status within customary international law, are binding on all nations, and cannot be preempted by treaty.' *United States v. Matta–Ballesteros,* 71 F.3d 754, 764 n. 5 (9th Cir. 1995) (citing *Committee of United States Citizens Living in Nicaragua v. Reagan,* 859 F.2d 929, 939–40 (D.C.Cir.1988), *Siderman de Blake v. Republic of Argentina,* 965 F.2d 699, 717 (9th Cir.1992)).")

40. This is all reflected in the Convention Against Torture, which defines torture in Article 1(1) as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as…punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind."

41. The "specific, universal, and obligatory" requirement echoes the test that determines whether a federal statute confers federal rights. *See Blessing v. Freestone*, 520 U.S. at 340 (federal statutes confer rights when they are clear, mandatory, and benefit the plaintiff).

42. Out of an abundance of caution, should the court require that the *Blessing* test be satisfied as well in order to determine the presence of a federal right, the right against torture is surely also beneficial to the plaintiff bringing the action.

43. The right against torture as *jus cogens*, incorporated into federal common law, thus confers federal rights.

44. In conclusion then, given that the right against torture as *jus cogens*, incorporated into federal common law, confers federal rights, §1983 provides a private right of action against a state defendant.

III. MR. WILSON CHALLENGES THE NITROGEN GAS ASPHYXIATION PROTOCOL, NOT THE DEATH PENALTY

45. Finally, Defendant contends, third, that "no international custom, treaty, or agreement […] specifically outlaws the death penalty" (Doc. 38, p. 9).

46. But this fundamentally misconstrues Mr. Wilson's international law claims. Plaintiff is not arguing in this lawsuit that the death penalty violates international law. He is claiming, instead, that (1) the nitrogen gas protocol violates the international law right not to be subject to torture and (2) the requirement that he design his method of execution as well violates the international law right not to be subject to torture.

47. Defendant has simply misunderstood the international law claims.

CONCLUSION

WHEREFORE, Plaintiff David P. Wilson respectfully moves the Court to deny Defendant's motion to dismiss Counts III and IV of the First Amended Complaint.

Done and signed this 20th day of May 2025.

Bernard E. Harcourt
Alabama Bar Number: ASB-4316-A31B

The Initiative for a Just Society (IJS)
COLUMBIA LAW SCHOOL
435 West 116th Street
New York, New York 10027
Telephone: (212) 854-1997
Fax: (212) 854-7946
Email: beh2139@columbia.edu

Attorney for Plaintiff David Wilson

CERTIFICATE OF SERVICE

I hereby certify that on May 20, 2025, the foregoing response has been electronically filed with the Clerk of the Court and a copy has been electronically mailed to counsel for Defendant:

Audrey Jordan, Esq.
Office of the Attorney General
Capital Litigation Division
501 Washington Avenue
Montgomery, AL 36130

Bernard E. Harcourt