

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the rights of persons with disabilities; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the independence of judges and lawyers; the Independent expert on the promotion of a democratic and equitable international order; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Ref.: UA USA 27/2024

(Please use this reference in your reply)

15 November 2024

Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; Special Rapporteur on the rights of persons with disabilities; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the independence of judges and lawyers; Independent expert on the promotion of a democratic and equitable international order; Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 51/8, 53/14, 53/4, 53/12, 57/7, 52/36 and 52/7.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the death sentences in the State of Alabama against Mr. Rocky Myers and Mr. David Phillip Wilson, as well as the execution scheduled for 21 November 2024 of Mr. Carey Grayson using nitrogen hypoxia – a method of execution, which may subject individuals to cruel, inhuman or degrading treatment that could amount to torture.

Previously the special procedures mandate holders raised concerns regarding executions using lethal injection via communications, including USA 5/2022, USA 4/2018, and USA 13/2016. In these cases, serious concern was raised over the three-drug combination used, which may cause severe physical and mental suffering of the condemned before death. In regard to the case of Mr. Kenneth Eugene Smith, USA 29/2023, the Special Rapporteurs also raised concerns in relation to the nitrogen hypoxia method of execution, which may subject individuals to cruel, inhuman and degrading treatment, or even torture. We take note of the reply to USA 4/2018 and USA 13/2016. Regrettably, we have not so far received substantive responses from your Excellency's Government to USA 5/2022 and USA 29/2023.

The mandate holders also issued [a press release](#) on 30 January 2024 expressing their horror at the execution of Mr. Kenneth Eugene Smith, noting that it took over 20 minutes for him to die and called for a ban on this method of execution.

According to information received:

The case of Mr. Rocky Myers

Mr. Rocky Myers is a 62 years-old person of African descent with an intellectual disability, and who has been on death row for nearly 30 years.

In 1991, Mr. Myers' neighbor and the neighbor's cousin were stabbed during a house burglary which resulted in the death of one of the two women. In 1991 Mr. Myers was 30 years old, was unemployed due to a skin condition and was supported by his family. He was not known to have committed any violence, but he used crack cocaine at the time. He was on probation for a previous offence in another county when he was arrested to be questioned in relation to the murder.

Lack of evidence and procedural issues

Mr. Myers maintains his innocence. There is no forensic evidence from the crime scene implicating him in the murder. The only evidence is a videocassette recorder stolen during the house burglary, which Mr. Myers says he found abandoned in the street and had traded for drugs on the night of the murder.

Initial witness statements and the victims' description of the clothes worn by the attacker connected the recorder to another man, who was arrested and charged with non-capital murder in relation to this crime. A month later, a new witness came forward following a reward issued by the Governor for new information. The new witness was a friend of the arrested man's family and was asked on the stand at trial if he was aware of the reward, and he noted that he was. He stated that he saw Mr. Myers cross the street from the house of the murder, carrying a video-recorder. Following this, two other witnesses changed their police statements to identify Mr. Myers as the seller of the video-recorder, clarifying that, when they were first interviewed by the police, they gave in to pressure. A fourth man, who testified against Mr. Myers at trial, signed an affidavit ten years later indicating that a Decatur police detective had requested he make his first police statement with the suggestion that a possible charge against him would have been set aside.

The federal courts never considered the evidence of the recanted testimony because of procedural time limitations established under the Antiterrorism and Effective Death Penalty Act of 1996.

Racial bias

Mr. Myers' initial trial, in 1994, was before 11 white jurors and 1 juror of African descent. The surviving victim of the attack stated twice during the trial that she could not see if the perpetrator was white or of African descent but maintained she could tell from his voice that he was "a coloured man." This statement was unchallenged by Mr. Myers' assigned defence lawyers, including during cross-interrogation.

The lead trial defence counsel had maintained a public connection to the white supremacist hate group Ku Klux Klan for many years before representing Mr. Myers. The counsel described in his opening statement to the jury the neighborhood in which the crime was committed and where mostly persons of African descent from disadvantaged socio-economic backgrounds lived, as "like looking into the very pit of hell. It's an area in Decatur [...] which people really don't live there. [...] It's an area, the evidence will show, that decent people don't have any business going to. Nobody could have any legitimate

business there unless you just absolutely are so poor that you can't live any place else because I tell you what, the rent is awfully cheap. You can understand why if you live there because you couldn't have anything. If you went to work, they would cart it all off.”

Mr. Myers’ current attorneys spoke to jurors. During this conversation, jurors used racial slurs. The attorneys also found the use of a racial slur in the notes from the trial defence team. A trial juror indicated to them that racial bias was an issue during the jury deliberations including jury members referring to Mr. Myers as a “thug” and using racial slurs.

Judicial override of jury decision not to impose the death sentence

Several jurors did not believe Mr. Myers was guilty but were concerned that if there was a mistrial he would be sentenced to death by a new jury. The jurors believing him innocent compromised with those who believed him guilty in sentencing him to life without the possibility of parole rather than the death penalty.

However, the judge overrode the jury recommendation and imposed a death sentence.

In April 2017, the Alabama legislature banned this practice in Act no. 2017-131. It was the last state to abolish the practice in the US.

However, the change did not apply retroactively. The US Supreme Court denied a petition seeking redress on this basis in November 2023 meaning those on death row have not benefited from the reform. There are 33 people including Mr. Myers who are on death row due to judicial override of the jury’s decision not to impose the death penalty.

Previous legislative fixes to this issue have failed in the Alabama legislature. Most recently House Bill 27 was introduced in January 2024 and would have retroactively applied the 2017 ban to Mr. Myers and approximately 30 other individuals who are currently on death row despite judicial override of their life sentences. The Judiciary Committee of the state House of Representatives rejected the bill on 17 April 2024.

Inadequate legal assistance and consideration of intellectual disability

Mr. Myers’ experienced a deprived childhood. In his school years, he was classified as “emotionally disturbed” and intermittently attended special classes. His intellectual disability was recognized when he was 11 years old. He has limited ability to read.

The extent to which Mr. Myers’ intellectual disability might have affected his account of the events was not considered by the courts, including in relation to the inconsistencies between the unrecorded police interrogation and his trial testimony, or his interaction with counsel to prepare his defence, among other concerns.

After the conviction in 1994, a state-appointed post-conviction attorney took up Mr. Myers' case. However, he abandoned the case without notifying Mr. Myers, nor telling him that his appeal had been rejected. This led Mr. Myers to fail to meet the deadline to appeal that rejection. In February 2004, he received a letter from the Alabama Attorney General, which another prisoner had to read to Mr. Myers due to his limited reading abilities. The letter indicated that his deadline for appeal had expired and notified him that his execution would be set. It was only upon receipt of this letter that he realized his appeal had been rejected.

His new lawyers petitioned the courts for a deadline extension, based on his state-appointed lawyer's alleged negligence and Mr. Myers intellectual disability but the federal courts rejected this request. In doing so, they relied primarily on IQ tests, a standard which the US Supreme Court found to be inadequate in 2014 (*Hall v. Florida*, 572 U.S. 701 (2014)). The Court further held that the gross negligence of his state-appointed lawyer was not sufficient to allow him extra time to appeal, that legal assistance was not mandatory for post-conviction appeals, and he should have shown better "due diligence" himself.

Mr. Myers faced execution in 2004 and 2012. In 2018, following shortages in the supply of lethal injection substances and changes to the state execution protocol, Mr. Myers was given the possibility to choose between an execution method of new lethal injection drugs or an untested method of nitrogen gas asphyxiation. He chose the latter. At that time, nitrogen gas had just been approved as a method of execution in Alabama, and there was no execution protocol in place.

Mr. Myers has technically exhausted his appeals. The Alabama Attorney General could request his execution be scheduled at any time.

The case of Mr. David Phillip Wilson

On 13 April 2004, a man was found dead in his home in Dothan, Alabama. The police questioned an individual whose car matched the description of one seen in the area by witnesses. The individual admitted to having some of the victim's possessions but implicated three other individuals including Mr. Wilson.

On 14 April 2004, at 3 a.m., police officers from the Dothan Police Department apprehended Mr. Wilson from his home without a warrant. At the time Mr. Wilson was 20 years old. He has Asperger's Syndrome and Attention Deficit and Hyperactivity Disorder.

The arresting authorities did not explain his rights while detaining him (a Miranda warning) and did not provide appropriate safeguards and accommodations during the arrest and subsequent interrogation given the psychosocial disabilities of Mr. Wilson, for example by ensuring that a qualified person supported him in understanding the reasons for his apprehension and the questions posed.

At the police station Mr. Wilson was questioned in the Criminal Investigation Department room. In total, Mr. Wilson's interrogation is estimated to have lasted 90 minutes. However, only 35 minutes were recorded. The initial 50 minutes of the interrogation were not recorded, and no notes were taken. The tape recorder then ran out of space, meaning the final 10 or 15 minutes of the interrogation were also not recorded. Given the highly coercive nature of his apprehension, Mr. Wilson would have been susceptible to communication and cognitive difficulties and would likely have misunderstood the nature of the questions being posed. During the recorded part of the interrogation Mr. Wilson does not state that he killed or intended to kill the victim. He stated that he had been persuaded to rob the victim's house. The account Mr. Wilson provided indicated that the victim confronted the robbers, including Mr. Wilson, with a knife and Mr. Wilson swung a baseball bat at the victim's arm to make him release the knife and accidentally hit him in the head. He then restrained the victim until he dropped the knife. Mr. Wilson then left the property. A co-defendant returned to the house, but Mr. Wilson did not go inside.

During the trial, the police gave contradictory information on the content of the non-recorded interrogation. They stated that the unrecorded portion was "exactly in the same lines" of what Mr. Wilson said during the recorded part of the interrogation. However, they also stated during the trial that Mr. Wilson had said that he had changed the plan from assaulting the victim to killing him. Mr. Wilson does not give any indication of this in the recorded testimony.

The police collected physical evidence but conducted no forensic testing. The only piece of evidence to place Mr. Wilson at the scene of the crime was his own statement to the police which was obtained without adequate safeguards and accommodations considering his mental health.

During the trial the prosecution failed to disclose potentially exculpatory evidence in the form of a letter in which a co-defendant confessed to committing the murder. In the letter, the co-defendant indicated they had hit the victim with a baseball bat multiple times. Had this letter been available to the jury, this would have likely affected the verdict and sentencing by the jury. The letter could have also corroborated the testimony of the State's pathologist, which found that there were over 100 impact wounds inflicted whilst the victim was still alive, and which subsequently resulted in his death. This is consistent the co-defendant's confession.

After eleven requests between 2004 and 2023, on 28 June 2023, the Judge of the District Court for the Middle District of Alabama instructed the prosecution to provide the defence with the letter. Throughout this period, the State of Alabama did not dispute the authenticity of the letter including in court filings. A handwriting expert engaged by the District Attorney found the letter was probably from the co-defendant. On 29 June 2023, the Attorney General obtained an affidavit from the co-defendant stating that the letter was fake. The co-defendant has an upcoming hearing before the Alabama Board of Pardons and Paroles.

Racial bias

Mr. Wilson was tried by an all-white jury despite African Americans making up a quarter of the population of the county. Of the 54 people in the pool for jury selection, 5 (equating to 12%) were African Americans. The state used peremptory challenges to strike all five potential African American jurors.

Inadequate legal representation

Mr. Wilson received inadequate legal representation. He was represented by two lawyers, one of them only visited him twice and the other three times, with the total duration of the meetings amounting only to five hours. The defence counsel did not spend enough time preparing Mr. Wilson pre-trial. There was no challenge to the racial composition of the jury. The defence did not object to the involuntariness of Mr. Wilson's statement to police given the lack of consideration of his disabilities, did not cross-examine inconsistencies in the testimonies provided by the state witnesses, did not provide a "theory of defence" and provided no closing argument. In mitigation, the defence did not call any witnesses such as his doctor or schoolteachers, to establish the effect of Mr. Wilson's mental health diagnosis and his social and behavioral history. Additionally, the trial judge did not inform the jury of the evidentiary standards for a capital offence. Mr. Wilson was also shackled throughout the trial, and this would have been visible to the jury. The court did not consider the appropriateness of the shackles and Mr. Wilson's legal counsel did not challenge their use.

The capital trial lasted 3 days, including jury selection, with a further day for the judge to sentence Mr. Wilson to death. This being insufficient time to review the factual issues. The jury voted 10 to 2 in favour of the death penalty. The Alabama Code (s. 13A-5-46(e)(2)) at the time indicated that a death sentence could only be imposed where a jury found: (i) unanimously and beyond a reasonable doubt that a statutory aggravating circumstance exists, and (ii) that aggravating circumstances outweigh the mitigating circumstances. In this case the jury did not decide unanimously. This is particularly concerning given the standard for criminal liability is beyond reasonable doubt and the absence of unanimity is indicative of reasonable doubt among the jury. Additionally, the jury were incorrectly instructed on the need to unanimously find mitigating circumstances.

On 7 January 2008, Mr. Wilson was sentenced to death. It has not been reasonably demonstrated that Mr. Wilson had the intention to commit the murder and there is no forensic evidence to prove that he killed the victim.

Mr. Wilson has been incarcerated for two decades, and under a death sentence for 16 years. During this time, exacerbated by his Asperger's Syndrome and ADHD, his psychological and physiological condition has been adversely affected.

The case of Mr. Carey Grayson

Mr. Carey Grayson and three of his friends were convicted of the murder of a woman to whom they had offered a lift in 1994. All four had been drinking

and using drugs. The four individuals were tried separately. One was 16 years old at the time of the offense and was sentenced to life imprisonment. The other two were 17 years old and were initially sentenced to death but this was later reduced to life imprisonment.

Mr. Grayson was the last to be prosecuted. His lawyers requested the transcripts of the three other trials. This request was denied by the judge, who suggested they should instead attend the trials in person. They could not financially afford to do this, nor did they have the time available to do so. The Prosecutor in Mr. Grayson's trial told the jury that he was the "the leader of the pack", that he was "the one who's responsible for getting them into this", and that there was "no question who was out in front leading the way." The same Prosecutor had told the three other juries the same thing – in one trial stating that the defendant in that case was "leader of the pack", "up front driving this thing." In another case the Prosecutor had said that the "only" evidence of Mr. Grayson's role was that he "drove the car", and the third trial the Prosecutor said that it was an "illusion" to describe Mr. Grayson as the leader and that the defendant in that case was "the only person" against whom "we have any evidence" of inflicting "the blow that caused [the victim's] death". This conduct suggests that the Prosecutor was endeavoring to get all four individuals death sentences regardless of the individual culpability of each.

The District Court held on appeal that the issue had been procedurally defaulted for not having been raised earlier in the original appeal, that the use of inconsistent theories was not a violation of due process under constitutional law and "the ringleader theories in Grayson's case were not impossibly contradictory" because it was not clear which of the four was the ringleader and "it was proper" to leave it to the jury.

In 2004, Alabama made submissions to the Supreme Court arguing against a ban to apply the death penalty to individuals who were under 18 years old at the time of the offence noting that "an arbitrary 18-year-old cut-off would result, nonsensically, in a constitutional rule permitting capital punishment for Grayson, who was 19 at the time, but not for ...[one of the other defendants] and [one of the other defendants], both of whom were 17 but plainly are every bit as culpable – if not more so – in [the victim's] death".

Mr. Grayson had bipolar disorder as a child and teenager and self-medicated with drugs and alcohol to control his symptoms. When he was 11 years old his mother was killed. He lived with an abusive father who evicted him when he was 15 years old.

In 1995, a psychologist conducted a court-ordered pre-trial assessment stated that at the time of the crime, "due to a combined effect of a hypomanic episode and polysubstance ingestion", Mr. Grayson "would have had difficulty conforming his behavior to the requirements of the law."

Execution by nitrogen hypoxia

Mr. Grayson is scheduled to be executed by nitrogen hypoxia on 21 November 2024. Mr. Wilson's and Mr. Myers are at risk of execution using this method.

On 25 January 2024, Mr. Kenneth Smith was executed by nitrogen hypoxia. The Attorney General indicated prior to the execution that the nitrogen hypoxia protocol would cause unconsciousness within seconds, rendering Mr. Smith unable to feel pain, and death within minutes. However, this was disproven during the execution.

The eyewitness accounts in Mr. Smith's execution revealed that this is a torturous method which imposed significant bodily trauma of over 20 minutes. Witnesses to the execution said that Mr. Smith remained conscious for several minutes as he writhed and convulsed on the gurney, gasping for air and pulling on the restraints, shaking violently in prolonged agony.¹

Taking into consideration the mental and physical health issues that Mr. Wilson, Mr. Myers and Mr. Grayson suffer from, the distress caused by execution by nitrogen hypoxia would be heightened.

In the case of Mr. Wilson, he suffers from sensitivity to bright light and requires prescription glasses. The gasmask will not prevent the exposure to the bright lights and it is very likely that any prescription glasses that he wears under the mask may cause gaps in the seal of the mask over his facial skin. This may cause gas seepage and ensure a more torturous death due to the mixing of oxygen and nitrogen. Furthermore, he has pulmonary health problems which will make breathing nitrogen even more painful.

A second individual was executed by nitrogen hypoxia in September 2024.

In addition, the jurisprudence of the US Supreme Court denies a meaningful review of the consideration of execution methods, as it has never granted a "method of execution" challenge in favour of a death row inmate. Additionally, in these cases, the burden of the proof is upon the person to be executed, who needs to convince the court that there exists a less cruel method of execution which can be readily used.

While we do not wish to prejudge the accuracy of the aforementioned allegations, we express grave concern at the death sentences against Mr. Rocky Myers and Mr. David Phillip Wilson in the State of Alabama, as well as the execution scheduled for 21 November 2024 of Mr. Carey Grayson using nitrogen hypoxia – a method of execution, which may subject individuals to cruel, inhuman or degrading treatment that could amount to torture.

If the above allegations prove to be true, they may constitute a violation of article 2 (right to a remedy), article 6 (right to life), article 7 (prohibition of torture and inhumane punishment, article 9 (prohibition on arbitrary detention), article 10 (human dignity of those deprived of their liberty), article 14 (right to a fair trial) the International Covenant on Civil and Political Rights (ICCPR), ratified by the United States of America in 1992, of various articles of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), ratified by the United States of America in 1994, article 5 of the International Convention on the Elimination of Racial Discrimination, ratified by the United States

¹ [United States: UN experts horrified by Kenneth Smith's execution by nitrogen in Alabama | OHCHR](#)

of America in 1994 and of the United Nations Safeguards Guaranteeing Protection of the Rights of those Facing the Death Penalty (1984). We further refer to the Convention on the Rights of Persons with Disabilities (CRPD) which the United States of America signed in 2009.

Execution by nitrogen hypoxia

As raised in UA USA 29/2023, we would like to recall that according to the Human Rights Committee “the death penalty cannot be reconciled with the full respect for the right to life, and abolition of the death penalty is both desirable and necessary of enhancement of human dignity and progressive development of human rights” (CCPR/C/GC/36, para. 50). We reiterate that article 6 (6) of ICCPR, is clear in asserting that “nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.” We also reiterate our concerns regarding the prohibition on medical experimentation on detainees (see article 7 of the ICCPR and principle 22 of the Body of Principles for the Protection of All persons under Any Form of Detention or Imprisonment). We remain concerned that your Excellency’s Government seems to be expanding its use of the death penalty by continuing the use of new methods of execution, which is against current international law standards, particularly the above-mentioned article of ICCPR.

We further recall that the death penalty can only be carried out in a manner that inflicts the minimum possible suffering (ECOSOC Strengthening of the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, para. 5). In this regard we are extremely concerned that Mr. Smith reportedly took over 20 minutes to die, remained conscious for several minutes as he writhed and convulsed on the gurney, gasping for air and pulling on the restraints, shaking violently in prolonged agony. We note that the Human Rights Committee found in a previous case that taking over 10 minutes to die via cyanide gas would not result in death as swiftly as possible, would not meet the test of “least possible physical and mental suffering”, and would constitute cruel and inhuman treatment, in violation of article 7 of the Covenant, (Chitat Ng v Canada, CCPR/C/49/D/469/1991 (1994). The Human Rights Committee has stressed that failure to respect article 7 “inevitably render[s] the execution arbitrary in nature.” The Committee has also clarified that the right to security of persons protects individuals from intentional infliction of bodily or mental harm (Human Rights Committee, general comment 35, CCPR/C/GC/35). Furthermore, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has warned that executions by gas asphyxiation – as is the case of nitrogen hypoxia – is already clearly prohibited under international law (A/67/279, paras. 32 and 77).

In relation to the cases of Mr. Wilson, Mr. Myers, and Mr. Grayson we note that their impairments and health conditions may compound their suffering during a possible execution by nitrogen hypoxia.

In this context we are disturbed by the scheduling of Mr. Grayson’s execution by nitrogen hypoxia in the State of Alabama for the 21 November 2024 and that Mr. Myers, Mr. Wilson, and more detainees are at risk of being scheduled for an execution using this method. We urgently call on your Excellency’s Government to ban this method of execution.

We are further concerned that defendants challenging their execution method on the basis that it may constitute inhumane or degrading treatment are required to prove there is an alternative method of execution available. We recall that the prohibition on torture or to cruel, inhuman or degrading treatment or punishment is absolute.

We further recall that the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has taken the view that most methods of execution amount to ill-treatment, if not torture, that States applying the death penalty cannot guarantee that the prohibition of torture or ill-treatment is scrupulously observed (A/67/279, paras. 75-77) and that that there is an evolving international standard to consider the death penalty in itself as a violation of the prohibition of torture and ill-treatment (A/67/279, para. 72).

Similarly, we would like to call your attention to an emerging international customary norm prohibiting the death penalty as a form of cruel, inhuman, or degrading punishment. The International Law Commission's Draft conclusions on identification and legal consequences of peremptory norms of general international law of 2022 provides a guiding methodology for UN Special Procedures to state the *jus cogens* violations of the death penalty (either as a new norm or in violation of the right to life or the prohibition of torture). This is also the conclusion of a recent report from the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, which on the basis of latest medical and medico-legal research, found that "the idea that the death penalty does not constitute torture simply lacks persuasion".

Death Row Phenomena

We recall that the cruelty of the death penalty goes beyond the execution itself. The concept of the "death row phenomenon" explains that prisoners on death row may experience severe mental trauma and physical deterioration. Extreme delays in the implementation of a death penalty sentence that exceed any reasonable period of time necessary to exhaust all legal remedies may also entail the violation of article 7 of the Covenant, especially when sentenced persons are particularly vulnerable due to factors such as age, health or mental state. Considering that Mr. Myers has been on death row since 1994, Mr. Grayson since 1996 and Mr. Wilson since 2008, a period which is likely to be compounded by their impairments and health conditions, we express our utmost concern over the potential violation of articles 7 of the CAT and 10 of the ICCPR, which guarantee the protection of the humanity and human dignity of those deprived of their liberty (CCPR/C/GC/36, para. 40).

Access to justice for persons with disabilities

We would like to recall that it seems that at no stage of the pre-trial, trial or post-trial proceedings were accommodations and appropriate support made available for any of the individuals nor was there an adequate understanding of Mr. Wilson's Asperger's Syndrome and ADHD, nor of Mr. Myers intellectual disability, and how this could detrimentally affect their access to justice. We further note with concern that neither Mr. Myers, nor Mr. Wilson received effective representation during the trial proceedings. We underline that the death penalty must not be imposed in a discriminatory manner and the element of non-discrimination applies both procedurally and substantively.

We note that your Excellency's Government is a signatory to the Convention on the Rights of Persons with Disabilities (CRPD). We wish to stress that, in line with the Vienna Convention on the Law of Treaties (VCLT), signing creates an obligation to refrain, in good faith, from acts that would defeat the object and the purpose of the treaty.² Article 13 of the CRPD enshrines an explicit right to access to justice of persons with disabilities on an equal basis with others. In particular, all persons with disabilities, and especially persons with intellectual and psychosocial disabilities, shall be informed about, and provided access to, promptly and as required, appropriate support and accommodation to facilitate their effective participation, as well as procedural accommodations to ensure fair trial and due process. This is similarly detailed in principles 2, 3 and 5 of the 2020 International Principles and guidelines on access to justice for persons with disabilities, which aim to support States in revising, designing and implementing justice systems that provide equal access to justice for persons with disabilities, in line with international human rights standards.³ Furthermore, Article 10 of the CRPD explicitly recognizes and protects the right to life, including protection against State conduct that threatens this right.

The Human Rights Committee has explicitly stated that persons with disabilities, including persons with psychosocial and intellectual disabilities, are entitled to specific measures of protection to ensure their effective enjoyment of the right to life on equal basis with others. Such measures of protection shall include the provision of reasonable accommodation in all stages of the process, access to essential facilities and services, and other specific measures.⁴

Moreover, States must refrain from imposing the death penalty on individuals who face special barriers in defending themselves on an equal basis with others, such as persons whose serious psychosocial and intellectual disabilities impeded their effective defence ([CCPR/C/GC/36 para. 49](#)).

It has further observed that failure to provide accessible documents and procedural accommodation for persons with disabilities constitutes a violation of article 14 of the Covenant and that violation of fair trial guarantees in proceedings resulting in the imposition of the death penalty would render the sentence arbitrary in nature, and in violation of article 6.

Right to health

In this context, we also draw the attention of your Excellency's Government to the contributions of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, which guarantees the highest attainable standard of mental health for every individual, irrespective of them having been convicted of crimes. In this regard, we wish to refer to the report of the former Special Rapporteur, in which he makes reference to the fact that "[i]n contexts of confinement and deprivation of liberty, violations of the right to health interfere with fair trial guarantees, the prohibition of arbitrary detention and of torture and

² We wish to highlight that the CRPD was adopted as a resolution by the General Assembly and enjoys near universal ratification. It has standing as the most progressive interpretation of all existing human rights as they apply to persons with disabilities. These rights are furthermore guaranteed by all other human rights treaties.

³ See International Principles and Guidelines on access to justice for persons with disabilities, available at <https://www.ohchr.org/EN/Issues/Disability/SRDisabilities/Pages/GoodPracticesEffectiveAccessJusticePersonsDisabilities.aspx>

⁴ General Comment No. 36, supra note 5, para 24

other forms of cruel, inhuman or degrading treatment, and the enjoyment of the right to life” and that violations of the right to health emerge as both causes and consequences of confinement and deprivation of liberty”.

Racial discrimination

As in the cases of Mr. Myers and Mr. Wilson there seems to be racial discrimination in the sentencing due to the composition of the jury and the circumstances described, we would like to further recall that the right to life must be respected and ensured without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion. Legal protections for the right to life must apply equally to all individuals and provide them with effective guarantees against all forms of discrimination, including multiple and intersectional forms of discrimination. Any deprivation of life based on discrimination in law or in fact is ipso facto arbitrary in nature. (CCPR/C/GC/36, para. 61) Similarly, article 5 of the International Convention on the Elimination of Racial Discrimination, ratified by the United States of America on 21 October 1994, states the obligation to guarantee to everyone, without distinction of race, colour or national or ethnic origin, the right to equality before the law, notably the right to equal treatment before the tribunals and all other organs of the administration of justice.

We further note that the Human Rights Committee has expressed concern at racial disparities in the imposition of death sentences, with a disproportionate impact on people of African descent and indicated that your Excellency’s Government should adopt further measures to effectively ensure that death sentences are not imposed as a result of racial bias (CCPR/C/USA/CO/5). Additionally, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, in her report on the visit to the United States of America in 2023 (A/HRC/56/68/Add.1), raised similar concerns regarding the mass incarceration and excessive sentencing of racially marginalized groups, particularly people of African descent (para. 44, 50).

Fair trial and due process

We wish to express our concern that in the case of Mr. Myers, and 32 others, the sentencing judge overrode the jury decision and sentenced them to death. It is noted that since 2017, such ‘judicial override’ has been abolished in the State of Alabama, reinforcing the potential violations of Mr. Myers’s fair trial and due process rights. In this regard we note that article 15 (1) of the ICCPR observes that, if subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

We further refer to safeguard 4 of the Safeguards guaranteeing protection of the rights of those facing the death penalty, which requires capital punishment only be imposed based upon “clear and convincing evidence, leaving no room for an alternative explanation of the facts.” With regard to Mr. Myers we note information that the recanted testimony was never considered by the federal court.

With regards the failure to provide a possibly exculpatory letter to Mr. Wilson’s defence team for 20 years, we note that under article 14(1) of the ICCPR, an individual is entitled to have adequate facilities for the preparation of his defence and this includes “access to documents and other evidence...this must include

all materials...that are exculpatory. Exculpatory material should be understood as including not only material establishing innocence but also other evidence that could assist the defence” (general comment No. 32, para. 13). The UN Basic Principles on the Role of Lawyers further states that the competent authorities should ensure lawyers access to appropriate information, files and documents in their possession at the earliest appropriate time (principle 21). The letter also appears to raise doubt as to whether Mr. Wilson carried out an intentional killing – the only conduct which constitutes “a most serious crime” for the imposition of the death penalty.

With regards to the information received that the day after being ordered to disclose the letter, the Attorney General obtained an affidavit from the co-accused indicating they were not the author, despite the state not having previously disputed the veracity of the letter and of the impending parole hearing of the co-accused, we noted that according to the UN Guidelines on the Role of Prosecutors, they should perform their duties “fairly consistently and expeditiously and respect and protect human dignity (principle 12).

In relation to legal representation, we are concerned about the information that indicates the defendants were not provided adequate counsel during proceedings that would lead to a death penalty sentence. These reported breaches of the right to legal counsel of one’s choosing are in violation of one of the key elements of due process.

The legal profession and its free exercise are an essential element of the rule of law, the protection of human rights and the functioning of an independent judicial system. The free exercise of the legal profession contributes to ensuring access to justice, oversight of state power, protection of due process and judicial guarantees.

We also note that Mr. Wilson was shackled during the trial. In this regard general comment 36 observes that “failure to respect the presumption of innocence, which may manifest itself in the accused being ... handcuffed during the trial” would amount to a violation of article 14 of the Covenant.

We reiterate that the imposition of a sentence of death following a trial in which the provisions of article 14 have not been respected also constitutes a violation of article 6 (Human Rights Committee, general comment 32).

Considering the irreversibility of the death penalty, we respectfully call on your Excellency’s Government to ensure no further executions by nitrogen hypoxia are carried out and to intervene to prevent the execution of Mr. Grayson, Mr. Myers and Mr. Wilson. We wish to request that your Excellency's Government brings our concerns to the relevant executive, legislative and judicial authorities of the State of Alabama. We further remind that according to article 50 of the ICCPR the provisions of the Convention “extend to all parts of federal States without any limitations or exceptions.”

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency’s Government to safeguard the rights of the above-mentioned person in compliance with international instruments.

We are issuing this appeal in order to safeguard the rights of the above-mentioned individuals from irreparable harm and without prejudicing any eventual legal determination. It is relief pendente lite⁵.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please explain whether the enforcement of the death sentence against Mr. Wilson, Mr. Myers and Mr. Grayson in the circumstances described above, and considering their intellectual and psychosocial disabilities, would comply with the international standards and human rights obligations of the United States of America under the International Covenant on Civil and Political Rights and other international standards.
3. Please provide information about the factual and legal basis for the arrests, detention, charging, and sentencing against Mr. Wilson and Mr. Myers, and explain how these actions comply with the United States of America's obligations under international human rights law.
4. Please provide details on the manner in which the intellectual and psychosocial disabilities of Mr. Wilson, Mr. Myers and Mr. Grayson were taken into account during the trial proceedings and what measures will be taken to prevent discriminatory practices based on the failure to consider a convicted person's intellectual and psychosocial disability in future cases.
5. Please provide details on the measures that the Government of the United States of America has taken or intends to take to fully prevent individuals from being subjected to a method of execution that reportedly constitutes cruel, inhuman or degrading treatment or punishment, or even torture, as per the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and other international standards.
6. Please provide details on the measures that the State of Alabama has taken or intends to take to fully prevent individuals from being subjected to a method of execution that reportedly constitutes cruel, inhuman or degrading treatment or punishment, or even torture, as per the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and other international standards.
7. Please provide details on the measures that the State of Alabama has taken or intends to take to address the situation of the 33 people on

⁵ Article 41 ICJ Statute 'Interim Protection': Part III, Section D (Incidental Proceedings), Subsection 1

death row sentenced following judicial override, a practice which has since been abolished in Alabama.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

Further, we would like to inform your Excellency's Government that after having transmitted the information contained in the present communication to the Government, the Working Group on Arbitrary Detention may also transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

We may continue to publicly express our concerns in the near future on this case, which in our view merits prompt attention, as Mr. Greyson, Mr. Wilson's and Mr. Myers' lives are at stake and the execution of a death penalty is irreversible. We also believe that this matter is one of public concern and that the public should be informed about it, and about its human rights implications. Any public expression of concern from our part would indicate that we have been in contact with your Excellency's Government to clarify the issues in question.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of our highest consideration.

Ganna Yudkivska
Vice-Chair on communications of the Working Group on Arbitrary Detention

Heba Hagrass
Special Rapporteur on the rights of persons with disabilities

Morris Tidball-Binz
Special Rapporteur on extrajudicial, summary or arbitrary executions

Margaret Satterthwaite
Special Rapporteur on the independence of judges and lawyers

George Katrougalos
Independent expert on the promotion of a democratic and equitable international order

K.P. Ashwini
Special Rapporteur on contemporary forms of racism, racial discrimination,
xenophobia and related intolerance

Alice Jill Edwards
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
punishment