

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

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

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**PLAINTIFF’S RESPONSE TO JON YORKE’S MOTION TO INTERVENE**

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Pursuant to the Court’s order dated May 19, 2025 (Doc. 45), Plaintiff David P. Wilson files this Response to Jon Yorke’s motion to intervene in this case. The parties have conferred and could not come to an agreement that would enable a joint response. The parties are thus filing separate responses.

Plaintiff has no objection to Jon Yorke intervening in this case. Plaintiff believes that his intervention will benefit the parties and the Court by providing the most reliable and contemporary information on the intricacies of international law and will not burden this Court with extraneous efforts.

In addition to the practical benefits of Professor Yorke’s intervention, Plaintiff believes that Professor Yorke has intervenor standing in this case and satisfies the requirements under Fed. R. Civ. P. 24(a) and (b). Plaintiff believes that he thus may intervene as of right, and in the alternative, satisfies the conditions required for the Court to grant permissive intervention.

### **PROCEDURAL HISTORY**

1. Mr. Wilson filed an amended complaint in this case on March 31, 2025 (Doc. 35), in which he raises two international law claims in Counts III and IV.
2. Defendant filed a second motion to dismiss on April 21, 2025 (Doc. 38), challenging Plaintiff’s Counts III and IV (the international law claims).
3. Professor Jon Yorke moved to intervene on May 16, 2025, stating that he “has a direct, substantial, legally protectable interest in the instant proceeding,” that “his perspective is not adequately represented” by the original parties, and that his “participation will meaningfully assist the court in considering relevant international legal norms” (Doc. 44, at pp. 2-3).
4. On May 19, 2025, This Court ordered that Plaintiff and Defendant respond to Professor Yorke’s motion by June 2, 2025 (Doc. 45).
5. Mr. Wilson filed his response to Defendant’s motion to dismiss, insofar as it concerns his international law claims, on May 20, 2025 (Doc. 46).

6. Counsel for Mr. Wilson and counsel for Mr. Hamm conferred on May 28, 2025, about Jon Yorke's motion to intervene and could not agree to a joint response.

7. Mr. Wilson files this response.

8. Mr. Wilson does not object to Jon Yorke's intervention.

### **PLAINTIFF'S RESPONSE**

**I. Professor Yorke's intervention would be beneficial for both parties and this Court in understanding international law.**

9. As Professor Yorke noted in his motion to intervene (Doc. 44), he is an internationally recognized international law expert, with a current appointment at Birmingham City University as Professor of Human Rights and Director of the Centre for Human Rights. He has published scholarly works on international human rights law and has been involved in legal interventions on the subject both at international bodies like the United Nations and the European Union, as well as in countries including the United States and Sudan.

10. Given the intricacies of international law and its requirements, undersigned counsel believes that it would be beneficial to all parties to have Professor Yorke's expertise in this case with respect to Plaintiff's Counts III and IV.

11. Questions of international law, concerning *jus cogens*, international treaties, and customary international law, all of which are material and necessary to the resolution of this case, often reach authorities and considerations outside the scope of knowledge with which American lawyers and jurists are generally familiar. Even

today, international law is not a required course at American law schools, nor is it a subject tested on bar exams, and American lawyers are not typically expected to know the obligations that private citizens and state actors have under international law, even though such obligations are binding on Americans. Thus, although it would be superfluous for a torts expert, for example, to intervene in a mass tort case, the situation is different when it concerns a specialized area of law like international human rights law.

12. Upon information and belief, David Wilson is the first person subject to the nitrogen gas protocol who has raised international law claims. Moreover, Mr. Wilson's litigation is the first such case that is advancing to the merits; all previous challenges have been resolved on applications for preliminary injunctions and thus have not reached the merits. As a result, this is the first case of its kind that would benefit from the expertise of a party intervenor like Jon Yorke.

**II. Under Fed. R. Civ. P. 24 (a) and (b), Professor Yorke may intervene as of right or, in the alternative, with the Court's permission.**

13. An individual may intervene as of right when he "claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." Fed. R. Civ. P. 24(a)(2).

14. As an international law practitioner and scholar, Professor Yorke has a legally protectable interest in this action, the disposition of this action will impact his ability to advocate for and advise other parties in human rights cases, and Mr. Wilson cannot adequately represent Professor Yorke's interests. An adverse federal ruling from a District Court in one of only two states that use nitrogen gas would vastly change Professor Yorke's ability to advocate for others and would necessarily change his scholarship and consulting roles. *Coalition to Defend Affirmative Action v. Granholm*, 501 F.3d 775, 782 (6th Cir. 2007). Professor York has an interest in preserving the progression of international law for international bodies, people he advocates for, and international scholars and practitioners to use.

15. Professor Yorke has a substantial and specific legal interest in the disposition of the important questions of international law put before this Court that satisfies the Eleventh Circuit's requirement for Rule 24(a) intervention. *Athens Lumber Co. v. Fed. Election Comm'n.*, 690 F.2d 1364, 1366 (11th Cir. 1982) (citation omitted). Should this Court find that Alabama's nitrogen gas protocol does not violate international law, Professor Yorke will be severely impeded in his ability to advocate for other persons subjected to the protocol before international legal bodies. Moreover, his ability to serve as a consultant to international bodies and sovereign countries will be impeded by a substantial federal court holding that sits in tension and dissonance with the consensus of experts in international law. Professor Yorke's

interest is thus unique and particularized, and not a mere “general grievance,” as the outcome of this case impacts his specific professional obligations and livelihood. *Chiles v. Thornburgh*, 865 F.2d 1197, 1212-14 (11th Cir. 1989) (quoting *United States v. Perry Cnty. Bd. of Ed.*, 567 F.2d 277, 279 (5th Cir. 1978)).

16. Professor Yorke’s interests are not adequately protected by the parties. As an expert and practitioner in international law, Professor Yorke has an interest in the development of the international legal order. Moreover, he has an interest in protecting his own ability to fulfill his professional obligations and to pursue his livelihood. These are not interests that are protected by Mr. Wilson. While Mr. Wilson’s position in Counts III and IV are consistent with the requirements of international law, Mr. Wilson’s interest extends only insofar as the nitrogen gas protocol violates existing international law as to him, facially and as applied. Mr. Wilson has no independent interest in upholding the international legal order itself, of shaping the development of international human rights law, in the cases of other persons subject to the nitrogen gas protocol or other execution protocols, nor preserving the ability of experts to further develop and clarify this area of law. Mr. Wilson has no interest in contextualizing how international human rights law functions for the Court, nor in making sure that international law continues to evolve in the proper direction. As an international law expert and practitioner, Professor Yorke does. As he noted in his motion to intervene, “Yorke’s work and direct

involvement with international legal proceedings distinguish his interest from the Plaintiff's and support the conclusion that his perspective is not adequately represented" (Doc. 44, at pp. 2-3). The interests of Jon Yorke and David Wilson may differ or diverge on some points, even if their overall position that the nitrogen gas protocol violates international law is shared.

17. Given that the Defendant is hoping to dismiss Plaintiff's international law claims, it is evident that Professor Yorke's interests are not protected by its position.

18. Thus, given that Professor Yorke has legally cognizable interests in the disposition of this case, and his interests are not protected by either party, he may intervene as of right under Fed. R. Civ. P. 24(a)(2).

19. In the alternative, this Court may also grant Professor Yorke permission to intervene under Fed. R. Civ. P. 24(b)(1)(B), as he "has a claim or defense that shares with the main action a common question of law or fact." Professor Yorke is currently challenging Alabama's nitrogen gas protocol in international human rights proceedings at the United Nations, including before several United Nations Special Rapporteurs and the United Nations Working Group on Arbitrary Detention, arguing that it violates international legal standards.<sup>1</sup> Plaintiff's Counts III and IV share with

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<sup>1</sup> See Complaint filed by Professor Jon Yorke on behalf of Mr. David P. Wilson under sentence of death and in the custody of the Alabama Department of Corrections, United States of America, Submission to Dr. Morris Tidball-Binz, Special Rapporteur on extrajudicial, summary or arbitrary executions, Dr. Alice Edwards, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Dr. Tlaleng Mofokeng, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Dr. Heba Hagrass, Special Rapporteur on the rights of persons with disabilities, Professor Margaret Satterthwaite, Special Rapporteur on the independence of judges and lawyers, Dr. Livingstone Sewanyana, Independent Expert on the

Professor Yorke’s challenges common questions of law and fact. This Court thus may grant Professor Yorke the right to intervene.

### **III. Professor Yorke has standing as an intervenor.**

20. In the Eleventh Circuit, individuals may intervene in ongoing litigation when they have “piggyback standing.” *Dillard v. Chilton Cnty. Comm’n*, 495 F.3d 1324, 1337 (11th Cir. 2007). In *Dillard*, the Eleventh Circuit held that “Because of lessened justiciability concerns in the context of an ongoing Article III case or controversy, intervenors in this circuit may in some cases be permitted to ‘piggyback’ upon the standing of original parties,” as long as there is the “existence of a justiciable case or controversy at the point at which intervention is sought.” *Id.* at 1330. It is only when the original parties settle or are otherwise no longer in an adverse position that the intervenor needs to demonstrate independent Article III standing. Moreover, this district has applied the Eleventh Circuit’s “piggyback standing” rule in the recent past. *See Am. All. for Equal Rts. v. Ivey*, No. 2:24-CV-104-RAH, 2024 WL 2034703, at \*2 (M.D. Ala. May 7, 2024) (holding that there is piggyback standing when “there ‘exists a justiciable case or controversy between the

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promotion of a democratic and equitable international order, Dr. Matthew Gillett, Chair-Rapporteur, Working Group on Arbitrary Detention, Professor Robert McCorquodale, Chairperson, Working Group on Business and Human Rights, OHCHR-UNOG, 8-14 Avenue de la Paix, 1211 Geneve 10, Switzerland, 11<sup>th</sup> April 2024; UA USA 27/2024, Palais des Nations, 1211 Geneva 10, Switzerland, 15 November 2024, p. 10, available online at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=29503>; and Response from the United States Permanent Mission to the United Nations, dated December 2, 2024, available on line here: <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=38788>; Jon Yorke, Submission to the United Nations Working Group on Arbitrary Detention on Behalf of David P. Wilson (May 20, 2024) (individual complaint submitted to the UN Working Group on Arbitrary Detention, which is currently pending before the Working Group).

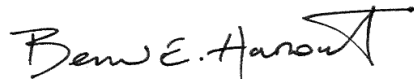


parties already in the lawsuit’ in which Plaintiff still requests ‘judicial resolution of the dispute’ against Defendant.” (quoting *Dillard*). Here, Plaintiff and Defendant remain adversarial, as they hold opposing positions on whether the state’s nitrogen gas execution protocol is legally permissible. Professor Yorke thus has standing to intervene.

### CONCLUSION

Given that Professor York satisfies the legal requirements of Rule 24(a) and (b), that he has standing to intervene, and that his interests are not adequately represented by the parties, Plaintiff does not oppose Professor Yorke’s motion to intervene.

Done and signed this 2<sup>nd</sup> day of June, 2025.

A handwritten signature in black ink, appearing to read "Bernard E. Harcourt". The signature is stylized with a large, sweeping initial "B" and a long, horizontal stroke extending to the right.

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

The Initiative for a Just Society (IJS)  
COLUMBIA LAW SCHOOL  
435 West 116<sup>th</sup> 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 June 2, 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

A handwritten signature in black ink, reading "Bernard E. Harcourt". The signature is stylized, with a large, sweeping "B" and a distinctive flourish at the end of the last name.

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Bernard E. Harcourt