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

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

JON YORKE'S REPLY IN SUPPORT OF MOTION TO INTERVENE

Jon Yorke files this Reply in support of his motion to intervene, pursuant to the Court's order dated May 19, 2025. (Doc. 45). Yorke seeks as of right intervention under Rule 24(a) of the Federal Rules of Civil Procedure and in the alternative permissive intervention under Rule 24(b). As delineated in his initial motion, Yorke moves to intervene on the basis of the potential harm to his specific legally protectable interest related to the international law claims, Counts III and IV, brought by Mr. Wilson. (Doc. 44). Not only, upon information and belief, has a U.S. court not yet ruled on the international legal implications of the use of nitrogen gas asphyxiation, Yorke's specific and novel work to bring Mr. Wilson's claims before various international legal mechanisms would be stymied by a ruling against the international law claims at issue in this case. (Doc. 44 at 11-15) (detailing Yorke's work before various international bodies on behalf of Mr. Wilson and similarly situated persons). Such a ruling here would both set damaging precedent, obstructing Yorke's ability to carry out his work, and effectively end Yorke's ability

to pursue Mr. Wilson's claims before international mechanisms. Yorke does not intend to seek discovery additional to that of Mr. Wilson, nor does he intend to raise new claims beyond those already asserted in Counts III and IV. Yorke simply seeks intervention to ensure that the Court has appropriately robust and up-to-date international legal arguments as it considers the legality of the use of nitrogen gas asphyxiation under international law (a question of first instance before this Court), and to protect Yorke's ability to carry out his work. As Mr. Wilson himself notes, Yorke's expertise in this area of international law, which is materially relevant to this case, is beyond that of American-trained lawyers and would contribute substantially to the efficient adjudication of these claims before this Court. (Doc. 52 at ¶ 3-4). As similarly affirmed by Mr. Wilson, Yorke's interests are *not* adequately represented by the present parties. *Id.* at ¶ 16.

Intervention as of right should be granted and upon a finding that Yorke has not met any element of as of right intervention, permissive intervention should be granted on the grounds that Yorke undoubtedly shares a common question of law or fact with the present matter and his intervention will bolster the efficiency, and not unduly prejudice or delay, these proceedings.

PROCEDURAL HISTORY

1. On March 31, 2025, Mr. Wilson filed an amended complaint that included two international law claims, Count III and IV. (Doc. 35).
2. On April 21, 2025, Defendant filed a second motion to dismiss, challenging the international law claims, Count III and IV. (Doc. 38).
3. On May 16, 2025, Yorke filed his motion to intervene seeking intervention as of right under Rule 24(a) of the Federal Rules of Civil Procedure or in the alternative permissive intervention under Rule 24(b). (Doc. 44).

4. On May 19, 2025, this Court ordered responses to Yorke's motion by June 2, 2025, and Yorke's reply by June 9, 2025. (Doc. 45).
5. On May 20, 2025, Mr. Wilson responded to the Defendant's motion to dismiss concerning international law claims, Count III and IV. (Doc. 46). On June 3, 2025, the Defendant filed his reply. (Doc. 53).
6. On June 2, 2025, after conferral without agreement, Defendant filed his response to the present motion (Doc. 51), with Mr. Wilson subsequently filing his response in support on the same date. (Doc. 52).
7. Yorke files this reply.

YORKE'S REPLY

I. Proposed Intervenor has a legally protectable interest.

8. Contrary to the Defendant's assertions (Doc. 51 at 6-9) and aligned with Mr. Wilson's (Doc. 52 at ¶¶ 14-15), Yorke has a "direct, substantial, legally protectable interest" (citation omitted), not an economic interest, nor one that is speculative or generalized. (*See* Doc. 44 at 17-27).
9. Yorke does not seek to further any personal anti-death penalty stance, as baselessly claimed by the Defendant. (Doc 51 at 4-5). His aim is solely to uphold the international legal standards that underly his professional work and ensure that his professional activities bringing individualized complaints on behalf of U.S. death row inmates subject to nitrogen gas asphyxiation can continue – particularly and including those brought on behalf of Mr. Wilson. Yorke's legal interest to carry out these aspects of his profession would be directly and substantially harmed absent intervention here.

10. The Court's inquiry into the Rule 24(a)(2) requirement of a "direct, substantial, legally protectible interest in the proceeding" is "a flexible one, which focuses on the particular facts and circumstances surrounding each [motion for intervention]" *Chiles v. Thornburgh*, 865 F.2d 1197, 1213 (11th Cir. 1989) (quoting *United States v. Perry Cnty. Bd. of Ed.*, 567 F.2d 277, 279 (5th Cir. 1978)).

11. Yorke's interests in this case are direct, substantial, and legally protectable. They are neither generalized nor are they akin to a lobbying effort, as Defendant argues without basis. (Doc. 51 at 9). As provided in detail in his original motion (Doc. 44 at 12-15), Yorke has submitted individualized complaints on behalf of death penalty inmates facing the use of nitrogen gas asphyxiation, including a complaint on behalf of Mr. Wilson on April 15, 2024 to seven United Nations ("U.N.") Special Procedures. (Doc. 44 at 12). Those U.N. Special Procedures (also referred to as U.N. Special Rapporteurs) expressed "grave concern" regarding the use of nitrogen gas asphyxiation as a death penalty procedure in a letter to the U.S. Permanent Mission to the United Nations, who cited federal structure and thus referred the matter to the Alabama Governor's office, which has yet to respond. (Doc. 44 at 13-14). A negative ruling on the international legal claims in this matter will directly impede Yorke's ability to receive an adequate response on behalf of Mr. Wilson, given that any response from the Alabama Governor's office is surely to cite to the decision in this matter where these very questions of international law are being litigated.

12. Yorke has also filed an individual complaint on behalf of Mr. Wilson to the Working Group on Arbitrary Detention ("WGAD"), seeking a communication from the WGAD to the relevant government regarding Mr. Wilson's case. (Doc. 44 at 13). A negative ruling

related to Mr. Wilson's international law claims here too would obstruct Yorke's ability to ensure that the WGAD adequately reviews his complaint. Negative precedent in this case would both weigh against Yorke's argument on behalf of Mr. Wilson, requiring him to rebut the findings of this Court and, if Mr. Wilson's executions was carried out by nitrogen gas asphyxiation, would indeed moot the complaint completely.

13. Yorke also drafted and filed a Stakeholder Submission to inform the United States Universal Periodic Review before the U.N. Human Rights Council, which examined the legality under international law of methods of death penalty execution, including the use of nitrogen gas asphyxiation. (Doc. 44 at 11). The submission specifically included the case of Mr. Wilson. *Id.*

14. Each of these lines of work, and other individual complaints on behalf of similarly situated persons, would be obstructed by a negative ruling in this case on the presented international legal claims, Claim III and IV. Not only would the U.S. government be able to simply refer any complainant to a U.N. Special Procedure to the relevant U.S. State, as done in Yorke's complaint on Mr. Wilson's behalf, any U.S. State government could simply refer to the ruling by this Court that squarely addressed the international legal questions as issue. If denied intervention, Yorke's inability to assure that the international legal claims in this case are fully and robustly considered will be cut off, thereby undermining his ability to fully pursue the claims of Mr. Wilson and others before international mechanisms. Moreover, a denial of these claims resulting in Mr. Wilson's execution by nitrogen gas asphyxiation would indeed end Yorke's ability to complete these lines of international complaints on Mr. Wilson's behalf.

15. Yorke's legally protectable interest in continuing to practice his profession via these specific avenues involving Mr. Wilson, and others similarly situated, meet the interest test adopted by this Circuit in *Worlds v. Dep't of Health and Rehab. Servs., State of Fla*., which is defined as a "practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process." 929 F.2d 591, 594-95 (11th Cir. 1991) (quoting *Nuesse v. Camp*, 385 F.2d 694, 700 (D.C. Cir. 1967)).

16. Yorke is a "concerned person" that will be directly impacted by the outcome in this case. His intervention in this matter will facilitate the efficiency of the adjudication by this Court of the relevant international legal claims, as discussed and affirmed by Mr. Wilson himself. (Doc. 52 at ¶ 10-12).

17. The Defendant further ignores Supreme Court precedent cited in Yorke's motion, which stated that intervention can be proper when future legal rights could be impaired by precedent set in the current case (Doc. 44 at 18) (citing *Cascade Nat. Gas Corp. v. El Paso Nat. Gas Co.*, 386 U.S. 129, 133 (1967)).

18. The Defendant further falsely claims (Doc. 51 at 7) that Yorke's interest is an economic one and that receiving an award for his work is somehow proof of economic gain. (Doc. 51 at 11). The Defendant cites *Mt. Hawley Ins. Co. v. Sandy Lake Props., Inc.* for the proposition that the legally protected interest must be more than an economic one. 425 F.3d 1308, 1311 (11th Cir. 2005). However, the *Mt. Hawley* Court's ruling turned on a finding that the proposed intervenor's interest was "purely economic." *Id.* Yorke's interest in being able to carry out his profession and livelihood is not a purely economic interest. Yorke is, in fact, *not* directly compensated for his work on behalf of Mr. Wilson

other others described above, nor does his ability to earn a living turn solely on his engagement in individualized complaints before international mechanisms. He is compensated through his service as professor at Brimingham City University, a professional role not contingent on bringing or the outcomes of such complaints. His interest, though connected with his legal right to carry out his professional activities, is thus not a "purely economic" one.

19. Finally, the Defendant claims that Yorke's interest is akin to a lobbying effort. (Doc. 51 at 9). As described in detail in Yorke's motion and delineated above, his work is one of an international legal practitioner and expert, not lobbyist. The District Court in *Resort Timeshare Resales, Inc. v. Stuart*, adopted the Seventh Circuit reasoning in *Keith v. Daley* in denying a lobbying organization intervention. 764 F. Supp. 1495, 1499 (S.D. Fla. 1991) (citing *Keith v. Daley*, 764 F.2d 1265, 1269 (7th Cir. 1985)). In adopting this reasoning, the District Court found that the purpose of Rule 24(a) is "to foster economy of judicial administration," *Id.* (citing *Stallworth v. Monsanto Co.*, 558 F.2d 257, 265 (5th Cir. 1977)), and found that granting a lobbyist the right to intervene would open the court to "every citizen who has called his congressman concerning litigation." *Resort Timeshare Resales, Inc.* 764 F. Supp. at 1499. The Defendant's erroneous lobbying claim dovetails with his later claim that allowing Yorke to intervene would open intervention to anyone in the field. (Doc. 51 at 15). Both are factually incorrect.

20. Again, Yorke is not a lobbyist. It is also incorrect to claim that intervention by Yorke would open future courts to any intervenor working in this field. As described in greater detail below, Yorke is uniquely positioned given both his specialized expertise in the international law regarding the use of specific methods of enacting the death penalty and

his novel direct work on behalf of Mr. Wilson via multiple complaints and submissions to international mechanisms. (Doc. 44 at 11-15). Yorke's work in this regard is extremely rare and, upon information and belief, is the only instance of an international legal expert and practitioner to submit complaints to three different United Nations review mechanisms on behalf of an individual on death row in the United States challenging a specific method of execution. This is due to the fact that Mr. Wilson's case raises novel international legal questions concerning the use of nitrogen gas asphyxiation, in both facial and as applied contexts.

II. Proposed Intervenor's interests will be impaired by this lawsuit.

21. Yorke's ability to fully pursue Mr. Wilson's individualized complaints, and those similarly situated, will be stymied by a negative decision by this Court on the presented questions of international law. As described above, any response from the Alabama Governor's office regarding Yorke's individual complaint on behalf of Mr. Wilson would likely simply refer to the rulings in this matter without further addressing the concerns raised by the U.N. Special Procedures.

22. The Eleventh Circuit has clearly held that a negative stare decisis can provide the "practical disadvantage" necessary for granting intervention as of right. *Huff. v. Comm'r of IRS*, 743 F.3d 790, 800 (11th Cir. 2014) (citing *Stone v. First Union Corp.*, 371 F.3d 1305, 1309–10 (11th Cir. 2004) (citation omitted)). In *Fox v. Tyson Foods, Inc.*, the Court describes its decision in *Stone* as holding that the "disposition of the action *might*, as a practical matter, impair [the intervenors] ability to protect their interests because disposition of the action *might* lead to a negative stare decisis effect." 519 F.3d 1298, 1303 (11th Cir. 2008) (emphasis added).

23. A decision in this case, the first of its kind before a U.S. court, will certainly practically disadvantage Yorke. Not only would such a ruling practically impair his ability to fully pursue Mr. Wilson's complaints, as previously described, but all future international efforts on this issue would require Yorke to undertake timely, extensive, and burdensome arguments to counter the decision and reasoning of this Court. Further, any future international efforts by Yorke on behalf of similarly situated inmates in the United States would be practically impaired by a negative stare decisis effect. Any challenge before international legal bodies would require the United States' Permanent Mission to the U.N. to respond, which would very likely refer to the precedent setting decision of this Court.

24. This is of particular importance given the nature of the issues which Yorke intends to provide international law arguments – the use of nitrogen gas asphyxiation. While the Defendant claims that the prior executions of four inmates using nitrogen gas asphyxiation occurred "successfully and without incident," numerous witnesses to these executions reported that these individuals suffered significant and prolonged pain and suffering. (Doc. 51 at 5; *see* Doc. 35 at 2–21 (detailing the myriad of issues with the prior use of nitrogen gas asphyxiation by Alabama); United Nations, Office of the High Commissioner for Human Rights, *United States: UN experts horrified by Kenneth Smith's execution by nitrogen in Alabama* (Jan. 30, 2024), https://www.ohchr.org/en/press-releases/2024/01/united-states-un-experts-horrified-kenneth-smiths-execution-nitrogen-alabama (condemning the issue of nitrogen gas asphyxiation to execute Mr. Kenneth E. Smith)). Under international law, the use of new and untested methods which could be potentially tortuous for infliction of the death

penalty is of serious concern, given the *jus cogens* nature of the absolute prohibition of torture and the requirement that deprivations of the right to life must never be arbitrary. Thus, precedent developed about the use of this method of execution without the opportunity for Yorke to present his international law arguments, would cause significant and lasting harm to Yorke's broader work on death penalty compliance with international law.

25. While correct that a decision from this Court would not bind international mechanisms from issuing contradictory opinions, such a decision would undoubtably practically disadvantage Yorke, impairing his interests.

III. Proposed Intervenor interest is inadequately represented by the parties.

26. A presumption of adequate representation exits where the intervenor and a present party seek "the *same* objectives." *Stone,* 371 F.3d at 1311 (citing *Clark v. Putnam Cnty.*, 168 F.3d 458, 461 (11th Cir. 1999) (emphasis added)). "This presumption is weak and can be overcome if the plaintiffs present *some* evidence to the contrary." *Id.* (emphasis added). The prospective intervenor "need only show that the current plaintiff's representation 'may be inadequate,' however, and the burden of making such a showing is 'minimal.'" *Id.*

27. Existing parties do not adequately represent Yorke's interest, nor do they have the same objectives. The Defendant in this matter is actively litigating to have the international legal claims, Count III and IV, dismissed (Doc. 53) and thus do not share Yorke's interest or objectives. Yorke's interest lies in protecting his ability to practice his profession without the practical disadvantage that a negative ruling in this Court's first instance consideration of international legal claims related to use of nitrogen gas asphyxiation

would cause. That interest requires that this Court take into full consideration all relevant international legal arguments and issue a ruling consistent with international law. Mr. Wilson's, on the other hand, interest is to prevent himself from suffering a painful death by nitrogen gas asphyxiation. Mr. Wilson thus is likely to further arguments to this end, regardless of how those arguments may impact this Court's consideration of the international legal claims before it. Mr. Wilson himself notes that his interest "extends only insofar as the nitrogen gas protocol violates existing international law as to him, facially and as applied." (Doc. 52 at ¶ 16). This divergence of interests could lead Mr. Wilson to prioritize seeking, for example, sedation or other means of lessening the pain likely associated with nitrogen gas asphyxiation, or deprioritizing consideration of the international law issues associated with this particular method of execution. Yorke's primary concern as party in this matter would remain solely in preventing damaging precedent that does not adequately consider the international law issues, and that would obstruct his future professional activities. Mr. Wilson and Yorke thus do not share the same interest or objectives and no party will adequately represent Yorke's interest.

IV. Permissive intervention should be granted.

28. The granting of permissive intervention is at the discretion of the Court and is allowed when timely sought and "when an applicant's claim or defense and the main action have a question of law or fact in common." Fed. R. Civ. P. 24(b). Defendant has not challenged the timeliness factor of either Yorke's request for intervention as of right or permissive intervention and thus presumably concedes that this factor is met. When timely, courts liberally permit intervention. "[T]he court notes that this 'common interest' requirement is liberally construed (citation omitted) and there need be no showing of a 'direct

personal or pecuniary interest in the subject of the litigation.'" *See, e.g. Marshall v. Planz*, 347 F. Supp. 2d 1198, 1204 (M.D. Ala. 2004) (citing *Stallworth*, 558 F.2d at 269 and *Piedmont Heights Civic Club, Inc. v. Moreland*, 83 F.R.D. 153, 157 (N.D. Ga. 1979)).

29. Mr. Wilson brings two claims in the present action, Count III and IV, which squarely share common questions of law and fact with Yorke's professional activities detailed above and in his original motion. (Doc. 44 at 9-15). Yorke's claims need not be grounded in the Eighth Amendment, as the Defendant erroneously suggests (Doc. 51 at 14). It is sufficient that Yorke's claims share a common question of law with Count III and IV, which bring questions of international law before this Court on squarely the same international law grounds as the Complaints filed by Yorke before international legal mechanisms on behalf of Mr. Wilson and similarly situated persons.

30. Yorke's intervention, if permitted, would add to the efficiency of this matter and would not cause undue delay or prejudice. Yorke's expertise in international law, specifically related to death penalty procedures, will benefit both parties in their litigation of international legal claims brought in Counts III and IV. Mr. Wilson himself agrees. (Doc. 52 at ¶ 3-4).

31. As previously noted, upon information and belief, Mr. Wilson is the first individual in the United States facing nitrogen gas asphyxiation to raise this package of international legal claims. Yorke is similarly, upon information and belief, the only international legal expert to bring international legal arguments on behalf of Mr. Wilson and others before multiple international mechanisms, including multiple U.N. Special Procedures, the U.N. Working on Arbitrary Detention, and the U.N. Human Rights Council. By engaging these

U.N. mechanisms, Yorke has prompted bilateral, multilateral, and quasi-judicial consideration of Mr. Wilson's case – an effort not replicated by anyone in the field. Yorke also holds expertise in both the death penalty procedures in the United States, given his work on behalf of multiple U.S. death row inmates, and international law and the death penalty. This makes Yorke unique in the field, where such cross-cutting expertise is rare.

32. Thus, contrary to the Defendant's argument (Doc. 51 at 15), Yorke's interest in this matter is inimitable. His specific and special interest, as the sole international legal practitioner to raise parallel legal issues in international mechanisms, combined with his unique expertise in precisely the international law at issue here, ensure that his intervention will not open this or any future Court to intervention by generally interested parties – nor would such parties necessarily meet the well-established intervention requirements met here by Yorke.

CONCLUSION

This Court should grant the motion.

Respectfully Submitted,

/s/ Gulika Reddy
GULIKA REDDY

Stanford Law School
559 Nathan Abbott Way
Stanford, CA 94305
Tel.: (650) 721-1582
greddy@law.stanford.edu

/s/ Anjli Parrin Shah
ANJLI PARRIN SHAH

University of Chicago Law School
6020 S. University Ave.
Chicago, Il 60637
Tel.: (917) 865-3630
aparrin@uchicago.edu

CERTIFICATE OF SERVICE

I hereby certify that on June 9, 2025, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to counsel of record, in accordance with Rules 24(c) and 5(b)(2)(E).

Respectfully Submitted,

/s/ Gulika Reddy
GULIKA REDDY
Stanford Law School
559 Nathan Abbott Way
Stanford, CA 94305
Tel.: (650) 721-1582
greddy@law.stanford.edu