

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

ALAN EUGENE MILLER,)
)
 Plaintiff,)
)
 v.) **Case No. 2:22-cv-00506-RAH**
)
 STEVE MARSHALL, Alabama)
 Attorney General,)
 et al.,)
)
 Defendants.)

Defendants’ Response to Order to File Affidavit

COME NOW Defendants and respond to this Court’s September 13, 2022, Order (Doc. 55), and set forth the following:

1. On September 13, 2022, this Court directed the Defendants to submit an affidavit “setting forth whether or not the Defendants can execute the Plaintiff by nitrogen hypoxia on September 22, 2022,” executed by an “appropriate official with personal knowledge” of that fact.

2. The relevant threshold question regarding the Plaintiff’s pending motion for preliminary injunction is whether he has established a substantial likelihood of success on the merits of his claim that he made a timely election of nitrogen hypoxia. Defendants do not concede that the ADOC’s ability to carry out an execution by nitrogen hypoxia is relevant to the question of whether the Plaintiff is likely to prove his claim that he elected nitrogen hypoxia within the statutorily set

election period. However, Plaintiff's dilatory filing of this suit has created an unnecessarily compressed period in which to address his claims. Consequently, rather than cause further delay by litigating the issue, Defendants, while reserving a relevance objection, submit the affidavit of John Q. Hamm, attached hereto as Attachment "A."

CONCLUSION

For the reasons discussed in Defendants' previous filings and during the evidentiary hearing, Plaintiff's motion for preliminary injunction should be denied.

Respectfully submitted,

Steve Marshall
Attorney General
BY—

s/ Beth Jackson Hughes
Beth Jackson Hughes
Assistant Attorney General

/s Audrey Jordan
Audrey Jordan
Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that on September 15, 2022, I electronically filed the foregoing with the Clerk of the Court using CM/ECF system. I also served a copy upon counsel for the plaintiff via electronic mail, addressed as follows:

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ATTACHMENT A

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

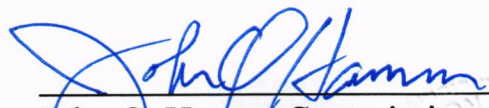
ALAN EUGENE MILLER)	
)	
Plaintiff,)	
)	
v.)	Case No. 2:22-CV-506-RAH
)	
JOHN Q. HAMM, Commissioner,)	
Alabama Department of Corrections,)	
<i>et al.</i> ,)	
)	
Defendants.)	

AFFIDAVIT OF JOHN Q. HAMM


Before me, the undersigned notary, personally appeared John Q. Hamm, who after being duly sworn did depose and say:

1. My name is John Q. Hamm. I am over nineteen years of age, and I am of sound mind. I am the Commissioner of the Alabama Department of Corrections (“ADOC”).
2. The ADOC cannot carry out an execution by nitrogen hypoxia on September 22, 2022.
3. The ADOC remains ready to carry out Plaintiff’s sentence by lethal injection on September 22, 2022.

Further affiant sayeth not.


 John Q. Hamm, Commissioner
 Alabama Department of Corrections

Subscribed and sworn to before me on this the 15th day of September, 2022.


 NOTARY PUBLIC
 My commission expires: 10-29-25