

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

DOYLE LEE HAMM,	)	Civil Action No.
	)	2:17-cv-02083-KOB
Plaintiff,	)	
v.	)	<b>EXECUTION SCHEDULED</b>
	)	
JEFFERSON S. DUNN, Commissioner,	)	<b>Thursday, February 22, 2018</b>
Alabama Department of Corrections, et al.,	)	
	)	
Defendants.	)	

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**DOYLE HAMM'S RESPONSE  
TO THE COURT'S ORDER DATED JANUARY 10, 2018,  
REGARDING THE EVIDENCE TO BE PRESENTED AT THE  
EVIDENTIARY HEARING ON JANUARY 31, 2018  
AND MOTION FOR A COURT ORDER**

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Dated: January 26, 2018

Plaintiff Doyle Lee Hamm respectfully submits this response to the Court's order dated January 10, 2018, and specifies below the evidence that he intends to submit at the evidentiary hearing scheduled for January 31, 2018. The evidence to be presented will include the following:

- Exhibit 1 Preliminary Report of Dr. Mark Heath dated October 1, 2017
- Exhibit 2 Supplemental Report of Dr. Mark Heath dated January 16, 2018
- Exhibit 3 Affidavit of Dr. Charles David Blanke dated January 16, 2018
- Exhibit 4 Supplemental Affidavit of Dr. Charles David Blanke dated January 24, 2018
- Exhibit 5 Affidavit of Doyle Lee Hamm dated January 11, 2018
- Exhibit 6 Medical Records of Doyle Lee Hamm from Brookwood Cancer Center
- Exhibit 7 Medical Records of Doyle Lee Hamm from Dr. John Donahue
- Exhibit 8 Medical Records of Doyle Lee Hamm from Donaldson Correctional Facility dated and sent to Plaintiff on June 30, 2017
- Exhibit 9 Correspondence with Warden Leon Bolling regarding request for medical records from Donaldson Correctional Facility dated January 19, 2017
- Exhibit 10 E-mail follow-up requesting again medical records from Donaldson Correctional Facility sent to Faylor Rutley at Donaldson dated June 29, 2017
- Exhibit 11 Doyle Hamm's Motion for Enlargement of Time to Respond filed with the Supreme Court of Alabama on July 11, 2017
- Exhibit 12 Order of the Supreme Court of Alabama dated July 14, 2017
- Exhibit 13 Doyle Hamm's Answer to the Alabama Supreme Court dated August 8, 2017
- Exhibit 14 Letter from Bernard E. Harcourt to Warden Cheryl Price at Donaldson Correctional Facility to set up doctor visit dated August 8, 2017
- Exhibit 15 Order of the Supreme Court of Alabama dated August 25, 2017
- Exhibit 16 Letter from Bernard E. Harcourt to Attorney General of Alabama requesting the lethal injection protocol dated August 28, 2017
- Exhibit 17 Doyle Hamm's first status update filed with the Supreme Court of Alabama on September 1, 2017
- Exhibit 18 Letter from Attorney General to Bernard E. Harcourt refusing to turn over lethal injection protocol dated September 7, 2017
- Exhibit 19 Second status update filed with the Supreme Court of Alabama on September 8, 2017
- Exhibit 20 Follow-up letter from Bernard E. Harcourt to Attorney General requesting again the lethal injection protocol dated September 11, 2017

- Exhibit 21 Third status update filed with the Supreme Court of Alabama on September 15, 2017
- Exhibit 22 Fourth status update filed with the Supreme Court of Alabama on September 22, 2017
- Exhibit 23 Fifth status update filed with the Supreme Court of Alabama on September 29, 2017
- Exhibit 24 Sixth status update filed with the Supreme Court of Alabama on October 2, 2017
- Exhibit 25 Doyle Hamm's Answer to the Supreme Court of Alabama dated October 2, 2017
- Exhibit 26 Order of the Supreme Court of Alabama dated October 4, 2017
- Exhibit 27 Doyle Hamm's response to the Supreme Court of Alabama dated October 11, 2017
- Exhibit 28 Order of the Supreme Court of Alabama setting an execution date dated December 13, 2017
- Exhibit 29 Order from the U.S. District Court for the Middle District of Alabama in *Nelson v. Allen* dated July 28, 2006, appointing an independent medical expert to advise the Court on the state of Alabama's proposed method of lethal injection
- Exhibit 30 Special Master's Report to the U.S. District Court for the Middle District of Alabama in *Nelson v. Allen* dated June 16, 2005
- Exhibit 31 Oregon Death with Dignity Act: Data Summary 2016 dated February 10, 2017 (An annual report produced by the Oregon Health Authority on Oregon's medical-aid-in-dying program under Oregon's Death With Dignity Act)
- Exhibit 32 Guidelines for the Practice of Euthanasia and Physician-Assisted Suicide dated August 2017 (Guidelines prepared by the Royal Dutch Medical Association and Royal Dutch Pharmacists Association on medical-aid-in-dying procedures to be used by physicians in the Netherlands, including specific medical techniques and medications)
- Exhibit 33 Characterizing 18 Years of the Death with Dignity Act by C. Blanke, M. LeBlanc, D. Hershman, L. Ellis, F. Meyskens (Published in JAMA Oncology in October 2017, Volume 3, pages 1403-1406)
- Exhibit 34 Oregon's Death With Dignity Act: 20 Years of Experience to Inform the Debate by K. Hedberg, C. New (Published in Annals of Internal Medicine in October 2017, Volume 167, pages, 579-583)
- Exhibit 35 Public Assessment Report on Midazolam of the Medicines Evaluation Board in the Netherlands dated December 22, 2009 (Report of the Medicines Evaluation Board in the Netherlands on the safety and efficacy of Midazolam)
- Exhibit 36 Blue Cross Blue Shield of Alabama Generic Plus Drug Guide dated October 2017 (Guide to all preferred brand prescription drugs and a partial listing of generic prescription drugs offered by Blue Cross and Blue Shield in Alabama).
- Exhibit 37 Photograph of Doyle Lee Hamm (dated 2016 or 2017)

- Exhibit 38 Drawing of Doyle Lee Hamm dated September 23, 2017
- Exhibit 39 Ben Crair, Photos from a Botched Lethal Injection: An Exclusive Look at What Happens When an Execution Goes Badly, *New Republic*, May 29, 2014
- Exhibit 40 Ben Crair, Exclusive Emails Show Ohio's Doubts About Lethal Injection, *New Republic*, August 17, 2014
- Exhibit 41 The credentials of Dr. Mark Heath, in the event he is called to testify
- Exhibit 42 The credentials of Dr. Charles David Blanke, in the event he is called to testify
- Exhibit 43 Affidavit of Egon Von Conway dated January 15, 2018, in the event the federal habeas corpus record in Doyle Hamm's case is not admitted
- Exhibit 44 Affidavit of Nicola Cohen dated January 25, 2018, in the event the newer medical records from Donaldson Correctional Facility are not available

In addition, Plaintiff Doyle Lee Hamm will present the following evidence:

1. the body of Doyle Lee Hamm, to demonstrate his medical condition regarding venous access;
2. the testimony of defendant Warden Leon Bolling, to detail the medical treatment of Doyle Hamm and demonstrate that, on December 13, 2017, defendant Warden Leon Bolling went to the prison infirmary and cancelled Doyle Hamm's surgery for the cancer on his cheek;
3. the testimony of defendant Commissioner Jefferson Dunn, to describe the lethal intravenous injection protocol for the state of Alabama;
4. the testimony of defendant Cynthia Stewart and other unknown Holman Prison employees (to be produced by defendants), who will conduct the venous access for purposes of lethal injection, to describe how venous access for purposes of lethal intravenous injection is achieved at Holman Prison;
5. the medical records of Doyle Lee Hamm from Donaldson Correctional Facility from January 1, 2017 to the present. Counsel for Doyle Lee Hamm has repeatedly requested from the Alabama Department of Correction (ADOC) all of his medical records since the last

production of medical records produced on June 30, 2017 (*see* Affidavit of Nicola Cohen dated January 25, 2018). Counsel for Doyle Hamm has been unsuccessful in obtaining the records. Doyle Hamm respectfully requests that the Court direct defendants to provide him all his medical records from Donaldson since January 1, 2017, prior to the hearing by scan and bring the originals to the hearing;

6. the complete record in *Hamm v. Allen*, No. 5:06-cv-00945-KOB (N.D. Ala.), consisting of the federal record of Doyle Hamm's federal habeas corpus proceedings in front of this Court. If defendants object to the introduction of this evidence, then Doyle Hamm will introduce the affidavit of Egon Von Conway; and

7. the venous access and lethal injection protocol for the state of Alabama. Defendants have refused to disclose to undersigned counsel the protocol, but counsel would ask this Court to ensure that the defendants immediately provide counsel with a copy of the protocol and admit them into evidence at the hearing, under seal if necessary.

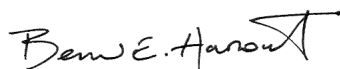
This list does not include any evidence that may become necessary to introduce or reference for impeachment or other purposes, and Doyle Hamm reserves the right to present such documents for that purpose and to supplement this list in the event additional information is discovered or is necessary.

Finally, Doyle Hamm respectfully renews his request that the Court appoint an independent medical expert to swiftly conduct an examination of Doyle Hamm's medical condition for purposes of venous access for lethal intravenous injection, which would be the speediest way to address the concerns in this case in a proper and humane way.

WHEREFORE, Doyle Lee Hamm respectfully asks the Court to enter an order:

1. directing the defendants to produce Doyle Lee Hamm at the hearing;
2. directing the defendants to provide Doyle Lee Hamm with a copy of the venous access and lethal injection protocols for the state of Alabama;
3. directing the defendants Dunn, Bolling, and Stewart, as well as unknown defendants who will perform the venous access for intravenous lethal injection, to be present at the hearing;
4. directing the defendants to provide Doyle Hamm, by scan and then to bring the hard copies at the hearing, all medical records in the possession of Donaldson Correctional facility created on or after January 1, 2017 to the present; and
5. appointing an independent medical expert and directing a medical examination of Doyle Lee Hamm.

Respectfully submitted,

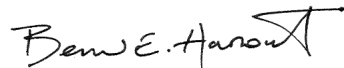


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Dated: January 26, 2018

CERTIFICATE OF SERVICE

I hereby certify that on January 26, 2018, I served a copy of the attached pleading by electronic mail to opposing counsel, Assistant Attorneys General Thomas Govan and Beth Jackson Hughes at [tgovan@ago.state.al.us](mailto:tgovan@ago.state.al.us) and [bhughes@ago.state.al.us](mailto:bhughes@ago.state.al.us), as well as to the Docket Clerk of the Capital Litigation Division of the Office of the Alabama Attorney General, Courtney Cramer at [ccramer@ago.state.al.us](mailto:ccramer@ago.state.al.us).

A handwritten signature in black ink that reads "Bernard E. Harcourt". The signature is written in a cursive style with a prominent initial "B" and a stylized "H".

BERNARD E. HARCOURT  
*Counsel of Record*