

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

KENNETH EUGENE SMITH, )  
 )  
 Plaintiff, )  
 )  
 v. ) CASE NO. 2:22-cv-497-RAH  
 )  
 JOHN Q. HAMM, *et al.*, )  
 )  
 Defendants. )

**FINAL JUDGMENT AND ORDER**

On August 18, 2022, Plaintiff initiated this action, seeking an injunction prohibiting the Defendants from executing the Plaintiff by lethal injection and requiring the Defendants to honor his state-created right to be executed by nitrogen hypoxia. In his Second Amended Complaint, Plaintiff renewed his request for an injunction prohibiting the Defendants from executing him by lethal injection. In no fewer than two hearings before this Court, Plaintiff has confirmed that nitrogen hypoxia is his chosen and preferred method of execution.

On August 25, 2023, the Defendants filed their *Motion to Dismiss Pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure*. (Doc. 104.) In their motion, the Defendants state that they will honor the Plaintiff's chosen method of execution – nitrogen hypoxia – and will not now, nor in the future, conduct any execution of Plaintiff via lethal injection. The Defendants further state that they

have moved the Alabama Supreme Court to set an execution date using nitrogen hypoxia as the method of execution. As such, the Defendants seek dismissal of the remaining claims in the Second Amended Complaint on mootness grounds.

In his responsive filing, Plaintiff argues that there is nothing precluding the Defendants from later reversing course and undertaking an execution via lethal injection. As such, Plaintiff states “Defendants should be formally precluded from reverting to lethal injection if they cannot use nitrogen hypoxia to execute Mr. Smith” and further that Defendants “should consent to entry of judgment and an injunction prohibiting them from any attempt to execute Mr. Smith by lethal injection.” (Doc. 108 at 4.) In their reply, the Defendants state that they “would consent to an injunction prohibiting the use of lethal injection to execute Mr. Smith while allowing the use of nitrogen hypoxia.” (Doc. 109 at 4.)

On September 19, 2023, the Court conducted a hearing in this matter, during which defense counsel and John Q. Hamm, Commissioner of the Alabama Department of Corrections, were present and in attendance. During that hearing, defense counsel and Commissioner Hamm represented and confirmed that Plaintiff’s looming execution will be conducted by nitrogen hypoxia and that no future efforts to conduct an execution via lethal injection will ever be initiated and undertaken as to Plaintiff. And as such, defense counsel confirmed the Defendants’

agreement to the entry of a permanent injunction against the use of lethal injection as it concerns the Plaintiff.

For good cause, it is hereby ORDERED as follows:

1. Defendants John Q. Hamm, in his capacity as Commissioner of the Alabama Department of Corrections, and Terry Raybon, Warden at the Holman Correctional Facility, and their successors, are permanently ENJOINED from executing Kenneth Eugene Smith by lethal injection. Sanctions will be swift and serious if this injunction is violated.

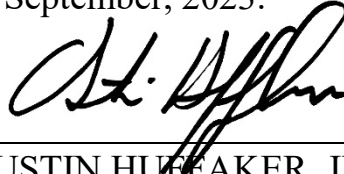
2. The *Defendants' Motion to Dismiss Pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure* (Doc. 104) is GRANTED since there is no longer a live case or controversy. *See Adler v. Duval Cnty. Sch. Bd.*, 112 F.3d 1475, 1477 (11th Cir. 1997) (noting that “[w]hen the threat of future harm dissipates, the plaintiff’s claims for equitable relief become moot because the plaintiff no longer needs protection from future injury.”). However, the Court retains jurisdiction to enforce any noncompliance or violation by Hamm, Raybon and their successors with this Order.

3. Defendants’ *Motion to Stay Discovery* (Doc. 106) is DENIED as moot.

4. No costs are taxed in favor of or against any party, nor are attorneys’ fees awarded to any party.

5. This matter is CLOSED, but with leave to reinstate for the sole purpose of enforcing compliance with the referenced injunction, or addressing any violation or attempted violation of this Court's injunction by initiating any efforts to execute Plaintiff by lethal injection.

DONE, on this the 20th day of September, 2023.

A handwritten signature in black ink, appearing to read "R. Austin Huffaker, Jr.", written in a cursive style.

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R. AUSTIN HUFFAKER, JR.  
UNITED STATES DISTRICT JUDGE