

01. This action is brought pursuant to 42 U.S.C. § 1983 for violations and threatened violations of the right of plaintiff to be free from cruel and usual punishment under the Eighth and Fourteenth Amendments to the United States Constitution. Plaintiff seeks equitable relief.

II.
Plaintiff

02. Melvin White is a United States citizen and a resident of the State of Texas. He is currently a death-sentenced inmate under the supervision of the Texas Department of Criminal Justice, TDCJ # 999317. He is held in the Polunsky Unit at 3872 F.M. South 350, Livingston, TX 77351.

III.
Defendants

03. Defendant Gary Johnson is the Executive Director of the Texas Department of Criminal Justice. Doug Dretke is the Director of the Correctional Institutions Division of the Texas Department of Criminal Justice (TDCJ). Charles O'Reilly is the Senior Warden of the Huntsville Unit where the execution will occur. Defendants Unknown Executioners are employed by the Texas Department of Criminal Justice and will carry out the scheduled execution of Plaintiff. Plaintiff does not yet know their identities.

IV.
Jurisdiction and Venue

04. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 (federal question), 1343 (civil rights violations), 2201 (declaratory relief), and 2202 (further relief). This action arises under the Eighth and Fourteenth Amendments to the United States Constitution and under 42 U.S.C. § 1983.
05. Venue in this Court is proper under 28 U.S.C. § 1391, and this Court has personal jurisdiction over the defendants in this matter because the events giving rise to this claim will occur in Huntsville, Texas.

V.
Facts

06. Plaintiff Melvin White was sentenced to death following his conviction for capital murder in the 112th Judicial District Court of Crockett County, Texas. Plaintiff challenged his conviction and sentence in state and federal court through habeas corpus, alleging that the State had no lawful authority to execute him. Plaintiff's petition for writ of certiorari filed in the Supreme Court of the United States requesting it review the United States Court of Appeals for the Fifth Circuit's denial of a certificate of appealability in his federal habeas corpus proceedings was denied on October 11, 1005. ***Defendants, acting under color of State law, will administer a lethal injection to Plaintiff on November 3, 2005.***

A. Administration of Lethal Injection

07. Defendants are given discretion under Texas law to design the protocol for the administration of a death sentence by lethal injection, including which drugs will be injected to execute the sentence. The precise lethal injection protocol designed by Defendants is kept a secret. Plaintiff believes, however, that Defendants intend to administer the death sentence to Plaintiff by injecting him with a lethal combination of three chemical substances: sodium thiopental, or sodium pentothal (an ultrashort-acting barbiturate); pancuronium bromide, or Pavulon (a curare-derived agent which paralyzes all skeletal or voluntary muscles, but which has no effect whatsoever on awareness, cognition or sensation); and potassium chloride (an extraordinarily painful chemical which activates the nerve fibers lining the inmate's veins and which can interfere with the rhythmic contractions of the heart and cause cardiac arrest). Because of Defendants' secrecy, Plaintiff has little to no other definitive information about the details of the administration of the lethal injection.
08. The particular combination of chemicals Defendants intend to administer to Plaintiff will cause an intolerable risk that Plaintiff will consciously suffer an excruciatingly painful and protracted death.
09. Sodium thiopental, or sodium pentothal, is an ultrashort-acting barbiturate which is ordinarily used to render a surgical patient unconscious for mere minutes, only in the induction phase of anesthesia, specifically so that the patient may re-awaken and breathe on his own power if any complications arise in inserting a breathing tube pre-surgery.
10. Because of its brief duration, sodium thiopental may not provide a sedative effect throughout the entire execution process, and because there are longer-acting barbiturates, the use of sodium thiopental is **wholly unnecessary** to the administration of the death sentence.
11. Due to the chemical combination used in the Texas execution process, there is also a probability that the second chemical, pancuronium bromide, neutralizes the sedative effect of the sodium thiopental.
12. The second chemical involved in the lethal injection process, pancuronium bromide, or Pavulon, is a derivative of curare that acts as a neuromuscular blocking agent.
13. While Pavulon paralyzes skeletal muscles, including the diaphragm, it has no effect on consciousness or the perception of pain or suffering. Additionally, because Plaintiff will be immobile and strapped to a gurney, there is no need to induce paralysis in the execution process. The intended use of Pavulon in the administration of Plaintiff's death sentence by lethal injection is therefore superfluous and **wholly unnecessary**.
14. To the extent that the first chemical, sodium thiopental, is neutralized by the second, Pavulon, the paralytic chemical (Pavulon) will serve only to mask the excruciating pain of Plaintiff as he suffers injection of the third chemical, a high dosage of potassium chloride, fully conscious but unable to express pain.

15. The third chemical, potassium chloride, is also superfluous and **wholly unnecessary** to the administration of the death sentence. In the event the Plaintiff has not been rendered sufficiently anesthetized, as is made probable by the injection of the first two chemicals, potassium chloride will cause Plaintiff to suffer excruciating pain as it travels through the venous system to the heart and eventually a painful cardiac arrest.
16. The unknown executioners who will perform the lethal injection procedure on Plaintiff have no training in anesthesia. After placement of one or two intravenous lines, unknown executioners will step behind a wall or curtain and remotely administer drugs to Plaintiff. At the point at which unknown executioners will step behind the partition, Plaintiff will still be conscious. Unknown executioners will not undertake direct observation, physical examination, or electronic monitoring for anesthesia. In short, Defendants will not take any measures to ensure or verify that Plaintiff will be rendered unconscious by the injection of the initial chemical prior to the injection of the next two chemicals.
17. The risk of torture in the administration of lethal injection can be reduced and the death sentence by lethal injection more humanely accomplished if performed in a manner not inconsistent with the recommended practices of the 2000 Report of the AVMA Panel on Euthanasia.
18. The risk of inflicting severe and unnecessary pain and suffering upon Plaintiff in the lethal injection process is particularly grave in Texas because the procedures and protocols designed by defendants, to the extent known, do not include safeguards regarding the manner in which the execution is to be carried out, do not establish the minimum qualifications and expertise required of the personnel performing the critical tasks in the lethal injection procedure, and do not establish appropriate criteria and standards that these personnel must rely upon in exercising their discretion during the lethal injection procedures.

B. Obtaining Venous Access Prior to Lethal Injection.

19. Plaintiff has a history in which medical personnel have struggled to obtain venous access for the purpose of taking blood. Plaintiff has had to give blood throughout his life not through his arms but through the back of his hand. Such a condition may make peripheral venous access (superficial veins in hands, feet, legs, or arms) for placement of the two IVs required for lethal injection difficult or impossible, because it is harder to insert an IV line into a vein than to simply draw blood. Due to this, it is possible that access to a central vein may be necessary to insert the IV lines prior to the lethal injection.
20. Procedures for accessing a central vein, such as the cut-down procedure or percutaneous techniques, are medically invasive and should not be undertaken unless appropriate safeguards are in place, including being performed by a properly trained physician.
21. On Wednesday, October 19, counsel for Plaintiff by telephone call to the Warden's office of the Huntsville Unit inquired of Defendants what course of action they intend to take in the

event peripheral venous access is unobtainable. Plaintiff's counsel was referred to the Office of the General Counsel for the Texas Department of Criminal Justice (TDCJ). On Thursday, October 20, Defendants informed counsel for Plaintiff, through the Office of the General Counsel for the Texas Department of Criminal Justice (TDCJ), that if the veins in Plaintiff's arms are inadequate, a suitable vein will be found. Plaintiff's counsel inquired further regarding what constitutes a suitable vein, and how access to such a suitable vein is obtained. Later that day, the same representative from the Office of the General Counsel of TDCJ called counsel for plaintiff and related that a cut-down procedure would not be an option.

22. Plaintiff believes Defendants do not have any written protocol for determining what constitutes a "suitable vein" or how to locate and obtain access to a "suitable vein." Plaintiff does not know whether Defendants intend to use the services of a physician for the purpose of locating a "suitable vein." Plaintiff does not know what medical procedures Defendants will utilize to locate a "suitable vein." Plaintiff believes any such procedures will be ad hoc in nature. Counsel for Plaintiff has been told that a cut-down procedure is not an option should it be unable to obtain peripheral venous access; however, because Defendants keep their protocol a secret and because there are no witnesses to IV insertion and no autopsy or other medical review of the body other than pronouncement of death following the injection, Plaintiff cannot be assured that Defendants will not resort to a cut-down procedure to obtain a suitable vein. Nor does Plaintiff know whether Defendants intend to resort to other means of central venous access besides a cut-down procedure such as percutaneous techniques should it be unable to obtain peripheral venous access.
23. Plaintiff has sought administrative relief from his anticipated torture through the Texas Department of Criminal Justice, and such relief was not forthcoming.

VI. Claims

24. Plaintiff incorporates paragraphs 1-19 by reference.
25. First Claim: Defendants Gary Johnson, Doug Dretke, Charles O'Reilly, and Unknown Executioners are acting under color of Texas law and with deliberate indifference in administering to Plaintiff a lethal injection consisting of a combination of chemicals – all of which are entirely superfluous to the execution process – that will cause unnecessary pain in the course of executing his sentence of death by lethal injection, thereby depriving Plaintiff of his rights under the Eighth and Fourteenth Amendments to be free from cruel and unusual punishment, and in violation of 42 U.S.C. § 1983.
26. Second Claim: Defendants Gary Johnson, Doug Dretke, Charles O'Reilly, and Unknown Executioners are acting under color of Texas law and with deliberate indifference to Plaintiff's medical needs in withholding from Plaintiff their protocol, if any, with respect to gaining venous access should peripheral access not be possible and in potentially performing torturous ad hoc invasive medical procedures on him in order to locate a suitable vein in which to place the IVs should peripheral access not be possible, thereby depriving Plaintiff of

his rights under the Eighth and Fourteenth Amendments to be free from cruel and unusual punishment, and in violation of 42 U.S.C. § 1983.

VII.
Prayer for Relief

27. Plaintiff requests that this Court grant a permanent injunction barring Defendants from injecting him with these chemicals in the manner they currently intend.
28. Plaintiff requests that this Court order Defendants to disclose their protocol and intended plan for gaining venous access to Plaintiff should peripheral access be unobtainable and grant an injunction barring Defendants from performing any medically invasive procedures on Plaintiff such as a cut-down procedure or percutaneous central line placement until such time as they can demonstrate such medical procedures are necessary and include the proper safeguards to protect Plaintiff's legitimate medical needs.
29. Plaintiff requests that this Court grant reasonable attorneys' fees pursuant to 42 U.S.C. § 1988 and the laws of the United States, as well as for costs of suit and any further relief that this Court deems just and proper.

VIII.
Jury Demand

30. Plaintiff, by and through his attorneys, and pursuant to Federal Rule of Civil Procedure 38, demands trial by jury of all issues triable by jury.

Respectfully submitted,



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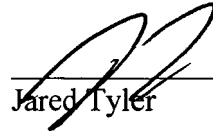
VERIFICATION

State of Texas §

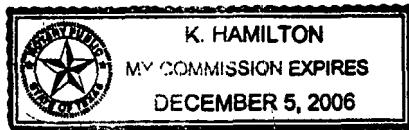
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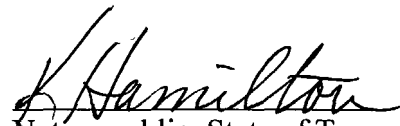
County of Harris §

I, Jared Tyler, attorney for Plaintiff in the above-entitled action, being duly sworn, state that to the best of my knowledge and belief, the facts sets for in this Complaint are true and correct.


Jared Tyler

Subscribed to and sworn before me this 21st day of October 2005.




Notary public, State of Texas

CERTIFICATE OF SERVICE

I certify that a copy of Plaintiff's Original Complaint has been served on the following by Federal Express on this 21 day of October, 2005.

Ms. Melinda Bozarth
General Counsel
Texas Department of Criminal Justice
Office of the General Counsel
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Ms. Gena Bunn
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A handwritten signature in black ink, consisting of a stylized 'M' or 'P' shape, is written over a horizontal line.

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff Polk
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Texas Innocence Network
190 Law Center
Houston, TX 77204-6060

DEFENDANTS

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE. IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | ☐ 1 | ☐ 1 | Incorporated or Principal Place of Business In This State | ☐ 4 | ☐ 4 |
| Citizen of Another State | ☐ 2 | ☐ 2 | Incorporated and Principal Place of Business In Another State | ☐ 5 | ☐ 5 |
| Citizen or Subject of a Foreign Country | ☐ 3 | ☐ 3 | Foreign Nation | ☐ 6 | ☐ 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 151 Medicare Act ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans) ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholders' Suits ☐ 190 Other Contract ☐ 195 Contract Product Liability ☐ 196 Franchise	PERSONAL INJURY ☐ 310 Airplane ☐ 315 Airplane Product Liability ☐ 320 Assault, Libel & Slander ☐ 330 Federal Employers' Liability ☐ 340 Marine ☐ 345 Marine Product Liability ☐ 350 Motor Vehicle ☐ 355 Motor Vehicle Product Liability ☐ 360 Other Personal Injury	PERSONAL INJURY ☐ 362 Personal Injury - Med. Malpractice ☐ 365 Personal Injury - Product Liability ☐ 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY ☐ 370 Other Fraud ☐ 371 Truth in Lending ☐ 380 Other Personal Property Damage ☐ 385 Property Damage Product Liability	☐ 422 Appeal 28 USC 158 ☐ 423 Withdrawal 28 USC 157 PROPERTY RIGHTS ☐ 820 Copyrights ☐ 830 Patent ☐ 840 Trademark LABOR ☐ 710 Fair Labor Standards Act ☐ 720 Labor/Mgmt. Relations ☐ 730 Labor/Mgmt. Reporting & Disclosure Act ☐ 740 Railway Labor Act ☐ 790 Other Labor Litigation ☐ 791 Empl. Ret. Inc. Security Act	☐ 400 State Reapportionment ☐ 410 Antitrust ☐ 430 Banks and Banking ☐ 450 Commerce ☐ 460 Deportation ☐ 470 Racketeer Influenced and Corrupt Organizations ☐ 480 Consumer Credit ☐ 490 Cable/Sat TV ☐ 810 Selective Service ☐ 850 Securities/Commodities/Exchange ☐ 875 Customer Challenge 12 USC 3410 ☐ 890 Other Statutory Actions ☐ 891 Agricultural Acts ☐ 892 Economic Stabilization Act ☐ 893 Environmental Matters ☐ 894 Energy Allocation Act ☐ 895 Freedom of Information Act ☐ 900 Appeal of Fee Determination Under Equal Access to Justice ☐ 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity)

42 U.S.C. § 1983

Brief description of cause

for threatened violations of 8th and 14th Amendments

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions)

JUDGE

DOCKET NUMBER

DATE

10/21/05

SIGNATURE OF ATTORNEY OF RECORD

[Signature]

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG JUDGE _____