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Alabama Attorney General Marshall Successfully Defends Constitutionality of Nitrogen Hypoxia Method of Execution *Miller settles lawsuit against the State, dropping his legal claim*

(Montgomery, Ala.) – Alabama Attorney General Steve Marshall announced the State of Alabama has settled a lawsuit that will allow the execution of convicted murderer, Alan Miller, to proceed as scheduled in September. Miller had challenged the method of execution, which Alabama used for the first time in January of this year. The two sides had spent months in discovery, anticipating a major hearing on August 6, but after reviewing key documents and deposing the State’s witnesses, Miller agreed to settle with the State. The terms of the settlement remain confidential, but the result will be the dismissal of Miller’s lawsuit with prejudice.

“The resolution of this case confirms that Alabama’s nitrogen hypoxia system is reliable and humane,” said Attorney General Marshall. “Miller’s complaint was based on media speculation that Kenneth Smith suffered cruel and unusual punishment in the January 2024 execution, but what the State demonstrated to Miller’s legal team undermined that false narrative. Miller’s execution will go forward as planned in September.”

In January, Alabama was the first state in the nation to use nitrogen gas as a method of execution when it successfully executed Kenneth Smith for the 1988 murder-for-hire slaying of Elizabeth Sennett. Although Miller sued in 2022 to ensure that his method of execution would be nitrogen hypoxia, he later asked a federal court to force the State to change its protocol once again. Miller’s speculative complaint relied on news reports, an unsworn statement by Kenneth Smith’s lawyer, and hyperbolic claims by Smith’s spiritual advisor that Smith appeared to be in discomfort during his execution. In its briefing, the State responded that Smith held his breath; much of the reporting wrongly attributed Smith’s early movements to nitrogen gas. As Smith’s own expert, Dr. Phillip Nitschke, explained: If Smith had “taken deep breaths . . . , he would, almost certainly, have lost consciousness and died much sooner” than he did. Other eyewitnesses, including Mrs. Sennett’s son, Mike Sennett, agreed that Smith seemed to be holding his breath. After dismissing most of his claims, the federal court allowed Miller to obtain discovery based a single claim that was “just barely” sufficient to proceed. Now, after the conclusion of that discovery, Miller has agreed to settle his case and to dismiss, with prejudice, all of his claims without so much as a hearing. Alabama will move forward to bring justice to Miller’s victims.

Miller has spent over two decades on death row for the “execution style” murders of Lee Holdbrooks, Scott Yancey, and Terry Lee Jarvis on August 5, 1999. Miller had worked with each of the victims before, and he claimed to believe that they had spread rumors about him. Miller shot Yancey once, paralyzing him, before shooting him twice more and causing his death. Miller shot Holdbrooks several times, and then as his victim crawled away, Miller approached and shot him in the head at point-blank range. Miller then drove to his former place of employment and shot Jarvis four times in the chest and once through the heart. The sentencing



court called the murders “calculated, premeditated and callous, with utter disregard of human life” and noted that “the taking of these lives was among the worst in the memory of this Court and was well beyond the level” required for capital punishment.