

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

ROBERT EARL COUNCIL AKA KINETIK
JUSTICE, *et al.*,

Plaintiffs,

v.

KAY IVEY, *et al.*,

Defendants.

Case No. 2:23-cv-00712-ECM-JTA

**PLAINTIFFS MOORE, COLE,
MCDOLE, CAMPBELL, PTOMEY,
AND ENGLISH'S NOTICE OF
MOTION AND MOTION FOR
PRELIMINARY INJUNCTION AND
PROVISIONAL CLASS
CERTIFICATION**

**TO THE CLERK OF THE COURT, DEFENDANTS KAY IVEY, STEVE MARSHALL,
LEIGH GWATHNEY, DARRYL LITTLETON, AND GABELLE SIMMONS, AND
ALL PARTIES AND COUNSEL:**

PLEASE TAKE NOTICE that, pursuant to Federal Rule of Civil Procedure 65,

Plaintiffs Lee Edward Moore Jr., Jerame Aprentice Cole, Frederick Denard McDole, Michael Campbell, Arthur Charles Ptomey Jr., and Alimireo English, on their own behalf and on behalf of a class and subclass of similarly situated people, will and hereby do move this Court for an Order granting a preliminary injunction to restrain and enjoin Defendants Governor Kay Ivey, Attorney General Steve Marshall, Alabama Board of Pardons and Paroles ("Parole Board") Chair Leigh Gwathney, and Associate Parole Board members Darryl Littleton and Gabrelle Simmons, in their official capacities, and their officers, agents, subordinates, employees, and attorneys, and those persons in active concert or participation with them, from violating the *Ex Post Facto* and Equal Protection Clauses of the U.S. Constitution in their administration of the parole system. Plaintiffs seek an order providing preliminary injunctive relief necessary to mitigate the irreparable harms caused by these constitutional violations, including by:

1. Prohibiting Defendants Ivey and Marshall from instructing their agents and Defendant Parole Board members (a) to ensure that individuals who have been sentenced to incarceration for offenses Alabama deems “violent” are not granted parole, and (b) to disregard the actuarially- and evidence-based risk assessments for considering parole applications mandated by Alabama law.
2. Prohibiting Defendants Gwathney, Littleton, and Simmons from issuing parole decisions pursuant to a process that deviates from the pre-October 1, 2019 status quo and requiring Defendants Gwathney, Littleton, and Simmons to revert immediately to the parole guidelines and practices in place prior to October 1, 2019;
3. Requiring Defendants Gwathney, Littleton, and Simmons to remedy the unlawful parole denials and extended reconsideration periods rendered since October 1, 2019.

Plaintiffs further seek an order provisionally certifying: (a) the Parole Denial Class consisting of all incarcerated persons within ADOC’s custody and housed within correctional facilities owned and operated by ADOC who were denied parole while in the custody of ADOC at any time after October 1, 2019; and (b) the Discriminatory Parole Denial Subclass consisting of all Black members of the Parole Denial Class.

This motion is based upon this Notice of Motion and Motion; the accompanying Memorandum in Support of Plaintiffs’ Motion for Preliminary Injunction; the Declarations of Mr. Moore, Mr. Cole, Mr. McDole, Mr. Campbell, Mr. Ptomey, Mr. English, Lyn Head, Lacey Keller, Amanda C. Lynch, Barbara J. Chisholm, Janet Herold, and Lauren Faraino; the Request for Judicial Notice submitted herewith; the complete files and records of this action; and such other argument or evidence as may be presented at or before the time of any hearing scheduled by the Court.

Dated: December 21, 2023

Respectfully submitted,

/s/ Barbara J. Chisholm

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