

# **EXHIBIT M**

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

KENNETH EUGENE SMITH, )  
 )  
 Plaintiff, )  
 )  
 v. ) **Case No.**  
 )  
 JOHN Q. HAMM, Commissioner, )  
 Alabama Department of Corrections, )  
 *et al.*, )  
 )  
 Defendants. )

**Affidavit of Cynthia Stewart**

Before me, the undersigned notary, personally appeared Cynthia Stewart, who after being duly sworn did depose and say:

1. My name is Cynthia Stewart. I am over nineteen years of age, and I am of sound mind. I am employed as a Regional Director by the Alabama Department of Corrections (ADOC).

2. I am familiar with the model of mask that the ADOC intends to use in nitrogen hypoxia executions, including the execution of Kenneth Smith.

3. The mask that ADOC intends to use is designed to fit and does fit a broad range of wearers. I understand that this type of mask is commonly used for industrial purposes. The mask features a five-point strapping system that allows for

a secure fit, even in instances where the wearer needs to be able to communicate with others while wearing the mask.

4. I have observed the mask in use in conditions closely replicating those that will take place during the execution. In those instances, with breathing air flowing, the wearer has appeared comfortable and has been able to speak audibly to others present and to be understood. Based on my observations, the strapping system creates a tight seal. Individuals wearing the mask have been able to speak audibly without dislodging the mask. It would be highly unlikely and very difficult for the wearer to dislodge the mask without use of his or her hands.

5. The mask is designed to be used with supplied air and features exhalation valves for venting carbon dioxide. I have observed multiple persons wearing the mask with supplied breathing air, and none have reported any problems breathing or with the entrapment of carbon dioxide. I have also worn the mask under these conditions, and I was able to breathe comfortably and to make myself heard by those around me, including persons in the witness rooms when the microphone (which is used for the inmate's final statement) was used.


6. ADOC obtained a certificate of analysis (COA) for the nitrogen gas obtained for use in executions, including Kenneth Smith's execution. The contents of that COA show it to be 100% pure nitrogen and did not reveal any information

suggesting contamination. Attached hereto as exhibit "A" are the contents of that COA, edited only to obscure the source of the gas.

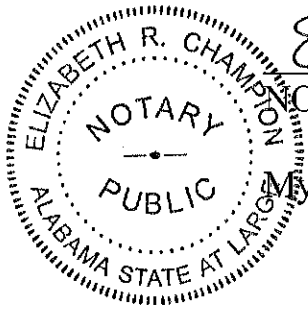
7. It has long been ADOC's practice to place condemned inmates on what Smith refers to as "single walk" status after the date for their execution was set. Smith was also placed on "single walk" status after his first execution date was set in 2022. As the former Warden of Holman Correctional Facility and in my current capacity, I am aware that this is done as a security measure for the protection of the condemned inmate, other inmates, and prison staff.

8. The protocol that will be employed at Smith's execution calls for the mask to be placed on Smith immediately after he has been taken to the execution chamber. The timing of this is important because that is the point at which the most members of the execution team are in the chamber. This ensures that the mask can be properly seated even if the inmate becomes combative. Further, this eliminates the possibility of the inmate becoming combative and refusing to comply with placement of the mask in front of witnesses, which preserves the inmate's dignity.

Further affiant sayeth not.

  
Cynthia Stewart

Subscribed and sworn to before me on this the \_\_\_\_ day of December 2023.



Elizabeth R Champton  
NOTARY PUBLIC

My commission expires 5/8/27.

*Certificate of Conformance*

<i>Lot Number</i>	<i>Cylinder Number</i>	<i>Analysis Date</i>	<i>Expiration Date</i>
021*****	Batch	August 25, 2023	N/A
<i>Cylinder Pressure</i>	<i>Cylinder Contents</i>	<i>Cylinder Size</i>	<i>CGA Connection</i>
2400 PSI	300cf	300	580
<i>Product</i>	<i>Part Number</i>	<i>Grade of Product</i>	<i>Analytical Uncertainty</i>
Nitrogen	*****	UHP	+/- 5%

<i>Components</i>	<i>Certified Concentration</i>	<i>Analytical method</i>
Nitrogen	99.999%	Reported by Supplier
Oxygen	<2 ppm	Paramagnetic
Moisture	<1 ppm	Electrolysis
THC	<0.5 ppm	Reported by Supplier