

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

DEMETRIUS FRAZIER,

Petitioner,

Civil No. 1:25-cv-00024-JB-N

v.

CAPITAL CASE

TERRY RAYBON, Warden,
Holman Correctional Facility,

**EXECUTION SET FOR
FEBRUARY 6, 2025**

&

HEIDI WASHINGTON,
Director, Michigan Department
of Corrections,

Respondents.

**REPLY TO MICHIGAN’S MOTION TO DISMISS THE PETITION FOR
WRIT OF HABEAS CORPUS AND BRIEF IN SUPPORT**

Michigan,¹ “through counsel Dana Nessel, Attorney General of the State of Michigan,” has moved to dismiss Mr. Frazier’s challenge to his execution while he

¹ Michigan’s motion to dismiss and brief in support denominate Respondent Washington as “‘Michigan’ for ease of reference.” ECF No. 7, PageID.132 (“Respondent Heidi Washington, Director of the Michigan Department of Corrections (hereinafter ‘Michigan’ for ease of reference), through counsel Dana Nessel, Attorney General of the State of Michigan . . .”); *see also id.* (titling pleading as “Michigan’s Motion to Dismiss the Petition for Writ of Habeas Corpus and Brief in Support”) (bold type and all capitals removed). There can be little doubt that Respondent Washington is directing General Nessel with at least the implicit consent of Governor Whitmer. *See Mich. Const. art. 5, § 3* (“When a single executive is the head of a principal department, unless elected or appointed as otherwise provided in this constitution, . . . [s]he shall serve at the pleasure of the governor.”).

is in Michigan’s legal custody because “Michigan does not seek to return [Mr.] Frazier to a Michigan correctional facility.” ECF No. 7, PageID.133. In doing so, Michigan relies on the “nearly identical case” (and binding circuit precedent) of *Moody v. Holman*, 887 F.3d 1281 (11th Cir. 2018). *Id.*, PageID.136. As discussed briefly below, Michigan’s position on this issue² is singularly fatal to Mr. Frazier’s claim, rendering the relief he sought non-cognizable.³

In *Moody*, then-United States Attorney General Jeff Sessions permitted the execution of Walter Leroy Moody, in the legal custody of the United States, by expressing he did “not object to Alabama retaining custody of Mr. Moody for the purpose of carrying out the death sentence.” 887 F.3d at 1292. General Nessel’s language defeating Mr. Frazier’s claim is “nearly identical” to that of General Sessions: acknowledging Michigan could “effectively prevent Alabama from carrying out its sentence” while stating, “Michigan does not seek to return [Mr.]

² General Nessel advances a host of other reasons for dismissing, each of which Mr. Frazier would have rebutted. However, given the preclusive effect of her position on Mr. Frazier’s physical custody, doing so would be fruitless. For the same reason, Mr. Frazier will not address Warden Raybon’s motion to dismiss and brief in support—including unfounded gratuitous attacks on undersigned counsel’s integrity.

³ Mr. Frazier had hope when he filed his petition because four years after it sent Mr. Frazier back to Alabama, Michigan prevented the execution of double murderer Clarence Ray. *See* Kern Golden Empire, *DA agrees to overturn death penalty to save tax payers money*, KGET, July 23, 2015, <https://web.archive.org/web/20150728005721/http://www.kerngoldenempire.com/news/local/story/d/story/da-agrees-to-overturn-death-penalty-conviction-to/37020/-cY8IJWLRESEdXcDEQt7YA> (“The D.A. says since Ray was already serving life without parole in Michigan [for murder], he would not be turned over to California until he died. Michigan officials even told the D.A. that they do not turn over inmates to states where the death penalty is used.”).

Frazier to a Michigan correctional facility.” ECF No. 7, PageID.133.⁴ This case likely disproves the adage that “history doesn’t repeat but it often rhymes.”

By disclaiming any interest in Mr. Frazier’s physical custody (while retaining legal custody) and relying on *Moody*, Director Washington and General Nessel have condoned Mr. Frazier’s death by nitrogen gas suffocation.⁵ Barring action by Governor Whitmer,⁶ sometime after 6 p.m. Central on Thursday, February 6, 2025, just outside Atmore, Alabama, Michigan (and Mr. Frazier) will make history: he will be the first prisoner executed while in the State of Michigan’s custody.⁷

Respectfully submitted,

/s/ Spencer J. Hahn
 Spencer J. Hahn
 Oregon Bar No. 043027

⁴ While Michigan notes it “takes no position on the *imposition* of the death penalty in this case,” ECF No. 7, PageID.133 (emphasis added), its pleading effectively authorizes the *execution* of the sentence of death.

⁵ Contemporaneously with this reply, Mr. Frazier is filing a motion to dismiss.

⁶ Mr. Frazier’s only legal hope is for Governor Whitmer to exercise her discretion to invoke the Extradition Clause. *In re Simmans*, 54 Mich. App. 112, 115 (1974) (“[A]n individual may be extradited even though he left the demanding state with the knowledge and consent of officials of that state”) (footnote omitted).

⁷ In 1846, the State of Michigan became “the first government in the English-speaking world to abolish capital punishment for murder and lesser crimes.” Eugene G. Wanger, *Michigan & Capital Punishment*, Mich. Bar J. (Sept. 2002), at 38. Although six people were executed while Michigan was a territory, it has never executed anyone post-statehood. Death Penalty Info. Ctr.: Michigan, <https://deathpenaltyinfo.org/state-and-federal-info/state-by-state/michigan>. Since statehood, one person has been executed in Michigan; in 1938, the federal government executed Anthony Chebatoris “at the federal detention farm in Milan.” Stuart Frohm, *Michigan death penalty history questions answered*, Midland Daily News, Feb. 28, 2004, <https://www.ourmidland.com/news/article/Michigan-death-penalty-history-questions-answered-7049348.php>.

/s/ John A. Palombi

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CERTIFICATE OF SERVICE

I certify that on January 24, 2025, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Spencer J. Hahn

Spencer J. Hahn