

No. 23-

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IN THE  
SUPREME COURT OF THE UNITED STATES

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James Edward Barber — PETITIONER  
(Your Name)

VS.

Governor of the State of Alabama, et al. — RESPONDENT(S)

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MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

Please check the appropriate boxes:

Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

The United States Court of Appeals for the Eleventh Circuit and the United States District Court for the Middle District of Alabama

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Petitioner has **not** previously been granted leave to proceed *in forma pauperis* in any other court.

Petitioner's affidavit or declaration in support of this motion is attached hereto.

Petitioner's affidavit or declaration is **not** attached because the court below appointed counsel in the current proceeding, and:

The appointment was made under the following provision of law: \_\_\_\_\_, or \_\_\_\_\_, or

a copy of the order of appointment is appended.

/s/ Jeffrey T. Green

(Signature)

**General Docket  
United States Court of Appeals for the Eleventh Circuit**

**Court of Appeals Docket #:** 23-12242

**Docketed:** 07/11/2023

**Nature of Suit:** 3550 Prisoner-Civil Rights (US not def)

James Edward Barber v. Governor of the State of Alabama, et al

**Appeal From:** Middle District of Alabama

**Fee Status:** IFP Granted

**Case Type Information:**

- 1) Private Civil - Prisoner
- 2) Death Penalty - State Civil Ri
- 3) -

**Originating Court Information:**

**District:** 1127-2 : [2:23-cv-00342-ECM](#)

**Court Reporter:** Patricia Starkie

**Civil Proceeding:** Emily Coody Marks, Chief U.S. District Judge

**Date Filed:** 05/25/2023

**Date NOA Filed:**

07/11/2023

**Prior Cases:**

[19-12133](#)   **Date Filed:** 05/31/2019   **Date Disposed:** 06/25/2021   **Disposition:** Affirmed

**Current Cases:**

None

JAMES EDWARD BARBER

Plaintiff - Appellant

Paula W. Hinton

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[COR LD NTC Retained]

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versus

GOVERNOR OF THE STATE OF ALABAMA

Richard Anderson  
Defendant - Appellee  
Direct: 334-353-2021  
[COR LD NTC Government]  
Alabama Attorney General's Office  
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501 WASHINGTON AVE  
PO BOX 300152  
MONTGOMERY, AL 36130

COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS

Richard Anderson  
Defendant - Appellee  
Direct: 334-353-2021  
[COR LD NTC Government]  
(see above)

Henry M. Johnson  
Direct: 334-242-7300  
[COR LD NTC Government]  
(see above)

Lauren Ashley Simpson  
Direct: 334-353-1209  
[NTC Government]  
(see above)

HOLMAN CF WARDEN

Richard Anderson  
Defendant - Appellee  
Direct: 334-353-2021  
[COR LD NTC Government]  
(see above)

Henry M. Johnson  
Direct: 334-242-7300  
[COR LD NTC Government]  
(see above)

Lauren Ashley Simpson  
Direct: 334-353-1209

		[NTC Government] (see above)
ATTORNEY GENERAL, STATE OF ALABAMA	Defendant - Appellee	Richard Anderson Direct: 334-353-2021 [COR LD NTC Government] (see above)
		Henry M. Johnson Direct: 334-242-7300 [COR LD NTC Government] (see above)
		Lauren Ashley Simpson Direct: 334-353-1209 [NTC Government] (see above)
JOHN DOE 1	Defendant - Appellee	Richard Anderson Direct: 334-353-2021 [COR LD NTC Government] (see above)
		Henry M. Johnson Direct: 334-242-7300 [COR LD NTC Government] (see above)
		Lauren Ashley Simpson Direct: 334-353-1209 [NTC Government] (see above)
JOHN DOE 2	Defendant - Appellee	Richard Anderson Direct: 334-353-2021 [COR LD NTC Government] (see above)
		Henry M. Johnson Direct: 334-242-7300 [COR LD NTC Government] (see above)
		Lauren Ashley Simpson Direct: 334-353-1209 [NTC Government] (see above)
JOHN DOE 3	Defendant - Appellee	Richard Anderson Direct: 334-353-2021 [COR LD NTC Government] (see above)
		Henry M. Johnson Direct: 334-242-7300 [COR LD NTC Government] (see above)
		Lauren Ashley Simpson Direct: 334-353-1209 [NTC Government] (see above)

JAMES EDWARD BARBER,

Plaintiff - Appellant,

versus

GOVERNOR OF THE STATE OF ALABAMA,  
COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS,  
WARDEN, HOLMAN CORRECTIONAL FACILITY,  
ATTORNEY GENERAL, STATE OF ALABAMA,  
JOHN DOE 1,  
JOHN DOE 2,  
JOHN DOE 3,

Defendants - Appellees.

07/11/2023	<input type="checkbox"/> <a href="#">1</a> 28 pg, 495.43 KB	DEATH PENALTY APPEAL DOCKETED. Notice of appeal filed by Attorney Paula W. Hinton for Appellant James Edward Barber on 07/11/2023. USDC motion pending: DE# 54 MOTION to Compel Deposition of Defendant Terry Raybon & for Expedited Briefing, DE#45 MOTION to Compel Production of Document and Interrogatories. Transcripts: All already on file. Fee Status: IFP Granted. [Entered: 07/12/2023 12:40 PM]
07/12/2023	<input type="checkbox"/> <a href="#">2</a> 1 pg, 98.86 KB	USDC order granting IFP as to Appellant James Edward Barber was filed on 07/12/2023. Docket Entry 62. [Entered: 07/12/2023 12:52 PM]
07/12/2023	<input type="checkbox"/> <a href="#">3</a> 1 pg, 127.74 KB	APPEARANCE of Counsel Form filed by Paula W. Hinton for James Edward Barber. Related cases? No. [23-12242] (ECF: Paula Hinton) [Entered: 07/12/2023 02:20 PM]
07/12/2023	<input type="checkbox"/> <a href="#">4</a> 7 pg, 204.79 KB	<i>EMERGENCY MOTION to expedite briefing filed by James Edward Barber. Opposition to Motion is Unknown.</i> [4] [23-12242] (ECF: Paula Hinton) [Entered: 07/12/2023 03:23 PM]
07/12/2023	<input type="checkbox"/> <a href="#">5</a> 5 pg, 276.94 KB	Certificate of Interested Persons and Corporate Disclosure Statement filed by Attorney Paula W. Hinton for Appellant James Edward Barber. On the same day the CIP is served, any filer represented by counsel must also complete the court's web-based stock ticker symbol certificate at the link here <a href="http://www.ca11.uscourts.gov/web-based-cip">http://www.ca11.uscourts.gov/web-based-cip</a> or on the court's website. See 11th Cir. R. 26.1-1(b). [23-12242] (ECF: Paula Hinton) [Entered: 07/12/2023 03:46 PM]
07/12/2023	<input type="checkbox"/> <a href="#">6</a> 1 pg, 128.77 KB	APPEARANCE of Counsel Form filed by Henry M. Johnson for Attorney General, State of Alabama, Commissioner, Alabama Department of Corrections, Governor of the State of Alabama, John Doe 1, John Doe 2, John Doe 3 and Holman CF Warden. Related cases? No. [23-12242] (ECF: Henry Johnson) [Entered: 07/12/2023 04:14 PM]
07/12/2023	<input type="checkbox"/> <a href="#">7</a> 1 pg, 128.8 KB	APPEARANCE of Counsel Form filed by Richard Anderson for Attorney General, State of Alabama, Commissioner, Alabama Department of Corrections, Governor of the State of Alabama, John Doe 1, John Doe 2, John Doe 3 and Holman CF Warden. Related cases? No. [23-12242] (ECF: Richard Anderson) [Entered: 07/12/2023 04:16 PM]
07/12/2023	<input type="checkbox"/> <a href="#">8</a> 7 pg, 39.84 KB	RESPONSE to Motion to expedite briefing filed by Appellant James Edward Barber [4] filed by Attorney Henry M. Johnson for Appellees Attorney General, State of Alabama, Commissioner, Alabama Department of Corrections, Governor of the State of Alabama, John Doe 1, John Doe 2, John Doe 3 and Holman CF Warden. [23-12242] (ECF: Henry Johnson) [Entered: 07/12/2023 04:41 PM]
07/12/2023	<input type="checkbox"/> <a href="#">9</a> 1 pg, 127.21 KB	APPEARANCE of Counsel Form filed by Mara Klebaner for James Edward Barber. Related cases? No. [23-12242] (ECF: Mara Klebaner) [Entered: 07/12/2023 09:49 PM]
07/13/2023	<input type="checkbox"/> <a href="#">10</a> 4 pg, 113.22 KB	<b>ORDER: Motion for expedition filed by Appellant James Edward Barber is GRANTED. Based on Appellant's counsel's representation that a motion for stay of execution would be forthcoming, the Court directs as follows: Appellant's motion for stay of execution shall be filed no later than July 14, 2023, at 12:00 p.m. CDT. Appellees' response shall be filed no later than July 16, 2023, at 12:00 p.m. CDT. Appellant's reply shall be filed no later than July 17, 2023, at 8:00 a.m. CDT.</b> [4]. ENTERED FOR THE COURT - BY DIRECTION. (See attached order for complete text)--[Edited 07/13/2023 by DLT] [Entered: 07/13/2023 10:26 AM]
07/13/2023	<input type="checkbox"/> <a href="#">11</a> 4 pg, 33.18 KB	Certificate of Interested Persons and Corporate Disclosure Statement filed by Attorney Henry M. Johnson for Appellees Attorney General, State of Alabama, Commissioner, Alabama Department of Corrections, Governor of the State of Alabama, John Doe 1, John Doe 2, John Doe 3 and Holman CF Warden. On the same day the CIP is served, any filer represented by counsel must also complete the court's web-based stock ticker symbol certificate at the link here <a href="http://www.ca11.uscourts.gov/web-based-cip">http://www.ca11.uscourts.gov/web-based-cip</a> or on the court's website. See 11th Cir. R. 26.1-1(b). [23-12242] (ECF: Henry Johnson) [Entered: 07/13/2023 10:44 AM]
07/13/2023	<input type="checkbox"/> <a href="#">12</a> 3 pg, 107.24 KB	<b>ORDER: The Court will hear oral argument in this case on Monday, July 17, 2023 at 2:00 p.m. (eastern daylight time). Oral argument will be conducted via Zoom. ENTERED FOR THE COURT - BY DIRECTION. (See attached order for complete text)</b> [Entered: 07/13/2023 11:12 AM]
07/13/2023	<input type="checkbox"/> <a href="#">13</a> 2 pg, 202.92 KB	TRANSCRIPT INFORMATION FORM SUBMITTED by Attorney Mara Klebaner for Appellant James Edward Barber. Transcript(s) ordered. [23-12242] (ECF: Mara Klebaner) [Entered: 07/13/2023 11:15 AM]
07/13/2023	<input type="checkbox"/> <a href="#">14</a>	Zoom Videoconference Oral argument scheduled.. Argument Date: Monday, 07/17/2023, at 2:00 p.m. (eastern daylight time). [Entered: 07/13/2023 12:03 PM]
07/13/2023	<input type="checkbox"/> <a href="#">15</a> 3 pg, 236.44 KB	Calendar issued as to this case to be orally argued on Monday, July 17, 2023, at 2:00 p.m. Eastern Daylight Time by Zoom Videoconference. Counsel are directed to electronically acknowledge receipt of this calendar by docketing the Calendar Receipt Acknowledged event in ECF (a document upload is not required). [Entered: 07/13/2023 12:19 PM]
07/13/2023	<input type="checkbox"/> 16	Attorney Richard Anderson for Appellees Attorney General, State of Alabama, Commissioner, Alabama Department of Corrections, Governor of the State of Alabama, John Doe 1, John Doe 2, John Doe 3 and Holman CF Warden hereby acknowledges receipt of a copy of the printed calendar for 07/17/2023. Richard D. Anderson, 334-353-2021 will present argument. [23-12242] (ECF: Richard Anderson) [Entered: 07/13/2023 12:57 PM]

07/13/2023  17

Attorney Mara Klebaner for Appellant James Edward Barber hereby acknowledges receipt of a copy of the printed calendar for 07/17/2023. Mara Klebaner, 312-853-7000 will present argument. [23-12242] (ECF: Mara Klebaner) [Entered: 07/13/2023 02:13 PM]

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

JAMES EDWARD BARBER, )  
Plaintiff, )  
v. ) CASE NO. 2:23-cv-342-ECM  
KAY IVEY, Governor of the State of )  
Alabama, *et al.*, )  
Defendant. )

## ORDER

On July 11, 2023, the Plaintiff filed a Notice of Appeal (doc. 58) and motion for leave to appeal *in forma pauperis* (doc. 59). Because a review of the Plaintiff's motion demonstrates that he does not have the assets necessary to pay the filing fee, the motion will be granted.

28 U.S.C. § 1915(a) provides that “[a]n appeal may not be taken *in forma pauperis* if the trial court certifies in writing that it is not taken in good faith.” The Court concludes that the Plaintiff can raise substantive issues on appeal that are not frivolous. *See Coppededge v. United States*, 369 U.S. 438, 445 (1962). Thus, the Court is of the opinion the Plaintiff’s appeal is taken in good faith. Accordingly, it is

ORDERED that the motion for leave to appeal *in forma pauperis* (doc. 59) is GRANTED.

DONE this 12th day of July, 2023.

/s/ Emily C. Marks  
EMILY C. MARKS  
CHIEF UNITED STATES DISTRICT JUDGE

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

## ORDER

Upon consideration of Plaintiff's Motion to Proceed *in Forma Pauperis* (doc. 2), it is

ORDERED that the motion (doc. 2) is GRANTED except to the extent payment of the filing fee is required by this Order under 28 U.S.C. §§1915(b)(1) and (2), as set forth below.

Under 28 U.S.C. § 1915(b)(1), a prisoner who seeks to proceed *in forma pauperis* in a civil action or on appeal must pay the full amount of the required filing fee. Upon review of the financial information provided to the Court, it appears Plaintiff lacks the funds in his prison account for the Court to require payment of either the entire filing fee or an initial partial filing fee. However, under 28 U.S.C. § 1915(b)(1), the Court must assess and, when funds exist, collect the \$350 filing fee from monies available to Plaintiff.

In accordance with 28 U.S.C. § 1915(b)(2), it is further

ORDERED:

1. Plaintiff will make monthly payments of 20 percent of each preceding month's income credited to his account as payments towards the \$350 filing fee; and
2. Persons having custody of Plaintiff will forward the payments from Plaintiff's account to the Clerk of this Court each time his account exceeds \$10 until the \$350 filing fee is paid in full.

To aid Plaintiff and those persons having custody of Plaintiff in complying with this Order, the Clerk is DIRECTED to furnish a copy of this Order to the inmate account clerk at the facility where Plaintiff is incarcerated.

**If this case is dismissed for any reason, Plaintiff remains obligated to pay the \$350 filing fee.** The filing fee will be collected from any funds that become available to Plaintiff and will be forwarded to this Court by those persons having custody of Plaintiff pursuant the directives in this Order. **Moreover, regardless of any filing fee or portion of filing fee that may have been paid, under 28 U.S.C. § 1915(e)(2)(B)(i)–(iii), this Court will dismiss the case before service of process if the Court determines it is frivolous, malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from monetary relief.** If Plaintiff does not wish to proceed with this case, he may request dismissal and request that no filing fee be collected.

Additionally, if Plaintiff files a notice of appeal, he will likewise be required to pay the appellate filing fee, which is currently \$505.00. If Plaintiff has the necessary funds to

pay the \$505 filing fee when he files a notice of appeal, he must pay that amount to the Court with the notice of appeal. If the required funds are not available and Plaintiff seeks to proceed in forma pauperis on his appeal, he must complete an affidavit in support of that request and supply the Court with a certified copy of his prison account statement for the six-month period preceding the filing of the appeal. However, regardless of this Court's determination on his in forma pauperis motion, the entire appellate filing fee will be collected from those persons having custody of him from funds available in his prison

DONE this 5th day of June, 2023.

/s/ Emily C. Marks  
EMILY C. MARKS  
CHIEF UNITED STATES DISTRICT JUDGE

**UNITED STATES DISTRICT COURT**  
for the

James Edward Barber )  
Plaintiff )  
v. )  
Kay Ivey, Governor of Alabama, et al. ) Civil Action No. 23-cv-00342  
Defendant )

**APPLICATION TO PROCEED IN DISTRICT COURT WITHOUT PREPAYING FEES OR COSTS**  
(Short Form)

I am a plaintiff or petitioner in this case and declare that I am unable to pay the costs of these proceedings and that I am entitled to the relief requested.

In support of this application, I answer the following questions under penalty of perjury:

1. *If incarcerated.* I am being held at: Holman Correctional Facility

If employed there, or have an account in the institution, I have attached to this document a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months for any institutional account in my name. I am also submitting a similar statement from any other institution where I was incarcerated during the last six months.

2. *If not incarcerated.* If I am employed, my employer's name and address are:

My take-home pay or wages are: \$        per (specify pay period)       

3. *Other Income.* In the past 12 months, I have received income from the following sources (check all that apply):

(a) Business, profession, or other self-employment	Yes
(b) Rent payments, interest, or dividends	Yes
(c) Pension, annuity, or life insurance payments	Yes
(d) Disability, or worker's compensation payments	Yes
(e) Gifts, or inheritances	Yes
(f) Any other sources	Yes

No  
 No  
 No  
 No  
 No  
 No

If you answered "Yes" to any question above, describe below or on separate pages each source of money and state the amount that you received and what you expect to receive in the future.

4. Amount of money that I have in cash or in a checking or savings account: \$ 0

5. Any automobile, real estate, stock, bond, security, trust, jewelry, art work, or other financial instrument or thing of value that I own, including any item of value held in someone else's name (*describe the property and its approximate value*):

NONE

6. Any housing, transportation, utilities, or loan payments, or other regular monthly expenses (*describe and provide the amount of the monthly expense*):

NONE

7. Names (or, if under 18, initials only) of all persons who are dependent on me for support, my relationship with each person, and how much I contribute to their support:

NONE

8. Any debts or financial obligations (*describe the amounts owed and to whom they are payable*):

NONE

*Declaration:* I declare under penalty of perjury that the above information is true and understand that a false statement may result in a dismissal of my claims.

Date: 6/1/23

James E. Barber Jr.  
Applicant's signature  
James E. Barber Jr.  
Printed name