



**IN THE CIRCUIT COURT FOR THE FIFTEENTH JUDICIAL CIRCUIT
 MONTGOMERY COUNTY, ALABAMA**

TRAYVEKA STANLEY et al.,

Plaintiffs,

v.

KAY IVEY, et al.,

Defendants.

No. CV-2024-900649.00

**PLAINTIFFS' RESPONSE IN OPPOSITION TO
 DEFENDANTS' MOTION TO DISMISS**

In 2022, the People of Alabama overwhelmingly voted in favor of revising Article I, Section 32 of their constitution to depart from the prison exception enshrined in the federal constitution's Thirteenth Amendment. In doing so, the voters made a profound commitment to the principle that neither slavery nor involuntary servitude will exist in any setting in the state, including in Alabama prisons and jails. Plaintiffs Trayveka Stanley, Regional Burrell, Dexter Avery, Charlie Gray, Melvin Pringle, and Ranquel Smith (collectively "Plaintiffs")—each of whom have been and continue to be subjected to involuntary servitude and slavery within Alabama Department of Corrections ("ADOC") prisons—have brought this lawsuit of first impression to challenge Defendants' laws and practices that punish, or threaten to punish, Plaintiffs for refusing to work while imprisoned.

Specifically, Plaintiffs seek to enjoin, and declare unconstitutional, portions of Executive Order 725 ("EO 725"), ADOC Administrative Regulation 403 ("AR 403"), and Alabama Code Section 14-9-41 ("Section 14-9-41")—all of which have been issued and/or enforced by Governor Kay Ivey and ADOC Commissioner John Hamm ("Defendants") to punish, or threaten to punish, Plaintiffs for not working or refusing to work. Plaintiffs also seek to expunge from Plaintiffs'

prison records information about disciplinary actions taken against them after Section 32 was revised. As Plaintiffs' well-pled Complaint shows, the range of punishments threatened and meted out by Defendants include: solitary confinement; loss of good time credit that would reduce one's time in prison; transfer to a more dangerous prison; additional unpaid, compelled labor within the prisons; loss of contact with loved ones; and loss of access to food and hygiene items available through the canteen. Such forms of coerced labor and punishment, detailed in ample factual allegations in the Complaint, sit at the heart of any reasonable definition of slavery and involuntary servitude, and are thus proscribed by Section 32's fundamental commitment that labor must be freely exchanged, rather than coerced through state mechanisms. State profit and power cannot come from forced labor of those, including those imprisoned, who otherwise have little to no power to resist such state leverage.

In response to Plaintiffs' claims for relief, Defendants move to dismiss Plaintiffs' action in its entirety under Alabama Rules of Civil Procedure 12(b)(1) and (b)(6), respectively, for lack of subject matter jurisdiction and for failure to state a claim. For the reasons detailed herein, each of their arguments fails.

First, this Court has subject matter jurisdiction over this matter. Plaintiffs' equitable claims for relief are asserted against state officers in their official capacities and therefore do not trigger state immunity under Section 14 of the Alabama Constitution. Moreover, because Plaintiffs' claims fall within several well-recognized categories of cases that are not barred by state sovereign immunity under Section 14, these official-capacity Defendants are not immune from Plaintiffs' claims for declaratory and injunctive relief under Section 32.

Additionally, all Plaintiffs have standing to challenge EO 725 because, as pled in the Complaint, they suffer—and absent this Court's issuance of declaratory and injunctive relief—

will continue to suffer, numerous injuries due to Defendants' enforcement of these laws, including solitary confinement, loss of good time, and transfer to higher security prisons. Plaintiff Ranquel Smith also has standing to challenge Section 14-9-41 and EO 725 because he is still subject to further injury under those laws, despite his current classification.

Second, Plaintiffs have alleged plausible claims for violations of Section 32: They clearly give adequate notice to Defendants that the plain language and the enforcement of EO 725, ADOC AR 403, and Section 14-9-41 violate Section 32 and explain the factual bases for these violations. And to the extent there is any ambiguity around the construction of Section 32—which has not been litigated in, or ruled on by, an Alabama court since 2022's constitutional revisions—this Court must construe Plaintiffs' allegations in a light most favorable to Plaintiffs at this stage of the proceedings. The Court must then determine whether Plaintiffs *may* possibly prevail on their claims under Section 32.

Thus, Defendants are decidedly incorrect in their attempts to recast the allegations of the Complaint in a light more favorable to *them*; deem irrelevant numerous factual allegations relating to the historical background of Plaintiffs' claims under Section 32; point this Court to "facts" outside the four corners of the pleading; and conclusively deny the merits of Plaintiffs' alleged facts by, for example, baldly stating "slavery and involuntary servitude do not exist in the State's prison system." *See, e.g.*, Doc. 14 at 2. Each of these tactics—which seek to distort and disregard Plaintiffs' allegations and force Plaintiffs to satisfy an inappropriately heightened pleading burden—lacks muster. Viewing all allegations in a *light most favorable to Plaintiffs* and *accepting all allegations* as true, the Complaint states plausible claims for relief under the Alabama Constitution.

For these reasons, as detailed below and as Plaintiffs will demonstrate to the Court during the July 29, 2024 hearing, Defendants’ Motion to Dismiss should be denied. Alternatively, Plaintiffs should be permitted leave to conduct discovery on any jurisdictional issues or to amend their Complaint to correct any pleading deficiencies identified by the Court.

ARGUMENT

I. The Court Has Subject Matter Jurisdiction Over This Action.

Defendants appear to bring a facial challenge to the Court’s subject matter jurisdiction, asserting that Defendants have state immunity from Plaintiffs’ claims and that Plaintiffs lack standing to bring their claims.¹ *See* Doc. 14 at 14–19. “Facial challenges, such as motions to dismiss for lack of standing at the pleading stage, attack the factual allegations of the complaint that are contained on the face of the complaint.” *Ex parte Safeway Ins. Co. of Ala., Inc.*, 990 So. 2d 344, 350 (Ala. 2008) (quotations, citations, and alterations omitted). “If a defendant mounts a facial challenge to the legal sufficiency of the plaintiff’s jurisdictional allegations, the court must accept as true the allegations in the complaint and consider the factual allegations of the complaint in the light most favorable to the non-moving party.” *Id.* at 349 (quotations and citations omitted). “The court may look beyond the allegations contained in the complaint to decide a facial challenge,

¹ In contrast, a factual challenge to subject matter jurisdiction is “addressed to the underlying facts contained in the complaint.” *Ex parte Safeway Ins. Co. of Ala., Inc.*, 990 So. 2d at 350 (quotations and citations omitted). “[A] court deciding a Rule 12(b)(1) motion asserting a factual challenge must go beyond the pleadings and resolve any disputed issues of fact the resolution of which is necessary to a ruling upon the motion to dismiss.” *Id.* (quotations and citations omitted). Neither of Defendants’ subject matter jurisdiction arguments hinge on disputes to the factual allegations in the Complaint. However, should the Court construe Defendants’ subject matter jurisdiction challenge as factual, Plaintiffs respectfully request that the Parties be permitted to proceed to discovery, or, alternatively, to engage in limited jurisdictional discovery so that the Court can resolve disputed issues of fact based on evidence. *See Branded Trailer Sales, Inc. v. Universal Truckload Servs., Inc.*, 74 So. 3d 404, 412, 419 (Ala. 2011) (reversing dismissal for lack of jurisdiction where court failed to provide plaintiff opportunity to conduct jurisdictional discovery before dismissal).

as long as it still accepts the factual allegations in the complaint as true.” *Id.* (quotations and citations omitted).

For the following reasons, Defendants’ arguments that state immunity and lack of standing deprive the Court of subject matter jurisdiction are baseless.

A. Plaintiffs’ Claims Are Not Barred by State Immunity.

Defendants claim they are shielded from suit by state immunity under Article I, Section 14 of the Alabama Constitution. Doc. 14 at 14–16.² Specifically, Defendants argue that Plaintiffs’ constitutional challenge to AR 403 is barred by state immunity. *Id.* at 15. They also briefly argue that this entire suit should be dismissed on state-immunity grounds because none of the legal provisions that Plaintiffs challenge is, according to Defendants, unconstitutional—essentially asking the Court to prematurely side with them on the merits. *Id.* at 15–16. Both arguments fail.

1. Actions Against State Officials to Enjoin Enforcement of Unconstitutional Laws—Including State Agency Regulations—Are Not Barred by State Immunity.

Plaintiffs’ constitutional challenge to AR 403 is not barred by state immunity because it is not, in effect, an action *against the state*. “[T]he immunity afforded the State by § 14 applies to instrumentalities of the State and State officers sued in their official capacities *when such an action is effectively an action against the State*.” *Ex parte Moulton*, 116 So. 3d 1119, 1130 (Ala. 2013) (emphasis added) (quoting *Vandenberg v. Aramark Educ. Servs., Inc.*, 81 So. 3d 326, 332 (Ala. 2011)). Not all actions against state *officials* are “considered to be actions against the State for § 14 purposes.” *Id.* at 1132 (quotations and citations omitted); *Ex parte Wilcox Cnty. Bd. of Educ.*, 279 So. 3d 1135, 1141 (Ala. 2018) (“Section 14 immunity . . . is not always absolute; there are

² Defendants mistakenly cite the 1901 Constitution, Doc. 14 at 14, which is no longer in effect. Doc. 2 ¶¶ 109–10. While the text of Section 14 did not change when the voters ratified a new constitution in 2022, Plaintiffs find it telling that Defendants appear wedded—even if subconsciously—to the pre-2022 version of our state’s constitution.

actions against State officials that are not barred by the general rule of sovereign immunity.”). For this reason, courts routinely distinguish between claims against state agencies and instrumentalities, which are absolutely barred under Section 14 irrespective of the relief sought, and claims for prospective relief against state officials, which are not. *See, e.g., Vandenberg*, 81 So. 3d at 333 n.7 (explaining that, while plaintiff-students’ statutory and constitutional claims against state university’s board of trustees were barred by state immunity because the board is a state instrumentality, “the students may seek injunctive and declaratory relief against the university administrators” in their official capacities). Indeed, the Alabama Supreme Court has repeatedly held that state officials are not entitled to Section 14 immunity in official-capacity suits against them “to the extent [the plaintiff] request[s] declaratory or prospective injunctive relief.” *See Wilcox Cnty. Bd. of Educ.*, 279 So. 3d at 1144–45; *see also, e.g., Ex parte Ala. Dep’t of Youth Servs.*, No. SC-2023-0627 and No. SC-2023-0628, 2024 WL 1335931, at *6 (Ala. Mar. 29, 2024); *Vandenberg*, 81 So. 3d at 333 n.7; *House v. Jefferson State Cmty. College*, 907 So. 2d 424, 427 (Ala. 2005).

As Defendants themselves acknowledge, it is well-settled law that state immunity does not apply to “actions brought to enjoin State officials from enforcing an unconstitutional *law*.” Doc. 14 at 15 (alterations omitted) (emphasis added by Defendants) (quoting *Ex parte Moulton*, 116 So. 3d at 1131). Defendants, however, advocate a cramped interpretation of the term “law,” attempting to draw a distinction between constitutional challenges to state statutes (and executive orders, as Defendants appear to concede), on the one hand, and state agency regulations, on the other,

claiming that only the former are not barred by state immunity. *See id.*³ But this is a distinction without a difference.

Binding precedent directly contradicts Defendants’ position that state immunity bars an action seeking to enjoin state officials from enforcing an unconstitutional ADOC regulation. In *Evatt v. Thomas*, the Court of Civil Appeals concluded that the ADOC Commissioner “is not entitled to § 14 immunity” in a suit for injunctive and declaratory relief brought against him in his official capacity by an incarcerated plaintiff challenging the constitutionality of two ADOC administrative regulations. 99 So. 3d 886, 893–94 (Ala. Civ. App. 2012) (reversing trial court’s dismissal of plaintiff’s equal protection challenge to AR 452, ADOC’s smoke/tobacco-free policy). The circumstances in this case are identical to those in *Evatt* in every way that matters: Plaintiffs here are suing Governor Ivey and Commissioner Hamm in their official capacities; they challenge the constitutionality of an ADOC administrative regulation (and a state statute and executive order); and they seek “a judgment declaring the unconstitutionality of [AR 403] and to enjoin [Defendants] from enforcing th[at] regulation[.]” *Id.*; *see* Doc. 2 ¶¶ 7, 17, 18, 233, p.52. *Evatt* dictates the conclusion here: Plaintiffs’ challenge to AR 403 is not barred by state immunity.

To hold otherwise and adopt Defendants’ preferred interpretation of state-immunity doctrine would lead to absurd and deeply undesirable results. State officials would be free to pass and enforce brazenly unconstitutional regulations, leaving aggrieved Alabamians with no remedy in court against ongoing violations of their state and federal rights. *See also Rodgers v. Hopper*, 768 So. 2d 963, 968 (Ala. 2000) (interpreting the Section 14 “exception” for “actions brought to compel State officials to perform their legal duties” to extend to duties imposed by “a law, a

³ To support their argument, Defendants rely on two inapposite cases, both of which concerned whether a court could take judicial notice of a state agency’s regulations. *See* Doc. 14 at 15 & n.5 (citing *Jenkins v. State*, 516 So. 2d 944, 945 (Ala. Crim. App. 1987); *State v. Friedkin*, 14 So. 2d 363, 365 (Ala. 1943)). Neither case contains any mention of state immunity.

regulation, or a validly enacted internal rule”); *Ex parte Ret. Sys. of Ala.*, 182 So. 3d 527, 540–41 (Ala. 2015) (Parker, J., concurring) (“Given the ever growing power of government through regulations, the people of Alabama must not be barred from challenging State officials seeking to enforce unconstitutional regulations All the § 14 exceptions must be read to include ‘a law, a regulation, or a validly enacted internal rule,’ as applicable.” (quoting *Rodgers*, 768 So. 2d at 968)). To preserve the basic functioning of the rule of law, the “exception” to sovereign immunity for actions “to enjoin State officials from enforcing an unconstitutional law”—as well as the other categories of actions enumerated in *Ex parte Moulton*—must be read to include constitutional challenges to rules and regulations.

2. Plaintiffs’ Claims Fall Under Several Other Well-Established Categories of Cases That Lie Outside the Scope of Section 14.

In addition to actions seeking to enjoin enforcement of an unconstitutional law, discussed *supra*, the Alabama Supreme Court has identified “six general categories of actions that do not come within the prohibition of § 14.” *See Wilcox Cnty. Bd. of Educ.*, 279 So. 3d at 1141 (citing, *inter alia*, *Ex parte Ala. Dep’t of Fin.*, 991 So. 2d 1254, 1256–57 (Ala. 2008); *Ex parte Moulton*, 116 So. 3d at 1131–32)).⁴ Those categories include: “actions brought to compel State officials to perform their legal duties,” declaratory-judgment actions against state officials “seeking construction of a statute and its application in a given situation,” and “actions for injunction brought against State officials in their representative capacity where it is alleged that they had acted fraudulently, in bad faith, beyond their authority, or in a mistaken interpretation of law.” *Id.*

⁴ The list of six “exceptions” to Section 14 is not exhaustive. *See Ex parte Cooper*, No. SC-2023-0056, 2023 WL 5492465, at *4 (Ala. Aug. 25, 2023) (describing “[t]he categories enumerated in *Moulton*” as “simply illustrations”). When determining whether a claim against state officials is effectively one against the state, “[t]he touchstone is . . . whether a result favorable to the plaintiff would directly affect a contract or property right of the State.” *Id.* No such contract or right is implicated here.

at 1141–42 (quotations and citations omitted). These are sometimes referred to as the first, fourth, and sixth *Ex parte Moulton* categories or “exceptions,” respectively. *See generally id.*

First, Plaintiffs’ claims for declaratory relief are not subject to state immunity. *See id.* at 1131 (stating the well-established principle that Section 14 does not apply to actions against state officials for purely declaratory relief); *accord Porter v. Hugine*, 101 So. 3d 1228, 1236 (Ala. Civ. App. 2012) (holding that portion of plaintiffs’ request for declaratory relief that did not “implicate[] the payment of money from the State treasury” was not barred by Section 14).⁵ Plaintiffs seek “no other relief” under the Declaratory Judgment Act than a “construction of [Section 32 of the Alabama Constitution] and how it should be applied [to Defendants’ enforcement of the challenged portions of EO 725, AR 403, and Section 14-9-41.]” *Ex parte Town of Lowndesboro*, 950 So. 2d 1203, 1211 (Ala. 2006) (quoting *Aland v. Graham*, 250 So. 2d 677, 679 (1971)); Doc. 2 at 52, (B) – (D) (requests for declaratory relief). Therefore, Plaintiffs’ claims for declaratory relief are not subject to dismissal.

Additionally, this suit seeks to “to compel State officials to perform their legal duties,” *Ex parte Moulton*, 116 So. 3d at 1131 (quotations and citations omitted)—*i.e.*, their duties to uphold the Alabama Constitution’s unqualified ban on slavery and involuntary servitude. And it is an “action[] for injunction brought against State officials in their representative capacity where it is alleged that they had acted . . . beyond their authority[] or in a mistaken interpretation of law,” *id.* at 1131–32 (quotations and citations omitted)—*i.e.*, the supreme law of this state under Section 32 of the Alabama Constitution. For these additional reasons, Plaintiffs’ claims “do not come within

⁵ While the case law on state immunity tends to refer specifically to actions “seeking construction of a statute and its application in a given situation,” *Wilcox Cnty. Bd. of Educ.*, 279 So. 3d at 1141 (quotations and citations omitted), the courts’ declaratory judgment powers, when properly invoked, also extend to constructions of the state constitution. *Morgan v. Bd. of Sch. Comm’rs of Mobile Cnty.*, 248 Ala. 22, 25 (1946); *see also* Ala. Code § 6-6-226.

the prohibition of § 14.” *Wilcox Cnty. Bd. of Educ.*, 279 So. 3d at 1141 (quotations and citations omitted).

Plaintiffs’ claims for injunctive and declaratory relief against Defendants in their official capacities seeking to clarify their duties under and compel their compliance with the Alabama Constitution are not, in essence, claims against the state, and therefore they are not barred by state immunity.

3. Defendants’ Arguments Regarding the Merits of Plaintiffs’ Constitutional Claims Have No Bearing on the Immunity Analysis.

Defendants’ remaining immunity argument—that “Plaintiffs cannot overcome Governor Ivey and Commissioner Hamm’s immunity” because “Defendants’ enforcement of EO725, AR403, and the Deputy Brad Johnson Act does not violate §32 of the Constitution[,]” Doc. 14 at 16—is a circular one, and wholly inappropriate at the motion-to-dismiss stage. It would require the Court to rule on the merits of Plaintiffs’ claims, and to side with Defendants’ version of the operative facts, instead of construing Plaintiffs’ well-pled allegations “most strongly in [their] favor” and considering “only whether [they] may possibly prevail.” *Ex parte Mobile Infirmary Ass’n*, 349 So. 3d 842, 845 (Ala. 2021) (quotations and citations omitted). Defendants cite no authorities in support of this argument—nor could they. State immunity does not permit Defendants to short-circuit this Court’s ability to engage in fact-finding and rule on questions of law—including, in this case, novel questions of state constitutional interpretation—based on an adequately-developed factual record at a time when this case is ripe for disposition on the merits.

B. Plaintiffs Have Standing to Bring Their Claims.

Plaintiffs have standing to bring their claims.⁶ Alabama courts have held that standing requires “(1) an actual, concrete and particularized ‘injury in fact’—‘an invasion of a legally protected interest’; (2) a ‘causal connection between the injury and the conduct complained of’; and (3) a likelihood that the injury will be ‘redressed by a favorable decision.’” *Ala. Alcoholic Beverage Control Bd. v. Henri-Duval Winery, LLC*, 890 So. 2d 70, 74 (Ala. 2003) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992)).

Here, Plaintiffs’ injuries are traceable to Governor Ivey, and they therefore have standing to sue her. Next, all six Plaintiffs work under an ongoing threat of various punishments authorized by EO 725 and thus have standing to challenge EO 725. And finally, Plaintiff Ranquel Smith remains subject to additional good time punishments authorized by EO 725 and Section 14-9-41 if he refuses to work, and he therefore has standing to challenge the good time provisions in EO 725 and Section 14-9-41.

1. Plaintiffs’ Injuries Are Traceable to Defendant Ivey.

Plaintiffs’ injuries under AR 403 are traceable to Defendant Ivey for two reasons. First, Plaintiffs have pled enough facts to meet the traceability test in *Lujan* that Alabama courts have adopted. *Ex parte King*, 50 So. 3d 1056, 1059 (Ala. 2010) (quoting traceability, or “causal connection,” standard in *Lujan*). Second, Defendants base their argument on a case that deals with whether a defendant is a proper party under *Ex parte Young*, 209 U.S. 123 (1908), wholly inapplicable federal precedent concerning the Eleventh Amendment to the U.S. Constitution. This is a separate issue from whether a plaintiff has standing, and the Court should not credit Defendants’ argument.

⁶ Notably, Defendants do not challenge any Plaintiffs’ standing to sue Defendant Hamm for constitutional violations in his promulgation and enforcement of AR 403.

Plaintiffs must show two things to meet the traceability prong of standing. First, that Defendant Ivey “has the authority to enforce the particular provision[s]” they have challenged. *Support Working Animals, Inc. v. Governor of Fla.*, 8 F.4th 1198, 1201 (11th Cir. 2021). And second, that their injuries are “fairly . . . trace[able]” to Defendant Ivey as opposed to “the independent action of some third party not before the court.” *Ex parte LeFleur*, 329 So. 3d 613, 624–25 (Ala. 2020) (quoting *Lujan*, 504 U.S. at 561).

Plaintiffs have pled sufficient facts in their Complaint to meet these requirements. Plaintiffs stated that Governor Ivey has the authority to exercise “all functions and duties” of the ADOC “by [herself].” Compl. ¶ 17; Ala. Code § 14-1-17. This capacious language would plainly include the ability of Defendant Ivey to enforce AR 403, and Defendants have cited no authority to contrary. Plaintiffs further pled that Defendant Ivey’s conduct is responsible for their harms. On the heels of a mass labor strike within ADOC, she issued EO 725, which *requires* Defendant Hamm and ADOC to impose certain punishments on incarcerated people for refusing to work. Compl. ¶¶ 5, 112–25. In response, Defendant Hamm revised AR 403 to incorporate EO 725’s requirements. *Id.* ¶¶ 5, 129. Plaintiffs have thus demonstrated traceability: They pled that Defendant Ivey has authority to direct Defendant Hamm and that she has enforcement power over ADOC, and they pled that their injuries are traceable to the governor’s conduct instead of an independent third party. *Ex parte LeFleur*, 329 So. 3d at 624–25; *Support Working Animals*, 8 F.4th at 1201.

Defendants acknowledge that Defendant Ivey has enforcement power under Alabama Code Section 14-1-17 while also making much ado about Defendant Hamm’s authority “for promulgating and enforcing AR 403.” Doc. 14 at 18–19 (citing Doc. 2 at ¶ 18). Plaintiffs agree that Defendant Hamm is responsible for promulgating and enforcing ADOC regulations, such as AR 403. *See* Doc. 2 ¶ 18. But Defendant Hamm’s ability to enforce AR 403, as Defendant Ivey’s

appointee and delegate, does not take away from Defendant Ivey’s statutory authority to also enforce this regulation and to direct Defendant Hamm’s conduct. *See Georgia Republican Party v. Sec’y of State for Georgia*, No. 20-1741, 2020 WL 7488181, at *2 (11th Cir. Dec. 21, 2020) (finding injuries were traceable to independent actor, where state legislature had wholly delegated authority to that independent actor). Moreover, contrary to Defendants’ suggestion, Plaintiffs do not assert that Defendant Ivey’s general executive power alone makes their injuries under AR 403 traceable to her. *See* Doc. 14 at 18–19 (citing *Women’s Emergency Network v. Bush*, 323 F.3d 937, 949–50 (11th Cir 2003) (considering whether a governor was responsible for a challenged action for purposes of federal Eleventh Amendment sovereign immunity analysis)). Rather, Defendant Ivey is specifically vested with authority to exercise “[a]ll functions and duties” of ADOC. Doc. 2 ¶ 17.

2. All Plaintiffs Have Standing to Challenge EO 725.

EO 725 threatens all six Plaintiffs with punishment for refusing to work. Doc. 2 ¶¶ 112–25, 230–31. Plaintiffs therefore have standing to seek relief from EO 725’s provisions that violate Article I, Section 32 of the Alabama Constitution. As discussed below, Mr. Smith has standing to challenge the good-time provisions of EO 725. *See infra* Part I.B.3.

Defendants contend that because the only punishment for violating EO 725 is the loss of good-time credits and because Plaintiffs are ineligible for good time, no Plaintiffs have standing to challenge EO 725. Doc. 14 at 16–17. But Defendants are incorrect that “inability to earn good-time credit ... is the only ‘punishment’ available for violating EO725.” Doc. 14 at 16. EO 725 requires the ADOC Commissioner to “establish four levels of disciplinary rule violations.” Doc. 16 at § 1.a. EO 725 requires “refusing to work” to be listed as a medium-level rule violation. *Id.* § 1.a.iii; Doc. 2 ¶ 119. The day after Defendant Ivey issued EO 725, Defendant Hamm revised AR

403 to add a fourth rule violation level and incorporate the other revisions mandated by EO 725. Doc. 2 ¶¶ 112, 129; Doc. 18. These changes apply to all six Plaintiffs.

EO 725 explicitly authorizes other punishments for refusing to work and other rule violations, “including but not limited to, time to be served in restrictive housing, loss of prison privileges, and other sanctions for disciplinary rule violations.” Doc. 16 at §1.h; Doc. 2 ¶ 123. Instructed by EO 725 to ignore the Section 32’s prohibition on slavery and involuntary servitude, which has applied in prisons since November 2022, Defendant Hamm permitted other forms of punishment—such as solitary confinement, extra required work, transfer from work release to a major prison, and loss of commissary, visitation, and phone call access—in addition to loss of good time, for incarcerated workers who refuse to work. *See* Doc. 2 at ¶¶ 4, 127–54. Thus, all six Plaintiffs have standing to challenge EO 725 because EO 725 requires Defendant Hamm to punish, or threaten to punish, Plaintiffs for rule violations such as “refusing to work,” a medium-level violation *mandated* by EO 725 and punishable with the various penalties authorized by EO 725.

3. Plaintiff Ranquel Smith Has Standing to Challenge EO 725 and Section 14-9-41.

Mr. Smith has standing to challenge the good time provisions of EO 725 and Section 14-9-41 because, as someone who is generally eligible to earn good time and whose good time earning status may be restored, he remains under threat of additional punishment for refusing to work. Generally, based on the nature of his convictions, Mr. Smith is eligible to earn good time, also known as “correctional incentive time,” which reduces an incarcerated person’s prison sentence. *See* Doc. 2 ¶¶ 16, 228; Doc. 32 at 16 (showing good time previously revoked). But Mr. Smith is currently classified as Level IV due to a high-level rule violation of which he was found guilty in January 2024, eliminating his eligibility to earn good time *at this time* for at least a year. After this period, however, he could be eligible to earn good-time credit and to have his good-time status

restored. Doc. 2 ¶¶ 118, 158; Doc. 18 at 20; Doc. 16 § (1)(c)(ii); ADOC Admin. Reg. 425(V)(V)(3) (Oct. 10, 2023) (hereinafter “AR 425”).⁷

EO 725 imposes additional barriers to Mr. Smith’s ability to return to good-time earning status. Doc. 2 ¶ 118. According to EO 725, ADOC may only restore Mr. Smith’s ability to earn good time after a year if Mr. Smith demonstrates “good behavior.” *Id.*; Doc. 16 § (1)(c)(ii). ADOC defines “demonstration of good behavior” as a “qualifying period of time in which an inmate has not received a disciplinary nor a behavior citation.” AR 425(III)(A). Like all of the Plaintiffs, Mr. Smith faces the ever-present risk of being subjected to disciplinary proceedings if he does not work. Doc. 2 ¶ 16. Thus, *pursuant to EO 725*, Defendants can prolong the period during which Plaintiff Smith is ineligible to earn good time, or have his good time restored, by punishing him again for not working.

Moreover, even if Mr. Smith is not found guilty of a rule violation through formal disciplinary proceedings, Section 14-9-41(b)(iv) permits ADOC to classify Mr. Smith as Level IV any time he is “able to work and refuse[s].” *Id.* ¶ 158. Thus, even if Mr. Smith maintains a clean disciplinary record until January 2025 and has otherwise demonstrated “good behavior,” ADOC can, in its full discretion, continue to classify him as Level IV if he refuses to work today, according to the plain language of the statute, thus depriving him of his ability to earn good time and extending his time in prison.

In sum, EO 725 and Section 14-9-41 continue to threaten Mr. Smith with *additional* punishment if he refuses to work because they require ADOC to prolong the time during which Mr. Smith cannot accrue good time and the time until he will be eligible again for good time restoration. Mr. Smith thus has standing to challenge EO 725 and Section 14-9-41.

⁷ Ala. Dep’t of Corrs., Admin. Reg. 425 (Oct. 10, 2023), *available at* <https://doc.alabama.gov/docs/AdminRegs/AR425.pdf>.

Accepting as true the allegations in the Complaint and viewing all allegations in the light most favorable to Plaintiffs, the non-movants, the Court has subject matter jurisdiction over Plaintiffs' claims.

II. Plaintiffs State Plausible Claims for Relief under Section 32 of the Alabama Constitution.

Defendants argue that Plaintiffs fail to state a claim under Section 32 of the Alabama Constitution. Doc. 14 at 23–36. They also seek to have the entire complaint tossed out of court as an impermissible shotgun pleading. *Id.* at 19–23. In so arguing, Defendants suggest a standard of review alien to civil pleading: that Plaintiffs must prove their claims “beyond a reasonable doubt.” *See* Doc. 14 at 23 (“Plaintiffs . . . must demonstrate ‘beyond reasonable doubt’ that the law is unconstitutional.”); *id.* at 5. That is decidedly not the standard at the civil pleading stage, and the case law that Defendants cite in support of this “reasonable doubt” is entirely inapposite: *State ex rel. King v. Morton*, 955 So. 2d 1012, 1017 (Ala. 2006), concerned review of a trial judgment and of an emergency motion for injunction pending appeal, and *Ala. State Fed’n of Labor v. McAdory*, 18 So. 2d 810, 814 (Ala. 1944), concerned review of a trial judgment.⁸ *See* Doc. 14 at 5, 23. Rather, under Alabama Rule of Civil Procedure 12(b)(6), “[t]he appropriate standard of review . . . is whether ‘when the allegations of the complaint are viewed most strongly in the pleader’s favor, it appears that the pleader could prove any set of circumstances that would entitle [the pleader] to

⁸ Moreover, Defendants have neither argued nor pointed to any legal authority to show that the purported presumption of constitutionality applies to executive and administrative acts, like EO 725 and AR 403 at issue here. *See* Doc. 14 at 23 (“[P]assing upon the constitutionality of a *legislative act*, the courts uniformly approach the question with every presumption and intentment in favor of its validity.”) (emphasis added) (quoting *Ala. State Fed’n of Labor*, 18 So. 2d at 815)). Indeed, both *McAdory* and *Morton* on which Defendants rely discuss solely a plaintiff’s burden to overcome the presumption of constitutionality of *legislative* acts. *See McAdory*, 18 So. 2d at 815; *State ex rel. King*, 955 So. 2d at 1017 (“Additionally, *acts of the legislature* are presumed constitutional.” (emphasis added) (citations omitted)); *Dobbs v. Shelby Cnty. Econ. & Indus. Dev. Auth.*, 749 So. 2d 425, 428 (Ala. 1999) (“In reviewing the constitutionality of a *legislative act*, this Court will sustain the act unless it is clear beyond reasonable doubt that it is violative of the fundamental law.”) (emphasis added) (quotations and citations omitted)). Therefore, Defendants’ argument as to the presumed constitutionality of legislative acts does not apply to Plaintiffs’ constitutional challenges to AR 403 and EO 725.

relief.” *Ex parte Mobile Infirmary Ass’n*, 349 So. 3d at 845 (quotations and citations omitted). A court should “not consider whether the plaintiff will ultimately prevail, but only whether the plaintiff *may* possibly prevail.” *Id.* (emphasis added) (quotations and citations omitted).

Construing the pleadings in Plaintiffs’ favor, Plaintiffs have stated a plausible claim for relief on each of the three counts alleged in their Complaint. The Complaint is not an impermissible shotgun pleading and serves to put Defendants and the Court adequately on notice of the claims; Defendants’ attempts to attack the merits of Plaintiffs’ claims are impermissible at this stage; and Plaintiffs have sufficiently alleged slavery and involuntary servitude.⁹

A. The Complaint Is Not a Shotgun Pleading.

Shotgun pleadings violate Rule 8(a) of the Alabama Rules of Civil Procedure for inadequate specificity in pleading. Under the governing Eleventh Circuit standards that Alabama courts follow, *Hoff v. Goyer*, 160 So. 3d 768, 773 (Ala. Civ. App. 2014), a shotgun pleading is “a rambling, dizzying array of nearly incomprehensible pleading” that does not give the defendants notice of what they are liable for on each count, and on what basis. *Barmapov v. Amuial*, 986 F.3d 1321, 1323 (11th Cir. 2021); *see also Dressler v. Equifax, Inc.*, 805 F. App’x 968, 972 (11th Cir. 2020) (holding that a shotgun pleading is one that is “replete with conclusory, vague, and immaterial facts not obviously connected to any particular cause of action’; does not separate causes of action into separate counts; or asserts multiple claims against multiple defendants while failing to specify which defendants are responsible for which acts or omissions.”) (quoting

⁹ Alternatively, if the Court finds dismissal to be appropriate under Rule 12(b)(6), Plaintiffs should be permitted leave to amend to correct the alleged deficiencies of their Complaint. *See* Ala. R. Civ. P. 78 (“Unless the court orders otherwise, an order granting a motion to dismiss shall be deemed to permit an automatic right of amendment of the pleading to which the motion is directed within ten (10) days from service of the order.”); *see also GEICO Gen. Ins. Co. v. Curtis*, 279 So. 3d 1171, 1179 (Ala. Civ. App. 2018) (“[G]ranteeing . . . [leave to amend] is especially appropriate when the trial court has dismissed the complaint for failure to state a claim.” (quotations and citations omitted)); *Roberts v. Meeks*, 397 So. 2d 111, 114 (Ala. 1981) (“A motion to dismiss under [Alabama Rules of Civil Procedure 12(b)(6)] . . . should be granted very sparingly and, when granted, leave to amend should always be afforded.” (citing 2 Lyons, Ala. Prac. § 12.7, Author’s Comments)).

Weiland v. Palm Beach Cnty. Sherriff's Office, 792 F.3d 1313, 1322 (11th Cir. 2015)). Otherwise put, a plaintiff has filed a shotgun pleading only when “it is *virtually impossible* to know which allegations of fact are intended to support which claim(s) for relief.” *Weiland*, 792 F.3d at 1325 (citation omitted).

The Complaint is not a shotgun pleading. The Complaint puts Defendants fully on notice by specifically and concisely pleading the causes of actions, which Defendants themselves reiterate in their Motion to Dismiss, and the Complaint includes only relevant allegations.

1. The Complaint Is Sufficient to Put Defendants and the Court on Notice of the Asserted Claims.

Here, Plaintiffs allegations were clearly pled: Defendants have impermissibly punished, or threatened to punish, Plaintiffs for being unable to or declining to work through their promulgation and enforcement of EO 725, AR 403, and Section 14-9-91. *See* Doc. 2 ¶¶ 89–162 (outlining specifically and concisely how EO 725, AR 403, and Section 14-9-91 are unconstitutional); *id.* ¶¶ 163–235 (outlining specifically and concisely how each Plaintiff has been punished or threatened with punishment for being unable to or declining to work). The Complaint separates into a different count each cause of action and claim for relief—elements uncharacteristic of a shotgun pleading—and gives all Defendants notice of the claims against them. *Cf. Adams v. Huntsville Hosp.*, 819 F. App’x 836, 839 (11th Cir. 2020) (finding shotgun pleading where “amended complaint is not properly separated into different counts”); *see* Doc. 2 ¶¶ 230–35. And “the organization of the [] paragraphs of factual allegations into [] subsections,” *Weiland*, 792 F. 3d at 1325, in the Complaint further aids the Court and Defendants in understanding the nature of Plaintiffs’ claims and the specific facts undergirding them.

Despite arguing inadequate notice, Defendants, in their Motion to Dismiss, repeatedly reiterate the claims against them and the alleged bases for those claims, indicating that they

understand the claims against them quite well. *See, e.g.*, Doc. 14 at 18 (“Plaintiffs allegations as to Governor Ivey generally relate to her signing EO 725”); *id.* at 23 (“Plaintiffs [] presume that EO725, AR403, and the Deputy Brad Johnson Act violate §32 because they authorize disciplinary actions. . . .”); *id.* at 31 (“Plaintiffs contend that ‘Defendants have maintained a system of involuntary servitude within ADOC’ by disciplining inmates who refuse to work”). Defendants themselves have demonstrated that they are on notice as to the nature of Plaintiffs’ claims and the factual allegations supporting them.

2. The Complaint Is Not Replete with Conclusory and Immaterial Facts about Race and History.

Contrary to Defendants’ position, race is centrally relevant to Plaintiffs’ claims under Section 32 of the Alabama Constitution. The historical facts alleged in the Complaint are necessary to understand how the current Alabama prison labor system violates the anti-racist purpose behind the recent revisions to the Alabama Constitution. It was the Alabama Legislature, not Plaintiffs, who injected race into those revisions. *See* Doc. 2 ¶ 95 (citing H.B. 238 (2019)). Alabama voters elected in 2022 to adopt the legislature’s proposal to “remov[e] racist language” through three changes to the state constitution—one of which was “deleting the language otherwise than for the punishment...” from Section 32’s ban on slavery and involuntary servitude. Doc. 14 at 25; *see also* Doc. 2 ¶¶ 95–111. The context provided by Plaintiffs is relevant to understanding what constitutes a violation of the recompiled constitution “in light of its history . . . and the conditions necessitating such adoption.” Doc. 14 at 23–24 (quoting *Barber v. Cornerstone Cmty. Outreach, Inc.*, 42 So. 3d 65, 79 (Ala. 2009)); *see also Houston Cnty. v. Martin*, 169 So. 13, 16 (1936) (“It is a well-settled rule of interpretation, applicable to constitutions as well as statutes, that it is permissible in ascertaining their purpose and intent to look to the history of the times, the existing order of things, the state of the law when the instrument was adopted, and the conditions

necessitating such adoption.”). Crucially, Defendants point to no binding Alabama authority that supports the idea that discussion of historical context is impermissible in a pleading.¹⁰

The Complaint is not a shotgun pleading, and there is no need for the Court to strike any of the pleadings or dismiss the Complaint with leave to refile as Defendants request.

B. Plaintiffs Have Alleged Slavery and Involuntary Servitude.

Defendants also argue that Plaintiffs have not alleged they are subject to slavery and involuntary servitude in ADOC. Doc. 14 at 23–36. This argument fails for two reasons. First, Defendants’ proffered definitions of involuntary servitude and slavery are unnecessarily narrow, ignoring the modern-day definitions of those terms, Section 32’s plain language, and the novel legal and factual context at issue in this case. Second, even under Defendants’ narrow definitions, Plaintiffs have stated claims for relief.

1. Defendants offer a definition of involuntary servitude unsupported by the case law and the plain language of Section 32.

This case presents an issue of first impression for Alabama courts: What does it mean for the Alabama Constitution to prohibit slavery and involuntary servitude, including in prisons?¹¹

¹⁰ Defendants cite a concurring opinion in *Hudson v. Ivey* in support of the proposition that Plaintiffs’ mention of race in the Complaint is an impermissible shotgun pleading. Doc. 14 at 21–22. The comparison is unpersuasive. The *Hudson* majority opinion does not even once discuss, let alone take issue with, the pleadings’ mention of race, nor consider whether the pleadings met the Rules 8(a) and 10(b) standards. *See generally Hudson v. Ivey*, 383 So. 3d 636, 638–43 (Ala. 2023). Moreover, Justice Mitchell’s concurrence did not relate to the legal issues of the case. The concurring opinion is pure dicta, and the Court should not rely on it as precedent on the question of whether a pleading satisfies Rules 8(a) and 10(b)’s requirements. *See Gray v. Reynolds*, 553 So. 2d 79, 81 (Ala. 1989) (“All other matters are . . . dicta and . . . not controlling upon the ultimate issue. While we are bound to carry out the holding as to the precise question before the Court on the first appeal, we are not . . . bound to carry out . . . dicta pertaining to questions . . . not then presented.”).

¹¹ Defendants misread the Complaint to allege that Alabama voters intended to end the work programs within ADOC altogether and “overhaul[] Alabama’s prison system.” See Doc. 14 at 26, 28. This type of slippery slope argument about the ultimate implications of Plaintiffs’ prevailing on the merits is simply not a proper Rule 12(b)(6) argument because it goes beyond the facts alleged by Plaintiffs. *See Ex parte Mobile Infirmary Ass’n*, 349 So. 3d at 845. Regardless, the Complaint contains no such allegations; rather, Plaintiffs allege that Alabama voters overwhelmingly elected to end slavery and involuntary servitude, including within Alabama prisons. Doc. 2 ¶¶ 109–11.

Given Alabama voters' explicit departure from the federal Thirteenth Amendment's allowance of involuntary servitude in prisons, Defendants' reliance on case law rooted in the Thirteenth Amendment's "exception clause" is misguided and unpersuasive. There is no case law interpreting Section 32's prohibition on slavery and involuntary servitude—and its explicit rejection of the Thirteenth Amendment's exception clause—since it was altered in 2022. The plain meanings of involuntary servitude and slavery in 2022 were undoubtedly more extensive than they were in the immediate aftermath of the Civil War.¹² Plaintiffs allege sufficient facts to plausibly show a violation of basic understandings of the coercion and forced labor at the heart of any reasonable construction of the terms "involuntary servitude" and "slavery," which should preclude dismissal at the motion to dismiss stage. Plaintiffs' claims give rise to novel issues of Alabama law never before addressed by an Alabama court, which should be decided on the merits, with the benefit of a fully developed factual record. They must not be rejected out of hand based on case law about a different constitution, applied in entirely different contexts. *See Robert*, 397 So. 2d at 114 (Alabama "courts should be especially reluctant to dismiss a case on the pleadings when the theory of liability is novel and untested. Such cases should be explored in light of actual facts developed on discovery or otherwise.") (citations omitted).

¹² See, e.g., U.S. Dep't of State, "What is Modern Slavery?" (last visited July 22, 2024), <https://www.state.gov/what-is-modern-slavery/> (involuntary servitude includes compelled labor by the threat of punishment, debt peonage, sex trafficking, physical confinement, coercion, exploitation, and other means); Merriam-Webster Dictionary, Slavery (last visited July 22, 2024), <https://www.merriam-webster.com/dictionary/slavery> (defining "slavery" as "the practice or institution of holding people as chattel involuntarily and under threat of violence" and "the state of a person who is forced usually under threat of violence to labor for the profit of another"); 22 U.S.C. § 7102(8) (defining "involuntary servitude" as "a condition of servitude induced by means of— (A) any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such condition, that person or another person would suffer serious harm or physical restraint; or (B) the abuse or threatened abuse of the legal process"); *United States v. Nelson*, 277 F.3d 164, 179 (2d Cir. 2002) ("The most basic feature of 'slavery' or 'involuntary servitude'" is "the subjugation of one person to another by coercive means.").

Moreover, far from Defendants’ mischaracterization of Plaintiffs’ claims as an “attempt to use [a] linguistic modernization to challenge the entire incentive structure of Alabama’s prison system,” Doc. 14 at 1, the voters of Alabama overwhelmingly chose to depart from the Thirteenth Amendment’s sanctioning of prison slavery. Section 32’s plain language must be given its natural and popular meaning, as understood by the voters of Alabama who overwhelmingly voted in favor of the language in 2022, and not in 1901. *City of Birmingham v. City of Vestavia Hills*, 654 So. 2d 532, 538 (Ala. 1995) (quoting *McGee v. Boron*, 341 So. 2d 141, 143 (Ala. 1976) (“We are, therefore, not at liberty to disregard or restrict the plain meaning of the provisions of the Constitution.”)); *see also* 16 C.J.S. Constitutional Law § 92 (“In interpreting a constitution, unless the context suggests otherwise, words must be given their natural, obvious, plain, ordinary, or common meaning . . . Accordingly, a court typically discerns the common understanding of constitutional text by applying each term’s plain meaning at the time of ratification.”). Therefore, the Court should reject Defendants’ argument that the plain meaning of involuntary servitude and slavery at the time the Alabama voters adopted revisions to Section 32 encompassed only “labor akin to African slavery.” Doc. 14 at 29 (quoting *Butler v. Perry*, 240 U.S. 328, 332–33 (1916)).

2. Plaintiffs have pled facts that meet even Defendants’ misguided, overly narrow definition of involuntary servitude and slavery.

Plaintiffs’ allegations of slavery and involuntary servitude meet—and even exceed—the standard required under 12(b)(6). As an initial matter, Defendants dismissively characterize Plaintiffs’ slavery and involuntary servitude as “chores” Doc. 14 at 2, 3, 12, 28, 31, 33, 35, “civic duties,”¹³ *id.* at 29, or “voluntary” labor, *id.* at 31–32, all of which Defendants maintain are exempt

¹³ Defendants assert that compulsion of civic duties is not involuntary servitude, Doc. 14 at 29, but working in these labor programs is not a civic duty.

from prohibitions on slavery and involuntary servitude in the Thirteenth Amendment context. This argument ignores the facts as alleged, which must be taken as true at this stage.

Plaintiff Stanley, for example, alleges she “worked on the garbage crew, emptying heavy trash cans filled with hundreds of pounds of garbage from all over the prison, including the kitchen, healthcare unit, and dorms. The garbage was sometimes unbagged and contained food waste crawling with maggots.” Doc. 2 ¶ 172. Defendants cite no authority to support that this type of labor in prisons is a mere “chore” or a “civic duty.” Likewise, Defendants cite no authority that the labor Plaintiffs have been forced to do for private employers, *e.g.*, Doc. 2 ¶¶ 170, 184, 189–90, 214–16, is a “chore” or a “civic duty.”

Additionally, whether Plaintiffs signed forms agreeing that their all of their labor is “voluntary,” *see* Doc. 14 at 32, is a question of fact at this stage. But even if Plaintiffs have signed such forms, they could still state a claim for involuntary servitude, as the law well recognizes that one cannot “voluntarily” contract oneself into conditions of slavery or involuntary servitude. *See Bailey v. State of Alabama*, 219 U.S. 219, 242 (1911) (finding that a debtor, who “contracted to perform the labor which is sought to be compelled” is in a “. . . condition of servitude . . . which would be not less involuntary because of the original agreement to work out the indebtedness.”); *cf. Downey v. Bituminous Cas. Corp.*, 349 So. 2d 1153, 1155 (Ala. 1977) (holding incarcerated individual “was not performing work voluntarily” but rather, because “he was working under sentence after conviction for a felony” he was “performing forced labor”); Eleventh Cir. Pattern Crim. Jury Instr., 18 U.S.C. §§ 1581, 1584 (Apr. 15, 2024) at 431¹⁴ (stating that even if a “person begins work willingly and later wants to stop but is forced to continue” due to the use of, or the

¹⁴ Available at <https://www.ca11.uscourts.gov/sites/default/files/courtdocs/clk/FormCriminalPatternJuryInstructionsRevisedAPR2024.pdf> (last visited July 22, 2024).

threat of the use of coercion or restraint or cause physical injury, “the service becomes involuntary.”).

Additionally, Plaintiffs have adequately alleged facts sufficient to state claims under Defendants’ proffered definition of involuntary servitude in the federal criminal context: “a condition of servitude in which the victim is *forced* to work for the defendant [a] by the use or threat of *physical restraint or physical injury* or [b] by the use or threat of *coercion through law or the legal process*.” *United States v. Kozminski*, 487 U.S. 931, 952 (1988) (emphasis added). The Supreme Court has further clarified that this definition “encompasses cases in which the [criminal] defendant holds the victim in servitude by placing him or her *in fear* of such physical restraint or injury or legal coercion.” *Id.* (emphasis added); *see also United States v. Bibbs*, 564 F.2d 1165, 1167–68 (5th Cir. 1977) (“In a prosecution for involuntary servitude, the law takes no account of the means of coercion.”). Notably, the *Kozminski* Court made clear that evidence of other means of coercion, of poor working conditions, or of the victim’s special vulnerabilities are all relevant in determining “whether the physical or legal coercion or threats thereof could plausibly have compelled the victim to serve.” *Kozminski*, 487 U.S. at 952.

In this case, Plaintiffs have met these definitions set out by *Kozminski*: they allege textbook forms of physical and legal coercion, including the threat of solitary confinement and being subjected to the disciplinary process resulting in a range of possible legal punishments. Additionally, they allege other means of coercion, including the loss of access to their loved ones through phone calls and visitation and the loss of access to canteen to buy food and hygiene items. Doc. 2 ¶¶ 132, 134, 136, 138, 144–49, 169–70, 193, 203, 214–16, 226–27. Plaintiffs have alleged poor working conditions, including handling trash filled with maggots and possibly bodily fluids, Doc. 2 ¶¶ 172, 200, and workplace injuries, *id.* ¶ 182. And Plaintiffs have alleged special

vulnerabilities, namely that they are all incarcerated and entirely subject to the power and control of Defendants. *See generally* Doc. 2.

Even accepting Defendants’ proffered definition of involuntary servitude as the operative one—which this Court need not do—Plaintiffs have pled in sufficient detail that they have been forced to work by the use or threat of physical restraint or injury or by the use of threat or coercion through law or the legal process.

a. Plaintiffs’ adequately plead physical coercion.

In Alabama, and across the federal circuits, courts have long held that the *use or threat of* physical restraint or injury, including by preventing laborers from leaving, or placing laborers in fear of such, constitutes involuntary servitude. *See Holland v. State*, 194 So. 412, 414 (Ala. App. 1940) (explaining that any effort by the employer “to force the laborer to stay and work . . . would constitute involuntary servitude and this is strictly violative of the XIII amendment to the Constitution of the United States”); *see also United States v. Kaufman*, 546 F.3d 1242, 1263–66 (10th Cir. 2008) (considering evidence of ridicule, poor living conditions, and threats or fear of threats against laborers when finding involuntary servitude); *United States v. Harris*, 701 F.2d 1095, 1100–01 (4th Cir. 1983) (affirming convictions for violations of the federal involuntary servitude statute, as evidenced by threats of or use of physical violence and by guarding and patrolling laborers to prevent their leaving); *United States v. Booker*, 655 F.2d 562, 566–67 (4th Cir. 1981) (finding slavery where labor is coerced by “threat of violence or confinement” of which is “backed sufficiently by deeds”); *Bibbs*, 564 F.2d at 1168 (recognizing a defendant “is guilty of holding a person to involuntary servitude” for placing a victim in fear of physical harm).

Each Plaintiff is currently working under the use or threat of physical restraint or harm by being subject to EO 725 and AR 403, and in addition, Mr. Smith is working under the threat of

physical coercion by being subjected to Section 14-9-41. Doc. 2 ¶ 16 (alleging Mr. Smith has been and remains subject to EO 725, AR 403, and Section 14-9-41(a)(4), (c)(4), and (f) of the Alabama Code); *see also id.* ¶¶ 5–6, 117–123, 132, 134, 136, 138, 157–62.

First, under EO 725 and AR 403, Defendants threaten Plaintiffs with solitary confinement—a form of physical injury¹⁵ and restraint—if they refuse to work. *Id.* ¶¶ 123, 132, 134, 136. Defendants cite to *McCullough v. City of Montgomery*, No. 2:15-cv-463-RCL, 2020 WL 3803045, at *8–9 (M.D. Ala. July 7, 2020), to support their assertion that Plaintiffs do not allege involuntary servitude, but this case actually supports Plaintiffs’ arguments for two main reasons. First, as Defendants conveniently ignore, the court in *McCullough* allowed Plaintiffs’ claims arising under the Thirteenth Amendment and federal anti-peonage and forced labors laws to move forward at the motion to dismiss stage. *See McCullough*, 2020 WL 3803045, at *9 (citing order denying City’s motion to dismiss). Furthermore, in *McCullough*, the court based its holding that the plaintiffs failed to show that they were subjected to involuntary servitude specifically on the plaintiffs’ failure to allege being subjected to solitary confinement. *Id.* at *3. Here, by contrast, Plaintiffs have very clearly alleged the threat of solitary confinement. Doc. 2 ¶¶ 4, 6, 92, 123, 132, 134.

Second, under AR 403, all Plaintiffs are under the continuous threat of transfer to more dangerous prisons in Alabama as a possible punishment for not working. This is yet another example of Plaintiffs being subjected to the threat of facing, or fear of facing, physical harm. *Id.* ¶¶ 6, 134, 136. Tragically, these transfers can spell a death sentence for some incarcerated persons.

¹⁵ Of particular concern is the fear of physical injury or actual physical injury exacted by solitary confinement, including but not limited to, fear of death, chronic headaches, heart palpitations, high-blood pressure, heart disease, and muscle and joint pain. *See, e.g.,* Jayne Leonard, *What are the effects of solitary confinement on health?*, Medical News Today (Nov. 16, 2023), <https://www.medicalnewstoday.com/articles/solitary-confinement-effects#physical-health-effects>; *Braggs v. Dunn*, 257 F.Supp.3d 1171, 1236–37 (M.D. Ala. 2017).

See Doc. 2 ¶ 79. As Plaintiffs have adequately alleged, Alabama’s prisons “have been, and still are, widely regarded as some of the most dangerous and inhumane in the country,” as evidenced by having “five times the national average death rate.” *Id.* In fact, in 2023, 325 people died in ADOC custody. *Id.* ¶ 80. And within the last decade, the U.S. Department of Justice recognized the violent practices incarcerated persons are subjected to, just by their very imprisonment in ADOC prisons. *Id.* ¶ 81 (noting Alabama’s acknowledgment of need to address allegations of “ongoing and systemic . . . sexual abuse and sexual harassment”); *id.* ¶ 83 (explaining that U.S. Department of Justice sued the State of Alabama due to, *inter alia*, violence, sexual abuse, and “excessive use of force by ADOC staff” in Alabama’s major prisons).

Third, under AR 403, Defendants subjected, and continue to subject, all Plaintiffs to extra duty, which is yet another form of coerced, unpaid labor inside prisons, or for private employers whereby Plaintiffs are punished and placed at additional risk of further punishment. *Id.* ¶¶ 130–38; *id.* ¶ 153 (Ms. Stanley), ¶¶ 151, 182 (Mr. Burrell), ¶ 189 (Mr. Avery), ¶ 206 (Mr. Gray), ¶¶ 212–217 (Mr. Pringle), ¶¶ 226–27 (Mr. Smith).

Finally, under EO 725 and Section 14-9-41, Defendants subjected Mr. Smith to the loss of good time, *see id.* ¶¶ 123, 144, 226, 227, 229, and continue to subject Mr. Smith to the threat of loss of good time, inability to earn good time, and inability to have good time restored, which would effectively extend Mr. Smith’s length of imprisonment in ADOC prisons by *years*. *Id.* ¶¶ 114–123, 130–32, 162, 235.

All of these forms of punishment and threatened punishment, as alleged in detail by Plaintiffs, constitute physical coercion that renders their labor a form of involuntary servitude.

b. Plaintiffs adequately plead legal coercion.

Defendants’ erroneously narrow the legal definition of “legal coercion” to only include “criminal sanctions.” Doc. 14 at 33 (“no Plaintiff alleges that they have been or could be subject to criminal sanctions for refusing to do their chores.”). But precedent from the federal, non-penal context clearly establishes that “[l]egal coercion simply means the use of the law, the legal process, or legal institutions to compel service.” *U.S. v. Alzanki*, 54 F.3d 994, 1002 n. 6 (1st Cir. 1995); *see also King v. Pridmore*, 961 F.3d 1135, 1142–43 (11th Cir. 2020) (“Various forms of coercion may constitute a holding in involuntary servitude. . . . Another example of involuntary servitude is when the victim is forced to work for the defendant . . . *by the use or threat of coercion through law or the legal process.*” (emphasis added) (quotations and citations omitted)). The Complaint includes detailed allegations of Defendants’ use of law to maintain a system of involuntary servitude against Plaintiffs, especially and including by issuing formal disciplinary or behavior citations to Plaintiffs and revoking good time in compliance with EO 725, AR 403, and Section 14-9-41. *See* Doc. 2 ¶¶ 112–62, 170, 173, 176, 182, 201–05. Plaintiffs understand that each formal disciplinary or behavior citation on record is sent to the parole board, and in turn, subjects Plaintiffs to not only immediate punishment by, for example, solitary confinement, but long-term punishment as well, by extending Plaintiffs’ time in prison due to the denial of parole or the loss of good time. *Id.* ¶¶ 139–42; *see, e.g., id.* ¶ 143 (Plaintiff Burrell was issued “a disciplinary report for a high-level violation under AR 403 after refusing to work during the statewide prison stoppage in 2022.”); ¶ 147 (Plaintiff Gray, after deciding to stop providing free labor at Donaldson Correctional Facility, was threatened with a disciplinary report for refusal to work, which Mr. Gray understood placed him in danger of solitary confinement).

Finally, not only is ADOC a legal institution, which it itself acknowledges,¹⁶ but also ADOC’s disciplinary procedures, as codified in AR 403, are a legal process that Defendants use to coerce Plaintiffs’ labor. Indeed, Alabama courts and ADOC itself have recognized that implementation of AR 403 and some of the punishments prescribed by EO 725 and Section 14-9-41—namely solitary confinement and the loss of good time—involve liberty interests such that procedural due process is required. *See generally* AR 403 (requiring notice, an opportunity to be heard, and a written disposition for disciplinary reports with factual findings); *Bryant v. Ala. Dep’t of Corr.*, 61 So. 3d 1109, 1111 (Ala. Crim. App. 2010) (“We first note that the loss of good-time credit constitutes a denial of a liberty interest that triggers the due process requirements established in *Wolff*.”); *Summerford v. State*, 466 So. 2d 182, 182–83 (Ala. Crim. App. 1985) (“The procedures outlined by the United States Supreme Court in *Wolff* are triggered either by the loss of good-time credits or by major changes in the conditions of confinement, such as the imposition of disciplinary segregation.”); *Spooner v. State*, 451 So. 2d 429, 429 (Ala. Crim. App. 1984) (setting out due process requirements for prison disciplinary proceedings); *Sandin v. Connor*, 515 U.S. 472, 484 (1995). Therefore, the threat and imposition of disciplinary proceedings through ADOC’s prison discipline regime can constitute a form of legal coercion.

In sum, the Court need not, at this stage, adopt Defendants’ proffered definitions of slavery and involuntary servitude, but even if it were to do so, the Court should conclude that Plaintiffs have adequately stated claims *even under* those unduly narrow definitions, such that this case can proceed to discovery and resolution on the merits.

¹⁶ Ala. Dep’t of Corr., <https://doc.alabama.gov/> (last visited July 22, 2024) (referring to itself as “the largest law enforcement agency in the State of Alabama”).

CONCLUSION

For the reasons set forth herein, the Court has subject matter jurisdiction over Plaintiffs' claims, and Plaintiffs have sufficiently alleged claims upon which relief can be granted. Defendants' Motion to Dismiss should therefore be denied.

Date: July 22, 2024

Respectfully submitted,

/s/ Caitlin J. Sandley

Caitlin J. Sandley (SAN085)
Jessica Myers Vosburgh (VOS003)
CENTER FOR CONSTITUTIONAL RIGHTS
P.O. Box 486
Birmingham, AL 35201
(212) 614-6443
csandley@ccrjustice.org
jvosburgh@ccrjustice.org

Emily C. R. Early (EAR012)
Zee Scout*
CENTER FOR CONSTITUTIONAL RIGHTS
666 Broadway, 7th Floor
New York, NY 10012
(212) 614-6494
early@ccrjustice.org
zscout@ccrjustice.org

*Admitted *pro hac vice*

Counsel for Plaintiffs