

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT PADUCAH
(Filed Electronically)**

**CRIMINAL ACTION NO. 5:06CR-19-R
UNITED STATES OF AMERICA,**

PLAINTIFF,

vs.

STEVEN DALE GREEN,

DEFENDANT.

**MOTION TO DECLARE LETHAL INJECTION UNCONSTITUTIONAL AS A
VIOLATION OF THE EIGHTH AMENDMENT'S PROHIBITION AGAINST
CRUEL AND UNUSUAL PUNISHMENT**

Comes the defendant, Steven Dale Green, by counsel, and moves the Court pursuant to the Eighth and Fourteenth Amendments to the Constitution of the United States to declare unconstitutional lethal injection as a means of execution because it amounts to cruel and unusual punishment.

18 U.S.C. §3596(a) states that federal death sentences shall be “implement[ed] in the manner prescribed by the law of the State in which the sentence is imposed.” Applicable Kentucky law provides that “every death sentence shall be executed by continuous intravenous injection of a substance or combination of substances sufficient to cause death.” See Kentucky Revised Statute (KRS) 431.220(1)(a).

The Eighth Amendment’s prohibition against “cruel and unusual punishments” is implemented by referring to “the evolving standards of decency that mark the progress of a

maturing society’ to determine which punishments are so disproportionate as to be cruel and unusual. *Trop v. Dulles*, 356 U.S. 86, 100-101, 78 S.Ct. 590, 2 L.Ed.2d 630 (1958) (plurality opinion).” *Roper v. Simmons*, 543 U.S. 551, 561 (2005). See also *Atkins v. Virginia*, 536 U.S. 304, 312 (2002). “Punishments are cruel when they involve torture or a lingering death; but the punishment of death is not cruel within the meaning of that word as used in the constitution. It implies something inhuman and barbarous,-something more than the mere extinguishment of life.” *In re Kemmler*, 136 U.S. 436, 447 (1890). See also *Weems v. United States*, 217 U.S. 349, 370 (1910). A punishment also violates the Eighth Amendment when it poses an unnecessary risk of pain and suffering. “The traditional humanity of modern Anglo-American law forbids the infliction of unnecessary pain in the execution of the death sentence.” *Louisiana. ex rel. Francis v. Resweber*, 329 U.S. 459, 463 (1947). “[A] punishment is “excessive” if it is “nothing more than the purposeless and needless imposition of pain and suffering ...” *Coker v. Georgia*, 433 U.S. 584, 592 (1977) (plurality opinion).

Defendant submits that lethal injection, as a method of execution, does not comport with “evolving standards of decency” because it causes “the purposeless and needless imposition of pain and suffering .” The Court should therefore declare that lethal injection amounts to cruel and unusual punishment and thereby violates the Eighth and Fourteenth Amendments.

Although the Kentucky Supreme Court has held that “lethal injection as a method of execution [does] not violate the constitutional standards prohibiting cruel and unusual punishment,” *Baze v. Rees*, 217 S.W.3d 207, 212 (Ky. 2006), the United States Supreme

Court granted *certiorari* in *Baze* to consider the issue of whether lethal injection violates the Eighth Amendment. See *Baze v. Rees*, No. 07-5439 (*cert.* granted 10-3-07).

Wherefore, the defendant, Steven Dale Green, respectfully moves the Court to enter the order tendered herewith.

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CERTIFICATE

I hereby certify that on February 15, 2008, I electronically filed the foregoing with the clerk of the court by using the CM/ECF system, which will send a notice of electronic filing to the following: Marisa J. Ford, Esq., Assistant United States Attorney; James R. Lesousky, Esq., Assistant United States Attorney; and Brian D. Skaret, Esq., Attorney at Law.

/s/ Scott T. Wendelsdorf