

URGENT ACTION

JURY VOTED FOR LIFE, STATE RESETS EXECUTION

Kenneth Smith is scheduled to be executed in Alabama on 25 January 2024. His jury voted for life imprisonment without the possibility of parole, but the judge imposed a death sentence, under a judicial override system outlawed in Alabama in 2017. The state tried to execute Kenneth Smith in 2022, but this attempt by lethal injection failed. The state will this time deprive him of oxygen using nitrogen gas, an execution method not previously used. Twenty-two years old at the time of the crime, Kenneth Smith is now 58. His prison record is one of non-violence, self-improvement and helping others.

TAKE ACTION: WRITE AN APPEAL IN YOUR OWN WORDS OR USE THIS MODEL LETTER

*The Office of Governor Kay Ivey
State Capitol, 600 Dexter Avenue
Montgomery, AL 36130, USA
Email: <https://contact.governor.alabama.gov/contact.aspx>
Fax: +1 334 353 0004*

Dear Governor

Kenneth Eugene Smith is scheduled to be executed on 25 January 2024. I urge you to stop the execution.

All but one of the 12 jurors at Kenneth Smith's 1996 retrial voted for a sentence of life imprisonment without the possibility of parole but were overridden by the judge. This would be the first execution in a judicial override case in Alabama since 2017, when you signed legislation banning the practice. Kenneth Smith's execution would contravene the criminal law principle recognized under international standards that those under sentence of death should benefit from retroactive leniency in the event of a change in the law after commission of the crime.

At the time of the 1988 murder, Kenneth Smith was 22, not long out of a childhood marked by exposure to severe domestic violence. Now 58, he is reported to have been a non-violent, respectful and constructive member of society on death row, who has pursued educational and religious activities, maintained strong relationships with family members, and offered counselling and advice to relatives and friends in crisis.

This would be the first execution in the world by "nitrogen hypoxia". Moreover, it comes a year after the state tried and failed to execute Kenneth Smith by lethal injection. A Circuit Judge on the 11th Circuit Court of Appeals described that episode as "horrifying", involving "protracted, severely painful, and grisly efforts" by the execution team. Three US Supreme Court Justices also described it as "torturous", with Kenneth Smith experiencing "severe pain and suffering" and left with Post-Traumatic Stress Disorder.

Marking the 75th anniversary of the Universal Declaration of Human Rights on 10 December 2023, President Joe Biden proclaimed that "we must never cease working to uphold the dignity and protect the rights of every person in this country". Today, two thirds of countries have abolished the death penalty in law or practice.

I appeal to you to use your clemency power to stop Kenneth Smith's execution and commute his death sentence.

Yours sincerely,

ADDITIONAL INFORMATION

The crime involved the murder of a 45-year-old woman in her home in Alabama on 18 March 1988. The prosecution submitted evidence that her husband had recruited Billy Williams, who then engaged Kenneth Smith and John Parker, to kill her. The husband, a preacher who was in debt and wanted to collect life insurance, committed suicide a week after the murder; Billy Williams was convicted of capital murder and sentenced to life imprisonment without the possibility of parole (LWOP); John Parker, was sentenced to death, and executed in 2010. Kenneth Smith was also sentenced to death, but his 1989 conviction and death sentence were overturned on appeal because of racist prosecutorial jury selection tactics at the trial. At the 1996 retrial, Kenneth Smith was again convicted. The jury – made up of seven Black women, four Black men, and one white woman – voted 11-1 for LWOP, but the judge overrode their decision and passed a death sentence.

The judge found one aggravating factor – that the murder was committed for pecuniary gain – and decided that this outweighed the mitigating circumstances, which were Kenneth Smith's young age at the time of the crime, his lack of significant history of prior criminal activity, good prison record, childhood deprivation and neglect, as well as his remorse and voluntary confession to his participation in the crime. The judge would later suggest in an interview that he had overridden the jury's vote because Kenneth Smith "deserved the death penalty" and that "some people serving on juries... don't want the responsibility to sentence someone to death".

In a dissent in an Alabama case in 2013, two US Supreme Court Justices noted that 95 death sentences had been passed in Alabama on judicial override since 1976, at a rate 10 times higher than overrides in the other direction. They noted that since the late 1990s Alabama had become a "clear outlier" on life-to-death overrides and concluded that "the only answer that is supported by empirical evidence" as to why this was the case, was that "Alabama judges, who are elected in partisan proceedings, appear to have succumbed to electoral pressures". Alabama got rid of its override system in 2017. The US Court of Appeals for the 11th Circuit noted in 2021, "If Smith's trial had occurred today, he would not be eligible for execution because, in 2017, Alabama amended its capital-sentencing scheme prospectively to repeal trial judges' authority to override capital jury sentencing determinations.

Kenneth Smith had no history of violence before the crime and none since. His lawyers have said his prison record has been one of respectfulness towards others; he has pursued religious and educational activities, obtaining an associate degree and described by an instructor as "very conscientious". He has counselled others on death row, as well as his family members and friends during personal crises. Some prison officers have confided in him too.

On 17 November 2022, Kenneth Smith survived the state's attempt to execute him by lethal injection, the third consecutive execution in Alabama in 2022 that was botched or failed. In another case in July 2023, three US Supreme Court Justices recalled how during these execution attempts "prison officials spent multiple hours digging for prisoners' veins in an attempt to set IV lines", and described the treatment as "torturous". Kenneth Smith's lawyers have said that during the four hours he was strapped to the gurney he had experienced "severe and ongoing physical and psychological pain" and had been left with post-traumatic stress disorder (PTSD), his symptoms including nightmares, hypervigilance, hyperarousal, and disassociation. They say his PTSD is being exacerbated by the increased isolation to which he has been subjected by the removal of contact with others on death row since his execution date was set on 8 November, and which will amount to a total of 78 days by the time of his execution date.

The state is proposing to attempt again to execute Kenneth Smith, this time by the method of "nitrogen hypoxia" during which nitrogen is fed by tube into an airtight face mask worn by the person being executed, depriving him or her of oxygen and causing eventual death. The US Supreme Court noted in 2019 that nitrogen hypoxia had "never been used to carry out an execution" and that the first state to do so would be "the first to experiment with a new untried and untested method". Now Alabama, a state with a record of botched executions and a lack of transparency and inquiry into such failures, is the one moving ahead with this method. Kenneth Smith's lawyers assert that he is being used as "the test subject for this novel and experimental method" and that "if not performed correctly, execution by nitrogen hypoxia can result in another botched execution that risks leaving Mr Smith with permanent injuries".

There have been 1,582 executions in the USA since 1976 – by electrocution, gas asphyxiation, hanging, firing squad and lethal injection. Amnesty International opposes the death penalty unconditionally, regardless of the execution method used. Cruelty is an inescapable part of sentencing someone to death and holding them under that sentence.

PREFERRED LANGUAGE TO ADDRESS TARGET: English. You may also write in your own language.

PLEASE TAKE ACTION AS SOON AS POSSIBLE UNTIL: 25 January 2024.

NAME: Kenneth Eugene Smith