

# URGENT ACTION

## ALABAMA CONDUCTS FIRST NITROGEN GAS EXECUTION

**Kenneth Smith, 58, was executed in Alabama on 25 January 2024, pronounced dead at 8.25pm local time. This was the state's second attempt to execute him, the first attempt by lethal injection in 2022 having failed. This time, the state used the new method of nitrogen hypoxia. He was sentenced to death at a 1996 retrial after a judge overrode the jury's vote for life imprisonment without parole. The courts and the governor declined to intervene.**

### **NO FURTHER ACTION IS REQUESTED. MANY THANKS TO ALL WHO SENT APPEALS.**

The crime for which Kenneth Smith was executed 36 years later 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 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's 1989 conviction and death sentence were overturned on appeal. At the 1996 retrial, he was again convicted. The jury voted 11-1 for LWOP, but the judge overrode their decision and passed a death sentence.

This was the State of Alabama's second attempt to execute Kenneth Smith, the first attempt in November 2022 by lethal injection having failed due to the execution team's inability to locate a vein after multiple attempts. This time it used the new method of nitrogen hypoxia. On 20 December 2023, the US District Court held a hearing on the defence motion for an injunction against the execution. On 10 January 2024, the judge denied the motion: "Courts presume, based upon the history and development of capital punishment in this country and the legislative process, that the [state authorities] do not seek to superadd terror, pain, or disgrace to their executions" unless and until a condemned person can make the requisite showing... Considering all the evidence presented and the parties' arguments, Smith has not met that burden."

On 24 January 2024, the US Court of Appeals for the 11<sup>th</sup> Circuit upheld the District Court's ruling, by 2-1. One of the two judges in the majority said that he "must concur" with the opinion because he could not say that the District Court's factual findings were "clearly erroneous", the governing standard for review, but expressed concerns that the circumstances of the case could lead to "a cruel and unusual execution". The dissenting judge wrote that Alabama "has chosen this condemned person, this protocol, and this moment, even though Mr Smith is suffering mentally and physically from the posttraumatic stress Alabama caused when it botched its first attempt to execute him in 2022...The cost, I fear, will be Mr Smith's human dignity, and ours."

On 25 January, the US Supreme Court declined to intervene. Three Justices dissented. Justice Sonia Sotomayor wrote "Having failed to kill Smith on its first attempt, Alabama has selected him as its 'guinea pig' to test a method of execution never attempted before. The world is watching. This Court yet again permits Alabama to experiment with a human life, while depriving Smith of meaningful discovery on meritorious constitutional claims." She noted that since the failed execution attempt of 17 November 2022, during which he spent four hours strapped to the gurney, "Smith has suffered from posttraumatic stress. Reliving those hours strapped to the gurney, his medical records confirm worsening bouts of nausea and vomiting over the past few weeks".

According to Associated Press, "The execution took about 22 minutes from the time between the opening and closing of the curtains to the viewing room. Smith appeared to remain conscious for several minutes. For at least two minutes, he appeared to shake and writhe on the gurney, sometimes pulling against the restraints. That was followed by several minutes of heavy breathing, until breathing was no longer perceptible." At a press conference after the execution, the ADOC Commissioner asserted that "nothing was out of the ordinary from what we were expecting". In a statement, Governor Kay Ivey said: "After more than 30 years and attempt after attempt to game the system, Mr Smith has answered for his horrendous crimes. I pray that [the victim's] family can receive closure after all these years dealing with that great loss."

There have been 1,583 executions in the USA since 1976 when the US Supreme Court upheld new capital statutes. Amnesty International opposes the death penalty in all cases and under any circumstances, regardless of the nature of the crime, the characteristics of the offender, or the execution method used. It considers the death penalty a violation of the right to life as recognized in the Universal Declaration of Human Rights and the ultimate cruel, inhuman and degrading punishment.

**NAME: Kenneth Smith**

**THIS IS THE FIRST AND FINAL OUTPUT FOR UA**

**LINK TO PREVIOUS UA:** <https://www.amnesty.org/en/documents/amr51/7531/2023/en/>

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