

US Supreme Court clears way for execution of Muslim inmate without imam in death chamber

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Domineque Hakim Marcelle Ray was put to death by lethal injection Thursday by the state of Alabama after the US Supreme Court vacated a stay of execution by the US Court of Appeals for the 11th Circuit. Ray, 42, challenged the Alabama prison's refusal to allow his spiritual adviser, an imam, from being present in the execution chamber.

Ray was convicted in 1999 of raping and murdering 15-year-old Tiffany Harville in 1995. The jury's recommendation of the death penalty was not unanimous, with a vote of 11 to 1. The application to vacate Ray's stay of execution was presented to Justice Clarence Thomas, who referred it to the full court.

The Supreme Court's 5-4, 11th hour ruling openly violated the separation of church and state enshrined in the US Constitution and the high court's jurisprudence that government may not discriminate among faiths. In a violation of condemned prisoners' rights, the Alabama Department of Corrections policy allows only a Christian chaplain, who is a prison employee, in the execution chamber.

The chaplain was removed from the execution chamber in Ray's case. But in a clear violation of his First Amendment rights, Ray's spiritual adviser, Imam Yusef Maisonet, was only allowed in the adjoining room along with witnesses and the media. The state of Alabama says it does not allow non-employees in the execution chamber. Two of Ray's lawyers also observed the execution.

Ray's execution was originally scheduled for 6 p.m. at the state prison in Atmore, but it was delayed waiting for the Supreme Court ruling. According to the *Montgomery Advertiser*, when the curtain opened on the chamber at 9:45 p.m., Ray lifted his head from the

gurney and, looking into the witness room, made a fist with his right hand and extended his index finger, an acknowledgment of the singular God of the Islamic faith. Maisonet seemed to mirror the gesture.

Asked for any final words, Ray gave a brief declaration of faith in Arabic. According to the *Advertiser*, "At 9:48, Ray made a fist with his left hand, raising his head slightly to look at his arm. His left arm shook briefly before his eyes closed a minute later." Prison officials recorded his time of death as 10:12 p.m.

In a dissenting opinion, Justice Elena Kagan—joined by Justices Ruth Bader Ginsburg, Stephen Breyer and Sonia Sotomayor—called the decision "profoundly wrong." Kagan wrote that allowing a Christian minister, but not a Muslim imam, to be at an inmate's side at execution "goes against the Establishment Clause's core principle of denominational neutrality."

The pertinent text of the First Amendment to the US Constitution reads: "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof ..." The First Amendment is the first of 10 to the US Constitution known as the Bill of Rights, ratified in 1791.

The court's right-wing majority, voting to vacate Ray's stay of execution, argued that "Ray waited until January 28, 2019 to seek relief" and that his request could be denied under the principle that "a court may consider the last minute nature of an application to stay execution in deciding whether to grant equitable relief."

In fact, the prison warden did not deny Ray's request to have his imam present until January 23. The execution date was set on November 6. He went through administrative channels to get the relief he sought, and then filed suit five days after his request

was denied.

The prison had refused to provide Ray with a copy of its execution practices and procedures before January 23, so there was no reason he should have known that his imam would be excluded from the execution chamber.

Kagan wrote in her dissent: “Here, Ray has put forward a powerful claim that his religious rights will be violated at the moment the State puts him to death.”

“The Eleventh Circuit wanted to hear that claim in full,” she added. “Instead, this Court short-circuits that ordinary process—and itself rejects the claim with little briefing and no argument—just so the State can meet its preferred execution date.”

Ray was implicated in the 1995 murder after another man, Marcus Owden, confessed to his role in Tiffany Harville’s kidnapping. Owden testified at the 1999 trial that he and Ray picked up the girl for a night out and then raped her. He said that Ray cut the girl’s throat.

There was no physical evidence linking Ray to the crime and Owden was the sole prosecution witness. Owden pleaded guilty to murder and in return for his testimony against Ray was sentenced to life in prison without parole.

In filings with the Supreme Court, Ray’s attorneys also asked that their client’s execution be stayed on the grounds that it was not disclosed to Ray’s defense that records from a state psychiatric facility could show that Owden suffered from schizophrenia, delusions and auditory hallucinations at the time of his testimony, potentially influencing his testimony against Ray. The Court also rejected that claim on Thursday.

Ray was the first prisoner executed in Alabama this year and the second nationwide. Robert Jennings, 61, died by lethal injection in Texas on January 30.



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