

US attorney general directs Bureau of Prisons to reinstate federal death penalty

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US Attorney General William Barr has directed the Bureau of Prisons (BOP) to reinstate the death penalty for federal inmates, setting the stage for the execution of inmates on federal death row for the first time in 16 years. Barr's directive reverses what has been an essential moratorium on the federal death penalty.

At the direction of the attorney general, the BOP has adopted the Federal Execution Protocol Addendum, which "replaces the three-drug procedure previously used in federal executions with a single drug—pentobarbital," the Department of Justice (DOJ) announced Thursday.

The DOJ intends to reinstate a two-decades-long dormant policy allowing the federal government to impose capital punishment and schedule the execution of five federal death row inmates, three in December and two in January, beginning with Daniel Lewis Lee on December 9. All five executions will take place at the US Penitentiary in Terre Haute, Indiana. There are currently 61 prisoners on federal death row, according to the Death Penalty Information Center (DPIC).

Federal prosecutors are still seeking the death penalty in some cases, including that of Dylann S. Roof, the white supremacist who killed nine African-American churchgoers in 2015, and Dzhokhar Tsarnaev, the surviving Boston Marathon bomber.

Three federal death-row prisoners have been executed since the reinstatement of the federal death penalty in 1988: Timothy McVeigh, the Oklahoma City bomber, on June 11, 2001; Juan Raul Garza, on June 19, 2001, for the murder of three drug dealers; and Louis Jones, a Gulf War veteran, on March 18, 2003, for the kidnapping and murder of a female soldier.

"The Justice Department upholds the rule of law—and we owe it to the victims and their families to carry forward the sentence imposed by our justice system,"

Barr said in a statement. "Congress has expressly authorized the death penalty through legislation adopted by the people's representatives in both houses of Congress and signed by the President."

The move comes as popular support for the death penalty has fallen in recent years. There is also no proof that victims' families have found "closure" through the barbaric practice, or that it serves as a deterrent to crime.

Support in the US for the death penalty hit a record low three years ago, with just under half of Americans polled supporting it for those convicted of murder, according to the Pew Research Center.

Since 1973, 166 former death-row prisoners have been exonerated of all charges and set free, according to the DPIC. There is virtually no doubt that innocent individuals have been put to death. Many defendants in capital cases, who are overwhelmingly working class and poor, have been represented by inadequate and negligent defense and tried by unscrupulous prosecutors using fabricated evidence.

Growing aversion to the barbaric practice has also been fueled by the numerous instances of so-called "botched" executions. In these cases, prisoners strapped to gurneys have choked, called out in pain or gasped for air as the lethal chemicals are injected into their veins. The DOJ hopes to side-step such horrifying spectacles by utilizing lethal injection of one-drug, pentobarbital, a barbiturate used in both animal and human euthanasia.

How the BOP intends to obtain this drug is unclear, as drug companies in the European Union, and some in the US, prohibit the use of their drugs in executions. The DOJ's Office of Legal Counsel, however, took steps in May to make executions easier for states—and presumably the federal government—by declaring that

the Food and Drug Administration lacked the power to regulate lethal injection drugs.

President Trump has called for increasing the application of the death penalty for drug traffickers and mass shooters. But it is clear that executing drug traffickers will do nothing to solve the opioid crisis, which is rooted in both the profit motives of the real drug pushers—the pharmaceutical industry—and deep-seated social problems. Similarly, future school and other mass shootings will not be halted by putting those responsible to death.

After Trump's election, then Attorney General Jeff Sessions moved for reinstatement of federal executions, ordering the BOP to examine the steps needed to resume the use of the death penalty. In March 2018, Sessions called on federal prosecutors to seek the death penalty when bringing cases against drug dealers and traffickers.

While the DOJ hopes to begin executions later this year, legal challenges could delay them. Robert Dunham, DPIC executive director, told CNN, "Saying that you are going to adopt a protocol is not the same thing as having a protocol properly adopted through the required administrative procedures," adding, "You can't just say it and have it happen. There is a legal process for challenging the protocol."

There is currently an ongoing lawsuit in the District of Columbia involving the federal lethal injection process. There will undoubtedly be challenges to the drugs to be used in federal executions.

The Anti-Terrorism and Effective Death Penalty Act, signed into law by President Bill Clinton in 1996, severely restricted the right of death row inmates to appeal their convictions. It also greatly expanded the number of federal crimes that can be punishable by death.

The US Supreme Court has upheld capital punishment. While ruling the death penalty unconstitutional for those convicted of crimes committed as juveniles and for the mentally impaired, it has not ruled the death penalty itself in violation of the Eight Amendment to the US Constitution's protection against cruel and unusual punishment.

In 2015, the high court ruled 5-4 in *Glossip v. Gross* that executions using the sedative midazolam could go forward, despite substantial evidence that use of the drug can cause excruciating and prolonged pain, thus

constituting cruel and unusual punishment.

The decision allowed executions after the case of Clayton Lockett in Oklahoma in April 2014, who gained consciousness as he was being executed and sought to rise from the execution table before eventually dying of a heart attack 43 minutes after initial sedation.

The Court's majority argued absurdly that the executions utilizing midazolam should continue because the Oklahoma prisoners bringing the case against their use did not provide an alternative method for their own executions.

In a dissenting opinion, Justice Stephen G. Breyer argued for an examination of the death penalty itself, citing evidence that innocent people have been executed, that death sentences were imposed arbitrarily, and that the capital justice system was rife with racial discrimination. He was joined in his dissent only by Justice Ruth Bader Ginsburg.

Since the Supreme Court reinstated the death penalty in 1976 after a brief hiatus, 1,500 condemned prisoners have been sent to their deaths. This has included those sentenced to death for crimes committed as juveniles, the mentally ill and impaired, and foreign nationals denied their consular rights. The Trump administration hopes to add federal death row inmates to this grim tally.



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