

Federal prisoner Orlando Hall executed after US Supreme Court clears the way

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Orlando Hall was executed just before midnight Thursday at the federal prison in Terre Haute, Indiana. His lethal injection proceeded after the US Supreme Court lifted a district judge's last-minute injunction that had temporarily blocked the execution.

Hall, 49, was convicted of the 1994 kidnapping, rape and murder of 16-year-old Lisa Rene in Arkansas. Attorneys for Hall, who is black, argued in a number of last-minute appeals that he had not been given a fair trial due to racial discrimination and that the federal execution protocol was unconstitutional.

Hall became the eighth person executed by the US government since the Trump administration resumed federal executions on July 14 for the first time in 17 years. In the past four months, the Justice Department under Attorney General William Barr has carried out more executions than the federal government had over the previous three decades. The Trump administration aims to carry out at least three more executions before Inauguration Day on Jan. 20.

The Trump Justice Department is the first to carry out an execution for a federal crime between a presidential election and the scheduled inauguration of a new president. The last federal execution after an election was on Jan. 25, 1889, when the outgoing administration of Grover Cleveland executed Richard Smith, a Choctaw Indian, for a murder on tribal land in Arkansas.

Hall's case was the first case involving a pending execution after Justice Amy Coney Barrett joined the high court in October after her appointment by President Trump and rapid approval by the Senate. Like her mentor, the late Justice Antonin Scalia, she evinced no qualms about squaring her Catholic faith's opposition to capital punishment with decisions upholding the death penalty.

In pleadings filed in the US District Court for the Southern District of Indiana on Nov. 12, Hall argued that his conviction and death sentence were the unconstitutional product of systemic racial discrimination in the application of the federal death penalty in Texas, where he was tried.

Defendants in federal capital trials in Texas are 16 times more likely to be sentenced to death if they are black, Hall's attorneys argued. Hall was condemned to death by an all-white jury empaneled by a prosecutor who unconstitutionally removed African American jurors in two other cases in which black defendants received the death penalty. Between 1998 and 2020, the Department of Justice has directed local authorities to seek the death penalty against 537 defendants, only 147 of whom were white.

Hall's habeas corpus petition and stay application also argued that he was tried before an all-white jury from which prospective black jurors had been unconstitutionally excluded due to their race. Federal prosecutor Paul Macaluso, who had twice been found to have engaged in racially biased jury selection, joined the prosecution in Hall's case specifically to conduct jury questioning, making sure that all black jurors were struck.

In 2005, the US Supreme Court ruled that Macaluso had unconstitutionally struck black jurors. In 2009, the US Court of Appeals also found that the federal prosecutor had unconstitutionally struck black jurors. Hall's attorneys argued that his prior counsel had not been aware of these cases and Macaluso's pattern of racially based jury selection.

Hall's attorneys' petition further alleged that his defense learned post-trial that Macaluso had trained in a prosecution office that used a racist manual that openly advocated excluding blacks, Jews and women from jury

selection.

A 1963 circular produced by this same legal office directed, “Do not take Jews, Negroes, Dagos, Mexicans or a member of any minority race on a jury, no matter how rich or how well educated.”

Despite this clear evidence of judicial bias in Hall’s case, courts were largely unreceptive to his appeals for a delay in his execution. Both the US District Court for the Southern District of Indiana and the US Court of Appeals for the Seventh Circuit denied his applications for a stay.

On Thursday, Judge Tanya Chutkan of the US District Court for the District of Columbia issued an injunction blocking the execution, based on an earlier finding from the judge that the government’s method of execution—using a lethal dose of sodium pentobarbital without obtaining a prescription—violates the Federal Food, Drug, and Cosmetic Act.

The US government immediately appealed, and the injunction was vacated Thursday night by the Supreme Court as Hall awaited execution. In a one-sentence order, Chief Justice John Roberts, Justices Clarence Thomas, Samuel Alito, Neil Gorsuch, Brett Kavanaugh and Barrett lifted the stay of execution; Justices Stephen Breyer, Sonia Sotomayor and Elena Kagan would have left the injunction in place.

The Court also denied Hall’s three emergency applications, each presenting separate legal arguments for a stay of execution. The first would have had the court take up Hall’s claim that his conviction was tainted by racial discrimination. The second asked the Court for a delay so the justices could review Hall’s claim that the government denied his rights by failing to provide him with sufficient notice of his execution. The third application challenged the federal government’s execution protocol on the same grounds that formed the basis for Judge Chutkan’s injunction. Hall was joined in this application by federal prisoner Brandon Bernard, who is scheduled for execution on Dec. 10.

The other federal inmates the Trump administration intends to execute in his presidential term include Alfred Bourgeois, on Dec. 11, and Corey Johnson, on Jan. 14.

The execution of Lisa Montgomery, who was set to be executed Dec. 8, was temporarily stayed on Thursday because her attorneys contracted COVID-19,

most likely from visiting her in prison, and cannot prepare her clemency application. US District Judge Randolph Moss signed a court order blocking the federal government from executing Montgomery before the end of the year.

Attorneys Amy Harwell and Kelley Henry visited Montgomery, traveling from Nashville to Texas three times in October and November. The federal lawsuit filed for Montgomery by Cornell Law School’s International Human Rights Policy Advocacy Clinic, said, “They are sick because Defendant Barr recklessly scheduled Mrs. Montgomery’s execution in the middle of the COVID-19 pandemic.”

Montgomery was convicted and sentenced to death for the 2007 strangling of a Missouri woman who was eight months pregnant and taking her unborn baby, who survived. Sandra Babcock, one of the lawyers representing Montgomery against Barr, said, “Mrs. Montgomery’s case presents compelling grounds for clemency, including her history as a victim of gang rape, incest and child sex trafficking, as well as her severe mental illness.”

According to court documents, the Justice Department said that Harwell and Henry should have already prepared Montgomery’s clemency application by now. They also made the remarkable argument that another lawyer could take over her case and that a delay would interfere with the president’s constitutional powers to grant reprieves and pardons.

If Montgomery’s execution goes forward, it would be the first federal execution of a woman in almost seven decades. Ethel and Julius Rosenberg were executed by electrocution on June 19, 1953. They were framed up and prosecuted at the height of the Cold War under the Espionage Act of 1917 on charges of conspiracy to commit espionage on behalf of the Soviet Union.



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