

Trump administration plans five federal executions before January 20, authorizes use of firing squads, electric chair and asphyxiation

Kate Randall
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The US Department of Justice is seeking to carry out five executions of federal prisoners before Inauguration Day, January 20, when former Vice President Joe Biden is set to be sworn in as president. The US government has already executed eight prisoners since the Trump administration resumed federal executions on July 14 for the first time in 17 years, more than had been carried out over the previous three decades.

In addition to scheduling this flurry of state killings, the Justice Department published a new regulation on November 27 which permits the federal government to perform executions using any form of lethal injection “or by any other manner prescribed by the law of the state in which the sentence was imposed or which has been designated by a court” in accordance with federal death penalty statutes. These methods include nitrogen gas, electrocution and firing squad.

The rush to carry out these executions in the weeks leading up to the inauguration, and the regulation permitting various barbaric forms of putting prisoners to death, are in line with the violence being promoted by fascistic forces in and around Trump’s administration following his electoral defeat. This has included incitement to violence against ousted administration officials, various state election officials and poll workers.

A coalition of 90 current and former prosecutors, state attorneys general, police chiefs and sheriffs have called on the federal government to halt the five executions. In an open letter, the group Fair and Just Prosecution claims executions during the turbulent presidential transition period and the resurgence of the

coronavirus pandemic risk undermining confidence in the criminal justice system. President-elect Biden has said he will work to pass legislation to end federal executions.

“When people believe the state is executing a person, or applying the death penalty unjustly,” they write, “their trust in our system of government and law enforcement is undermined.” In other words, the group of prosecutors and police heads fear the White House’s rush to execute will further deepen the already hostile sentiments of wide layers of the US population towards the police and federal authorities.

While the November 27 regulation in theory allows the government to use methods other than lethal injection, it is unlikely that they would be used in the upcoming executions. The rule allows the federal government to carry out executions in the same manner as the state in which the offense was committed, and no one currently on federal death row were sentenced for a crime in a state that uses the firing squad.

Only Mississippi, Oklahoma and Utah permit execution by firing squad as a backup method of execution. Of those, only Oklahoma has prisoners on federal death row. The seven states that allow lethal-gas executions either have no one on federal death row or no protocol in place to carry out a lethal-gas execution.

A federal execution by electric chair is somewhat more probable in the future. Seventeen prisoners are on federal death row for offenses committed in states in which electrocution is a back-up execution method. However, those states require lethal drugs that are unavailable and/or allow the prisoner to designate the

electric chair as their means of execution.

The *Washington Post* reports that a Justice Department official has said that four of the five set to be put to death before January 20—Lisa Montgomery, Brandon Bernard, Alfred Bourgeois and Cory Johnson—will be killed by lethal injection. The official declined to comment on the fate of the fifth prisoner, of Dustin John Higgs, citing pending litigation.

The Trump administration became the first to carry out an execution for a federal crime between a presidential election and the scheduled inauguration of a new president with the execution of Orlando Hall, 49, on November 19. 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.

The five condemned federal prisoners include four black men and one white woman.

The Justice Department has scheduled the execution of Brandon Bernard, 39, for December 10. Bernard was sentenced to death for the 1999 killings of two youth ministers, Todd and Stacie Bagley, on the Fort Hood military base in Texas. Bernard's associate, Christopher Vialva, was executed September 26 in connection with the same crime. Bernard's attorney has argued that his trial was flawed and that some jurors are now opposed to his death sentence because of what they see as his lesser guilt.

Alfred Bourgeois, 56, scheduled for execution December 11, was sentenced to death in 2004 for the killing of his two-year-old daughter. Bourgeois' attorneys argue that he has an intellectual disability and should be able to prove that in court.

The week before Inauguration Day, the Trump administration plans three executions. Lisa Marie Montgomery, 52, is scheduled to be put to death January 12. Her execution was set for December 8 but was temporarily stayed because her attorneys contracted COVID-19, most likely from visiting her in prison, and said they could not prepare her clemency application. A US District judge signed a court order blocking the federal government from executing Montgomery before the end of the year.

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. Attorney Sandra Babcock said of her client,

"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." If it goes forward, Montgomery's execution would be the first federal execution of a woman in almost seven decades.

Cory Johnson, 52, is scheduled for execution January 14. He was sentenced to death for the killing of seven people as part of a drug trafficking conspiracy. Johnson's attorneys argue that he has an intellectual disability and needs to present evidence of this in court.

The following day, January 15, Dustin John Higgs, 48, is set to be put to death. He was sentenced to death in connection with the kidnapping and killing of three women in Maryland in 1996. Higgs' friend, Willis Mark Haynes, was convicted of murder but his jury did not recommend that he be executed. A lawyer for Higgs says it would be unjust to execute his client when Haynes, who actually pulled the trigger, was not sentenced to death.

While the above federal prisoners face death in the execution chamber, other death row inmates have been sickened or killed by COVID-19. New coronavirus outbreaks have killed prisoners on death row in Ohio and Missouri and sickened at least 11 men in Tennessee.

James Frazier, 79, Ohio's oldest death row inmate, died of the virus on November 19 after 15 years on death row. He had suffered from dementia following a series of strokes behind bars and his lawyers had recently filed a petition to bar his execution on grounds of mental incompetency.

Richard Davis, 56, contracted COVID-19 on death row at the Potosi Correctional Center in Missouri. He died on December 1 after 16 days on a respirator. He spent 12 years on death row.



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