

Trump administration executes two more death row prisoners in pre-Inauguration Day killing spree

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The US government executed two prisoners Thursday night and early Saturday as the Trump administration continued its killing spree in advance of the inauguration of Joe Biden as president on January 20. The US Supreme Court allowed both executions to proceed.

Federal death row inmate Corey Johnson, 52, was executed Thursday night at the federal prison facility in Terre Haute, Indiana. His execution was the second time in less than five weeks that the federal government executed a likely intellectually disabled death row prisoner without giving the inmate a judicial review to determine eligibility for the death penalty.

Johnson was convicted and sentenced to die for killing seven people in 1992 as a part of the drug trade in Virginia. In his final statement, Johnson apologized for his crimes and told the families of the victims that he hoped they would find peace. "I would have said I was sorry before, but I didn't know how. I hope you will find peace," he said, according to his lawyers. "To my family, I have always loved you, and your love has made me real. On the streets, I was looking for shortcuts. ... I was blind and stupid. I am not the same man that I was."

Johnson was pronounced dead at 11:34 p.m. by prison authorities after receiving a lethal injection of pentobarbital. His execution was the second of three scheduled in the week before Inauguration Day as Donald Trump seeks to end his presidential term by inflicting the cruel wrath of the state killing machine with unprecedented speed.

In the early morning hours of January 13, Lisa Montgomery, 52, was executed for the 2004 murder of a pregnant woman and the kidnapping of her premature baby. Montgomery's attorney said of her execution, "The government stopped at nothing in its zeal to kill this damaged and delusional woman." Both Johnson's and Montgomery's executions proceeded with the sanction of the US Supreme Court despite clear evidence of their intellectual disability.

Federal inmate Dustin Higgs, 48, was executed and pronounced dead at 1:23 a.m. Saturday, just hours after the Supreme Court lifted a stay issued Wednesday by a federal appeals court. The Supreme Court voted, 6-3, to vacate the stay issued by the US Court of Appeals for the Fourth Circuit.

Higgs was convicted in the 1996 murders of three women in Maryland. In his final statement before his lethal injection, Higgs was defiant. Mentioning the victims by name, he said. "I'd like to say I am an innocent man. I did not order the murders." Higgs was the 13th federal prisoner executed in six months and the fifth in the transition period between the November presidential election and Inauguration Day, January 20.

Both Higgs and Johnson contracted COVID-19 as part of a widespread outbreak at the Terre Haute facility. Experts testifying on behalf of the two men said that pentobarbital, the barbiturate used in federal executions, could cause "flash pulmonary edema," a condition similar to waterboarding, while they are still conscious. The courts, including the nation's high court, rejected this as a basis for staying Johnson's execution, and it is likely the same fate awaits Higgs.

In an order issued at 10 p.m. Thursday, four hours after Johnson was scheduled to be executed, the Supreme Court denied Johnson's emergency application for a stay to permit him to present evidence of his intellectual disability. Only Justices Elena Kagan and Sonia Sotomayor dissented. The Supreme Court ruled in *Atkins v. Virginia* in 2002 that the execution of the "mentally retarded" violates the Eighth Amendment's prohibition against cruel and unusual punishment.

Earlier Thursday evening, the judges of the US Court of Appeals for the Fourth Circuit declined to reconsider a three-judge panel's ruling refusing to grant Johnson an evidentiary hearing on his claim of intellectual disability. Dissenting, Judge James A. Wynn wrote that newly

available evidence “convincingly demonstrates...that he is intellectually disabled under current diagnostic standards. But no court has ever considered such evidence.”

In December, Johnson filed a petition in federal district court in Richmond, Virginia, seeking a review of evidence of his intellectual disability that his trial lawyer had failed to address.

His new lawyers presented records and witness affidavits showing that Johnson had “remained in the second grade for three years, and also repeated third and fourth grades. When asked his birthday at age eight, while in second grade, he thought it was in March, though he was actually born in November.”

They said, “When he was 13 years old, he could barely write his own name. And while he knew there were 12 months in the year, he could recite them only up to August. Corey was not able to tell time or perform arithmetic beyond a third-grade level.... When he was last tested at age 45, Mr. Johnson was still at an elementary school level.”

Johnson’s lawyer at trial relied on the testimony of Dr. Dewey Cornell, a psychologist with no expertise in intellectual disability, who administered an outdated test that scored Johnson’s IQ at 77, placing him above the range typically defined as indicating intellectual disability. His trial lawyer ignored the opinion of Richard Benedict, who had taught Johnson, who called him a “poster child” for intellectual disability.

Johnson’s defense counsel told the jury, “Now, I’m not intending to suggest at this juncture or any other juncture that Corey Johnson is mentally retarded.” The condemned man was sent to his death with no court having heard evidence that his execution would be unconstitutional.

Another federal prisoner, Alfred Bourgeois, was executed on December 11 despite evidence that may have proved him ineligible for the death penalty due to his intellectual disability. A federal court in Texas denied Bourgeois’s claim of intellectual disability, relying on a series of lay stereotypes with no clinical validity. Despite the finding of another federal district court that Bourgeois had made a “strong showing” of intellectual disability, the ruling was reversed by a federal appeals court. The Supreme Court allowed his execution to go forward.

In July 2019, then-US Attorney General William Barr 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, reversing what had been an essential moratorium on the federal death penalty and setting the stage for an assembly line of federal executions over the next year and a half.

Previous to Barr’s directive, three federal death-row

prisoners had 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 solder.

Since then, in addition to the three executions carries out in 2021, the following federal prisoners have been sent to their deaths:

- Daniel Lewis Lee: July 14, 2020
- Wesley Ira Purkey: July 16, 2020
- Dustin Lee Honken: July 17, 2020
- Lezmond Mitchell: August 26, 2020
- Keith Nelson: August 28, 2020
- William Emmet LeCroy: September 22, 2020
- Christopher Vialva: September 24, 2020
- Orlando Hall: November 19, 2020
- Brandon Bernard: December 10, 2020
- Alfred Bourgeois: December 11, 2020



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