

# Oklahoma seeks execution of 25 prisoners after federal judge denies challenge to state's lethal injection protocol

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Oklahoma state prosecutors are pushing to schedule the execution of 25 death row inmates over approximately two years. The move comes as a federal judge denied a challenge by prisoners to the state's lethal injection protocol. If granted, the number of death sentences carried out over the next two years in Oklahoma would exceed all US states combined since 2020.

On June 6, federal judge Stephen P. Friot of the US District Court for the Western District of Oklahoma ruled that the state's lethal execution combination of drugs does not violate the Eighth Amendment's guarantee against cruel and unusual punishment. Attorneys for the plaintiffs in the long-running case are considering an appeal of the judge's ruling. Attorney Jennifer Moreno told CNN that the state's execution protocol "creates an unacceptable risk that prisoners will experience severe pain and suffering."

Oklahoma's lethal injection protocol uses three drugs: the sedative midazolam, the paralytic drug vecuronium bromide and potassium chloride, which stops the prisoner's heart. Medical experts have argued that midazolam does not have the properties necessary to adequately render prisoners unconscious before the other two drugs are administered, potentially subjecting the condemned individuals to a torturous death.

On June 10, Oklahoma Attorney General John O'Connor asked the state's Court of Criminal Appeals to set the dates for 25 of the 28 prisoners who were parties to the execution-protocol challenge. The Associated Press reports that O'Connor is requesting the first execution be carried out on August 25 and then at four-week intervals after that.

Lawyers for the 25 prisoners argue that the volume of executions will make it impossible for the prisoners to adequately present issues in their cases. Close to half of

the prisoners the state is seeking to execute over the next two years have claims of innocence, serious mental illnesses and/or brain damage.

The first person to be put to death under O'Connor's proposed execution order would be James Coddington, who experienced poverty, trauma and abuse since birth, according to the Death Penalty Information Center (DPIC). The DPIC explains that Coddington "has severe mental illness and drug addiction, and immediately expressed profound remorse of killing a friend while in the throes of a crack-cocaine binge."

The second person to be put to death under the order would be Richard Glossip, whose claims of innocence are currently under an investigation commissioned by a bipartisan group of state legislators. Glossip was convicted and sentenced to death for the 1997 murder of Barry Van Treese. The prosecution has acknowledged that Glossip did not actually kill Van Treese but was convicted of allegedly convincing Justin Sneed to kill him in exchange for money and the prospect of managing a motel. Sneed agreed to plead guilty in exchange for testifying against Glossip and received a sentence of life without parole.

Jurors at Glossip's trial were not shown footage that exists of police interrogating Sneed and saying his life would be spared if he implicated Glossip. Despite the evidence of his actual innocence, Glossip has exhausted all of his appeals. In a statement urging the state to not execute his client while the case is being reviewed, Glossip's attorney Don Knight said, "No matter where people stand on the death penalty, no one should want to kill an innocent man. The stakes are too high to rush this process. A man's life is on the line."

Glossip was granted three successive stays of execution, in September and October 2015, due to questions about

Oklahoma's lethal injection drugs after the state's Department of Corrections officials used potassium acetate instead of potassium chloride to execute Charles Warner on January 15, 2015. Media witnesses reported that Warner had cried out during his execution, "It feels like acid," and "My body is on fire."

Other prisoners on the list of 25 to be executed include Richard Fairchild, Wendell Grissom and John Hanson, who have brain damage. Another inmate, Wade Lay, has schizophrenia but was allowed to represent himself at trial.

In the cases of many of those who face execution, juries did not hear mitigating evidence that might have influenced their sentencing decisions. Kendrick Simpson has a diagnosis of PTSD resulting from a lack of access to basic necessities in the wake of Hurricane Katrina. Kevin Underwood suffers from a developmental disorder and several mental illnesses.

In Oklahoma, it is up to the governor, currently Republican Kevin Stitt, to grant reprieves. He follows the decision of the Pardon and Parole Board, which is charged with recommending commutation or clemency.

The rush to execution in Oklahoma comes despite clear evidence that executions in the state have led to unconstitutionally torturous deaths. In particular, autopsies of the four men executed in the state between October 2021 and February 2022 showed that all four had an abnormal buildup of fluid in their lungs, or pulmonary edema—meaning that they were effectively killed by drowning.

The autopsy report for Gilbert Postelle, obtained by *Oklahoma Watch* through a public records request, found that he experienced pulmonary edema with "frothy parenchymal fluid" during his February 17, 2022 execution. The medical examiner's report indicated that Postelle's lungs had a combined weight of 1,220 grams, making them a quarter to a third larger than the average adult lung size.

Medical experts at the federal trial before Judge Friot in February and March on the constitutionality of Oklahoma's execution protocol testified that frothing could only occur if "the prisoner is alive and breathing" when the edema occurred.

The executions of John Grant (October 28, 2021) and Bigler Stouffer (December 9, 2021), indicated that the men experienced pulmonary edema and accompanying severe pain while they were being put to death. The autopsy for Donald Grant (no relation to John Grant), who was executed January 27, indicated that his "lung tissue

displays edema and congestion."

An NPR analysis of the autopsies of more than 200 prisoners executed by lethal injection found that 84 percent showed pulmonary edema. In the case of executions involving midazolam, pulmonary edema was even more prevalent.

The DPIC reports that Dr. Mark Edgar, autopsy director at the Mayo Clinic in Florida, reviewed more than 30 autopsies of prisoners executed by lethal injection including midazolam and testified at the federal trial on Oklahoma's execution protocol that 27 of those prisoners had experienced "severe pulmonary edema," which would produce sensations of "doom, panic, drowning, and asphyxiation."

Dr. Gail Van Norman, professor of anesthesiology and pain medicine at the University of Washington Medical School, testified to a "'virtual medical certainty' that the four prisoners executed under Oklahoma's current protocol 'experienced extreme pain and suffering,'" DPIC writes.

Despite this disturbingly gruesome testimony, Judge Friot ruled that the prisoners' attorneys fell "well short of clearing the bar set by the Supreme Court" for lethal injection challenges. This bar is not set very high. The US high court ruled 5-4 on June 29, 2015 in *Glossip v. Gross* that executions using midazolam could go forward.

Justice Samuel Alito, writing for the majority, argued despite substantial evidence that use of the drug in executions can cause excruciating and prolonged pain that Oklahoma prisoners had failed to make the case that the use of the drug entailed a substantial risk of serious pain. He asserted, moreover, that the prisoners had not presented a viable alternative for their own executions that might prove less agonizing.

Seven years later, Richard Glossip and the more than 2,400 condemned men and women who continue to languish on death row across the US face execution, a barbaric practice outlawed by the vast majority of industrialized nations.



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