

UN experts call on US to halt first planned execution by nitrogen asphyxiation

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Experts from the United Nations have called on the United States to halt what would be the nation's first execution by nitrogen gas, warning that it could cause severe suffering and possibly be considered torture. The state of Alabama plans to put Kenneth Eugene Smith to death on January 25 using nitrogen hypoxia, or asphyxiation, by depriving the condemned prisoner of oxygen by having him breathe pure nitrogen gas.

In a joint statement issued January 3 in Geneva, Switzerland, four independent UN monitors accuse Alabama of a rush to utilize the experimental execution technique that could inflict grave suffering on Smith in violation of the International Convention against Torture, which the US ratified in 1994, and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the UN General Assembly in 1988 without a vote.

"We are concerned that nitrogen hypoxia would result in a painful and humiliating death," the experts write. They note that the execution method has never to date been used in an execution.

Smith, 58, was convicted and sentenced to death for the 1996 murder of Elizabeth Sennett, after being offered \$1,000 to kill her by the victim's husband, a pastor, who was seeking to receive an insurance payout. Despite an 11 to 1 vote by the trial jury to sentence Smith to life in prison, the judge overruled the jury and sentenced him to death. Alabama abolished judicial sentencing override in 2017, but the state has not applied this retroactively to those sentenced prior to this date.

If Alabama attempts to execute Smith it will be his second trip to the state's execution chamber. He spent four hours on November 17, 2022, strapped to a gurney while the execution team repeatedly failed in its attempts to insert the intravenous line to inject lethal chemicals into his body.

According to an account published by the Death Penalty

Information Center (DPIC), an individual of "unknown medical credentials" repeatedly stabbed Smith in the collarbone area with a large needle while attempting to place a central IV line. Smith described experiencing sharp and intense pain. The effort was abandoned when it became clear that the team would not be able to kill Smith before the death warrant expired at midnight.

"When guards came to remove him from the execution chamber, Smith was trembling, sweating, hyperventilating, dizzy, and could not lift his own arms to be handcuffed or walk unassisted," DPIC writes. Smith thus became one of a growing number of death row inmates who have lived after a failed execution attempt, discrediting any claims that lethal injection is a painless method of state killing.

Having already failed once at putting Smith to death, Alabama authorities are now planning to use a totally untested method for his upcoming execution. Although their plans have been shrouded in secrecy, according to the Associated Press, the execution will be carried out by placing a mask over the inmate's nose and mouth, forcing him to breathe only nitrogen, depriving him of the oxygen needed for bodily functions and causing death.

There is no scientific evidence that proves this method will be painless. Despite this, Republican Trip Pittman, the owner of the Pittman Tractor Company, who sponsored the bill authorizing nitrogen gas executions as a state senator, claimed in an interview, "I know in a pure nitrogen environment you pass out. It is instantaneous. You basically black out. There is no time for pain or anything else."

Contradicting these unfounded claims, Dr. Joel Zivot, an anesthesiologist at Emory University Hospital in Atlanta, told the *Alabama Reflector*, "This is death by asphyxiation. This is choking someone to death with gas. Why anyone would think that would be something pleasant or painless is really beyond my understanding."

The Eighth Amendment to the US Constitution, adopted in 1791 as part of the US Bill of Rights, reads, “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” The US Supreme Court has ruled that executions of the mentally impaired and those convicted for crimes committed as juveniles are unconstitutional but has consistently upheld the constitutionality of capital punishment itself.

Capital punishment has been outlawed in Western Europe and Canada. The US and Japan are the only two Group of Seven (G7) nations that have retained the death penalty. Japan did not carry out any executions in 2023, leaving the US as the only G7 member to carry out executions last year.

Lethal injection remains the most-used method of execution among the 27 US states that retain the death penalty, along with the US government and the US military. Electrocution, lethal gas, hanging and the firing squad remain on the books in some of these states, often as an alternative method if lethal injection is unavailable. States have scrambled to procure drugs to use in lethal injections after companies in Europe and domestically have refused to provide them for executions.

Large-scale gas chambers designed for mass killing were used by Nazi Germany during the Holocaust, killing millions of Jews, the disabled, socialists and other opponents of the fascist regime. Gas inhalation for executions has only ever been used in the US and Lithuania. The first gas chamber execution in the US was in 1924, when Chinese national Gee Jon, 29, was put to death in Nevada.

Since the US Supreme Court reinstated the death penalty in 1976 after a brief hiatus, 11 of 1,582 executions have been carried out with hydrogen cyanide gas: Mississippi, 4; California, North Carolina and Arizona, 2 each; and Nevada, 1.

Walter LaGrand, 37, a German national, was the last person executed by gas in the US, on March 3, 1999, in Arizona. His brother Karl LaGrand, 35, was put to death by lethal injection in the state a week earlier. The two had been convicted and sentenced to death for a murder committed during a bank robbery.

Chancellor Gerhard Schroeder objected to the executions in a meeting with President Bill Clinton, expressing concern that neither brother had received consular assistance at the time of his arrest. Karl LaGrand had already been executed when Berlin filed suit in the International Court of Justice (ICJ) to stop the older brother’s execution.

The White House argued it was a matter for the State of Arizona. The Arizona Board of Pardons and Paroles recommended a 60-day reprieve to await the decision of the ICJ, but Arizona Governor Jan D. Hull ignored it and the execution proceeded.

A German political scientist wrote in a post on executedtoday.com in 2008:

Given a choice in their method of execution, both brothers tactically opted for the gas chamber to give the legal challenges to lethal gas a chance to save them. With those challenges foundering, both were offered a late switch to lethal injection in exchange for dropping [their] suit.

Karl took the deal. Walter, as the *New York Times* put it, “opted for the gas, with its resonance of the Holocaust for Germans.”

Before the executioner switched the lever to initiate a chemical reaction between cyanide pellets (KCN) and sulfuric acid (H₂SO₄) the inmate was given his last words. Walter LaGrand said:

To all my loved ones, I hope they find peace. To all of you here today, I forgive you and hope I can be forgiven in my next life.

This date’s gassing with hydrogen cyanide (HCN) took 18 minutes until the heart of Walter LaGrand stopped beating. While the execution took place witnesses left the room nauseated.



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