

# Death row inmate executed by first-ever nitrogen asphyxiation: “Tonight Alabama causes humanity to take a step backwards”

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The state of Alabama put Kenneth Eugene Smith to death Thursday evening at the Holman Correctional Facility in Atmore. With his execution, Alabama has earned the macabre distinction of being the first US state, and likely the first government entity internationally, to utilize nitrogen asphyxiation to deliberately kill a human being.

By all accounts, Smith’s execution was a gruesome event, evoking revulsion from witnesses and prison officials alike. It proceeded after the US Supreme Court declined Smith’s last appeal to stop the execution.

According to the *Montgomery Advertiser*, when the drapes were opened at 7:53 p.m. local time, revealing the death chamber, witnesses saw Smith wearing a full face mask with a plastic tube running out of it connected to the nitrogen gas outside the room. He was strapped to the gurney “cruciform,” with his arms and body secured by straps.

He made the sign language sign for “I love you” toward the witnesses, which included his wife. “Tonight, Alabama causes humanity to take a step backwards,” he said. His next words were inaudible due to the mask. He added, “I’m leaving with love, peace and light.”

At 7:57 p.m., the nitrogen appeared to begin to flow. For the next four minutes, Smith writhed and convulsed on the gurney. “He took deep breaths, his body shaking violently with his eyes rolling in the back of his head. ... Smith clenched his fists, his legs shook under the tightly tucked-in white sheet that covered him from his neck down. He seemed to be gasping for air. The gurney shook several times during this time,” the *Advertiser* reported.

Other media witnesses said Smith grabbed violently at the restraints. He appeared to lose consciousness at 8:02 p.m. After about 20 seconds, he took several large gasps for air. Smith appeared to take his last breath at 8:07 p.m., and the curtains to the witness room were closed at 8:15 p.m. He was pronounced dead at 8:25 p.m.

Rev. Jeff Hood, Smith’s spiritual adviser, who was with him in the execution chamber, told CNN afterward, “When they turned the nitrogen on, he began to convulse. He popped up on the gurney over and over and over again. He shook the whole gurney.”

Hood said that audible gasps could be heard coming from the witness area. “An unbelievable evil was unleashed tonight in Alabama,” he said. He held the Alabama governor, Republican

Kay Ivey, and state Attorney General Steve Marshall, as well as the corrections officers involved, “responsible for the horror show that just happened in there.” He added, “I have never, ever seen anything like that. That was torture.”

The US Supreme Court had obliged Alabama authorities by denying Smith’s earlier legal challenge, which contended that a second execution attempt by Alabama—after a first failed attempt in 2022 caused him severe trauma—would violate the Eighth Amendment’s protection against cruel and unusual punishment.

Experts from the United Nations called on the United States to halt Smith’s execution because the experimental execution technique could inflict grave suffering, in violation of the International Convention against Torture, which the US ratified in 1994. Religious and anti-death penalty organizations also strongly objected to the use of this method to execute Smith. All of these protests fell on deaf ears.

In a phone call to the *Guardian* earlier this week from his cell, Smith said he was not prepared to return to the death chamber. He said he had not recovered from the trauma of the nearly four-hour attempt to execute him by lethal injection in November 2022. When prison authorities determined that they would be unable to complete the execution before the death warrant expired at midnight, they returned him to his cell.

“They haven’t given me a chance to heal,” Smith said. He had been diagnosed with post-traumatic stress disorder (PTSD) after the failed attempt by his executioners to insert the IV lines necessary to inject him with the deadly chemicals. “I’m still suffering from the first execution and now we’re doing this again. They won’t let me even have post-traumatic stress disorder.

“I was strapped down, couldn’t catch my breath,” Smith told NPR recently about the first attempt to kill him. “I was shaking like a leaf. I was absolutely alone in a room full of people, and not one of them tried to help me at all, and I was crying out for help. It was a month or so before I really started to come back to myself.”

This time around, the Alabama executioners were determined not to fail. Prison officials announced Tuesday that they would deny Smith all solid food beginning at 10 a.m. on Thursday, execution day, after the condemned man’s lawyers reported that Smith had been vomiting continuously for several days, a condition they said was likely due to PTSD caused by the failed execution attempt in 2022.

At an evidentiary hearing in December, Smith's counsel presented expert evidence that he could vomit while fitted with the mask and aspirate or choke to death on his own vomit. But rather than calling off the execution, or postponing it, they made the last-minute change to protocol to deprive Smith of food on Thursday. He was not given the "traditional" last meal of his choice.

To set out the optimal conditions for the state to successfully kill Smith, in January of 2023 the Alabama Supreme Court announced a rule change that granted the Alabama governor new and unrestricted discretion over when executions are carried out, usurping the state high court's own powers, delegated by the state legislature, to schedule execution dates.

Under the rule change, the governor is not required to schedule an execution on a specific date, or within a limited period, but instead can schedule executions "within a time frame." In Smith's case, his death warrant was active from 12 a.m. Thursday to 6 a.m. Friday. Had the new rule been effect in November 2022, the prison execution team's attempts to set an IV line could have been extended for an undetermined number of torturous hours.

The US has been no stranger to barbaric execution methods in its nearly two-and-a-half centuries of existence. But the last half-century in America has seen a mad scramble by the states that practice capital punishment to keep the death penalty alive by devising new methods to carry it out. State authorities have struggled to find the chemicals to use for lethal injections, the most common execution method since it was introduced in 1982.

Nitrogen asphyxiation is the modern update to the gas chamber, which was replaced by lethal injection as the method of choice in the 27 states that still have the death penalty on the books. Other methods that are still legal, in various combinations, include electrocution, hanging and the firing squad.

Attorney General Marshall said Friday that nitrogen gas is now a "proven" method of execution. "What occurred last night was textbook," he said Friday at a press conference. "And I now suspect that many states will follow."

Marshall said that 43 of the staggering 167 inmates on Alabama's death row had already chosen the new execution method. Inmates are being forced to choose their preferred poison—injected lethal chemicals or nitrogen gas inhaled through a breathing tube.

Nitrogen hypoxia—which rightly should be called "nitrogen asphyxiation" or "nitrogen suffocation"—deprives its victim of oxygen by forcing him or her to breathe pure nitrogen. When nitrogen or another inert gas is inhaled, and carbon dioxide is exhaled, bodily tissues become starved of oxygen and organ systems begin to fail, resulting in death.

While this suffocation method had not been tested before its use on Smith—as such a "test" would result in death—the method *has* been tested on animals. In its 2020 guidelines, the American Veterinary Medical Association (AVMA) stated that "hypoxia resulting from exposure to [argon (another inert gas) or nitrogen] gas mixtures is acceptable for euthanasia of chickens and turkeys. ... [and] is acceptable with conditions for euthanasia of pigs," but that it "is unacceptable for other mammals."

In experiments studying euthanasia of rats with this method, "signs of panic and distress were evident before the rats collapsed

and died," according to the AVMA. States that authorize the use of nitrogen gas for executions, which now include Mississippi and Oklahoma in addition to Alabama, are sending a message that this barbaric method is legitimate to be used against humans, the highest species of mammal.

Kenny Smith was the first casualty of this perverse technique. That he found himself on death row was itself a travesty of justice. He 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 an insurance payout.

Smith's first conviction was overturned. At his second trial, the jury voted 11 to 1 to sentence him to life in prison, but the judge overruled the jury and sentenced him to death. Alabama abolished judicial sentencing overrides in 2017, but the state has not applied this retroactively to those sentenced prior to this date, including Smith.

Speaking of his crime, Smith told the *Guardian* he wished he "had done things differently." He added, "I've been in prison for 35 years, how have I not been punished? Thirty-five years, I have not gone unpunished for 35 years. I have suffered doing this. So has my family."

At least 2 million people are currently incarcerated in the US in 1,566 state prisons, 98 federal prisons, 3,116 local jails, 1,323 juvenile correctional facilities, 181 immigration detention facilities, and 80 Indian country jails, as well as in military prisons, civil commitment centers, state psychiatric hospitals, and prisons in the US territories, according to the Prison Policy Initiative.

In this massive system of imprisonment, the concept of rehabilitation is virtually nonexistent and is subordinated to retribution and "victims' rights." The US stands alone with Japan among G7 countries with the death penalty, which has not been shown to serve as a deterrent to crime or to provide "closure" to murder victims' families. Mass incarceration in America is above all a product of social inequality, with workers, the poor and oppressed making up the vast majority of the prison population.

There is a connection between the naked brutality on display Thursday evening and the Biden administration's war policy. The same government that has armed Israel and supports the Netanyahu regime's genocide in Gaza, which has now claimed the lives of more than 25,000 Palestinians, had no comment on Thursday's execution in Alabama or any response to the international protests against it. The introduction of yet another method of capital punishment is aimed at accustoming the population to this assembly line of death and is yet another demonstration of the US ruling elite's descent into barbarism.



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