



International Commission
against the Death Penalty

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Navanethem (Navi) Pillay

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(1939-2014)

Asma Jilani Jahangir

(1952-2018)

Bill Richardson

(1947-2023)

Secretariat

Pl. Marqués de Salamanca, 8

P.02.020, 28006

Madrid, Spain

Tel: +00 34 91 3799458

info@icomdp.org



North-South Prize
of the Council of Europe

Madrid, 21 January 2023

The Honorable Kay Ellen Ivey
Governor of the State of Alabama
The Office of Alabama Governor
600 Dexter Avenue
Montgomery, AL 36130, United States of America

ICDP 03/2024

Urgent Appeal to Halt the Execution of Kenneth Eugene Smith on 25-26 January 2024

Dear Governor Kay Ellen Ivey, dear Excellency

We write to you as Commissioners of the International Commission against the Death Penalty (ICDP or Commission) to express our deep concern regarding the execution of 58-year-old Kenneth Eugene Smith, scheduled for 25-26 January 2024, using nitrogen hypoxia, a method of execution by gassing leading to fatal asphyxiation that has never been used in the history of the United States.

We are very concerned at the lack of evidence and research, the secrecy and lack of transparency surrounding the impact, including the pain inflicted by the use of this untested and never-used method of execution. Nitrogen gas has never been used in the United States to carry out the execution of human beings. We are also concerned to note that the American Veterinary Medical Association recommends giving even large animals a sedative when being euthanized in this manner, while Alabama's protocol for execution by nitrogen suffocation makes no provision for sedation of human beings prior to execution. This leads us to believe this method of nitrogen suffocation could subject Mr Smith to cruel, inhuman or degrading treatment or punishment, even torture leading to the violation by the USA of Articles 6 and 7 of [International Covenant on Civil and Political Rights](#) (ICCPR) and [Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment](#), both international treaties to which the US is a party. Non-guaranteeable painless executions violate [Article 5 of the Universal Declaration of Human Rights](#) and may breach the [Convention against Torture](#). Additionally, the untested nature of this method of execution may contravene Article 7 of the ICCPR and Principle 22 of the [Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment](#), which guarantees that detainees shall not be subjected to medical or scientific experimentation. On this note, we urge caution to prevent the re-emergence of historical trauma associated with the Holocaust, where execution by gassing was employed by the Nazis.

Excellency, reports suggest that the implementation of this untested method of execution by suffocation is partly due to recent instances of distress caused to those people whose executions were carried out, or nearly carried out, by lethal injection, which underscore the broader difficulties in carrying out effective and painless execution. In the case of Mr. Smith, he survived execution by lethal injection in 2022.

Excellency, Mr. Smith has faced the death penalty for over three decades and, according to reports reaching ICDP, ongoing federal court proceedings remain unresolved. His conviction in 1988 raises questions about the constitutionality of judicial override, given the jury's recommendation for life imprisonment. On this point we note that one of your first acts as Governor in April 2017 was to sign a bill into law that enabled juries, not judges, to have the final say on whether to impose the death penalty in capital murder cases. As such, halting this execution would be



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consistent with one of the most important aspects of your legacy as Governor:
ending judicial override.

Excellency, in light of these concerns and to not undermine your legacy of ending
judicial override, we urgently appeal to you to intervene and stop the execution of
Kenneth Eugene Smith. We join the international community in expressing our
gratitude for your attention to this matter and hope that your intervention can
ensure a just and humane resolution.

Please accept the assurances of our highest consideration.

Sincerely,

Navi Pillay
President

Ruth Dreifuss
Vice President

Ibrahim Najjar
Vice President

Hanne Sophie Greve
Commissioner

Michèle Duvivier Pierre-Louis
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