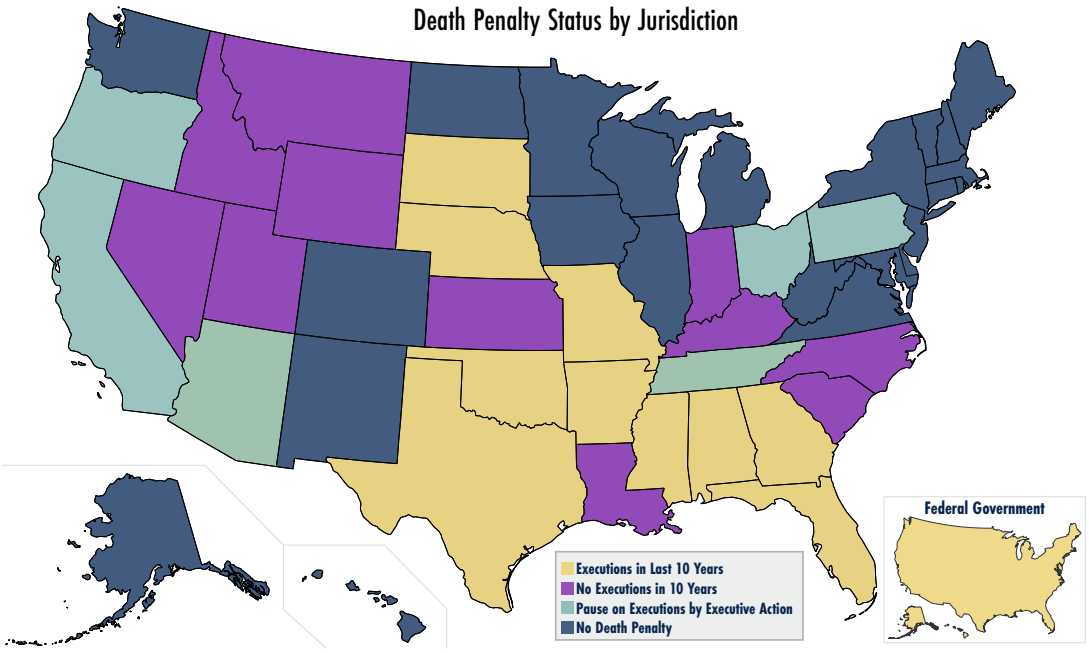
DEATH PENALTY INFORMATION CENTER

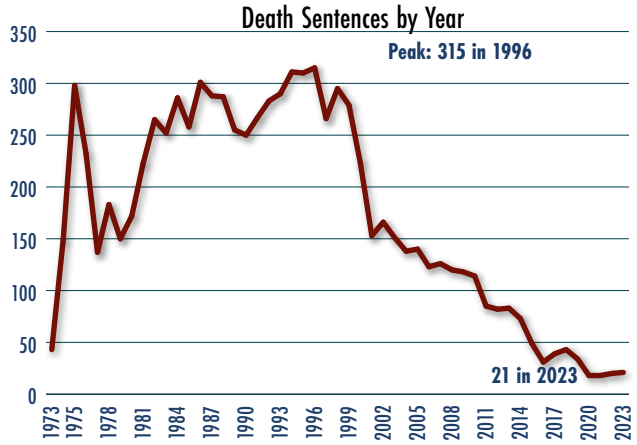
The Death Penalty in 2023: Year End Report

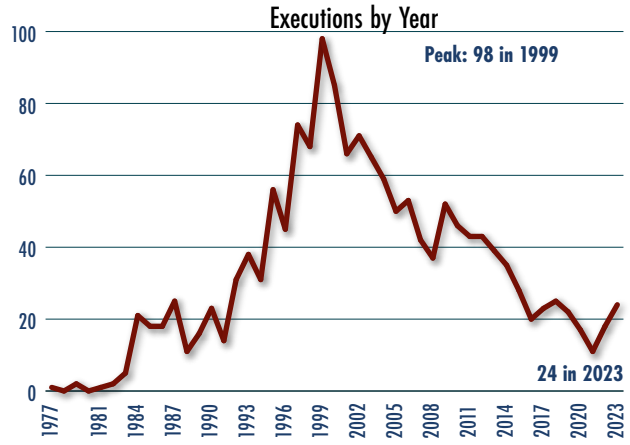
Only Five States Conducted Executions and Seven States Imposed New Death Sentences in 2023, the Lowest Number of States in 20 Years

FLORIDA'S SIX EXECUTIONS AND FIVE NEW DEATH SENTENCES RESPONSIBLE FOR 2023 INCREASE

FOR THE FIRST TIME, MORE AMERICANS BELIEVE THE DEATH PENALTY IS ADMINISTERED UNFAIRLY THAN FAIRLY







Executive Summary

- For the first time, a Gallup poll reports that more Americans (50%) believe the death penalty is administered unfairly than fairly (47%).
- Only 5 states (Texas, Florida, Missouri, Oklahoma, and Alabama) executed people this year, and only 7 states (Alabama, Arizona, California, Florida, Louisiana, North Carolina, and Texas) sentenced people to death. For the first time, the number of executions exceeded the number of new death sentences.
- The majority of states (29) have now either abolished the death penalty or paused executions by executive action.
- 2023 is the 9th consecutive year with fewer than 30 people executed (24) and fewer than 50 people sentenced to death (21).
- Three exonerations this year bring the total to 195 in the modern death penalty era.
- High profile innocence cases in several states received intense media attention but found no relief in the courts, raising questions about the adequacy of state procedures and the ability of the legal system to protect innocent people.
- The United States Supreme Court overwhelmingly rejected petitions from death-sentenced prisoners over the increasingly alarmed dissents of Justices Jackson, Kagan, and Sotomayor.
- Prisoners who were executed spent an average of 23 years in prison, the longest average time since executions resumed in 1976, and were an average age of 54 years old at the time of their execution, the oldest average age since executions resumed in 1976 (tied with 2021).
- The Biden Administration's Department of Justice secured its first death sentence for Robert Bowers, convicted of killing eleven people in the Pittsburgh, Pennsylvania Tree of Life Synagogue.

Introduction

Innocence cases dominated much of the media's attention on death penalty cases in 2023. While these prisoners were largely unsuccessful in the courts, there was unprecedented support for their claims from state legislators, prosecutors, judges, and other elected officials, some of whom declared themselves newly disillusioned with use of the death penalty in their state. This year is the 9th consecutive year with fewer than 30 people executed (24) and fewer than 50 people sentenced to death (21,

as of December 1). The 23 men and one woman who were executed in 2023 were the oldest average age (tied with 2021) and spent the longest average number of years in prison in the modern death penalty era before being executed. As in previous years, most prisoners had significant physical and mental health issues at the time of their executions, some of which can be attributed to the many years they spent in severe isolation on death row. Continued difficulties obtaining lethal injection drugs led some states to explore new, untested methods of execution or revive previously abandoned methods. Other states enacted or continued pauses on executions while the state's method of execution was studied.

Before 1972, state officials generally used the death penalty without fear of federal court review. That changed with *Furman v. Georgia*, when the Supreme Court invalidated all death penalty statutes, citing serious constitutional concerns with the arbitrariness and racial discrimination in many state processes and death sentences. After the Court approved the reinstatement of the death penalty in 1976, the Court assumed a more active role in regulating states' use of the death penalty. In what Justice Blackmun later called "tinkering with the machinery of death," the Court spent decades scrutinizing state laws and procedures, interpreting arcane statutory provisions, clarifying constitutional safeguards, reviewing challenges to methods of execution, and deciding cases that narrowed the application of the death penalty. The Court also intervened in extraordinary cases to grant stays of execution and resisted state efforts to expand use of the death penalty.

Now, more than 50 years after *Furman* was decided, the majority of the Court appears unwilling to continue in this role. The Supreme Court granted only one stay of execution, reflecting the view of some members of the Court that prisoners bring "last-minute claims that will delay the execution, no matter how groundless." The Court granted certiorari in only four death penalty cases, all of which pertained to procedural issues, and turned away the overwhelming majority of petitions filed by death-sentenced prisoners. Some state officials and legislatures may once again feel unrestrained

Death Row by State†

State	2023	2022
California	665	692
Florida	313	330
Texas	192	199
Alabama	167	170
North Carolina	140	139
Ohio	129	135
Pennsylvania	123	129
Arizona	114	117
Louisiana	63	62
Nevada	62	65
Tennessee	47	47
U.S. Fed. Gov't	44	44
Georgia	41	42
Oklahoma	40	44
Mississippi	36	37
South Carolina	36	37
Arkansas	28	30
Kentucky	26	27
Missouri	18	20
Nebraska	11	12
Kansas	9	9
Idaho	8	8
Indiana	8	8
Utah	7	7
U.S. Military	4	4
Montana	2	2
New Hampshire^	1	1
South Dakota	1	1
Oregon	0	22
Wyoming	0	0
Total‡	**2,331**	**2,436**

† Data from NAACP Legal Defense and Educational Fund for January 1 of the year shown

^ New Hampshire prospectively abolished the death penalty May 30, 2019

‡ Persons with death sentences in multiple states are only included once

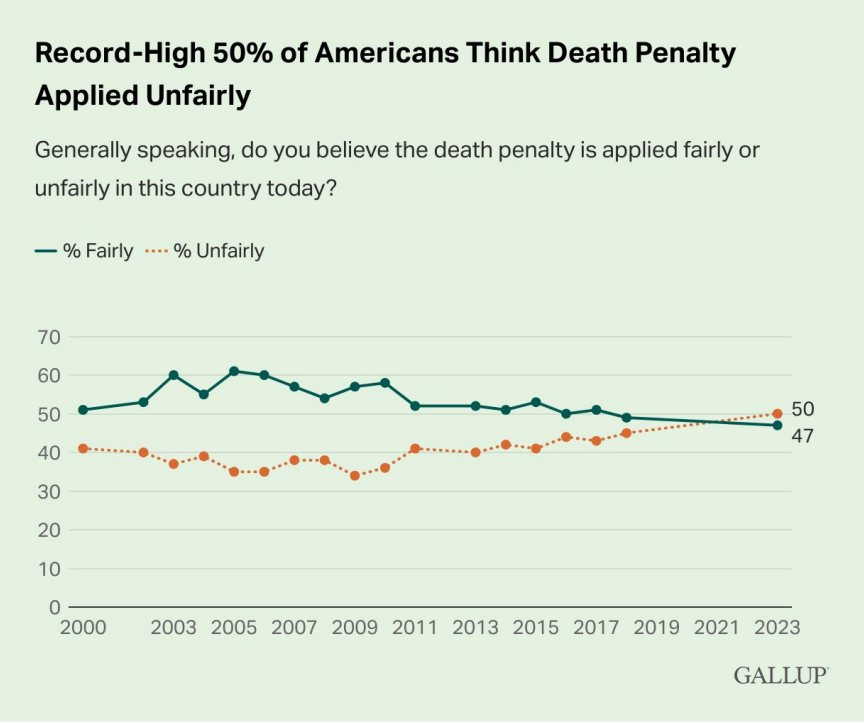
by the risk of judicial oversight or correction; Florida directly flouted Supreme Court precedent with new legislation making a non-homicide crime a death-eligible offense, while states like Alabama announced plans to use nitrogen gas in an untested, risky method of execution.

But the pivot away from the Supreme Court does not mean there is (or will be) increased use of the death penalty. For the first time, more Americans now believe that the death penalty is administered unfairly than fairly. The data show that the death penalty is increasingly disfavored, and the continued, years-long decline in its use has little to do with the Supreme Court. It is, instead, the result of society's greater understanding about the fallibility of our legal system and its inability to protect innocent people from execution, the vulnerabilities of the people who are sentenced to death, and a recognition that the significant resources and time necessary to use the death penalty do not deliver enough of a return on the public's investment in terms of safety or deterrence. These lessons are reflected in changing public opinion polls, jury verdicts, state legislative and executive decisions, and charging decisions, as this 2023 Year End Report details below.

Public Opinion

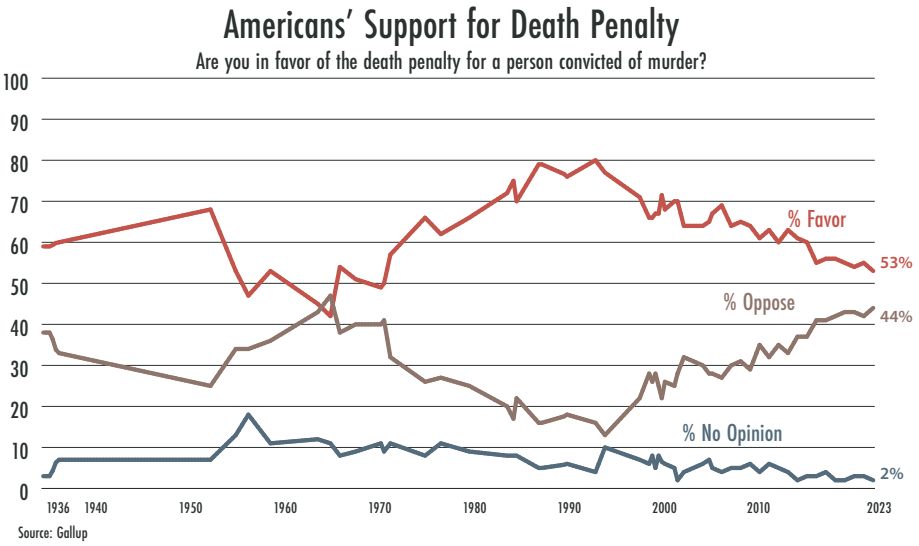
More Americans Believe the Death Penalty is Applied Unfairly

The Gallup Crime Survey has asked for opinions about the fairness of death penalty application in the United States since 2000. For the first time, the October 2023 survey reports that more Americans believe the death penalty is applied unfairly (50%) than fairly (47%). Between 2000 and 2015, 51%—61% of Americans said they thought capital punishment was applied fairly in the U.S., but this number has been dropping since 2016. This year's 47% represents a historic low in Gallup's polling.



Gallup. (Nov. 6, 2023). New 47% Low Say Death Penalty Is Fairly Applied in U.S.

Overall support for capital punishment remains at a five-decade low in the United States. In 2023, the Gallup survey found that 53% of Americans favor the death penalty, the lowest number since March 1972, although not a statistically significant change from the 54% and 55% level of support recorded over the previous three years. Results from 2019 indicate that support for the death penalty drops even lower (36%) when respondents are given the option of life without parole. When Gallup first asked about the death penalty in 1936, 59% of Americans supported the death penalty for convicted murderers. Public support for the death penalty peaked in 1994, with 80% of Americans in favor, but has steadily declined since that year.



Gallup also asked respondents whether they believe the death penalty is imposed too often, about the right amount, or not enough. 39% of respondents said that capital punishment is not used often enough, while 56% of respondents believe it is either imposed too often or about the right amount. There are also partisan differences. 62% of Republicans think that the death penalty is not imposed often enough, while 25% say it is imposed about the right amount. 52% of Democrats think that the death penalty is imposed too often, while 24% think it is used about the right amount. There is a greater divide among Independents, as 37% think that it is not used enough, 32% think it is used about the right amount, and 26% think it is used too often.

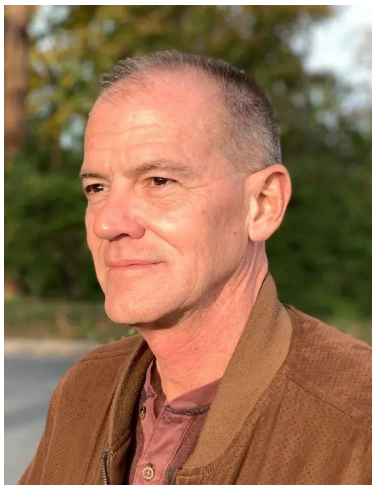
Gallup's Moral Issues Survey was administered in May 2023 against the backdrop of the Tree of Life Synagogue trial in Pittsburgh. Gallup reported a slight (5%) increase in the number of respondents who believe that capital punishment is morally acceptable, with 60% of individuals responding in the affirmative. The results of this survey have varied over the past two decades, reaching a high of 71% in 2006. Gallup reports that 82% of Republicans find the death penalty morally acceptable, compared to 59% of Independents, and just 40% of Democrats.

Innocence and Clemency

Three New Exonerations End Decades-Long Imprisonment

Three exonerations (John Huffington, Jesse Johnson, and Glynn Simmons) occurred in 2023; collectively, the three men spent 109 years in prison. Including the previously unrecorded exonerations of Larry Hudson in 1993 and Joe Cota Morales in 1981, the total number of U.S. death-row exonerations since 1973 is 195.

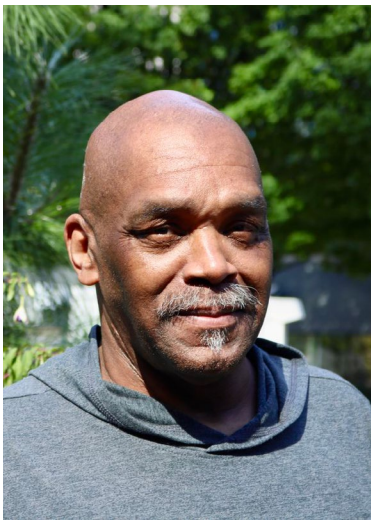
Before leaving office, former Maryland Governor Larry Hogan granted death-sentenced prisoner John Huffington a full pardon on January 13, 2023 based on evidence that conclusively showed his "convictions were in error." Originally convicted in 1981, Mr. Huffington, who always maintained his innocence, agreed in 2017 to accept an Alford plea in exchange for a reduced sentence which later resulted in his release. The original case was tried by disgraced prosecutor Joseph Cassilly, who was disbarred after an investigation revealed he had withheld exculpatory evidence regarding the scientific inaccuracy of forensic evidence in the case.



"I have fought for over 40 years for this day, and I feel a deep sense of closure and vindication. This pardon officially acknowledges that I was wrongly convicted and imprisoned for crimes I never committed."

— John Huffington

Jesse Johnson, who has long maintained his innocence, was released from Oregon's Marion County Jail on September 5, 2023. Deputy district attorneys Katie Suver and Matt Kemmy wrote in their motion to dismiss the case that, "Based on the amount of time that has passed and the unavailability of critical evidence in this case, the state no longer believes that it can prove the defendant's guilt to twelve jurors beyond a reasonable doubt." Two years earlier, Mr. Johnson's conviction was overturned by the Oregon Court of Appeals after finding he had not received effective representation from his defense counsel at trial. According to Oregon's Innocence Project, who assisted with appeals in 2014, racism on the part of the detective played a role in Mr. Johnson's wrongful conviction.



"I'm happy and excited and ready for the next phase now. Been a lot of years for something I didn't do."

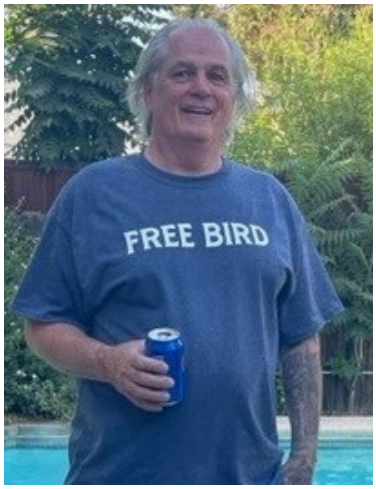
— Jesse Johnson

48 years after being sentenced to death, Glynn Simmons was exonerated on September 19, 2023, becoming the 11th person exonerated in Oklahoma since 1973. During his trial, prosecutors failed to disclose that the surviving victim identified multiple people in the line-up, not solely Mr. Simmons. Oklahoma District Attorney Vicki Behenna, agreeing that the original trial was unfair, first requested that Mr. Simmons' sentence, which had already been reduced to life in prison in 1977, be vacated in July 2023. Ms. Behenna later asked that the case be dismissed due to the state's inability to "prove beyond a reasonable doubt that Simmons was responsible for Ms. [Carolyn Sue] Rogers' murder" in a new trial.

"I'm happy, and I'm free. It's a long, long struggle. … We need to reimagine justice and how we do it."

— Glynn Simmons

Although he does not meet DPIC's strict criteria to be included in its Innocence Database, Barry Jones was freed on June 15, 2023 after serving 29 years for a crime that the Arizona Attorney General agreed he did not commit. Mr. Jones was sentenced to death in 1995 after being convicted of murdering his girlfriend's four-year-old daughter in 1994. Medical evidence that was readily available at



Barry Jones

the time of trial showed that the child did not sustain her fatal internal injuries during the time she was in Mr. Jones' care. But this evidence was not discovered by either his trial attorney or his state post-conviction attorney. In 2018, Mr. Jones presented this evidence for the first time in federal court as proof that his state counsel had been ineffective for failing to investigate and present medical evidence that contradicted the prosecution's timeline. Both the federal district court and the Ninth Circuit Court of Appeals agreed he was entitled to a new trial, but the Supreme Court ruled against him in ***Shinn v. Ramirez*** (2022). The decision, however, did not bar the Arizona Attorney General's Office from independently reviewing the case and after doing so, the office agreed to a settlement agreement that had Mr. Jones pleading guilty to second-degree murder—for failing to take his girlfriend's daughter to a hospital while she was in his care and already suffering from her fatal internal injury—in exchange for which he was released from prison for time served.

Unprecedented Support for Prisoners with Innocence Claims from State Legislators, Prosecutors, and Other Elected Officials

The appeals of Areli Escobar, Richard Glossip, Phillip Hancock, Toforest Johnson, and Robert Roberson received unprecedented public support from former and current state officials.

Areli Escobar

Areli Escobar's successful appeal to the Supreme Court was the result of Travis County District Attorney Jose Garza's admission that the conviction was based on "flawed and misleading forensic evidence." In remanding the case for a new trial on January 9, 2023, the Court briefly explained its decision was made "in light of the confession of error by Texas."

Last year, a bipartisan group of 62 Oklahoma lawmakers, including 45 Republican legislators, publicly expressed concern about Richard Glossip's case and asked then Attorney General John O'Connor to support a new evidentiary hearing. Mr. Glossip currently has two petitions pending at the Supreme Court. The first is on the denial of his innocence claim. His second petition is supported by Oklahoma Attorney General Gentner Drummond, who also

argued in favor of clemency for Mr. Glossip. The reply he filed with the Court stated, "After careful consideration – including a thorough review by an independent counsel – the State came to the conclusion that ...ensuring that justice is done in this case requires a retrial." Both Mr. Glossip and Phillip Hancock, who has long claimed self-defense, received personal support from Republican state legislators Kevin McDugle and J.J. Humphrey, who say they strongly support the death penalty but believe executions should be paused in Oklahoma because of the system-wide failures and injustices in these cases. "[I]f we can't fix it... then we need to get rid of it," Rep. McDugle told the PBS Newshour. Mr. Glossip was denied clemency based on a 2-2 vote from the Oklahoma Pardon and Parole Board and has since filed suit against the Board. Mr. Hancock received a recommendation for clemency from the Oklahoma Pardon and Parole Board which, at the time of this writing, is pending in front of the Governor. Reps. McDugle and Humphrey testified in support of Mr. Glossip and Mr. Hancock at their respective clemency hearings.

Among many others, Toforest Johnson's case has the support of his original trial prosecutor, the current Jefferson County district attorney Danny Carr, former Alabama Attorney General Bill Baxley, state bar presidents, three of the jurors in his case, and former Alabama Supreme Court Justice Drayton Nabers, all of whom support a new trial. "As a lifelong defender of the death penalty, I do not lightly say what follows: An innocent man is trapped on Alabama's death row," wrote Mr. Baxley in a March, 2021 Washington Post op-ed. Mr. Johnson's petition for certiorari was denied by the Supreme Court on October 2, 2023.

Toforest Johnson with family members

Robert Roberson's petition to the Supreme Court was supported by five retired federal judges, including one from Texas, and groups of scientists, medical experts, forensic experts, and others who argued that the Shaken Baby Syndrome theory relied upon by prosecutors to convict Mr. Roberson has been soundly discredited. The Supreme Court denied his petition on the same day as Mr. Johnson.

Credible Innocence Claims in Death Penalty Cases

Areli Escobar, Richard Glossip, Toforest Johnson, Rodney Reed, and Robert Roberson, whose cases are described above, were among several death penalty cases with credible innocence claims that received significant media attention this year.

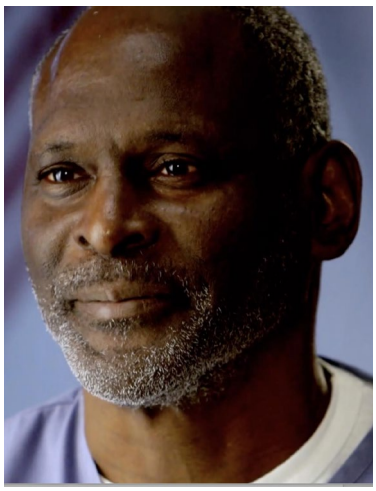
On January 13, the special counsel appointed by California Governor Gavin Newsom to conduct an investigation into Kevin Cooper's innocence claim released its report, finding that the "evidence of Cooper's guilt is extensive and conclusive," while also noting that the fairness of the trial in relation to Mr. Cooper's race was not assessed. In response, lawyers for Mr. Cooper criticized the investigation as improperly conducted and incomplete. "Most fundamentally, we are shocked that the governor seemingly failed to conduct a thorough review of the report that contains many misstatements and omissions and also ignores the purpose of a legitimate innocence investigation, which is to independently determine whether Mr. Cooper's conviction was a product of prosecutorial misconduct." Mr. Cooper was convicted in 1985 and has consistently maintained his innocence.

Leonard Taylor

In Missouri, Leonard Taylor consistently maintained that he was not in St. Louis at the time of the crime that sent him to death row. Although Mr. Taylor's attorneys discovered new evidence to substantiate his innocence claim, including support from a forensic pathologist, St. Louis County Prosecuting Attorney Wesley Bell declined to avail himself of a Missouri law that allows prosecutors to reopen possible wrongful convictions, saying there were no facts "to support a credible claim of innocence" in the case. Mr. Taylor was executed on February 7.

On June 29, Missouri Governor Mike Parson lifted the stay of execution for Marcellus Williams, ending a six-year panel review of his innocence claims and maintaining the confidentiality of the panel's recommendations. In 2017, former Governor Eric Greitens stayed Mr. Williams' execution and asked five former judges as a board of inquiry to investigate new DNA testing results that were unavailable at the time of his trial. A DNA test authorized by the Missouri Supreme Court excluded Mr.

Williams and matched an unknown person, and three separate DNA experts confirmed the findings. Gov. Parson explained his decision to end the inquiry in a statement, saying, "We could stall and delay for another six years, deferring justice, leaving a victim's family in limbo, and solving nothing. This administration won't do that." No new execution date for Mr. Williams has been set, but in August he sued Gov. Parson for dissolving the board of inquiry before it completed its investigation of his innocence claim.



Crosley Green

Crosley Green, a former Florida death-sentenced prisoner whose conviction was overturned in 2018, was denied parole on June 21, 2023 by the Florida Commission on Offender Review. Mr. Green was released from prison in April 2021 following a federal court's determination that the prosecution had withheld critical evidence from his defense at trial that pointed to another shooter. Mr. Green has maintained his innocence. After two years of release, he returned to prison earlier this year after the 11th Circuit Court of Appeals reversed the lower court's decision and the U.S. Supreme Court declined to review his appeal in February. The Commission ruled that Mr. Green's tentative parole release date will be in 2054, when he will be 97 years old.

Executive Clemency, the "Fail Safe" of the Death Penalty System, Largely Unavailable

In the last ten years, just 15 individual clemencies have been granted in death penalty cases.

In June, nearly every death-sentenced prisoner in Louisiana filed a request for clemency with the Louisiana Board of Pardons and Committee on Parole shortly after Governor John Bel Edwards announced his opposition to the death penalty. After the Board initially declined to consider the petitions without reviewing the merits of the claims, Governor Edwards used his executive authority to direct the Board to set hearings for the prisoners. Twenty clemency hearings were thereafter scheduled to begin in October.

Attorney General (and Governor-elect) Jeff Landry and some state district attorneys quickly denounced the 'rushed' efforts of the Board to hear the clemency applications and sued to block any applications from moving forward. A last-minute legal settlement resulted in a reduction in the number of scheduled clemency hearings from 20 to just five. On October 13, the Board administratively screened the five petitions and denied full clemency hearings to the applicants; on November 8, another five petitions were denied full clemency hearings. On November 9, Chief U.S. District Judge Shelly Dick of

the Middle District of Louisiana denied a request from the clemency applicants for a preliminary injunction, stating, "There is no constitutional right to a clemency hearing, nor is there a right to challenge the Board's failure to follow its own procedures." Governor Edwards will leave office on January 8, 2024 and cannot constitutionally commute any death sentence without the recommendation of the Board.

Phillip Hancock as a child, holding his baby brother

Attorneys for Florida death-sentenced prisoners Darryl Barwick and Michael Zack separately petitioned the U.S. Supreme Court to consider whether Florida's clemency process offered adequate due process. Mr. Barwick's attorneys wrote, "For 40 years, the chances of obtaining clemency or commutation of a death sentence in Florida is 0%. Not since 1983 has any death-sentenced individual in Florida been granted executive clemency." The Court denied both petitions. Mr. Barwick was executed on May 4, and Mr. Zack was executed on October 3.

On November 8, the Oklahoma Pardon and Parole Board narrowly recommended clemency to Phillip Hancock following an emotional clemency hearing. After failing to act for 22 days, Governor Stitt allowed the execution to go forward on November 30. Mr. Hancock was the last person executed in 2023.

Developments in the States

New Executive Actions in Two States Pause Executions

Governor Katie Hobbs

In Arizona, newly elected Governor Katie Hobbs and Attorney General Kris Mayes acted almost immediately upon taking office to order an examination of the state's execution procedures. On January 20, Governor Hobbs issued an executive order appointing a Death Penalty Independent Review Commissioner "to review and provide transparency into the [Arizona Department of Corrections, Rehabilitation & Reentry's (ADCRR)] lethal injection drug and gas chamber chemical procurement process, execution protocols, and staffing considerations." Attorney General Mayes filed a motion to withdraw the state's only pending request for a death warrant. The governor's

executive order noted that "Arizona has a history of executions that have resulted in serious questions about ADCRR's execution protocols and lack of transparency." In 2022, the state performed three executions, all of which were visibly problematic. The order went on to say that "a comprehensive and independent review" was necessary "to ensure these problems are not repeated in future executions." The actions by the governor and attorney general have halted executions in Arizona until the review is complete.

Governor Josh Shapiro of Pennsylvania announced on February 16 that he would continue his predecessor's moratorium on executions. He called upon the legislature to repeal the death penalty, saying, "The Commonwealth shouldn't be in the business of putting people to death. Period. I believe that in my heart. This is a fundamental statement of morality. Of what's right and wrong. And I believe Pennsylvania must be on the right side of this issue." Pennsylvania has executed only three people in the modern era of the death penalty, all of whom waived their appeals and "volunteered" for execution.

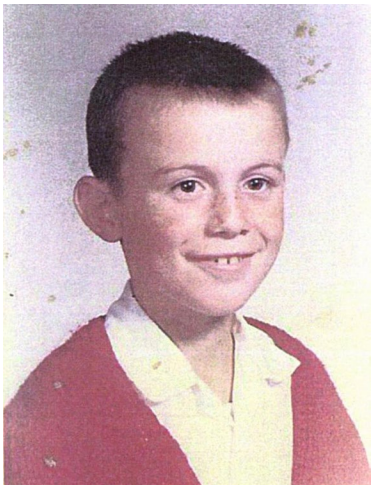
States Approve Alternative Execution Methods When Lethal Injection is Unavailable; Legal Challenges Continue

In response to continuing difficulties obtaining lethal injection drugs, South Carolina and Idaho passed legislation authorizing alternative methods of execution, and Alabama announced its plan to use an untested execution method.

After the South Carolina Supreme Court ordered the state to disclose its efforts to obtain lethal injection drugs, the legislature passed a secrecy law and authorized a new lethal injection protocol. The new law, signed in May 2023, conceals from the public the identity of manufacturers and suppliers of execution drugs, as well as those on the team responsible for carrying out the execution. Republican state officials previously cast blame on the lack of 'shield laws' for the state's inability to acquire drugs. State officials announced on September 19 that they had obtained a supply of pentobarbital and intended to use it in a one-drug protocol, rather than using the state's previous three-drug protocol. Officials in the Department of Corrections admitted contacting more than 1,300 people in their efforts to obtain execution drugs. Litigation is ongoing in the state Supreme Court in a challenge to South Carolina's 2021 statute making electrocution the default method of execution and authorizing firing squad as an alternative method. In 2022, a trial court found that both of those methods violated the state's constitutional prohibition against "cruel, unusual, and corporal punishments."

Alabama released a heavily redacted protocol for using nitrogen gas in August. While Oklahoma and Mississippi also authorize execution by nitrogen suffocation, no state has ever used the method, and Alabama was the first to release a protocol. Alongside the release of the protocol, Alabama officials asked the Alabama Supreme Court to authorize an execution date for Kenneth Smith, who survived an earlier, botched attempt to execute him in 2022. Governor Kay Ivey has set Mr. Smith's execution date for January 25, 2024. Mr. Smith's attorneys have argued that he should not be used as a "test subject" for the new execution method.

Idaho became the fifth state to authorize executions by firing squad. Under the law, which went into effect July 1, 2023, the director of the Idaho Department of Correction will have up to five days after a death warrant is issued to determine whether an execution by lethal injection is possible. If it is not, the execution will be performed by firing squad. Prior to the law's passage, Idaho had twice delayed execution dates for Gerald Pizzuto, Jr. because lethal injection drugs couldn't be obtained.



Gerald Pizzuto in fourth grade

U.S. District Judge B. Lynn Winmill ruled in favor of death row prisoner Mr. Pizzuto, indefinitely pausing his March 2023 execution date, and granting him a hearing on his claim that Idaho violates his constitutional right against cruel and unusual punishment by repeatedly scheduling execution dates while knowing the state does not have the means to carry it out.

> *"As Pizzuto describes it, defendants' repeated rescheduling of his execution is like dry firing in a mock execution or a game of Russian roulette... With each new death warrant comes another spin of the revolver's cylinder, restarting the 30-day countdown until the trigger pulls. Not knowing whether a round is chambered, Pizzuto must relive his last days in a delirium of uncertainty until the click sounds and the cylinder spins again."*
>
> ***— U.S. District Judge B. Lynn Winmill***

Mr. Pizzuto, who has been on death row since 1986, has faced five execution dates during his 37 years behind bars, three of which have been set during the past two years.

Florida Expands Death Penalty Eligibility and Revises Sentencing Requirement

Florida passed two new death penalty laws in April which are likely to expand the number of people sentenced to death in the state. First, the legislature removed the requirement that a jury must unanimously agree to impose a death sentence. Second, the legislature passed a law that allows the death penalty as punishment for sexual battery of a child under the age of 12 that does not result in the death of the victim. The sexual battery law is in direct conflict with U.S. Supreme Court precedent under *Kennedy v. Louisiana* (2008), which struck down a similar law.

While the Court has never held that a unanimous jury recommendation is required for a death sentence, nearly every death penalty state requires all 12 jurors to agree. Prior to the passage of Florida's new law this year, only Alabama allowed a non-unanimous jury to impose a death sentence. Florida has now set the lowest threshold for the imposition of death, allowing a death sentence if at least eight jurors agree. In Alabama, the threshold is ten jurors. Opponents of the non-unanimity bill noted that Florida has the highest number of exonerations from death row in the nation, at 30. Most of those exonerated were sent to death row by non-unanimous jury votes.

Tennessee Unsuccessfully Attempts to Remove Power from Local District Attorneys

The Tennessee legislature passed a law intended to remove power from elected district attorneys and provide the unelected attorney general with greater control over death penalty cases. It appeared aimed at some newly elected district attorneys who had expressed concerns about the use of the death penalty and indicated they would be more reluctant to pursue new death sentences. A Shelby County judge struck it down just three months later, finding the law unconstitutional. An appeal of that decision is pending before the Tennessee Court of Criminal Appeals.

Texas Cannot Execute Scott Panetti

On September 28, 2023, the U.S. District Court for the Western District of Texas ruled that the state cannot execute Scott Panetti, a death row prisoner with a decades-long history of serious mental illness and a diagnosis of schizophrenia. Despite a state expert conceding Mr. Panetti's serious mental illness, Texas argued that he is competent to face execution

Scott Panetti

because he has "some degree" of rational understanding. U.S. District Judge Robert Pitman ruled, however, that "[Mr.] Panetti is not sane enough to be executed" and that he "lack[s] a rational understanding of the connection between his actions and his death sentence." The decision ends decades of litigation through Texas state and federal courts, including the United States Supreme Court. Judge Pittman explained his decision: "There are several reasons for prohibiting the execution of the insane, including the questionable retributive value of executing an individual so wracked by mental illness that he cannot comprehend the 'meaning and purpose of the punishment,' as well as society's intuition that such an execution 'simply offends humanity.' Scott Panetti is one of these individuals."

State Legislative Action on Mental Illness and Repeal

Three state legislatures (Arizona, Arkansas, and Texas) proposed bills to exempt people with severe mental illness from death penalty eligibility. The bills failed in Arizona and Arkansas. The Texas bill passed the House 97-48 on April 5, 2023. No action has been taken in the Senate, but Texas' legislative session continues into 2024.

Five years after the Washington Supreme Court struck down the state's death penalty law, Governor Jay Inslee signed legislation to formally remove the unconstitutional law from the books. Gov. Inslee said the new legislation codified the concerns that were raised in the court's decision about the application of the death penalty in Washington: "The [court] made clear, and we know this to be true, that the penalty has been applied unequally and in a racially insensitive manner."

The Pennsylvania House Judiciary Committee voted 15-10 in favor of a death penalty repeal bill on October 31. With 14 Democrats and one Republican voting in favor, the committee passage is the first step toward abolishing the death penalty in Pennsylvania, which has not executed anyone since 1999 and has had a moratorium on executions since 2015.

Legislators in twelve different states and U.S. Congress introduced bills to abolish the death penalty. In September 2023, a bipartisan group of Ohio state house representatives introduced a bill that would abolish the death penalty and replace it with life in prison without parole. The proposed legislation came just a few months after Ohio state senators introduced a similar bill.

Governor John Bel Edwards

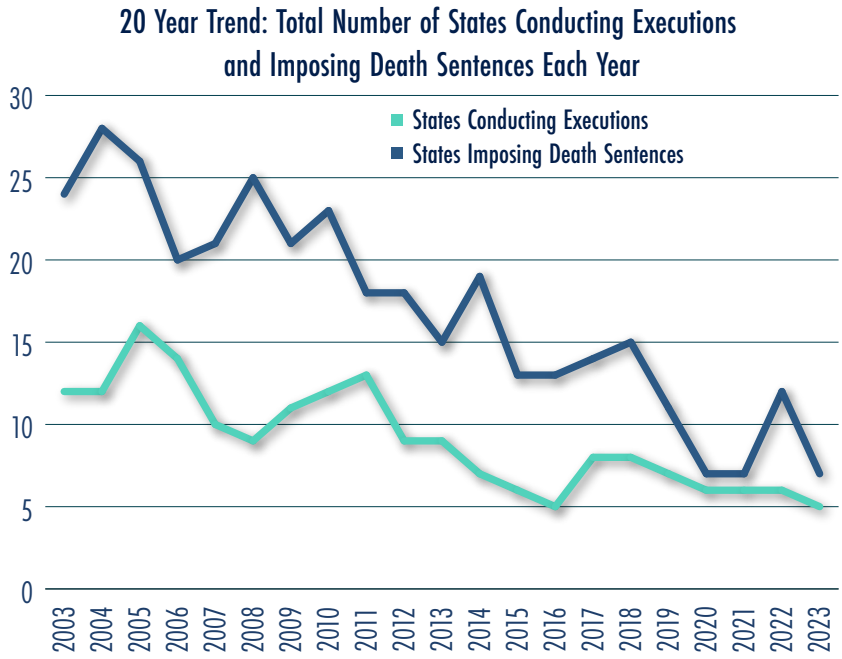
Unsuccessful legislative efforts to abolish the death penalty were also seen in Louisiana, following Governor John Bel Edwards' first public

announcement of his opposition to capital punishment. In March, Gov. Edwards expressed his opposition in a seminar at Loyola University in New Orleans: "The death penalty is so final. When you make a mistake, you can't get it back. And we know that mistakes have been made in sentencing people to death." He cited his deep religious faith and "pro-life" views as the reason for his opposition and said it was "fortuitous" that there is a shortage of the drugs required for lethal injection executions. Louisiana has carried out just one execution in the past twenty years.

Executions

Long-Term Decline in Executions Continued, Despite Slight Increase in 2023

Although the 24 people executed in 2023 represented an increase from last year's number of 18, this year was the ninth consecutive year with fewer than 30 executions.

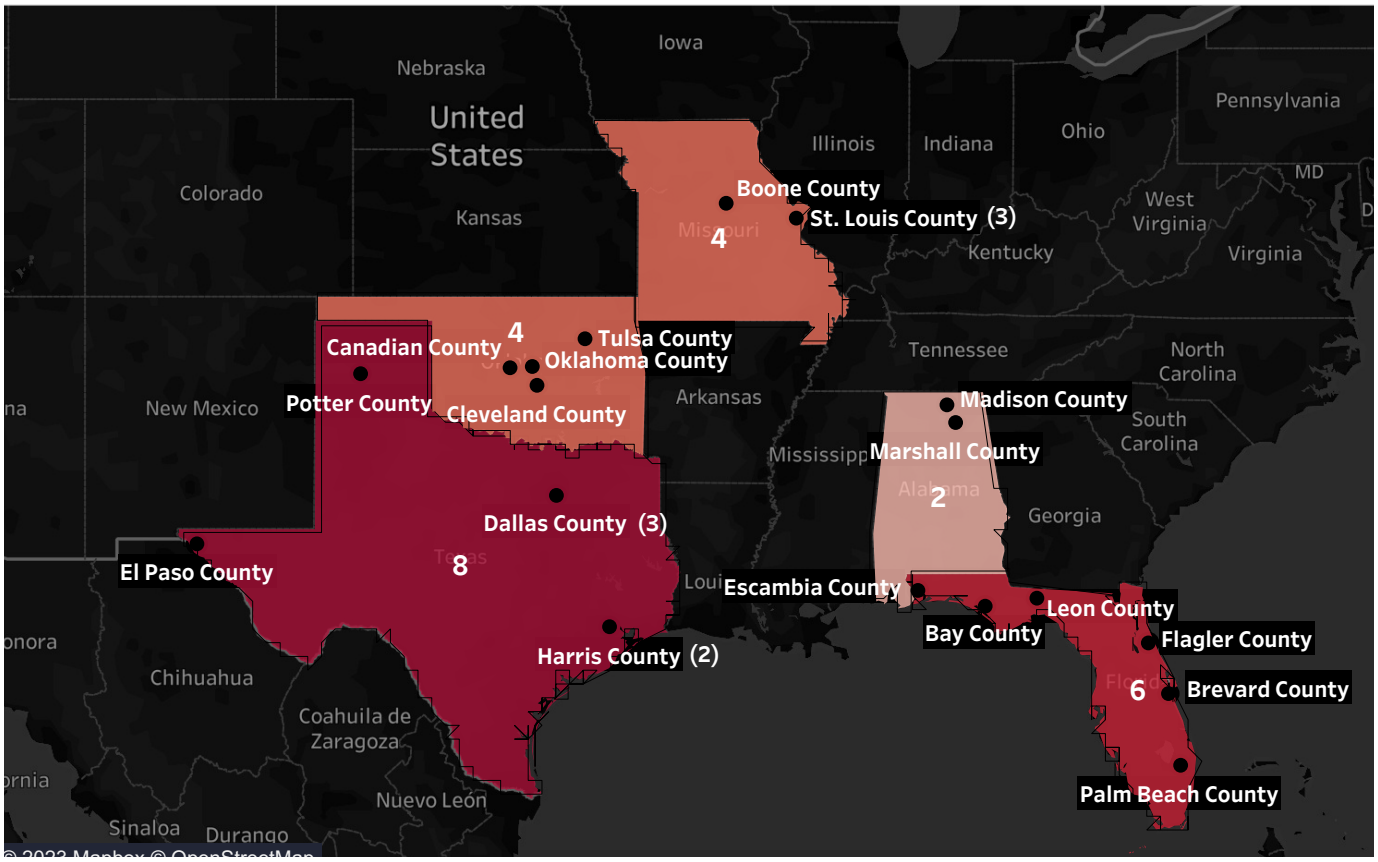


As in past years, most of the people executed in 2023 had significant vulnerabilities, and many likely would not have been sentenced to death if tried today. 79% of the people executed this year had at least one of the following impairments: serious mental illness; brain injury, developmental brain damage, or an IQ in the intellectually disabled range; and/or chronic serious childhood trauma, neglect, and/or abuse. 33% had all three. At least three (Darryl Barwick, Michael Tisius, and Casey McWhorter) were under the age of 20 at the time of their crimes.

Florida and Texas Conducted Almost 60% of the Year's Total Number of Executions

Only five states executed people this year. Florida and Texas accounted for more than half (58%) of the year's total number. Florida's six executions in 2023 were the highest number since 2014. Before

2023 Executions by State and County

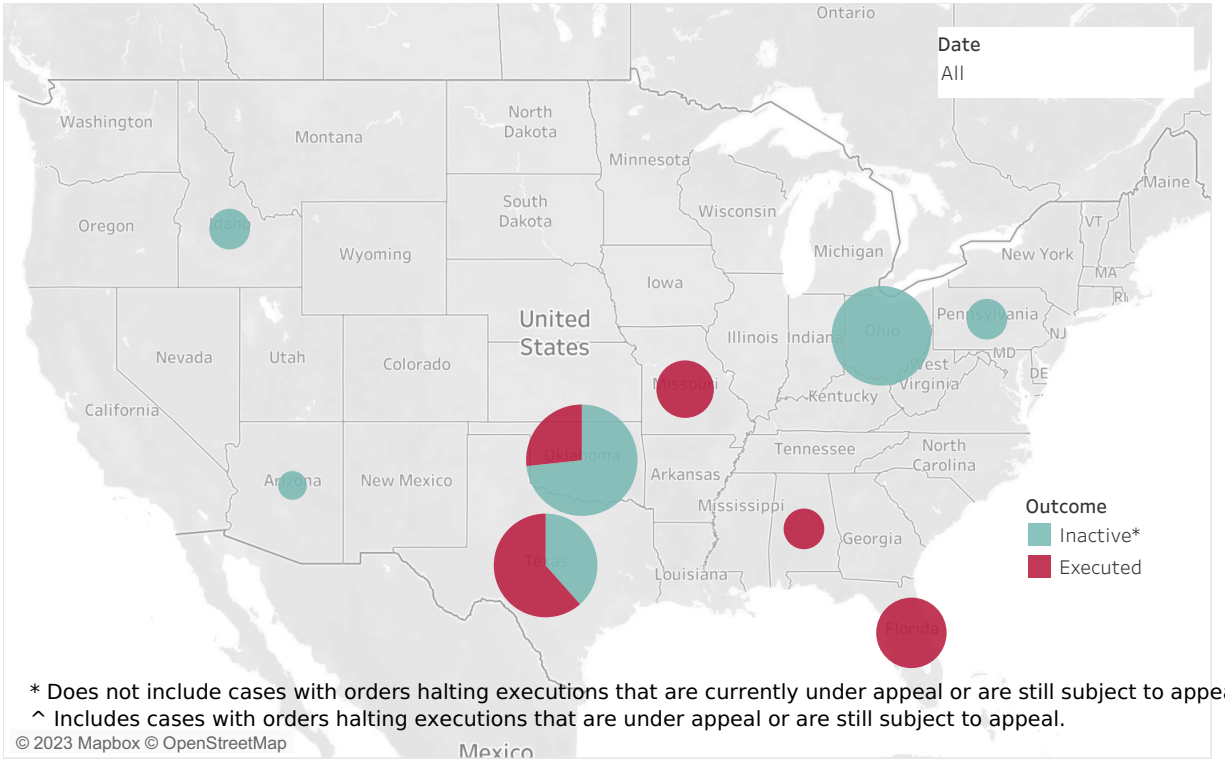


this year, Florida had not executed anyone since 2019. Governor Ron DeSantis, who is running for President, has scheduled eight executions since he took office in 2019, bringing the total number of executions in Florida since 1976 to 105. With eight executions, Texas maintained its status as the state that has conducted the most executions in 2023 — and overall since 1976.

Most Execution Warrants Not Carried Out

Only 41% of the 58 death warrants issued in 2023 were carried out. Four executions were stayed for reasons including mental incompetency, intellectual disability, and credible innocence of the prisoners. Ten executions were halted by gubernatorial reprieve in Ohio, where executions have been on hold since 2019 over concerns about its lethal injection protocol. Three were halted in Pennsylvania, which has had a moratorium on executions since 2015. One was halted in Arizona after Governor Katie Hobbs announced an investigation into the state's execution protocol. Two prisoners (Henry Skinner in Texas and Michael Webb in Ohio) died while their execution dates were pending. Five dates were stayed to allow time for additional court proceedings or clemency hearings.

Outcome of Death Warrants in 2023 (as of November 30, 2023)

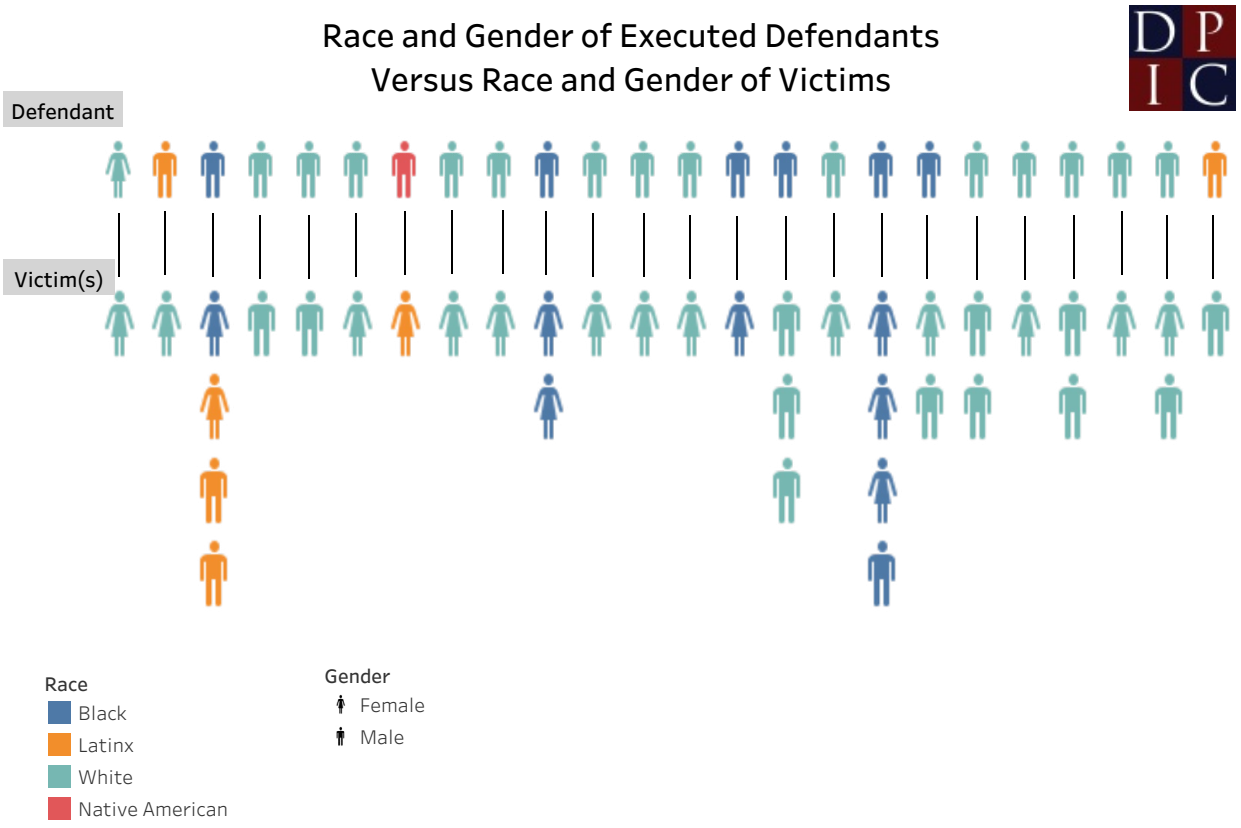


Oklahoma Attorney General Gentner Drummond reacted to recent events in his state by requesting that the Oklahoma Court of Criminal Appeals slow the pace of executions. Prior to AG Drummond's 2022 election, Oklahoma had set an unprecedented 25 execution dates over the course of two years. Attorney General Drummond, who generally supports the death penalty but has advocated in favor of death row prisoner Richard Glossip, wrote that the compressed execution schedule "is unduly burdening the Department of Corrections and its personnel" and called it "unsustainable in the long run." In response to Attorney General Drummond's request, the Oklahoma Court of Criminal Appeals reset the state's execution schedule to perform one execution approximately every two months, resulting in the rescheduling of nine execution dates that had been set for 2023.

Race Continues to Matter

Once again, the majority of the crimes for which defendants were executed involved white victims (79%). Based on racial classifications from state departments of corrections, none of the 15 white defendants executed in 2023 were convicted of killing a person of color. Nine of the 24 prisoners executed were people of color. Four of the nine (44.4%) were people of color executed for killing

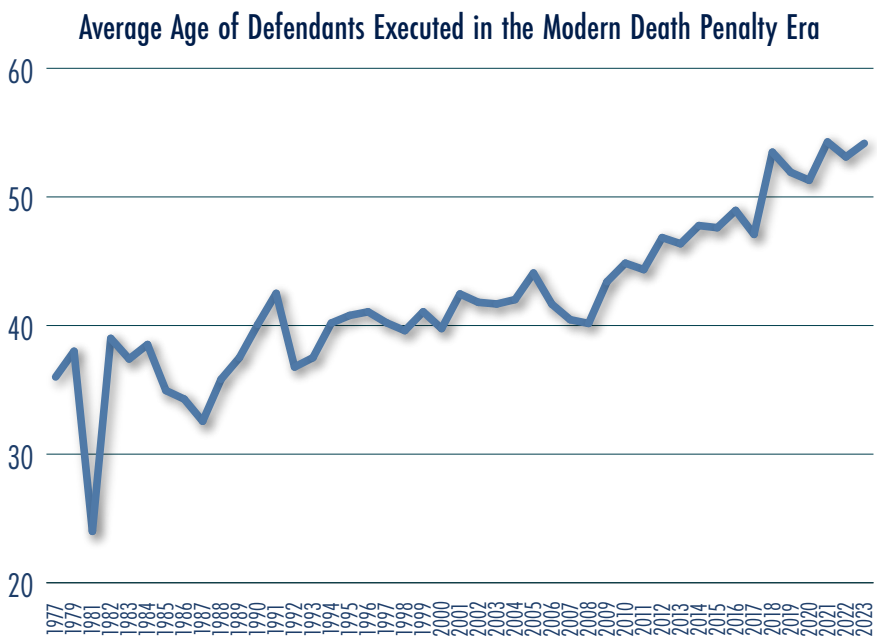
white victims. In Texas, people of color were overrepresented among those executed in 2023. Five of the eight prisoners (62.5%) executed in Texas were people of color.



Executed Prisoners Spent Longer on Death Row

The length of time that prisoners spend on death row before being executed has steadily increased. Those executed in 2023 spent an average of nearly 23 years on death row, the longest average time in the modern era of the death penalty. More than half (54%) of the prisoners had been on death row for more than 20 years, in violation of international human rights norms. Six prisoners were on death row for more than 30 years before being executed this year.

The deleterious mental health effects of significant stays on death row are well-known. Researchers and experts have found that extended solitary confinement and the harsh conditions on death row cause mental illness in healthy prisoners and exacerbate it in those with existing conditions. Legal teams for two executed prisoners (Duane Owen and Johnny Johnson) raised claims that their clients were incompetent to be executed by reason of insanity. Both men had lengthy histories of mental illness worsened by their time on death row. Both presented the opinions of mental health experts who had thoroughly



examined them and believed they met the criteria for incompetence: that they did not understand their impending execution or the reason for it. In both cases, courts denied the claims, giving greater weight to the opinions of state experts who had engaged in much more cursory examinations of the men. Similarly, James Barnes was allowed to waive his appeals and "volunteer" for execution without ever being examined by a mental health expert.

Most Executed Prisoners Would Likely Not Be Sentenced to Death Today

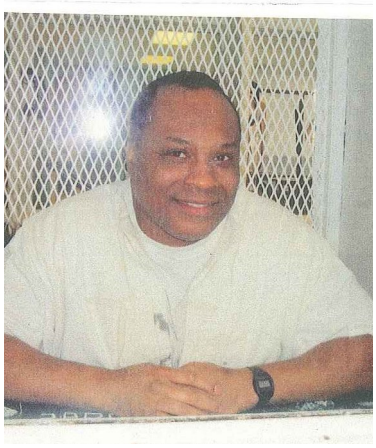
The significant changes that have occurred during the decades that most death-sentenced prisoners have spent in prison almost certainly mean that many of them would not be sentenced to death if they were prosecuted today. Changes in the law, such as the alternative sentence of life without parole, the elimination of non-unanimous death sentences in most states, the exclusion of people with intellectual disability from death penalty eligibility, and changes in the common and scientific understanding of mental illness and trauma and their lasting effects mean that arguments in favor of an alternative sentence are much stronger today than they were in previous years. Theories such as "Shaken Baby Syndrome" have been resoundingly debunked, meaning that some people were convicted of causing deaths that are no longer considered crimes.

The number of death sentences imposed each year has steadily decreased over the last two decades, a strong indication that juries' attitudes about the effectiveness, accuracy, and morality of the death penalty have changed. Prosecutors, too, are more cognizant of the allocation of resources required for capital cases and less likely to seek a death sentence. Finally, improvements in the quality and availability of defense representation have been proven to significantly alter the outcomes of capital trials, especially in sentencing.

Appellate attorneys for two people executed this year (Wesley Ruiz and Michael Tisius) obtained signed affidavits from jurors stating that they would change their votes or support a different sentence now based on the mitigating evidence that new counsel presented on appeal. Mr. Tisius' clemency petition included statements from four jurors and two alternates who supported a reduced sentence. One juror told the *New York Times*, "I feel angry and remorseful. I feel that I wronged Michael. ... I hated having a part in somebody dying."

Michael Tisius

Those two cases illustrate some of the critical improvements that have occurred in the quality of defense representation. The defense bar invested significant time training lawyers to follow detailed guidance found in the ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases (2003). Juries today are more likely to be presented with a comprehensive biopsychosocial history of the defendant and a more compelling argument for an alternative sentence. By contrast, Mr. Ruiz and Mr. Tisius were just two of at least seven defendants executed this year whose juries did not hear significant mitigating evidence of mental illness, childhood trauma, or both. While mental illness was once presented as aggravating evidence – as was true for Robert Fratta, whom prosecutors falsely claimed had Antisocial Personality Disorder to convince the jury that he presented an ongoing danger to society – evidence of mental illness is properly presented today as part of the defense's "case for life" to demonstrate a defendant's diminished culpability.



John Balentine

Changes in sentencing procedures could have affected the outcomes of several people executed this year. Seven prisoners (John Balentine, Donald Dillbeck, Arthur Brown, Duane Owen, Jedidiah Murphy, Brent Brewer, and David Renteria) were sentenced to death before their states offered the alternative sentence of life without parole. Seven prisoners (Amber McLaughlin, Donald Dillbeck, Louis Gaskin, Duane Owen, James Barber, Michael Zack, and Casey McWhorter) were sentenced to death after non-unanimous jury sentencing recommendations. Only Florida and Alabama currently allow death sentences to be imposed without the agreement of all 12 jurors, making non-unanimity an outlier practice among death penalty states.

Executed in 2023

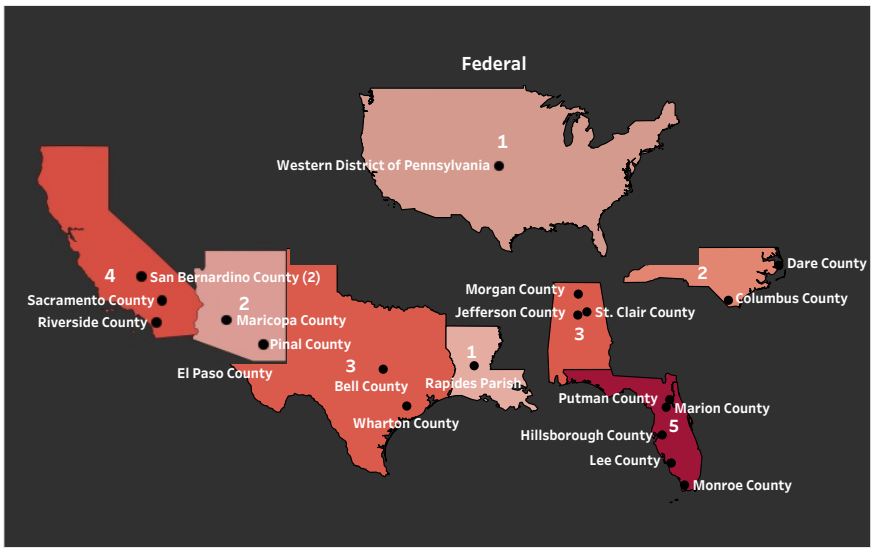
Name	Execution Date	State	
Phillip Hancock	11/ 30/ 2023	OK	Mr. Hancock sought DNA testing to support his claim that he killed Robert Jett and James Lynch in self-defense. He received support from two Republican legislators, and the Oklahoma Pardon and Parole Board recommended clemency by a 3 – 2 vote.
David Renteria	11/ 16/ 2023	TX	Mr. Renteria maintained that he was coerced by gang members into abducting five-year-old Alexandra Flores, and that he did not kill the girl. His attorneys unsuccessfully sought access to evidence they said would have shown he was not responsible for the child's death.
Casey McWhorter	11/ 16/ 2023	AL	Mr. McWhorter was just three months past his 18th birthday at the time of his crime. His jury recommended a death sentence by a vote of 10 – 2.
Brent Brewer	11/ 9/ 2023	TX	Mr. Brewer's death sentence relied on unreliable "future dangerousness" junk science testimony from a psychiatrist who never even met Mr. Brewer.
Jedidiah Murphy	10/ 10/ 2023	TX	Mr. Murphy had a long history of mental illness and killed 79-year-old Bertie Lee Cunningham during a dissociative episode. His appellate attorneys argued that, if his history of trauma and mental illness were presented to a jury today, he would not be sentenced to death.
Michael Zack	10/ 3/ 2023	FL	Attorneys for Mr. Zack argued that he was intellectually disabled due to his diagnosis of Fetal Alcohol Syndrome Disorder, making his execution unconstitutional under Atkins v. Virginia (2002).
Anthony Sanchez	9/ 21/ 2023	OK	Mr. Sanchez maintained his innocence in the murder of Juli Busken. His request to reexamine the DNA evidence in his case was denied.
James Barnes	8/ 3/ 2023	FL	At his trial, Mr. Barnes waived his right to counsel and to a jury, represented himself, pled guilty, and waived all mitigation evidence at sentencing. After his execution was scheduled, he discharged his lawyers and waived his appeals. A judge found Mr. Barnes competent for execution; however, a medical professional did not complete a mental evaluation of Mr. Barnes, who had a lengthy history of mental illness.
Johnny Johnson	8/ 1/ 2023	MO	Attorneys for Mr. Johnson asserted that his longstanding, severe mental illness and diagnosed schizophrenia prevented him from understanding the connection between his imminent execution and the crime he committed, rendering him incompetent for execution.
James Barber	7/ 21/ 2023	AL	Mr. Barber was sentenced to death for the 2001 murder of 75-year-old Dorothy Epps via a non-unanimous jury verdict. Sarah Gregory, the granddaughter of Dorothy Epps, had forgiven Mr. Barber and was against the execution.
Jemaine Cannon	7/ 20/ 2023	OK	At Mr. Cannon's trial, his defense team presented testimony from neuropsychologist Dr. Herman Jones, who falsely characterized the severe abuse and trauma Mr. Cannon had endured in childhood as making him more dangerous.
Duane Owen	6/ 15/ 2023	FL	Mr. Owen's attorneys presented evidence that he was incompetent to be executed. They argued it was error for the Florida courts to find that "the psychiatrists that only briefly examined Owen were more credible than the neuropsychologist who spent over 13 hours with Owen conducting interviews and testing."
Michael Tisius	6/ 6/ 2023	MO	Four jurors and two alternates from Mr. Tisius' trial said they would have voted for life, or would now support a reduced sentence, after they heard mitigating evidence that was not presented at his trial.
Darryl Barwick	5/ 3/ 2023	FL	Mr. Barwick was just 19 years old at the time of his crime. He was mentally ill, and had brain damage from the trauma he experienced, including his mother's attempt to abort him by throwing herself down the stairs while pregnant.
Louis Gaskin	4/ 12/ 2023	FL	Mr. Gaskin was tried by an all-white jury who voted 8 – 4 to sentence him to death, a verdict that would result in a life sentence in every state except Florida. His jury never heard evidence of his schizophrenia, brain damage, or trauma.
Arthur Brown	3/ 9/ 2023	TX	Mr. Brown maintained his innocence and may have been ineligible for the death penalty due to his intellectual disability. He had Fetal Alcohol Syndrome Disorder and as a child was placed in special education due to his low IQ scores.
Gary Green	3/ 7/ 2023	TX	Mr. Green's attorneys presented evidence that he was intellectually disabled and had schizoaffective disorder. Experts testified that the paranoia associated with his mental illness likely contributed to his crime.
Donald Dillbeck	2/ 23/ 2023	FL	Testing of Mr. Dillbeck indicated "widespread and profound neurological damage throughout Mr. Dillbeck's brain, with particular abnormality in the portions of the brain most responsible for regulating planning, mood, judgment, behavior, impulse control and intentionality."
John Balentine	2/ 8/ 2023	TX	Mr. Balentine was tried by all-white jury in Texas. Mr. Balentine's jury foreperson used racist epithets and told fellow jurors that a death sentence was "biblically justified." Mr. Balentine's own defense team passed handwritten notes calling his death sentence a "justifiable lynching."
Leonard Taylor	2/ 7/ 2023	MO	New evidence uncovered shortly before Mr. Taylor's execution supported his claim of innocence, confirming his claim that he was not in St. Louis at the time of the murders. Mr. Taylor claimed the medical examiner was pressured to change the time of death at the prosecutor's request.
Wesley Ruiz	2/ 1/ 2023	TX	Mr. Ruiz's legal team held racist beliefs that affected their ability to represent him. Multiple jurors said they would support a reduced sentence based on mitigating evidence that was not presented at his trial.
Scott Eizember	1/ 12/ 2023	OK	Mr. Eizember's clemency petition described the significant trauma he experienced during his youth and explained that he had been a model prisoner throughout his time on death row.
Robert Fratta	1/ 10/ 2023	TX	Mr. Fratta's trials were tainted by prosecutorial misconduct, which resulted in the reversal of his first conviction. At his second trial, prosecutors presented unreliable and misleading evidence, including a false claim that Mr. Fratta had Antisocial Personality Disorder, making him more likely to be dangerous.
Amber McLaughlin	1/ 3/ 2023	MO	Ms. McLaughlin was the first openly transgender prisoner executed in the United States. Ms. McLaughlin was sentenced to death by a Missouri judge after her jury could not come to a unanimous sentencing decision.

New Death Sentences

New Death Sentences from Seven States and the Federal Government

The number of people on death rows across the United States has continued to decline from a peak population in the year 2000. As of January 1, 2023, there were 2,331 people on death row.

2023 Death Sentences by State and County

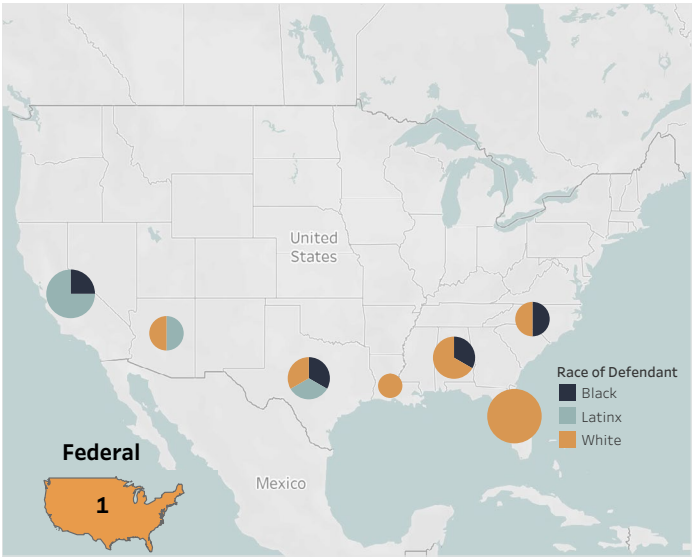


As of December 1, twenty-one people had been sentenced to death in 2023. Florida imposed the most death sentences in the U.S. in 2023, with five. California imposed four. Alabama and Texas imposed three each. Arizona and North Carolina imposed two each. Louisiana imposed a single new death sentence. The federal government also secured its first new death sentence since 2019.

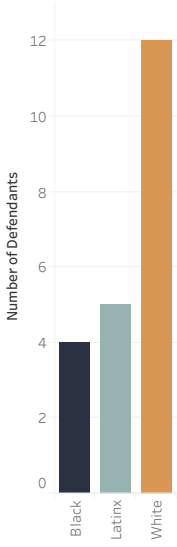
For the first time since executions resumed in 1977, the number of executions exceeded the number of new death sentences. This is further evidence of juries' growing reluctance to impose death sentences, and a reflection of the fact that today's executions are an indicator only of past support for the death penalty.

Nine of the defendants sentenced to death (42.9%) were people of color. Five Latino defendants and four Black defendants were sentenced to death.

Race of Defendants Sentenced to Death in 2023



Total Nationwide



Supreme Court

At the United States Supreme Court, 2023 saw the continued ceding of ground to state death penalty laws and procedures. Last year, the Court rolled back its own precedent in ***Shinn v. Ramirez***, holding that defendants with ineffective trial and appellate counsel had no right to an evidentiary hearing in federal court — in other words, defendants were limited to the evidence developed by the very lawyers they were challenging as ineffective. The decision, as Justice Sotomayor noted in her dissenting opinion, "overrule[d] two recent precedents" and "will leave many people who were convicted in violation of the Sixth Amendment to face incarceration or even execution without any meaningful chance to vindicate their right to counsel." The majority opinion held that federal review must be limited so as not to encroach on states' rights and complained that federal habeas review "overrides the State's sovereign power to enforce societal norms through criminal law." This year the Court enforced that point by overwhelmingly rejecting the petitions of state death-sentenced prisoners and declining to review cases that presented major constitutional concerns.

Stays of Execution Remain Rare

The data show death-sentenced petitioners continue to be largely unsuccessful when seeking stays of execution at the Supreme Court. In the 2022-23 term, the Court granted just one of 26 stays of execution sought, and has granted none of the eight stays sought during the first half of the 2023-24 term. A recent analysis by Bloomberg Law identified 270 emergency stay requests filed since 2013 and found that the Court agreed to stay an execution just 11 times in ten years (4%). Several of these stays concerned execution protocols, not challenges to the execution itself. Justice Neil Gorsuch issued clear instructions to the federal courts in ***Bucklew v. Precythe*** (2019), writing that "[c]ourts should police carefully against attempts to use such challenges as tools to interpose unjustified delay...[l]ast-minute stays should be the extreme exception, not the norm." On the other hand, the Court has not hesitated to lift a lower court's stay in order to allow an execution to proceed. *Bloomberg* found that the Court had granted 18 of 21 emergency requests by states to vacate stays of execution in the same ten-year period (86%).

In July, the Court denied James Barber's request for a stay to obtain more information about Alabama's botched executions last year, described by DPIC as "the year of the botched execution." Mr. Barber challenged the method in light of the "ever-escalating levels of pain and torture" reported

James Barber

by Kenneth Smith and Alan Miller during the state's aborted attempts to execute them in 2022. Justice Sotomayor wrote in dissent that the denial in Mr. Barber's case was "another troubling example of this Court stymying the development of Eighth Amendment law by pushing forward executions without complete information...the Eighth Amendment does not tolerate playing such games with a man's life."

Since the release of the *Bloomberg* report, the Court granted Texas' request to lift a lower court stay for Jedidiah Murphy, issuing the decision on its "shadow docket" with no accompanying opinion explaining its reasoning. Justices Sotomayor, Jackson, and Kagan dissented. Mr. Murphy's execution had been stayed based on his argument that DNA testing could have exonerated him of crimes that formed the basis for the jury's finding of "future dangerousness," a requirement for death sentences in Texas. This decision was the tenth stay lifted since Justice Ruth Bader Ginsburg's death in 2020—indicating the Court's growing intolerance of stays. Indeed, the Texas Attorney General's Office echoed Justice Gorsuch by arguing that Mr. Murphy had waited "until the eleventh hour" to raise a "manipulative" request for DNA testing. Texas executed Mr. Murphy on October 10, the 21st World Day Against the Death Penalty.

New Decisions on Procedure, with Rare Group Relief in Arizona

Rodney Reed

The cases the Court did decide hinged largely on procedure. In *Reed v. Goertz*, the Court ruled 6-3 that Texas prisoner Rodney Reed's request for DNA testing could proceed because his civil rights claim had been timely filed. Though Mr. Reed's innocence case has received substantial media attention, the Court ruled only on the interpretation of a statute regarding the timing of the two-year limit on federal claims, holding that the clock begins to run "at the end of the state-court litigation." Mr. Reed, who is Black, was sentenced to death by an all-white Texas jury for the rape and murder of a white woman in 1998. Mr. Reed's request to test the murder weapon and additional evidence, with the hope of identifying the true perpetrator, now proceeds in state court.

In *Escobar v. Texas*, the Court issued a two-sentence summary opinion reversing and remanding the case in light of the State's confession of error. Areli Escobar was convicted in 2011 of the rape and murder of a teenage girl in his apartment complex based almost entirely on the Austin Police Department crime lab's forensic testing. However, the State permanently closed the lab in 2016 after an investigation by the Texas Forensic Science Commission identified serious concerns about the accuracy of its DNA testing. The district attorney's office supported a new trial, but the Texas Court of Criminal Appeals denied relief. In its Supreme Court brief, the State wrote in support of Mr. Escobar that based on a "comprehensive reexamination" of the record, it was clear that prosecutors "had offered flawed and misleading forensic evidence at [his] trial and this evidence was material to the outcome of his case in violation of clearly established federal due process law."

In *Cruz v. Arizona*, the Court held that its earlier ruling in *Simmons v. South Carolina* (1994) applied retroactively. The case was the Court's second intervention to prevent Arizona from circumventing settled law. The Court previously held in *Simmons* that a defendant has the right to inform the jury at sentencing that a life sentence means life without parole. However, Arizona consistently denied defendants that right, disingenuously arguing to juries that life-sentenced prisoners might receive clemency. The Court rejected that argument in *Lynch v. Arizona* (2016), but the State later denied John Montenegro Cruz the right to renew his appeal on those grounds. The Court ruled 5-4 in favor of Mr. Cruz, holding that Arizona had created a "catch-22" for defendants. This decision resulted in rare group relief: two subsequent cases, *Burns v. Arizona* and *Ovante v. Arizona*, granted summary relief to seven additional defendants affected by the decision in *Cruz*. Experts estimate that up to thirty Arizona death-sentenced prisoners may be eligible for relief, which will likely result in new sentencing trials.

Precedent Observed in Dissents, Not Majority Opinions

This year, the justices issued more dissents to denials of certiorari in death penalty cases than they did to opinions on the merits — and these dissents uniformly addressed the Court's failure to uphold its own earlier decisions regarding the constitutional rights of criminal defendants. Justice Sonia Sotomayor, Justice Elena Kagan, and Justice Ketanji Brown Jackson (in her first full year on the bench) stood united in their criticism of the Court's "rush[...] to finality" in capital cases and cautioned that the Court's decisions and indifference may embolden states to disregard established Supreme Court precedent in the future.

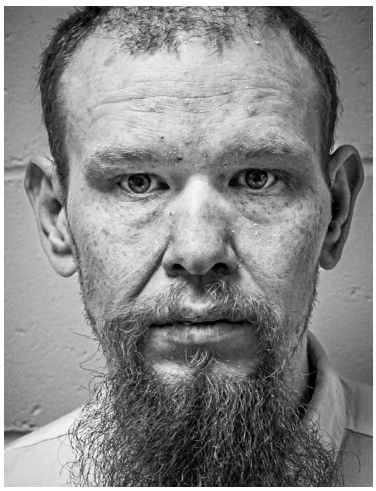
David Brown

In ***Brown v. Louisiana***, the evidence showed that the prosecution withheld a confession by David Brown's co-defendant that never mentioned Mr. Brown at all, a clear violation of ***Brady v. Maryland*** (1963). However, the Louisiana Supreme Court found no *Brady* violation, reasoning that the confession was not exculpatory because it did not point to an alternative killer and did not explicitly state that Mr. Brown was not involved. After the U.S. Supreme Court declined review, Justice Jackson, joined by Justices Kagan and Sotomayor, wrote in dissent that the Court had "repeatedly reversed lower courts—and Louisiana courts, in particular—for similar refusals to enforce the Fourteenth Amendment's mandate that favorable and material evidence in the government's possession be disclosed to the defense before trial." Justice Jackson argued that the "requirement that the withheld evidence must speak to or rule out the defendant's participation in order for it to be favorable is wholly foreign to our case law." Finally, she cautioned that the rejection of Mr. Brown's petition "should in no way be construed as an endorsement of the lower court's legal reasoning."

In ***Clark v. Mississippi***, the evidence established that prosecutors violated the defendant's constitutional rights by illegally striking potential jurors of color. Just four years earlier, the Court had decided ***Flowers v. Mississippi*** (2019), reversing the conviction and death sentence in a case where the same prosecutor had struck 41 of 42 Black jurors across six trials. The Court ruled in *Flowers* that the prosecutor's conduct violated ***Batson v. Kentucky*** (1986), the Court's landmark decision forbidding racial discrimination in jury selection. Like Curtis Flowers, Tony Clark's trial featured stark racial disparities: 34.5% of the jury pool was Black, but the seated jury had just one Black juror (7%) and eleven white jurors. In total, the State struck 87.5% of Black and just 16.7% of white potential jurors. On appeal, the State presented printouts of criminal records for everyone in the area with the same last name as Black prospective jurors to imply that those jurors had lied to the trial court about having no family members with felony convictions, but never asked about the records during voir dire to verify that they were even related. Justice Sotomayor forcefully dissented from the majority's decision not to review the case, joined by Justices Jackson and Kagan:

> Apparently *Flowers* was not clear enough for the Mississippi Supreme Court, however. In yet another death penalty case involving a Black defendant, that court failed to address not just one but three of the factors *Flowers* expressly identified. This was a direct repudiation of this Court's decision. This can only be read as a signal from the Mississippi Supreme Court that it intends to carry on with business as usual, no matter what this Court said in *Flowers*. By allowing the same court to make the same mistakes applying the same standard, this Court acquiesces in the Mississippi Supreme Court's noncompliance. Today, this Court tells the Mississippi Supreme Court that it has called our bluff, and that this Court is unwilling to do what is necessary to defend its own precedent. The result is that *Flowers* will be toothless in the very State where it appears to be still so needed.

In ***Johnson v. Vandergriff***, the defense asked the Court to order a hearing on Johnny Johnson's competence to be executed based on a psychiatrist's finding that he did not have a "rational understanding of the link between his crime and his punishment." Mr. Johnson, who suffered from schizophrenia and had decades of documented severe mental illness, said that Satan told him that his execution was part of Satan's plan to destroy the world. Mr. Johnson insisted that "he is a vampire and able to 'reanimate' his organs," and that he could "enter an animal's mind...to go on living after his execution." Although Mr. Johnson appeared to be a textbook case of incompetence for execution under ***Ford v. Wainwright*** (1986), a majority of the Court rejected his application and the execution proceeded. "The Court today paves the way to execute a man with documented mental illness before any court meaningfully investigates his competency to be executed," Justice Sotomayor wrote in dissent. "There is no moral victory in executing someone who believes Satan is killing him to bring about the end of the world... Instead, this Court rushes to finality, bypassing fundamental procedural and substantive protections."



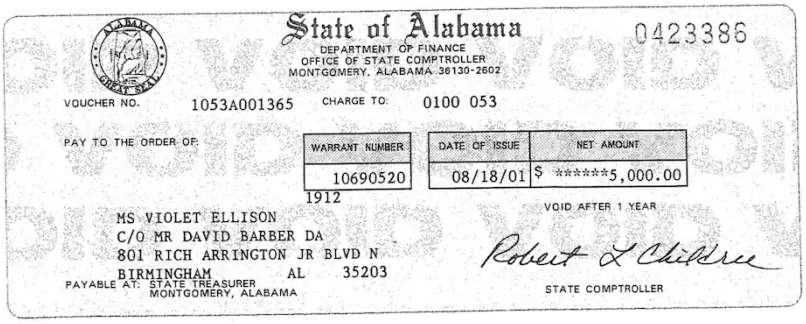
Johnny Johnson

The dissenting justices questioned why the Court did not resolve the cases through summary disposition, also referred to as "Grant-Vacate-Remand" or GVR, as it had in *Escobar*, when doing so would have been simple and straightforward. Justice Sotomayor had previously observed in a 2022 dissent from denial of certiorari that the Court "appears to be quietly constricting its GVR practice" in criminal cases even when the ruling held "great stakes for the individual petitioner." In *Clark*, Justice Sotomayor wrote that the starkness of the misconduct should have made it an "easy case" to resolve—the Court could have just vacated the judgment and directed the Mississippi Supreme Court to conduct

a proper analysis—but that "appears to be too much for this Court today." Likewise, in *Brown* and *Johnson*, Justices Jackson and Sotomayor wrote that they would have summarily reversed. In *Burns v. Mays*, also denied review, the defense lawyer failed to impeach a surviving witness who gave contradictory testimony at each co-defendant's trial; Mr. Burns' petition argued that the lawyer's conduct was ineffective under *Strickland v. Washington* (1984). Justice Sotomayor dissented that the "Court's failure to act is disheartening because this case reflects the kind of situation where the Court has previously found summary action appropriate," and the "need for action is great because Burns faces the ultimate and irrevocable penalty of death." As a result, as Justice Sotomayor put it in *Clark*, when the "Court is unwilling to take even that modest step to preserve the force of its own recent precedent... courts throughout the State will take note and know that this Court does not always mean what it says."

Review Denied for High-Profile Innocence Cases

The Court also turned away several high-profile innocence cases this year. As former Justice Antonin Scalia stated in *Herrera v. Collins* (1993), the Court "has *never* held that the Constitution forbids the execution of a convicted defendant who has had a full and fair trial but is later able to convince a habeas court that he is 'actually' innocent." The decisions of the Court this year indicate a reluctance to assume a role as the court of last resort for the wrongfully convicted.


State of Alabama
DEPARTMENT OF FINANCE
OFFICE OF STATE COMPTROLLER
MONTGOMERY, ALABAMA 36130-2602
0423386
VOUCHER NO. 1053A001365 CHARGE TO: 0100 053
PAY TO THE ORDER OF:
WARRANT NUMBER 10690520
DATE OF ISSUE 08/18/01
NET AMOUNT $ ******5,000.00
1912
VOID AFTER 1 YEAR
MS VIOLET ELLISON
C/O MR DAVID BARBER DA
801 RICH ARRINGTON JR BLVD N
BIRMINGHAM AL 35203
PAYABLE AT: STATE TREASURER MONTGOMERY, ALABAMA
STATE COMPTROLLER
Check made out to witness Violet Ellison

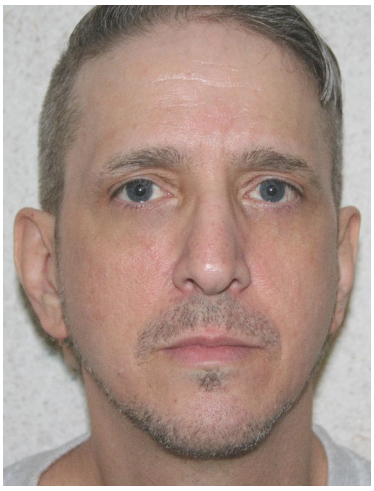
In *Toforest Johnson's* case, Alabama prosecutors flatly denied for seventeen years that they had compensated their star witness until a former employee of the prosecutor's office told the defense team about a set of "confidential reward files" that were never disclosed. This revelation prompted the State to finally admit it had paid $5,000 to the witness, claiming that the check to her had been "misfiled." The witness, Violet Ellison, had approached police after the posting of a public reward offer for the same amount, and testified at trial that she overheard a three-way jail phone call in which a man referred to himself as "Toforest" and confessed to the crime. Mr. Johnson's conviction largely rested on Ms. Ellison's "earwitness" testimony even though she had never met Mr. Johnson and over ten eyewitnesses placed him across town at a nightclub at the time of the crime. The current district attorney, the original trial prosecutor, and three of the original jurors all support a new

trial for Mr. Johnson. Nevertheless, the Court rejected his petition on appeal from denials of relief in Alabama courts.

In Robert Roberson's case, a robust record of scientific and medical evidence presented in state court demonstrated that no murder occurred at all. Mr. Roberson was convicted of killing his daughter, Nikki, based on the now-discredited scientific theory of "Shaken Baby Syndrome." Experts say that pneumonia and an accidental fall caused Nikki's death, not Mr. Roberson. At least 32 caregivers convicted based on Shaken Baby Syndrome in the past have been exonerated, and even its creator Dr. Norman Guthkelch has disavowed the condition. Dr. Guthkelch called for a review of the cases in 2012, writing that he was "quite disturbed" that what he "intended as a friendly suggestion for avoiding injury to children has become an excuse for imprisoning innocent people." When Texas courts denied Mr. Roberson relief, a group of physicians, scientists, and federal judges supported his request for the Supreme Court to review his case. But as in Mr. Johnson's case, the Court denied review.

Robert Roberson with his daughter Nikki

The Court's denial of review in innocence cases paralleled its procedural decision in *Jones v. Hendrix*, where it held that federal prisoners who are actually innocent are not entitled to an opportunity to petition the court for release. The petitioner, Marcus DeAngelo Jones, was incarcerated based on conduct that the Court later found did not constitute a crime. However, when he tried to argue this claim on appeal, he was barred under the Anti-Terrorism and Effective Death Penalty Act's (AEDPA) strict rules limiting successive petitions. The Court held that Mr. Jones had no "end-run" around AEDPA even though he was by definition innocent of the charges. In dissent, Justices Sotomayor and Kagan criticized the "disturbing results" of the decision: a "prisoner who is actually innocent, imprisoned for conduct that Congress did not criminalize, is forever barred...from raising that claim, merely because he previously sought postconviction relief. [...] By challenging his conviction once before, he forfeited his freedom." Though *Jones* was not a death penalty case, its holding further narrows options for death-sentenced prisoners with innocence claims. In a separate dissent, Justice Jackson expressed that she was "deeply troubled by the constitutional implications of the nothing-to-see-here approach that the majority takes with respect to the incarceration of potential legal innocents."



Richard Glossip

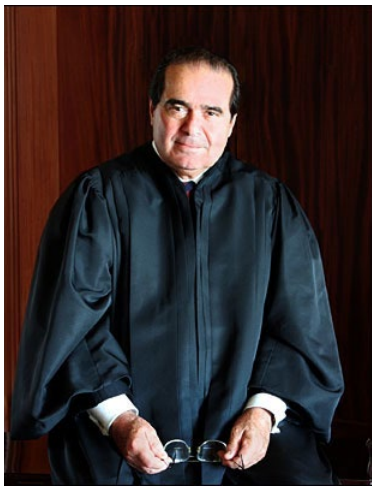
The Court has yet to announce whether it will review the widely-reported innocence case of Richard Glossip, who received the Court's only stay of execution this year pending the outcome of his petition for certiorari. Mr. Glossip is in the rare position of having the State's support for his claim of prosecutorial misconduct—but was forced to petition the Supreme Court for relief when the Oklahoma Court of Criminal Appeals denied a joint request for a new trial. Evidence shows that prosecutors pressured Mr. Glossip's co-defendant Justin Sneed to implicate Mr. Glossip and lie on the stand regarding the murder of motel owner Barry Van Treese, who had employed both men. The State did not dispute that Mr. Sneed bludgeoned Mr. Van Treese to death while high on methamphetamines, but argued that Mr. Glossip had ordered the killing. Mr. Glossip has received nine execution dates and eaten his "last meal" three times. A bipartisan group of 62 Oklahoma legislators supports relief for Mr. Glossip. "There has never been an execution in the history of this country where the state and the defense agreed that the defendant was not afforded a fair trial," said Representative Kevin McDugle, a Republican. "Oklahoma cannot become the first."

Some Death Penalty States Urge the Court to Adopt a New Eighth Amendment Standard

First used in *Trop v. Dulles* (1958), the Court's practice has been to look to state legislatures, jury verdicts, and other objective criteria to evaluate whether a punishment is cruel and unusual in violation of the Eighth Amendment, drawing its meaning from "the evolving standards of decency that mark the progress of a maturing society." The Court applied this test to reach landmark rulings in *Ford v. Wainwright* (1986) (holding the execution of people with insanity unconstitutional), *Roper v. Simmons* (2005) (holding the execution of juveniles unconstitutional), *Atkins v. Virginia* (2002) (holding the execution of people with intellectual disability unconstitutional), and *Kennedy v. Louisiana* (2008) (holding the execution of people who commit non-homicide crimes unconstitutional).

Some justices on the Court have questioned the doctrine over the years, advocating for an "originalist" interpretation of the Eighth Amendment that rejects only punishments that were considered "cruel and unusual" when the Constitution was drafted. Former Justice Scalia believed that the Eighth Amendment "is addressed to always-and-everywhere 'cruel' punishments, such as the rack and the thumbscrew," but "is not a ratchet, whereby a temporary consensus on leniency for a particular crime

fixes a permanent constitutional maximum." Justice Thomas has echoed these arguments, writing that "the Framers did not provide for the constitutionality of a particular type of punishment to turn on a snapshot of American public opinion taken at the moment a case is decided." Justice Gorsuch, who joined the Court in 2017, endorsed the originalist approach in *Bucklew*, writing that capital punishment is lawful because it was "the standard penalty for all serious crimes" at the time of the founding and appears in the Constitution. He did not mention the "evolving standards of decency" test once in his opinion. Justice Gorsuch's majority opinion garnered the votes of four other conservatives still on the Court, but no other current member of the Court except Justice Thomas has directly criticized the test.



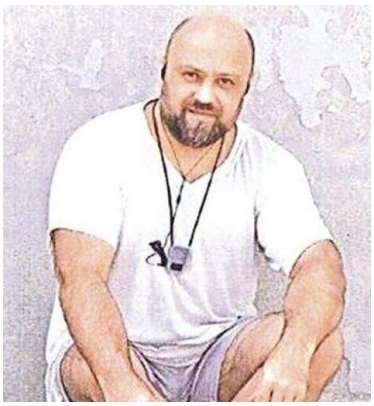
Justice Antonin Scalia

This year in *Hamm v. Smith*, Alabama appealed to the Supreme Court after lower courts vacated Joseph Clifton Smith's death sentence, having found that Mr. Smith had an intellectual disability that rendered him ineligible for execution under *Atkins*. Alabama argued in its petition that *Atkins'* "dubious methodology subjects States not to the fixed and objective strictures of the Constitution's original meaning but to the 'judgment' of other States." Attorneys General of thirteen death penalty states, including Texas and Florida, filed an amicus brief in support of Alabama in which they advocated for a new "originalist" test. They argued that the "evolving standards of decency" test is a "lawless standard" that "cannot be squared with the text, structure, and history of the Eighth Amendment," and "States will continue to be on the receiving end of federal overreach" until the Court imposes a new standard. The Court has not yet announced whether it will grant certiorari in Mr. Smith's case.

Developments in Federal Government

Lawsuit Alleges Federal Death Row Conditions Violate U.S. Constitution and Human Rights Treaty Obligations

In January 2023, Jurijus Kadamovas, a Russian national on U.S. federal death row, filed a civil rights lawsuit alleging unconstitutional conditions of confinement. The complaint, filed on behalf of Mr. Kadamovas and seeking class certification for 37 other individuals incarcerated in the United



Jurijus Kadamovas

States Penitentiary in Terre Haute, Indiana, alleges that the "severely isolating" and "unrelenting solitary confinement" on death row falls below the standards outlined by international human rights instruments regarding the treatment of prisoners, including the International Covenant on Civil and Political Rights and the United Nations Standard Minimum Rules for the Treatment of Prisoners. The suit, which was filed by the ACLU of Indiana and national law firm Faegre Drinker Biddle & Reath LLP, argues that this treatment is also a violation of the U.S. Constitution's prohibition against cruel and unusual punishment. As of December 2023, Mr. Kadamovas' lawsuit is pending in federal court.

Federal Government Seeks Death Sentences

Trial of Sayfullo Saipov Ends in Life Sentence

Sayfullo Saipov

In January 2023, a federal jury in the Southern District of New York found Sayfullo Saipov guilty of intentionally killing eight people in New York City by driving a truck on a bike path in 2017. In March 2023, the same jury concluded its sentencing-phase deliberations without coming to a unanimous decision. Under federal law, if the jury in the penalty phase of the trial cannot come to a unanimous decision, the defendant cannot be sentenced to death. Mr. Saipov was sentenced to eight consecutive life sentences, two concurrent life sentences, and a consecutive sentence of 260 years in prison for carrying out an act of terrorism. At trial, neither Mr. Saipov nor his attorneys contested his involvement in the crime, but argued that a death sentence would not bring more justice: "It is not necessary to kill Sayfullo Saipov," said attorney David Patton. "It is not necessary to keep us or anyone else safe. It is not necessary to do justice. So we are asking you to choose hope over fear, justice over vengeance and, in the end, life over death."

Trial of Robert Bowers Ends in Death Sentence

In May 2023, Robert Bowers went to trial five years after his attack on the Pittsburgh, Pennsylvania Tree of Life Synagogue that resulted in 11 deaths and many more injuries. Mr. Bowers had offered to plead guilty in exchange for a sentence of life without the possibility of parole, but the federal

government rejected Mr. Bowers' offer. Twelve death-qualified jurors and six alternates were selected to hear federal charges that included hate-based crimes. During voir dire, prosecutors struck all Black, Latinx, and Jewish potential jurors. Victims' family members did not agree about whether a death sentence should be sought. A 2021 letter from seven of the nine families who lost a relative expressed support for the death penalty, while the other families expressed their concerns with the incompatibility of Judaism and capital punishment. In July 2023, the jury found Mr. Bowers guilty of all 63 federal charges related to the synagogue shooting. Following an eligibility determination phase and two hours of deliberation, the jury determined that prosecutors had met their burden by proving that Mr. Bowers had the "necessary intent" to commit a crime with specific aggravating factors that made him eligible for the death penalty. Attorneys for Mr. Bowers told jurors about his history of mental illness and brain impairment from childhood, including several suicide attempts and commitments to psychiatric facilities before the age of 13, and argued that he was too delusional to be eligible for the death penalty.

On August 1, 2023, the jury unanimously recommended a sentence of death for Mr. Bowers. This is the first new federal death sentence since 2019 and the first secured during the Biden Administration. Mr. Bowers may face a state trial and potential state death sentences if the Allegheny County, Pennsylvania District Attorney's office decides to prosecute him. There is currently a governor-imposed moratorium on executions in Pennsylvania.

Department of Justice Continues Pause on Federal Executions But Defends Existing Death Sentences

Attorney General Merrick Garland

Since Attorney General Garland took office, the Department of Justice (DOJ) has withdrawn notices of intent to seek the death penalty for 32 defendants that were initially filed during President Trump's administration. Capital charges against Mr. Saipov and Mr. Bowers were both authorized under Attorney General Barr and prosecuted this year by Attorney General Garland. In March 2023, the U.S. Attorney for the District of North Dakota, at the direction of AG Garland, withdrew the notice of intent to seek another death sentence for Alfonso Rodriguez, Jr., who had been convicted and sentenced to death in 2007 for the 2003 kidnapping and murder of college student Dru Sjodin. In September 2021, U.S. District Court Judge Ralph Erickson overturned Mr. Rodriguez's death sentence

because of false testimony presented at trial, in addition to defense counsel's failure to introduce evidence of their client's post-traumatic stress disorder, which may have prevented him from entering an insanity defense.

No new notices of intent to seek a federal death sentence have been authorized by AG Garland. In February 2023, the DOJ decided against seeking a death sentence for Patrick Crusius, who pled guilty to nearly 50 federal hate crime charges in the racially motivated killing of 23 Latinx people and injuring of 22 others in an El Paso, Texas Walmart in August 2019. Mr. Crusius intended on pleading not guilty to the charges against him before federal prosecutors decided against seeking the death penalty. Attorneys for the Department of Justice agreed with Mr. Crusius' defense counsel that Mr. Crusius has schizoaffective disorder. The mental health of a defendant is one factor that must be considered by federal prosecutors when deciding whether to seek a death sentence. Pursuant to Mr. Crusius' plea agreement, he received 90 consecutive life sentences for the 90 charges against him. In July 2023, El Paso District Attorney Bill Hicks announced that he intends to seek a state death sentence for Mr. Crusius, who remains in local custody. In 2023, the Department of Justice agreed to the resentencing to life without parole for Jeffrey Paul, a severely mentally ill prisoner who was federally sentenced to death for his involvement in the robbery and murder of a retired national park employee in 1995.

The Department of Justice is still considering whether to seek a death sentence for Payton Gendron, who is accused of the racially motivated killing of 10 Black people and injury of many others at the Tops Friendly Supermarket in Buffalo, New York in May 2022. In November 2022, Mr. Gendron pled guilty to 15 state charges, including ten counts of first-degree murder, three counts of attempted second-degree murder as a hate crime, one count of second-degree criminal possession of a weapon, and one count of domestic terrorism in the first degree. In February 2023, Mr. Gendron was sentenced to the most severe punishment in New York state: life in prison without parole. New York abolished the death penalty in 2007.

Representative Ayanna Pressley

Federal Legislation Introduced to End Federal Death Penalty

In July 2023, Congresswoman Ayanna Pressley and Senate Majority Whip Dick Durbin reintroduced the *Federal Death Penalty Prohibition Act of 2023*. The bicameral legislation would prohibit the use of the death penalty at the federal level and would require

the commutation of all death sentences for prisoners currently on federal death row. Rep. Pressley and Sen. Durbin previously introduced legislation in 2019, following then-Attorney General Bill Barr's announcement regarding the resumption of federal executions, and in 2021, following the execution spree under President Trump's administration. Both Rep. Pressley and Sen. Durbin have also written to the Department of Justice and urged AG Merrick Garland to keep the pause on federal executions in place.

U.S.S. Cole and 9/11 Military Commissions Capital Proceedings Stall

On September 6, 2023, President Biden rejected proposed conditions for a plea agreement with five Guantanamo Bay prisoners accused of aiding in the preparation of the 9/11 terrorist attacks that would have removed the death penalty as a possible sentence. According to the *New York Times*, the defendants' plea request included the condition that they avoid solitary confinement and receive mental health treatment to mitigate the effects of the torture they endured at the hands of American agents. President Biden rejected this deal, as a spokesperson for the National Security Council told the press that "the President does not believe that accepting the joint policy principles as a basis for a pre-trial agreement would be appropriate in these circumstances." The U.S. Department of Defense's Office of the Convening Authority for the Office of Military Commissions will make the final decision regarding settlement.

On September 21, 2023, Judge Matthew McCall ruled that Ramzi bin al-Shibh, one of the five defendants in pretrial capital proceedings, is mentally incompetent to stand trial. Mr. bin al-Shibh has been in military custody for 21 years and will remain at Guantanamo as authorities treat his post-traumatic stress disorder caused by the "enhanced interrogations" employed by the U.S. government and its agents.

Ramzi bin al-Shibh
Image received from David Bruck

In his opinion, Judge McCall wrote that Mr. bin al-Shibh is wholly focused on his delusions and thus incompetent to stand trial. "They disrupt his sleep and lead to outbursts that result in disciplinary confinement measures. The result is a sleep-deprived accused whose primary focus is on stopping attacks, not defending himself against the charged offenses.... The fact that Mr. bin al-Shibh understands the vital role that his defense counsel plays and yet, again and

again, he focuses his counsel's work on stopping his delusional harassment, demonstrates the impairment of his ability to assist in his defense."

On August 18, 2023, Judge Lanny Acosta Jr., a military judge overseeing the pretrial capital proceedings of Abd al-Rahim al-Nashiri, a Saudi national who is accused of organizing the October 2000 bombing of the U.S.S. Cole, ruled that Mr. al-Nashiri's confessions could not be entered in evidence at trial because they are products of torture. Judge Acosta acknowledged that excluding this evidence may have societal implications, but "permitting the admission of evidence obtained by or derived from torture by the same government that seeks to prosecute and execute the accused may have even greater societal cost."

Prosecutors argued that Mr. al-Nishiri's confessions were voluntary and thus admissible in court, but the judge disagreed. "Even if the 2007 statements were not *obtained by* torture or cruel, inhuman, and degrading treatment, they were *derived* from it," said Judge Acosta (emphasis in original).

Defense attorneys have long argued that the torture and trauma endured during years-long interrogations at CIA blacksites and Guantanamo Bay have caused permanent damage to all the 9/11 and U.S.S. Cole defendants and should make them ineligible for the death penalty.

International

Continued Isolation of the United States as a Retentionist Country Amid Rising Global Execution Numbers

The United States remains a global outlier in its use of the death penalty. The overall worldwide trend toward abolition of the death penalty in law or practice continued in 2023 with developments in Malaysia, Kenya, and Ghana. On July 4, Malaysia took a step closer to abolition by eliminating the mandatory death penalty for 11 capital offenses; following this reform, seven death row prisoners were resentenced to a 30 year life imprisonment term on November 14. In July, Kenyan President Dr. William Ruto commuted all death sentences imposed prior to November 21, 2022 to life sentences. On July 25, Ghana joined 28 other African nations in abolishing the death penalty. Uganda is at odds with the trend toward abolition in sub-Saharan Africa. It passed the Anti-Homosexuality Act 2023 on May 29 that made the death penalty a possible punishment for "aggravated homosexuality." A 20-year-old man has recently been charged under this new law.

Although the geographic scope of capital punishment has narrowed, the total number of known executions worldwide increased for the second year in a row. This year's increase is attributable to a surge in executions by Iran, which has reportedly surpassed 700 executions for the first time in eight years. Saudi Arabia (at least 121 executions as of November 8) and Somalia (at least 55 executions as of November 22) have the second and third highest number of reported executions in the world.

Though the United States has at times joined the international community in condemning the unlawful actions of fellow retentionist countries, the criticism has limited impact given the fact that the Inter-American Commission on Human Rights (IACHR)'s precautionary measures for American death-sentenced prisoners are frequently ignored. This year, the IACHR granted precautionary measures to South Carolina prisoner Richard Moore and to Missouri prisoner Michael Tisius; Mr. Tisius was executed on June 6.

Increased Use of the Death Penalty in Violation of International Law and Norms

Morris Tidball-Binz

"Although international law permits the death penalty in very limited circumstances, in practice it is almost impossible for States to impose the death penalty while complying with human rights obligations, including the absolute and universal prohibition of torture."

Alice Jill Edwards

— Statement from Morris Tidball-Binz, UN Special Rapporteur on Extra-judicial, Summary or Arbitrary Executions, and Alice Jill Edwards, UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Secrecy shields much of the information about the use of capital punishment in the U.S. and in many retentionist countries. China, Vietnam, and North Korea classify information relating to the death penalty, such as number of death sentences and executions, as state secrets. China is estimated to execute thousands of people per year, making it the world's leading executioner, and North Korea has executed at least 17 people this year. In Iran, the Revolutionary Court has reportedly convicted and

sentenced to death individuals without adequate counsel in quick, secret trials, routinely characterized by human rights advocates as unfair and lacking due process.

Ill-treatment of prisoners or trials based on information obtained through torture are prohibited under international law. Some countries, including Iran, Vietnam, and Saudi Arabia, have executed individuals this year despite serious allegations of torture. In Vietnam, Le Van Manh was executed amidst numerous appeals from the international community to spare his life. "I am disturbed by the execution of Le Van Manh despite calls for clemency, in light of serious doubts about the fairness of his trial proceedings and credible allegations of torture or ill-treatment to extract a confession," said Mr. Tidball-Binz.

Executions for Drug Crimes and Other Non-Homicides

The International Covenant on Civil and Political Rights permits the use of the death penalty for "the most serious offenses," defined as intentional killing, in retentionist countries; only two retentionist countries, Jamaica and Saint Vincent and the Grenadines, follow this standard. In 2023, many people were charged and executed for non-serious offenses, such as drug-related offenses and political speech. As of October 10, 305 executions in Iran, or 57%, have been the result of drug-related charges, marking a dramatic increase from the previous year's number of 180 drug-related executions. Saudi Arabia continues to execute people for drug-related crimes after resuming in November 2022. In the 54th session of the UN Human Rights Council, Saudi Arabia led a proposal to remove paragraphs in a proposed resolution condemning capital punishment for drug-related crimes, emphasizing state sovereignty in establishing appropriate legal punishments; the proposal was rejected. Singapore has notoriously strict laws on drug possession, prescribing the death penalty for people convicted of trafficking more than 15 grams of heroin, 30 grams of cocaine, 250 grams of methamphetamines, or 500 grams of cannabis. As of July 28, at least four people were executed for drug-related offenses in Singapore. Pakistan has sentenced several people to death for sharing blasphemous content on social media. Saudi Arabia sentenced a retired schoolteacher to death for retweeting criticism of the government on social media. Iran executed at least five protesters on security-related charges and two for blasphemy. In North Korea, nine people were publicly executed for operating a beef distribution ring, one warehouse manager for allegedly stealing 20,000 doses of penicillin, and two women for reportedly watching South Korean television programs.

Over-Representation of Vulnerable Populations

Vulnerable populations, such as the very poor, people with serious mental impairments, and juveniles, as well as people from ethnic, religious, or racial minorities, are overrepresented on death rows across most retentionist countries. At least three juveniles are believed to have been executed in Iran, and the Baluch population accounts for 21% of all executions and 31% of drug-related executions in 2023 (as of October 10) despite comprising only 2-5% of Iran's population. 90% of those executed for security-related charges in Iran in the last 13 years were Kurdish (51%), Baluch (28%), and Arab (15%). Despite a 2020 royal decree ordering the implementation of a 2018 law abolishing the death penalty for juveniles, at least nine children in Saudi Arabia face the death penalty. In June, Saudi Arabia executed two Bahraini Shi'a on terrorism-related charges after what Amnesty International described as a "grossly unfair trial." These two are among at least 16 executions of Shiites in Saudi Arabia this year.

Key Quotes

Now I know the public, quite reasonably, has conjured up in their minds, what the worst of the worst is, and it has to do with the crime committed. As a lay person, public citizen, I can understand that. But being involved in corrections at the level that I've been over 20 years, at least, and administering prisons, I've been able to see below the surface of that type of classification. So, it's not that easy to come up with a singular profile of what the worst of the worst might be.

— *Frank Thompson, former Oregon Superintendent of Prisons, on Discussions with DPIC*

It's a very important issue that has to be done correctly, and we will take the time to fix the protocol and to make certain that we don't move forward until everything's in place.

— *Governor Bill Lee, discussing Tennessee's execution protocol*

This Court has so prioritized expeditious executions that it has disregarded well-reasoned lower court conclusions, preventing both the meaningful airing of prisoners' challenges and the development of Eighth Amendment law... Unfortunately, lower courts are receiving the message.

— *Justice Sonia Sotomayor, dissenting in Barber v. Ivey*

Justice has been delayed for too long in South Carolina... This filing brings our state one step closer to being able to once again carry out the rule of law and bring grieving families and loved ones the closure they are rightfully owed.

— *South Carolina Governor Henry McMaster announcing the state's ability to resume executions*

If I thought that the death penalty was going to stop people from committing brutal murders, I would seek it. But we know that it won't... The reality is that the death penalty doesn't serve as a deterrent, and the death penalty does not bring people back...What I can assure you is that we're going to do everything within our legal power to make sure that this defendant never is out of prison.

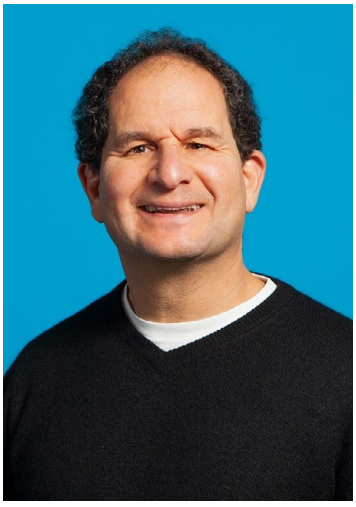
— *Los Angeles County District Attorney George Gascón, speaking at a press conference*

If the death penalty is reinstated, or if we start seeing it applied more, we can expect it's going to be applied in a disproportionate way and that those are the same racial disparities that we have seen over years. My concern is [the number of defendants of color sentenced to death] may even increase because the rhetoric lately has been so much stronger. We have to know that if we're going to punish more, that it's going to be disproportionately borne by Black and Brown communities.

— *Jamila Hodge, Executive Director of Equal Justice USA in an op-ed piece in The Hill*

In my heart, I feel that he is not only remorseful for his actions but has been doing good works for others and has something left to offer the world... I respectfully request that his sentence be changed to life in prison where hopefully he can continue to help others and make amends for his past crimes.

— *Sammie Gail Martin, sister of William Speer's murder victim Gary Dickerson*



For me, the opposition to capital punishment has just been a natural extension of our pro-life position of building an inclusive society, a society that welcomes everyone into the human family and says: 'Listen, your worth is not dependent on whether somebody wants you or not.' God's given you human dignity, God's giving you worth, and so we just want to stand on the side of the Lord.

— *Evangelical Pastor Rich Nathan on Discussions with DPIC*

Had we not had this trial, the deeds of this criminal would have been glossed over in history... The purpose of the death penalty is not so much punishing, as cutting off the person from society, eliminating the evil, taking away the risk, the potential for infection, and the possibility of further harm to the citizens.

— *Audrey Glickman, survivor of the Tree of Life Synagogue shooting, on the sentencing of Robert Bowers*

I am also deeply troubled by the constitutional implications of the nothing-to-see-here approach that the majority takes with respect to the incarceration of potential legal innocents... Apparently, legally innocent or not, Jones must just carry on in prison regardless, since...no path exists for him to ask a federal judge to consider his innocence assertion. But forever slamming the courtroom doors to a possibly innocent person who has never had a meaningful opportunity to get a new and retroactively applicable claim for release reviewed on the merits raises serious constitutional concerns.

— *Justice Ketanji Brown Jackson, dissenting in Jones v. Hendrix*

As governors, we had the power to commute the sentences of all those on Alabama's death row to life in prison... We missed our chance to confront the death penalty and have lived to regret it, but it is not too late for today's elected officials to do the morally right thing.

— *Former Alabama Governors Don Siegelman (D) and Robert Bentley (R) discuss their regrets surrounding capital punishment*

DEATH PENALTY INFORMATION CENTER ▪ WASHINGTON, DC
202-289-2275 (Main) • 202-289-4022 (Media)
dpic@deathpenaltyinfo.org • www.deathpenaltyinfo.org

The **Death Penalty Information Center** (DPIC) is a national non-profit organization whose mission is to serve the media, policymakers, and the general public with data and analysis on issues concerning capital punishment and the people it affects. DPIC does not take a position on the death penalty itself but is critical of problems in its application. This report was written by DPIC's Executive Director Robin M. Maher and Managing Director Anne Holsinger, with the assistance of DPIC staff (Hayley Bedard, Tiana Herring, Dane Lindberg, Nina Motazedi, Leah Roemer, and Rickelle Williams) and interns (Skylar Bates and Isabel Carles). Further sources for facts and quotations are available upon request. The Center is funded through the generosity of individual donors and foundations, including the Roderick and Solange MacArthur Justice Center; the Fund for Nonviolence; M. Quinn Delaney; and the Tides Foundation. Funding for DPIC's law fellow position was provided in part by the UC Berkeley School of Law. The views expressed in this report are those of DPIC and do not necessarily reflect the opinions of its donors.