

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

THOMAS E. CREECH,

Petitioner,

v.

STATE OF IDAHO,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Idaho

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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IN THE SUPREME COURT OF THE STATE OF IDAHO
Docket No. 51229

THOMAS EUGENE CREECH,)	
)	
Petitioner-Appellant,	)	Boise, February 2024 Term
)	
v.	)	Opinion filed: February 9, 2024
)	
STATE OF IDAHO,	)	Melanie Gagnepain, Clerk
)	
Respondent.)	
)	

Appeal from the District Court of the Fourth Judicial District of the State of Idaho, Ada County. Jason D. Scott, District Judge.

The district court’s judgment is affirmed.

Federal Defender Services of Idaho, attorneys for Appellant. Jonah J. Horowitz argued.

Raúl R. Labrador, Idaho Attorney General, Boise, attorneys for Respondent. L. LaMont Anderson argued.

BEVAN, Chief Justice.

Thomas Eugene Creech appeals from the district court’s order dismissing his successive post-conviction petition for relief as untimely. Creech was sentenced to death in 1995 for the murder of fellow inmate David Jensen. Creech argues that his death sentence, which was imposed by a judge without the participation of a jury, is unlawful based on the prohibition against cruel and unusual punishment under the U.S. Constitution and the Idaho Constitution. The district court dismissed Creech’s petition as untimely under Idaho Code section 19-2719. For the reasons stated below, we affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

Creech is a capital inmate incarcerated by the State of Idaho.¹ He pleaded guilty to first-degree murder in 1981 and was sentenced to death by a judge in 1982. Creech appealed his death sentence to this Court, where he argued that “Idaho’s death penalty provisions are unconstitutional [because] jury participation is not required in the sentencing decision, but rather the discretion to impose a death sentence is vested in a judge.” *State v. Creech (Creech I)*, 105 Idaho 362, 372, 670 P.2d 463, 473 (1983). This Court rejected that argument, holding that “there is no federal constitutional requirement of jury participation in the sentencing process and that the decision to have jury participation in the sentencing process, as contrasted with judicial discretion sentencing, is within the policy determination of the individual states.” *Id.* at 373, 670 P.2d at 474.

Creech then filed his first habeas petition, which was denied by the federal district court. *Creech v. Arave (Creech III)*, 947 F.2d 873, 875 (9th Cir. 1991). On appeal to the Ninth Circuit Court of Appeals, Creech argued “that the Constitution guarantees a jury trial on the existence of aggravating circumstances which may result in the imposition of the death penalty.” *Id.* at 885. The Ninth Circuit declined to adopt that argument, but granted Creech habeas relief regarding his death sentence. *Id.* at 881-86. The United States Supreme Court reversed part of the Ninth Circuit’s decision, but it did not disturb the grant of relief on Creech’s death sentence. *See Arave v. Creech (Creech IV)*, 507 U.S. 463 (1993). Based on that grant of relief, the Court remanded the case for further proceedings because Creech was entitled to resentencing in state district court under the Ninth Circuit’s order. *Id.*

Creech was resentenced in state district court in March 1995. *State v. Creech (Creech V)*, 132 Idaho 1, 6, 966 P.2d 1, 6 (1998). After hearing new mitigating evidence, Creech was sentenced to death by a judge, without jury participation. *Id.* at 6, 966 P.2d at 6. The 1995 death sentence remains in effect today and is the sentence from which Creech’s successive post-conviction case derives.

Following a series of state and federal proceedings, Creech filed his second successive post-conviction petition in state court. In his petition, Creech argued that his death sentence was unconstitutional under the Sixth Amendment and that he was entitled to jury sentencing under *Ring v. Arizona*, 536 U.S. 584, 606-07 (2002), which held that statutory aggravating factors must

¹ Creech’s prior cases are complex and begin in the 1970s. The history is partly recounted in *Creech v. Richardson*, 59 F.4th 372, 376-82 (9th Cir.), *cert. denied*, 144 S. Ct. 291 (2023). For ease of reference, this opinion briefly summarizes the relevant appeals and post-conviction claims that predate this appeal.

be found by juries rather than judges. The district court dismissed the successive petition and this Court affirmed.

After those state proceedings ended, the stay on a federal habeas proceeding that Creech initiated in 1999 was lifted. When Creech resumed his federal habeas case, he raised a variety of new claims, which included several jury sentencing claims. The federal district court dismissed those claims, *Creech v. Hardison*, CV 99-0224-S-BLW, 2006 WL 851113, at *1 (D. Idaho Mar. 29, 2006) (unpublished), and after a protracted series of habeas proceedings, the Ninth Circuit affirmed, *Creech v. Richardson (Creech VIII)*, 59 F.4th 372, 381 (9th Cir. 2022), and the U.S. Supreme Court denied certiorari on October 10, 2023. *Creech v. Richardson*, 144 S. Ct. 291 (2023).

After the Supreme Court of the United States denied certiorari, the district court issued a death warrant for Creech on October 12, 2023, scheduling his execution for November 8, 2023. The next day, Creech filed the successive petition for post-conviction relief that is at issue. On October 16, 2023, the district court *sua sponte* dismissed Creech’s petition as untimely under Idaho Code section 19-2719. Creech timely filed a notice of appeal later that day.

Creech later sought and was granted a clemency hearing before the Idaho Commission of Pardons and Parole. As a result, on October 19, 2023, the district court stayed Creech’s execution. I.C. § 19-2715(1). The Idaho Commission of Pardons and Parole denied Creech’s clemency request on January 29, 2024. On January 30, 2024, the district court signed a new death warrant setting Creech’s execution date for February 28, 2024.

II. ISSUES ON APPEAL

1. Did the district court err in *sua sponte* dismissing Creech’s successive petition for post-conviction relief?
2. Did the district court err in concluding that Creech’s successive petition for post-conviction relief was untimely?

III. STANDARDS OF REVIEW

“Whether a successive petition for post-conviction relief was properly dismissed pursuant to [Idaho Code section] 19-2719 is a question of law. This Court reviews questions of law *de novo*.” *Dunlap v. State*, 59 Idaho 280, 292, 360 P.3d 289, 301 (2015) (quoting *Fields v. State*, 154 Idaho 347, 349, 298 P.3d 241, 243 (2013)). “A court must summarily dismiss any successive petition that does not meet the requirements of [Idaho Code section] 19-2719(5).” *McKinney v. State*, 133 Idaho 695, 701, 992 P.2d 144, 151 (1999).

IV. ANALYSIS

A. The district court did not err in dismissing Creech's petition *sua sponte*.

Creech argues that the district court erred in *sua sponte* dismissing his petition for post-conviction relief on timeliness grounds without giving him the twenty-day notice required by Idaho Code section 19-4906(b), and without providing the State an opportunity to respond to Creech's petition. The State counters that Creech's petition, as a successive petition for post-conviction relief, is governed by the "[s]pecial appellate and post-conviction procedure for capital cases" set forth in Idaho Code section 19-2719. Those procedures require a successive petition for post-conviction relief be dismissed summarily unless it is filed within forty-two days of the time "such claims for relief were known or should have been known." I.C. § 19-2719(5). We affirm the district court and hold that it properly applied the forty-two-day time limit of section 19-2719(5) to Creech's latest petition. Since the petition was untimely, the district court had "no power to consider any such claims for relief," *id.*, and was required to dismiss the petition summarily. I.C. § 19-2719(11).

Post-conviction proceedings are civil cases and governed by the Idaho Rules of Civil Procedure. *Pizzuto v. State*, 127 Idaho 469, 470, 903 P.2d 58, 59 (1995). Idaho Code section 19-4906(b), which is part of the Uniform Post-Conviction Procedure Act ("UPCPA"), governs the summary dismissal of post-conviction proceedings generally. It permits trial courts to issue *sua sponte* notice of intent to dismiss such actions:

When a court is satisfied, on the basis of the application, the answer or motion, and the record, that the applicant is not entitled to post-conviction relief and no purpose would be served by any further proceedings, it may indicate to the parties its intention to dismiss the application and its reasons for so doing. The applicant shall be given an opportunity to reply within 20 days to the proposed dismissal. In light of the reply, or on default thereof, the court may order the application dismissed or grant leave to file an amended application or, direct that the proceedings otherwise continue. Disposition on the pleadings and record is not proper if there exists a material issue of fact.

I.C. § 19-4906(b).

Creech's argument that the district court erred by dismissing his petition *sua sponte* without providing notice is unavailing. If this matter were governed by this section of the UPCPA, his argument might have merit. That said, this case involves a successive petition for post-conviction relief by a defendant in a capital case. The procedures governing the process in such cases are delineated in Idaho Code section 19-2719. This Court has held that section 19-2719,

which again, applies specifically to capital post-conviction matters, “supersedes the UPCPA to the extent that their provisions conflict.” *McKinney*, 133 Idaho at 700, 992 P.2d at 149. “[Idaho Code section] 19-2719 is not a part of the [UPCPA], it merely serves to modify post-conviction proceedings in capital cases.” *Pizzuto*, 127 Idaho at 470, 903 P.2d at 59.

Section 19-2719 sets forth special appellate and post-conviction procedures that apply in all capital cases. *Fields v. State*, 151 Idaho 18, 23, 253 P.3d 692, 697 (2011). These “special procedures shall be interpreted to accomplish the purpose of eliminating unnecessary delay in carrying out a valid death sentence.” I.C. § 19-2719. We interpret the statute accordingly.

The Idaho Legislature has provided a directive that petitions not meeting the strictures of subsection five of Idaho Code section 19-2719 “shall be dismissed *summarily*[,]” *i.e. without notice* to the petitioner:

Any successive petition for post-conviction relief not within the exception of subsection (5) of this section *shall be dismissed summarily*. Notwithstanding any other statute or rule, the order of dismissal shall not be subject to any motion to alter, amend or reconsider. Such order shall not be subject to any requirement for the giving of notice of the court's intent to dismiss. The order of dismissal shall not be appealable.

I.C. § 19-2719(11) (emphasis added).

Creech argues that notwithstanding the clear mandate of this statute, interpreting Idaho Code section 19-2719 to permit *sua sponte* dismissals without notice in capital cases produces absurd results. This is so, he argues, because, quoting Creech’s brief, such an interpretation would mean that

a post-conviction petitioner convicted of shoplifting and facing a six-month sentence will always be able to respond to the potential bases for the dismissal of his claims, in the form of a response to the district court’s notice of intent and potentially also in the form of responding to the State’s motion to dismiss [pursuant to I.C. § 19-4906(b)]. Yet a post-conviction petitioner convicted of first-degree murder and facing an execution might see his claim dismissed three calendar days after he filed it without any document being filed by the State and without any notice whatsoever.

Creech is correct that the notice provision of Idaho Code section 19-4906(b) requires twenty-days’ notice to a petit thief who seeks post-conviction relief. But the fact that notice is not also required for a petitioner filing an untimely successive petition does not lead to an absurd result. If the district court determines that a successive petition in a death penalty case is untimely, it has no choice but to summarily dismiss the petition by the plain reading of the statute. *See* Idaho

Code § 19-2719. This is a requirement the legislature has imposed in an effort to “eliminat[e] unnecessary delay in carrying out a valid death sentence.” *Id.* The summary dismissal provision in this section promotes those ends.

This statute is directly applicable here and the district court correctly applied it.

B. Creech’s successive post-conviction petition is untimely.

Along with the summary dismissal question, Creech argues that the district court erred in concluding that his successive post-conviction claim was timely based on an “evolving standards of decency” standard Creech claims is applicable under the Eighth Amendment.² He asserts that a unique mixture of history and present judgment render his judge-imposed death sentence cruel and unusual punishment and that his evolving standards claim is timely. He relies on alleged historical and recent changes in societal norms that made his petition timely when filed on October 13, 2023. These evolving standards include two primary data points: (1) A moratorium on the death penalty imposed by the governor of Arizona in January 2023; and (2) the absence of executions of judge-sentenced defendants in the time after the moratorium. Creech also argues that the Arizona moratorium could not have been relied on as setting an evolving standard in early 2023 because the Arizona Supreme Court issued a death warrant on a jury-sentenced defendant named Aaron Gunches in February 2023. Although this warrant expired on April 5, 2023, Creech explains the delay in bringing his petition by maintaining that the standard of decency in his case was unclear at that point due to the unsettled legal environment in Arizona. Even so, he waited until October 13, 2023, the day after Creech’s latest death warrant was issued, to file his petition.

Idaho Code section 19-2719 generally provides a capital defendant with “one opportunity to raise all challenges to the conviction and sentence in a post-conviction relief petition.” *State v. Rhoades*, 120 Idaho 795, 806-07, 820 P.2d 665, 676-77 (1991); *see also Paradis v. State*, 128 Idaho 223, 226, 912 P.2d 110, 113 (1996). A defendant who has been sentenced to death has forty-two days from the filing of the judgment imposing the death sentence to file “any legal or factual challenge to the sentence or conviction that is known or reasonably should be known.” I.C. § 19-2719(3). A challenge not filed within the forty-two-day filing period is waived. I.C. § 19-2719(5).

² A death penalty must accord with contemporary moral and social values by reflecting “the evolving standards of decency that mark the progress of a maturing society.” *State v. Creech*, 105 Idaho 362, 381, 670 P.2d 463, 482 (1983) (quoting *Gregg v. Georgia*, 428 U.S. 153, 181-82 (1976)).

Creech relies on the statutory exception for challenges that “were not known or could not reasonably have been known” within the initial forty-two-day period:

If the defendant fails to apply for relief as provided in this section and within the time limits specified, *he shall be deemed to have waived such claims for relief as were known, or reasonably should have been known*. The courts of Idaho shall have no power to consider any such claims for relief as have been so waived or grant any such relief.

(a) An allegation that *a successive post-conviction petition may be heard because of the applicability of the exception herein for issues that were not known or could not reasonably have been known* shall not be considered unless the applicant shows the existence of such issues by (i) a precise statement of the issue or issues asserted together with (ii) material facts stated under oath or affirmation by credible persons with first hand knowledge that would support the issue or issues asserted. A pleading that fails to make a showing of excepted issues supported by material facts, or which is not credible, must be summarily dismissed.

I.C. § 19-2719(5) (emphasis added).

This exception permits a successive petition “in those *unusual* cases where it can be demonstrated that the issues raised were not known and reasonably could not have been known within the time frame allowed by the statute.” *Rhoades*, 120 Idaho at 807, 820 P.2d at 677 (emphasis added); *see also McKinney*, 133 Idaho at 701, 992 P.2d at 151. “The statute requires an objective examination of whether a defendant should have known of a claim at the time of the filing of the first petition.” *Hairston v. State*, 144 Idaho 51, 56, 156 P.3d 552, 557 (2007). A capital defendant who brings a successive petition for post-conviction relief has a “heightened burden and must make a prima facie showing that issues raised in that petition fit within the narrow exception provided by the statute.” *Pizzuto*, 127 Idaho at 471, 903 P.2d at 60 (emphasis added).

Creech filed the petition at issue here on October 13, 2023. Creech has admitted that nothing unusual occurred during the forty-two days prior to October 13 that would have triggered the commencement of the forty-two-day window on or after September 1. For his petition to be timely when it was filed in October, something giving rise to Creech’s claim must have surfaced in the forty-two days before his filing on October 13. No such facts exist.

As the record shows, even if we accept for purposes of argument that the current status of death penalty litigation in the United States somehow reflects an evolving standard that triggered the exception to the statute of limitations in section 19-2719(5), none of those triggers occurred during the forty-two days before October 13. As the district court correctly recognized, “[n]othing

of import to the viability of the claim asserted in the petition is alleged to have either happened or come to light . . . between September 1 and the filing of the petition” on October 13, 2023. The district court found that Creech’s claim “could have been asserted before September 1, with no less force than it can be asserted now,” and that it “does not genuinely depend on anything that has happened or come to light since September 1.” We agree with the district court’s conclusions. Thus, we hold that Creech failed to articulate a claim based on information he did not know or could not have known. As the claim is untimely, the district court properly dismissed it.

1. Requiring evolving standards claims to comply with the statute of limitations in Idaho Code section 19-2719 does not create due process concerns.

In a related argument, Creech maintains that denying his claim based on timeliness violates “the Due Process Clause of the United States and Idaho Constitutions” because the lack of clear guidance on when a claim is ripe makes it so he has a “right without a remedy.” We disagree. Due process claims associated with Idaho Code section 19-2719 have been repeatedly rejected by this Court:

Abdullah also makes a passing effort at challenging the constitutionality of the time-bar in Idaho Code section 19-2719(5) as violative of due process to the extent it precludes the airing of *Brady* claims which reasonably could have been brought in a prior petition. As explained above, “even if the State violated a petitioner’s right to due process by withholding evidence, *the petitioner [is still] required to raise this issue, like other constitutional issues, within the time frame mandated by [Idaho Code section] 19-2719.*” *Porter*, 136 Idaho at 261, 32 P.3d at 155; *McKinney*, 133 Idaho at 706–07, 992 P.2d at 155–56; *Rhoades*, 120 Idaho at 806–07, 820 P.2d at 676–74 (upholding the constitutionality of the general time-bar against capital petitioners under section 19-2719 under a procedural due process challenge); *Pizzuto*, 149 Idaho at 165, 233 P.3d at 96 (explaining that the issue is “settled”—Idaho Code section 19-2719 does not violate the Due Process Clause of the United States and Idaho Constitutions). Thus, an extensive discussion on [the] challenge here is unnecessary because it has already been rejected.

Abdullah v. State, ___ Idaho ___, 539 P.3d 947, 962–63 (2023) (emphasis added). As we explained, Creech could have satisfied the exception under Idaho Code section 19-2719(5) by bringing his claim within forty-two days of when he knew or reasonably should have known of the facts supporting his claim, even if the facts to sustain his claim developed more than forty-two days after judgment. His decision to wait to file his claim in October 2023 does not create a due process violation.

2. *The text of the Eighth Amendment does not support Creech’s timeliness argument.*

Finally, Creech maintains that the text of the Eighth Amendment supports his proposal to use the date the State issued a death warrant as the start of the forty-two-day statute of limitations period. Creech argues that the *infliction* of a punishment is distinct from its *imposition*. As a result, Creech maintains that capital punishment is inflicted when the State issues a death warrant, while a punishment is imposed when the defendant is sentenced. Thus, according to Creech, the infliction of the punishment triggers Idaho’s statute of limitations under Idaho Code section 19-2719.

Such an interpretation is unsupported by the legal framework for Creech’s claims, and it would effectively eliminate the statute of limitations under Idaho Code 19-2719 because every petitioner could assert an evolving standards claim at the last possible date—i.e., shortly before their scheduled execution date—rather than when the claim becomes known or reasonably should have been known. Permitting successive filings based on the issuance of a death warrant would thwart the stated purpose of Idaho Code section 19-2719 by creating unnecessary delays in carrying out otherwise valid death sentences. Therefore, we hold that the time constraints of section 19-2719(5) do not violate the Eighth Amendment and we decline to adopt the issuance of the death warrant as the trigger for a timely evolving standards petition.

V. CONCLUSION

The district court’s judgment dismissing Creech’s petition as untimely is affirmed. Shortly before oral argument Creech moved to stay his execution date of February 28, 2024, as set forth in the death warrant. Having issued this opinion more than fourteen days before February 28, we see no need to stay the execution date set forth in the death warrant. Creech’s motion to stay execution is therefore denied.

Justices BRODY, MOELLER, and MEYER, and Justice Pro Tem BURDICK CONCUR.

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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COURT OF ADA

THOMAS EUGENE CREECH,	)	CAPITAL CASE
)	
Petitioner,	)	CV01-23-16641
	)	CASE NO.
v.	)	(Related to Ada Cty. No. HCR
	)	10252)
STATE OF IDAHO,)	
	)	PETITION FOR POST-
Respondent.	)	CONVICTION RELIEF
_____)	

1. The entire country has effectively abandoned the practice of executing inmates who were sentenced to death by judges, sitting alone.

2. Nevertheless, the State wishes to execute Petitioner Thomas Eugene Creech under those circumstances.

3. Pursuant to Idaho Code §§ 19-2719 and 19-4901, Mr. Creech seeks post-conviction relief because it violates the evolving standards of decency to execute someone who was sentenced to death by a judge and not a jury.

I. Procedural Background

4. Mr. Creech was charged with first-degree murder in Ada County District Court for the murder of David D. Jensen in case number 10252.¹

5. On August 28, 1981, Mr. Creech entered a guilty plea for the crime.

6. Mr. Creech was originally sentenced to death on January 25, 1982, by Judge Robert Newhouse. *See Ex. 1.*

7. The Idaho Supreme Court² affirmed the judgment and conviction on May 23, 1983. *See State v. Creech*, 670 P.2d 463 (Idaho 1983).

8. The issues raised in those proceedings are summarized in the Idaho Supreme Court's opinion.

9. In the same opinion, the Idaho Supreme Court rejected Mr. Creech's argument that he was entitled to a jury at his sentencing under the Sixth Amendment. *See Creech*, 670 P.2d at 474.

10. Relief on a subsequent post-conviction petition was denied by the Idaho Supreme Court on June 20, 1985. *See State v. Creech*, 710 P.2d 502 (Idaho

¹ Ada County District Court case no. 10252 has been assigned the current case number of CR-FE-0000-10252.

² Mr. Creech will refer to the "Idaho Supreme Court" here by its full title and when he is describing the United States Supreme Court he will simply call it, for ease of reference, "the Supreme Court."

1985).

11. The issues raised in those proceedings are summarized in the Idaho Supreme Court's opinion.

12. On March 27, 1991, the Ninth Circuit granted Mr. Creech habeas relief with respect to his death sentence. *See Creech v. Arave*, 947 F.2d 873 (9th Cir. 1991).

13. The issues raised in those proceedings are summarized in the Ninth Circuit's opinion.

14. In the same opinion, the Ninth Circuit rejected Mr. Creech's argument that he was entitled under the Sixth Amendment to the participation of a jury at his sentencing. *See Creech*, 947 F.2d at 16.

15. The Supreme Court reversed the Ninth Circuit's judgment in part on March 30, 1993 on claims not relevant now, but left the grant of relief in place. *See Arave v. Creech*, 507 U.S. 463 (1993).

16. As a result of the federal rulings, a new penalty-phase proceeding was held, and a new death sentence was imposed by Judge Newhouse on April 17, 1995. *See Ex. 2*.

17. On August 19, 1998, the Idaho Supreme Court upheld the death sentence and affirmed the denial of post-conviction relief. *See State v. Creech*, 966 P.2d 1 (Idaho 1998).

18. The issues raised in those proceedings are summarized in the Idaho Supreme Court's opinion.

19. In the same opinion, the Idaho Supreme Court rejected on res judicata grounds the argument that Mr. Creech was entitled by the Sixth Amendment to a jury at his sentencing. *See Creech*, 966 P.2d at 15.

20. Relief on a subsequent petition for post-conviction relief was denied by the Idaho Supreme Court on June 6, 2002. *See Creech v. State*, 51 P.3d 387 (Idaho 2002).

21. The issues raised in those proceedings are summarized in the Idaho Supreme Court's opinion.

22. On August 2, 2002, Mr. Creech filed in Ada County District Court a petition for post-conviction relief combined with a motion to reduce illegal sentence under Idaho Criminal Rule 35.

23. The petition received case number SPOT-200712D, later converted to CV-PC-2002-22017.

24. The Rule 35 motion was filed in the underlying criminal case number.

25. Henceforth, the hybrid proceedings will be referred to as "the Rule 35 case."

26. In the Rule 35 case, Mr. Creech alleged that his death sentence was unconstitutional under the Sixth Amendment and Idaho's cognate constitutional protections for the right to a jury trial, all as a result of *Ring v. Arizona*, 536 U.S. 584 (2002).

27. On April 25, 2003, the Ada County District Court denied relief in the Rule 35 case.

28. The Idaho Supreme Court dismissed Mr. Creech's appeal from the district judge's decision in the Rule 35 case in a one-page unpublished order issued December 23, 2005.

29. Although Mr. Creech referred in passing to the Eighth Amendment in his Rule 35 motion and post-conviction petition, he did not make an argument there about the evolving standards of decency.

30. The district court did not analyze the Eighth Amendment in its order denying relief in the Rule 35 case.

31. Even if Mr. Creech had made out an evolving-standards argument in the Rule 35 case in 2003, the vast majority of the data presented below did not exist at that time.

32. As set forth below, it is the current state of the data that makes Mr. Creech's claim meritorious.

33. On June 30, 2022, Mr. Creech filed a post-conviction petition in Ada County District Court, which was assigned case number CV-01-22-9424.

34. In that petition, Mr. Creech alleged that his right to ineffective assistance of counsel was violated at his guilty-plea proceedings and at his resentencing, and that the claims were appropriately reviewed in light of the U.S. Supreme Court's decision in *Shinn v. Ramirez*, 142 S. Ct. 1718 (2022).

35. The district court dismissed the post-conviction petition as untimely under Idaho Code § 19-2719.

36. Mr. Creech currently has pending an appeal from that order in the
Petition for Post-Conviction Relief – 5

Idaho Supreme Court in case number 50336.

37. After Mr. Creech’s resentencing in 1995, he initiated a new federal habeas proceeding in U.S. District Court.

38. The case was assigned number 1:99-cv-224.

39. In the fortieth ground for relief in the operative habeas petition (the second amended iteration, filed in March 2005), Mr. Creech cited *Ring* and alleged this his death sentence violated his rights under the Sixth, Eighth, and Fourteenth Amendments to have a jury determine his punishment.

40. The only factual allegation unique to the claim was that “[t]he statutory scheme in effect in Idaho is constitutionally significantly different from the sentencing scheme in effect in Arizona found not to be retroactive . . . in” *Schriro v. Summerlin*, 542 U.S. 348 (2004).

41. The forty-first ground for relief lodged a similar attack on judge findings with respect to mitigation.

42. The forty-second ground for relief lodged a similar attack on judge findings with respect to the weighing process.³

43. Mr. Creech did not refer to the evolving standards of decency in Claims 40–42 or present any data about death-row populations, execution rates, etc.

44. The State moved to dismiss Claims 40–42 on the basis that *Ring* was

³ In the claim articulated by this petition, Mr. Creech does not distinguish between the finding of aggravation and the weighing process, since the jury was not involved in either aspect of the sentencing at issue.

not retroactive.

45. In Mr. Creech's response to the motion to dismiss with respect to Claims 40–42, he did not refer to the evolving standards of decency or present any data about death-row populations, execution rates, etc.

46. In an order dated March 29, 2006, the federal district court dismissed Claims 40–42 on the basis that *Ring* was not retroactive.

47. Relief on the petition as a whole was later denied by the district court and then the Ninth Circuit in *Creech v. Richardson*, 59 F.4th 372 (9th Cir. 2023).

48. The other issues raised in those proceedings are summarized in the Ninth Circuit opinion.

49. On October 10, 2023, the Supreme Court denied certiorari. *See Creech v. Richardson*, --- S. Ct. ----, 2023 WL 6558513 (2023).

50. Undersigned counsel do not believe that Mr. Creech has in any of his prior proceedings ever asserted that judge-sentencing violates the Eighth Amendment under the evolving standards of decency as a result of data about death-row populations, execution rates, etc.

II. Claim for Relief

51. Mr. Creech's claim for relief is as follows.

52. Every statement in this petition is incorporated by reference into every part of it.

A. First Ground: Mr. Creech's death sentence is unconstitutional because it was imposed by a judge and not a jury.

53. Mr. Creech's death sentence violates the cruel and unusual

punishment clauses of the United States and Idaho Constitutions under the evolving standards of decency because it was imposed by a judge sitting alone without any participation by a jury. *See* U.S. Const., Ams. VIII, XIV; Idaho Cons., Art. I, § 6.⁴

1. Supporting Facts and Argument

54. Mr. Creech’s current death sentence was imposed by Judge Newhouse on April 17, 1995. *See* Ex. 2.

55. No jury was involved in the determination of death as the punishment.

56. Evolving standards have rendered judge-imposed death sentences cruel and unusual.⁵

57. The analysis takes into account state laws as well as decisions by juries, appellate courts, and governors. *See Roper v. Simmons*, 543 U.S. 551, 563–65 (2005); *Atkins v. Virginia*, 536 U.S. 304, 313–17 (2002).

⁴ With respect to any reference to the Idaho Constitution herein, Mr. Creech argues that if the U.S. Constitution is deemed not to protect the asserted right, the parallel provision of the Idaho Constitution is broader and still does. *See State v. Thompson*, 760 P.2d 1162, 1164 (Idaho 1988) (“[I]n interpreting provisions of our constitution that are similar to those of the federal constitution we are free to extend protections under our constitution beyond those granted by the United States Supreme Court under the federal constitution.”). Mr. Creech respectfully requests an explicit and specific ruling from the Court on his state constitutional arguments, so as to ensure those arguments are preserved for appeal. *See State v. Frederick*, 236 P.3d 1269, 1273 (Idaho 2010). When Mr. Creech uses words like “Constitution,” “constitutional,” “unconstitutional,” etc., without discrimination, he is referring to both the state and the federal constitutions.

⁵ Mr. Creech respectfully reserves the right to update the information he presents here regarding evolving standards of decency as additional facts emerge.

58. “Statistics about the number of executions” are also relevant. *Kennedy v. Louisiana*, 554 U.S. 407, 433 (2008).⁶

59. Considering all of these sources, there is a strong trend away from executing those sentenced to death by judges.

a) Death row populations and executions

60. First, there are very few individuals on death rows who were sentenced—like Mr. Creech was—by a judge without any involvement whatsoever by a jury.⁷

61. In 2002, the Supreme Court found that it violated the Sixth Amendment right to a jury trial for a defendant to be sentenced to death solely by a judge “sitting alone.” *See Ring*, 536 U.S. at 588–89.

62. The *Ring* Court identified five states that allowed for such sentencings: Arizona, Colorado, Idaho, Montana, and Nebraska. *See id.* at 608 n.6.

⁶ In this petition, all internal quotation marks and citations are omitted, and all alterations are in original unless otherwise noted.

⁷ Some states have experimented with schemes in which juries render a verdict at capital sentencings and then judges potentially make the final decision as to death or life. However, no jury participated in Mr. Creech’s sentencing in any respect. Indeed, no jury was involved in Mr. Creech’s case at all, as he pled guilty. Consequently, the narrow question presented here is whether that type of sentencing has become unconstitutional under the evolving standards of decency. Mr. Creech will therefore focus here primarily on that question and will only analyze schemes involving judicial override, juror unanimity, etc. when they are tangentially related to his claim.

63. However, in Arizona, Governor Katie Hobbs imposed a moratorium on all executions in January 2023, which is still in effect. *See Botched Executions Prompt Arizona Governor and Attorney General to Halt Executions Pending Independent Review of State’s Execution Process*, Death Penalty Information Center (“DPIC”), Jan. 23, 2023, available at <https://perma.cc/ZEV2-WT68>.⁸

64. The Arizona moratorium means that the state counts in Mr. Creech’s favor in the evolving-standards calculus. *See Hall v. Florida*, 572 U.S. 701, 716 (2014) (including states that have moratoria on the anti-death “side of the ledger” while determining whether capital punishment is allowed for a particular class of inmates).

65. Similarly, there is no one on death row in Colorado, because in 2020 the state abolished capital punishment and the governor promptly commuted all three existing death sentences to life in prison. *See Milton J. Hernandez IV, Missing the Misjoinder Mark: Improving Criminal Joinder of Offenses in Capital Sentencing Jurisdictions*, 111 J. Crim. L. & Criminology 651, 714 (2021).

⁸ The website perma.cc allows the user to freeze a website for perpetuity in its present version with a constant address. Mr. Creech uses the service here to guarantee that the cited websites are not altered or destroyed during the litigation. With respect to URLs that are regularly updated to reflect current data, Mr. Creech has provided the website without using perma.cc, so that the Court can see the latest information whenever it is conducting its review. Perma.cc does not typically work with PDFs. Therefore, with respect to internet sources that are PDFs, Mr. Creech has downloaded the relevant document and attached it as an exhibit to his petition.

66. Thus, Colorado falls on Mr. Creech’s side of the scale as well. *See Hall*, 572 U.S. at 716 (including states that have abolished the death penalty in the evolving-standards count for a specific type of inmate).

67. Accordingly, the only states that matter for evolving-standards purposes are Idaho, Montana, and Nebraska.

68. The aggregate number of individuals in those states who were sentenced by judges alone and who remain on death row is strikingly small.

69. There are four inmates on death row in Idaho who were sentenced by judges. *See Ex. 3* at 1–2.

70. There are two inmates on death row in Montana who were sentenced by judges. *See Michael L. Radelet & G. Ben Cohen, The Decline of Judicial Override*, 15 Ann. Rev. L. & Soc. Sci. 539, 541 (2019); *accord* DPIC, Montana, available at <https://deathpenaltyinfo.org/state-and-federal-info/state-by-state/montana>.⁹

71. There are ten inmates on death row in Nebraska who were sentenced by judges. *See Radelet, supra*, at 541; *Ex. 5*.¹⁰

⁹ Attached to this petition is a declaration from DPIC’s Executive Director regarding its statistics. *See Ex. 4*. Courts routinely rely on DPIC for information regarding capital punishment. *See, e.g., State v. Bartol*, 496 P.3d 1013, 1019 n.5 (Or. 2021) (en banc) (discussing a statement of facts that drew in part from DPIC’s Execution Database and referring to the source as a “well-respected national database[]”).

¹⁰ The law review article by Professor Radelet, cited above, counted eleven inmates for Nebraska who were sentenced by judges. Since the publication of the article, one of those inmates (Arthur Gales) died of natural causes in prison, as evidenced by the newspaper article cited above.

72. Thus, in total, there are sixteen inmates from these three states who were sentenced by judges alone and who remain on death row today.

73. In *Graham v. Florida*, 560 U.S. 48, 64 (2010), the Supreme Court condemned juvenile nonhomicide life-without-parole sentences after calculating that there were 124 inmates who met that description around the country.

74. Thus, under *Graham*, the sixteen inmates at issue here support a finding that capital judge-sentencing violates the evolving standards of decency. See Radelet, *supra*, at 550–51 (calculating that ninety-seven individuals were “under death sentences imposed by judges without the benefit of a jury’s death verdict” at the time of publication and that the practice was therefore unconstitutional in light of the 124-prisoner total at issue in *Graham*).¹¹

75. Similarly, the *percentage* of inmates on death row from the three relevant states who were put there by judges sitting alone is a mark in Mr. Creech’s favor.

¹¹ The article cited above took into account states where juries did participate at sentencing but where judges had the final say. For reasons noted elsewhere, Mr. Creech does not include such states in his own calculations.

76. There are roughly 2,333 inmates on death row in the United States.

See Ex. 6 at 2.¹²

77. Thus, 0.68% of the inmates on death row nationwide were sent there by virtue of sentencings that did not include juries in some capacity.

78. In *Coker v. Georgia*, 433 U.S. 584, 596–97 (1977) (plurality op.), the Supreme Court found death sentences for the rape of an adult victim unconstitutional under the evolving standards of decency where approximately 90% of the relevant cases did not involve such offenses.

79. Accordingly, the 0.69% here supports a finding that judge-sentencing is unconstitutional.

80. If Arizona is included in the judge-sentenced count, the same result obtains.

¹² Like much of the data presented here, it is impossible for Mr. Creech to have a perfectly accurate up-to-date number for the above statistic. With so many cases in the relevant universe, a handful of inmates could be added or subtracted from the class and not yet accounted for in the resources available to Mr. Creech at the time he is preparing this petition. Mr. Creech has provided the most current data that is feasible for him to collect under the circumstances. He asserts that if the numbers are not 100% precise, they are close enough such that the bottom-line conclusions drawn here remain correct. The dynamics described in this footnote are yet another reason why it would be inappropriate to find that Mr. Creech's petition was untimely on the ground that it was not brought within forty-two days of when the claim became available, as the shifting nature of the data make it impossible for a litigant to calculate such a date with exactitude. See *infra* at Part II.A.2. Because the calculations here require a substantial amount of work, and because the materials presented had to be prepared in advance of when they could be finalized and filed, Mr. Creech has used October 13, 2023 as his uniform date for purposes of counting backwards. For example, when Mr. Creech states below that in the last ten years there have been 228 executions, that is because there were 228 executions between October 13, 2013 and October 13, 2023.

81. There are thirty-three inmates on Arizona’s death row who were sentenced by judges alone. *See Radelet, supra*, at 541; Arizona Department of Corrections, Rehabilitation & Reentry (ADCRR), Death Row, available at <https://corrections.az.gov/death-row>.¹³

82. If Arizona is added to the counts from Idaho, Nebraska, and Montana, there are then forty-nine judge-sentenced inmates at issue.

83. It would then be the case that 2.1% of death-row inmates in America were sentenced by judges sitting alone.

84. That number supports Mr. Creech’s evolving-standards claim.

85. Execution rates support the same finding. *See Kennedy*, 554 U.S. at 433 (“Statistics about the number of executions may inform the consideration whether capital punishment for the crime of child rape is regarded as unacceptable in our society.”).

86. As noted, Arizona has a moratorium on executions and Colorado has abolished the death penalty.

¹³ The law review article by Professor Radelet, cited above, counted forty inmates for Arizona who were sentenced by judges. Undersigned counsel has compared the names on Professor Radelet’s table with the ADCRR’s list of death-row inmates, cited above, which has been updated more recently. The comparison reveals that seven of the individuals on Professor Radelet’s table are no longer on Arizona’s death row, either because they were executed, died of natural causes, or obtained relief. Thus, undersigned counsel has calculated that there are currently thirty-three relevant inmates in Arizona.

87. Thus, Arizona and Colorado do not count in the assessment of execution rates.

88. As for the remaining three states in *Ring*'s list (Idaho, Montana, and Nebraska), none of them have carried out any execution in more than seven years.

See DPIC, Execution Database, available at

<https://deathpenaltyinfo.org/database/executions> (hereinafter DPIC Execution Database).¹⁴

89. The most recent execution of an individual in any of those states was that of Carey Dean Moore in Nebraska in August 2018. *See id.*

90. Mr. Moore was sentenced to death by a judge.¹⁵ *See Moore v. Clarke*, 904 F.2d 1226, 1226 (8th Cir. 1990).

91. Prior to Mr. Moore, the two most recent judge-sentenced executions were both in Idaho: Richard Leavitt in June 2012 and Paul Rhoades in November 2011. *See id.*

92. Messrs. Leavitt and Rhoades were both sentenced to death by judges. *See State v. Leavitt*, 120 P.3d 283, 285 (Idaho 2005); *State v. Rhoades*, 809 P.2d 455, 465 (Idaho 1991).

¹⁴ The DPIC Execution Database is filterable by “start date,” “end date,” and state, all of which can be used to assess the statistics offered here.

¹⁵ Some of the judge-imposed sentences discussed in this petition were meted out by panels of judges, rather than a single judge, as in the case cited above. For the sake of consistency and simplicity, and because it makes no difference for present purposes, Mr. Creech will still refer to those sentences as having been imposed by a “judge,” in the singular.

93. Before that, the most recent judge-sentenced execution was that of David Thomas Dawson in Montana in August 2006. *See id.*

94. Mr. Dawson was sentenced to death by a judge. *See State v. Dawson*, 761 P.2d 352, 360 (Mont. 1988).

95. Going back to the only judge-sentenced executions that took place earlier and which still occurred in the modern death-penalty era,¹⁶ one finds the following information.

96. In Montana, Terry Langford was executed in February 1998 and Duncan McKenzie was executed in May 1995. *See* DPIC Execution Database.

97. Messrs. Langford and McKenzie were both sentenced to death by judges. *See McKenzie v. Risley*, 842 F.2d 1525, 1536 (9th Cir. 1988); *see also Langford v. Day*, 110 F.3d 1380, 1384 (9th Cir. 1996).

98. In Nebraska, Robert Williams was executed in 1997, John Joubert was executed in 1996, and Harold Otey was executed in 1994. *See* DPIC Execution Database.

¹⁶ The modern death-penalty era began in 1976 when capital punishment resumed after a four-year moratorium imposed by the Supreme Court. *See, e.g.,* Corinna Barrett Lain, *Deciding Death*, 57 Duke L.J. 1, 8–9 (2007) (describing how the 1976 reinstatement of capital punishment “inaugurat[ed] what came to be known as the modern death penalty era”). It is therefore appropriate to use 1976 as the starting point for statistical purposes here. *See, e.g., Glossip v. Gross*, 576 U.S. 863, 909 (2015) (Breyer, J., dissenting) (using 1976 as the starting point while analyzing whether the death penalty as a whole has become cruel and unusual under the evolving-standards rubric).

99. Messrs. Williams, Joubert, and Otey were all sentenced by judges. *See Joubert v. Hopkins*, 75 F.3d 1232, 1249 (8th Cir. 1996) (Bright, J., dissenting); *Williams v. Clarke*, 40 F.3d 1529, 1531 (8th Cir. 1994); *State v. Otey*, 287 N.W.2d 36, 40 (Neb. 1979).

100. In Idaho, Keith Wells was executed in 1994. *See* DPIC Execution Database.

101. Mr. Wells was sentenced to death by a judge. *See State v. Wells*, 864 P.2d 1123, 1124 (Idaho 1993).

102. The execution data of judge-sentenced inmates from Idaho, Montana, and Nebraska is summarized in Exhibit 7. *See* Ex. 7.

103. Considering this data, the following conclusions can be drawn about Idaho, Montana, and Nebraska.

104. In the last ten years, these states have collectively executed only a single inmate.

105. In the last fifteen years, these states have executed only three inmates. *See* DPIC Execution Database.

106. In the last twenty years, these states have executed only four inmates. *See* DPIC Execution Database.

107. In the last twenty-five years, these states have executed only four inmates. *See* DPIC Execution Database.

108. In the last thirty years (and in the modern death-penalty era generally), these states have executed only ten inmates. *See* DPIC Execution Database.

109. Those raw numbers favor Mr. Creech's claim.

110. For instance, in *Coker*, there were seventy-two executions over the previous twenty-two years for rape offenses and the practice was found to be inconsistent with evolving standards. *See Enmund v. Florida*, 458 U.S. 782, 794 (1982) (discussing *Coker*).

111. It is equally significant that the numbers here also represent an exceedingly small *portion* of the individuals who have been executed in the U.S. during the same time frames.

112. In the last ten years, there have been 228 executions in the country. *See* DPIC Execution Database.

113. In the last fifteen years, there have been 455 executions in the country. *See* DPIC Execution Database.

114. In the last twenty years, there have been 701 executions in the country. *See* DPIC Execution Database.

115. In the last twenty-five years, there have been 1,095 executions in the country. *See* DPIC Execution Database.

116. In the last thirty years, there have been 1,356 executions in the country. *See* DPIC Execution Database.

117. Thus, of the total executions in the country, the executions from Idaho, Montana, and Nebraska represent the following percentages.

118. In the last ten years, 0.4% (1/228) of the executions that took place in the country occurred in one of the three states.

119. In the last fifteen years, 0.7% (3/455) of the executions that took place in the country occurred in one of the three states.

120. In the last twenty years, 0.6% (4/701) of the executions that took place in the country occurred in one of the three states.

121. In the last twenty-five years, 0.4% (4/1095) of the executions that took place in the country occurred in one of the three states.

122. In the last thirty years (and in the modern death penalty era generally), 0.7% (10/1356) of the executions that took place in the country occurred in one of the three states.

123. The first pie chart in Exhibit 8 reflects how tiny the above percentage is. *See* Ex. 8.

124. These numbers stack up favorably for Mr. Creech in the context of evolving-standards precedent.

125. In *Enmund*, for instance, a practice was found unconstitutional where at least 339 of the 362 executions at issue did not involve the practice. *See* 458 U.S. at 794.

126. That comes out to 94%.

127. Here, where the three judge-sentencing states contributed to 0.7% of the executions in the modern death-penalty era, judge-sentencing in capital cases is unconstitutional under *Enmund*.

128. Mr. Creech submits, for the reasons stated above, that Arizona executions should not be considered in the calculus because of the moratorium in effect there now.

129. However, if Arizona and Colorado are counted, Mr. Creech's claim is still meritorious.

130. In the last ten years, Arizona has executed four inmates who were sentenced by judges. *See* DPIC Execution Database.¹⁷

131. In the last fifteen years, Arizona has executed sixteen judge-sentenced inmates. *See* DPIC Execution Database.

132. In the last twenty years, Arizona has executed seventeen judge-sentenced inmates. *See* DPIC Execution Database.

¹⁷ Arizona has executed five people in the last ten years: Robert Jones, Joseph Wood, Frank Atwood, and Murray Hooper. *See* DPIC Execution Database. However, Mr. Dixon was sentenced to death by a jury. *See Dixon v. Ryan*, 932 F.3d 789, 799 (9th Cir. 2019). Other than Mr. Dixon, undersigned counsel believe that the inmates on DPIC's Execution Database from Arizona in the modern era were all sentenced by judges. That inference is also supported by the general timeline of the cases and the history of the death penalty statute in Arizona. *See* Ariz. Act of May 14, 1973, ch. 138, § 5, 1973 Ariz. Sess. Laws 966, 968–70 (reflecting that Arizona adopted judge-sentencing in capital cases at the inception of the modern death-penalty era). Thus, Mr. Creech has taken the DPIC Execution Database numbers but subtracted one from each total.

133. In the last twenty-five years, Arizona has executed twenty-seven judge-sentenced inmates. *See* DPIC Execution Database.

134. In the last thirty years, Arizona has executed thirty-six judge-sentenced inmates. *See* DPIC Execution Database.

135. Colorado has carried out only one execution in the modern death-penalty era: that of Gary Lee Davis in 1997. *See* DPIC Execution Database.

136. However, Mr. Davis was sentenced to death by a jury. *See Davis v. People*, 871 P.2d 769, 770 (Colo. 1994) (en banc).

137. Thus, there are no executions to add to the totals from Colorado.

138. If Arizona is added to the totals, the numbers above (from Idaho, Montana, and Nebraska) are modified as follows.

139. There would then be five judge-sentenced executions (1+4) in the last ten years.

140. There would then be nineteen judge-sentenced executions (3+16) in the last fifteen years.

141. There would then be twenty-one judge-sentenced executions (4+17) in the last twenty years.

142. There would then be thirty-one judge-sentenced executions (4+27) in the last twenty-five years.

143. There would then be forty-six judge-sentenced executions (10+36) in the last thirty years.

144. Those raw numbers still weigh in Mr. Creech's favor, because—to reiterate—the Supreme Court in *Coker* found that seventy-two executions over a twenty-two year period were so few as to reflect a decline for evolving-standards purposes.

145. In light of those numbers, the percentages of judge-sentenced executions would become the following.

146. Judge-sentenced executions over the last ten years would be 2.2% of the total (5/228).

147. Judge-sentenced executions over the last fifteen years would be 4.2% of the total (19/455).

148. Judge-sentenced executions over the last twenty years would be 3.0% of the total (21/701).

149. Judge-sentenced executions over the last twenty-five years would be 2.8% of the total (31/1095).

150. Judge-sentenced executions over the last thirty years would be 3.4% of the total (46/1356).

151. The smallness of that ratio is reflected in the second pie chart in Exhibit 8. *See* Ex. 8.

152. Those percentages support Mr. Creech's claim for the same reasons stated earlier.

153. The direction of the change in judge-sentenced executions supports Mr. Creech's claim.

154. Exhibit 9 depicts the numbers over time of judge-sentenced executions around the country. *See* Ex. 9.

155. As the chart reflects, there were seven such executions in 2012, but the number then declined over time such that it is zero in 2023. *See* Ex. 9.

156. That reflects “the consistency of the direction of change” in Mr. Creech’s favor. *Roper*, 543 U.S. at 566.

b) Statutory developments

157. Statutory developments around the country also support Mr. Creech’s claim. *See Atkins*, 536 U.S. at 312 (“We have pinpointed that the clearest and most reliable objective evidence of contemporary values is the legislation enacted by the country’s legislatures.”).

158. Mr. Creech acknowledges that, because of *Ring*, no state has been constitutionally permitted since 2002 to adopt a strict judge-sentencing regime for capital cases.

159. However, that fact does not make statutory developments meaningless.

160. For one thing, the fact that only five states had statutes in place at the time of *Ring* allowing for judge sentencing in capital cases is itself a reflection the movement against the practice.

161. That is especially true because such statutes had been expressly found by the Supreme Court, before *Ring* changed the law, to be constitutional. *See Walton v. Arizona*, 497 U.S. 639, 647–49 (1990).

162. Additionally, post-*Ring* statutory trends support Mr. Creech’s claim.

163. At the time of *Ring*, several states had statutes that incorporated juries at sentencing but diluted their role in some respect or another, such as by authorizing death sentences despite non-unanimous verdicts, allowing judges to overrule verdicts for life, and so forth. *See, e.g., Woodward v. Alabama*, 134 S. Ct. 405, 407 (2013) (Sotomayor, J., dissenting) (placing in that category Alabama, Delaware, and Florida).

164. In addition, Indiana had judicial override until 2002. *See* Ind. Code § 35-50-2-9(e) (2002)).

165. For ease of reference, Mr. Creech will refer generally to the practices grouped above as “judicial override.”

166. In Delaware, the state supreme court struck down the capital statute in 2016 and the legislature has declined to fix the infirmity—though it could have—in the seven years since, leading to what is essentially a legislative abolition of the punishment. *See* Carol S. Steiker & Jordan M. Steiker, *Little Furmans Everywhere: State Court Intervention and the Decline of the American Death Penalty*, 107 Cornell L. Rev. 1621, 1632–38 (2022).

167. The Alabama legislature abolished judicial override in 2017. *See* Meghann M. Lamb, *Overturing Override: Why Executing a Person Sentenced to Death By Judicial Override Violates the Eighth Amendment*, 95 S. Cal. L. Rev. 663, 666 (2022).

168. Indiana abolished judicial override in 2002. *See* Ind. Code § 35-50-2-9(e).

169. Florida is the only exception in that it does still allow for death sentences to be imposed in the absence of a unanimous jury verdict. *See* Fla. Stat. Ann. 921.141(2)(c).¹⁸

170. In overview, of the three most relevant states (Delaware, Alabama, and Florida), two have reduced the influence of the judge at capital sentencings, and no other jurisdiction has moved in the opposite direction.

171. That reflects “the consistency of the direction of change” in Mr. Creech’s favor. *Roper*, 543 U.S. at 566.

172. Thus, there is a definite legislative trend in support of the central place of juries—and not judges—in capital sentencings, which further supports Mr. Creech’s claim.

c) Sentencing decisions

173. Statistics regarding actual sentencing decisions also cut in favor of Mr. Creech’s claim. *See Graham*, 560 U.S. at 62 (“Actual sentencing practices are an important part of the Court’s inquiry into consensus.”).

¹⁸ Florida eliminated judicial override in 2016, *see* Fla. Stat. § 921.141(3)(a)(1) (2016), before later bringing it back, thus leaving the state in essentially the same position as it was earlier for evolving-standards purposes.
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174. In the few states that allowed it, judicial override was used 125 times in the 1980s, 74 times in the 1990s, and then only 27 times between 2000 and 2013. *See Woodward*, 134 S. Ct. at 407 (Sotomayor, J., dissenting).

175. That shows a steady decline in the appetite of state courts to sentence defendants to death without the unanimous approval of juries.

176. Of the twenty-seven judicial overrides that occurred between 2000 and 2013, twenty-six of them took place in Alabama. *See id.*.

177. That demonstrates that the practice had become extremely isolated as a geographical matter, which again reflects its unpopularity nationwide. *See Kennedy*, 554 U.S. at 427, 434 (stressing in its finding of an evolving standard of decency that there was only “one state” that had imposed the sentence at issue in the previous forty-four years).

178. Further, as noted, because Alabama itself abolished the practice later, even those twenty-six judicial overrides cannot now be cited as evidence of any contrary trend.

179. Instead, the practice effectively vanished from the country, thereby demonstrating a strong country-wide consensus in favor of restoring the primacy of the jury’s role at capital sentencings, thereby reinforcing Mr. Creech’s evolving-standards challenge to Idaho’s obsolete system.

d) The death penalty generally

180. In addition, one must consider nationwide practices with respect to the death penalty generally, regardless of judicial sentencing. *See Hall*, 572 U.S. at 716.

181. No individual would be executed for *any* offense in twenty-five states and the District of Columbia, as all of those jurisdictions have either abolished the death penalty¹⁹ or have suspended executions through moratoria.²⁰ *See Hall*, 572 U.S. at 716 (including states that have abolished and that have moratoria in the evolving-standards count for a specific type of inmate).

¹⁹ The twenty-two states that have abolished the death penalty are Alaska, Colorado, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, New Mexico, New York, North Dakota, Rhode Island, Vermont, Virginia, West Virginia, Washington, and Wisconsin. *See* DPIC, States with and without the death penalty – 2023, available at <https://deathpenaltyinfo.org/states-landing>.

²⁰ The three states with moratoria are California, Oregon, and Pennsylvania. *See* Governor Gavin Newsom, Executive Order, March 13, 2019, available at <https://perma.cc/CPY5-PC6A>; Governor John Kitzhaber, Executive Order, November 22, 2011, available at <https://perma.cc/PAU8-SBTP>; Governor Shapiro Announces He Will Not Issue Any Execution Warrants During His Term, Calls on General Assembly to Abolish the Death Penalty, February 16, 2023, available at <https://perma.cc/46VB-KH8G>. Ohio arguably has a moratorium as well, since Governor Mike DeWine has for several years been granting reprieves on every scheduled execution. *See* DPIC, Ohio General Assembly Resumes Bipartisan Efforts to Abolish the Death Penalty, Sep. 12, 2023, available at <https://perma.cc/39UC-5Z4M>. If one were to include Ohio as a moratorium state, it would shift the numbers even more decisively in Mr. Creech’s favor, especially since it has one of the larger death rows in the country. *See* Ex. 6 at 2 (listing Ohio as having the sixth most populous death row in the country with 129 inmates). However, in the interest of being conservative, Mr. Creech will not count Ohio in his column.

182. Second, the Court should consider the states that allow for the death penalty but no longer execute anyone.

183. Eleven additional states authorize the death penalty but have not executed anyone in the last ten years: Idaho, Indiana, Kansas, Kentucky, Louisiana, Montana, Nevada, North Carolina, South Carolina, Wyoming, and Utah. *See* DPIC, States With No Recent Executions, available at <https://perma.cc/U3XN-JH68>. All eleven of these states accordingly fall on the pro-life side of the equation.

184. Counting the abolitionist states plus the moratorium states plus the de facto moratorium states there are thirty-six.

185. Execution trends nationwide are sharply down.

186. Death sentences in 2022 were 93.7% below the peak of 315 in 1996. *See* Ex. 10 at 11.

187. Executions have dropped by 82% since their peak of 98 in 1999, with only eighteen executions in 2022. *See id.*

188. There have been fewer than thirty executions each year for the last eight. *See id.*

189. The decline of executions is especially striking in Idaho's region.

190. If one looks just at Idaho and the six adjacent states (Montana, Nevada, Oregon, Utah, Washington, and Wyoming), there have not been any executions in the last ten years and only four in the last fifteen years. *See* DPIC Execution Database.

191. The number of people on death row declined in 2022 for the twenty-first consecutive year. *See id.*

192. In Oregon, the governor commuted all seventeen death sentences in 2022 to life in prison.

193. The death penalty has become extremely geographically isolated.

194. Only six states carried out executions in 2022. *Id.* at 12.

195. Oklahoma and Texas combined to perform more than half of 2022's executions. *Id.* at 12.

196. Death sentences have been steadily declining for more than twenty years. *Id.* at 1.

197. In 1996, at its peak, there were 315 death sentences. *Id.* at 1.

198. There have been fewer than fifty death sentences every year since 2015. *Id.*

199. In 2022, there were only twenty new death sentences, which is 295 fewer than there were in 1996. *Id.*

200. International developments, too, are “instructive for [the] interpretation of the Eighth Amendment’s prohibition of cruel and unusual punishments.” *Roper*, 543 U.S. at 575–76; *accord Enmund*, 458 U.S. at 796 n.22; *Coker*, 433 U.S. at 596 n.10.

201. There is a strong and unambiguous trend against the death penalty worldwide, which is by definition a trend against the execution of defendants

sentenced by judges. By the end of 2022, 112 countries had abolished the death penalty for all crimes. Ex. 11 at 9.

202. The trend is unmistakably downward. Only twenty countries carried out executions in 2022, meaning that 90% of nations did not. *See id.* at 11.

203. In 2022, almost two thirds of the UN General Assembly voted in favor of a moratorium on executions with the ultimate aim of full abolition. *See id.* at 9.

204. 90% of executions last year took place in Egypt, Iran, and Saudi Arabia, *see id.* at 10, countries the U.S. shares little in common with in terms of legal traditions and culture.

205. The facts sketched out above demonstrate that the execution of an inmate who was sentenced to death by a judge sitting alone is no longer harmonious with the evolving standards of decency and is thus cruel and unusual under the Eighth Amendment.

206. Mr. Creech acknowledges that the Supreme Court held in pre-*Ring* cases that judge-sentencing did not violate the Eighth Amendment. *See, e.g., Walton*, 497 U.S. at 649.

207. However, such cases did not consider the data presented above.

208. As such, the cases must be reconsidered in light of up-to-date information. *See, e.g., Roper*, 543 U.S. at 555 (reevaluating an evolving-standards case in view of more recent developments).

209. Apart from the statistics, the evolving standards of decency are especially well-suited to Mr. Creech's challenge to judge sentencing.

210. That is because, under the Eighth Amendment, it is “the *jury’s* task of expressing the conscience of the community on the ultimate question of life or death.” *McCleskey v. Kemp*, 481 U.S. 279, 309 (1987).

211. Those same values held by the community as a whole are what drives the inquiry into the evolving standards of decency. *See, e.g., Woodson v. North Carolina*, 428 U.S. 280, 288 (1976) (plurality op.) (“Central to the application of the [Eighth] Amendment is a determination of contemporary standards regarding the infliction of punishment,” as reflected by the “indicia of societal values”).

212. Thus, jury sentencing in capital cases is mandated by the Eighth Amendment. *See Ring*, 536 U.S. at 615–16 (Breyer, J., concurring) (concluding that, for Eighth Amendment purposes, “jurors possess an important comparative advantage over judges” in that “they are more attuned to the community’s moral sensibility” and consequently “better able to determine in the particular case the need for retribution”).

213. In the alternative, if the Court rejects Mr. Creech’s Eighth Amendment theory under Supreme Court precedent, it should grant relief while applying Idaho’s prohibition on cruel and unusual punishment. *See State v. Thompson*, 760 P.2d 1162, 1164 (Idaho 1988) (“[I]n interpreting provisions of our constitution that are similar to those of the federal constitution we are free to extend protections under our constitution beyond those granted by the United States Supreme Court under the federal constitution.”).

2. The petition is timely.

214. Under Idaho Code § 19-2719(5), a successive post-conviction petition is only permitted where the inmate establishes that he is raising the claims within forty-two days of when he “knew or reasonably should have known of” it. *Pizzuto v. State*, 202 P.3d 642, 649 (Idaho 2008).

215. Mr. Creech can make that showing here.

216. Specifically, Mr. Creech asserts that the evidence marshaled above has only made his claim meritorious now.

217. Current precedent provides no clear answer to the timing question.

218. For example, the Supreme Court in *Enmund* found that it violated the evolving standards of decency to sentence to death a defendant who was responsible for the victim’s death only in the sense of having accomplice liability for a felony murder. *See* 458 U.S. at 794.

219. In *Enmund*, the Court noted that in the previous twenty-eight years, only six of the country’s 362 executions (1.7%) involved “a nontriggerman felony murderer.” *Id.*

220. If one goes back twenty-eight years from today’s date, there have been 1,261 executions. *See* DPIC Execution Database.

221. Of those, forty-two took place in Arizona, Idaho, Montana, or Nebraska and appear to have involved judge-sentenced inmates.

222. That would constitute 3.3% (42/1261) of all executions during that time period.

223. However, if Arizona were removed from the list, there would then be seven judge-sentenced executions during the same period.

224. That would constitute .6% (7/1261) of all executions during that period.

225. In other words, if *Enmund's* calculation is the north star, then the question of whether Mr. Creech's claim is meritorious now might depend on whether Arizona is or is not counted.

226. Precedent does not unequivocally provide an answer to that question.

227. Mr. Creech should not be punished for the timing he has chosen when he has made a plausible and good-faith argument in the absence of clear instructions from the courts.

228. In light of the above, if the courts hold otherwise and find Mr. Creech's claim untimely, it will put petitioners in the impossible position of having to predict when along a seamless continuum they are expected to suddenly know that their claim is ripe, with no notice as to when the claim will be considered too early (and thus unsubstantiated) and when it will be considered too late (and thus untimely).

229. The objections that Mr. Creech would surely have drawn from the State if he had raised his claim in his most recent post-conviction petition also point to the reasons the Court should find no timeliness bar.

230. As mentioned above, Mr. Creech filed his most recent post-conviction petition on June 30, 2022. *See supra* at Part I.

231. Only twenty-two days earlier, on June 8, 2022, Arizona executed Frank Atwood. *See* DPIC Execution Database.

232. Mr. Atwood was sentenced to death by a judge. *See Atwood v. Ryan*, 870 F.3d 1033, 1061–62 (9th Cir. 2017).

233. And less than five months after Mr. Creech filed his most recent post-conviction petition, on November 16, 2022, Arizona executed Murray Hooper. *See* DPIC Execution Database.

234. Mr. Hooper was also sentenced to death by a judge. *See Hooper v. Shinn*, 985 F.3d 594, 609–10 (9th Cir. 2021).

235. If Mr. Creech had included his current Eighth Amendment claim in his most recent post-conviction petition, the State almost certainly would have objected on the basis that Arizona at the time was actively executing inmates who had been sentenced by judges.

236. However, on November 16, 2023, it will be a year from the latest judge-sentenced execution. *See* DPIC Execution Database.

237. Outside of Idaho, no judge-sentenced executions are currently scheduled. *See* DPIC, Upcoming Executions, available at <https://deathpenaltyinfo.org/executions/upcoming-executions>.

238. No such executions are in the immediate forecast for the state with by far the largest group of candidates—Arizona—because as noted earlier it now has a moratorium.

239. The facts above could not have been presented in Mr. Creech’s earlier petition, thereby demonstrating that he is properly raising the claim in his current one.

240. Such an approach would violate Mr. Creech’s right to a free and fair post-conviction proceeding and his right to access the courts under the Due Process clauses of the U.S. and Idaho Constitutions. *See Evitts v. Lucey*, 469 U.S. 387, 401 (1985); Idaho Const., Art. I, § 13.

241. It would also be unlawful for the related reason that it would create a situation in which Mr. Creech has a right without a remedy. *See Swain v. Fritchman*, 125 P. 319, 329 (Idaho 1912).

242. The problems with a finding of untimeliness are exacerbated by the lack of precise guidance from the Idaho and U.S. Supreme Courts in this area.

243. For example, in *Hairston v. State*, 472 P.3d 44, 48–51 (Idaho 2020), the Idaho Supreme Court rejected a claim that the evolving standards of decency prohibited the execution of late-adolescents under the state and federal constitutions.

244. The court did so while appearing to accept Mr. Hairston’s contention that in the twenty-four years following his offense not a single other late-adolescent defendant had been sentenced to death in Idaho. *See id.* at 49.

245. However, the *Hairston* court did not explain what sort of statistical evidence would be sufficient to demonstrate a consensus for evolving-standards decency.

246. Similarly, although the U.S. Supreme Court in its own evolving-standards cases has analyzed in more detail the statistical evidence presented, it too has declined to set a bright-line threshold for what sort of showing is required in

terms of how few death sentences for the group at issue are, how infrequent executions are, and so forth.

247. The problems with a finding of untimeliness are also exacerbated by the unusual nature of Mr. Creech's claim in particular.

248. That is because Mr. Creech is attacking a practice under the evolving standards of decency that has also been outlawed as a constitutional matter.

249. To Mr. Creech's knowledge, that scenario has never been confronted by either the U.S. or Idaho Supreme Courts.

250. The rarity of the scenario poses complications as to how the relevant calculations are to be made.

251. Thus, there is no existing precedent that would have informed Mr. Creech as to when his claim became meritorious.

252. In the absence of such guidance, it would not be appropriate to enforce a timeliness bar against Mr. Creech.

253. Rather, any such bar should only apply prospectively. *See Pizzuto*, 202 P.3d at 727 (holding that a new timeliness rule would "not apply" to the petitioner in the case because he "did not have advance notice of [the court's] further clarification of what is a reasonable time" and therefore treating the petition as timely).

3. The proposed rule is retroactive.

254. Idaho Code § 19-2719(5)(c) provides that a successive post-conviction petition “shall be deemed facially insufficient to the extent it seeks retroactive application of new rules of law.”

255. “[W]hen a new substantive rule of constitutional law controls the outcome of a case, the Constitution requires state collateral review courts to give retroactive effect to that rule.” *Montgomery v. Louisiana*, 577 U.S. 190, 200 (2016).

256. The Supreme Courts of the United States and Idaho have held that the *Sixth* Amendment right to jury-sentencing in capital cases is procedural and thus not retroactive. *See Schriro v. Summerlin*, 542 U.S. 348, 358 (2004); *Rhoades v. State*, 233 P.3d 61, 71 (Idaho 2010).

257. However, Mr. Creech’s claim is that the *Eighth* Amendment bars judge sentencing based on the evolving standards of decency.

258. Rules proscribing the execution of individuals under the evolving standards of decency are substantive in nature. *See, e.g., Bonilla v. State*, 791 N.W.2d 697, 700–01 (Iowa 2010).

259. For instance, *Roper* has been applied retroactively, *see Sims v. Commw.*, 233 S.W.3d 731, 733 (Ky. Ct. App. 2007), along with *Coker*, *Kennedy*, *Enmund*, and *Atkins*, *see Lee Kovarsky, Delay in the Shadow of Death*, 95 N.Y.U. L. Rev. 1319, 1361 & n.273 (2020).

260. In *Montgomery*, the Supreme Court found that the rule against mandatory sentences of life without the possibility of parole for juveniles was substantive and thus retroactive. 577 U.S. at 206–13.

261. The Court did so despite acknowledging that the rule “did not bar a punishment for all juvenile offenders” but only “those whose crimes reflect permanent incorrigibility.” *Id.* at 209.

262. What is more, the Court recognized that the rule had a “procedural component,” but that the procedural component was only “a procedure through which [a] prisoner can show that he belongs to the protected class.” *Id.* at 735.

263. The same is true of Mr. Creech’s claim, where he is demonstrating that he belongs to the protected class of individuals who were sentenced to death by judges. *Cf.* Angela J. Rollins & Billy H. Nolas, *The Retroactivity of Hurst v. Florida*, 136 S. Ct. 616 (2016) to *Death-Sentenced Prisoners on Collateral Review*, 41 S. Ill. U. L.J. 181, 197 (2017) (explaining how a decision regarding the right to jury findings at sentencing is retroactive because it contained a substantive element delineating who fell “within the narrow category . . . for which death is an appropriate punishment”).

264. *Montgomery* also demonstrates that a class need not be immutable for retroactivity purposes.

265. By *Montgomery*’s account, the class of defendants at issue were “juvenile offenders whose crimes reflect the transient immaturity of youth.” 136 S. Ct. at 734.

266. Here, it is adult murderers who were sentenced to death by judges. In either category, it is *some* juveniles and *some* adults.

267. In addition to satisfying the conventional substantiveness test, the rule advocated for here also qualifies as substantive under the Supreme Court's newer, more liberal approach to retroactivity.

268. In 2016, the Supreme Court acknowledged that a rule can be substantive without literally "plac[ing] certain conduct, classes of persons, or punishments beyond the legislative power of Congress." *Welch v. United States*, 136 S. Ct. 1257, 1267 (2016).

269. The *Welch* Court provided an example in the form of *Bousley v. United States*, 523 U.S. 614 (1998), which found a rule retroactive even though the rule was later reversed by statute, thereby proving that the rule had not forbidden Congress from criminalizing a category of conduct. *See Welch*, 136 S. Ct. at 1267.

270. The *Welch* case also shows that a rule is not disqualified from substantive status simply because a defendant can get the benefit of the rule and then be resentenced to the same punishment.

271. Under *Welch*, a defendant can have his sentence vacated and he can then be given the same enhancement, so long as it is not done on the basis of the now-defunct residual clause. *See, e.g., United States v. Gieswein*, No. 5:07-cr-120, Dkts. 211, 237 (W.D. Okla. July 25, 2016) (granting retroactive *Johnson* relief and vacating the defendant's sentence but then resentencing him to the same term of imprisonment as he had before).

272. With the rule proposed by Mr. Creech, a defendant can have his judicial death sentence vacated and he can then be resentenced to death by a jury.

273. In both instances, the rule is still substantive for retroactivity purposes.

274. Indeed, here in Idaho, Timothy Dunlap was sentenced to death by a judge originally and then—after he obtained relief—resentenced to death by a jury, demonstrating how workable Mr. Creech’s theory is. *See Dunlap v. State*, 516 P.3d 987, 993–94 (2022), *cert. denied*, 143 S. Ct. 2667 (2023).

275. More generally, the Supreme Court in *Montgomery* and *Welch* began looking at retroactivity questions through a more flexible, contextualist lens. *See Rollins, supra*, at 208–09.

276. The contextualist perspective here would consider the irrevocability of death, the need for greater reliability in capital proceedings, the core role the jury plays in the selection process, and the fairly minor ramifications of a retroactivity finding.

277. With respect to that final factor, the class of prisoners who might benefit from a ruling in favor of retroactivity is limited.

278. It would apply only to vacate—potentially just temporarily—the sentences of death-row inmates for whom juries played no role at the penalty phase.

279. As set forth above, there are only forty-nine individuals in that category nationwide.

280. That is a small percentage of the death-row population in America, as established earlier, and a tiny part of the prison community overall. See Stephanie Holmes Didwania, *Redundant Leniency and Redundant Punishment in Prosecutorial Reforms*, 75 Okla. L. Rev. 25, 26 n.2 (2022) (noting that as of 2022 the U.S. had roughly 1.68 million individuals in its prison population).

281. Notably, a ruling in Mr. Creech’s favor would benefit far fewer individuals than the Supreme Court’s decision in *Montgomery*, which cast doubt on more than 2,000 sentences. See John R. Mills, Anna M. Dorn, and Amelia C. Hritz, *No Hope: Re-Examining Lifetime Sentences for Juvenile Offenders*, The Phillips Black Project, available at <https://perma.cc/P9Qs-5S2X>.

282. In Idaho, a finding of retroactivity would at most affect only four death sentences. See Ex. 3 at 1–2.

283. That, too, is a reason to rule in favor of Mr. Creech. See *State v. Whitfield*, 107 S.W.3d 253, 269 (Mo. 2003) (en banc) (determining that *Ring* was retroactive under state law in part because it would at most destabilize the sentences in five cases), *abrogated on other grounds by State v. Wood*, 580 S.W.3d 566, 585–88 (Mo. 2019) (en banc).

284. And against whatever modest disruption might be occasioned by a decision rendering the rule retroactive, one must balance the compelling need for defendants to be treated in accordance with their constitutional rights. See *Mosley v. State*, 209 So. 3d 1248, 1282 (Fla. 2016) (“[W]here the rule announced is of such fundamental importance, the interests of fairness and curing individual injustice

compel retroactive application . . . despite the impact it will have on the administration of justice.”); *see also Falcon v. State*, 162 So. 3d 954, 960 (Fla. 2015) (“Considerations of fairness and uniformity make it very difficult to justify depriving a person of his liberty or his life, under process no longer considered acceptable and no longer applied to indistinguishable cases.”), *receded from by Williams v. State*, 242 So. 3d 280, 287–88 (Fla. 2018).

285. That interest decisively outweighs any other and dictates a determination of retroactivity.

286. Because the rule at issue here is retroactive as a matter of federal constitutional law, under the Supremacy Clause of the U.S. Constitution, *see* U.S. Const., Art. 6, cl. 2, “Idaho Code § 19-2719(5)(c) cannot prevent the” rule of law invoked here “from being applied retroactively in this case.” *Pizzuto*, 202 P.3d at 650 n.4.

287. In the alternative, if the Court rejects Mr. Creech’s federal constitutional argument as to retroactivity, the same result is required by Idaho law.

288. State courts are entitled “to give broader effect to new rules of criminal procedure than is required by” federal constitutional jurisprudence. *Danforth v. Minnesota*, 552 U.S. 264, 266 (2008).

289. Thus, “the decisions of the courts of this state whether to give retroactive effect to a rule of law should reflect independent judgment, based upon

the concerns of this Court and the uniqueness of our state, our Constitution, and our long-standing jurisprudence.” *Rhoades v. State*, 233 P.3d 61, 70 (Idaho 2010).

290. Mr. Creech has outlined above the reasons why the rule he proposes here ought to be given retroactive effect.

291. Even if this Court believes those reasons fail as a matter of federal constitutional precedent, they are sound and should be accepted and embraced with respect to the meaning of Idaho’s own law. *See Colwell v. State*, 59 P.3d 463, 471 (Nev. 2002) (acknowledging that “strictly constraining retroactivity serves the Supreme Court’s purpose of circumscribing federal habeas review of state court decisions” but opting, as a state court, “not to bind quite so severely [its] own discretion in deciding retroactivity”).

292. Mr. Creech respectfully requests an explicit and specific ruling from the Court on his state constitutional arguments, so as to ensure those arguments are preserved for appeal. *See Frederick*, 236 P.3d at 1273.

293. Accordingly, insofar as Mr. Creech is seeking the benefit of a retroactive rule, he is entitled to do so.

294. To the extent this Court finds that it is bound by *Rhoades* to reject the retroactivity theory asserted here—which Mr. Creech does not agree with—undersigned counsel preserves the ability to argue on appeal that *Rhoades* was wrongly decided and should be overruled for reasons contained in this petition.

295. Mr. Creech is not required to articulate a full-blown argument for abrogating *Rhoades* here because this Court has now power to overrule precedential appellate opinions.

III. Amendment may be necessary.

296. This Court has the authority to give Mr. Creech a reasonable amount of time to amend his petition. *See* Idaho Code §§ 19-2719(8), 19-4906(a); *see also* Idaho R. Civ. P. 15(a).

297. Mr. Creech requests that time now and will seek amendment at a later date if necessary.

IV. Discovery may be necessary.

298. In a successive capital post-conviction proceeding, the district court has the authority to allow discovery when it “is necessary to protect an applicant’s substantial rights.” *Fields v. State*, 17 P.3d 230, 235 (Idaho 1999).

299. Here, as demonstrated above, Mr. Creech has presented all of the information in support of his claims that was reasonably available within the timeframes established by law.

300. However, Mr. Creech anticipates that discovery may be necessary to further support his claims.

301. That is particularly true if the State contests the admissibility of any of Mr. Creech’s evidence or questions whether it can be considered for any other reason.

302. For if that occurs, Mr. Creech may well need to access discovery in order to provide further evidence that satisfies the State's demands.

303. Mr. Creech will request that discovery at the appropriate time if it becomes necessary.

V. Relief Sought

304. Based on the foregoing, Mr. Creech respectfully prays for the following forms of relief:

- a. That the Court permit amendment within a reasonable time as Mr. Creech continues to investigate and obtain discovery on the claim herein, which he has presented within the demanding timeframes established by law, and as domestic and international developments emerge, impacting the evolving-standards-of-decency analysis.
- b. That the Court set a briefing schedule that allows the claim raised here to be fully litigated with the thorough arguments they require in this capital case.
- c. That the Court allow for discovery for the reasons set forth above, which will be elaborated upon further in subsequent pleadings.
- d. That the Court hear oral argument on the claims and on any other pleadings that are filed in this case.
- e. That the Court, if it is not prepared to grant relief to Mr. Creech on the papers alone, order an evidentiary hearing.

f. That, after considering the pleadings and oral argument, the Court grant the petition and vacate Mr. Creech's unlawful death sentence.

g. That the Court order any other relief that it deems appropriate.

Respectfully submitted this 13th day of October 2023.

/s/ Jonah J. Horwitz
Jonah J. Horwitz
Attorney for Petitioner

VI. Verification

I, Thomas Creech, being duly sworn upon my oath, depose and say that I have subscribed to this petition; that I know the contents of it; and that the matters and allegations set forth are true.

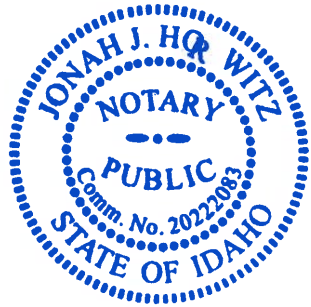

Thomas Eugene Creech

SUBSCRIBED AND SWORN TO before me this 11th day of October 2023.



NOTARY PUBLIC FOR Idaho

My commission expires: 4/22/28



Respectfully submitted this 13th day of October 2023.

/s/ Jonah J. Horwitz
Jonah J. Horwitz
Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of October 2023, I caused to be served a true and correct copy of the foregoing document on opposing counsel through the mail and email as follows:

Jill Longhurst
Deputy Prosecuting Attorney
200 W. Front St., Rm. 3191
Boise, ID 83702
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Ada County Prosecuting Attorney
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/s/ Julie Hill
Julie Hill

EXHIBIT 1

1 IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
2 STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

3
4 THE STATE OF IDAHO,)
5 Plaintiff,)
6 vs.)
7 THOMAS EUGENE CREECH,)
8 Defendant.)

Case No. 10252

9:55 P.M.

JAN 25 1982

JOHN EASTMAN CLERK
BY *David Priskrey*

9 * * *

10 FINDINGS OF THE COURT IN CONSIDERING THE DEATH PENALTY
11 UNDER SECTION 19-2515, Idaho Code

12
13 The above defendant having entered a plea of guilty to
14 the criminal offense of Murder of the First Degree, which
15 under the law authorizes the imposition of the death penalty;
16 and the court having ordered a presentence investigation of
17 the defendant and thereafter held a sentencing hearing for the
18 purpose of hearing all relevant evidence and argument of counsel
19 in aggravation and mitigation of the offense;

20 NOW THEREFORE the Court hereby makes the following
21 findings:

- 22 1. Conviction. That the defendant while represented
23 by court-appointed counsel, Rolf Kehne, was found guilty of
24 the offense of Murder in the First Degree pursuant to a plea
25 of guilty.
- 26 2. Presentence Report - That a presentence report
27 was prepared by order of the court and delivered to the
28 defendant or his counsel at least seven (7) days prior to the
29 sentencing hearing pursuant to 19-2515, Idaho Code, and the
30 Idaho Criminal Rules.
- 31 3. Sentencing Hearing. That a sentencing hearing was
32 held on January 11, 1982, pursuant to notice to counsel for
the defendant; and that at said hearing, in the presence of

1 the defendant, the court heard relevant evidence in aggravation
2 and mitigation of the offense and arguments of counsel.

3 4. Facts and Argument Found in Mitigation.

4 (a) That the defendant is a mature man, 31 years
5 of age.

6 (b) That the defendant is probably employable, and
7 is capable of being further trained and educated.
8 He is of an adequate intelligence, and is an extremely
9 talented writer.

10 (c) That the defendant did not instigate the fight
11 with the victim, but the victim, without provocation,
12 attacked him. He was initially justified in protecting
13 himself.

14 ~~4~~⁵ Facts and Arguments Found in Aggravation.

15 (a) That the defendant has, repeatedly, throughout
16 his life, committed many murders.

17 (b) That the victim was a young, inexperienced,
18 handicapped man. He had both physical and mental
19 impairments.

20 (c) That the victim, once the attack commenced,
21 was under the complete domination and control of the
22 defendant. The murder itself was extremely gruesome
23 evidencing an excessive violent rage. With the
24 victim's attack as an excuse, the defendant's murder
25 then took on many of the aspects of an assassination.
26 These violent actions of the defendant went well
27 beyond self-defense.

28 (d) That the defendant indicates an intention to
29 commit continued murders in the future, which, based
30 on his record, is extremely probable.


31 (e) That the defendant, heretofore, has been
32 sentenced to death by the district court of the State
of Idaho. Such death sentence was reversed by the
Idaho Supreme Court.

1 (f) That the defendant is unable to be rehabilitated.

2 (g) That, during the incident, the defendant was
3 not under the influence of any mind-controlling
4 substance. The murder, once commenced, appears
5 to have been an intentional, calculated act.

6 6. Statutory Aggravating Circumstances Found Under
7 Section 19-2515(f), Idaho Code.

8 These aggravating circumstances are all found by this
9 Court to be beyond a reasonable doubt.

10  A. The defendant was previously convicted of another
11 murder, to-wit:

12 1. March 25, 1976. Two Counts of First Degree
13 Murder. Sentenced to life on each charge.

14 2. April 23, 1979. First Degree Murder. Sentence
15 was 99 years.

16 3. November 4, 1980. First Degree Murder. Sentence
17 was life.

18 B. By the murder, or circumstances surrounding its
19 commission, the defendant exhibited utter disregard for
20 human life. After the victim was helpless the defendant
21 killed him.

22 C. The murder was one defined as Murder of the
23 First Degree by Section 18-4003, Idaho Code, Subsection (c)
24 The defendant was under a sentence for Murder of the
25 First Degree at the time of his actions.

26 D. The murder was one defined as Murder of the
27 First Degree by Section 18-4003, Idaho Code, Subsection (e)
28 The defendant committed the murder on a fellow inmate
29 while both were incarcerated in the Idaho State
30 Correctional Institution.

31 E. The defendant, by prior conduct or conduct
32 in the commission of the murder at hand, has exhibited

1 a propensity to commit murder which will probably
2 constitute a continuing threat to society. It is clear
3 from the entire proceedings that the defendant will
4 murder again, and again, unless physically restrained.
5 This court does not know how this can be done since,
6 after all, the defendant committed the present offense
7 while in maximum security.

8 7. Reasons Why Death Penalty Was Imposed.

9 This defendant intentionally destroyed another human
10 being at a time when he was completely helpless. He has
11 repeatedly murdered others over, and over, and over again. He
12 intends to keep on killing and can't be stopped. This court knows
13 of no way to protect the society which it represents except by
14 an execution. If the Death Penalty had been invoked before,
15 many citizens would remain alive.

16 The defendant has made many requests upon this Court to
17 impose this Death Penalty. In that regard a comment is in order.
18 This Court does not impose the Death Penalty because of these
19 pleadings or public demonstrations made by the defendant. A
20 Court should not grant anyone legal suicide. This Court imposes
21 the Death Penalty upon this defendant because he earned it.

22 The Court finds that the mitigating circumstances do not
23 outweigh the gravity of the aggravating circumstances so to make
24 unjust the imposition of the Death Penalty.

25 That the Death Penalty should be imposed on the defendant
26 for the capital offense of which he was convicted.

27 Dated this 25th day of January, 1982.

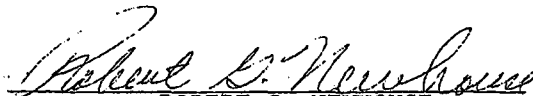
28
29 
30 ROBERT G. NEWHOUSE
31 District Judge
32

EXHIBIT 2

APR 17 1995

J. DAVID NAVARRO, Clerk
By *Harold Seely*
DEPUTY

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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,)
)
Plaintiff,)
)
vs.)
)
THOMAS EUGENE CREECH,)
)
Defendant.)

Case No. HCR-10252
FINDINGS OF THE COURT IN
CONSIDERING THE DEATH PENALTY
UNDER SECTION 19-2515,
IDAHO CODE

26000292

This matter has been returned from the federal court system.
The earlier sentence of this court has been vacated. A new
sentencing hearing was held beginning March 13, 1995 with the
defendant being given opportunity to present any and all
evidence for this court's consideration. Therefore pursuant to
I.C. Sec. 19-2515, this court enters its findings.

FINDINGS OF THE COURT IN CONSIDERING THE DEATH PENALTY
UNDER SECTION 19-2515, IDAHO CODE

The above defendant entered a plea of guilty to the criminal
offense of Murder of the First Degree, which under the law
authorizes the imposition of the death penalty. The court
ordered an updated presentence investigation of the defendant
and thereafter held a sentencing hearing for the purpose of
hearing all relevant evidence and argument of counsel in
aggravation and mitigation of the offense;

FINDINGS OF THE COURT - 1

00262

1 NOW, THEREFORE, the Court hereby makes the following
2 findings:

3 1. Conviction. The defendant while represented by court-
4 appointed counsel, Rolf M. Kehne, was found guilty of the
5 offense of Murder of the First Degree pursuant to a plea of
6 guilty entered in open court on August 28, 1981.

7 2. Presentence Report. A presentence report was prepared by
8 the order of the court in 1981. An updated presentence report
9 was prepared and delivered to the defendant or his counsel at
10 least seven (7) days prior to the sentencing hearing pursuant to
11 19-2515, Idaho Code, and the Idaho Criminal Rules.

12 3. Sentencing Hearing. A sentencing hearing was commenced on
13 March 13, 1995, pursuant to notice to counsel for the defendant.
14 At this hearing, in presence of the defendant, the court heard
15 relevant evidence in aggravation and mitigation of the offense
16 and arguments of counsel.

17 4. Facts Found in Mitigation.

18 (a) Thomas Eugene Creech was born on September 9, 1950 and at
19 this time is 44 years old. Most violent acts statistically are
20 committed by males 30 years old and younger.

21 (b) He has completed the 11th grade and has acquired his
22 G.E.D. while serving in the Army.

23 (c) He takes pride in cooperating with law enforcement
24 personnel, although in 1978 he was cited in a disciplinary
25 violation for threatening a guard. For purposes of sentencing

26 FINDINGS OF THE COURT - 2

1 this court will accept that the defendant gets along with law
2 enforcement.

3 (d) Tom Creech is creative. He is musical, writes songs and
4 plays guitar. He also writes poetry and prose.

5 (e) He credits his current wife, Sherry, with the reduction
6 in disciplinary citations he has received in the last years.
7 The fact that Tom has been in maximum security since 1989 and
8 has had no opportunity to be alone with another inmate at any
9 time may also play a substantial factor in the reduced
10 disciplinary citations. For the purposes of sentencing, this
11 court will accept that defendant's wife Sherry has contributed
12 positively to defendant's outlook.

13 (f) There may be a biological reason for the defendant to
14 be predisposed to violence. There is no independent factual
15 basis presented for this theory as it relates to this
16 individual. However, for the purpose of sentencing this court
17 will accept that the defendant may be biologically predisposed
18 to violence.

19 5. Facts Found in Aggravation.

20 (a) Thomas Eugene Creech has told different versions to
21 different people regarding what happened on May 13, 1981. After
22 reviewing the investigation which occurred at that time as well
23 as Tom's various statements, this court determines beyond a
24 reasonable doubt that the murder which occurred on "B" tier in
25 the penitentiary was planned and executed by Tom Creech to kill

26 FINDINGS OF THE COURT - 3

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00264

1 David Jensen. All the weapons which were used in this murder
2 were made by Tom Creech. Jensen was egged on to attack Creech
3 so the justification of self defense could be used. Jensen had
4 earlier suffered a head injury resulting in a plastic plate
5 covering part of his skull and limited coordination. Tom Creech
6 referred to him as "spastic".

7 Creech was the janitor for "B" tier and the only inmate who
8 could be out simultaneously with another inmate. On May 13th,
9 Jensen was released from his cell for his hour of exercise and
10 shower. Jensen approached Creech holding a weapon made up of
11 batteries in a sock. The sock was later determined to be
12 Creech's. Words were exchanged and Jensen swung the weapon at
13 Creech. Creech was not in fear of his life; he merely took the
14 weapon and punched Jensen in the face. Jensen retreated.

15 Creech went to his cell and made a second weapon out of a
16 toothbrush, razor blade and wire. He took this weapon to a
17 second inmate who in turn gave it to Jensen and urged a second
18 attack. Jensen came out of his cell and again swung at Creech
19 causing slight cuts. Creech went to his own cell and brought
20 out a radio, plugged it in near Jensen's cell and turned it on
21 loud. Creech went into Jensen's cell and began beating him with
22 the battery-filled sock.

23 Creech took breaks during the beating. At one time he
24 believed that he had mortally injured Jensen but yet returned to
25 the cell where Jensen lay helpless and sprawled on the floor and
26 FINDINGS OF THE COURT - 4

1 proceeded to beat him with his hands, kicking him several times
2 in the throat. Ultimately Jensen died on the operating table.
3 The pathologist report determined that David Jensen's death
4 resulted from the shattering of his skull bone and plate.
5 Thomas Eugene Creech did deliberately and with premeditation
6 form specific intent to kill David Jensen while they were
7 inmates at the Idaho state penitentiary.

8 (b) Thomas Eugene Creech has killed in the past and been
9 convicted. The convictions are for the following murders: John
10 Bradford and Thomas Arnold in Idaho; William Dean in Oregon and
11 Vivian Robinson in California.

12 (c) Thomas Eugene Creech has confessed to killing others in
13 the past. Several bodies have been found based upon information
14 received from the defendant. These murders resulted from either
15 perceived personal affronts or self gain.

16 (d) The defendant indicates an intention to commit further
17 murders if he is ever released. This court finds it probable
18 that Thomas Eugene Creech will kill again if placed in a
19 situation of less than total isolation.

20 (e) The defendant has been previously sentenced to death by a
21 district court of the State of Idaho. Such death sentence was
22 reversed by the Idaho Supreme Court after finding the earlier
23 Idaho death penalty statute unconstitutional.

24 (f) The defendant was 30 years old when he committed this
25 murder. His various violent disciplinary citations involving

1 stabbing, battery or aggravated assault did not decline until
2 he was 38 years old and placed in maximum security. The general
3 statistics regarding aging and declining of violence have not
4 held true for this defendant; he continued to be violent after
5 30 years old. Only isolation has stopped the violence.

6 (g) Tom Creech cannot be rehabilitated.

7 6. Statutory Aggravating Circumstances Found Under Section
8 19-2515(f), Idaho Code.

9 These following aggravating circumstances are all found
10 beyond a reasonable doubt by this court.

11 A. The defendant was previously convicted of another murder,
12 to-wit:

- 13 1. March 25, 1976: Two Counts of Murder of the First
14 Degree. The initial sentence was death, but was
15 reduced to life on each charge by the Idaho
16 Supreme Court.
- 17 2. April 23, 1979: First Degree Murder. The sentence
18 imposed was 99 years.
- 19 3. November 4, 1980: First Degree Murder. The sentence
20 imposed was life.

21 B. By the murder, or circumstances surrounding its
22 commission, the defendant exhibited utter disregard for human
23 life. The defendant did not fear the victim; David Jensen was
24 egged on to attack the defendant with weapons made by the
25 defendant to provide a possible justification of self-defense.
26 The defendant returned to Jensen's cell and continued to beat

1 him while he lay helpless on the floor. This murder was nothing
2 more than a brutal assassination.

3 C. The murder was one defined as Murder of the First Degree
4 by Section 18-4003, Idaho Code, subsection (c).

5 The defendant was under a sentence of Murder of the First
6 Degree at the time of his actions and with specific intent
7 caused the additional death of David Jensen.

8 D. The murder was one defined as Murder of the First Degree
9 by Section 18-4003, Idaho Code, subsection (e).

10 The defendant with specific intent committed the murder of a
11 fellow inmate while both were incarcerated in the Idaho State
12 Correctional Institution.

13 E. The defendant, by his prior conduct or conduct in the
14 commission of the murder at hand, has exhibited a propensity to
15 commit murder which will probably constitute a continuing threat
16 to society. Anything less than total isolation would give rise
17 to a substantial chance of the defendant killing again. This
18 court is unwilling to assume that future correction officials
19 will continue to recognize the deadliness of this defendant.

20 7. Reasons Why The Death Penalty Was Imposed.

21 Thomas Eugene Creech murdered David Jensen while they were
22 both inmates at the Idaho State Corrections Institute. The
23 arguments presented at the earlier hearing that it was somehow
24 the prison officials' fault for putting Jensen in the tier with
25 killers; that Creech was angry because Jensen spilled syrup on

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1 the floor that Creech had just cleaned; or that Jensen was an
2 obnoxious punk who was going to be hurt by someone on that tier
3 do not come close to justifying this murder. Tom Creech kills
4 almost on whims with little regard or interest in the
5 consequences. He may "feel bad" at times about some of these
6 murders, but he has no control or chooses not to exercise
7 control over his actions. The protection of society demands
8 that Thomas Eugene Creech receive the Death Penalty.

9 This court has weighed all the mitigating factors in relation
10 to each aggravating factor as required by the Idaho Supreme
11 Court decision of St. v. Charboneau and finds that all the
12 mitigating factors combined do not outweigh each individual
13 aggravating factor.

14 THEREFORE, this Court finds that the Death Penalty should be
15 imposed upon the defendant, THOMAS EUGENE CREECH, for the
16 capital offense of which he was convicted.

17 Dated this 17th day of April, 1995.

18
19 
20 Robert G. Newhouse
21 District Judge
22
23
24

25 00269

EXHIBIT 3

DECLARATION OF JONAH J. HORWITZ

I, Jonah J. Horwitz, declare as follows:

1. I am an attorney in the Capital Habeas Unit (“CHU”) for the Federal Defender Services of Idaho (“FDSI”).
2. I have been counsel for Mr. Creech in his federal habeas litigation since February 2016.
3. I have been assigned by the CHU to be lead counsel on behalf of Mr. Creech.
4. The CHU is dedicated almost exclusively to representing death-row inmates in their collateral challenges to our clients’ convictions and sentences, as well as related proceedings.
5. Once the CHU is appointed to a case, it typically continues to represent the client indefinitely until all federal and state challenges to the death sentence are finally resolved, which often takes many years. For instance, the CHU has represented several of its Idaho clients for more than twenty years.
6. The CHU represents six of the eight people currently on death row in Idaho.
7. I am personally assigned to five of those cases.
8. The CHU generally—and I personally—closely follow capital developments statewide in Idaho.
9. I am aware that four of the inmates currently on death row in Idaho had their operative sentences imposed by judges sitting alone, without the assistance of juries: Mr. Creech; James Hairston; Robin Row; and Gerald Ross Pizzuto, Jr.

10. All of the calculations that my office made regarding judge-sentencing that are presented in the post-conviction petition were done either by myself personally or at my direction and under my supervision.
11. To the best of my knowledge, the calculations that my office made regarding judge-sentencing that are presented in the post-conviction petition are true and correct.
12. To the best of my knowledge, the court documents attached to the post-conviction petition, filed on today's date, are all true and correct copies of the original submissions.
13. I have reviewed all of the exhibits attached to the post-conviction petition, filed on today's date.
14. To the best of my knowledge, those exhibits are all true and correct copies of the documents they purport to be.
15. I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 13th day of October 2023 at Boise, Idaho.

/s/ Jonah J. Horwitz
Jonah J. Horwitz

EXHIBIT 4

DECLARATION OF ROBIN M. MAHER

I, Robin M. Maher, declare as follows:

1. I am over the age of 18 years.
2. I am a licensed attorney and the Executive Director of the Death Penalty Information Center (DPIC).
3. DPIC is a nonprofit organization that provides information, data, and analysis on the death penalty to the public and to the media. DPIC does not take a position on the death penalty itself.
4. In my capacity as Executive Director, I am familiar with the methods DPIC uses for gathering, organizing, presenting, and updating the data on DPIC's website regarding death sentences and executions.
5. The data on DPIC's website regarding death sentences and executions are obtained from a variety of reliable sources and continually updated by DPIC staff. The data are accurate to the best of our knowledge.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and that this declaration was executed in Washington, D.C. on October 2, 2023.

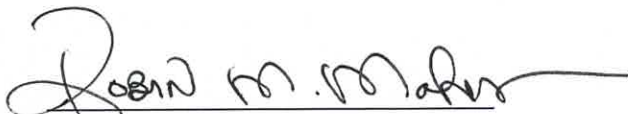

Robin M. Maher

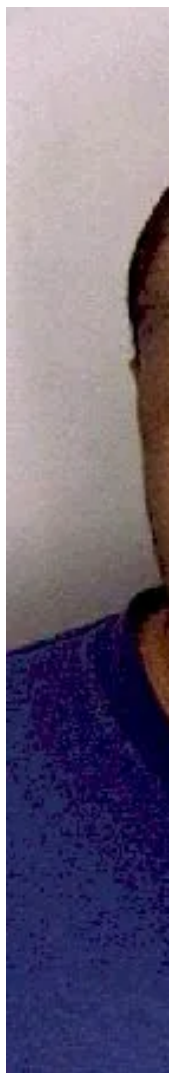
EXHIBIT 5

Nation

The Seattle Times

Man on Nebraska death row for killing girlfriend's kids dies

April 5, 2021 at 1:04 pm | Updated April 5, 2021 at 4:07 pm



This undated photo provided by the Omaha Police Department shows Arthur Lee Gales who was sentenced to death for the November 2000 slayings of his then-girlfriend's two children. Gales died Saturday,... (Omaha World-Herald/Omaha Police Department via AP) **More** ✓

The Associated Press

OMAHA, Neb. (AP) — A man who had been on Nebraska's death row since 2003 died Saturday, reducing the total number of condemned inmates in the state to 11, prison officials said Monday.

Arthur Gales, 55, was sentenced to death for the November 2000 slayings of his then-girlfriend's two children. Authorities said he killed 13-year-old Latara Chandler and 7-year-old Tamar Chandler because they were potential witnesses to him severely beating their mother.

The Nebraska Department of Correctional Services said in a news release that the cause of Gales' death wasn't yet known, but he had been undergoing treatment for an unspecified medical condition at the Tecumseh State Correctional Institution, where the state's death row is located. A grand jury will investigate, which happens anytime a prison inmate dies in custody.

Gales also received a 50-year sentence for the attempted murder of Judith Chandler, whom authorities said was left for dead outside her Omaha apartment.

Autopsies revealed that Latara died of strangulation and Tamar died of drowning and strangulation. Authorities said Latara had been sexually assaulted, and a pathologist testified at trial that each child had been strangled for at least four minutes.

Gales had not been scheduled for an execution, nor have any of the 11 remaining men on Nebraska's death row. The state's last execution was in August 2018, and prison officials have acknowledged they don't have any more lethal injection drugs and aren't likely to get any.

Before 2018, Nebraska's last execution took place in 1997. In 2015, death row inmate Michael Ryan died from complications related to cancer.

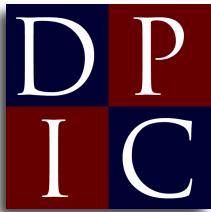
Nebraska could add two more inmates to death row this year with the sentencing of Aubrey Trail and Bailey Boswell, who were convicted in the 2017 slaying of a Lincoln woman who disappeared after a Tinder date.

The year of the children's deaths has been corrected to 2000 instead of 2001.

GRANT SCHULTE

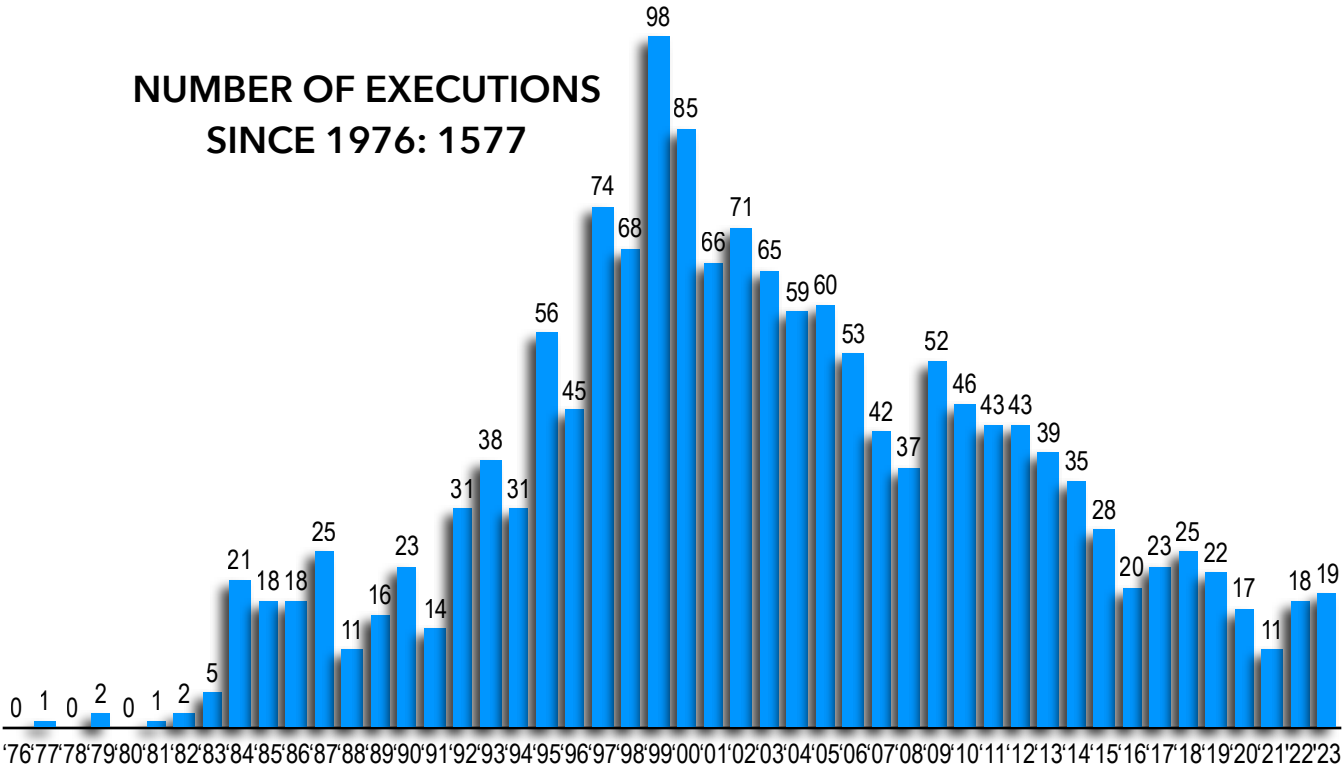
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EXHIBIT 6



Updated: October 4, 2023

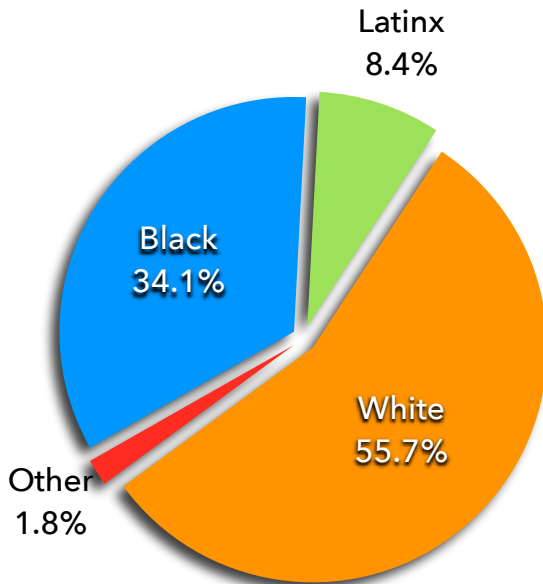
**NUMBER OF EXECUTIONS
 SINCE 1976: 1577**



DEATH PENALTY STATES (27)

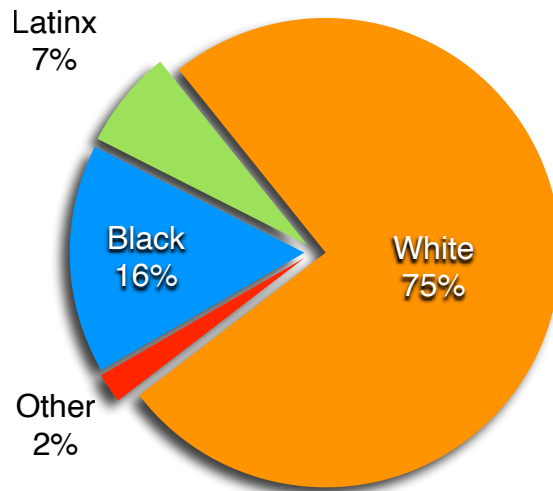
- Alabama
- Arizona
- Arkansas
- California
- Florida
- Georgia
- Idaho
- Indiana
- Kansas
- Kentucky
- Louisiana
- Mississippi
- Missouri
- Montana
- Nebraska
- Nevada
- North Carolina
- Ohio
- Oklahoma
- Oregon
- Pennsylvania
- South Carolina
- South Dakota
- Tennessee
- Texas
- Utah
- Wyoming
- U.S. Gov't
- U.S. Military

RACE OF DEFENDANTS EXECUTED



- White: 878
- Black: 537
- Latinx: 133
- Other: 29

RACE OF VICTIMS IN DEATH PENALTY CASES



More than 75% of the murder victims in cases resulting in an execution were white, even though nationally only 50% of murder victims generally are white.

NON-DEATH PENALTY STATES (23)

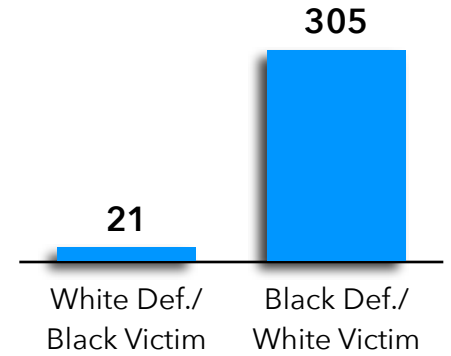
- Alaska
- Colorado
- Connecticut
- Delaware
- Hawaii
- Illinois
- Iowa
- Maine
- Maryland
- Massachusetts
- Michigan
- Minnesota
- New Hampshire†
- New Jersey
- New Mexico
- New York
- North Dakota
- Rhode Island
- Vermont
- Virginia
- Washington
- West Virginia
- Wisconsin
- District of Columbia

† 1 prisoner remains on death row.

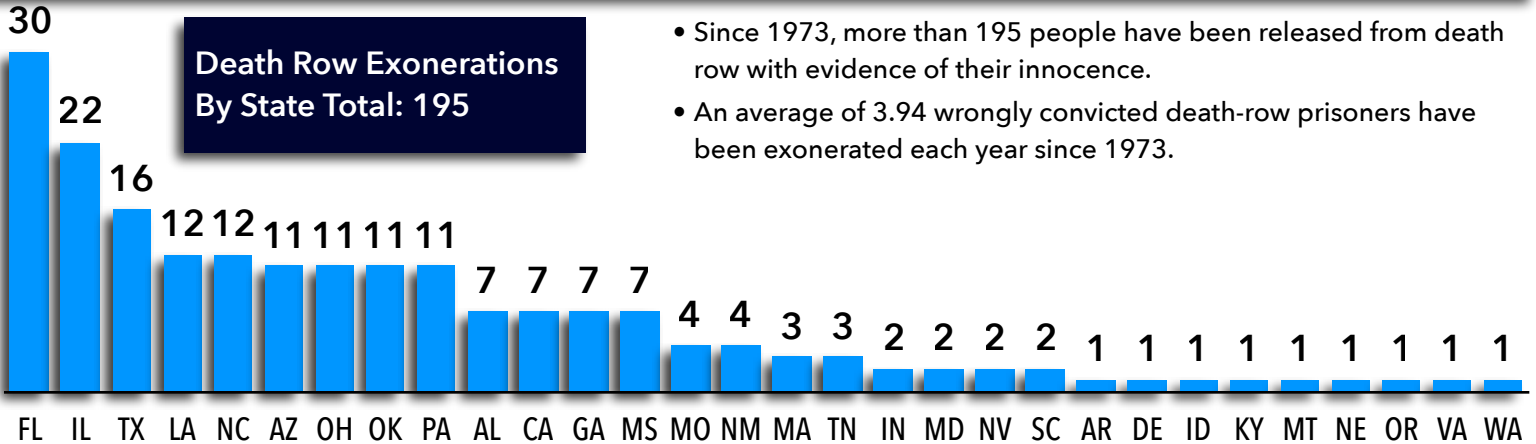
RECENT STUDIES ON RACE

- Jurors in Washington state are three times more likely to recommend a death sentence for a black defendant than for a white defendant in a similar case. (Prof. K. Beckett, Univ. of Washington, 2014).
- In Louisiana, the odds of a death sentence were 97% higher for those whose victim was white than for those whose victim was black. (Pierce & Radelet, Louisiana Law Review, 2011).
- A study in California found that those convicted of killing whites were more than 3 times as likely to be sentenced to death as those convicted of killing blacks and more than 4 times more likely as those convicted of killing Latinos. (Pierce & Radelet, Santa Clara Law Review, 2005).
- A comprehensive study of the death penalty in North Carolina found that the odds of receiving a death sentence rose by 3.5 times among those defendants whose victims were white. (Prof. Jack Boger and Dr. Isaac Unah, University of North Carolina, 2001).
- In 96% of states where there have been reviews of race and the death penalty, there was a pattern of either race-of-victim or race-of-defendant discrimination, or both. (Prof. Baldus report to the ABA, 1998).

Persons Executed for Interracial Murders

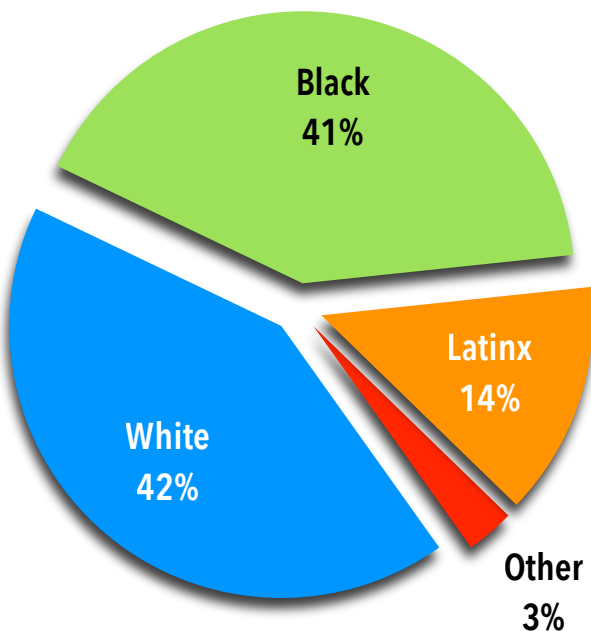


INNOCENCE



- Since 1973, more than 195 people have been released from death row with evidence of their innocence.
- An average of 3.94 wrongly convicted death-row prisoners have been exonerated each year since 1973.

DEATH ROW PRISONERS BY RACE



DEATH ROW PRISONERS BY STATE: January 1, 2023

California	665	Tennessee	47	Kansas	9
Florida	313	U.S. Gov't	44	Idaho	8
Texas	192	Oklahoma	40	Indiana	8
Alabama	167	Georgia	41	Utah	7
North Carolina	140	South Carolina	36	U.S. Military	4
Ohio	129	Mississippi	36	Montana	2
Pennsylvania	123	Arkansas	28	New Hampshire	1
Arizona	114	Kentucky	26	South Dakota	1
Louisiana	63	Missouri	18	Oregon	0
Nevada	62	Nebraska	11	Wyoming	0

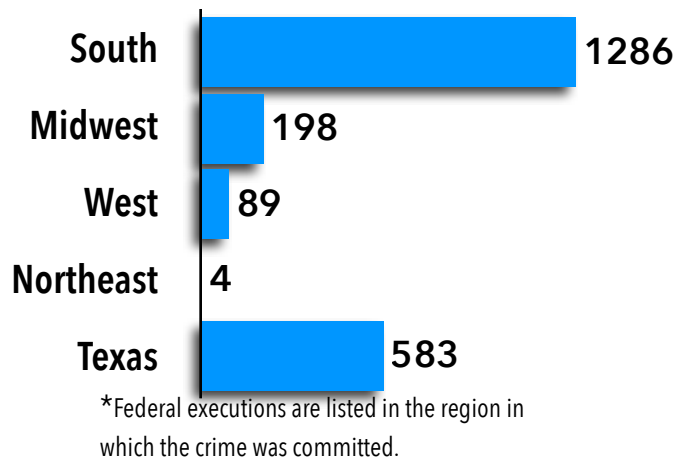
TOTAL: 2,333

Race of Death Row Prisoners and Death Row Prisoners by State Source: The Legal Defense Fund, "Death Row USA" (January 1, 2023). The combined state totals are slightly higher than the reported national total. That is because a few prisoners are sentenced to death in more than one state. Those prisoners are included in each state's totals, but only once in the national total.

EXECUTIONS BY STATE SINCE 1976

State	Tot	2023	2022	State	Tot	2023	2022	State	Tot	2023	2022
TX	583	5	5	LA	28	0	0	WA	5	0	0
OK	122	3	5	MS	22	0	1	NE	4	0	0
VA	113	0	0	IN	20	0	0	PA	3	0	0
FL	105	6	0	DE	16	0	0	KY	3	0	0
MO	97	4	2	US GOVT	16	0	0	MT	3	0	0
GA	76	0	0	CA	13	0	0	ID	3	0	0
AL	71	1	2	TN	13	0	0	OR	2	0	0
OH	56	0	0	IL	12	0	0	NM	1	0	0
NC	43	0	0	NV	12	0	0	CO	1	0	0
SC	43	0	0	UT	7	0	0	WY	1	0	0
AZ	40	0	3	MD	5	0	0	CT	1	0	0
AR	31	0	0	SD	5	0	0				

EXECUTIONS BY REGION*



DEATH SENTENCING

295 death sentences were imposed in the U.S. in 1998. The number of death sentences per year has dropped dramatically since then.

Year	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Sentences	153	166	151	138	140	123	126	120	118	114	85	82	83	74	49	31	39	43	34	18	18	21

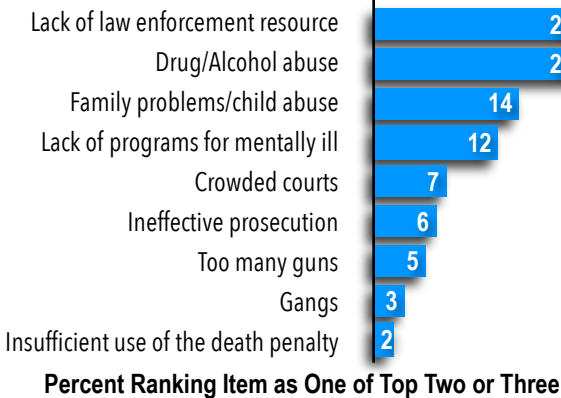
Source: Bureau of Justice Statistics: "Capital Punishment, 2013." 2014 - 2018 figure from DPIC research.

MENTAL DISABILITIES

- **Intellectual Disabilities:** In 2002, the Supreme Court held in *Atkins v. Virginia* that it is unconstitutional to execute defendants with 'mental retardation.'
- **Mental Illness:** The American Psychiatric Association, the American Psychological Association, the National Alliance for the Mentally Ill, and the American Bar Association have endorsed resolutions calling for an exemption of the severely mentally ill.

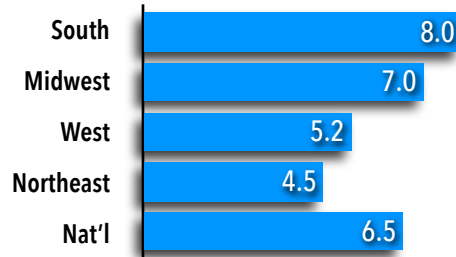
DETERRENCE

What Interferes with Effective Law Enforcement?



- A report by the National Research Council, titled *Deterrence and the Death Penalty*, stated that studies claiming that the death penalty has a deterrent effect on murder rates are "fundamentally flawed" and should not be used when making policy decisions (2012).
- A DPIC study of 30 years of FBI Uniform Crime Report homicide data found that **the South has consistently had by far the highest murder rate. The South accounts for more than 80% of executions.** The Northeast, which has fewer than 0.5% of all executions, has consistently had the lowest murder rate.
- A 2009 poll commissioned by DPIC found police chiefs ranked the death penalty last among ways to reduce violent crime. The police chiefs also considered the death penalty the least efficient use of taxpayers' money.

Murder Rates per 100,000 (2020)



EXECUTIONS SINCE 1976 BY METHOD USED

1397	Lethal Injection	28 states plus the US government use lethal injection as their primary method. Some states utilizing lethal injection have other methods available as backups. New Hampshire abolished the death penalty in 2019, but the law was not retroactive, leaving one prisoner on death row and the lethal injection protocol intact.
163	Electrocution	
11	Gas Chamber	
3	Hanging	
3	Firing Squad	

Appendix B

JUVENILES

- In 2005, the Supreme Court in *Roper v. Simmons* struck down the death penalty for juveniles. Since 1976, 22 defendants had been executed for offenses committed as juveniles.

WOMEN

- There were 50 women on death row as of October 1, 2022. This constitutes 2.12% of the total death row population. (The Legal Defense Fund, October 1, 2022). 18 women have been executed since 1976.

App. 084

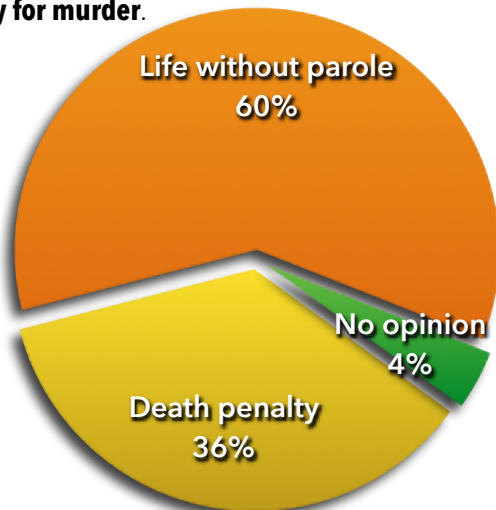
COSTS OF THE DEATH PENALTY

- Capital trials cost more than non-capital cases because of higher costs for prosecution and defense lawyers; time consuming pre-trial investigation; lengthy jury selection process for death-qualification; enhanced security requirements; longer trials because of bifurcated proceedings; solitary confinement incarceration; and necessary appeals to ensure fairness.
- An economic analysis of independent research studies completed in 15 death penalty states from 2001 – 2017 found that the average difference in case-level costs for seeking the death penalty was just over \$700,000. Report of the Oklahoma Death Penalty Review Commission, Table 1 at p.233 (2017).
- Oklahoma capital cases cost, on average, 3.2 times more than non-capital cases. (Study prepared by Peter A. Collins, Matthew J. Hickman, and Robert C. Boruchowitz, with research support by Alexa D. O'Brien, for the Oklahoma Death Penalty Review Commission, 2017.)
- Defense costs for death penalty trials in Kansas averaged about \$400,000 per case, compared to \$100,000 per case when the death penalty was not sought. (Kansas Judicial Council, 2014).
- A study in California revealed that the cost of the death penalty in the state has been over \$4 billion since 1978. Study considered pre-trial and trial costs, costs of automatic appeals and state habeas corpus petitions, costs of federal habeas corpus appeals, and costs of incarceration on death row. (Alarcon & Mitchell, 2011).
- A report by the Administrative Office of the U.S. Courts in 2010 found that seeking a federal death sentence costs 8 times more than seeking a life sentence. Jon B. Gould and Lisa Greenman, Update on the Cost and Quality of Defense Representation in Federal Death Penalty Cases (2010) at <https://www.uscourts.gov/sites/default/files/fdpc2010.pdf>

PUBLIC OPINION AND THE DEATH PENALTY

Support for Alternatives to the Death Penalty

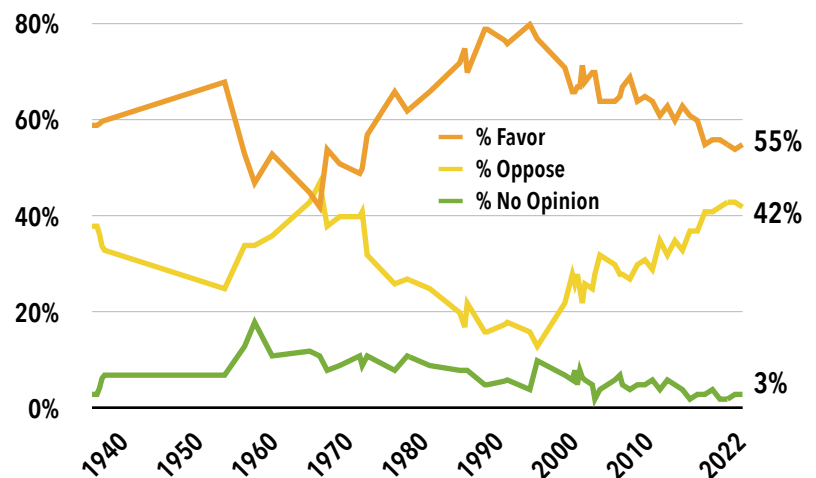
- A 2019 poll by *Gallup* found that **a clear majority of voters (60%) would choose a punishment other than the death penalty for murder.**



- Gallup *Americans Now Support Life in Prison Over Death Penalty*

Americans' Support for Death Penalty

Are you in favor of the death penalty for a person convicted of murder?



- Gallup *Steady 55% of Americans Support Death Penalty for Murderers*

The Death Penalty Information Center has available more extensive reports on a variety of issues, including:

- ["Doomed to Repeat: The Legacy of Race in Tennessee's Contemporary Death Penalty"](#) (June 2023)
- ["The Death Penalty in 2022: Year-End Report"](#) (December 2022)
- ["Deeply Rooted: How Racial History Informs Oklahoma's Death Penalty"](#) (October 2022)
- ["DPIC Special Report: The Innocence Epidemic"](#) (February 2021)
- ["Enduring Injustice: the Persistence of Racial Discrimination in the U.S. Death Penalty"](#) (September 2020)
- ["Behind the Curtain: Secrecy and the Death Penalty in the United States"](#) (November 2018)
- ["Battle Scars: Military Veterans and the Death Penalty"](#) (November 2015)
- ["The 2% Death Penalty: How a Minority of Counties Produce Most Death Cases at Enormous Costs to All"](#) (October 2013)
- ["Struck By Lightning: The Continuing Arbitrariness of the Death Penalty 35 Years After Its Reinstatement in 1976"](#) (June 2011)
- ["Smart on Crime: Reconsidering the Death Penalty in a Time of Economic Crisis"](#) (October 2009)
- ["A Crisis of Confidence: Americans' Doubts About the Death Penalty"](#) (2007)
- ["Blind Justice: Juries Deciding Life and Death with Only Half the Truth"](#) (2005)

EXHIBIT 7

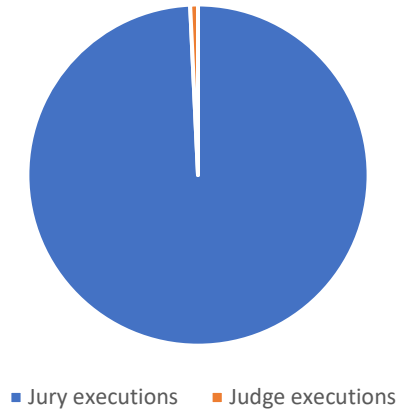
JUDGE-SENTENCED INMATES EXECUTED IN IDAHO, MONTANA, AND
NEBRASKA IN THE MODERN DEATH-PENALTY ERA

1. 08/14/18: Carey Moore (Nebraska)
2. 06/12/12: Richard Leavitt (Idaho)
3. 11/18/11: Paul Rhoades (Idaho)
4. 08/11/06: David Dawson (Montana)
5. 02/24/98: Terry Langford (Montana)
6. 12/02/97: Robert Williams (Nebraska)
7. 07/17/96: John Joubert (Nebraska)
8. 05/10/95: Duncan McKenzie (Montana)
9. 09/02/94: Harold Otey (Nebraska)
10. 01/06/94: Keith Wells (Idaho)

EXHIBIT 8

EXHIBIT 8

Judge-Sentenced Post-1976 Executions (without Arizona)



Judge-Sentenced Post-1976 Executions (with Arizona)

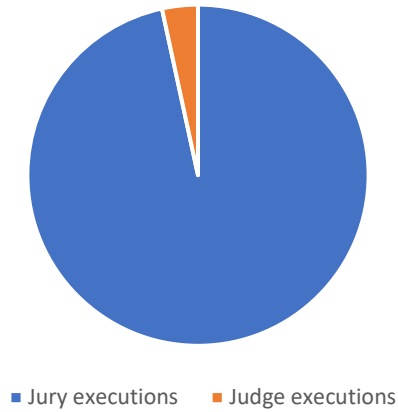


EXHIBIT 9

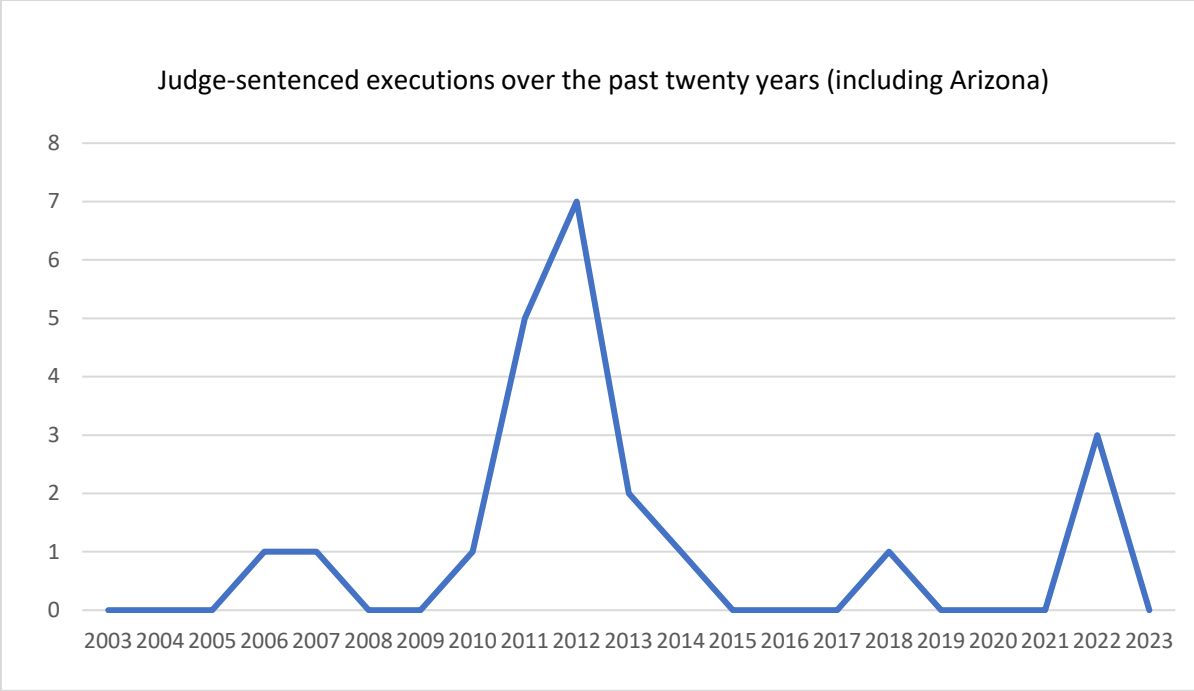


EXHIBIT 10

THE DEATH PENALTY IN 2022: YEAR END REPORT

PUBLIC SUPPORT FOR DEATH PENALTY AT NEAR-RECORD LOW DESPITE PERCEPTION THAT VIOLENT CRIME IS UP

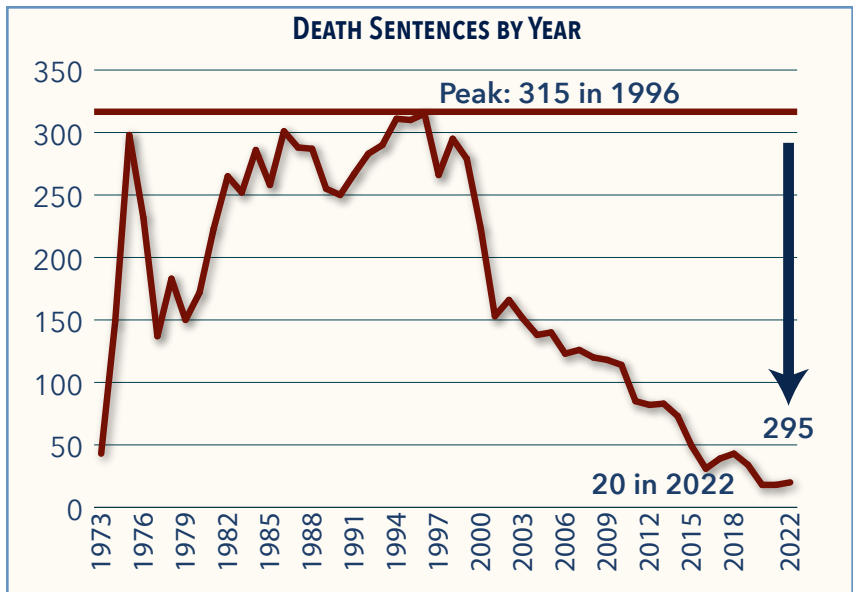
UNACCOUNTABILITY HIGHLIGHTS A YEAR OF BOTCHED EXECUTIONS

OREGON’S GOVERNOR COMMUTES DEATH ROW

KEY FINDINGS

- Eighth consecutive year with fewer than 30 executions and 50 new death sentences
- Botched executions and protocol errors lead to halts in Alabama and Tennessee
- Executions heavily concentrated in few jurisdictions—more than half in Oklahoma and Texas

Note: In March 2023, DPIC learned of one additional death sentence that was imposed in 2022: Leo Boatman, a white male defendant, was sentenced to death on November 9, 2022 in Bradford County, Florida, for the murder of Billy Chapman, a white male. Boatman’s death sentence brings the total to 21. The text below does not reflect that death sentence.



INTRODUCTION

In a year awash with incendiary political advertising that drove the public’s perception of rising crime to record highs, public support for capital punishment and jury verdicts for death remained near fifty-year lows. Defying conventional political wisdom, nearly every measure of change—from new death sentences imposed and executions conducted to public opinion polls and election results—pointed to the continuing durability of the more than 20-year sustained decline of the death penalty in the United States.

The Gallup crime survey, administered in the midst of the mid-term elections while the capital trial for the 2018 mass shooting at Marjory Stoneman Douglas High School in Florida was underway, found that support for capital punishment remained within one percentage point of the half-century lows recorded in 2020 and 2021. The 20 new death sentences imposed in 2022 are fewer than in any year before the pandemic, and just 2 higher than the record lows of the prior two years. With the exception of the pandemic years of 2020 and 2021, the 18 executions in 2022 are the fewest since 1991.

One by one, states continued their movement away from the death penalty. On December 13, 2022, Oregon Governor Kate Brown announced the commutation of the capital sentences of all 17 death-row prisoners and instructed corrections officials to begin dismantling the state’s execution chamber. The commutations completed what she called the “near abolition” of the death penalty by the state legislature in 2019. Thirty-seven states—nearly three-quarters of the country—have now abolished the death penalty or not carried out an execution in more than a decade.

For the eighth consecutive year, fewer than 30 people were executed and fewer than 50 people were sentenced to death. The five-year average of new death sentences, 26.6 per year, is the lowest in 50 years. The five-year average of executions, 18.6 per year, is the lowest in more than 30 years, a 74% decline over the course of one decade. Death row declined in size for the 21st consecutive year, even before Governor Brown commuted the sentences of the 17 prisoners on Oregon’s death row.

2022 could be called “The Year of the Botched Execution” because of the high number of states with failed or bungled executions. Seven of the 20 execution attempts were visibly problematic—an astonishing 35%—as a result of executioner incompetence, failures to follow protocols, or defects in the protocols themselves. On July 28, 2022, executioners in Alabama took three hours to set an IV line before putting Joe James Jr. to death, the longest botched lethal injection execution in U.S. history. Executions were put on hold in Alabama, Tennessee, Idaho, and South Carolina when the states were unable to follow execution protocols. Idaho scheduled an execution without the drugs to carry it out. One execution did not occur in

DEATH ROW BY STATE

STATE	2022 [†]	2021 [†]
CALIFORNIA	690	699
FLORIDA	323	338
TEXAS	199	198
ALABAMA	166	171
NORTH CAROLINA	138	136
OHIO	134	130
PENNSYLVANIA	128	130
ARIZONA	116	118
NEVADA	65	66
LOUISIANA	62	65
TENNESSEE	47	49
U.S. FED. GOV ^T	44	46
OKLAHOMA	42	43
GEORGIA	41	45
MISSISSIPPI	37	40
SOUTH CAROLINA	37	39
ARKANSAS	29	31
KENTUCKY	27	27
OREGON [~]	21	24
MISSOURI	20	21
NEBRASKA	12	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
VIRGINIA [^]	0	2
WYOMING	0	1

TOTAL **2,414[‡]** **2,474[‡]**

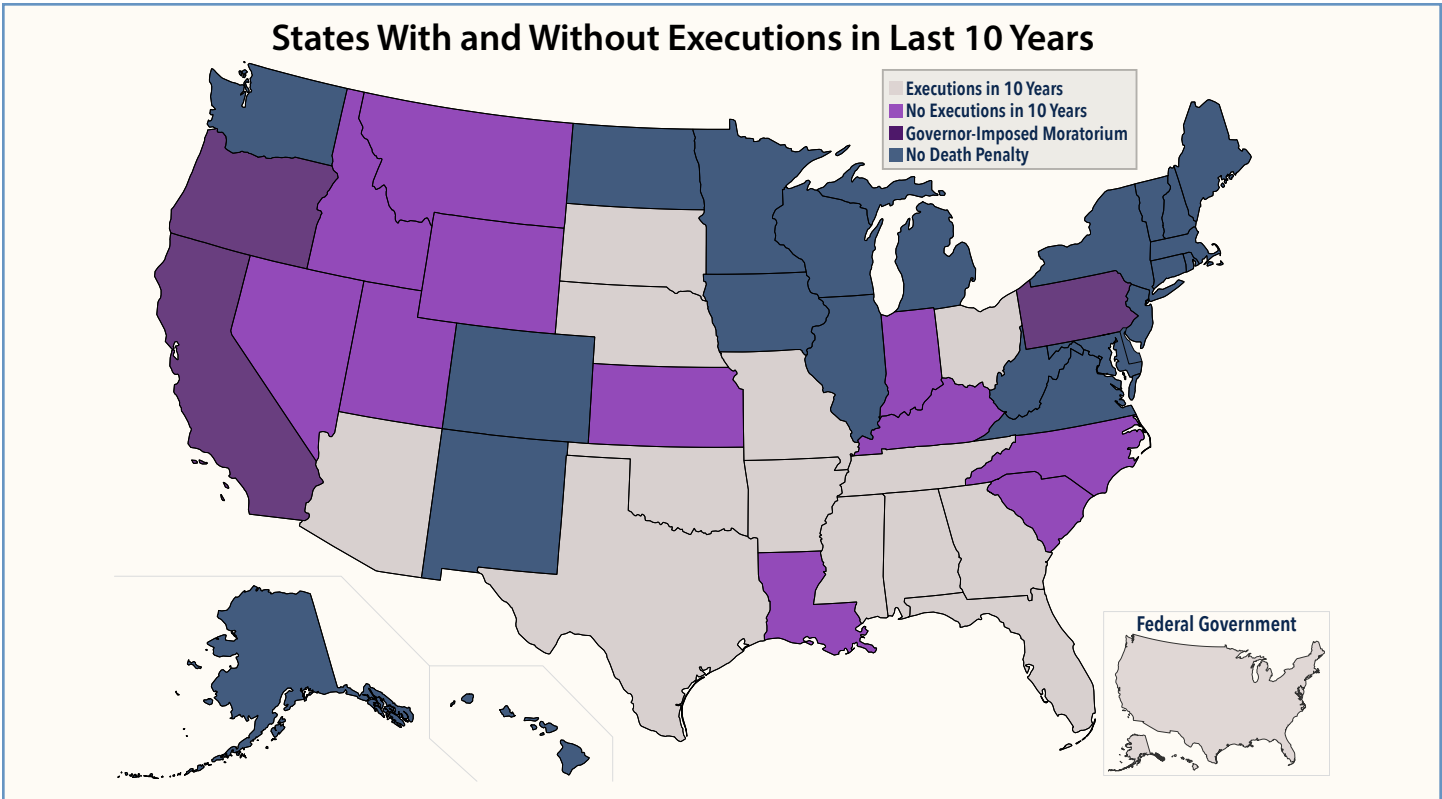
[†] Data from NAACP Legal Defense and Educational Fund for April 1 of the year shown

[^] Virginia abolished the death penalty with an effective date of July 1, 2021. The bill reduced the state’s two death sentences to life without parole

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

[~] Oregon Governor Kate Brown commuted all of the state’s death sentences on December 13. This shows Oregon’s death row population as of April 1.

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



Oklahoma because the state did not have custody of the prisoner and had not made arrangements for his transfer before scheduling him to be put to death.

Although states persisted in veiling the execution process in secrecy, what reporters were able to see, and what autopsies or failed executions revealed, was shocking. Witnesses reported significant problems in all three of Arizona’s executions, including the “surreal” spectacle of a possibly innocent man assisting his executioners in finding a vein in which to inject the lethal chemicals. An independent autopsy of Alabama prisoner Joe James Jr.’s body revealed what a reporter who observed those proceedings described as “carnage.” The next two executions were called off while in progress because of the execution teams’ inability to set IV lines. Alabama Governor Kay Ivey called for a pause in future executions and ordered an internal “top-to-bottom review” of the state’s execution process.

Tennessee Governor Bill Lee stayed the execution of Oscar Smith when, shortly before it was set to occur, he learned that the execution team had failed to test the chemicals for impurities and contamination. Citing an “oversight” in execution preparations, he canceled all pending executions and commissioned a former federal prosecutor to undertake an independent review of the process.

South Carolina attempted to schedule two executions without having a complete execution protocol in place. Under state law, if lethal injection is unavailable, prisoners are forced to choose between electrocution or firing squad, but the state had no plan for firing squad executions. The state supreme court halted later scheduled executions to allow a trial court to adjudicate a challenge to the constitutionality of those methods. After a trial on the issue, the court ruled that they violated South Carolina’s constitutional prohibition against “cruel, unusual, and corporal punishments.”

A small number of jurisdictions that have historically been the heaviest users of capital punishment carried out a majority of executions and imposed most death sentences. Executions were concentrated in a handful of states — Oklahoma, Texas, Alabama, and Arizona — that have historically been among the most prolific executioners. But in most states and counties, cultural and political trends toward criminal legal reform and racial justice kept the death penalty out of favor, even as media and politicians escalated

fears of crime. In the midst of political rhetoric reminiscent of the peak death penalty years of the 1990s, voters selected governors in the three states with moratoria on executions. Candidates who said they would not sign death warrants won in all three. Reform prosecutors were elected or re-elected across the country: in Dallas and San Antonio, Texas; Shelby County, Tennessee; Oklahoma County, Oklahoma; and Alameda County, California; among others.

The 18 executions carried out this year raised serious concerns about the application of the death penalty and the methods used to carry it out. Among those executed this year were prisoners with serious mental illness, brain damage, intellectual disability, and strong claims of innocence. In most jurisdictions, these cases would not even be capitally prosecuted today. Two prisoners were executed over the objections of the victims' families, and two others were executed despite requests from prosecutors to withdraw their death warrants.

The arbitrariness of capital punishment was evident in sentencing decisions. Twenty people were sentenced to death in twelve states. Among those sentenced to death were at least four with significant trauma, one with brain damage, one who waived his right to counsel, and one who waived jury sentencing and asked for a death sentence. At the same time, several highly aggravated murder cases resulted in life sentences, including the 2018 mass shooting at Marjory Stoneman Douglas High School in Florida and a high-profile quadruple-murder in Ohio. The juxtaposition of those cases that resulted in death sentences and those that resulted in life without parole belies the myth that the death penalty is reserved for the “worst of the worst.”

Innocence cases attracted national attention and support from unlikely actors. A bipartisan group of Oklahoma legislators released the findings of an independent investigation into the case of Richard Glossip. Representative Kevin McDugle, a Republican and self-described supporter of capital punishment, was so convinced by the evidence of Glossip's innocence that he vowed, “If we put Richard Glossip to death I will fight in this state to abolish the death penalty simply because the process is not pure. I do believe in the death penalty, I believe it needs to be there, but the process to take someone to death has to be of the highest integrity.” The Texas case of Melissa Lucio similarly brought together a bipartisan group of legislators in support of clemency. Both Glossip and Lucio remain on death row; Glossip's execution was delayed until 2023 by Governor Kevin Stitt, while Lucio's was delayed indefinitely by a ruling from the Texas Court of Criminal Appeals.

Two people — Samuel Randolph IV in Pennsylvania and Marilyn Mulero in Illinois — were exonerated, and DPIC's research found two additional older exonerations, bringing the total to 190 people exonerated from death row since 1973. DPIC released its Death Penalty Census, which analyzed the status of more than 9,700 death sentences imposed from 1972 to January 1, 2021. The data reveal that the single most likely outcome of a death sentence imposed in the United States is that the sentence or conviction is ultimately overturned and not re-imposed. Nearly half of the sentences (49.9%) were reversed as a result of court decisions. By comparison, fewer than one in six (15.7%) death sentences ended in execution. DPIC's ongoing prosecutorial accountability project identified more than 550 trials in which capital convictions or death sentences were overturned or wrongfully convicted death-row prisoners exonerated as a result of prosecutorial misconduct — more than 5.6% of all death sentences imposed in the past fifty years.

As the United States marked 50 years of the modern death penalty system, the arbitrariness and unreliability that led the *Furman v. Georgia* court to strike down capital punishment persist. As the systemic flaws of the death penalty have become clearer and more pronounced, it is being regularly employed by just a handful of outlier jurisdictions that pursue death sentences and executions with little regard for human rights concerns, transparency, fairness, or even their own ability to successfully carry it out.

SIGNIFICANT DEVELOPMENTS IN 2022

Death penalty developments reflected the split between the growing number of states that have abandoned the use of capital punishment in law or practice and the extreme conduct of a small number of outlier states and counties that are attempting to carry out executions. At both the state and federal level, legislators grappled with the racial injustice in the criminal legal system. Two states took action to address questions of mental health and the death penalty. Meanwhile, three states took action to avoid public oversight of executions, and a fourth undertook an unprecedented spree of executions.

Legislation

Reform legislation passed on the state and federal level, while three states passed laws intended to expand execution secrecy and reduce public oversight of the execution process.

The **California** legislature and **U.S. Congress** took action to redress racism in the legal system. A [federal law](#), first proposed nearly a century ago, made lynching a federal crime. At the signing ceremony, President Biden drew a historical link between the murder of Emmett Till, for whom the bill was named, and the 2020 murder of Ahmaud Arbery. “Racial hate isn’t an old problem; it’s a persistent problem,” Biden said.



President Biden signing the Emmett Till Antilynching Act

California enacted the [Racial Justice Act for All](#), a measure that retroactively applied the state’s 2020 Racial Justice Act to prisoners already sentenced to death and others convicted of felonies. Effective January 1, 2023, the expanded law permits death-row prisoners to challenge convictions obtained or sentences imposed “on the basis of race, ethnicity, or national origin.”

Kentucky became the second state to pass a [serious mental illness exemption](#), barring the death penalty for people diagnosed as seriously mentally ill. Kentucky provides for a narrow exemption, requiring that a defendant had a documented diagnosis and active symptoms of mental illness at the

time of his or her offense. **Ohio** passed a somewhat broader serious mental illness exemption in 2021. On January 31, 2022, [David Sneed](#)— who faced an April 2023 execution date — became the third person removed from death row under the statute.

Voters in **Alabama** overwhelmingly approved a constitutional amendment to require the governor to provide advance notice to the attorney general and the victim’s family before granting a reprieve or commutation to any person sentenced to death. The amendment, which had no organized opposition, is expected to have little practical impact: Alabama governors have commuted only [one death sentence](#) in the past fifty years, and none since 1999.

Idaho, Florida, and Mississippi each passed laws designed to make it easier for the states to perform executions by reducing transparency in the execution process. New laws in Idaho and [Florida](#) will conceal

- Oregon governor commutes its entire death row
- Oklahoma schedules 25 executions over a 29-month period, seeking to put to death 58% of its death row
- Kentucky becomes second state to pass serious mental illness exemption
- Three states—Idaho, Florida, and Mississippi—expand secrecy surrounding executions

from the public the identity of producers and suppliers of execution drugs. In both states, proponents of the bills claimed, without evidence, that the measures were necessary to protect drug suppliers from intimidation or harassment. Similar unfounded claims have been made in other states to justify secrecy policies.

Idaho’s bill initially failed on a tie vote in committee. Historically, that had meant that that a bill was off the table for the remainder of the legislative session. But in a controversial parliamentary decision that deviated from past legislative practice, committee chairman Sen. Todd Lakey ruled that a tie vote is a “nullity” that “decides nothing” and allowed the committee to [reconsider](#) the bill. In the first test of source secrecy after the passage of the bill, the Idaho Department of Corrections [called off](#) the scheduled December 15, 2022 execution of **Gerald Pizzuto, Jr.** saying it was unable to find any source willing to sell it execution drugs.



Senator Todd Lakey

Mississippi implemented a law giving [unprecedented discretion](#) to the Commissioner of Corrections in determining the method of execution. Prior to July 1, 2022, the state gave prisoners a choice of lethal injection, electrocution, firing squad, or nitrogen hypoxia. Under the new law, the Commissioner must notify a prisoner of which method will be used within seven days of an execution warrant being issued. There is no provision for transparency regarding the Commissioner’s selection of the method, and the law provides no guidance on how the method should be selected.

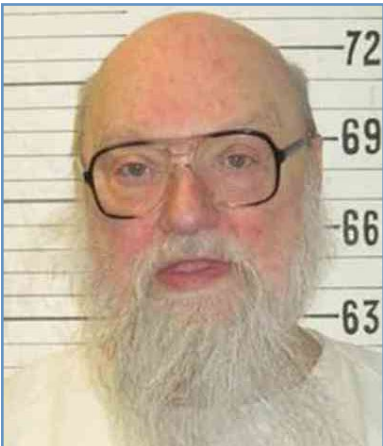
Legislators in fifteen states and U.S. Congress introduced bills to abolish the death penalty. Repeal bills received serious consideration in two states: **Utah** and Ohio. In Utah, an abolition bill sponsored by two Republican lawmakers [failed in committee](#) on a 6-5 vote. After the vote, bill sponsor Rep. V. Lowry Snow said, “This is not a matter of if, it is when the time is right, Utah will move forward.” A bipartisan repeal bill in Ohio is still pending, after four hearings were held in 2021.

Other State Developments

Outgoing **Oregon Governor Kate Brown** announced on December 13 the commutation of the death sentences of all 17 people on Oregon’s death row. Governor Brown commuted the death sentences to sentences of life without parole and ordered the dismantling of the state’s execution chamber.

Challenges to methods of execution remained at the forefront of death penalty litigation and controversy.

In **South Carolina**, the executions of **Brad Sigmon** and **Richard Moore** were [halted](#) in April to allow for a legal challenge to the state’s execution protocols. The state had first set executions for the men by lethal injection without having a supply of drugs to carry them out, then scheduled executions by electric chair without complying with a state-law requirement that they be provided the option to die by firing squad. In Moore’s legal filing, he said, “I believe this election is forcing me to choose between two unconstitutional methods of execution.” In September, a South Carolina trial court [issued an injunction](#) against executions by firing squad or electric chair after hearing four days of expert testimony. Judge Jocelyn Newman found that the methods violated the state constitution’s prohibition on “cruel, unusual, and corporal punishments.” The South Carolina Supreme Court is scheduled to hear the appeal in the case January 5, 2023.



Oscar Smith

Governors in two southern states put executions on hold after serious problems in carrying out their lethal-injection protocols. **Tennessee Governor Bill Lee** [announced](#) on May 2 that he was pausing all executions scheduled for 2022 and ordering an “independent review” of the state’s execution protocol to address a “technical oversight” that led him to halt **Oscar Smith’s** execution less than a half-hour before it was scheduled to be carried out on April 21, 2022. In a series of articles published later in May, *The Tennessean* [revealed](#) mistakes and questionable conduct at every step of the lethal-injection process, from the compounding of the execution drugs by a pharmacy with a problematic safety history, to testing procedures, to the storage and handling of the drugs once they were in the possession of the Tennessee Department of Correction (TDOC).

In November, **Alabama Governor Kay Ivey** also [halted executions indefinitely](#) after the Alabama Department of Corrections (ADOC) botched three consecutive executions. ADOC personnel struggled for three hours behind a closed curtain to establish an IV line to execute **Joe James Jr.**, in the longest botched lethal-injection execution in U.S. history. ADOC called off the executions of **Alan Miller** and **Kenneth Smith** when it became clear that the execution team would not be able to set an intravenous execution line before the warrant expired. Ivey called for a “top-to-bottom review” of the execution process, but unlike Tennessee’s independent investigation, Ivey directed the Department of Corrections to investigate its own mistakes.

Florida became the seventh state since 2017 to address the conditions of confinement on death row. The state [ended](#) its practice of automatically incarcerating all death-sentenced prisoners in permanent solitary confinement. The Florida Department of Corrections agreed to the action as part of a settlement of a federal civil rights lawsuit brought by eight prisoners who alleged that the state’s death-row conditions were “extreme, debilitating, and inhumane, violate[d] contemporary standards of decency, and pose[d] an unreasonable risk of serious harm to the health and safety.” Five other states ended automatic prolonged solitary confinement for their death rows: [Arizona](#), [Louisiana](#), [Pennsylvania](#), [South Carolina](#), and [Virginia](#) (which subsequently abolished its death penalty). A sixth state, [Oklahoma](#), has not ended its practice of keeping death-row prisoners in solitary confinement for 23 hours a day, but has implemented some other changes, including eliminating incarceration in windowless cells, permitting contact visitation, and providing some opportunity for outside recreation.

Denials of Meaningful Process

Throughout 2022, the few states that carried out executions exhibited a callous disregard for fair process and public or judicial oversight of their actions. The most notable example was Oklahoma, which [scheduled 25 executions](#) over the course of 29 months. The state court’s execution orders came two weeks after the prisoners [filed notice](#) in the U.S. Court of Appeals for the Tenth Circuit that they intended to appeal federal district Judge Stephen Friot’s ruling upholding the constitutionality of the state’s controversial execution protocol. Oklahoma began to execute prisoners before the circuit court could rule on the prisoners’ appeal. The state previously executed four prisoners while the federal trial on the drug protocol was pending. Among those slated for execution are prisoners with serious mental illness, intellectual disability, trauma, and significant claims of innocence. Oklahoma executed two seriously mentally ill prisoners without judicial review of their claims of mental incompetency and scheduled another for execution even though he was incarcerated in another jurisdiction and the state had not made arrangements for transfer of custody.



Judge Stephen Friot

Alabama carried out — or attempted to carry out — several executions in 2022 in violation of its own law. When the Alabama legislature authorized nitrogen hypoxia as a method of execution in 2018, it afforded prisoners a narrow 30-day window in which to designate it, rather than lethal injection, as the means by which they would be put to death. Alabama prosecutors then selected for execution prisoners whom they believed had not designated nitrogen hypoxia as the method of their execution.

However, as an Alabama federal district court and the U.S. Court of Appeals for the Eleventh Circuit found, corrections officials “[chose not to keep](#) a log or list of those inmates who submitted an election form choosing nitrogen hypoxia” and lost or misplaced the election forms submitted by some death-row prisoners. Prison guards also collected, but did not turn in, forms submitted by other prisoners. Further, when it distributed the forms, ADOC provided no explanations of the form or assistance in filling it out to prisoners with intellectual impairments. In court proceedings over potential violations of condemned prisoners’ rights, the Alabama Attorney General’s office materially misrepresented the role prison officials played in the designation process and was sanctioned for its misconduct.

Lawyers for **Matthew Reeves**, an intellectually disabled death-row prisoner, alleged that he would have opted for execution by nitrogen gas and that Alabama’s failure to offer him accommodations for his intellectual disability violated his rights under the Americans with Disabilities Act (ADA). After reviewing thousands of pages of documents and conducting a seven-hour hearing that included testimony from prison officials and a defense mental health expert, the district court concluded that Reeves had demonstrated a substantial likelihood that he would succeed on his ADA claim and issued a preliminary injunction barring the state “from executing [Reeves] by any method other than nitrogen hypoxia before his [ADA] claim can be decided on its merits.” A three-judge panel of the Eleventh Circuit unanimously affirmed the district court but in a [5-4 execution night vote](#) on January 27, the U.S. Supreme Court vacated the injunction and Reeves was executed.



Alan Miller

Alabama unsuccessfully attempted to execute **Alan Miller** on September 22 after he challenged the state’s authority to execute him by lethal injection. Miller alleged that he had designated execution by nitrogen hypoxia and requested a copy of the form, but Alabama prison officials said they had no record of his having submitted the form. Judge R. Austin Huffaker, Jr. of the U.S. District Court for the Middle District of Alabama found that “Miller has presented consistent, credible, and uncontroverted direct evidence that he submitted an election form in the manner he says was announced to him by the [ADOC],” along with “circumstantial evidence” that ADOC lost or

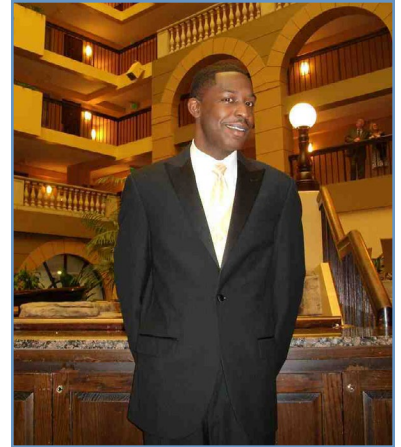
misplaced his form. Huffaker issued an injunction prohibiting the state from executing Miller by means other than nitrogen hypoxia and the Eleventh Circuit denied Alabama’s motion to vacate the district court’s ruling. In a 5-4 vote, the U.S. Supreme Court lifted the injunction and allowed the execution to proceed, but Miller’s execution was called off when the execution team was unable to set an IV line.

Defendants in two states brought challenges to the death-penalty jury selection process. Both argued that the combination of the “death-qualification” process — which disqualifies potential jurors from serving in a capital case because of their expressed opposition to the death penalty — and discretionary jury strikes discriminatorily disenfranchised African American jurors and produced unrepresentative juries incapable of reflecting the views of the community.

In **North Carolina**, lawyers for Wake County capital defendant **Brandon Hill** [presented](#) a study by law professors Catherine M. Grosso and Barbara O’Brien that documented statistically significant evidence of racial disparities in death-qualification. The study of eleven years of capital prosecutions in the county found that Black potential jurors were removed “at 2.16 times the rate of their white counterparts.”

Controlling for jurors who could have been excused for cause on other grounds, they found that otherwise qualified “Black venire members were removed on this basis at 2.27 times the rate of white venire members.” The prosecution’s racially disparate exercise of discretionary peremptory strikes further diluted Black representation on death penalty juries. Grosso and O’Brien found that the prosecution peremptorily “struck Black potential jurors at 2.04 times the rate it struck white venire members.” Their research showed that “[t]he cumulative effect of the death qualification process and the state’s exercise of peremptory strikes meant that Black potential jurors were removed at almost twice the rate of their representation in the population of potential jurors,” while white jurors were removed at 0.8 times their representation in the general venire.

In **Florida**, lawyers representing **Dennis Glover** in his capital resentencing trial [presented](#) research from criminal justice professor Dr. Jacinta M. Gau, who reviewed the jury selection practices in the 12 capital cases tried in Duval County (Jacksonville) from 2010 through 2018. Dr. Gau found that 33.8% of Black potential jurors were excluded by death qualification, along with 38.0% of other jurors of color, while only 15.5% of white jurors were excluded. While Black jurors comprised 25.9% of the general venire, they constituted 39.3% of those disqualified because of their views against the death penalty. Likewise, while other jurors of color (Latinx, Asian, or other race) comprised 8.9% of the overall jury pool, they constituted 15.2% of those disqualified because of opposition to capital punishment. By contrast, white jurors comprised 65.4% of the entire venire, but only 45.5% of death-qualification strikes. Again, the prosecutor’s discretionary strikes compounded the racial disparities: “fully two thirds of Black women otherwise eligible, qualified, and willing to serve were excluded by the combination of death qualification and prosecutor peremptory strikes, as were 55% of Black men,” Gau wrote.



Brandon Hill

Research and Investigations

On June 29, 2022, timed to coincide with the fiftieth anniversary of the U.S. Supreme Court’s decision in *Furman v. Georgia* that ushered in the modern era of the U.S. death penalty, DPIC released our [Death Penalty Census](#), our effort to identify and document every death sentence imposed in the U.S. since *Furman*. The census captures more than 9,700 death sentences imposed between the *Furman* ruling and January 1, 2021.

The data from the census document that 49 years into the modern era, the single most likely outcome of a death sentence imposed in the United States is by far that the defendant’s conviction or death sentence will be overturned and not re-imposed. Nearly half of the death sentences imposed since 1972 (49.9%) have been reversed as a result of court decisions. The next most likely outcome (23.9%) is that the sentence is still active, and the defendant is still on death row. By comparison, fewer than one in six (15.7%) death sentences have ended in execution. 7.3% of death sentences effectively became death-in-prison life sentences, as death-row prisoners died before their sentence was carried out or while their appeals were still pending in the courts. Another 2.9% of sentences were decapitalized by executive grants of clemency.

Our analysis of the data confirmed the increasing geographic arbitrariness of the U.S. death penalty and that it is disproportionately carried out in a small number of states and counties characterized by outlier practices and lack of meaningful judicial process. Fewer than 2.4% of all counties in the U.S. (just 75 counties) accounted for half of all death sentences imposed in state courts since 1972.

Prosecutions in just five counties accounted for more than 1/5 of all executions in the U.S., while prosecutions in just 2% of U.S. counties accounted for half of all U.S. executions. 84% of U.S. counties had not had any executions in a half-century.

Just 34 counties — fewer than 1.1% of all the counties in the U.S. — accounted for half of everyone on death row in U.S. state death rows. 2% of U.S. counties accounted for 60.8% of all state death-row prisoners. 82.8% of U.S. counties did not have anyone on death row.

Outlier practices disproportionately contributed to death sentences and executions. Counties in Alabama and Florida, which authorized non-unanimous death sentences, imposed more death sentences and had higher per capita death-sentencing rates and current death-row populations than other counties of similar size. States with the highest execution rates also tended to have the worst access to meaningful judicial review. [More than 100 people](#) were executed in Texas after U.S. Supreme Court case precedent had already established the unconstitutionality of their death sentences. 36.4% of all Florida executions, or 1 in every 2.75 executions, came despite U.S. Supreme Court decisions clearly establishing the unconstitutionality of their death sentences.

Our [prosecutorial accountability project](#), the first results of which were also released on the 50th anniversary of *Furman*, found that official misconduct is rampant in death penalty cases. Our research, which is still ongoing, identified more than 550 cases in which a capital conviction or death sentence was overturned or a death-row prisoner was exonerated as a result of prosecutorial misconduct. That means that at least 5.6% of all death sentences that have been imposed in the United States since 1972 have been reversed because of prosecutorial misconduct or resulted in a misconduct-related exoneration.

An important investigation by [National Public Radio](#) shined a light on one of the less appreciated consequences of capital punishment: its debilitating impact on the prison personnel who are tasked with carrying it out. Reporter Chiara Eisner interviewed 26 current or former corrections workers and others

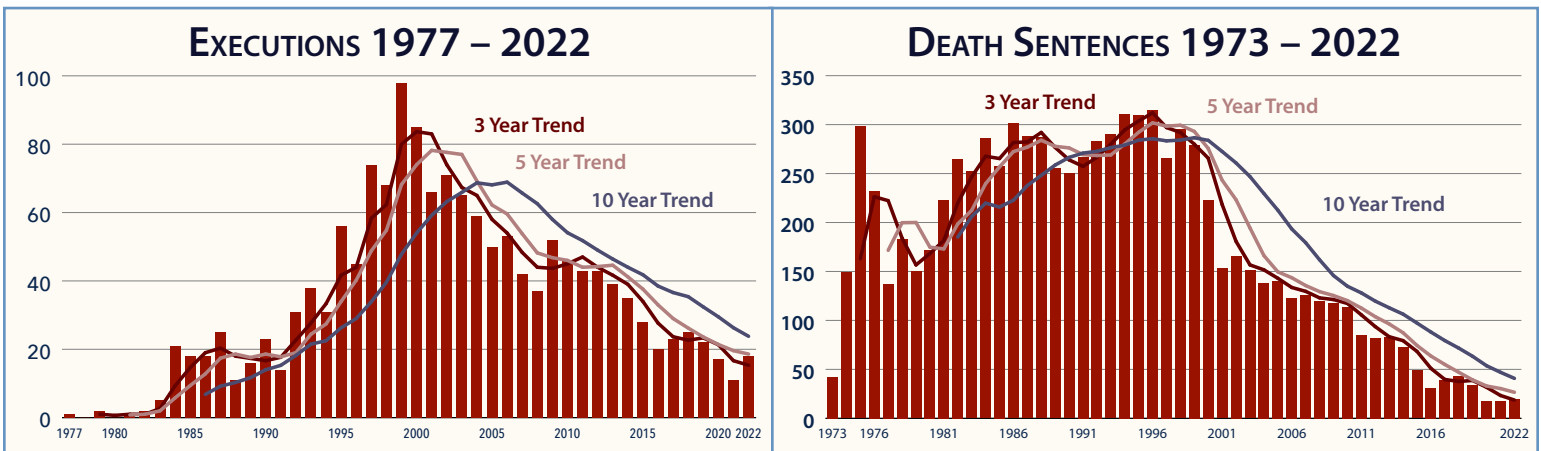
who had been involved in executions carried out by seventeen states and the federal government, finding that corrections personnel who participate in executing prisoners experience emotional trauma so profound that it often changes their views about capital punishment.

“Most of the workers NPR interviewed reported suffering serious mental and physical repercussions,” Eisner reported. “But only one person said they received any psychological support from the government to help them cope.” Of all the people whose work required them to witness executions in 13 states — Virginia, Nevada, Florida, California, Ohio, South Carolina, Arizona, Nebraska, Texas, Alabama, Oregon, South Dakota, and Indiana — none said they still support the death penalty, including those who were in favor of capital punishment when they started their jobs.



EXECUTION AND SENTENCING TRENDS

- Eighth consecutive year with fewer than 30 executions and 50 new death sentences
- Two states—Oklahoma and Texas—performed 56% of the year’s executions
- Only one county—San Bernardino, California—imposed more than a single death sentence. Two death sentences are expected to be imposed there on December 16



For the eighth consecutive year, fewer than 50 new death sentences were imposed in the United States and fewer than 30 executions were carried out. Six states carried out executions, while twelve imposed new death sentences. With the exception of the pandemic years of 2020 and 2021, the 20 new death sentences — just two above last year’s record low of 18 — were the fewest imposed in any year in the U.S. in the past half-century. The 18 executions also were fewer than in any pre-pandemic year since 1991.

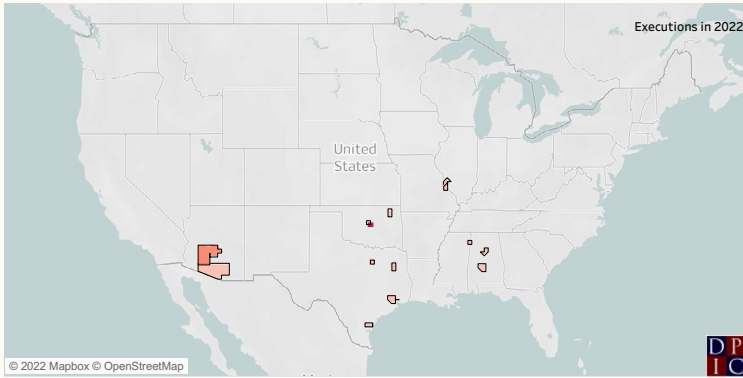
Death sentences and executions have both fallen dramatically from their peak usage in the 1990s. Death sentences in 2022 were 93.7% below the peak of 315 in 1996. Executions have dropped by 82% since their peak of 98 in 1999. The number of people on death row across the country also declined for the 21st consecutive year, with resentencings to life or less again outpacing the number of new death sentences. As of April 1, there were 2,414 people on death row.

Geographically, the year’s trends were a microcosm of the last 50 years of the U.S. death penalty. **Oklahoma** and **Texas** performed more executions than any other states, combining for more than half (56%) of the year’s executions. Since 1976, those two states have performed about 45% of all executions in the U.S. At a county level, just 13 counties carried out executions, and just two — Oklahoma County, **Oklahoma** and Maricopa County,

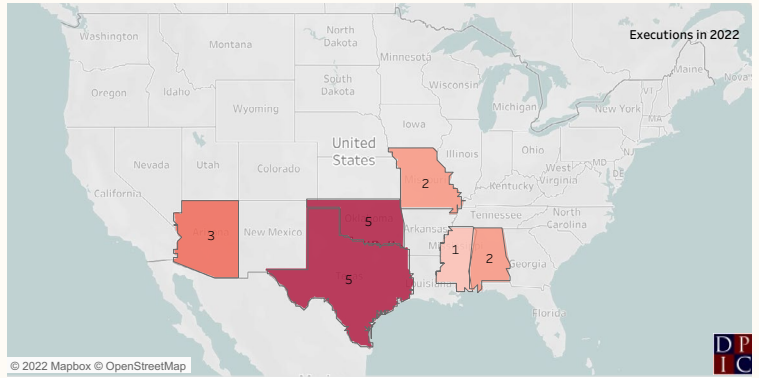
EXECUTIONS BY STATE 2022 & 2021		
STATE	2022	2021
TEXAS	5	3
OKLAHOMA	5	2
ARIZONA	3	0
ALABAMA	2	1
MISSOURI	2	1
MISSISSIPPI	1	1
U.S. GOVERNMENT	0	3
TOTAL	18	11

2022 EXECUTIONS

By County



By State



Arizona — carried out more than a single execution. Both of those counties are among the 20 most prolific executing counties in the last 50 years. Thirteen (65%) of the death sentences imposed in 2022 were handed down in the five states with the largest death row populations — **California** (2 new sentences), **Florida** (4), **Texas** (2), **Alabama** (3), and **North Carolina** (2), which also are the only states to impose multiple death sentences during the year.

Oklahoma County’s four executions in 2022 brought its total to 46 since 1976. It now ranks fourth in the country in the number of executions, and no county outside of Texas is responsible for more. The five most prolific executing counties (the others, all in Texas, are Harris, Dallas, Bexar, and Tarrant) have carried out more than one-fifth of all executions in the U.S. in the last fifty years.

People of color were again overrepresented among those executed in 2022, as were cases involving white victims. Eight of the 18 prisoners executed were people of color: five were Black, one was Asian, one Native American, and one Latino. Five of the eight people of color (62.5%) were executed for killing white victims (3 Black defendants, one Latino, and one Native American). Only one of the 10 white defendants (10.0%), **Benjamin Cole**, was executed for killing a person of color (Native American), and no one was executed for an interracial murder of a Black victim.

Twelve states imposed new death sentences this year. Florida sentenced more people to death than any other states, with four.

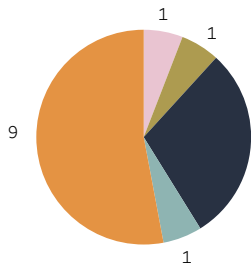
COUNTIES WITH THE MOST DEATH SENTENCES IN THE LAST FIVE YEARS

COUNTY	STATE	NEW DEATH SENTENCES		FIVE-YEAR TOTAL
		2018-2021	2022	
RIVERSIDE	CALIFORNIA	5	0	5
CUYAHOGA	OHIO	5	0	5
LOS ANGELES	CALIFORNIA	4	0	4
MARICOPA	ARIZONA	3	1	4
TULARE	CALIFORNIA	3	1	4
OKLAHOMA	OKLAHOMA	3	0	3
SAN BERNARDINO	CALIFORNIA	1	2	3

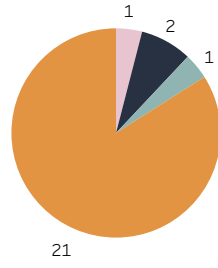
The overlap between executing states and sentencing states illustrates the continued geographic narrowing of death penalty use. The six states that carried out executions in 2022 imposed 41% (9) of the year’s death sentences. Every state that performed an execution also imposed at least one new death sentence this year.

Just 35% of the 51 death warrants issued for 2022 were actually carried out. Ten executions were stayed for reasons including

2022 Executions by Race of Defendant



2022 Executions by Race of Victim(s)



Race
 American Indian or Alaska Native
 Asian
 Black
 Latinx
 White

Victim(s) Race(s)
 American Indian or Alaska Native
 Black
 Latinx
 White

mental competency, intellectual disability, and probable innocence. Seventeen executions were halted by reprieve — 9 in **Ohio**, where executions have been on hold since 2019 over concerns about lethal injection, and 6 in **Tennessee**, where **Governor Bill Lee** halted executions this year to review the state’s execution protocols. **Richard Glossip** in Oklahoma received two reprieves to allow the Oklahoma Court of Criminal Appeals to review his request for an evidentiary hearing on new evidence of innocence. One prisoner died while his death warrant was pending. One execution date was removed. Two executions, both in Alabama, failed after execution personnel were unable to set IV lines. Two other warrants

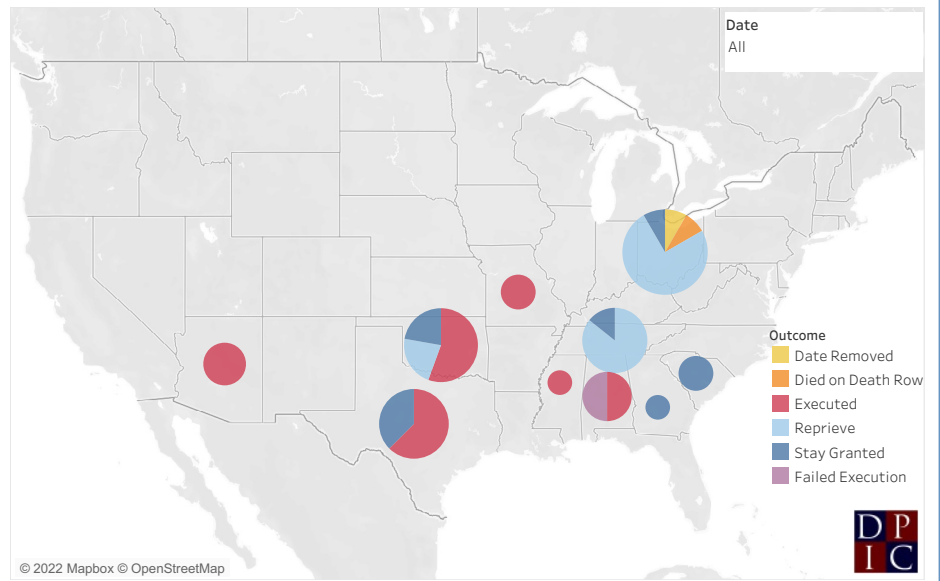
expired without being carried out because the condemned prisoner was not in custody in the state or the state had scheduled the execution without the drugs necessary to carry it out.

Oklahoma’s decision to schedule 25 execution dates over a two-year period marked it as an outlier, even among states that regularly perform executions. Only three states have ever executed 25 or more people in a two-year span — Texas, Oklahoma, and **Virginia**. If Oklahoma were to carry out all 25 executions, it would execute an unprecedented 58% of its death row in that time period.

Problems with execution methods halted executions in three states, while Ohio continued to pause executions for the same reason. In **South Carolina**, the state supreme court stayed the executions of **Richard Moore** and **Brad Sigmon**, who were challenging the state’s use of the electric chair and firing squad as execution alternatives to lethal injection. In court filings, Moore wrote, “I believe this election is forcing me to choose between two unconstitutional methods of execution. ... Because the Department says I must choose between firing squad or electrocution or be executed by electrocution I will elect firing squad.” The state said that it had been unable to obtain lethal-injection drugs, leaving electric chair and firing squad as the available methods.

Tennessee Governor Bill Lee halted executions and ordered an independent investigation into the state’s execution procedures after it was revealed that corrections officers had not

Outcome of Death Warrants in 2022



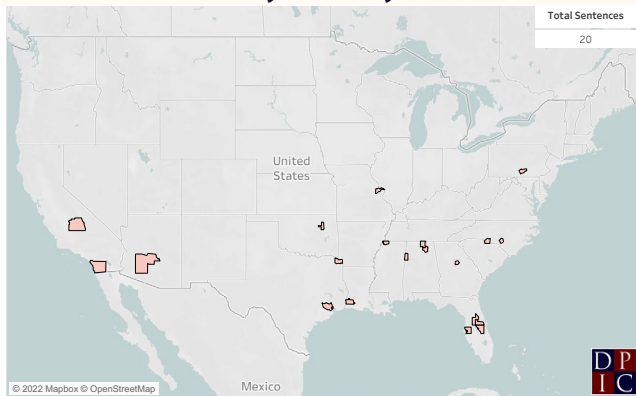
followed protocol in preparation for **Oscar Smith**'s execution on April 21. Lee called off Smith's execution less than half an hour before it was set to be carried out. Lee emphasized the importance of an independent, third-party review, appointing a former U.S. Attorney to conduct the investigation.

Alabama Governor Kay Ivey similarly paused executions after her state's string of botched and failed executions. In contrast to Lee, Ivey made no assurances that the "top-to-bottom review" she ordered would be performed by an independent investigator. Instead, she blamed the problems on efforts by prisoners and their attorneys to ensure that each case received thorough judicial review.

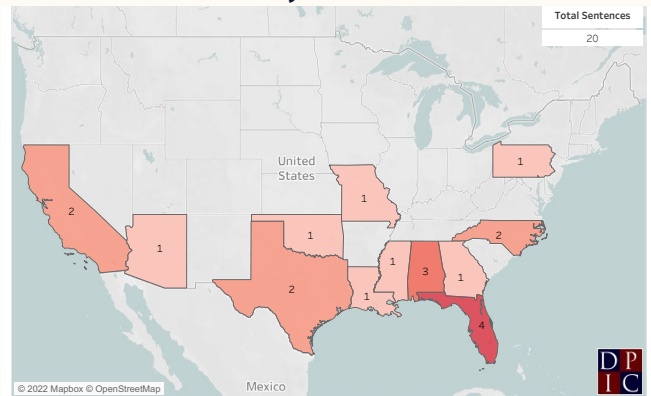
Ohio Governor Mike DeWine issued nine reprieves citing "ongoing problems involving the willingness of pharmaceutical suppliers to provide drugs" for use in executions "without endangering other Ohioans." Drug manufacturers had informed the governor that they would halt selling medicines to state facilities if Ohio diverted drugs that had been sold for medical use and instead used them in executions.

2022 DEATH SENTENCES

By County



By State



INNOCENCE AND CLEMENCY

- 190 people have been exonerated from death row since 1973
- Concerns about innocence attracted unlikely spokespeople, including Republican state legislators and self-described supporters of capital punishment
- Exonerations and claims of innocence centered on police and prosecutorial misconduct

Exonerations in 2022

Two more former death-row prisoners were exonerated in 2022, including the third woman wrongfully convicted and sentenced to death. With DPIC's ongoing research discovering two additional unrecorded exonerations, the number of U.S. death-row exonerations since 1973 rose to 190.

DPIC’s analysis of data from the National Registry of Exonerations also found that at least twelve innocent people were exonerated in 2021 from wrongful murder convictions that involved the wrongful pursuit or threatened use of the death penalty by police or prosecutors.

Samuel Randolph IV was [exonerated](#) in April 2022 after being wrongfully incarcerated for 20 years. Randolph is **Pennsylvania’s** 11th death-row exoneree, with five of those exonerations occurring since 2019. All five of those exonerations have involved both official misconduct and perjury or false accusation. Four of the five have also involved inadequate legal representation at trial.

Randolph was sentenced to death in 2003 for the murders of two men in a Harrisburg bar in 2001. He had long maintained his innocence, alleging that police and prosecutors withheld exculpatory evidence in the case and selectively refused to test DNA evidence that could exclude him as the killer. He was represented at trial by a lawyer who, while running for district attorney in a neighboring county, had failed to investigate Randolph’s case. After a complete breakdown in communications between Randolph and appointed counsel, his family’s sale of property raised enough money to hire private counsel. However, the trial court refused to grant counsel even a three-hour continuance to accommodate a previously scheduled, unrelated court appearance. Randolph alleged that the court’s ruling violated his Sixth Amendment right to be represented by counsel of choice.

A federal district court held a hearing on these claims in 2019. In [May 2020](#), it granted Randolph a new trial on the Sixth Amendment violation, mooting the necessity to address Randolph’s innocence claims. In July 2021, the U.S. Court of Appeals for the Third Circuit [upheld that ruling](#). Two days after the U.S. Supreme Court declined to review the county prosecutors’ appeal, District Attorney Fran Chardo filed a motion to terminate the prosecution of Randolph. Refusing to concede Randolph’s innocence, Chardo wrote that “retrial is not in the public interest at this time” because “[t]he police affiant and the police detective who handled the evidence collection in this case have both died” and “[o]ther witnesses have become unavailable for other reasons.”

In 2021, while the Dauphin County prosecutors’ request for review by the U.S. Supreme Court was pending, Chardo offered Randolph an “*Alford*” plea in which he could continue to maintain his innocence but would have to admit that prosecutors had sufficient evidence to convict. Under the deal, Randolph would be released for time served but his convictions would remain on his record. “I didn’t do this. Innocent people don’t plead guilty — as bad as I want to go home,” Randolph told *Penn Live*.

In August 2022, a Cook County, **Illinois** judge granted a motion filed by State’s Attorney Kim Foxx to [dismiss](#) all charges against **Marilyn Mulero**, who was framed for the murder of an alleged gang member by disgraced former Chicago detective Reynaldo Guevara. Mulero’s was one of seven cases Foxx moved to dismiss, but the only case in which a defendant had been sentenced to death. Two additional people framed for murder by Guevara have since been exonerated.

Guevara has been accused of framing defendants of murder in more than 50 cases by beating, threatening, and coercing suspects to obtain false confessions. Thirty-three wrongful convictions tied to Guevara’s misconduct have been overturned to date, including death-row exoneree [Gabriel Solache](#) in 2017.



Samuel Randolph IV



Marilyn Mulero at a news conference regarding her exoneration.

Mulero's case follows the same pattern. In 1992, she was interrogated by Guevara and former Chicago Police Detective Ernest Halvorsen over the course of a 20-hour period, during which she was denied sleep and access to counsel and was threatened with the death penalty and the loss of her two children if she did not confess. She eventually signed a statement prepared by the detectives confessing to one of two murders of gang members who were thought to have been shot in retaliation for a prior gang killing.

After the trial court denied her motion to suppress the confession, Mulero's court-appointed lawyer advised her to plead guilty, which she did in September 1993. A jury was empaneled for the sentencing phase of trial and sentenced her to die. In May 1997, the Illinois Supreme Court overturned her conviction because her trial prosecutor improperly cross-examined her about the suppression motion and then argued to the jury that her answers indicated a failure to express remorse. She was resentenced to life without parole in 1998.

Governor J.B. Pritzker commuted her sentence to time served in April 2020, after Mulero had spent 28 years in prison, five of them on death row. She is the third female death-row exoneree in the U.S. since 1973 and the 16th exoneree from Cook County — the most of any county in America. At least 14 of the Cook County exonerations have involved official misconduct by police or prosecutors, and eight have involved coerced false confessions.

DPIC's 2021 report, *The Innocence Epidemic*, explains that Cook County's then 15 death-row exonerations "are directly related to endemic police corruption, as the notorious 'Burge Squad,' operating under Chicago Police Commander Jon Burge, and disgraced Chicago detective Reynaldo Guevara systematically tortured or coerced innocent suspects into confessing to murders they did not commit. Illinois' high rate of wrongful convictions in death cases was a major factor in the state's 2011 repeal of capital punishment, as state officials decided there was no way to correct the inaccuracy of the state's death penalty system."

DPIC also added two **California** cases to its Exoneration List: **Eugene Allen**, who was wrongfully convicted and sentenced to death for the murder of a prison guard in 1976 and acquitted on retrial in 1981; and **Barry Williams**, wrongfully convicted in 1986 and exonerated in 2021 of an allegedly gang-related street shooting in Los Angeles. Official misconduct was present in both of their cases.

All four exonerees are people of color: Randolph, Allen, and Williams are Black; Mulero is Latina. Nearly two-thirds of all U.S. death-row exonerees have been people of color (123 of 190, 64.7%). 54.2% percent are Black; 8.9% are Latinx.

DPIC's review of [National Registry of Exonerations data](#) from 2021 once again found that the use or threat of the death penalty by police or prosecutors led to wrongful convictions in numerous other cases in which the death penalty was not imposed. Of the seven wrongful capital prosecutions that resulted in exonerations in 2021, three resulted in death sentences ([Sherwood Brown](#) and [Eddie Lee Howard](#) in Mississippi and [Barry Williams](#) in California). Juries in three other states sentenced other wrongfully capitally prosecuted defendants to life without parole — [James Allen](#) in Illinois, [George Bell](#) in New York, and [Devonia Inman](#) in Georgia. In the seventh wrongful capital prosecution, Georgia prosecutors secured a murder conviction against [Dennis Perry](#) and then used the threat of an imminent penalty-phase trial to coerce him to agree to waive any guilt-phase appeals in exchange for being spared the death penalty. In five exonerations in non-capital murder prosecutions, witnesses who had pled guilty to avoid the death penalty or had been threatened with the death penalty if they did not cooperate provided false testimony that led to wrongful murder convictions.

Official misconduct was the leading cause of the wrongful convictions, present in 10 of the 12 exonerations. Race was also a significant factor: six of the seven who were wrongfully capitally prosecuted — and all three who were sentenced to death — are Black; overall, nine of the exonerees are African

American. The exonerees averaged 26.5 years between conviction and exoneration, collectively losing more than 300 years to the wrongful convictions. But African-American exonerees averaged 27.8 years from conviction to exoneration, nearly 23% longer than the average of 22.7 years it took to clear white exonerees.

Innocence Claims Prompt Execution Deferrals, Garner Bipartisan Support from Lawmakers

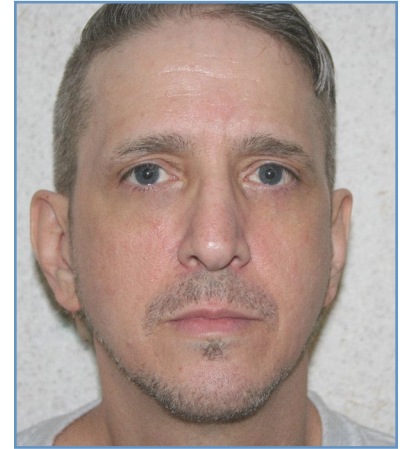
Richard Glossip, who has long maintained his innocence, received two reprieves this year from **Oklahoma Governor Kevin Stitt** following significant findings of innocence from an independent investigation into his case. Stitt issued the first 60-day reprieve in [August 2022](#), pushing Glossip's September 2022 execution date to December 2022, to provide time for the Oklahoma Court of Criminal Appeals (OCCA) to determine whether to grant an evidentiary hearing to address innocence claims. Stitt granted a second reprieve on [November 2, 2022](#), again "to allow time for OCCA to address pending legal proceedings," resetting Glossip's December 2022 execution date to February 2023. Later in November, after the second reprieve, the OCCA [twice denied](#) Glossip's petitions for a hearing to review evidence on his innocence claims.

In May 2021, [28 Republican and six Democratic](#) Oklahoma legislators called upon Governor Stitt and the Oklahoma Pardon and Parole Board to conduct an [independent investigation](#) into Glossip's case, after his lawyers had uncovered new evidence supporting his claims of innocence. Glossip was originally sentenced to death for the 1997 murder of Barry Van Treese, his boss at an Oklahoma City motel. The prosecution had no physical evidence linking him to the crime, only the self-serving testimony of his co-defendant, Justin Sneed, who was able to avoid the death penalty by claiming that Glossip had hired him to commit the crime.

The legislators subsequently commissioned an independent *pro bono* investigation by the national law firm, Reed Smith, LLP. Days before the release of the law firm's report, which exposed significant evidence of government misconduct and destruction of evidence, Oklahoma Attorney General John O'Connor filed a motion to set execution dates for Glossip and 24 other death-row prisoners. On July 1, 2022, the same day that Glossip's lawyers filed a motion for an evidentiary hearing on his innocence claim, the state court set the 25 execution dates, scheduling an execution nearly every month from August 2022 through December 2024.

Since 2014, Glossip has been scheduled for execution eight times, and he has been served his last meal three separate times. He received a last-minute reprieve from **then-Governor Mary Fallin** in September 2015 when it was revealed that the state had obtained an incorrect drug for the execution. Glossip's case has not only received bipartisan support from state legislative officials but has also been examined by the Inter-American Commission of

Human Rights (IACHR), which issued a precautionary measure in favor of Glossip in March 2022. In a [press release](#) on the issuance of the precautionary measure, the IACHR identified Glossip's 23 years in



Richard Glossip



Oklahoma Representative Kevin McDugle speaking at a June 15, 2022 press conference announcing the release of the independent investigation into Richard Glossip's case.

solitary confinement and the repeated, and often last-minute, postponement of scheduled executions as “conditions of detention incompatible with international human rights standards.”

After the OCCA denied Glossip’s motions to permit him to present his new evidence of innocence in court, State Representative Kevin McDugle (R-Broken Arrow), who led the call for an investigation, authored a blistering op-ed in *The Oklahoman* saying: “if the [Oklahoma Court of Criminal Appeals] cannot grant a hearing on this flimsy death penalty conviction, my confidence as a legislator in our state’s judicial system, and its ability to make just decisions and take responsibility for its failures, has been destroyed. ... Who will take responsibility for this travesty? Where is the backbone that will stand for justice? The members of the Oklahoma Court of Criminal Appeals have let us all down. I pray new leadership in the offices of the attorney general and Oklahoma County district attorney find the strength to do what is needed to right this terrible wrong. We cannot kill an innocent man!”

The innocence case of Texas death-row prisoner **Melissa Lucio** has also been the subject of international attention and bipartisan legislative action. Lucio was sentenced to death in 2008 on charges that she allegedly beat her two-year-old daughter, Mariah, to death. Lucio’s lawyers, with the support of expert testimony, have presented expert affidavits that Mariah was not murdered at all, but likely died from head trauma following an accidental fall two days prior to her death. The victim of physical, emotional, and sexual abuse from a young age, Lucio has been diagnosed with PTSD, battered woman syndrome, and depression, and has intellectual impairments, all of which, forensic and domestic abuse experts say, made her more vulnerable to coercive interrogation. After five hours of aggressive questioning by police on the night of Mariah’s death, Lucio acquiesced to police pressure, saying, “I guess I did it.”



Melissa Lucio

In July 2019, a panel of the U.S. Court of Appeals for the Fifth Circuit [overturned Lucio’s conviction](#), one of only two times the court had granted relief in more than 150 appeals of Texas death sentences imposed this century. However, in February 2021, the full circuit voted 10-7 to reconsider that opinion and [reinstated her conviction and death sentence](#). Supported by amicus briefs filed by a [broad coalition](#) of advocates for victims of domestic and gender-based violence, former prosecutors, legal scholars, and innocence organizations, Lucio sought review in the U.S. Supreme Court. However, in October 2021, the [U.S. Supreme Court denied review](#) of Lucio’s case.

Texas then scheduled Lucio’s execution for April 27, 2022. In response, Lucio filed a motion to [vacate](#) the death sentence and remove the judge and district attorney in her case because of conflicts of interest stemming from their employment of key members of Lucio’s original defense team.

In February, the IACHR granted Lucio a precautionary measure asking the state to refrain from execution until her case is reviewed and to ensure detention conditions align with international human rights standards. Lucio, who has spent 14 years in solitary confinement, is housed in a concrete room the size of a parking space in a building containing female prisoners who suffer from extreme mental illness. Lucio “hears screaming, cursing, banging, and slamming doors throughout the prison,” and is frequently exposed to “airborne chemical agents, which are used to subdue prisoners who are deemed to be acting out,” according to her [petition](#).

In March, [nearly 90 members](#) of the Texas House of Representatives from across the political spectrum, led by Rep. Jeff Leach (R-Plano) issued a call for the Texas Board of Pardons and Paroles and **Governor Greg Abbott** to grant clemency to Lucio. Her clemency petition included statements of support from jurors, forensic and medical experts, anti-domestic violence activists, religious leaders, exonerees, and Lucio’s siblings and children. In a [heated legislative hearing](#), Leach and other legislators pressed

Cameron County District Attorney Luis Saenz to withdraw Lucio’s death warrant. He ultimately agreed to do so if the Texas Court of Criminal Appeals (TCCA) did not first issue a stay.

Days before the scheduled execution, as the state Board of Pardons and Paroles was set to consider Lucio’s clemency petition, the TCCA [stayed Lucio’s execution](#) and granted her review of four issues: that prosecutors obtained her conviction using false testimony, that the jury’s exposure to previously unavailable scientific evidence would have resulted in her acquittal, that she is in fact innocent, and that prosecutors suppressed favorable evidence that was material to the outcome of her trial. The court granted the stay “pending resolution of the remanded claims.”



Texas Representative Jeff Leach (R-Plano) at a press conference for Melissa Lucio.

Clemency

On December 13, Oregon **Governor Kate Brown** announced she would grant clemency to all 17 people on the state’s death row. “I have long believed that justice is not advanced by taking a life, and the state should not be in the business of executing people — even if a terrible crime placed them in prison,” Brown said. She described her action as “consistent with the near abolition of the death penalty” by the state legislature in 2019, when it enacted a new law that significantly limited the circumstances in which the death penalty could be applied. The Oregon Supreme Court then declared that the use of the death penalty against those whose crimes were no longer subject to capital punishment violated the Oregon constitution’s prohibition against disproportionate punishment, a ruling that experts said would effectively clear death row. Brown’s blanket commutation was the seventh time in the last 50 years that a governor had commuted all of a state’s death sentences. Governor Mark Hatfield also commuted the sentences of all of Oregon’s death-row prisoners after voters passed a statewide referendum abolishing capital punishment in 1964.



Gerald Pizzuto Jr.

The case of terminally ill death-row prisoner **Gerald Pizzuto Jr.**, put the **Idaho** governor and pardons board at odds, forcing the state supreme court to intervene in the matter. Pizzuto, who experienced a traumatic childhood characterized by chronic severe physical and sexual abuse, suffers from late-stage bladder cancer, chronic heart and coronary artery disease, coronary obstructive pulmonary disease (COPD), and Type 2 diabetes with related nerve damage to his legs and feet. In [December 2021](#), the Idaho Commission of Pardons and Parole voted 4-3 to recommend clemency for Pizzuto. The following day, **Governor Brad Little** rejected the recommendation, leading to a legal battle over his constitutional authority to do so.

An Idaho trial court ruled on [February 4, 2022](#) that Little did not have the power to reject the board’s clemency ruling and vacated Pizzuto’s death sentence, only to have it later reinstated by the Idaho Supreme Court in an [August 23 ruling](#). Prosecutors then sought and obtained a new death warrant, setting Pizzuto’s execution for December 15. On [November 30](#), the Director of the Idaho Department of Corrections provided notice that the state was unable to obtain the lethal drugs necessary to carry out the execution, and the state attorney general’s office notified the court that the state would allow Pizzuto’s death warrant to expire.



Pervis Payne embracing his attorney Kelley Henry.

Resentencing of Pervis Payne

After decades of litigation, **Tennessee** death-row prisoner **Pervis Payne**, who has long maintained his innocence, was found to be ineligible for the death penalty because of intellectual disability and in [January 2022](#) was resentenced to two concurrent life sentences. Payne, who has been in prison for 34 years, will be eligible to apply for parole in five years. Shelby County District Attorney Amy Weirich, who had opposed DNA testing of evidence Payne said could prove his innocence and had fought granting him a hearing to prove his ineligibility for the death penalty, later [conceded](#) that he was intellectually disabled. However, she argued to the court that he should be resentenced to two consecutive life sentences, effectively condemning him to death in prison.

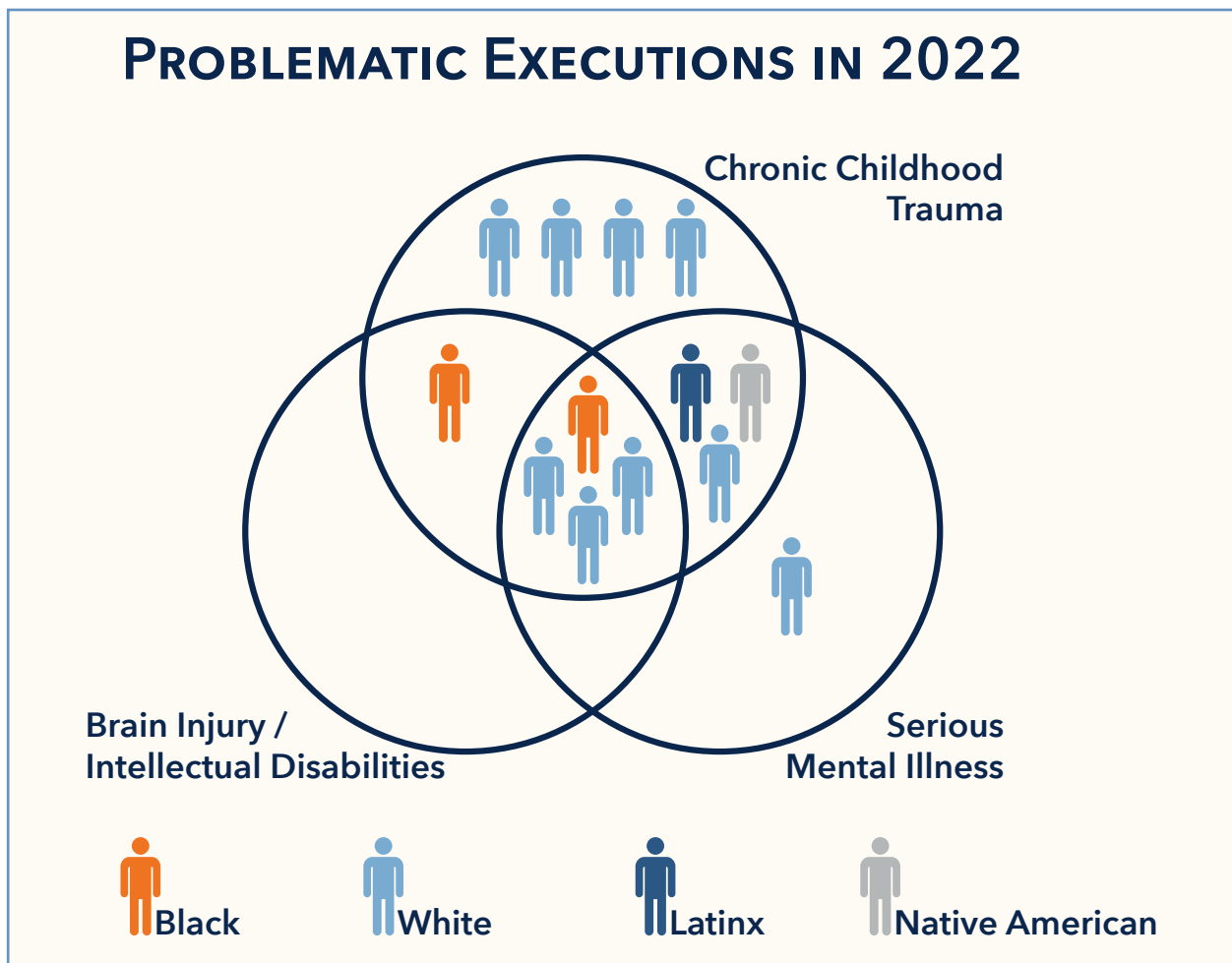
International bodies have routinely encouraged the suspension and abolition of death sentences for those with psychosocial and intellectual disabilities, as noted by both the United Nations Human Rights Committee and the Committee on the Rights of Persons with Disabilities. Although the 2002 U.S. Supreme Court case *Atkins v. Virginia* established the unconstitutionality of executing people with intellectual disability, many states, including Tennessee, have been slow to implement the exemption retroactively. Scheduled for execution in December 2020, Payne received a reprieve because of the COVID-19 pandemic. The Tennessee legislature subsequently passed [new legislation](#) that went into effect in May 2021 that allowed Payne, whose IQ scores place him within the intellectually disabled range, to [petition the court to vacate his death sentence](#).

Payne, who is Black, was convicted and sentenced to death in 1987 for the murders of a white 28-year-old woman and her 2-year-old daughter. In a trial marred by prosecutorial misconduct and racial bias, prosecutors alleged without evidence that Payne — a pastor's son with no prior criminal record, no history of drug use, and no history of violence — had been high on drugs and committed the murder after the victim rebuffed his sexual advances. After a 2019 court order compelled the state to provide the defense access to evidence, DNA testing identified the DNA of the two victims and an [unknown male](#) on the handle and blade of the knife used. Payne's DNA was found only on a portion of the knife that was consistent with his account of how he had tried to assist the victims.

PROBLEMATIC EXECUTIONS

- Significant problems in executions and attempted executions marked 2022 as the year of the botched execution
- 72% of prisoners executed in 2022 had evidence of a significant impairment
- Half of those executed had spent 20 years or more on death row, in violation of international human rights norms

Alongside the systemic problems that have become commonplace in U.S. executions — vulnerable defendants, claims of innocence, inadequate defense, and denial of meaningful judicial review — 2022 featured a shocking number of botched and failed executions. In what could be categorized as “The Year of the Botched Execution,” significant problems were reported in all three of **Arizona’s** executions, and **Alabama’s** executions went so wrong that **Governor Kay Ivey** paused all executions and ordered a “top-to-bottom review” after one execution resulted in “carnage” and the remaining two had to be called off when execution personnel repeatedly failed to establish an IV line.



Several states scheduled executions in violation of their own protocols, without the means to carry them out, or without making arrangements to obtain custody of a person incarcerated in another jurisdiction. A **South Carolina** trial court [struck down](#) that state's attempted use of the electric chair and firing squad as alternatives to lethal injection, and **Tennessee Governor Bill Lee** [halted](#) all executions in his state and appointed an independent counsel to investigate major failures by corrections officials to comply with the state's execution protocol.

As in past years, the vast majority of those executed in 2022 were individuals with significant vulnerabilities. At least 13 of the 18 people executed in 2022 had one or more of the following impairments: serious mental illness (8); brain injury, developmental brain damage, or an IQ in the intellectually disabled range (5); and/or chronic serious childhood trauma, neglect, and/or abuse (12). Three prisoners were executed for crimes committed in their teens: **Matthew Reeves** and **Gilbert Postelle** were 18 at the time of their crimes; **Kevin Johnson** was 19. At least four of the people executed this year were military veterans: **John Ramirez**, **Benjamin Cole**, **Richard Fairchild**, and **Thomas Loden Jr.**

The people executed in 2022 reflected the aging death-row population in the U.S. Six of the 18 people executed were age 60 or older. **Carl Buntion**, who was 78 years old when he was executed in **Texas**, was the third-oldest person ever executed in the United States. Five had significant physical disabilities, including **Clarence Dixon**, who was blind, and **Frank Atwood**, who used a wheelchair as a result of a degenerative spinal condition. Half (9) of those executed in 2022 had spent at least 20 years on death row, a period of time that has been [recognized](#) by international human rights bodies as constituting "excessive and inhuman" punishment, in violation of U.S. human rights obligations. Though these lengthy stays on death row are often the result of legally necessary appeals, the isolation, poor access to healthcare, and harsh conditions exacerbate prisoners' physical and mental health conditions.



Donald Grant

Donald Grant was executed in **Oklahoma** on January 27 using a lethal-injection protocol that, at the time, was still under review by a federal court. He would be the first of four people executed in 2022 who were convicted in Oklahoma County, raising the county's execution total to 46, the fourth most of any U.S. county in the past half-century. Grant's lawyers had asked the Oklahoma Pardon and Parole Board to commute his death sentence, citing his diagnosis with schizophrenia and his brain damage. "Executing someone as mentally ill and brain damaged as Donald Grant is out of step with evolving standards of decency," they argued at his clemency hearing. The board voted 4-1 to deny commutation.

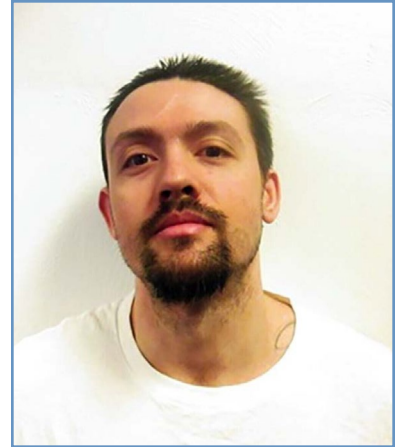
Matthew Reeves, the second prisoner executed in 2022, raised claims that he was ineligible for execution because he was intellectually disabled and that Alabama had violated the Americans with Disabilities Act (ADA) by failing to offer him accommodations for his disability in order to allow him to select his method of execution. A federal appeals court had overturned Reeves' death sentence in part because his trial lawyer failed to present expert testimony on his intellectual disability, but the U.S. Supreme Court, voting along partisan lines, reversed that decision in 2021. The Court also rejected, in a 5-4 decision issued 1½ hours after his execution was scheduled to begin, a claim that the state had violated Reeves' rights under the ADA when it distributed a form to death-row prisoners requiring them to choose between lethal injection and nitrogen hypoxia. The form required an 11th-grade reading level to understand. However, Reeves, who had an IQ in



Matthew Reeves

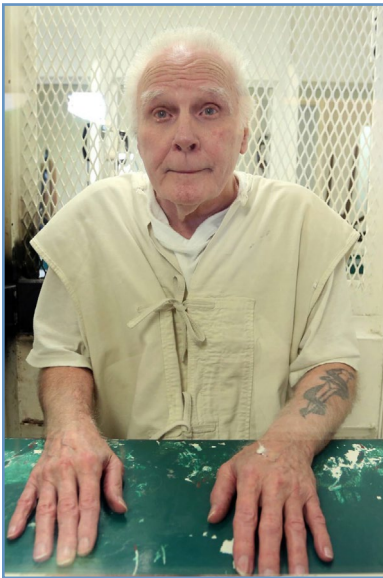
the upper 60s to low 70s and read at a first-grade level, was offered no assistance in completing the form. When Reeves did not fill out the form, prosecutors sought and obtained a death warrant scheduling his execution by lethal injection. No one who elected nitrogen suffocation was scheduled for execution. A federal district court issued an injunction, finding that Reeves had demonstrated substantial likelihood of success on the merits of his claim, and the U.S. Court of Appeals for the Eleventh Circuit upheld the injunction. Five justices on the U.S. Supreme Court voted to lift the injunction, allowing Alabama to execute Reeves.

Gilbert Postelle was 18 years old, intellectually impaired, mentally ill, and addicted to methamphetamines when, at the direction of his mentally ill father, he, his brother, and a fourth man participated in the fatal shootings of four people. His father delusionally believed that one of the men had been responsible for a motorcycle accident that had left the father seriously brain damaged. Postelle was sentenced to death for two of the shootings — the only person sentenced to death for the killings. His father was found incompetent to stand trial, and the others received life sentences. Oklahoma executed Postelle on February 17, just 11 days before a federal judge began hearing evidence on the constitutionality of the state’s execution protocol.



Gilbert Postelle

Carl Buntion was Texas’ oldest death-row prisoner and, just days before his scheduled April 21 execution, had been taken to the hospital suffering from pneumonia and blood in his urine. In his clemency petition, which was denied on April 19, his lawyers wrote, “Mr. Buntion is a frail, elderly man who requires specialized care to perform basic functions. He is not a threat to anyone in prison and will not be a threat to anyone in prison if his sentence is reduced to a lesser penalty.” Counsel noted that



Carl Buntion

Buntion “ha[d] been cited for only three disciplinary infractions” in his 31 years on death row, “and [had] not been cited for any infraction whatsoever for the last twenty-three years.” They argued that his death sentence had been based on a prediction of future dangerousness that had proven false over his three decades of incarceration.

Missouri executed **Carman Deck** after his death sentence had been overturned three separate times. In the decade between his initial death sentence and his third sentencing hearing in 2008, several mitigation witnesses had died or could no longer be located. That delay, a federal district judge ruled, “prevented the jury from adequately considering compassionate or mitigating factors that might have warranted mercy.” He was granted relief for the third time in 2017. On appeal, a three-judge panel of the U.S. Court of Appeals for the Eighth Circuit reversed that ruling on a technicality, holding that Deck’s claim was procedurally defaulted because his post-conviction lawyer had failed to raise the issue in state court. It further ruled that because



Carman Deck

the law on the issue had not been settled at the time of Deck’s resentencing, post-conviction counsel’s failure to raise the issue was not ineffective, and Deck therefore could not establish grounds to excuse the procedural default. In a stay application that was denied by the U.S. Supreme Court, Deck’s lawyers argued that “[a] state should not be allowed to repeatedly attempt to

obtain a death sentence, bungle the process, and then claim victory when no one is left to show up for the defendant at the mitigation phase.” Deck’s petition seeking review of his case called the situation “an egregious example of what happens when the state repeatedly violates the rights of a capital defendant. The state’s earlier failures directly prevented Mr. Deck from presenting a compelling mitigation case at his third resentencing.”

On May 11, Arizona executed [Clarence Dixon](#), a severely mentally ill man. In 1978, then-Maricopa County Superior Court Judge Sandra Day O’Connor, later a Justice of the U.S. Supreme Court, had found Dixon not guilty by reason of insanity on unrelated charges. Judge O’Connor had directed Maricopa County prosecutors to make arrangements for Dixon’s continued custody until civil commitment proceedings, which were scheduled to start within ten days, could begin. Instead, Dixon was released, and two days later committed the offense for which he was executed. Dixon was not connected to the murder for two decades, and at his 2008 capital trial, he was permitted to fire his court-appointed attorneys and represent himself. At trial, Dixon presented a convoluted defense based upon his delusional belief that the charges against him were fueled by a government conspiracy. Despite counsel’s presentation of evidence that Dixon suffered from paranoid schizophrenia, with accompanying auditory and visual hallucinations and delusional thinking, and was now blind, a judge found him competent to be executed.

Dixon’s lawyers also challenged Arizona’s execution process and the drugs it intended to use in the state’s first execution attempt since the botched two-hour execution of [Joseph Wood](#) on July 23, 2014. In court proceedings in advance of the execution, assistant federal defender Jennifer Moreno [argued](#) that “[t]he state has had nearly a year to demonstrate that it will not be carrying out executions with expired drugs but has failed to do so.” Describing Dixon as “a severely mentally ill, visually disabled, and physically frail member of the Navajo Nation,” which opposes capital punishment, she said his execution would be “unconscionable.”

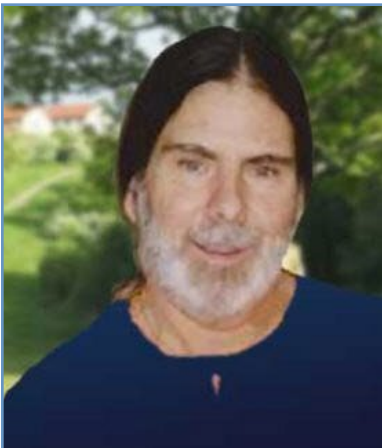
After an execution experts said was [botched](#), witnesses described how Department of Corrections personnel failed for 25 minutes to set an intravenous line in his arms before performing a bloody and apparently unauthorized “cutdown” procedure to insert the IV line into a vein in his groin. Defense lawyers said that the problems were exacerbated by the lack of transparency about Arizona executions. Dixon’s lawyer, assistant federal public defender Amanda Bass, said “[s]ince Arizona keeps secret the qualifications of its executioners, we don’t know whether the failure to set two peripheral lines in Mr. Dixon’s arms was due to incompetence, which resulted in the unnecessarily painful and invasive setting of a femoral line.”

Less than a month later, on June 8, Arizona executed [Frank Atwood](#), who maintained his innocence in the 1984 kidnapping and murder of Vicki Hoskinson. In 2021, Atwood’s lawyers had discovered an FBI memo about an anonymous call the Bureau had received reporting that, after her disappearance, Hoskinson had been seen in a vehicle connected to an alternative suspect. A federal appeals court denied him a hearing on his claims of innocence and that the prosecution had unconstitutionally withheld exculpatory evidence from the defense.

In what *Arizona Republic* reporter Jimmy Jenkins called a “surreal spectacle,” Atwood helped prison officials find a suitable vein for the IV line during his execution. Jenkins wrote, “I have looked behind the curtain of



Clarence Dixon



Frank Atwood

capital punishment and seen it for what it truly is: a frail old man lifted from a wheelchair onto a hand-icap accessible lethal injection gurney; nervous hands and perspiring faces trying to find a vein; needles puncturing skin; liquid drugs flooding a man's existence and drowning it out." When the execution team was struggling to set the IV line, Atwood first suggested they try his right arm, then his hand, stopping them from their stated intention to establish an IV line in his femoral vein as they had done in Dixon's execution.

Continuing the series of botched executions, Alabama killed [Joe James Jr.](#) on June 28 over the strenuous opposition of the victim's family. The daughters and brother of murder victim Faith Hall [urged](#) Governor Kay Ivey to halt James' execution. Helvetius Hall, Faith's brother, said, "Taking [James'] life is not going to bring Faith back. It ain't going to make no closure for us."



Joe James Jr.

James was representing himself at the time of his execution. His execution began with an unexplained three-hour delay, which Alabama Department of Corrections (ADOC) officials later obliquely indicated involved difficulties setting an IV line. While media witnesses were waiting for the execution, corrections officials subjected two female journalists, both of whom had previously witnessed multiple executions, to embarrassing dress code inspections. *AL.com* reporter Ivana Hrynskiw was told that her skirt, which she had worn to witness three previous executions, was "too short." After changing into clothing borrowed from a cameraman from another media outlet, she was then told she couldn't wear open-toed shoes because they were "too revealing," so she retrieved a pair of sneakers from her car. Hrynskiw's employer, the Alabama Media Group, sent a formal complaint the next day, calling ADOC's conduct "sexist and an egregious breach of professional conduct."

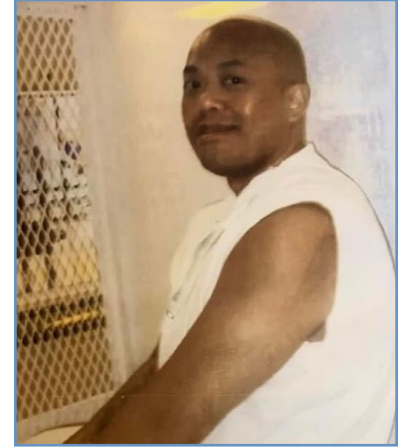
The clothing inspections diverted attention from the state's repeated failures to set an IV line, as a later private autopsy [revealed](#). In the words of *Atlantic* writer Elizabeth Bruenig, who had facilitated and witnessed the private autopsy, "[s]omething terrible had been done to James while he was strapped to a gurney behind closed doors without so much as a lawyer present to protest his treatment or an advocate to observe it." Bruenig wrote of "carnage" on James' body, that his "hands and wrists had been burst by needles, in every place one can bend or flex" during what she called a "lengthy and painful death." When the execution chamber curtains were opened three hours after the scheduled start of James' execution, he was motionless and non-responsive. Anesthesiologist Joel Zivot, who witnessed the private autopsy, noted that there were puncture wounds, accompanied by bruises, throughout James' arms, and bruising around the knuckles and wrists that suggested that execution team members tried and failed to insert IV lines in those locations. They also found puncture wounds in James' musculature, "not in the anatomical vicinity of a known vein." "It is possible that this just represents gross incompetence, or some, or one, or more of these punctures were actually intramuscular injections," Zivot wrote, noting that such an injection "in this setting would only be used to deliver a sedating medication."

James' execution was the longest botched lethal-injection execution in the 40-year history of that execution method. ADOC denied having sedated James and Commissioner John Hamm insisted that "nothing out of the ordinary" had occurred during the three-hour period between the scheduled start of the execution and the time the execution curtain opened.

Texas' execution of [Kosoul Chanthakoummane](#) on August 17 also took place over the objections of the victim's family. Joe Walker, whose daughter, Sarah, was murdered, said of Chanthakoummane, "I don't have any hate towards him at all. I don't want him put to death." Chanthakoummane's conviction relied on multiple forms of discredited forensic evidence, including notoriously unreliable bite mark evidence

and hypnotically enhanced eyewitness testimony. Chanthakoummane, the son of Laotian refugees who escaped to the United States during the Vietnam war, had long maintained his innocence. Prosecutors said his DNA had been found under Walker's fingernails and in various locations throughout the house, but defense lawyers argued that the DNA testimony purporting to identify him as the assailant was statistically flawed.

On July 6, Oklahoma [set 25 execution dates](#), scheduling an execution nearly every month from August 2022 to December 2024. The first person executed as part of Oklahoma's unprecedented execution spree was [James Coddington](#). Coddington took full responsibility and expressed deep remorse for the addiction-driven murder of his friend, Albert Hale. At his clemency hearing, he gave an emotional statement to the board, saying, "I can't apologize enough for what I did." After hearing Coddington's plea, as well as evidence of his traumatic upbringing and lifelong battle with ad-



Kosoul Chanthakoummane



James Coddington and his attorney at his clemency hearing

dition, the Oklahoma Pardon and Parole Board recommended clemency by a 3-2 vote. **Governor Kevin Stitt** rejected the board's recommendation and Coddington was executed on August 25.

With no apparent review of or changes to its execution protocol following the botched execution of Joe James Jr., Alabama proceeded with the lethal-injection execution of [Alan Miller](#) on September 22. Miller challenged his execution on the grounds that he had timely designated nitrogen hypoxia as the method of his execution but that ADOC personnel had lost his designation form. In court proceedings on that challenge, state prose-

cutors intimated that ADOC could execute him by lethal gas. However, when the federal district court set a firm deadline to declare if ADOC was prepared to proceed with lethal gas, [ADOC said it could not do so](#). On September 19, 2022, the district court issued a [preliminary injunction](#) enjoining Alabama from executing Miller "by any method other than nitrogen hypoxia." On the afternoon of his scheduled execution, a divided panel of the U.S. Court of Appeals for the Eleventh Circuit denied the state's motion to set aside the injunction. At about 9:15 p.m. Central time, the U.S. Supreme Court issued a 5-4 ruling that vacated the injunction, leaving Alabama approximately 2½ hours to carry out the execution before the warrant expired.

Prison officials reportedly attempted as many as 18 times to establish an IV line before calling off Miller's execution shortly before midnight, when the execution warrant would expire. ADOC Commissioner Hamm blamed the failure on "time constraints resulting from the lateness of the court proceedings." He said, "the execution was called off once it was determined the condemned inmate's veins could not be accessed in accordance with our protocol before the expiration of the death warrant." After the execution, a federal judge granted a request from Miller's lawyers to take photos and video of Miller to [preserve all ADOC records related to the execution](#) to document what had transpired and the injuries Miller sustained in the attempted execution. On November 28, the state settled Miller's method-of-execution challenge, [agreeing](#) that it would no longer attempt to execute him by lethal injection and that any future execution attempt would be by means of nitrogen hypoxia.

Less than two months later, a second Alabama execution was called off after officials spent an hour failing to set IV lines during the attempted lethal injection of [Kenneth Smith](#) on November 17. The

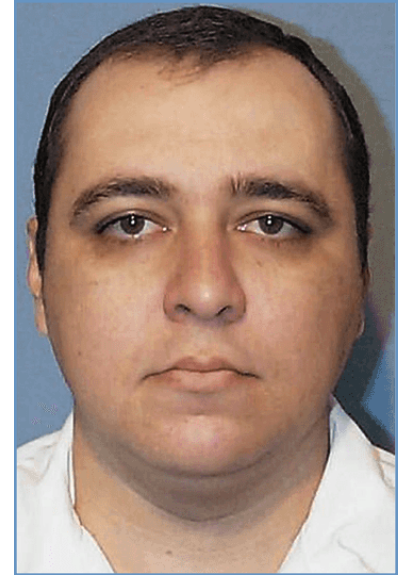
execution was already controversial because the trial court [overrode the jury's 11-1 vote for life](#) under a since-repealed provision of Alabama law. According to Andy Johnson, a lawyer for Smith, the state strapped Smith to a gurney for approximately four hours while his motion to stay his execution was pending, was granted by the U.S. Court of Appeals for the Eleventh Circuit, and then was lifted by the U.S. Supreme Court. As in Miller's case, Smith's lawyers immediately filed requests to preserve evidence from the execution attempt. Five days after the state's failed attempt to execute Smith, Alabama Governor Kay Ivey [halted](#) executions in the state, ordering ADOC to undertake a "top-to-bottom review" of the execution protocol.

Two executions were carried out over the objections of local prosecutors. Texas executed [John Ramirez](#) on October 5 after the Texas Court of Criminal Appeals (TCCA), without ruling on the merits, rejected the request of Nueces County District Attorney Mark Gonzalez to withdraw the death warrant. Gonzalez's office had filed a motion, granted by the county trial court on April 12, to set an execution date for Ramirez. Two days later, Gonzalez, a former defense attorney who was elected in 2016 on a platform of criminal justice reform, attempted to withdraw the warrant. Stating his "firm belief that the death

penalty is unethical and should not be imposed on Mr. Ramirez or any other person while the undersigned occupies the office in question," Gonzalez told the court that "[t]he Assistant District Attorney who most recently moved for an execution date in this cause was not aware of my desire in this matter and did not consult me prior to moving for an execution date." The trial judge denied Gonzalez's motion on June 21, saying "I'm not sure that I have the power to do so."

The trial court's view in Ramirez's case diverged sharply from the understanding of the law expressed by several dozen Texas legislators and Cameron County District Attorney Luis Saenz during April 14, 2022 legislative hearings relating to the scheduled execution of Melissa Lucio. During those hearings, described by reporters as "heated," legislators pressed Saenz to withdraw Lucio's death warrant, citing evidence of probable innocence and police misconduct. Saenz agreed with the legislators that he had the power to withdraw the warrant and eventually agreed that he would do so if the TCCA did not issue a stay. The point became moot when the court halted Lucio's execution and directed that an evidentiary hearing be conducted on her innocence claims.

Missouri also executed a prisoner over the objections of a prosecutor. In 2021, [Kevin Johnson](#)'s defense team had requested that the St. Louis County Conviction and Incident Review Unit (CIRU) evaluate Johnson's case. Because of a conflict of interest in the CIRU, the trial court appointed E.E. Keenan as a special prosecutor. Keenan's investigation of the case found racial disparities in decisions to seek the death penalty by former county prosecuting attorney Robert McCulloch, as well as "deliberate" exclusion of Black jurors from Johnson's jury. Special prosecutor Keenan then asked the trial court to stay Johnson's execution and vacate his death sentence. The court denied his motion and both Johnson and the special prosecutor appealed. The Missouri Supreme Court heard argument in Johnson's case less than 36 hours before his execution was scheduled to begin and ruled against Johnson. The U.S. Supreme Court then declined to review the case, allowing the execution to proceed. On November 29, Johnson was executed.



Kenneth Smith

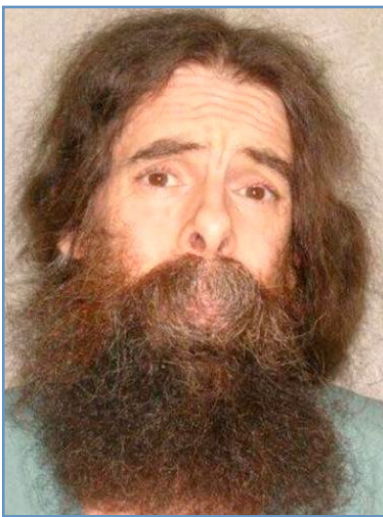


John Ramirez

Oklahoma continued its execution spree with the October 20 execution of **Benjamin Cole**. Cole had schizophrenia and brain damage, and his lawyers, who described Cole as often “catatonic,” said prison guards who had daily interactions with him “confirm that he cannot communicate or take care of his most basic hygiene.” Counsel sought a hearing on his mental competency to be executed, arguing that he did not understand the reason for his impending execution. A judge denied counsel’s request for a competency hearing. In Cole’s clemency petition, his legal team wrote, “Benjamin Cole today is a frail, 57-year-old man with a damaged and deteriorating brain, suffering from progressive and severe mental illness who poses no threat to anyone in any way.”

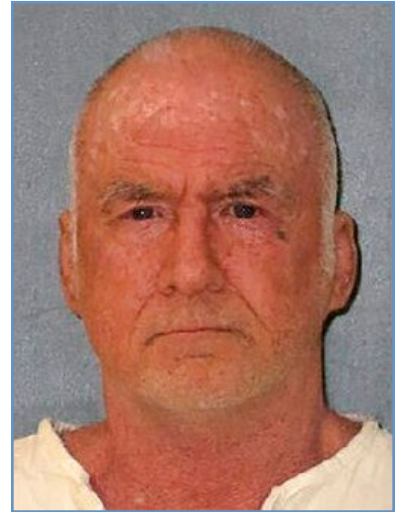


Kevin Johnson with his daughter and grandson.



Benjamin Cole

Significant mental health issues were also raised in Texas’ November 9 execution of **Tracy Beatty**. Defense lawyers had argued that Texas’ refusal to uncuff Beatty so that a psychiatrist and a neuropsychologist could administer testing to assess brain impairments constituted unlawful state interference with services Congress has authorized be made available to federal counsel representing death-row prisoners in clemency and other potential capital post-conviction proceedings. Beatty was diagnosed with paranoid schizophrenia and experienced hallucinations and delusions. The Texas state and federal courts and the U.S. Supreme Court declined to stay his execution to permit the testing to occur, rewarding Texas’ refusal to grant access to comprehensive mental health evaluations. Beatty was executed without any judicial consideration of the extent of his deteriorated mental condition and its impact on his mental incompetency.



Tracy Beatty

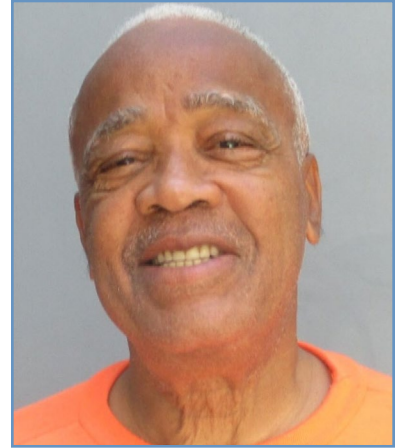
Stephen Barbee, whose execution had been stayed due to a religious freedom claim in 2021, was executed in Texas on November 16 for the murders of his ex-girlfriend Lisa Underwood and her son. No DNA or forensic evidence connected Barbee to the murders, though a local medical examiner, Dr. Marc Krouse, testified that Barbee had killed Underwood by applying between 100 and 400 pounds of force to her throat for a period of 5 to 7 minutes.



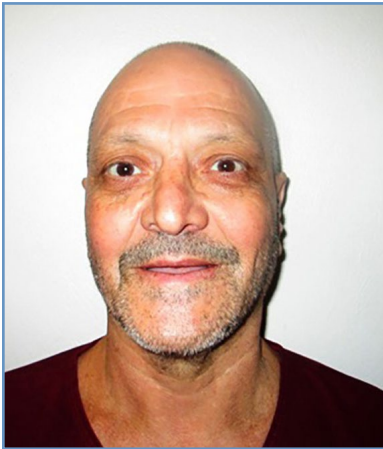
Stephen Barbee

Barbee had sought judicial review of his attorney’s unilateral decision to concede his guilt without his consent, in violation of his constitutional rights. He also requested a new trial because newly discovered evidence showed that Krouse had been suspended from performing autopsy examinations on homicide cases because of a pattern of errors and negligent practices and that his forensic testimony concerning the cause of Underwood’s death was false. An audit of Krouse’s autopsies conducted by the Tarrant County Medical Examiner’s Office revealed that Krouse “had made 59 mistakes during the autopsies of 40 murder victims.”

In its third botched execution of the year, Arizona executed **Murray Hooper**. Though Hooper had been on death row for nearly forty years, the prosecution revealed new information in the lead-up to Hooper’s clemency hearing that supported his innocence claim and called into question the testimony of a key witness. That information was never heard in court. Hooper also unsuccessfully sought DNA and fingerprint testing of evidence from his case, citing a recent Arizona law that expanded access to modern forensic testing in old cases. At Hooper’s November 16 execution, corrections officials once again struggled to insert an IV. After questioning what was taking the execution team so long to set an IV line, Hooper reportedly turned to the witnesses and asked, “Can you believe this?” Executioners eventually resorted to inserting the IV in Hooper’s femoral vein in the groin area.



Murray Hooper

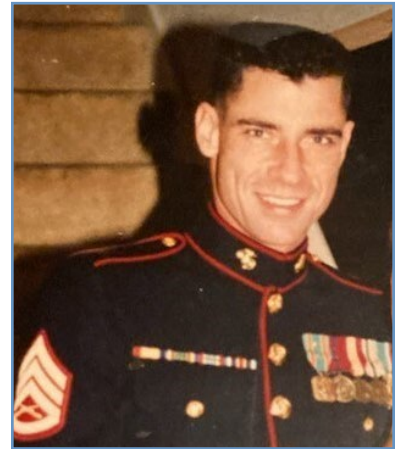


Richard Fairchild

On November 17, Oklahoma executed **Richard Fairchild**, a military veteran with serious mental illness and brain damage. Fairchild sustained several traumatic head injuries during his youth, both from his abusive father and from participating in boxing as a teenager. His medical and military records indicate an additional five head injuries as an adult. A psychiatrist’s evaluation before his trial noted “severe organic brain syndrome,” but his trial lawyer did not question the psychiatrist about it during the trial and explained Fairchild’s crime solely as a result of substance abuse. Fairchild’s clemency petition included an affidavit from one of his jurors indicating that she would not have voted for death if she had known about Fairchild’s brain damage.

Thomas Loden Jr. Loden had experienced physical and sexual abuse during childhood, and had attempted suicide five times. He was a Marine veteran who received numerous awards and medals for his service, but who developed PTSD as a result of his combat experience in the Gulf War. Loden was the fourth military veteran executed in 2022. A public opinion poll released in February 2022 found that 61% of respondents opposed the execution of veterans with PTSD, suggesting that, if Loden’s trial attorneys had appropriately investigated and presented the mitigating evidence in his case, he might have been spared a death sentence.

Mississippi carried out the final execution of the year on December 14, when it executed



Thomas Loden Jr.

PUBLIC OPINION AND ELECTIONS

- Support for capital punishment remained near historic lows amidst rising perceptions of crime
- Large majorities of Americans oppose executing people with mental illness, brain damage, or intellectual disability, or veterans with PTSD
- Midterm elections favored reform prosecutors and gubernatorial candidates supporting continuation of moratoria on executions

Americans' Support for Death Penalty



Support for capital punishment in the United States remained near half-century lows in 2022 despite record-high perception that local crime has increased. The results of the 2022 mid-term election showed gains for candidates favoring reform of the criminal legal system in the face of an avalanche of dark money spending attempting to portray them as dangerously soft on crime.

[Gallup's 2022 Crime Survey](#), administered between October 3–20, 2022 against the backdrop of the Parkland school shooting trial, reported support for capital punishment held steady at 55%, one percentage point above the 50-year low of 54% in 2021. According to Gallup, support for capital punishment has remained between 54-56% for each of the past six years. 42% of respondents told Gallup they oppose the death penalty, one percentage point below 2021's 50-year high.

Support for capital punishment, which historically had tracked Americans' fear of crime, did not materially rise despite the largest increase in fifty years in the number of U.S. adults who reported that crime is up in the area in which they live. The spike in perceived crime was fueled primarily by a surge in fear among those identifying as Republicans, whose perception that local crime is rising increased from 38% in the final year of the Trump presidency to 73% at the approach of the first midterm elections of the Biden administration. Yet in that same two-year period, Gallup found that Republican support for capital punishment fell from 82% to 77%. Nationally, 56% of Americans told Gallup that local crime was up.

An October 31, 2022 **Pew Research** poll noted the disconnect between crime data and Americans’ perception of crime after being exposed to a tsunami of partisan midterm election advertising that falsely blamed Democrats and reform prosecutors for a rise in violent crime during the COVID pandemic. Pew noted that, in fact, “[a]nnual government surveys from the Bureau of Justice Statistics show no recent increase in the U.S. violent crime rate.” Although murder rates have “risen significantly during the pandemic” and the “roughly 30% increase in the U.S. murder rate between 2019 and 2020 [was] one of the largest year-over-year increases ever recorded,” Pew reported that “the rate remained well below past highs, and murder remains the least common type of violent crime overall.”

DPIC reviewed the [2020 murder data](#) compiled by the center-left think tank The Third Way for its March 2022 report, *The Red State Murder Problem*. DPIC compared the data to states’ death-penalty status and historic usage of capital punishment. That analysis found that pandemic murder rates generally correlated not just with the presence or absence of the death penalty in a state but with the state’s general level of death-penalty usage. Murder rates in the mostly high death-penalty usage, high pandemic-murder-rate states ranged from roughly triple to 23 times higher than in the mostly no death penalty, low pandemic-murder-rate states.

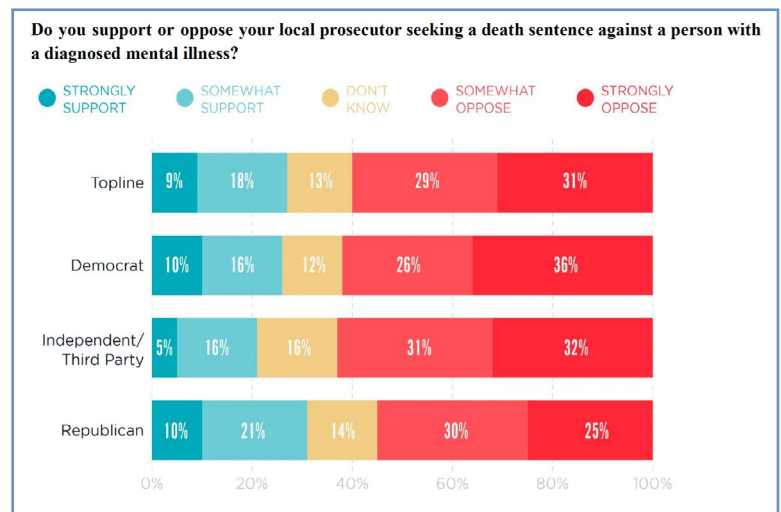
[Gallup’s 2022 Values and Beliefs Survey](#), administered from May 2 – 22, 2022 and released in June 2022, showed that Americans’ support for capital punishment mirrors their views of its moral acceptability. Gallup found that 55% of Americans regarded the death penalty as morally acceptable, fractionally above the record low of 54% in the organization’s [2020 survey](#). The number matched the 55% level of acceptability reported in the 2021 Values and Beliefs survey.

Public support for capital punishment varies considerably depending upon the question that is asked. Gallup periodically asks respondents to choose whether the death penalty or life without possibility of parole “is the better penalty for murder.” The last time Gallup asked that question, in 2019, [60% percent of Americans](#) chose the life-sentencing option, while only 36% favored the death penalty.

A poll by **Rasmussen Reports** found even less support for capital punishment than reported by Gallup. The Rasmussen poll, conducted in a telephone and online survey October 16 – 17, 2022 and released November 10, 2022, found that fewer than half of American adults now support the death penalty. Asked “Do you favor or oppose the death penalty?” 46% of respondents said they favored capital punishment. Twenty-eight percent of respondents told Rasmussen they oppose the death penalty and 26% said they weren’t sure.

The survey recorded a continuing decline in expressed support for capital punishment. Those saying they favored the death penalty fell by 17 percentage points from the 63% who favored capital punishment in Rasmussen’s June 2011 national survey. Death penalty support also fell by three percentage points from July 2019, when 49% of respondents told Rasmussen they favored the death penalty.

A poll released in February 2022 by the [Justice Research Group](#) found that Americans’ support for the death penalty was even lower when asked about the classes of defendants who are most frequently subject to the punishment. Democrats, Republicans, and Independents by margins of more than 30 percentage points opposed the use of the death penalty against people with severe mental illness, brain damage,



or intellectual impairments, and against veterans with PTSD. The poll found pluralities of each group opposed to seeking the death penalty against victims of severe abuse, and Americans nearly evenly split on the propriety of the death penalty for adolescent offenders between the ages of 18 and 21.

The level of support for capital punishment mirrored recent years even in polls administered at the height of the American mid-term elections during a barrage of advertising that attempted to stoke voters' fear of violent crime.

Election Results

Despite massive special interest campaign spending, election results at the state and local levels reflected continued public support for officials committed to criminal legal system reform — including policies that could significantly reduce the use of the death penalty.

Governors were up for election in the three states that had officially declared moratoria on executions: **California**, **Oregon**, and **Pennsylvania**. In each of these states, gubernatorial election results ensure that the moratoria will continue. **Governor Gavin Newsom**, who announced a moratorium on executions in 2019 and decisively defeated a recall effort in 2021, easily won re-election in California. Governor-elect **Tina Kotek**, the former Speaker of the Oregon House of Representatives, has promised to extend the state's existing moratorium on executions. Pennsylvania's next governor, Attorney General **Josh Shapiro**, has also pledged not to sign execution warrants while in office. **Ohio**, a state without a formal moratorium, re-elected **Governor Mike DeWine**, who has issued a series of reprieves to death row prisoners based on obstacles to the state's provision of execution drugs.

Governorships changed hands in two key death-penalty states. **Nevada's** Democratic Governor **Steve Sisolak**, who helped scuttle a bill to abolish the state's death penalty fearing it might hurt his re-election chances, was defeated anyway by Republican **Joe Lombardo**, the Sheriff of Clark County, the state's most active death-penalty jurisdiction. The election effectively forecloses death-penalty repeal in the state for the foreseeable future. In **Arizona**, Democrat **Katie Hobbs** won the race to replace term-limited Republican Doug Ducey, defeating Republican election denier, **Kari Lake**. Also in Arizona, Democrat **Kris Mayes**, who supports the death penalty but was critical of the state's execution botches, expenditure of funds to purchase cyanide compounds for possible gas chamber executions, and aggressive pursuit of death warrants, led Republican election denier **Abraham Hamadeh** — pending a recount — in the race to replace Attorney General Mark Brnovich.

Prosecutors campaigning on a commitment to criminal legal system reform were elected in several counties that have previously produced a disproportionate amount of death sentences and executions. These victories occurred despite consistent messaging targeted at fear of violent crime and political attacks against some sitting reform prosecutors.



California Governor Gavin Newsom, Oregon Governor-elect Tina Kotek, and Pennsylvania Governor-elect Josh Shapiro

Voters ousted long-time Shelby County, **Tennessee** prosecutor [Amy Weirich](#) in favor of **Steve Mulroy**, a University of Memphis law professor and former county commissioner and federal civil rights prosecutor. Weirich, who headed an office that represented 13% of Tennessee’s population but was responsible for one-third of all death sentences in the state, sought re-election based on what her campaign touted as her “tough on crime” policies. She faced backlash from community activists for her efforts to prevent Shelby County death-row prisoner **Pervis Payne** from obtaining DNA testing for his innocence claim and for opposing efforts to overturn Payne’s unconstitutional death sentence because of his intellectual disability.



Vicki Behenna

Oklahoma County, **Oklahoma** elected **Vicki Behenna**, the former executive director of the Oklahoma Innocence Project, to serve as its top prosecutor. Behenna will take the prosecutorial reins in a county that has imposed more death sentences over the past fifty years than any other county its size (population between 750,000 – 1,000,000), imposed more death sentences in the past decade than any other county with a population under 2.25 million people, and carried out more than 2.5 times the number of executions of any other comparably sized county. The Oklahoma County District Attorney’s office has a long history of prosecutorial misconduct, with at least eleven death sentences reversed

or death-row prisoners exonerated because of misconduct. Only three counties in the U.S. have had more wrongfully convicted death-row prisoners exonerated than Oklahoma County, with the innocence issues in the cases of **Julius Jones** and **Richard Glossip** still unresolved.

Mulroy and Behenna have not pledged to never seek the death penalty but are replacing aggressively pro-capital punishment prosecutors in counties that have been disproportionate drivers of death sentencing.

In Alameda County, **California**, civil rights attorney **Pamela Price** won the district attorney’s race. Price, a former defense attorney, will be the first Black woman to serve in the role. She campaigned on promises to right past wrongs, including seeking resentencing for all 41 people currently on death row from Alameda County and those sentenced to life without parole. Price’s election was seen as a test of the durability of prosecutorial reform after the recall of San Francisco District Attorney **Chesa Boudin**. Price’s election reinforced the message sent by the failed attempt to recall Los Angeles District Attorney **George Gascón**, that California voters remain receptive to prosecutorial reform.



Pamela Price

Reform prosecutors **John Cruzot** (Dallas) and **Joe Gonzales** (San Antonio) were re-elected in Texas, despite opponents’ concerted efforts to attack their reform initiatives. Elsewhere in Texas, Fort Bend’s reform D.A. **Brian Middleton** was re-elected without opposition and reformer **Kelly Higgins** won the District Attorney election in Hays County.

Incumbent prosecutors who have signed a pledge to work to end the death penalty were re-elected in Durham and Buncombe counties in North Carolina (Democrats **Satana Deberry** and **Todd Williams**); St. Louis County, Missouri (Democrat **Wesley Bell**), and Salt Lake County, Utah (Republican **Sam Gill**). County Attorney **David Leavitt**, who supported a bill to abolish the state’s death penalty, faced attacks based upon QAnon conspiracy theories, and was defeated in the Republican primary election in Utah County.



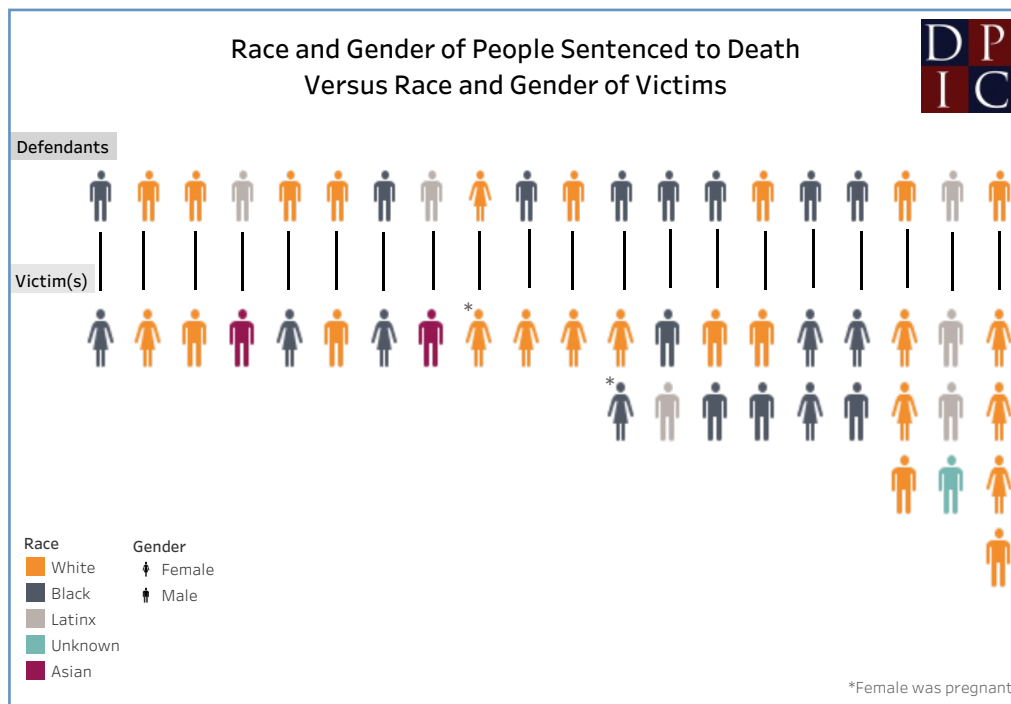
Wesley Bell

PROBLEMS WITH NEW DEATH SENTENCES

- The 20 death sentences imposed in 2022 were fewer than in any year prior to the pandemic
- No county imposed more than one new death sentence in 2022
- The life sentence imposed in the Parkland School shooting and other multiple-victim cases highlighted the disproportionality of capital murder verdicts in 2022

Twenty death sentences were imposed in 2022, two more than the record lows in the pandemic years of 2020 and 2021, but fewer by far than in any pre-pandemic year in the modern era of the death penalty. Death verdicts were concentrated in historically high-sentencing states, although four states imposed their first death sentences since the beginning of the pandemic. Life sentences in the Parkland school shooting case and other significant multi-victim cases demonstrated the disproportionality of many of the death sentences imposed in 2022. Those death sentences also disproportionately involved cases with the most vulnerable defendants or the greatest defects in legal process.

The 2022 death sentences included at least four defendants who experienced mental health issues resulting from chronic exposure to childhood trauma, two who were permitted to waive important trial rights and then asked for the death penalty, one with brain damage exacerbated by chemical dependence and substance abuse disorder, one with an IQ in the intellectually disabled range who had a one-day sentencing trial, and one military veteran. One prisoner, **Ricky Dubose in Georgia**, died by suicide ten days after being sentenced to death. Seven death sentences were imposed in cases in which law enforcement or corrections officers were victims, including the first Sikh deputy in Texas.



Nineteen men and one woman, **Taylor Parker** (Texas), were sentenced to death.

Florida imposed the most death sentences in the U.S. in 2022 with four. **Alabama** imposed three, and **California**, **North Carolina** and **Texas** each imposed two. These states, which also currently have the five largest death rows in the U.S., were the only states to impose multiple death sentences. Seven other states — **Arizona**, **Georgia**, **Louisiana**, **Mississippi**, **Missouri**, **Oklahoma**, and **Pennsylvania** — imposed a single death sentence each.

Harris County, **Texas** defendant **Robert Solis** fired his lawyers and represented himself in his trial for the murder of the county’s first Sikh sheriff’s deputy. In the penalty phase, he asked the jury to sentence him to death. After only 35 minutes of deliberation, the jury sentenced him to death.

William Roberts was sentenced to death in Lake County, Florida after also volunteering for the death penalty. Roberts waived a jury trial, tried to represent himself in court, refused to attend parts of the trial, would not permit his counsel to present mitigating evidence, and asked the judge to sentence him to death.

In **Louisiana**, **Kevin Daigle** was formally sentenced to death in Calcasieu Parish for the murder of a state trooper in 2015. His trial was initially delayed when the trial judge, who had a longtime working and social media relationship with the victim’s widow — a court employee who was scheduled to be a prosecution penalty-phase witness — refused to recuse himself from the case. After falsely denying in a written opinion that he had social media contact with the witness, the judge later admitted to the relationship under oath. The Louisiana Supreme Court subsequently ordered that a new judge be designated to handle the case. Daigle was convicted in 2019, and the jury at that trial recommended the death penalty. However, during post-trial motions, the prosecution and defense agreed that one of the jurors had been improperly impaneled and that the death verdict should be vacated. Daigle, who suffers from brain damage, chemical addiction and substance abuse, and has a history of childhood trauma, was again sentenced to death this year.

Jimmy Spencer was sentenced to death in Alabama despite significant evidence that he was ineligible for the death penalty because of intellectual disability. His lawyers filed a motion pretrial to bar the death penalty, presenting an IQ score of 56 (far below the 70-75 IQ range considered indicative of intellectual disability), school records that showed he failed multiple grades and was placed in special education, and evidence that he cannot read or write. A prison IQ test placed Spencer’s IQ at 73. The judge denied Spencer’s motion and allowed the case to proceed as a capital trial. Spencer’s penalty phase was tried in a single day, with his defense counsel presenting a mitigation investigator as the only live witness. The jury took just 40 minutes to return a death sentence.

Twelve death sentences (60%) were imposed on defendants of color. Ten Black defendants and four Latino defendants were sentenced to death. Most cases involved defendants and victims of the same race, but one Black defendant was sentenced to death for the murder of a white woman and one white defendant was sentenced to death for the murder of his biracial daughter. At least four cases involved multiple victims of different races.

NEW DEATH SENTENCES BY STATE		
STATE	2022	2021
FLORIDA	4	2
ALABAMA	3	4
CALIFORNIA	2	3
NORTH CAROLINA	2	0
TEXAS	2	3
ARIZONA	1	0
GEORGIA	1	0
LOUISIANA	1	0
MISSISSIPPI	1	0
MISSOURI	1	0
OKLAHOMA	1	4
PENNSYLVANIA	1	0
NEBRASKA	0	1
TENNESSEE	0	1
TOTAL	20	18

For the first time in nine years, a Missouri jury recommended a death sentence, but St. Charles County Judge Daniel Pelikan [exercised](#) his authority “to reduce the punishment [recommended by the jury] within the statutory limits prescribed for the offense if it finds that the punishment is excessive.” In 2017, **Marvin Rice** had been sentenced to death by a judge after his jury voted 11-1 for a life sentence. Under Missouri law, a non-unanimous sentencing recommendation is considered a hung jury, triggering a statutory provision that allows the trial judge to independently impose sentence. The Missouri Supreme Court overturned that death sentence because the prosecutor had improperly commented on Rice’s decision not to testify, violating his Fifth Amendment right. Judge Pelikan reportedly considered the 2017 jury’s decision in choosing to sentence Rice to life. Later in the year, Missouri sentenced **Richard Emery** to death, marking the first time since 2013 that a Missouri jury and judge agreed to impose a death sentence.

As pandemic restrictions eased and courts began to re-open, five states imposed their first death sentences since the start of the pandemic: Georgia, Louisiana, Missouri, North Carolina, and Pennsylvania.

Notable Cases in Which Death Sentences Were Rejected

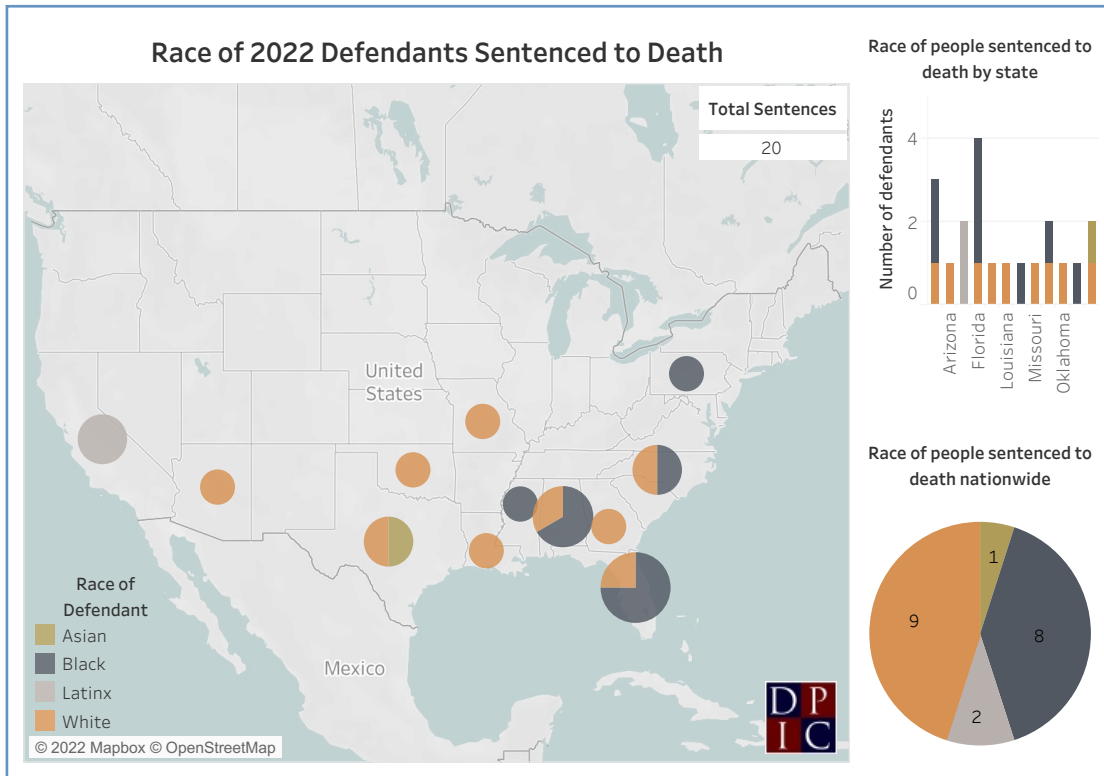
A number of cases that resulted in life sentences in 2022 provided evidence of the continuing arbitrariness and disproportionality of capital punishment.

In October, a Florida jury [recommended](#) a sentence of life without parole for Nikolas Cruz, the man convicted of killing 17 people in a mass shooting at Marjory Stoneman Douglas High School. Prosecutors had rejected a defense offer in 2019 for Cruz to plead guilty and be sentenced to 34 consecutive life sentences. They remained adamant in their desire to pursue a death sentence in 2021 after Cruz pleaded guilty to 17 counts of murder and 17 counts of attempted murder. After a six-month sentencing trial marked by delays and a chaotic jury selection process, three jurors found that the mitigating evidence outweighed the aggravating evidence. As in the vast majority of U.S. states, Florida law requires a unanimous jury vote to impose a death sentence, and Cruz was sentenced to life without parole. The verdict was reminiscent of the outcome in the Aurora, **Colorado** movie theater mass shooting case in 2015, in which three jurors found that the evidence of James Holmes’ serious mental illness warranted a life verdict. Twelve people were killed and dozens wounded in that shooting.

Cuyahoga County (Cleveland), **Ohio** prosecutors sought the death penalty for Armond Johnson, who was convicted of murdering four people, including two children. Though prosecutor Michael O’Malley said, “His callous actions demand that he face the ultimate punishment,” the jury found that the aggravating circumstances in the case did not outweigh Johnson’s mitigating circumstances. Johnson’s lawyers presented evidence of his mental illness and the chronic neglect, trauma, and extreme poverty to which he was constantly subjected throughout his childhood. Johnson was sentenced to life without parole. The case was the second time in 2022 in which a Cuyahoga County jury rejected a death sentence — in February, a life sentence was imposed in the capital trial of Kodi Gibson.

Also in Ohio, prosecutors reached a deal to take the death penalty off the table in the capital prosecution of George Wagner IV in the so-called “Pike County massacre.” Wagner and his family members were charged with the murders in several different locations of eight members of the Rhoden family. The murders resulted in the largest and most expensive homicide investigation in Ohio history. After a 13-week capital trial, George Wagner was convicted of 8 counts of murder on November 30. However, he will formally be sentenced to life on December 19 pursuant to a plea deal between prosecutors and Wagner’s brother Jake, in which Jake pleaded guilty and agreed to testify against his other family members if the death penalty was not imposed against them. Their father, Billy Wagner, faces a capital trial in 2023, but also will not be sentenced to death pursuant to the plea deal.

On August 19, the eighth anniversary of the murder of journalist James Foley, a federal district judge in Virginia **imposed** eight life sentences on Islamic State militant El Shafee Elsheikh. Elsheikh, one of the so-called “ISIS Beatles,” was convicted of murdering Foley, journalist Steven Sotloff, and humanitarian workers Peter Kassig and Kayla Mueller, who were kidnapped and held hostage in Iraq. Federal prosecutors dropped pursuit of the death penalty in order to secure British cooperation in the investigation of Elsheikh and his co-defendant, Alexandra Kotey, both of whom grew up in Britain. Kotey was sentenced to life in 2021. Diane Foley, the mother of James Foley and a leading advocate for Americans held hostage abroad, hailed the life sentence as “a huge victory” and “a very important deterrent.” She told Fox News that she considered a life sentence “a much more just sentence” than the death penalty. “These young men will have to spend the rest of their lives thinking about what they did and why they’ve lost their freedom, country, and family,” she said.



SUPREME COURT

- The U.S. Supreme Court continued to withdraw the federal courts from regulation of death-penalty cases, limiting access to federal habeas corpus review for death-row prisoners, vacating lower court rulings that had halted executions, and declining to review death-penalty cases that presented serious constitutional issues
- The Court's controversial ruling in *Shinn v. Ramirez* elevated concerns for "state's rights" and the finality of state court judgments over issues of executing the innocent, ineligibility for the death penalty, and redressing defective state-court process
- Justice Ketanji Brown Jackson became the first Black woman and first public defender to serve on the U.S. Supreme Court

The U.S. Supreme Court continued its efforts throughout 2022 to weaken or withdraw federal-court regulation of death penalty cases. Those efforts were manifest both in court decisions severely limiting prisoners' access to federal habeas corpus review to develop evidence of innocence, ineligibility for the death penalty, or constitutional violations at trial or sentencing and in refusals to review death-penalty issues that presented significant claims of constitutional violations.

The Court also continued its pattern of summarily intervening to permit executions in cases in which the lower federal courts had issued injunctions or stays of execution necessary to adjudicate significant legal issues and in uniformly denying defense applications for stays of execution. Since the death of **Justice Ruth Bader Ginsburg** and the retirement of **Justice Anthony Kennedy**, the Court has not granted a single stay of execution concerning the constitutionality of a death-row prisoner's conviction or sentence. The only execution stays it has granted have been in cases implicating the extent to which a religious figure may provide spiritual comfort to a prisoner in the death chamber during his or her execution.

2022 also saw the retirement of **Justice Stephen Breyer**, the Court's most persistent death-penalty skeptic and the historic confirmation of **Justice Ketanji Brown Jackson**, the first African American woman and first federal public defender to serve as a justice on the Court.

The Court's most significant death-penalty ruling of 2022 came in the consolidated cases of *Shinn v. Ramirez* and *Shinn v. Jones*, with a decision that severely limited access to the federal courts for state prisoners who had been provided a succession of ineffective lawyers in state court. **David Ramirez** and **Barry Jones** had been sentenced to death in separate proceedings in **Arizona**, and each argued during federal habeas review that they were entitled to present evidence of their counsel's ineffectiveness for the





Barry Jones

first time in federal court because their state post-conviction counsel had also provided them ineffective representation in failing to investigate and raise that issue.

Jones argued that trial and post-conviction counsel had both failed to develop evidence of his innocence. Ramirez argued that trial and post-conviction counsel had both failed to develop mitigating evidence that could have resulted in a life sentence and evidence of his intellectual disability that could have established his constitutional ineligibility for the death penalty. In 2012, a 7-2 majority of the Court had ruled in *Martinez v. Ryan* that state prisoners could challenge the ineffectiveness of trial counsel in federal habeas court for the first time if they had been denied effective assistance of counsel in state post-conviction proceedings. Consistent with the rulings of every federal appeals court that had previously interpreted *Martinez*, the U.S. Court of Appeals for the Ninth Circuit ruled that a federal evidentiary

forum was available to the petitioners on the claim of trial counsel's ineffectiveness, once they had shown post-conviction counsel's ineffectiveness in failing to raise the issue in state court. The Ninth Circuit affirmed a district court finding that Jones had been provided serially ineffective representation concerning his innocence, and upheld the lower court ruling vacating his conviction and granting him a new trial. In Ramirez's case, the circuit court ordered an evidentiary hearing to determine the merits of his trial ineffectiveness claim. Arizona filed a combined petition for certiorari asking the Supreme Court to jointly review the case and reverse the circuit's rulings.

Writing for the conservative majority in *Ramirez and Jones*, **Justice Clarence Thomas** called federal judicial intervention to overturn a state prisoner's conviction and sentence an "intru[sion] on state sovereignty ... [that] overrides the State's sovereign power to enforce societal norms through criminal law." Although *Martinez* permitted a habeas petitioner to raise a claim of trial counsel's ineffectiveness that state post-conviction counsel had failed to investigate and present, Thomas wrote: "a federal habeas court may not conduct an evidentiary hearing or otherwise consider evidence beyond the state-court record based on ineffective assistance of state postconviction counsel." Joined by Justice Stephen Breyer and **Elana Kagan**, **Justice Sonia Sotomayor** issued a scathing dissent describing the decision "perverse" and "illogical." The ruling, she wrote, "viscerates" controlling case precedent and "mischaracterizes" other decisions of the Court. "The Court," Sotomayor said, "arrogates power from Congress[,] ... improperly reconfigures the balance Congress struck in the [habeas amendments] between state interests and individual constitutional rights," and "gives short shrift to the egregious breakdowns of the adversarial system that occurred in these cases, breakdowns of the type that federal habeas review exists to correct." The decision, she cautioned, would "doom many meritorious trial-ineffectiveness claims" that otherwise would result in relief.

The decision also produced [harsh reactions](#) from legal scholars, who blasted it as "nightmarish" and "an abomination."

The Court further limited access to federal review in *Shoop v. Twyford*, narrowing the circumstances in which a habeas petitioner can obtain the assistance of a federal court in developing evidence. **Ohio** death-row prisoner **Raymond Twyford**'s habeas counsel sought to develop evidence to support a claim that his lawyer at trial had been ineffective in failing to investigate or develop evidence of neurological impairments he suffered after a failed suicide attempt when he was 13 years old. During federal habeas review, counsel asked the court for an order to transport Twyford to a medical facility for neurological imaging as part of their investigation into his mental competency and his trial counsel's ineffectiveness. The district court granted Twyford's motion, and Ohio prosecutors appealed. The U.S. Court of Appeals

for the Sixth Circuit agreed with Twyford that the district court had jurisdiction to issue the transport order. Rather than answer that question, the Supreme Court instead held that the transportation order had been inappropriate because Twyford did not make a specific showing that the evidence would be admissible under the restrictions imposed by the Anti-Terrorism and Effective Death Penalty Act (AEDPA).

The Supreme Court's most significant substantive death penalty ruling in 2022 was its March 4 decision in *United States v. Tsarnaev*, reimposing the death penalty on federal death row prisoner **Dzhokhar Tsarnaev** for his role in the Boston Marathon bombing. The U.S. Court of Appeals for the First Circuit had overturned Tsarnaev's death sentence, holding that the trial judge had improperly prevented Tsarnaev's lawyers from questioning jurors about the nature of their exposure to pretrial publicity and unconstitutionally excluded mitigating evidence of a murder committed by Tsarnaev's violent, radicalized older brother that Tsarnaev argued would show that he had acted under his brother's dominating influence. In a 6-3 partisan-line ruling, Justice Thomas reversed the circuit court, asserting that trial court had not abused the broad discretion afforded district court judges in questioning jurors and in admitting evidence.

In *Nance v. Ward*, the Court faced a narrow procedural question about the manner in which death-row prisoner **Michael Nance** should have challenged the constitutionality of **Georgia's** method of execution. Historically, such challenges — which do not contest the constitutionality of the death sentence itself — have been brought under the federal civil rights act, and that is what Nance did. However, recent U.S. Supreme Court case precedent requires prisoners to offer an alternative method for their own execution before they may challenge the state's intended method, and Georgia argued that the designation of any method other than lethal injection — the sole method authorized under its state law — constituted a challenge to the prisoner's underlying sentence that must be brought under the habeas corpus statute. If that were the case, every prisoner whose habeas corpus petition had been denied before the issuance of a death warrant would be time barred from challenging the execution method.

Nance suffers from a medical condition that has so compromised his veins that the only way to perform an execution by lethal injection would be by cutting into his neck to insert an intravenous line. So instead of lethal injection, he designated firing squad as his designated alternative method.

In a 5-4 decision in which **Chief Justice John Roberts** and **Justice Brett Kavanaugh** joined the Court's three liberal justices, the Court ruled in Nance's favor, retaining a single procedural mechanism for method-of-execution challenges. Writing for the Court, Justice Kagan noted that to do otherwise would permit a state to avoid challenges to the constitutionality of its execution protocol, no matter how blatantly tortuous, by designating it as the only legally authorized method of execution.

In *Ramirez v. Collier*, the Court stayed the execution of **John Ramirez** in September 2021 to consider his challenge to **Texas'** refusal to permit his pastor to be present in the execution chamber, lay hands on him, and pray out loud during his execution. Although Texas subsequently agreed to allow his spiritual advisor in the execution chamber, it denied Ramirez's requests for physical touch and audible prayer. In an 8-1 decision, the Court found that Ramirez was likely to succeed on his religious rights claim and returned the case to the lower courts to fully adjudicate his claim. Texas and Ramirez came to an agreement on what his pastor was permitted to do in the execution chamber and he was executed October 5.

In 2022, the Court denied every application for a stay of execution filed by a death-row prisoner and intervened in multiple cases to vacate stays of execution or injunctions issued by the lower federal courts.

Matthew Reeves, an intellectually disabled death-row prisoner in **Alabama**, challenged his execution by lethal injection arguing that he would have designated execution by nitrogen hypoxia but for the Alabama Department of Corrections' failure to explain a form ADOC had distributed requiring prisoners to elect a method of execution. That failure, he argued violated his rights under the Americans with Disabilities Act. The U.S. District Court for the Middle District of Alabama determined that Reeves

was likely to prevail on his claim and granted him a preliminary injunction on January 7, 2022 barring Alabama from executing him “by any method other than nitrogen hypoxia before his [Americans with Disabilities Act] claim can be decided on its merits.” The U.S. Court of Appeals for the Eleventh Circuit unanimously affirmed that injunction on January 26, just one day before his scheduled execution. In a 5-4 ruling issued after the execution was scheduled to begin, the Court vacated the injunction and Reeves was executed. **Justice Amy Coney Barrett** and the three liberal justices voted to leave the injunction in place.

In a dissenting opinion joined by Justices Breyer and Sotomayor, Justice Kagan wrote: “Four judges on two courts have decided — after extensive record development, briefing, and argument — that Matthew Reeves’ execution should not proceed as scheduled tonight. The law demands that we give their conclusions deference. But the Court today disregards the well-supported findings made below, consigning Reeves to a method of execution he would not have chosen if properly informed of the alternatives.”

The Court also issued after-hours orders vacating stays or injunctions pending further litigation in two other cases, clearing the path for Alabama to attempt the failed executions of **Alan Miller** and **Kenneth Smith**. On September 19, the district court [issued](#) a preliminary injunction enjoining Alabama from executing Miller “by any method other than nitrogen hypoxia.” The Court found that “Miller has presented consistent, credible, and uncontroverted direct evidence that he submitted an election form in the manner he says was announced to him by the [ADOC]” along with “circumstantial evidence” that ADOC lost or misplaced his form. A divided panel of the U.S. Court of Appeals for the Eleventh Circuit upheld the injunction on the afternoon of Miller’s execution. At about 9:15 p.m. Central Time, the U.S. Supreme Court vacated the injunction, leaving Alabama approximately 2½ hours to carry out the execution before the warrant expired. Justice Jackson joined Justices Sotomayor, Kagan, and Barrett in dissent. The U.S. Court of Appeals for the Eleventh Circuit granted Smith a stay of execution on November 17, 2022, the day he was scheduled to be put to death. In a 6-3 party-line vote, the Court [vacated the stay](#).

This term also introduced a new voice to the Court, with the historic June 30 confirmation of Ketanji Brown Jackson as an Associate Justice of the U.S. Supreme Court. Justice Jackson fills the judicial spot on the Court left vacant by the retirement of Justice Breyer, for whom she previously clerked. Justice Jackson is the first former federal public defender to serve on the Court, the first justice since Thurgood Marshall to have significant experience representing indigent criminal defendants, and the first Black woman to serve as a justice in the Court’s history.

Justice Jackson issued her first written opinion as a member of the Supreme Court in dissenting from the Court’s denial of certiorari review in [Chinn v. Shoop](#), death-row prisoner **Davel Chinn**’s appeal of the **Ohio** federal courts’ denial of his claim that prosecutors unconstitutionally withheld evidence favorable to the defense. Both the Ohio federal district court and the U.S. Court of Appeals for the Sixth Circuit agreed that the prosecution had improperly withheld the evidence from the defense, but they denied relief on his claim asserting that the withheld evidence had not been material to his conviction.



U.S. Supreme Court Justice Ketanji Brown Jackson

The Supreme Court declined to review the case, but Justice Jackson, joined by Justice Sotomayor, dissented, writing:

“There is no dispute that, during the capital trial of petitioner Davel Chinn, the State suppressed exculpatory evidence indicating that the State’s key witness, Marvin Washington, had an intellectual disability that may have affected Washington’s ability to remember, perceive fact from fiction, and testify accurately. When affirming on direct appeal, the Ohio Supreme Court said “[i]f the jury accepted Washington’s testimony, the jury was certain to convict [Chinn], but if the jury did not believe Washington, it was certain to acquit [Chinn] of all charges.” Similarly, the Ohio Court of Appeals said that Washington was the “key” and “main” witness against Chinn. Yet, when confronted during state postconviction proceedings with the State’s suppression of evidence that would have substantially impeached this key witness, the Ohio courts suddenly concluded that evidence was not “material” enough to have affected the trial.”

Saying that the lower federal courts had applied the wrong legal standard in upholding the state court’s ruling, Jackson wrote: “Because Chinn’s life is on the line, and given the substantial likelihood that the suppressed records would have changed the outcome at trial based on the Ohio courts’ own representations, I would summarily reverse to ensure that the Sixth Circuit conducts its materiality analysis under the proper standard.”

The Court’s refusal to review the *Chinn* case illustrates another trend in the Court’s decisions in 2022, repeatedly denying certiorari review in death-penalty cases in which state and federal court had denied relief on significant constitutional claims. Those cases include that of Texas death-row prisoner **Andre Thomas**, a severely mentally ill Black man convicted of murdering his wife, who was a white woman, her daughter from a previous relationship, who was white, and their son, who was biracial. Thomas challenged his conviction and sentence because his trial lawyer agreed to impanel three jurors who expressed clear bias against interracial marriage or thought interracial couples should not have children, without so much as asking them any questions about their biases. The Court voted 6-3 to deny certiorari.

The Court also refused to review a significant constitutional question raised by **Rodney Young**, who was sentenced to death in Georgia despite agreement by mental health experts that he met the medical requirements for intellectual disability. For medical purposes, proof of the disorder requires a diagnosis to a reasonable degree of medical certainty. But Georgia requires capital defendants and death-row prisoners to prove intellectual disability beyond a reasonable doubt before they can be ineligible for the death penalty. No other state has such an extreme requirement, and no one convicted of committing a murder in Georgia has ever been able to meet that standard. But despite the extreme outlier status of Georgia’s rule, the Court denied certiorari review for Young.

The Court’s refusal to grant a stay of execution to **Missouri** death-row prisoner **Kevin Johnson** also raised questions regarding its commitment to fair process and the enforcement of constitutional protections against racial bias. A special prosecutor appointed by a St. Louis County trial court had found that Johnson’s death sentence was a product of discriminatory prosecutorial practices by former county prosecutor Robert McCullough. Based on those findings, the special prosecutor sought to stay Johnson’s execution and overturn his death sentence under a Missouri statute that mandated an evidentiary hearing when the prosecution presented evidence of prejudicial constitutional error. The trial court nevertheless refused to stay Johnson’s execution. Scheduling oral argument in his case for the day before the execution was set to take place, the Missouri Supreme Court also declined to grant a stay, without ruling on the merits of the special prosecutor’s assertions. The U.S. Supreme Court then declined to stay Johnson’s execution to permit him to have his day in court on the discrimination claims, and he was executed November 29.

In a [dissent](#) issued the day after Johnson’s execution and joined by Justice Sotomayor, Justice Jackson wrote that the Missouri Supreme Court had “flouted the plain language” of the state law that required an evidentiary hearing when a prosecutor seeks to vacate a conviction based upon evidence “demonstrating a ‘constitutional error at the original trial ... that undermines the confidence in the judgment.’” Johnson’s execution, Jackson wrote, “irrevocably mooted our consideration of his due process claim, and Missouri would have suffered no discernible harm if a stay had issued, as a State has no legitimate interest in carrying out an execution contrary to [its laws] or due process.” As a result, “new evidence relating to the trial prosecutor’s racially biased practices and racially insensitive remarks ... will not be considered on the merits by any court, much less the one that was supposed to base its conclusions about the validity of Johnson’s conviction on all such evidence, per the statutory mandate.”

Several other capital cases that are awaiting Supreme Court decision at the end of 2022 may serve as bellwethers on how far the Court is willing to go to limit defendants’ access to federal review.

In November, the Supreme Court heard argument in *Cruz v. Arizona*, a case in which the Arizona courts had refused **John Cruz**’s request to instruct his jury that he would not be eligible for parole if spared a death sentence. Although the Supreme Court ruled in *Simmons v. South Carolina* in 1994 that a defendant has a due process right to inform a capital sentencing jury of his or her parole ineligibility if future dangerousness has been placed in issue, Arizona courts routinely prohibited capital defendants from informing their juries of that fact. State courts justified this practice on the grounds that the governor could grant clemency to a defendant who was otherwise sentenced to life without parole, so technically a sentence of life without parole was not absolute. In 2016, in *Lynch v. Arizona*, the Supreme Court summarily reversed Arizona’s interpretation of the law, finding it flatly contrary to *Simmons*.

After *Lynch*, Cruz tried to again present his claim to Arizona’s courts, citing *Lynch* as a new case that changed Arizona law. However, the state court, departing from prior precedent that consider such decisions to constitute a change in the law, ruled that Cruz’s claim was procedurally barred because *Lynch* simply reaffirmed prior law. The question before the Supreme Court is whether the state court’s procedural ruling is an adequate and independent ground for its judgement.

The Court also heard argument in *Reed v. Goertz* in October, an appeal by Texas death-row prisoner **Rodney Reed** seeking DNA testing of evidence that he argues can prove his innocence. Reed’s case has drawn international attention because of the strength of his innocence claim, but his Supreme Court case turns on the very narrow question of what event started the clock on his deadline to raise his claim in federal court, after Texas denied his request to test the additional DNA evidence. During his federal appeals, the U.S. Court of Appeals for the Fifth Circuit ruled that Reed was required to file his federal civil rights lawsuit within two years of the date the state trial court denied his request for DNA testing, even though his appeal of that decision was still pending in state court. By the time the case reached the Supreme Court, Texas Solicitor General Judd Stone had backed down from this position, and instead argued that Reed’s time clock began to run “no later than” when the Texas Court of Criminal Appeals (TCCA) denied his initial appeal. Reed argued that the time clock did not begin to run until his appeal was final — including consideration of any petition for reconsideration of his case. His federal civil rights action was filed more than two years after the Texas Court of Criminal Appeals denied his appeal, but within two years after its denial of his request for reconsideration brought the appellate process to a close. Reed’s interpretation is also the current rule in the U.S. Court of Appeals for the Eleventh Circuit, creating a conflict between the Fifth and Eleventh Circuits that the Court’s decision in this case will resolve.



Rodney Reed

–KEY QUOTES

“For us as a Christian nation, the notion of ‘thou shall not kill’ still prevails.”

—**Papua New Guinea Prime Minister James Marape, announcing the abolition of the country’s death penalty**



*Papua New Guinea Prime Minister
James Marape*



Oregon Governor Kate Brown

“It is an irreversible punishment that does not allow for correction; is wasteful of taxpayer dollars; does not make communities safer; and cannot be and never has been administered fairly and equitably.”

—**Oregon Governor Kate Brown, announcing the commutation of all 17 of the state’s death sentences**

“There was more than one casualty. More people are involved than anyone understands.”

—**Perrin Damon, former Oregon Department of Corrections spokesperson, on the impact of executions on corrections personnel**

“It’s clear that lethal injection creates a circus of suffering. ... I don’t know why they are so bad at this. But it seems they are trying to hide a pattern of dangerous, cruel, incompetence.”

—**Emory University Anesthesiologist Joel Zivot on 2022 execution failures**

“Tonight, the State of Missouri killed Kevin Johnson. ... Make no mistake about it, Missouri capitally prosecuted, sentenced to death, and killed Kevin because he is Black. ... The law is supposed to punish people for what they do, not who they are. Yet, Missouri killed Kevin because of the color of his skin. Shame on all of them.”

—Assistant Federal Defender Shawn Nolan on the execution of Kevin Johnson, despite a court-appointed special prosecutor’s efforts to vacate his death sentence because of racial discrimination by the St. Louis County District Attorney’s Office



Brett Farley

“We cannot be a state that... values the sanctity of life, and, at the same time, think that we can have a system of justice that resorts to death.”

—Brett Farley, State Coordinator, Oklahoma Conservatives Concerned About the Death Penalty, former communications director of the Oklahoma Republican Party

“What’s taking so long? ... Can you believe this?”

—Arizona death-row prisoner Murray Hooper, as corrections personnel failed to set an intravenous execution line and ultimately inserted a catheter into his femoral vein near his groin

“We policymakers have an obligation and opportunity to speak out when there is injustice. Here, in the case of Melissa Lucio, there is clear injustice.”

—Texas State Representative Lacey Hull (R-138) in reference to Melissa Lucio’s execution that was scheduled for April 27, 2022, which has since been stayed

“The opinion leaves innocent people in the nightmarish position of having no court to go to for justice.”

—Innocence Project Executive Director Christina Swarns on the implications of the U.S. Supreme Court’s decision in *Shimm v. Ramirez*



Christina Swarns (center), after arguing before the Supreme Court in 2017



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The Death Penalty Information Center is a non-profit organization serving the media and the public with information and analysis on capital punishment. The Center provides in-depth reports, conducts briefings for journalists, promotes informed discussion, and serves as a resource to those working on this issue. DPIC’s Executive Director Robert Dunham and Managing Director Anne Holsinger wrote this report with assistance from DPIC’s staff. Further sources for facts and quotations are available upon request. The Center is funded through the generosity of individual donors and foundations, including the MacArthur Justice Center, the Open Society Foundations, the Tides Foundation, M. Quinn Delaney, and the Fund for Nonviolence. Funding for DPIC’s law fellow position was provided in part by the Georgetown University Law Center. The views expressed in this report are those of DPIC and do not necessarily reflect the opinions of its donors.

EXHIBIT 11

AMNESTY INTERNATIONAL GLOBAL REPORT

DEATH SENTENCES

AND EXECUTIONS

2022

AMNESTY
INTERNATIONAL



Amnesty International is a movement of 10 million people which mobilizes the humanity in everyone and campaigns for change so we can all enjoy our human rights. Our vision is of a world where those in power keep their promises, respect international law and are held to account. We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and individual donations. We believe that acting in solidarity and compassion with people everywhere can change our societies for the better.

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Appendix B



App. 142

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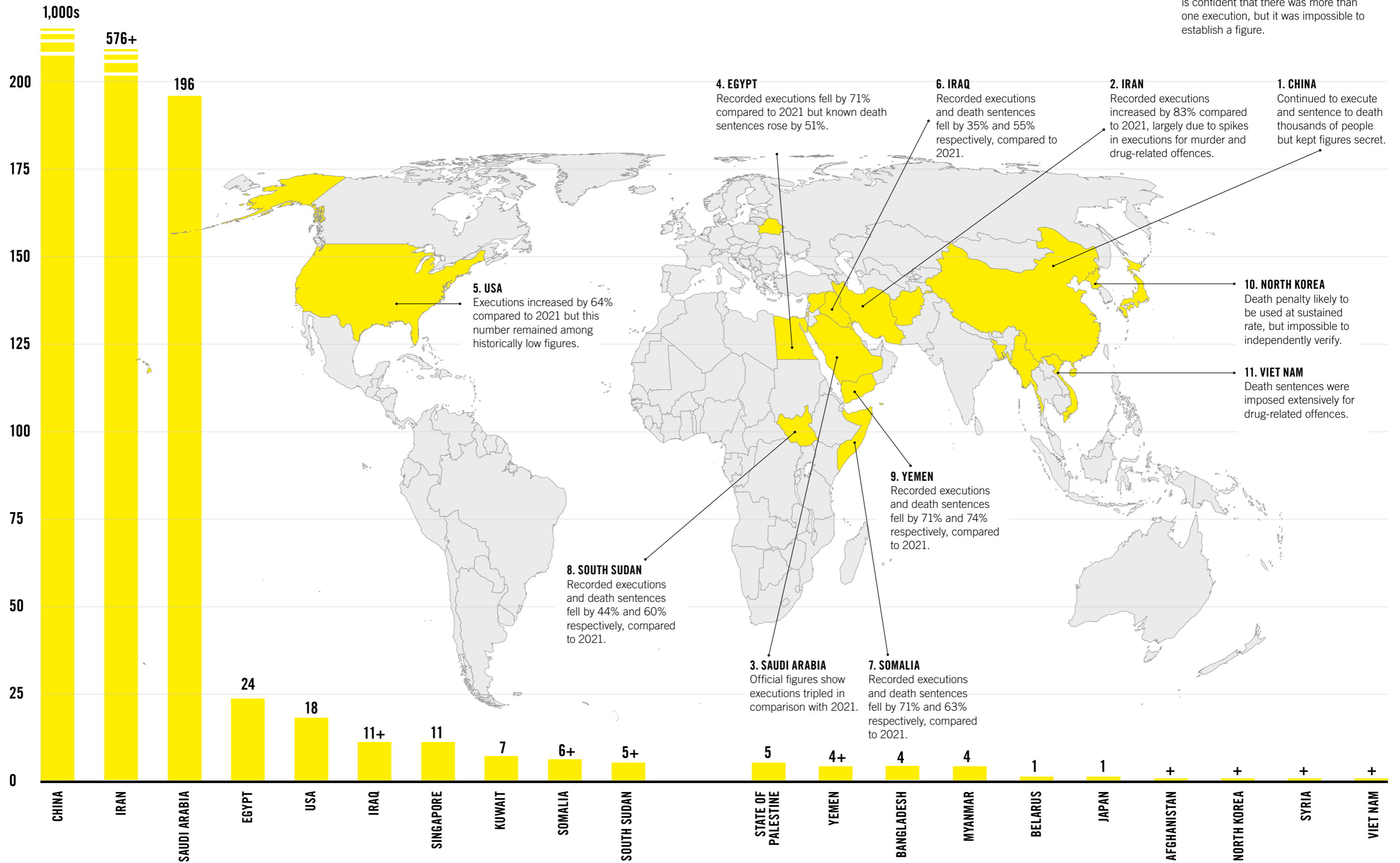
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EXECUTING COUNTRIES IN 2022

This map indicates the general locations of boundaries and jurisdictions and should not be interpreted as Amnesty International's view on disputed territories.

The 11 countries numbered on the map have persistently executed people in the past five years (2018–2022).

+ indicates that the figure that Amnesty International has calculated is a minimum. Where + is not preceded by a number, this means that Amnesty International is confident that there was more than one execution, but it was impossible to establish a figure.



AMNESTY INTERNATIONAL'S FIGURES ON THE USE OF THE DEATH PENALTY

This report covers the judicial use of the death penalty for the period January to December 2022. As in previous years, information is collected from a variety of sources, including: official figures; judgments; information from individuals sentenced to death and their families and representatives; media reports; and, as specified, other civil society organizations. Amnesty International reports only on executions, death sentences and other aspects of the use of the death penalty, such as commutations and exonerations, where there is reasonable confirmation. In many countries governments do not publish information on their use of the death penalty. In China and Viet Nam, data on the use of the death penalty is classified as a state secret, while little or no information was available on some other countries due to restrictive state practice.

Therefore, for a significant number of countries, Amnesty International's figures on the use of the death penalty are minimum figures. The true overall numbers are likely to be higher.

In 2009 Amnesty International stopped publishing its estimated figures on the use of the death penalty in China, a decision that reflected concerns about how the Chinese authorities misrepresented Amnesty International's numbers. Amnesty International always made clear that the figures it was able to publish on China were significantly lower than the reality, because of the restrictions on access to information. China has yet to publish any figures on the death penalty; however, available information indicates that each year thousands of people are executed and sentenced to death. Amnesty International renews its call on the Chinese authorities to publish information on the use of the death penalty in China.

Where Amnesty International receives and is able to verify new information after publication of this report, it updates its figures online at [amnesty.org/en/what-we-do/death-penalty](https://www.amnesty.org/en/what-we-do/death-penalty)

In tables and lists, where “+” appears after a figure next to the name of a country – for example, Malaysia (16+) – it means that Amnesty International confirmed 16 executions, death sentences or persons under sentence of death in Malaysia but believes that there were more than 16. Where “+” appears after a country name without a figure – for instance, Syria (+) – it means that Amnesty International has corroborated executions, death sentences or persons under sentence of death (more than one) in that country but had insufficient information to provide a credible minimum figure. When calculating global and regional totals, “+” has been counted as two, including for China.

Amnesty International opposes the death penalty in all cases without exception regardless of the nature or circumstances of the crime; guilt, innocence or other characteristics of the individual; or the method used by the state to carry out the execution. The organization campaigns for total abolition of the death penalty.

THE USE OF THE DEATH PENALTY IN 2022

“We have commuted the sentences of 30 of those who are on death row to life imprisonment. [Zambia’s government] has taken a decision, a big decision, to end the death penalty in our country. We will work with Parliament to run through this process as we transition away from the death penalty and focus on the preservation [and] rehabilitation of life while still delivering justice for all.”

President Hakainde Hichilema, President of Zambia, 24 May 2022¹

GLOBAL TRENDS

Amnesty International’s research on the global use of the death penalty in 2022 revealed a spike in the number of people known to have been executed worldwide, including a significant increase in executions for drug-related offences. This negative trend contrasts with a countervailing positive tendency: a substantial number of countries have taken decisive steps away from the death penalty in 2022, marking remarkable progress against the ultimate cruel, inhuman and degrading punishment.

Known executions, excluding the thousands believed to have taken place in China, significantly increased by 53% on those for 2021, from 579 (2021) to 883 (2022). The executions recorded in 2022 were the highest since 2017 (993).² Secrecy and restrictive state practices continued to impair an accurate assessment of the use of the death penalty in several countries, including China, North Korea and Viet Nam.

The sharp increase in known global executions in 2022 was mainly due to the significant increase recorded in the Middle East and North Africa region, where known executions went up by 59%, from 520 in 2021 to 825 in 2022. A staggering 93% of known global executions (excluding China) in 2022 were carried out in the Middle East and North Africa region. Of the 825 executions recorded in the region, 94% were carried out in Iran (70%) and Saudi Arabia (24%); two countries that routinely execute people after unfair trials and where sharp increases in executions were recorded in 2022. In Iran, recorded executions went up to 576 from 314 recorded the previous year, an increase of 83%. In Saudi Arabia, recorded executions tripled from 65 (2021) to 196 (2022), the highest number Amnesty International recorded in the country in 30 years.

¹ ‘President’s address to mark Africa Freedom Day’, President of Zambia, 24 May 2022, <https://twitter.com/HHichilema/status/1529176783567917060?s=20&t=UWGsVP5gR04PqZ3HUJOF1Q>

² Amnesty International recorded 993 executions globally in 2017, 690 in 2018, 657 in 2019, 483 in 2020, and 579 in 2021.

Four countries – China, Iran, Saudi Arabia and Singapore – executed people for drug-related offences in violation of international human rights law which prohibits the use of the death penalty for crimes that do not meet the threshold of “most serious crimes” (that is, crimes that involve intentional killing).³ Executions for these offences were very likely to have been carried out in Viet Nam, but secrecy prevented confirmation. At the end of 2022, 325 executions were recorded for drug-related offences. The number more than doubled the 134 executions recorded for the crime in 2021 and represented 37% of known global executions in 2022. Of the 325 confirmed executions, 255 were recorded in Iran – where drug-related offences accounted for 44% of known executions carried out in 2022 in the country; 57 recorded in Saudi Arabia – where a moratorium on executions for drug-related offences, which the Saudi Human Rights Commission had said was put in place in 2020, ended in 2022; and 11 recorded in Singapore – where executions resumed in 2022 and all executions in the year were for drug-related offences. Amnesty International confirmed executions were carried out for drug-related offences in China but had insufficient information to provide a credible minimum figure.⁴ The escalation in the use of the death penalty for drug-related offences is of grave concern to Amnesty International as it is a violation of the right to life, undermines international human rights law and constitutes a threat to the global progress already made against the death penalty.

Notwithstanding the drawbacks documented, remarkable progress against the death penalty was made in 2022. Without doubt, the world continued to move away from the death penalty and only a minority of countries – that are increasingly becoming isolated – actively used the punishment. Six countries abolished the death penalty either fully or partially in 2022.

Four countries – Kazakhstan, Papua New Guinea, Sierra Leone and the Central African Republic – abolished the death penalty for all crimes. In Kazakhstan, a law that abolished the death penalty was officially promulgated in January. By April, amendments to the Criminal Code which removed the death penalty for all crimes became effective in Papua New Guinea. On 21 April 2022, the Abolition of the Death Penalty Act 2021 which removed the death penalty from the laws of Sierra Leone was officially promulgated. On 27 June 2022, President Faustin-Archange Touadéra of Central African Republic signed into law a bill abolishing the death penalty which the National Assembly had passed a month before. By the end of 2022, two countries – Equatorial Guinea and Zambia – had abolished the death penalty for ordinary crimes only. Amnesty International considered these positive actions partial abolitions due to the death penalty remaining in the military laws of the two countries at the end of the year. In 1977, when Amnesty International started its global campaign for the worldwide abolition of the death penalty, only 16 countries had abolished the death penalty for all crimes. At the end of 2022, 112 countries were abolitionist for all crimes and 9 were abolitionist for ordinary crimes only.⁵

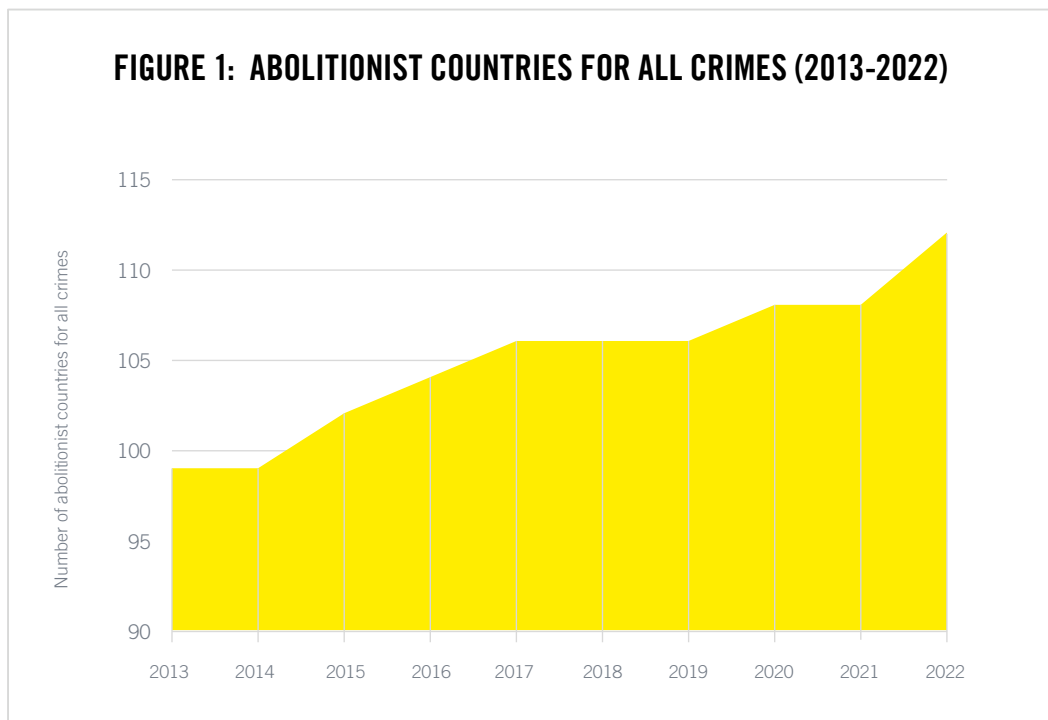
Furthermore, Kazakhstan – without any reservations – became a state party to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty. Gambia, Maldives and Sri Lanka continued to observe official moratoriums on executions. In Asia, the authorities of Malaysia took steps towards reforming the mandatory death penalty; and the Parliament of Indonesia adopted a new Criminal Code that, once effective in 2026, would allow for the commutation of death sentences after 10 years if certain conditions are met. In the sub-Saharan Africa region, legislative steps towards the abolition of the death penalty were taken. The Senate of Liberia, in July, unanimously voted to abolish the death penalty in a penal code bill which was pending before the House of Representatives at the end of 2022. In Ghana, legislative work continued on a bill to amend the Criminal Offences Act 1960 and the Armed Forces Act 1962 to remove death penalty provisions from the two laws.

³ Human Rights Committee, General Comment No. 36 on Article 6: Right to Life, UN Doc. CCPR/C/GC/36 para35.

⁴ In calculating the global total of executions carried out for drug-related offences, two were counted for China in accordance with Amnesty International's research methodology.

⁵ Amnesty International, “*Abolitionist and retentionist countries (as of April 2023)*” (Index: ACT50/6591/2023), April 2023, [amnesty.org/en/documents/act50/6591/2023/en/](https://www.amnesty.org/en/documents/act50/6591/2023/en/)

In December, at the plenary session of the UN General Assembly (UNGA), an unprecedented number of UN member states supported the adoption of the biennial resolution calling for the establishment of a moratorium on executions with a view to fully abolishing the death penalty.⁶ Close to two-thirds of the UN membership – 125 UN member states – voted to adopt the ninth resolution on a moratorium on the use of the death penalty. Support for the resolution increased since it was last adopted in December 2020, an indication that the community of UN member states is steadily moving closer to rejecting the death penalty as a lawful punishment under international human rights law. Several states changed their vote positively compared to December 2020. Ghana, Liberia and Myanmar voted in favour after abstaining at the UNGA plenary in 2020; Uganda changed its vote from against to in favour and Papua New Guinea changed from against to abstention. Palau and Solomon Islands voted in favour after not voting at the plenary in 2020.



EXECUTIONS

At least 883 executions were carried out in 2022 compared to 2021 when at least 579 occurred, representing a 53% rise. For the second consecutive year, Amnesty International recorded an increase in executions following a drop in those recorded in 2018, 2019 and 2020.⁷

⁶ Since 2007, the UNGA has adopted nine resolutions calling for the establishment of a moratorium on executions with a view to abolishing the death penalty, with increased cross-regional support. UNGA resolutions carry considerable moral and political weight and the continued consideration of resolutions on this issue has kept scrutiny on the use of this cruel punishment as a human rights priority for the international community. The overall number of votes in favour of these resolutions has risen from 104 in 2007 to 125 in 2022.

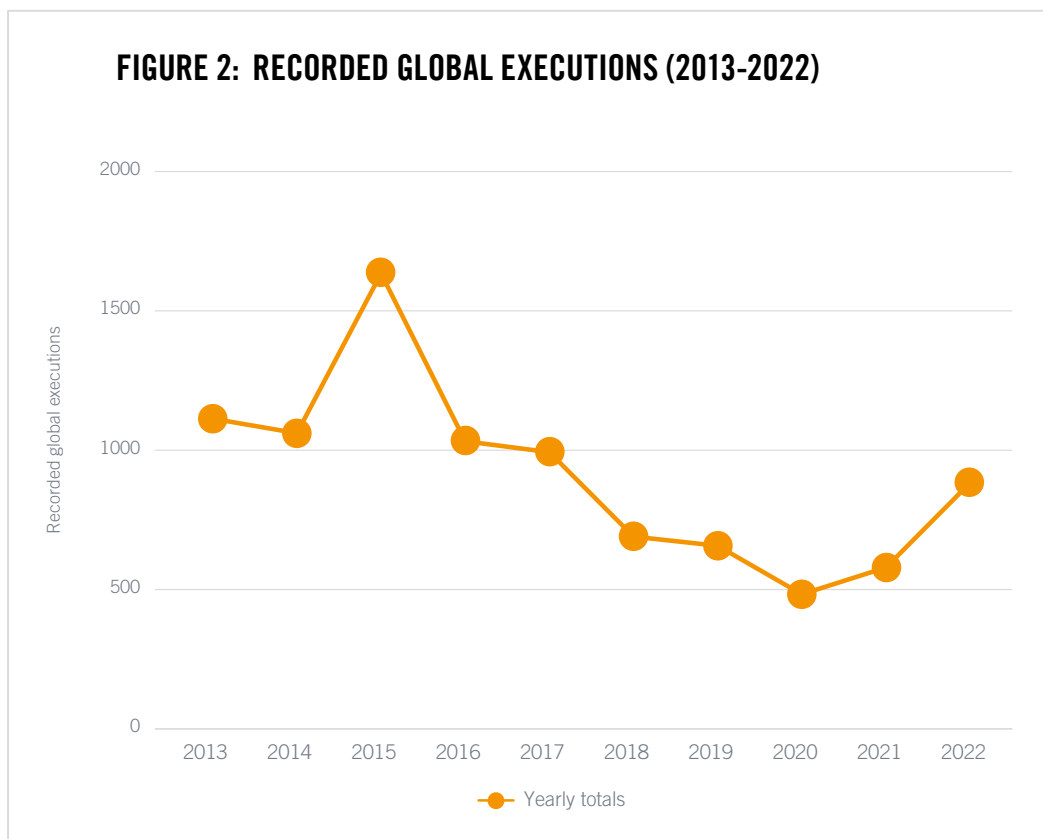
⁷ The total number of executions reported for 2020 represents one of the lowest figures that Amnesty International has recorded in any given year since it began its monitoring of the use of the death penalty in 1979. However, changes in access to information, configuration of countries and research methodology over the decades make it challenging to accurately compare this figure over a longer period.

Similar to previous years, the global recorded totals do not include the thousands of executions that Amnesty International believed were carried out in China, where data on the death penalty is classified as a state secret.⁸

In comparison to 2021 records, executions reduced significantly in Egypt (from 83+ to 24), Iraq (from 17+ to 11+), Japan (from 3 to 1), Somalia (from 21+ to 6+), South Sudan (from 9+ to 5+) and Yemen (from 14+ to 4+). In contrast, Amnesty International recorded notable increases in executions in Iran (from 314+ to 576+), Kuwait (from 0 to 7), Myanmar (from 0 to 4), Palestine (State of) (from 0 to 5), Saudi Arabia (from 65 to 196), Singapore (from 0 to 11) and USA (from 11 to 18).

Three countries – Egypt (24), Iran (at least 576) and Saudi Arabia (196) – accounted for 90% of all known executions. Increases in recorded executions for murder and drug-related offences were largely responsible for the spike in Iran: recorded executions for murder had risen sharply by 75% from 159 in 2021 to 279 in 2022; and rose significantly for drug-related offences by 93% from 132 in 2021 to 255 in 2022. The 196 executions in Saudi Arabia were the highest recorded by Amnesty International in the country in 30 years. The increase in recorded executions for terrorism-related offences and the resumption of executions for drug-related offences were mainly responsible for the significant increase in executions in Saudi Arabia: recorded executions for terrorism-related offences rose from 9 in 2021 to 85 in 2022; and for drug-related offences from 0 in 2021 to 57 in 2022.

Thirteen women were among the 883 people known to have been executed in 2022 as follows: Iran (12), Saudi Arabia (1).



⁸ In 2009 Amnesty International stopped publishing its estimated figures on the use of the death penalty in China. Instead, the organization has challenged the authorities to prove their claims that they are achieving their goal of reducing the application of the death penalty by publishing the figures themselves. Little or partial information was available for several other countries (see Note on Amnesty International's figures on the use of the death penalty in this report for further information).

Amnesty International recorded executions in 20 countries compared to 18 in 2021. After a hiatus of several years, executions resumed in five countries: Afghanistan (first since 2018), Kuwait (first since 2017), Myanmar (first in four decades), Palestine (State of) (first since 2017), Singapore (first since 2019). Three countries – Botswana, UAE and Oman – that carried out executions in 2021 did not do so in 2022.



EXECUTIONS RECORDED GLOBALLY IN 2022

Afghanistan (+), Bangladesh (4), Belarus (1), China (+), Egypt (24), Iran (576+), Iraq (11+), Japan (1), Kuwait (7), Myanmar (4), North Korea (+), Palestine (State of) (5), Saudi Arabia (196), Singapore (11), Somalia (6+), South Sudan (5+), Syria (+), USA (18), Viet Nam (+), Yemen (4+).

METHODS OF EXECUTIONS IN 2022⁹

Beheading	Saudi Arabia								
Hanging	Bangladesh	Egypt	Iran	Iraq	Japan	Myanmar	Singapore	South Sudan	Syria
Lethal injection	China	USA	Viet Nam						
Shooting	Afghanistan	Belarus	China	Kuwait	North Korea (Democratic People's Republic of Korea)	Palestine (State of)	Somalia	Yemen	

2022 KNOWN EXECUTING COUNTRIES BY INTERNATIONAL GOVERNMENTAL ORGANIZATIONS

- **Organization of American States:** 1 out of 35 countries carried out executions – **USA**
- **Organization for Security and Co-operation in Europe:** 2 out of 57 countries executed people – **Belarus** and the **USA**
- **African Union:** 3 out of 55 countries carried out executions – **Egypt, Somalia** and **South Sudan**
- **League of Arab States:** 8 out of 22 countries executed people – **Egypt, Iraq, Kuwait, Palestine (State of), Saudi Arabia, Syria, Somalia** and **Yemen**
- **Association of Southeast Asian Nations:** 3 out of 10 countries carried out executions – **Myanmar, Singapore** and **Viet Nam**
- **Commonwealth:** 2 out of 56 countries executed people – **Bangladesh** and **Singapore**
- **Organisation Internationale de la Francophonie:** 2 out of 54 countries carried out executions – **Egypt** and **Viet Nam**
- **United Nations:** 19 out of 193 member states (10% of UN membership) were known to have executed people – **Afghanistan, Bangladesh, Belarus, China, Egypt, Iran, Iraq, Japan, Kuwait, Myanmar, North Korea, Saudi Arabia, Singapore, Somalia, South Sudan, Syria, USA, Viet Nam** and **Yemen**.¹⁰

⁹ In line with previous years, Amnesty International did not receive any reports of judicial executions by stoning in 2022.

¹⁰ The State of Palestine has the status of a non-member observer State at the United Nations.

DEATH SENTENCES

The total number of death sentences recorded by Amnesty International in 2022 decreased slightly on the 2021 global figure. At least 2,016 new death sentences were imposed, compared to at least 2,052 in 2021. However, variations in the nature and availability of information on death sentences for some countries make the evaluation of this global total in comparison with those of previous years methodologically challenging.

Amnesty International did not receive information on official figures for death sentences imposed in Nigeria and Sri Lanka, countries that reported high official numbers of death sentences in previous years. On the other hand, the authorities of Thailand provided Amnesty International with figures for new death sentences imposed by courts of first instance, unlike in previous years.

In 2022, death sentences were confirmed in 52 countries, four less than in 2021, when 56 countries were known to have imposed death sentences. Five countries were known to have imposed death sentences after a hiatus – Bahrain, Comoros, Laos, Niger and South Korea. No new death sentences were recorded in Belarus, Cameroon, Japan, Malawi, Morocco/Western Sahara, Oman, Sierra Leone, Uganda and Zimbabwe – all countries that were known to have sentenced people to death in 2021.



DEATH SENTENCES RECORDED GLOBALLY IN 2022

Afghanistan (+), Algeria (54), Bahrain (2+), Bangladesh (169+), Botswana (1), China (+), Comoros (2), Democratic Republic of the Congo (76+), Egypt (538), Ethiopia (2+), Gambia (9), Ghana (7), Guyana (4), India (165), Indonesia (112+), Iran (+), Iraq (41+), Jordan (4+), Kenya (79), Kuwait (16+), Laos (5+), Lebanon (2+), Libya (18+), Malaysia (16+), Maldives (1), Mali (8+), Mauritania (5+), Myanmar (37+), Nigeria (77+), Niger (4+), North Korea (+), Pakistan (127+), Palestine (State of) (28), Qatar (+), Saudi Arabia (12+), Singapore (5), Somalia (10+), South Korea (1), South Sudan (4+), Sri Lanka (8+), Sudan (1+), Syria (+), Taiwan (3), Tanzania (11), Thailand (104), Trinidad and Tobago (5+), Tunisia (26+), UAE (2+), USA (21), Viet Nam (102+), Yemen (78+), Zambia (2+).

Amnesty International recorded a significant increase in the number of death sentences imposed in 2022 compared to 2021 in the following countries: Algeria (from 9 to 54), Egypt (from 356+ to 538), India (from 144 to 165), Kenya (from 14 to 79), Kuwait (from 5+ to 16+), Nigeria (from 56+ to 77+), Tunisia (from 3+ to 26+). Significant decreases in the number of death sentences imposed were recorded in the following countries: Bangladesh (from 181+ to 169+), Iraq (from 91+ to 41+), Lebanon (from 12+ to 2+), Malawi (from 11+ to 0), Mali (from 48 to 8+), Mauritania (from 60 to 5+), Myanmar (from 86+ to 37+), Sierra Leone (from 23 to 0), Somalia (from 27+ to 10+), Viet Nam (from 119+ to 102+), Yemen (from 298+ to 78+).

Globally, at least 28,282 people were under sentence of death at the end of 2022.¹¹

¹¹ For several countries where Amnesty International believed a high number of prisoners were under sentence of death, figures were not available or it was impossible to estimate a credible number. These included China, Egypt, Iran, Libya, North Korea and Saudi Arabia.

COMMUTATIONS, PARDONS AND EXONERATIONS

Amnesty International recorded commutations or pardons of death sentences in 26 countries:

Afghanistan, Bangladesh, Barbados, China, Gambia, Ghana, Guyana, India, Indonesia, Iraq, Kazakhstan, Kuwait, Malaysia, Mauritania, Morocco/Western Sahara, Niger, Nigeria, Pakistan, Singapore, Sri Lanka, Sudan, Taiwan, Thailand, USA, Viet Nam, Zambia.¹²

Amnesty International recorded at least 28 exonerations of prisoners under sentence of death in four countries – Kenya (20), Morocco/Western Sahara (1), USA (2), Zimbabwe (5).¹³

THE DEATH PENALTY IN 2022: IN VIOLATION OF INTERNATIONAL LAW



The death penalty continued to be used in ways that violated international law and standards in 2022. Some examples included:

- At least 3 **public executions**: in Afghanistan (1+) and Iran (2).
- At least 5 people – in Iran – were executed for crimes that occurred when they were **below 18 years of age**; Amnesty International believed that other people in this category remained on death row in Maldives, Iran and Saudi Arabia.¹⁴
- People with **mental or intellectual disabilities** were under sentence of death in several countries, including Iran, Japan, Maldives and USA.
- Death sentences were known to have been imposed after proceedings that did not meet international **fair trial standards** in several countries, including Afghanistan, Bahrain, Bangladesh, Belarus, China, Egypt, Iran, Iraq, Malaysia, Myanmar, North Korea, Pakistan, Saudi Arabia, Singapore, Viet Nam and Yemen.
- **“Confessions”** that may have been extracted through **torture or other ill-treatment** were used to convict and sentence people to death in Egypt, Iran, Saudi Arabia and Yemen.
- Death sentences were imposed **without the defendant being present (in absentia)** in Bangladesh and Egypt.

¹² Commutation is the process by which a death sentence is exchanged for a less severe sentence such as a term of imprisonment, often by the judiciary on appeal but sometimes also by the executive. A pardon is granted when the convicted individual is completely exempted from further punishment.

¹³ Exoneration is the process whereby, after sentencing and the conclusion of the appeals process, the convicted person is later cleared from blame or acquitted of the criminal charge, and therefore is regarded as innocent in the eyes of the law.

¹⁴ Often the actual age of the prisoner is in dispute because no clear proof of age exists, such as a certificate of registration at birth. Governments should apply a full range of appropriate criteria in cases where age is in dispute. Good practice in assessing age includes drawing on knowledge of physical, psychological and social development. Each of these criteria should be applied in a way that gives the benefit of the doubt in disputed cases so that the individual is treated as a person who was below 18 years of age at the time of the crime, and accordingly should ensure that the death penalty is not applied. Such an approach is consistent with the principle that the best interests of the child shall be a primary consideration in all actions concerning children, as required by Article 3(1) of the UN Convention on the Rights of the Child.

THE DEATH PENALTY IN 2022: IN VIOLATION OF INTERNATIONAL LAW (CONTINUED)



- **Mandatory death sentences** were imposed in Afghanistan, Ghana, Iran, Malaysia, Myanmar, Nigeria, Pakistan, Saudi Arabia, Singapore and Trinidad and Tobago.¹⁵
- **Military courts sentenced** civilians to death in Egypt, Libya, Myanmar and Pakistan. **Special Courts** imposed death sentences in Bangladesh, India, Iran, Pakistan, Saudi Arabia and Yemen.
- The death penalty was used for **crimes that did not involve intentional killing**, and therefore did not meet the threshold of “most serious crimes” under international law:¹⁶
 - **Drug-related offences:** Execution for drug-related offences were recorded in China (+),¹⁷ Iran (255), Saudi Arabia (57) and Singapore (11); the total number of 325 constituted 37% of total executions recorded globally. Information on Viet Nam, which is very likely to have carried out such executions, was unavailable
 - 213 new death sentences known to have been imposed in 9 countries: Bangladesh (6), Egypt (1), China (+),¹⁸ Indonesia (105), Laos (5), Malaysia (8), Pakistan (1), Singapore (5) and Viet Nam (80). In Thailand, of the 195 total number of people under sentence of death at the end of 2022, 121 including 14 women had been convicted of drug-related offences
 - **Economic crimes, such as corruption:** China and Viet Nam.
 - **Apostacy:** Libya
 - **Kidnapping:** Iran and Saudi Arabia
 - **Rape:** Bangladesh, Egypt, India, Iran, Pakistan and Saudi Arabia.
 - Different forms of “**treason**”, “**acts against national security**”, “**collaboration**” with a foreign entity, “**espionage**”, “**questioning the leader’s policies**”, participation in “**insurrectional movement and terrorism**”, “**armed rebellion against the ruler**” and other “**crimes against the state**”, whether or not they led to a loss of life: Iran and Saudi Arabia.

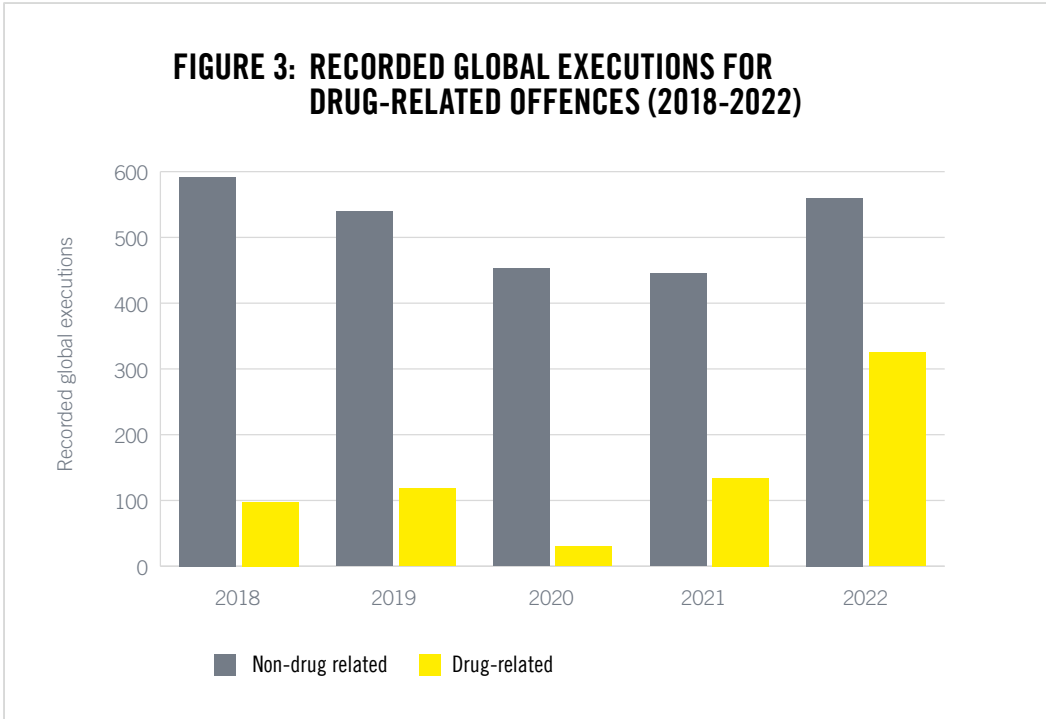
¹⁵ The UN Human Rights Committee has stated that “mandatory death sentences that leave domestic courts with no discretion as to whether to designate the offence as a crime warranting the death penalty, and whether to issue the death sentence in the particular circumstances of the offender, are arbitrary in nature.” Human Rights Committee, General Comment No. 36 on Article 6: Right to Life, UN Doc. CCPR/C/GC/36 [3 September 2019], para. 37.

¹⁶ As prescribed by Article 6 of the International Covenant on Civil and Political Rights; Human Rights Committee, General Comment No. 36 on Article 6: Right to Life, UN Doc. CCPR/C/GC/36 para35.

¹⁷ When calculating global and regional totals, “+” has been counted as two.

¹⁸ When calculating global and regional totals, “+” has been counted as two.

FIGURE 3: RECORDED GLOBAL EXECUTIONS FOR DRUG-RELATED OFFENCES (2018-2022)



REGIONAL OVERVIEWS

AMERICAS

REGIONAL TRENDS

- Outgoing Governor of Oregon Kate Brown commuted all of this US state's remaining death sentences¹⁹
- Yearly totals of US death sentences and executions increased, but remained among historically low figures
- For the sixth consecutive year, Guyana, Trinidad and Tobago and the USA were the only three countries in the Americas known to have imposed new death sentences; for the 14th consecutive year, the USA was the only country in the region to execute people

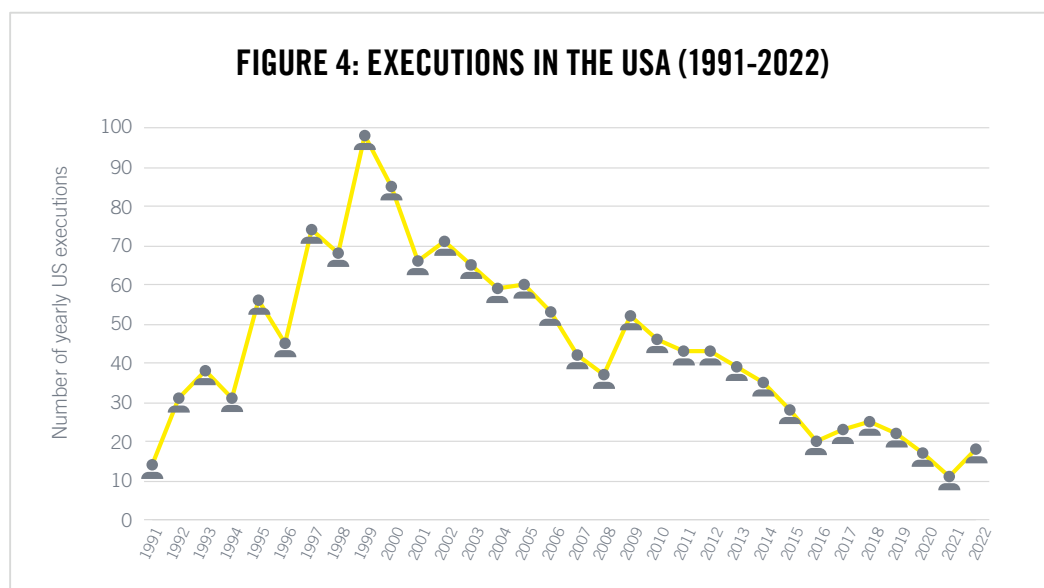
COUNTRY	2022 RECORDED EXECUTIONS	2022 RECORDED DEATH SENTENCES	PEOPLE KNOWN TO BE UNDER SENTENCE OF DEATH AT THE END OF 2022
Antigua and Barbuda	0	0	0
Bahamas	0	0	0
Barbados	0	0	5
Belize	0	0	0
Cuba	0	0	0
Dominica	0	0	0
Grenada	0	0	1
Guatemala	0	0	0
Guyana	0	4	17
Jamaica	0	0	0
Saint Kitts and Nevis	0	0	0
Saint Lucia	0	0	0
Saint Vincent and the Grenadines	0	0	1
Trinidad and Tobago	0	5+	43

¹⁹ *Oregon Capital Chronicle*, "Oregon Gov. Kate Brown commutes 17 death sentences, ending death row", 13 December 2022, oregoncapitalchronicle.com/2022/12/13/oregon-gov-kate-brown-commutes-17-death-sentences-ending-death-row/

COUNTRY	2022 RECORDED EXECUTIONS	2022 RECORDED DEATH SENTENCES	PEOPLE KNOWN TO BE UNDER SENTENCE OF DEATH AT THE END OF 2022
USA ²⁰	18 in 6 states: Alabama (2) Arizona (3) Mississippi (1) Missouri (2) Oklahoma (5) Texas (5)	21 new death sentences in 12 states Alabama (3) Arizona (1) California (2) Florida (5) Georgia (1) Louisiana (1) Mississippi (1) Missouri (1) North Carolina (2) Oklahoma (1) Pennsylvania (1) Texas (2)	2,276 people, including 48 women, held in 28 jurisdictions. ²¹ Eight states held more than 100 people: California 670 Florida 299 Texas 186 Alabama 165 North Carolina 137 Ohio 126 Arizona 110 Pennsylvania 101

As the impact of restrictions put in place in response to the Covid-19 pandemic during 2020 and 2021 waned, the number of recorded US death sentences and executions showed an increase. Nevertheless, this was not significant enough to reverse the long-term downward trends recorded in recent decades.

US executions carried out in 2022 (18) increased by 64% on the 2021 total (11). Despite the rise, and with the exception of the previous two years when proceedings were significantly affected by restrictions put in place in response to the Covid-19 pandemic, the 2022 total remained the lowest recorded since 1991 (Figure 4). All executions were carried out by lethal injection.



Executions carried out in the USA during the period 1991-2022.

²⁰ Figures based on Amnesty International's monitoring of information published by Departments of Corrections, courts and media in relevant US states.

²¹ The state of New Hampshire, where the death penalty was abolished in 2019, still held one person under sentence of death.

Six US states executed people during 2022. Arizona conducted executions for the first time since 2014, putting to death three men. The authorities of the other five states had all carried out executions in 2021, with most reporting an increase in 2022 on their previous year's tally: Alabama (from one in 2021 to two in 2022), Mississippi (one in 2021 and one in 2022), Missouri (from one to two), Oklahoma (from two to five), Texas (from three to five). Oklahoma – where 10 executions had initially been set for 2022²² – and Texas together carried out more than half the total of US executions in 2022. The Supreme Court of South Carolina intervened in April to halt the state's first executions since 2011, which were set to be carried out by firing squad.²³

Figures compiled by the Death Penalty Information Center in Washington, DC, USA, indicated that the number of execution warrants sought in 2022 (55) was significantly higher than in 2021 (45).²⁴

Challenges with the sourcing of substances and amended protocols for lethal injections continued to cause a hiatus in executions in several other states.²⁵ Idaho completed 10 years without executions in June 2022, despite attempts by the state authorities to – unsuccessfully – resume executions.²⁶ The Governor of Tennessee, Bill Lee, suspended executions and ordered an independent review, after he had to intervene a month earlier to halt an execution one hour before it was due to be carried out due to “a technical oversight” related to the substances for lethal injection.²⁷ Later in the year, the Governor of Alabama, Kay Ivey, temporarily halted all executions and ordered a system-wide review, after two failed attempts to carry out executions by lethal injection.²⁸ Ohio executions remained on hold, with its Governor, Mike DeWine, issuing reprieves because of ongoing issues with the state lethal injection method.²⁹

New death sentences imposed by US courts slightly increased compared to previous years, rising from 18 in both 2020 and 2021 to 21 in 2022, but remained the second-lowest figure since executions resumed under revised laws after the US Supreme Court ruled the application of the death penalty under the then existing statutes unconstitutional in 1972.³⁰

The number of states imposing death sentences in 2022 (12) nearly doubled compared to 2021 (seven). Courts in Arizona, Georgia, Louisiana, Mississippi, Missouri, North Carolina and Pennsylvania imposed death sentences after a hiatus;³¹ while in Nebraska and Tennessee courts did not sentence people to death in 2022, while they had done so in the previous year.

²² Death Penalty Information Center, “Outcomes of Death Warrants in 2022”, <https://deathpenaltyinfo.org/stories/outcomes-of-death-warrants-in-2022>; *Newsweek*, “Oklahoma Execution Dates as State Plans to Kill Inmate Nearly Every Month”, 5 July 2022, <https://www.newsweek.com/oklahoma-execution-dates-state-plans-kill-inmate-nearly-every-month-1721724>

²³ CNN, “South Carolina’s highest court stays firing squad execution set for next week”, 20 April 2022, edition.cnn.com/2022/04/20/us/south-carolina-execution-firing-squad-stay/index.html

²⁴ Death Penalty Information Center, Outcomes of Death Warrants in 2022, <https://deathpenaltyinfo.org/stories/outcomes-of-death-warrants-in-2022>

²⁵ In addition to Ohio, executions in 2022 were completely or in part on hold in several jurisdictions, including in Alabama, Arkansas, Florida, Idaho, Indiana, Kentucky, Louisiana, Nebraska, Nevada and South Carolina, because of litigation and other challenges relating to lethal injection procedures.

²⁶ Idaho Department of Corrections, “IDOC director suspends preparation for Dec. 15 execution”, 30 November 2022, [idoc.idaho.gov/content/news/idoc-director-suspends-preparation-dec-15-execution#:~:text=15%20execution,-IDOC%20news%20release&text=Nov.,scheduled%20execution%20of%20Gerald%20Pizzuto](https://www.idoc.idaho.gov/content/news/idoc-director-suspends-preparation-dec-15-execution#:~:text=15%20execution,-IDOC%20news%20release&text=Nov.,scheduled%20execution%20of%20Gerald%20Pizzuto).

²⁷ TN Office of the Governor, “Gov. Lee Calls for Independent Review Following Smith Reprieve”, 2 May 2022, [tn.gov/governor/news/2022/5/2/gov-lee-calls-for-independent-review-following-smith-reprieve.html](https://www.tn.gov/governor/news/2022/5/2/gov-lee-calls-for-independent-review-following-smith-reprieve.html)

²⁸ Al.com, “Gov. Kay Ivey orders moratorium on executions in Alabama”, 22 November 2022, [al.com/news/2022/11/gov-kay-ivey-orders-moratorium-on-executions-in-alabama.html](https://www.al.com/news/2022/11/gov-kay-ivey-orders-moratorium-on-executions-in-alabama.html)

²⁹ Mike DeWine Governor of Ohio, “Governor DeWine Issues Reprieves”, 1 July 2022, [governor.ohio.gov/media/news-and-media/Governor-DeWine-Issues-Reprieves-07012022](https://www.governor.ohio.gov/media/news-and-media/Governor-DeWine-Issues-Reprieves-07012022)

³⁰ US Supreme Court, *Furman v. Georgia*, 408 U.S. 238 (1972).

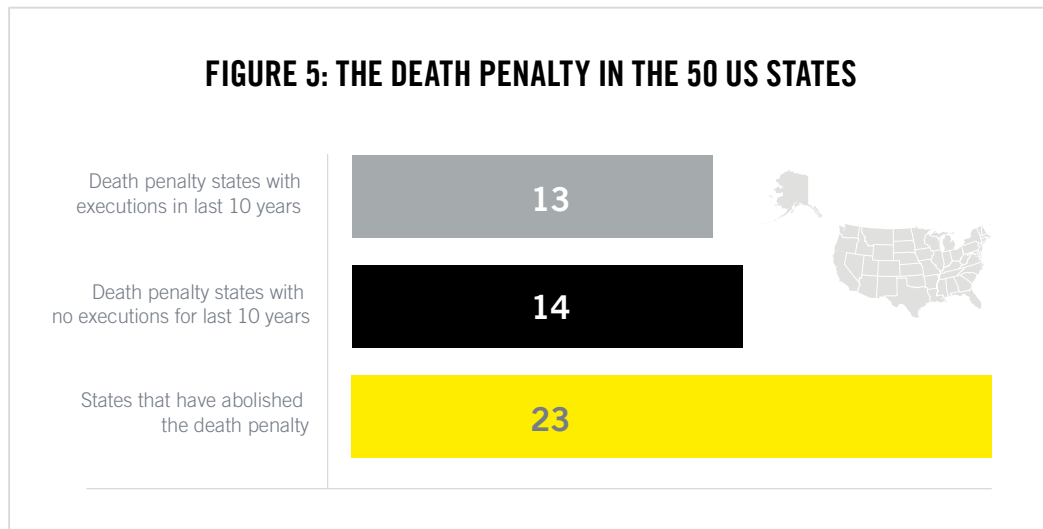
³¹ Before 2022, Arizona and Mississippi imposed their last death sentences in 2020; Georgia, North Carolina and Pennsylvania in 2019; and Louisiana and Missouri in 2018.

THE DEATH PENALTY IN THE USA

Abolition of the death penalty in Virginia in 2021 brought to 23 the number of US states that had abolished this punishment for all crimes, including 11 since the beginning of the millennium.³² Of the 27 remaining states, California, Idaho, Indiana, Kansas, Kentucky, Louisiana, Montana, Nevada, North Carolina, Oregon, Pennsylvania, South Carolina, Utah and Wyoming (14, or 52% of all states that retained the death penalty in law) had not carried out executions for at least 10 years, with California, Oregon and Pennsylvania observing governor-ordered moratoriums on executions. (Figure 5)

At the federal level, the US military authorities had not carried out any executions since 1961; the Biden administration continued to observe the temporary moratorium on executions of people convicted under ordinary federal capital laws it had put in place in July 2021. Under the previous Trump administration, executions resumed with 13 sentences carried out between July 2020 and January 2021, after a 17-year hiatus.

FIGURE 5: THE DEATH PENALTY IN THE 50 US STATES



At the end of 2022, 23 US states had fully abolished the death penalty. Of the remaining 27, 14 had not carried out executions in the last 10 years.

While no executions were recorded at federal level in 2022, no progress was recorded with regard to commutation of existing death sentences or legislative measures to abolish the death penalty. Six men continued to face capital prosecution before unfair military commissions at the US naval base at Guantánamo Bay, Cuba.

³² The states of Colorado, Connecticut, Delaware, Illinois, Maryland, New Hampshire, New Jersey, New Mexico, New York, Virginia and Washington. The District of Columbia has also abolished the death penalty.

Several cases of those who faced executions in 2022 were affected by violations of restrictions on the use of the death penalty established under international human rights law and standards, including concerns of unfair trial;³³ racial discrimination and bias;³⁴ and breach of protections for those with psycho-social (mental) and intellectual disabilities.³⁵

Two men who had been previously convicted and sentenced to death had the charges against them dismissed in Illinois and Pennsylvania, after the courts considered evidence of inadequate legal representation and official misconduct in their cases, bringing the total number of such exonerations since 1973 by year end to 190.³⁶

Outside the USA, Guyana and Trinidad and Tobago imposed the only other known nine death sentences in the Americas region. Trinidad and Tobago – the only country in the region to retain the mandatory death penalty for murder – held more than half (64%) of the 67 people known to be under sentence of death outside the USA.

Nine countries – Antigua and Barbuda, Bahamas, Belize, Cuba, Dominica, Guatemala, Jamaica, Saint Kitts and Nevis and Saint Lucia – did not hold anyone under sentence of death and did not impose any new death sentences. Grenada and Saint Vincent and the Grenadines each continued to hold one person formally under sentence of death, but neither death sentence can be implemented due to court rulings.

The Court of Appeal of Guyana and the Judicial Committee of the Privy Council (the final appellate court of Trinidad and Tobago) upheld the constitutionality of the death penalty in Guyana and of the mandatory death penalty in Trinidad and Tobago, respectively.³⁷

³³ Amnesty International, “USA: Further Information: Texas appeals court blocks execution – Melissa Lucio” (Urgent Action, AI Index: AMR 51/5513/2022), 27 April 2022, [amnesty.org/en/documents/amr51/5513/2022/en/](https://www.amnesty.org/en/documents/amr51/5513/2022/en/)

³⁴ Amnesty International, “USA: Second Texas execution of 2023 goes ahead” (Urgent Action, AI Index: AMR 51/6417/2023), 2 February 2022, [amnesty.org/en/documents/amr51/6417/2023/en/](https://www.amnesty.org/en/documents/amr51/6417/2023/en/)

³⁵ Amnesty International, “USA: Man with mental disability executed – Benjamin Cole” (Urgent Action, AI Index: AMR 51/6140/2023), 21 October 2022, [amnesty.org/en/documents/amr51/6140/2022/en/](https://www.amnesty.org/en/documents/amr51/6140/2022/en/)

³⁶ For more information see Death Penalty Information Center, deathpenaltyinfo.org/policy-issues/innocence-database

³⁷ *Guyana Times*, “Appeal Court quashes death sentences imposed on 3 ex-GDF Coast Guards”, 22 December 2022, guyanatimesgy.com/appeal-court-quashes-death-sentence-imposed-on-3-ex-gdf-coast-guards/; Judicial Committee of the Privy Council, *Jay Chandler v. The State No 2 (Trinidad and Tobago)*, [2022] UKPC 19, 16 May 2022, jcp.c.uk/cases/docs/jcpc-2020-0051-judgment.pdf

ASIA-PACIFIC

REGIONAL TRENDS

- The military authorities carried out the first executions in Myanmar in four decades, arbitrarily depriving four people, including two-high profile opposition politicians, of their lives after grossly unfair and secretive proceedings; executions resumed after a hiatus in Afghanistan and Singapore.
- Papua New Guinea became the 21st country in the Asia-Pacific region to have abolished the death penalty for all crimes; the Minister of Home Affairs of Maldives and the President of Sri Lanka each confirmed that death sentences would not be implemented in their country.
- China remained the world's leading executioner but continued to keep its death penalty figures shrouded in secrecy. Restrictive state practices, particularly in North Korea and Viet Nam, continued to impede an accurate assessment of the use of the death penalty in the Asia-Pacific region, which has the highest number of executions in the world.

COUNTRY	2022 RECORDED EXECUTIONS	2022 RECORDED DEATH SENTENCES	PEOPLE KNOWN TO BE UNDER SENTENCE OF DEATH AT THE END OF 2022
Afghanistan	+	+	+
Bangladesh	4	169+	2,000+
Brunei Darussalam	0	0	+
China	+	+	+
India ³⁸	0	165	539
Indonesia	0	112+	452+
Japan	1	0	116
Laos	0	5+	+
Malaysia	0	16+	1,337 ³⁹
Maldives	0	1	20
Myanmar	4	37+	119+
North Korea	+	+	+

³⁸ Project 39A, *Death Penalty in India: Annual Statistics Report 2022*, January 2023, <https://www.project39a.com/annual-statistics-reports..>

³⁹ Written answer to Parliament, Third meeting, fifth term, fourteenth Parliament, 4 October 2022. Data given as of 23 September 2022. The total included 891 people (67%) under sentence of death for drug-related offences. The official figure of 1,320 published by the authorities in February 2023 suggests that commutations of death sentences could have taken place after September 2022 and that the end of the year total could be lower.

COUNTRY	2022 RECORDED EXECUTIONS	2022 RECORDED DEATH SENTENCES	PEOPLE KNOWN TO BE UNDER SENTENCE OF DEATH AT THE END OF 2022
Pakistan	0	127+	3,831+ ⁴⁰
Papua New Guinea	0	0	28
Singapore	11	5	50+
South Korea	0	1	60
Sri Lanka	0	8+	1,000+
Taiwan	0	3	45
Thailand	0	104	195
Tonga	0	0	0
Viet Nam	+	102+	1200+

The year began with debates before the parliament of Papua New Guinea on a bill to amend the Criminal Code and remove the death penalty for all crimes. The Parliament adopted the bill on 20 January 2022, which became effective on 12 April 2022.⁴¹ Further positive commitments were made by other administrations in the Asia-Pacific region during the year: Imran Abdulla, Minister of Home Affairs of Maldives, confirmed before Parliament in June that the government would continue to observe its policy of a moratorium on the implementation of the death penalty;⁴² and Ranil Wickremesinghe, President of Sri Lanka, confirmed through an undertaking to the Supreme Court in an ongoing legal challenge that he would not authorize the implementation of the death penalty.⁴³ Moreover, the authorities of Malaysia took steps towards reforming the mandatory death penalty and the Parliament of Indonesia adopted a new Criminal Code that, once effective in 2026, would allow for the commutation of death sentences after 10 years if certain conditions are met.

On the other hand, the number of countries known to have carried out executions in the region during the year increased from five in 2021 to eight in 2022. The military authorities carried out the first executions in Myanmar in four decades, arbitrarily depriving four people of their lives after grossly unfair and secretive proceedings.⁴⁴ The Taliban authorities resumed judicial executions, including publicly, in Afghanistan, after none were recorded in the country for the previous three years.⁴⁵

⁴⁰ Justice Project Pakistan, Submission to the United Nations Secretary-General's Report on a Moratorium on the Use of the Death Penalty: Information for the Secretary-General's report to the United Nations General Assembly's 77th Session, April 2022.

⁴¹ Parliament of Papua New Guinea, Criminal Code (Amendment) Act, Act no.10 of 2022.

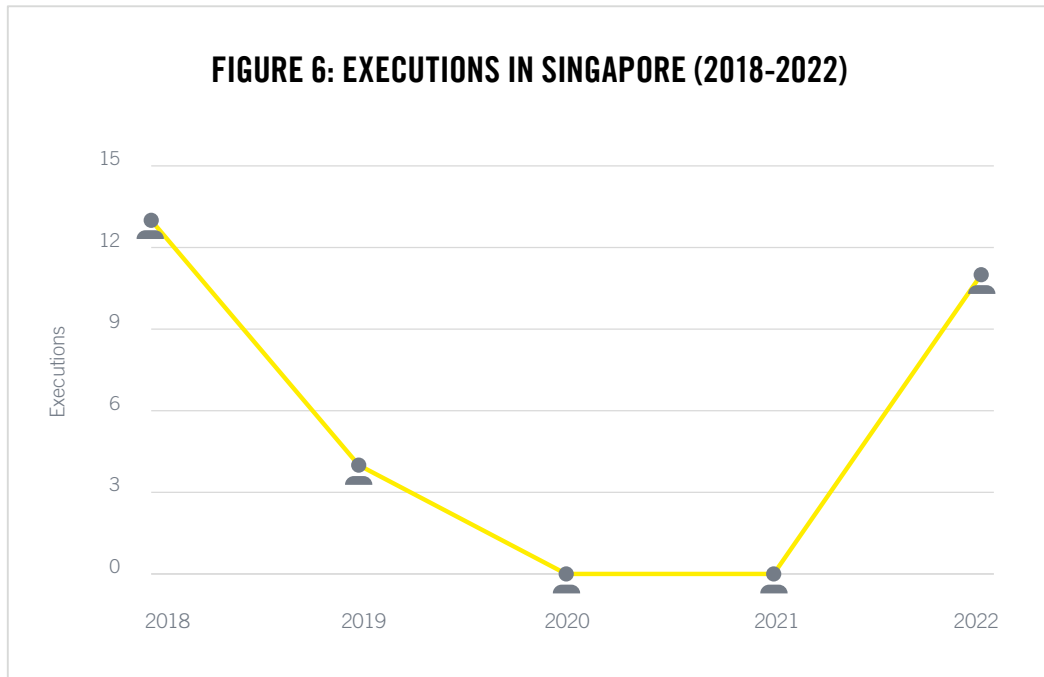
⁴² *The Edition*, "Maldives to continue moratorium on death penalty: Home Minister", 6 June 2022, [edition.mv/imran_abdulla_home_minister/24877](https://www.edition.mv/imran_abdulla_home_minister/24877)

⁴³ *Colombo Page*, "President informs the Supreme Court that he will not sign the death sentences", 1 September 2022, [colombopage.com/archive_22B/Sep01_1662007289CH.php](https://www.colombopage.com/archive_22B/Sep01_1662007289CH.php)

⁴⁴ Amnesty International, "Myanmar: First executions in decades mark atrocious escalation in state repression", 25 July 2022, [amnesty.org/en/latest/news/2022/07/myanmar-first-executions-in-decades-mark-atrocious-escalation-in-state-repression/](https://www.amnesty.org/en/latest/news/2022/07/myanmar-first-executions-in-decades-mark-atrocious-escalation-in-state-repression/)

⁴⁵ Afghanistan: Amnesty International condemns public execution by the Taliban, 7 December 2022, <https://www.amnesty.org/en/latest/news/2022/12/afghanistan-amnesty-international-condemns-public-execution-by-the-taliban/>

The Singapore authorities executed people for the first time since 2019, after appeals in key cases were dismissed. The governments of India and Taiwan continued to observe a hiatus in executions for the second consecutive year.

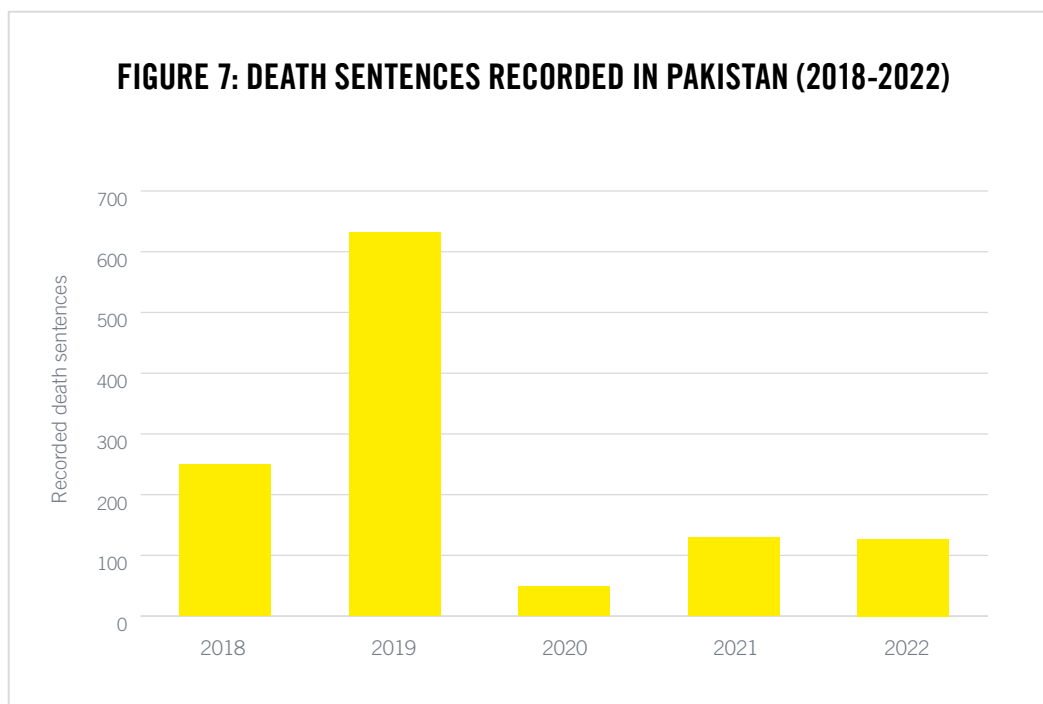


The number of new death sentences recorded regionally in 2022 (861) increased by 5% on the 2021 total (819), reaching similar figures to those recorded by Amnesty International before the Covid-19 pandemic put court proceedings in several countries on hold.⁴⁶ The increase was partly attributable to the fact that the Thailand authorities provided Amnesty International with figures for new death sentences imposed by courts of first instance, unlike in previous years. However, a significant rise on 2021 was recorded in India, where the 165 known total represented the highest yearly figure registered since 2000.⁴⁷ The recorded death sentences in Pakistan (at least 127) remained as high as in 2021 (at least 129). While the numbers of death sentences imposed in this country in recent years increased, the yearly total remained lower than pre-pandemic levels (see Figure 7). The high rate of new death sentences recorded by Amnesty International in Indonesia in 2021 also continued into and throughout 2022, leaving the yearly total for that country substantially unchanged (at least 114 in 2021 to at least 112 in 2022). The known number of new death sentences imposed in Singapore halved compared to 2021 (from 10 to 5).

⁴⁶ In 2018 and 2019 respectively, at least 1,100 and 1,227 new death sentences were known to have been imposed in the Asia-Pacific region.

⁴⁷ Project 39A, *Death Penalty in India: Annual Statistics Report 2022*, January 2023, project39a.com/annual-statistics-reports

FIGURE 7: DEATH SENTENCES RECORDED IN PAKISTAN (2018-2022)



The number of countries known to have sentenced people to death in 2022 (17) slightly increased compared to 2021 and 2020 (16). Courts in Laos and South Korea were known to have imposed death sentences in 2022, while none were recorded in these countries for 2021. No new death sentences were known to have been imposed in Japan in 2022, while three people were sentenced to hanging in 2021.

Secrecy surrounding figures and limited access to information in China, North Korea and Viet Nam, as well as lack of transparency in several other countries, made it impossible to verify reports and assess the true extent of the use of the death penalty in the region. Based on its monitoring, Amnesty International believed that the number of death sentences imposed and executions carried out in China during the year remained in the thousands. Similarly, lack of access to North Korea and independent media sources continued to make it impossible for Amnesty International to verify reports and information it received on the use of the death penalty in this country. Amnesty International considers it very likely that executions were carried out, including publicly, and that death sentences were imposed at a sustained rate including after summary trials. There were concerns that the death penalty was used for a range of acts that either did not meet the threshold of the “most serious crimes” to which the use of the death penalty must be restricted under international law, or which could not be considered to constitute recognizable criminal offences complying with international human rights law requirements. Partial disclosures in Laos and Viet Nam suggested that these countries resorted to the death penalty extensively, but it was impossible on the basis of this incomplete information to determine estimates for the year. Therefore the figures included in this report are based on Amnesty International’s monitoring.

The use of the death penalty in the Asia-Pacific region continued to violate international law and standards in many cases. In Myanmar, the military authorities continued to resort to this punishment as a tool of state repression against protesters and political opponents. Four men were arbitrarily executed in secret. The proceedings against them before a military-controlled court were secretive and grossly unfair. Following the issuing of Martial Law Order 3/2021,⁴⁸ the military had transferred authority from civilian courts to special or existing military tribunals to try cases of civilians in some townships. These tribunals oversaw trials involving a wide range of offences, including those punishable with the death penalty, through summary proceedings and without a right to appeal. The alarming developments recorded in 2021, which saw an increase in the imposition of death sentences as part of ongoing and widespread persecution, intimidation and harassment of and violence against the population, including protesters and journalists, continued in 2022. Although the number of recorded death sentences in 2022 decreased by 57% compared to 2021 (86), the 37 people reported to have been sentenced to death were convicted in similarly unfair proceedings.

The death penalty was extensively used in the region for offences that did not meet the threshold of the “most serious crimes” to which the use of the death penalty must be restricted under international law.⁴⁹ Executions of people convicted of drug-related offences were recorded in China and also Singapore, where all 11 people executed in 2022 had been sentenced to the mandatory death penalty for drug trafficking. Executions for this offence were also believed to have been carried out in Viet Nam. New drug-related death sentences were known to have been imposed in:

- Bangladesh (6 out of 169);
- China (no figure available);
- Indonesia (105, or 94% of all recorded death sentences; this includes the only woman known to have been sentenced to death in the country in 2022);
- Laos, where all five recorded new death sentences were imposed for drug trafficking;
- Malaysia, where half of the 16 recorded total were imposed for drug trafficking;
- Pakistan, where one new death sentence was recorded for drug trafficking;
- Singapore, where all five mandatory new death sentences were related to drug trafficking;⁵⁰
- and Viet Nam (80, or 78% of the recorded total).

In Thailand, official figures indicated that of the 195 people under sentence of death at the end of 2022, 121 including 14 women had been convicted of drug-related offences. In November, the Parliament of Sri Lanka adopted the Poisons, Opium and Dangerous Drugs (Amendment) Act, which made possession and trafficking of 5g or more of methamphetamine punishable by death.⁵¹ On the other hand, in December, the National Assembly of Pakistan adopted a bill abolishing the death penalty for drug-related offences.⁵²

⁴⁸ Martial Law Order 3/2021, 16 March 2021.

⁴⁹ See p. 14 in the global overview for more detailed information.

⁵⁰ This total included the mandatory death sentence imposed on a man as a result of the Attorney General’s Office not issuing a “certificate of substantial assistance”. The man had been found by the judge to have been involved only in the transporting of drugs, but the judge could not exercise sentencing discretion between death and life imprisonment with caning because the certificate was not issued.

⁵¹ Act No. 41 of 2022, effective from 25 November 2022, parliament.lk/uploads/acts/gbills/english/6277.pdf

⁵² National Assembly of Pakistan, The Control of Narcotic Substances (Amendment) Bill, 2022., adopted on 20 December 2022, https://na.gov.pk/uploads/documents/63a1b97d961f2_119.pdf

Economic crimes, such as corruption, which also do not meet the threshold of the “most serious crimes” under international law and standards, were punished by death in China and Viet Nam during the year. Amnesty International recorded 10 cases involving former officials who were convicted of corruption in China and received a “suspended” death sentence – with the possibility of commutation after two years – in an apparent increase compared to previous years.

Sentences related to sexual offences not resulting in death, which also do not meet the threshold of the “most serious crimes”, were recorded in several countries including Bangladesh (13), India (5)⁵³ and Pakistan (7).

Amnesty International recorded four new death sentences imposed in Pakistan for “blasphemy”, an act that does not constitute a recognizable criminal offence complying with requirements under international human rights law.

People who were below 18 years of age at the time of the offence for which they had been convicted remained under sentence of death in Maldives. A man with an intellectual disability was executed in Singapore in April.⁵⁴

In many countries across the Asia-Pacific region, Amnesty International was concerned that proceedings did not meet international standards for a fair trial. The Special Rapporteur on the situation of human rights in Afghanistan raised serious concerns in relation to the independence and qualifications of those appointed by the Taliban to adjudicate cases, the frequent lack of separation between investigating officials and the judiciary, as well as over the common lack of due process.⁵⁵

Death sentences were imposed by courts established under emergency legislation or to try specific offences instead of ordinary courts, including through expedited proceedings in Bangladesh, India and Pakistan. Among other examples, in Bangladesh 14 death sentences were imposed on people convicted and sentenced by the International Crimes Tribunal, a Bangladeshi court established to investigate war crimes and other gross violations of human rights committed during the country’s 1971 War of Independence. On 29 November, the Parliament of Singapore adopted the Post-appeal Applications in Capital Cases Bill,⁵⁶ introducing a new procedure for post-appeal applications in capital cases which further restricts the circumstances in which those facing the death penalty can apply for a review of the case after the ordinary appeals process is concluded. This had the effect of curtailing the grounds and modalities for critical last-minute appeals to halt executions.

⁵³ Project 39A, *Death Penalty in India: Annual Statistics Report 2022*, January 2023, project39a.com/annual-statistics-reports, p.17.

⁵⁴ Amnesty International, “Singapore: Abhorrent hangings must end as man with intellectual disability executed”, 27 April 2022, [amnesty.org/en/latest/news/2022/04/singapore-abhorrent-hangings-must-end-as-man-with-intellectual-disability-executed/](https://www.amnesty.org/en/latest/news/2022/04/singapore-abhorrent-hangings-must-end-as-man-with-intellectual-disability-executed/)

⁵⁵ Human Rights Council, Report of the Special Rapporteur on the situation of human rights in Afghanistan, Richard Bennett (Advance Edited Version), UN Doc. A/HRC/52/84, 9 February 2023, para. 51.

⁵⁶ Parliament of Singapore, Bill No. 34/2022, parliament.gov.sg/docs/default-source/default-document-library/post-appeal-applications-in-capital-cases-bill-34-2022.pdf

EUROPE AND CENTRAL ASIA

REGIONAL TRENDS

- Belarus remained the only country in the region carrying out executions.
- Kazakhstan abolished the death penalty for all crimes and ratified a key UN treaty on abolition.
- Russia and Tajikistan continued to observe moratoriums on executions.
- Following its exit from the Council of Europe, Russia ceased to be a signatory to Protocol No. 6 to the European Convention on Human Rights concerning the abolition of the death penalty.

COUNTRY	2022 RECORDED EXECUTIONS	2022 RECORDED DEATH SENTENCES	PEOPLE KNOWN TO BE UNDER SENTENCE OF DEATH AT THE END OF 2022
Belarus	1	0	1
Kazakhstan	0	0	1 ⁵⁷
Russia	0	0	0
Tajikistan	0	0	0

In Belarus, one man was executed⁵⁸ and one man was believed to be on death row at the end of 2022.⁵⁹ In May, Belarusian authorities adopted a new law introducing the death penalty for “attempts to carry out acts of terrorism”, in violation of the restriction on the use of the death penalty related to “the most serious crimes”⁶⁰ and the stated goal of abolition under Article 6 of the International Covenant on Civil and Political Rights (ICCPR),⁶¹ to which Belarus is a state party.⁶²

In Kazakhstan, the law which removed the death penalty from the laws of the country became effective in January.⁶³ In March, Kazakhstan became a state party to the Second Optional Protocol to the ICCPR, without any reservations.⁶⁴ In June, constitutional amendments entered into force that enshrined the abolition of the death penalty in the Constitution.⁶⁵

⁵⁷ According to the Kazakhstani authorities, in January, the case of the last remaining person on death row was sent for review to change the death sentence to life imprisonment. However, by the end of 2022, there was no publicly available information on whether this death sentence was commuted.

⁵⁸ Human Rights Center Viasna, “Condemned prisoner’s death date revealed more than a year after the execution”, 17 February 2023, spring96.org/en/news/110810

⁵⁹ Amnesty International, *Belarus Must Not Execute Viktor Serhil* (Index: EUR 49/1845/2020), 19 February 2020, [amnesty.org/en/wp-content/uploads/2021/05/EUR4918452020ENGLISH.pdf](https://www.amnesty.org/en/wp-content/uploads/2021/05/EUR4918452020ENGLISH.pdf)

⁶⁰ UN Human Rights Committee (HRC), General Comment 36 on Article 6 of the International Covenant on Civil and Political Rights, on the right to life, 3 September 2019, UN Doc. CCPR/C/GC/36, para 35.

⁶¹ HRC, General Comment 36, (previously cited) para 34.

⁶² Amnesty International, “Belarus: New death penalty law is the ultimate attack on human rights”, 19 May 2022, [amnesty.org/en/latest/news/2022/05/belarus-new-death-penalty-law-is-the-ultimate-attack-on-human-rights/](https://www.amnesty.org/en/latest/news/2022/05/belarus-new-death-penalty-law-is-the-ultimate-attack-on-human-rights/)

⁶³ On 29 December 2021, the President of Kazakhstan signed into law, Law No. 89-VII, “On amendments and additions to certain legislative acts of the Republic of Kazakhstan on the issue of abolishing the death penalty”. The law was officially promulgated in January 2022.

⁶⁴ UN, Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, 15 December 1989.

⁶⁵ *The Astana Times*, “Kazakhstan’s Constitutional Amendments to Expand People’s Participation in State Governance”, 12 May 2022, astanatimes.com/2022/05/kazakhstans-constitutional-amendments-to-expand-peoples-participation-in-state-governance/

MIDDLE EAST AND NORTH AFRICA

REGIONAL TRENDS

- Recorded executions increased by 59%.
- 94% of executions recorded in the region were carried out in Iran (70%) and Saudi Arabia (24%).
- Executions resumed in Kuwait and the State of Palestine for the first time since 2017.
- Recorded death sentences decreased slightly and were imposed in 16 countries, down from 17 in 2021.

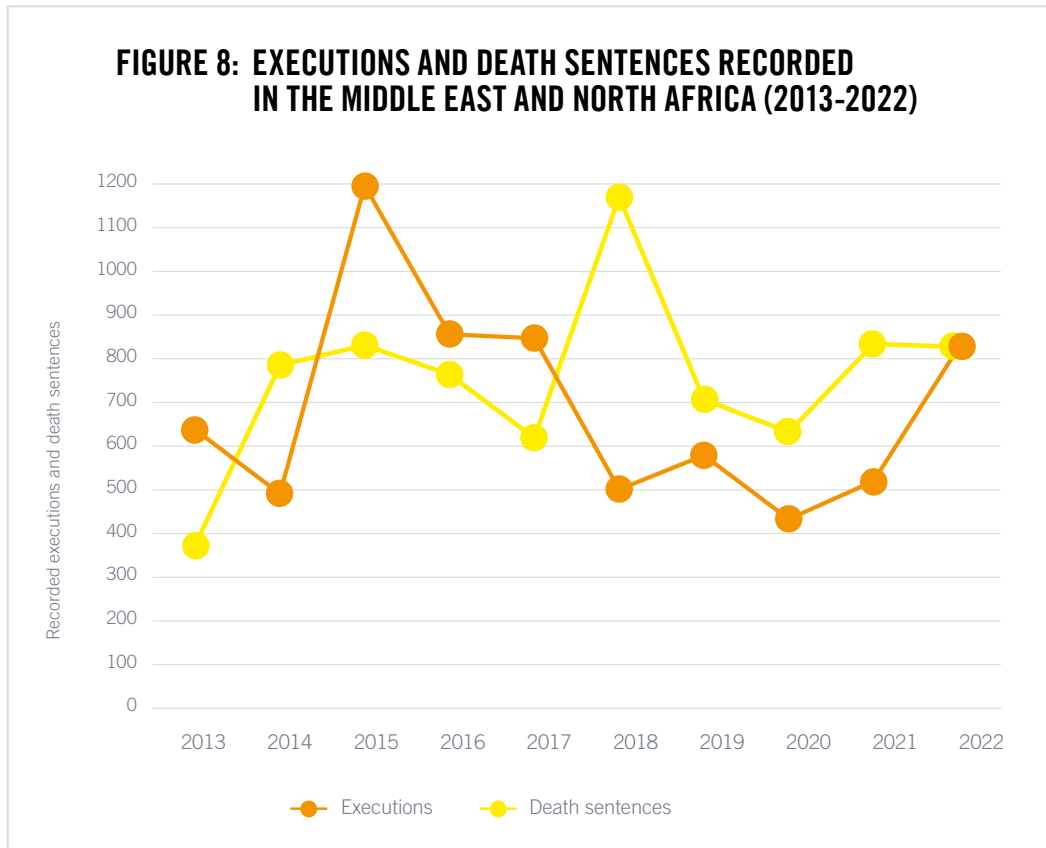
COUNTRY	2022 RECORDED EXECUTIONS	2022 RECORDED DEATH SENTENCES	PEOPLE KNOWN TO BE UNDER SENTENCE OF DEATH AT THE END OF 2022
Algeria	0	54	+
Bahrain	0	2+	41+
Egypt	24	538	+
Iran	576+	+	+
Iraq	11+	41+	7,900+
Israel ⁶⁶	0	0	0
Jordan	0	4+	219+
Kuwait	7	16+	24+
Lebanon	0	2+	+
Libya	0	18+ ⁶⁷	18+
Morocco/Western Sahara	0	0	82
Oman	0	0	+
Palestine (State of)	5 ⁶⁸	28	238+
Qatar	0	+	+
Saudi Arabia	196	12+	21+
Syria	+	+	+
Tunisia	0	26+	115+
United Arab Emirates	0	2+	11+
Yemen	4+	78+	84+

⁶⁶ Amnesty International classifies Israel as abolitionist for ordinary crimes because its laws provide for the death penalty only for exceptional crimes such as crimes under military law or crimes committed in exceptional circumstances. The last execution took place in 1962.

⁶⁷ The 18 recorded death sentences were imposed by courts in western Libya, in areas under the control of the Government of National Unity (GNU). Amnesty International was able to confirm that death sentences were also passed by military courts in eastern Libya in territories under the de facto control of the Libyan Arab Armed Forces (LAAF) armed group. However, given that proceedings by such courts are shrouded in secrecy and independent observers are not granted access, Amnesty International is not able to provide a credible minimum figure on the number of death sentences passed. No executions had been carried out in Libya since the 2011-armed conflict.

⁶⁸ These executions were carried out by the Hamas de facto administration in the Gaza Strip.

The number of executions recorded by Amnesty International in the Middle East and North Africa region increased significantly by 59% from 520 in 2021 to 825 in 2022; and recorded death sentences decreased slightly from 834 in 2021 to 827 in 2022.

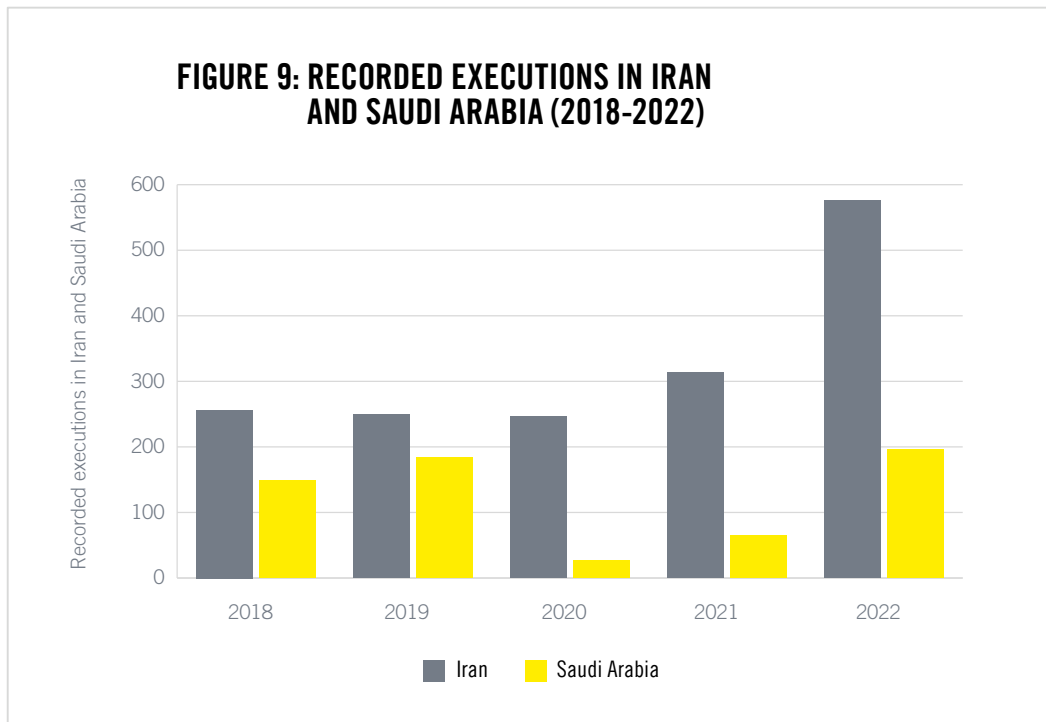


Amnesty International recorded executions in eight countries in the region – Egypt, Iran, Iraq, Kuwait, Palestine (State of), Saudi Arabia, Syria and Yemen. No executions were recorded in Oman and United Arab Emirates (UAE), countries that executed in 2021. Executions resumed in Kuwait and the State of Palestine for the first time since 2017. In September, the Hamas de facto administration in the Gaza Strip executed five people – three for murder and two for spying for Israel. In November, Kuwait executed seven people – one Ethiopian woman, one Syrian man, one Pakistani man and four Kuwaiti men.⁶⁹ Compared to 2021, recorded executions reduced in the following countries: Egypt (83 to 24); Iraq (17 to 11); and Yemen (14 to 4). The 825 executions recorded in the region in 2022 were the highest recorded by Amnesty International since 2017.

Iran and Saudi Arabia were mainly responsible for the significant increase in recorded executions in 2022. Of the total number of executions recorded in the region, 94% were carried out in Iran (70%) and Saudi Arabia (24%).

⁶⁹ Amnesty International, *Kuwait: Authorities must halt imminent execution of seven prisoners* (News story, 15 November 2022), <https://www.amnesty.org/en/latest/news/2022/11/kuwait-authorities-must-halt-imminent-execution-of-seven-prisoners/>; “Kuwait hangs seven people in first executions since 2017”, Al Jazeera, 16 November 2022, <https://www.aljazeera.com/news/2022/11/16/kuwait-executes-seven-people-despite-international-outcry>

Amnesty International recorded 576 executions in Iran, an increase of 83% compared to 2021 when 314 executions were recorded.⁷⁰ Of the 576 executions recorded by Amnesty International, 279 (48%) were for murder; 255 (44%) were for drug-related offences; 21 were for rape; 18 were for *moharebeh* (enmity against God);⁷¹ and three were for unknown crimes. Two executions were carried out in public, and 12 women were executed. During the year, the Iranian authorities executed five people who were under the age of 18 at the time of the offence for which they had been convicted.⁷² Increases in recorded executions for murder and drug-related offences were largely responsible for the 83% spike in recorded executions in Iran. Recorded executions for murder had risen sharply by 75% from 159 in 2021 to 279 in 2022; and spiked for drug-related offences by 93%, from 132 in 2021 to 255 in 2022.⁷³ The Iranian authorities continued to use the death penalty as a tool of political repression and to disproportionately execute members of ethnic minorities as part of the long-term, entrenched discrimination and repression of these groups.⁷⁴



⁷⁰ Many of the executions carried out in Iran in 2022 followed grossly unfair trials.

⁷¹ Two were in relation to the nationwide protests that have erupted in Iran since 16 September 2022.

⁷² International human rights law strictly prohibits the use of the death penalty for people who were below the age of 18 at the time of the offence for which they have been convicted.

⁷³ Between 2018 and 2020, the authorities considerably reduced drug-related executions. However, in 2021, at least 132 people were executed for drug-related offences, accounting for 42% of overall recorded executions and representing more than a five-fold rise from 2020 (23). The law still provides for a mandatory death penalty once courts convict a person of being in possession of specific amounts of drugs; the amount varies according to the type of drug.

⁷⁴ Amnesty International, *Iran: Horrific wave of executions must be stopped* (News story, 27 July 2022), <https://www.amnesty.org/en/latest/news/2022/07/iran-horrific-wave-of-executions-must-be-stopped>

In Saudi Arabia, the Saudi Press Agency, the official news agency of the Saudi Arabia government, officially published details of the execution of 148 people – one woman and 147 men – in 2022 based on announcements by the Ministry of Interior. Of the 148 executions reported, 84 were for terrorism-related offences; 33 for murder; 20 for drug-related offences; four for rape and kidnap; three for rape, robbery and drug-related offences; one for murder and rape; one for rape; one for robbery, assault and attempted murder; and one for robbery, rape and torture. Of the 148 people reported to have been executed, 112 were Saudi Arabian nationals. The others were foreign nationals from the following countries: Egypt (4); Ethiopia (3); Indonesia (2); Jordan (3); Myanmar (1); Nepal (1); Nigeria (2); Pakistan (3); Palestine (State of) (1); Syria (6) and Yemen (10).

However, in response to Amnesty International's request for information on the use of the death penalty in the country, the Saudi Human Rights Commission informed the organization that 196 people were executed in 2022 – which tripled the 65 executions recorded in 2021 and is the highest number recorded by Amnesty International in the country in 30 years. Of the 196 people executed, the Saudi Human Rights Commission said that 85 were convicted of terrorism-related offences and 57 of drug-related offences. The execution of the 57 people for drug-related offences marked the resumption of executions for drug-related offences in Saudi Arabia following a moratorium on executions, for these offences, in place since 2020 according to the Commission.⁷⁵

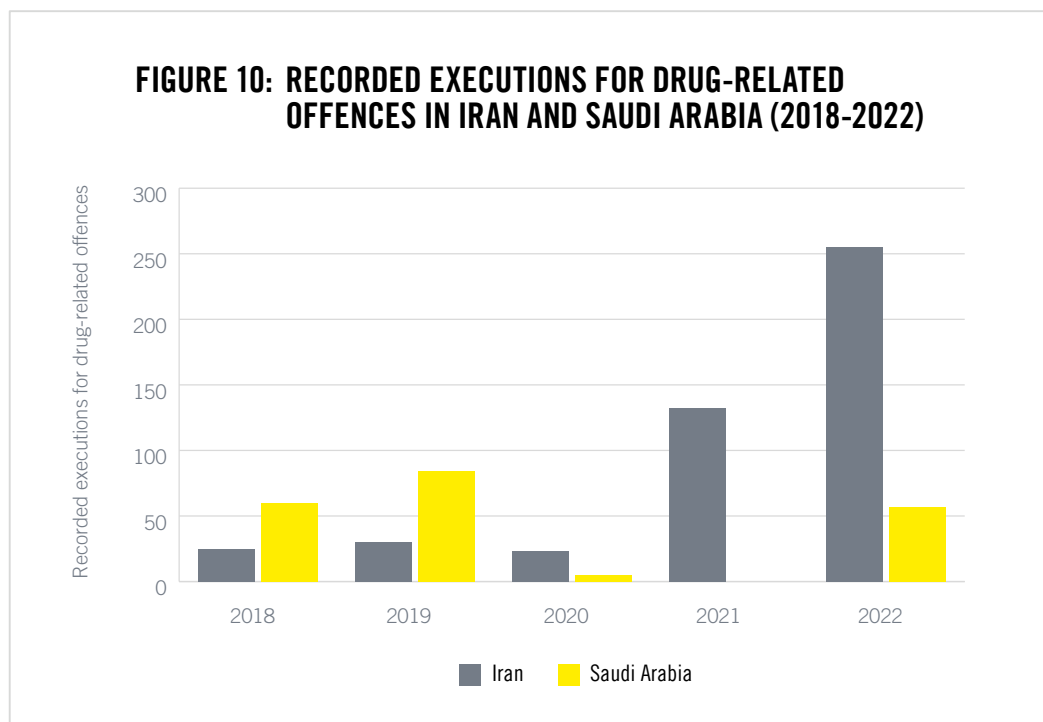
For the second year running, recorded executions continued to increase at an alarming rate in Saudi Arabia, a sharp contrast to the 27 executions recorded in the country in 2020. On a single day in March, the Saudi authorities carried out the mass execution of 81 people.⁷⁶ The fact that the number of executions the Saudi Arabia Human Rights Commission provided to Amnesty International is much higher than those announced during the year by the Saudi Press Agency, raises serious concerns about Saudi Arabia's transparency on the use of the death penalty.

The Iranian authorities continued to use the death penalty as a tool of political repression and to disproportionately execute members of ethnic minorities as part of the long-term, entrenched discrimination and repression of these groups.

⁷⁵ In January 2021, the Saudi Human Rights Commission said the country had introduced a moratorium on executions for drug-related crimes; HRC International (Official Twitter account of the Saudi Human Rights Commission), Twitter post, 18 January 2021, twitter.com/HRCSaudi_EN/status/1351087958565281793: "#Saudi Arabia drastically decreases application of death penalty in 2020."

⁷⁶ Amnesty International, *Saudi Arabia: Mass execution of 81 men shows urgent need to abolish the death penalty* (News story, 15 March 2022), <https://www.amnesty.org/en/latest/news/2022/03/saudi-arabia-mass-execution-of-81-men-shows-urgent-need-to-abolish-the-death-penalty>

FIGURE 10: RECORDED EXECUTIONS FOR DRUG-RELATED OFFENCES IN IRAN AND SAUDI ARABIA (2018-2022)



Amnesty International recorded the imposition of death sentences in all countries in the region except Israel, Morocco/Western Sahara and Oman, a total number of 16 (down from 17 in 2021). Of the 827 death sentences recorded in 2022, 538 (65%) were imposed in Egypt.⁷⁷ Of the 538 death sentences, seven were imposed for drug-related offences; 13 for rape and other sexual offences; and 47 on women. Compared to 2021, increases in death sentences were recorded in Algeria (9 to 54), Bahrain (0 to 2), Egypt (356 to 538), Kuwait (5 to 16), Palestine (State of) (21 to 28), Saudi Arabia (8 to 12), Tunisia (3 to 26). In contrast, significant reductions in death sentences were recorded in Iraq (91 to 41), Jordan (11 to 4), Lebanon (12 to 2) and Yemen (298 to 78). Amnesty International was able to confirm that death sentences were imposed in Iran but had insufficient information to provide a credible minimum figure. At least 20 commutations and at least seven pardons were granted in the region.

⁷⁷ Many of the death sentences were imposed following grossly unfair trials, including by emergency courts, marred by credible reports of torture and enforced disappearances.

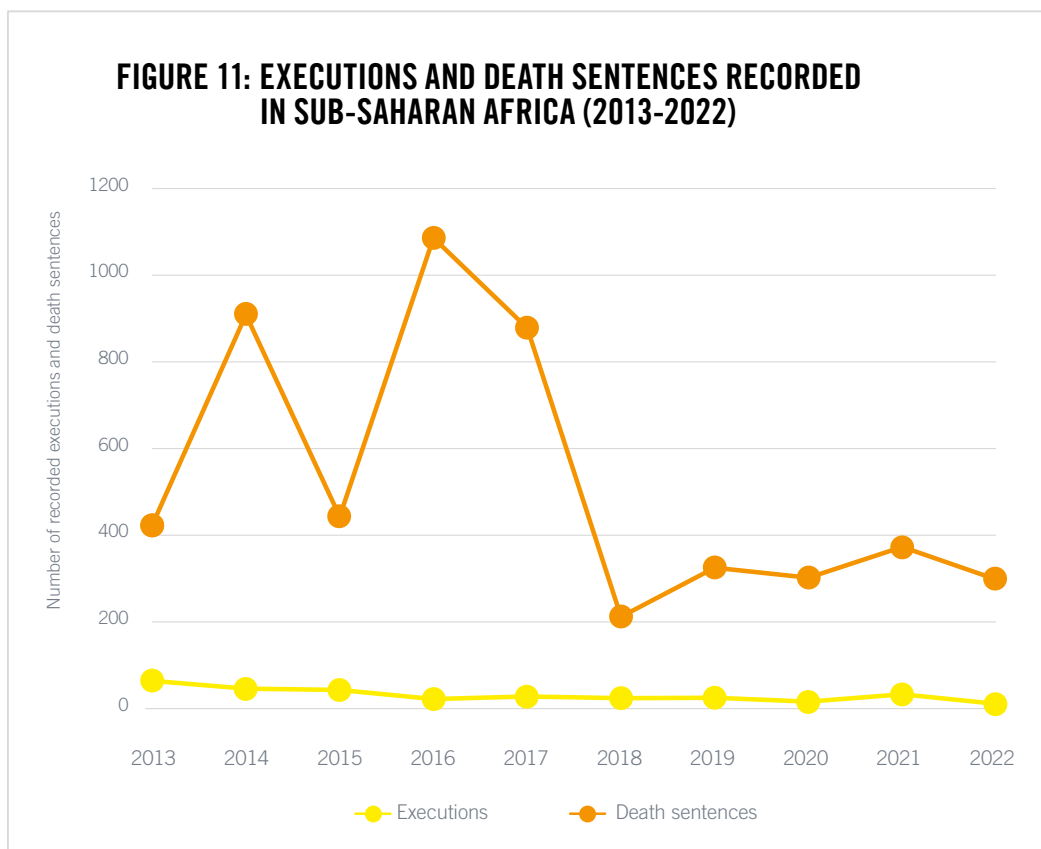
SUB-SAHARAN AFRICA

REGIONAL TRENDS

- The use of the death penalty fell in the region; recorded executions dropped by 67% and recorded death sentences reduced by 20%.
- Executions were recorded in two countries, Somalia and South Sudan – one fewer compared to 2021.
- Death sentences were recorded in 16 countries, a decrease of 3 compared to 2021.
- Sierra Leone and the Central African Republic abolished the death penalty for all crimes; Equatorial Guinea and Zambia abolished the death penalty for ordinary crimes only.

COUNTRY	2022 RECORDED EXECUTIONS	2022 RECORDED DEATH SENTENCES	PEOPLE KNOWN TO BE UNDER SENTENCE OF DEATH AT THE END OF 2022
Botswana	0	1	7
Burkina Faso	0	0	0
Cameroon	0	0	250+
Central African Republic	0	0	0
Comoros	0	2	12
Democratic Republic of the Congo	0	76+	166+
Equatorial Guinea	0	0	
Eritrea	0	0	
Eswatini	0	0	1
Ethiopia	0	2+	+
Gambia	0	9	13
Ghana	0	7	172
Kenya	0	79	656
Lesotho	0	0	0
Liberia	0	0	17
Malawi	0	0	+
Mali	0	8+	8+

COUNTRY	2022 RECORDED EXECUTIONS	2022 RECORDED DEATH SENTENCES	PEOPLE KNOWN TO BE UNDER SENTENCE OF DEATH AT THE END OF 2022
Mauritania	0	5+	163+
Niger	0	4+	8+
Nigeria	0	77+	3,167+
Sierra Leone	0	0	0
Somalia	6+	10+	10+
South Sudan	5+	4+	341+
Sudan	0	1+	96+
Tanzania	0	11	491+
Uganda	0	0	135+
Zambia	0	2+	390+
Zimbabwe	0	0	61



The sub-Saharan Africa region made remarkable progress against the death penalty in 2022. The number of executions, executing countries and death sentences recorded during the year substantially reduced, while two countries abolished the death penalty for all crimes and another two abolished it for ordinary crimes only.

Recorded executions in the region went down by 67%, from 33 in 2021 to 11 in 2022. Executions were recorded in two countries – Somalia and South Sudan – the lowest number of executing countries recorded by Amnesty International in the region since 2017. No executions were recorded in Botswana, which had carried out executions in 2021. Compared to 2021, recorded executions reduced sharply in Somalia from 21 to 6; and went down in South Sudan from 9 to 5.

Recorded death sentences decreased by 20%, from 373 in 2021 to 298 in 2022. The death sentences recorded in 2022 were imposed in 16 countries, a decrease of 3 compared to 2021. The 20% drop in recorded death sentences was due to notable reductions in recorded death sentences in the following countries in 2022 compared to 2021: Botswana (6 to 1); Cameroon (4 to 0); Democratic Republic of the Congo (81 to 76); Malawi (11 to 0); Mali (48 to 8); Somalia (27 to 10); Sierra Leone (23 to 0), South Sudan (10 to 4); Sudan (7 to 1). Despite these decreases, two countries had significant increases of recorded death sentences in 2022 compared to 2021: Kenya (14 to 79) and Nigeria (56 to 77).

At least 240 commutations and at least 67 pardons were granted, and at least 27 exonerations occurred across several countries in the region. A significant number of commutations were granted in the following countries: Kenya (12); Malawi (25); Nigeria (48); Sierra Leone (117) and Zambia (30). In Nigeria, 56 people were pardoned by the authorities; while 20 people in Kenya and 5 people in Zimbabwe were exonerated by the courts. At the end of the year, at least 6,168 people were under sentence of death in sub-Saharan Africa, with those in Nigeria constituting 51% (3,167) of the recorded number.

Four countries in the region abolished the death penalty either fully or partially: Sierra Leone and the Central African Republic abolished the death penalty for all crimes while Equatorial Guinea and Zambia abolished the death penalty for ordinary crimes only.

In Sierra Leone, on 21 April 2022, the Abolition of the Death Penalty Act 2021 – which removed the death penalty from the laws of the country – was officially promulgated.⁷⁸ On 27 May 2022, the National Assembly of the Central African Republic voted in favour of a bill abolishing the death penalty in the country.⁷⁹ A month later, on 27 June 2022, President Faustin-Archange Touadéra signed the bill into law.⁸⁰

On 19 September, the Vice President of Equatorial Guinea, Teodoro Nguema Obiang Mangue, announced that Equatorial Guinea had abolished the death penalty.⁸¹ This followed the signing of a new Penal Code, dated 17 August 2022, by President Teodoro Obiang Nguema Mbasogo.⁸² The Penal Code in Equatorial Guinea no longer provides for the death penalty. However, at the end of the year the death penalty remained in the Military Code of Justice for crimes under military laws.⁸³

⁷⁸ The Abolition of the Death Penalty Act 2021, Supplement to the Sierra Leone Gazette Vol. CXLXIII, No. 22, 21 April 2022. In the previous year, on 23 July 2021, the Parliament of Sierra Leone voted in favour of a bill abolishing the death penalty. On 8 October 2021, President Julius Maada signed the bill. However, the law was officially promulgated on 21 April 2022.

⁷⁹ “Central African Republic abolishes death penalty”, *Vatican News*, 28 May 2022, <https://www.vaticannews.va/en/world/news/2022-05/central-african-republic-abolishes-death-penalty.html>

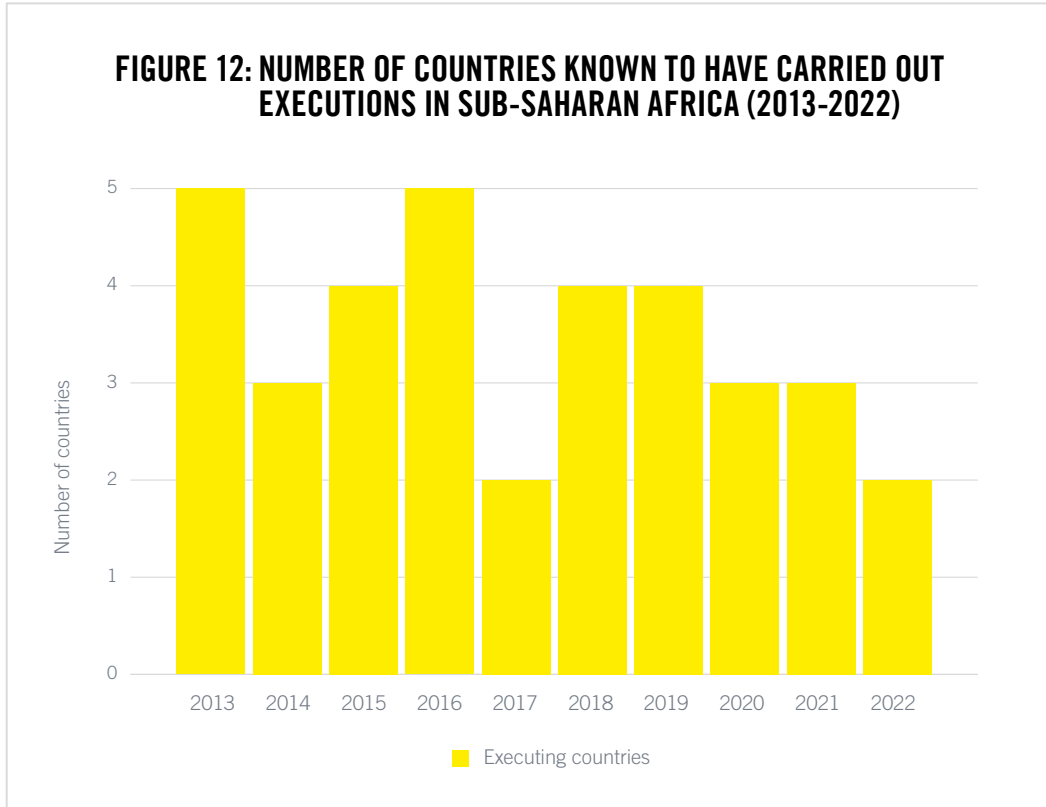
⁸⁰ Portant abolition de la peine de mort en République Centrafricaine, “Loi No. 22.011”, 27 Juin 2022.

⁸¹ Teodoro Nguema, *Tweet* (19 September 2022), <https://twitter.com/teonguema/status/1571837888593117186>

⁸² Del Código Penal en la República de Guinea Ecuatorial, Ley No 4/2022, 17 de Agosto.

⁸³ Código de Justicia Militar.

On 23 December, the Office of the President of Zambia announced that President Hakainde Hichilema had assented to the Penal Code (Amendment) Bill number 25 of 2022, which abolished the death penalty in the country’s Penal Code.⁸⁴ The Penal Code was amended to replace the death penalty with life imprisonment and no longer provides for the death penalty.⁸⁵ However, at the end of the year the death penalty remained in the Defence Act of Zambia for crimes under military laws.⁸⁶

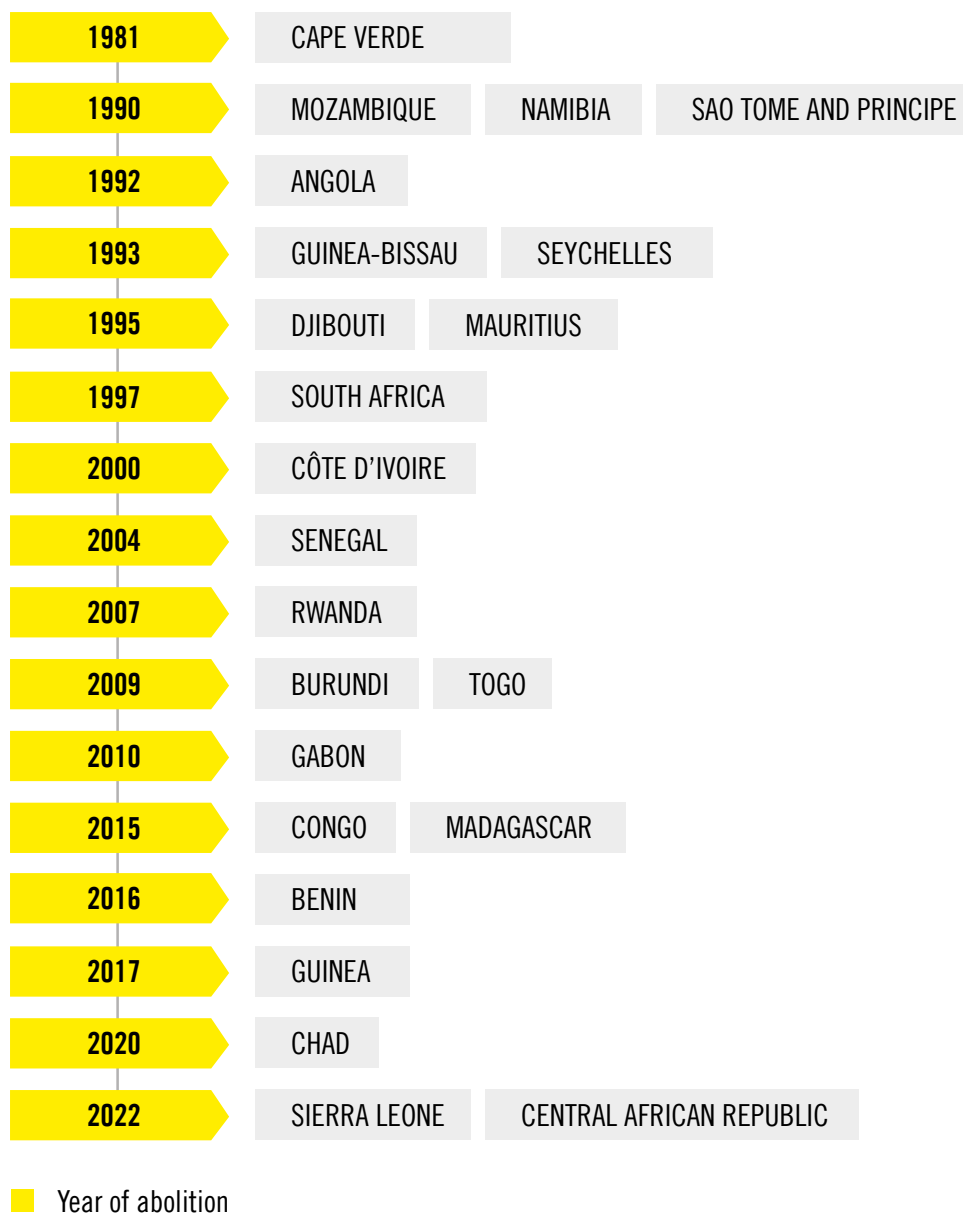


⁸⁴ Office of the President, *Press Release*, “President Hakainde Hichilema assents into law the Penal Code (Amendment) Bill number 25 of 2022, abolishes the imposition of the death penalty and the offence of criminal defamation of the President” (23 December 2022).

⁸⁵ The Penal Code (Amendment) Bill 2022, Number 25 of 2022.

⁸⁶ The Defence Act, Chapter 106 of the Laws of Zambia.

FIGURE 13: COUNTRIES THAT HAVE ABOLISHED THE DEATH PENALTY FOR ALL CRIMES IN SUB-SAHARAN AFRICA⁸⁷



⁸⁷ Burkina Faso (2018), Equatorial Guinea (2022) and Zambia (2022) have abolished the death penalty for ordinary crimes only. These are countries whose laws provide for the death penalty only for exceptional crimes such as crimes under military law or crimes committed in exceptional circumstances.

ANNEX I: RECORDED EXECUTIONS AND DEATH SENTENCES IN 2022

This report only covers the judicial use of the death penalty and does not include figures for extrajudicial executions. Amnesty International only reports figures for which it can find reasonable confirmation, although the true figures for some countries are significantly higher. Some states intentionally conceal death penalty proceedings; others do not keep or make available data on the numbers of death sentences and executions.

Where “+” appears after a figure next to the name of a country – for example, Iraq (11+) – it means that Amnesty International confirmed 11 executions or death sentences in Iraq but believes there were more than 11. Where “+” appears after a country name without a figure – for instance, Viet Nam (+) – it means that Amnesty International has corroborated executions or death sentences (more than one) in that country but had insufficient information to provide a credible minimum figure. When calculating global and regional totals, “+” has been counted as two including for China.

RECORDED EXECUTIONS IN 2022

China 1,000s	Kuwait 7	Belarus 1
Iran 576+	Somalia 6+	Japan 1
Saudi Arabia 196	South Sudan 5+	Afghanistan +
Egypt 24	State of Palestine 5	North Korea +
USA 18	Yemen 4+	Syria +
Iraq 11+	Bangladesh 4	Viet Nam +
Singapore 11	Myanmar 4	

RECORDED DEATH SENTENCES IN 2022

China 1,000s	USA 21	Guyana 4
Egypt 538	Libya 18+	Taiwan 3
Bangladesh 169+	Kuwait 16+	Bahrain 2+
India 165	Malaysia 16+	Ethiopia 2+
Pakistan 127+	Saudi Arabia 12+	Lebanon 2+
Indonesia 112+	Tanzania 11	UAE 2+
Thailand 104	Somalia 10+	Zambia 2+
Viet Nam 102+	Gambia 9	Comoros 2
Kenya 79	Mali 8+	Sudan 1+
Yemen 78+	Sri Lanka 8+	Botswana 1
Nigeria 77+	Ghana 7	Maldives 1
Democratic Republic of the Congo 76+	Laos 5+	South Korea 1
Algeria 54	Mauritania 5+	Afghanistan +
Iraq 41+	Trinidad and Tobago 5+	Iran +
Myanmar 37+	Singapore 5	North Korea +
State of Palestine 28	Jordan 4+	Qatar +
Tunisia 26+	Niger 4+	Syria +
	South Sudan 4+	

ANNEX II: ABOLITIONIST AND RETENTIONIST COUNTRIES

AS OF 31 DECEMBER 2022

Close to three quarters of the countries in the world have now abolished the death penalty in law or practice. As of 31 December 2022, the numbers were as follows:

Abolitionist for all crimes: 112

Abolitionist for ordinary crimes only: 9

Abolitionist in practice: 23

Total abolitionist in law or practice: 144

Retentionist: 55

The following are lists of countries in the four categories: abolitionist for all crimes, abolitionist for ordinary crimes only, abolitionist in practice and retentionist.

1. ABOLITIONIST FOR ALL CRIMES

Countries whose laws do not provide for the death penalty for any crime:

Albania, Andorra, Angola, Argentina, Armenia, Australia, Austria, Azerbaijan, Belgium, Benin, Bhutan, Bolivia, Bosnia and Herzegovina, Bulgaria, Burundi, Cabo Verde, Cambodia, Canada, Chad, Central African Republic, Colombia, Congo, Cook Islands, Costa Rica, Côte d'Ivoire, Croatia, Cyprus, Czech Republic, Denmark, Djibouti, Dominican Republic, Ecuador, Estonia, Fiji, Finland, France, Gabon, Georgia, Germany, Greece, Guinea, Guinea-Bissau, Haiti, Honduras, Hungary, Iceland, Ireland, Italy, Kazakhstan, Kiribati, Kosovo, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malta, Marshall Islands, Mauritius, Mexico, Micronesia, Moldova, Monaco, Mongolia, Montenegro, Mozambique, Namibia, Nauru, Nepal, Netherlands, New Zealand, Nicaragua, Niue, North Macedonia, Norway, Palau, Panama, Papua New Guinea, Paraguay, Philippines, Poland, Portugal, Romania, Rwanda, Samoa, San Marino, Sao Tome and Principe, Senegal, Serbia, Seychelles, Sierra Leone, Slovakia, Slovenia, Solomon Islands, South Africa, Spain, Suriname, Sweden, Switzerland, Timor-Leste, Togo, Türkiye, Turkmenistan, Tuvalu, Ukraine, United Kingdom, Uruguay, Uzbekistan, Vanuatu, Vatican City, Venezuela.

2. ABOLITIONIST FOR ORDINARY CRIMES ONLY

Countries whose laws provide for the death penalty only for exceptional crimes such as crimes under military law or crimes committed in exceptional circumstances:⁸⁸

Brazil, Burkina Faso, Chile, El Salvador, Equatorial Guinea, Guatemala, Israel, Peru, Zambia.

3. ABOLITIONIST IN PRACTICE

Countries that retain the death penalty for ordinary crimes such as murder but can be considered abolitionist in practice in that they have not executed anyone during the last 10 years or more and are believed to have a policy or established practice of not carrying out executions:

Algeria, Brunei Darussalam, Cameroon, Eritrea, Eswatini, Ghana, Grenada, Kenya, Laos, Liberia, Malawi, Maldives, Mali, Mauritania, Morocco/Western Sahara, Niger, Russia,⁸⁹ South Korea, Sri Lanka, Tajikistan, Tanzania, Tonga, Tunisia.

4. RETENTIONIST

Countries that retain the death penalty for ordinary crimes:

Afghanistan, Antigua and Barbuda, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belize, Botswana, China, Comoros, Cuba, Democratic Republic of the Congo, Dominica, Egypt, Ethiopia, Gambia, Guyana, India, Indonesia, Iran, Iraq, Jamaica, Japan, Jordan, Kuwait, Lebanon, Lesotho, Libya, Malaysia, Myanmar, Nigeria, North Korea, Oman, Pakistan, Palestine (State of), Qatar, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Saudi Arabia, Singapore, Somalia, South Sudan, Sudan, Syria, Taiwan, Thailand, Trinidad and Tobago, Uganda, United Arab Emirates, United States of America, Viet Nam, Yemen, Zimbabwe.

⁸⁸ No executions were recorded in these countries in more than 10 years.

⁸⁹ Russia introduced a moratorium on executions in August 1996. However, executions were carried out between 1996 and 1999 in the Chechen Republic.

ANNEX III: RATIFICATION OF INTERNATIONAL TREATIES

AS OF 31 DECEMBER 2022

The community of nations has adopted four international treaties providing for the abolition of the death penalty. One is of worldwide scope; three are regional.

Below are short descriptions of the four treaties, a list of states parties to the treaties and lists of countries which have signed but not ratified the treaties, as of 31 December 2022. States may become states parties to international treaties either by acceding to them or by ratifying them. Signature indicates an intention to become a party at a later date through ratification. States are bound under international law to respect the provisions of treaties to which they are a party, and to do nothing to defeat the object and purpose of treaties which they have signed.

SECOND OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, AIMING AT THE ABOLITION OF THE DEATH PENALTY

The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, adopted by the UN General Assembly in 1989, is of worldwide scope. It provides for the total abolition of the death penalty but allows states parties to retain the death penalty in time of war if they make a reservation to that effect at the time of ratifying or acceding to the Protocol. Any state which is a party to the International Covenant on Civil and Political Rights can become a party to the Protocol.

States parties: Albania, Andorra, Angola, Argentina, Armenia, Australia, Austria, Azerbaijan, Belgium, Benin, Bolivia, Bosnia and Herzegovina, Brazil, Bulgaria, Cabo Verde, Canada, Chile, Colombia, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Djibouti, Dominican Republic, Ecuador, El Salvador, Estonia, Finland, France, Gabon, Gambia, Georgia, Germany, Greece, Guinea-Bissau, Honduras, Hungary, Iceland, Ireland, Italy, Kazakhstan, Kyrgyzstan, Latvia, Liberia, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malta, Mexico, Moldova, Monaco, Mongolia, Montenegro, Mozambique, Namibia, Nepal, Netherlands, New Zealand, Nicaragua, North Macedonia, Norway, Palestine (State of), Panama, Paraguay, Philippines, Poland, Portugal, Romania, Rwanda, San Marino, Sao Tome and Principe, Serbia, Seychelles, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Timor-Leste, Togo, Türkiye, Turkmenistan, Ukraine, United Kingdom, Uruguay, Uzbekistan, Venezuela (total: 90).

PROTOCOL TO THE AMERICAN CONVENTION ON HUMAN RIGHTS TO ABOLISH THE DEATH PENALTY

The Protocol to the American Convention on Human Rights to Abolish the Death Penalty, adopted by the General Assembly of the Organization of American States in 1990, provides for the total abolition of the death penalty but allows states parties to retain the death penalty in wartime if they make a reservation to that effect at the time of ratifying or acceding to the Protocol. Any state party to the American Convention on Human Rights can become a party to the Protocol.

States parties: Argentina, Brazil, Chile, Costa Rica, Dominican Republic, Ecuador, Honduras, Mexico, Nicaragua, Panama, Paraguay, Uruguay, Venezuela (total: 13).

PROTOCOL NO. 6 TO THE EUROPEAN CONVENTION ON HUMAN RIGHTS, CONCERNING THE ABOLITION OF THE DEATH PENALTY⁹⁰

Protocol No. 6 to the (European) Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), concerning the abolition of the death penalty, adopted by the Council of Europe in 1983, provides for the abolition of the death penalty in peacetime; states parties may retain the death penalty for crimes “in time of war or of imminent threat of war”. Any state party to the European Convention on Human Rights can become a party to the Protocol.

States parties: Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Monaco, Montenegro, Netherlands, North Macedonia, Norway, Poland, Portugal, Romania, San Marino, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Türkiye, Ukraine, United Kingdom (total: 46).

PROTOCOL NO. 13 TO THE EUROPEAN CONVENTION ON HUMAN RIGHTS, CONCERNING THE ABOLITION OF THE DEATH PENALTY IN ALL CIRCUMSTANCES

Protocol No. 13 to the (European) Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), concerning the abolition of the death penalty in all circumstances, adopted by the Council of Europe in 2002, provides for the abolition of the death penalty in all circumstances, including in time of war or of imminent threat of war. Any state party to the European Convention on Human Rights can become a party to the Protocol.

States parties: Albania, Andorra, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Monaco, Montenegro, Netherlands, North Macedonia, Norway, Poland, Portugal, Romania, San Marino, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Türkiye, Ukraine, United Kingdom (total: 44).

Signed but not ratified: Armenia (total: 1)

⁹⁰ Russia ceased to be a signatory to the treaty on 16 September 2022.

ANNEX IV: VOTING RESULTS OF UN GENERAL ASSEMBLY RESOLUTION 77/222

ADOPTED ON 15 DECEMBER 2022

The UN General Assembly adopted its eighth resolution on a moratorium on the use of the death penalty. The resolution was adopted by an overwhelming majority of UN member states.

Co-sponsors of UN General Assembly resolution 77/222, adopted on 15 December 2022

Albania, Algeria, Andorra, Angola, Argentina, Armenia, Australia, Austria, Belgium, , Bolivia, Bosnia and Herzegovina, Brazil, Bulgaria, Cabo Verde, Canada, Chile, Colombia, Congo, Costa Rica, Côte d'Ivoire, Croatia, Cyprus, Czech Republic, Denmark, Dominican Republic, Ecuador, El Salvador, Estonia, Fiji, Finland, France, Georgia, Germany, Greece, Honduras, Hungary, Iceland, Ireland, Israel, Italy, Kiribati, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Luxembourg, Madagascar, Mali, Malta, Mexico, Micronesia, Moldova, Monaco, Mongolia, Montenegro, Netherlands, New Zealand, Nicaragua, North Macedonia, Norway, Panama, Paraguay, Poland, Portugal, Romania, San Marino, Serbia, Seychelles, Slovakia, Slovenia, Spain, Sweden, Switzerland, Timor-Leste, Togo, Ukraine, United Kingdom, Uruguay, Venezuela (total: 79).

Votes in favour – Albania, Algeria, Andorra, Angola, Argentina, Armenia, Australia, Austria, Azerbaijan, Belgium, Benin, Bhutan, Bolivia, Bosnia and Herzegovina, Brazil, Bulgaria, Burkina Faso, Cabo Verde, Cambodia, Canada, Central African Republic, Chad, Chile, Colombia, Congo, Costa Rica, Côte d'Ivoire, Croatia, Cyprus, Czech Republic, Denmark, Djibouti, Dominican Republic, Ecuador, El Salvador, Equatorial Guinea, Eritrea, Estonia, Fiji, Finland, France, Gambia, Georgia, Germany, Ghana, Greece, Guatemala, Guinea, Guinea-Bissau, Haiti, Honduras, Hungary, Iceland, Ireland, Israel, Italy, Jordan, Kazakhstan, Kiribati, Kyrgyzstan, Latvia, Lebanon, Liberia, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malawi, Malaysia, Mali, Malta, Marshall Islands, Mauritius, Mexico, Micronesia, Moldova, Monaco, Mongolia, Montenegro, Mozambique, Myanmar, Namibia, Nauru, Nepal, Netherlands, New Zealand, Nicaragua, North Macedonia, Norway, Palau, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Russia, Rwanda, Samoa, San Marino, Serbia, Sierra Leone, Slovakia, Slovenia, Solomon Islands, South Africa, South Korea, Spain, Sri Lanka, Suriname, Sweden, Switzerland, Tajikistan, Timor-Leste, Togo, Tunisia, Türkiye, Turkmenistan, Tuvalu, Uganda, Ukraine, United Kingdom, Uruguay, Uzbekistan, (total: 125).

Votes against –Antigua and Barbuda, Bahamas, Bahrain, Bangladesh, Barbados, Belize, Botswana, Brunei Darussalam, China, Democratic Republic of the Congo, Dominica, Egypt, Ethiopia, Grenada, India, Iran, Iraq, Jamaica, Japan, Kuwait, Libya, Maldives, North Korea, Oman, Pakistan, Qatar, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Saudi Arabia, Singapore, Sudan, Syria, Tonga, Trinidad and Tobago, United States of America, Yemen (total: 37).


Abstentions – Belarus, Burundi, Cameroon, Cuba, Eswatini, Gabon, Guyana, Indonesia, Kenya, Laos, Lesotho, Mauritania, Morocco/Western Sahara, Niger, Nigeria, Papua New Guinea, Tanzania, Thailand, United Arab Emirates, Viet Nam, Zambia, Zimbabwe (total: 22).


Not present – Afghanistan, Comoros, Sao Tome and Principe, Senegal, Seychelles, Somalia, South Sudan, Vanuatu, Venezuela (total: 9).



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TO ONE PERSON, IT
MATTERS TO US ALL.**

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DEATH SENTENCES AND EXECUTIONS

2022

Amnesty International's monitoring of the global use of the death penalty in 2022 revealed an increase of 53% in recorded executions (excluding China). Twenty countries are known to have executed a total of 883 people compared to 579 in 18 countries in 2021.

This global spike in known executions was mainly due to a significant increase recorded in the Middle East and North Africa region, where figures rose by 59% from 520 in 2021 to 825 in 2022. Of these, 70% were carried out in Iran, where recorded executions increased by 83% from 314 in 2021 to 576 in 2022, and 24% in Saudi Arabia, where recorded executions tripled from 65 in 2021 to 196 in 2022.

Executions resumed in Afghanistan, Kuwait, Myanmar, Palestine (State of) and Singapore. While notable increases compared to 2021 were recorded in Iran, Kuwait, Myanmar, Palestine (State of), Saudi Arabia, Singapore and USA, secrecy and restrictive practices in China, North, Korea and Viet Nam, among other states, continued to impair accurate assessments of the use of the death penalty.

While international human rights law prohibits the use of the death penalty for crimes that do not meet the threshold of "most serious crimes" (crimes involving intentional killing), at least four countries - China, Iran, Saudi Arabia and Singapore - carried out executions for drug-related offences: 325 such executions were recorded, more than double the number recorded in 2021. In Iran this constituted 44% (255 people) of all known executions in the country.

However, the world made remarkable progress towards abolition. In 2022, the number of fully abolitionist countries reached 112, while nine were abolitionist for ordinary crimes only and a further 23 were abolitionist in practice. Six countries abolished the death penalty either fully or partially.

Amnesty International opposes the death penalty in all cases without exception.

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AMNESTY
INTERNATIONAL 

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THOMAS EUGENE CREECH,

Petitioner,

vs.

STATE OF IDAHO,

Respondent.

Case No. CV01-23-16641

ORDER OF DISMISSAL

In the underlying Ada County criminal case (previously designated Case No. HCR-10252 but, in Idaho’s current case-management system, redesignated Case No. CR-FE-0000-10252), Petitioner Thomas Eugene Creech was sentenced to death on January 25, 1982, for the crime of murder in the first degree. His death sentence was vacated twice but reinstated twice, last on April 17, 1995. It remains in effect now, more than forty years after it was first ordered. This history of that case and Creech’s many challenges to its outcome—including multiple post-conviction cases in state court and multiple habeas cases in federal court—is partly recounted in *Creech v. Richardson*, 59 F.4th 372, 376–82 (9th Cir. 2023), *cert. denied*, 2023 WL 6558513 (U.S. Oct. 10, 2023). It will not be recounted here, except to mention that, in addition to the post-conviction and habeas challenges described in the just-cited Ninth Circuit opinion, Creech filed still another post-conviction case in state court (Ada County Case No. CV01-22-9424) on June 30, 2022, and it was dismissed as untimely on December 1, 2022.

On October 12, 2023, a death warrant was issued, prompting Creech the next day to initiate this latest installment in a series of post-conviction cases. In his newest petition for post-conviction relief, Creech claims that executing him would constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution and the corresponding provision of the Idaho Constitution because (i) a judge, rather than a jury, sentenced him to death, and (ii) executions of persons sentenced to death by judges are, these days, quite rare.¹ (Pet. Post-Conviction Relief ¶¶ 53–213.) Along with the petition, Creech filed three motions: (1) a motion to take judicial notice of two sets of judicial findings made in connection with the imposition of his death sentence, copies of which are Exhibits 1 and 2 to the petition; (2) a motion to stay his execution; and (3) a motion to shorten the time for hearing on his motion to stay his execution. The motion for judicial notice is granted. The motion to stay Creech’s execution and the motion to shorten the time for hearing on that motion are, however, denied. As the Court is about to explain, the petition must be summarily dismissed as untimely, so its filing does not warrant holding any hearing or granting any stay of execution.

¹ The ostensible rarity in recent years of executions of persons sentenced to death by judges is explained largely by *Ring v. Arizona*, 536 U.S. 584 (2002), which held that the Sixth Amendment to the United States Constitution confers on criminal defendants the right to have juries, rather than judges, conduct the fact-finding necessary to the imposition of a death sentence. Today, more than two decades after judges stopped deciding whether criminal defendants should be sentenced to death, the supply of persons sentenced to death by judges—and still subject to a death sentence—has, for a variety of reasons, dwindled.

A defendant who has been sentenced to death has forty-two days from the filing of the judgment imposing the death sentence to file “any legal or factual challenge to the sentence or conviction that is known or reasonably should be known.” I.C. § 19-2719(3). A challenge not filed within the forty-two-day filing period is waived. I.C. § 19-2719(5). But challenges “that were not known or could not reasonably have been known” by the end of that period may be raised later, in a successive post-conviction petition. *Id.* According to the Idaho Supreme Court, section 19-2719(5) requires any such successive petition to be filed “within a reasonable time after the claims were known or should have been known.” *Pizzuto v. State*, 146 Idaho 720, 726, 202 P.3d 642, 648 (2008) (quoting *Pizzuto v. State*, 134 Idaho 793, 798, 10 P.3d 742, 747 (2000)). “[A] reasonable time,” the Idaho Supreme Court has held, “is forty-two days after the petitioner knew or reasonably should have known of the claim, unless the petitioner shows that there were extraordinary circumstances that prevented him or her from filing the claim within that time period.” *Id.* at 727, 202 P.3d at 649. Creech filed the petition on October 13, 2023. The petition is untimely, then, if he knew or reasonably should have known of the ostensible grounds for the claim asserted in the petition before September 1, 2023, which is forty-two days before he filed the petition.

A lengthy section of the petition is devoted to arguing that the petition is timely. (Pet. Post-Conviction Relief ¶¶ 214–253.) Nothing of import to the viability of the claim asserted in the petition is alleged to have either happened or come to light, however, between September 1 and the filing of the petition. The claim lacks

an aura of viability, but it could have been asserted before September 1 with no less force than it can be asserted now. The Court concludes that Creech knew or reasonably should have known before September 1 of the ostensible basis for the claim asserted in the petition—a claim that has been decades in the making by its very nature (see footnote 1, *supra*) and does not genuinely depend on anything that has happened or come to light since September 1. That it is difficult to pinpoint the (surely invalid) claim’s maturation date is no impediment to so concluding.

Further, Creech does not argue that extraordinary circumstances prevented him from filing the petition within forty-two days after he first knew or reasonably should have known about the ostensible basis for the claim asserted in the petition. And nothing in the record gives the Court any reason to suspect that extraordinary circumstances prevented him from doing so.

Consequently, the petition is untimely under section 19-2719(5). Untimely petitions for post-conviction relief relating to capital cases, the legislature directs, “shall be dismissed summarily.” I.C. § 19-2719(11). Creech’s petition is untimely, so the Court obliges.

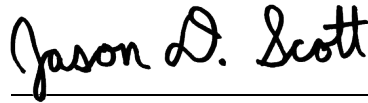
Accordingly,

IT IS ORDERED that Creech’s motion for judicial notice is granted. Judicial notice is taken of Exhibits 1 and 2 to the petition, which are copies of documents from the underlying criminal case.

IT IS FURTHER ORDERED that Creech’s motion to stay his execution is denied.

IT IS FURTHER ORDERED that Creech's motion to shorten the time for hearing on his motion to stay his execution is denied.

IT IS FURTHER ORDERED that Creech's petition for post-conviction relief is dismissed as untimely.



10/16/2023 10:57:13 AM

Jason D. Scott
DISTRICT JUDGE

CERTIFICATE OF SERVICE


I certify that on October 16, 2023, I served a copy of this document as follows:

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10/16/2023 11:21:56 AM

By: 
Deputy Court Clerk

