

# URGENT ACTION

## EXECUTION CALLED OFF, CONTINUE CLEMENCY CALL

**The State of Alabama called off the execution of Doyle Hamm late on 22 February after the lethal injection team was unable to find an accessible vein over the course of two and a half hours. The governor should now commute his death sentence.**

Twenty-nine at the time of the crime, **Doyle Hamm** turned 61 on 14 February 2018 after 30 years on death row. His veins are compromised because of his lymphatic cancer and treatment for it, and his prior intravenous drug use. His lawyer argued that his execution by lethal injection would be unconstitutional. The US District Court and the 11<sup>th</sup> Circuit Court of Appeals ruled that the execution could go ahead as long as the state did not try to access the prisoner's peripheral veins in his arms or hands after an independent doctor appointed by the District Court had found that none would be accessible there. The US Supreme Court issued a stay on 22 February, a few hours before the execution was due. At about 8.45pm it lifted the stay.

At around 11.30pm, the Alabama Commissioner of Corrections announced that the execution had been called off. He said that after over two hours of trying, at around 11.15pm, "I was informed by the medical personnel that they didn't in their judgment think that they could obtain the appropriate venous access before the warrant would expire" at midnight. At that time "we made the decision to halt the procedure". He said he contacted the governor and that she "concurred" with this. He added that he "wouldn't necessarily characterize what we had tonight as a problem."

Doyle Hamm's lawyer has since described the two-and-a-half hours between the Supreme Court lifting the stay and the execution being called off. In a brief filed in District Court on 23 February, he wrote that the lethal injection team had spent much time trying "to find a vein anywhere in his lower extremities for peripheral venous access." When they could not find accessible peripheral veins, other personnel tried to obtain "central venous access", trying "multiple times", to "insert a catheter into Doyle Hamm's right groin, causing severe bleeding and pain". The lawyer has said: "This went beyond ghoulish justice and cruel and unusual punishment. It was torture. It was precisely the kind of torture that the UN Human Rights Rapporteurs had warned about to the Governor of Alabama." This was in reference to the intervention on 19 February of two UN Special Rapporteurs – on extrajudicial, summary or arbitrary executions and torture and other cruel, inhuman or degrading treatment or punishment – who expressed concern that "attempts to insert needles into Mr. Hamm's veins to carry out the lethal injection would inflict pain and suffering that may amount to torture".

On 26 February, the District Court judge issued an order setting 6 March for a "scheduling conference". She added that "Before the conference, the parties SHALL discuss the possibility of an early settlement" [emphasis in original]. On 27 February, the state asked for this hearing to be rescheduled for the week of 12 March.

### **Please write immediately in English or own language, in your own words:**

- Expressing regret that the governor allowed the execution of Doyle Hamm to proceed on 22 February, noting with deep concern the events of that night and urging her to now to commute his death sentence.

### **PLEASE SEND APPEALS BEFORE 11 APRIL 2018 TO:**

Governor Kay Ivey

Alabama State Capitol, 600 Dexter Avenue, Montgomery, Alabama 36130, USA

Fax: +1 334 353 0004

Email: <http://governor.alabama.gov/contact> (please use the AI USA details: 5 Penn Plaza, 16th Floor, New York, NY 10001, Phone: 212 807-8400

Fax: 212 627-1451)

Salutation: Dear Governor

**Also send copies to diplomatic representatives accredited to your country.** HIS EXCELLENCY WOODY JOHNSON, U.S. Embassy London, 33 Nine Elms Lane, London, SW11 7US, United Kingdom, Phone: (0)20 7499-9000

**Please check with your section office if sending appeals after the above date.** This is the first update of UA 29/18. Further information: [www.amnesty.org/en/documents/amr51/7848/2018/en/](http://www.amnesty.org/en/documents/amr51/7848/2018/en/)

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### ADDITIONAL INFORMATION

In his 23 February brief in the District Court, Doyle Hamm's lawyer said that the execution team had "inserted needles multiple times on [Hamm's] left and right legs and ankles, each time forcing the needles into his lower extremities", including after turning him over on to his stomach to seek access to veins in the back of his legs. After accompanying a doctor to examine Doyle Hamm in prison on 25 February, the lawyer said that the execution team appeared to have punctured the prisoner's bladder during the execution attempt, and may have "hit his femoral artery as well". There were "multiple puncture wounds on the ankles, calf, and right groin area, around a dozen...He seems to have six puncture marks in his right groin, and large bruising and swelling in the groin... During the execution, Doyle was lying there praying and hoping that they would succeed because of the pain, and collapsed when they took him off the gurney."

The execution attempt was preceded by litigation seeking to stop the execution but was challenged every step of the way by the state. On 13 February, the US Court of Appeals for the 11<sup>th</sup> Circuit lifted the stay of execution that had been granted to Doyle Hamm by the US District Court on 6 February. The 11<sup>th</sup> Circuit ordered the District Court judge to "immediately appoint an independent medical examiner". On 15 February, the District Court did this and ordered the doctor to examine Doyle Hamm, "specifically the condition of his peripheral and central veins". The doctor concluded that Doyle Hamm had accessible peripheral (great saphenous) veins in his legs below the knees, none in his arms or hands, and that his (central) jugular and femoral veins would be accessible but only with "ultrasound guidance" and the involvement of "an advanced level practitioner".

On 20 February, the District Court judge issued her opinion. Noting that the state had stipulated that it would "not attempt peripheral venous access in Mr Hamm's upper extremities", she ruled that the prisoner had "adequate peripheral *and* central venous access for intravenous lethal injection of a large amount of fluid. He cannot show any medical factors that would make the Alabama lethal injection protocol, as applied to him, more likely to violate the Eighth Amendment [ban on 'cruel and unusual punishments'] than it would for any other inmate who would be executed following that protocol."

On 21 February, the 11<sup>th</sup> Circuit ordered the state to provide one or more affidavits from "someone with knowledge and authority" that it would abide by the stipulation not to attempt venous access in Doyle Hamm's arms or hands, "whether ultrasound technology and an 'advanced level practitioner'" would be present for the execution; and whether the state was "capable of administering an intravenous line through Hamm's great saphenous veins". That afternoon, the state filed a response objecting to the 11<sup>th</sup> Circuit's order, but attached an affidavit signed by the warden of Holman Correctional Facility. On 22 February, the 11<sup>th</sup> Circuit upheld the District Court's 20 February ruling: "Hamm has two peripheral veins accessible for a lethal injection, and his central veins are likewise accessible for a lethal injection. Finally, the conditions rendering the central veins accessible in Hamm's case – the availability of ultrasound equipment and an advanced practitioner – exist here."

When the US Supreme Court lifted its temporary stay at about 8.45pm on 22 February, Justices Ruth Bader Ginsburg and Sonia Sotomayor dissented, pointing out that "the insertion of intravenous catheters into Hamm's leg or central veins" was a method of execution which, "although it fits within the compass of the State's execution protocol, has, by all accounts before us, never been tried before in Alabama." Justice Stephen Breyer wrote a separate statement: "This case reflects the special circumstances of trying to execute a person who has been on death row for 30 years and has cancer. As I have previously written, rather than develop a constitutional jurisprudence that focuses upon the special circumstances of the aged, I would reconsider the constitutionality of the death penalty itself."

Further information on UA: 29/18 Index: AMR 51/7972/2018 Issue Date: 28 February 2018