

URGENT ACTION

MAN WITH MENTAL DISABILITY FACING EXECUTION

Benjamin Cole, aged 57, is scheduled to be executed in Oklahoma on 20 October 2022. He was sentenced to death in December 2004 for killing his nine-month-old daughter in December 2002. He has been diagnosed with paranoid schizophrenia and brain damage. Throughout the years his lawyers have described an individual who has been unable to assist them in his case, both at trial and during appeals. The Oklahoma Pardon and Parole Board is due to hold a clemency hearing and vote on the case on 27 September 2022. We urge the members of the Board to recommend to Governor Kevin Stitt that he commute Benjamin Cole's death sentence.

TAKE ACTION: WRITE AN APPEAL IN YOUR OWN WORDS OR USE THIS MODEL LETTER

Oklahoma Pardon and Parole Board
2915 N Classen Blvd #405
Oklahoma City, OK 73106
USA

Dear Members of the Oklahoma Pardon and Parole Board

Benjamin Cole is due to be executed in Oklahoma on 20 October 2022 for the murder of his baby daughter in December 2002. You are due to consider his petition for clemency on 27 September 2022.

Lawyers representing Benjamin Cole have long had serious doubts about his mental competence – to stand trial, to assist in his appeals, and in recent years for execution – arising from a long-standing psychosocial (mental) disability. Since the outset of this case, they have described a client who has been unable to communicate in a rational and coherent manner with them.

In 2008, Benjamin Cole was diagnosed with paranoid schizophrenia, and over the years on death row his condition is reported to have deteriorated and to have remained untreated. Additionally, according to a physician who is also a neuroradiologist, a lesion on his brain, first spotted in a scan in 2004 could be exacerbating his mental disability and explain his deteriorating motor functions, possible Parkinsonism, and need for a wheelchair.

I appeal to you to recommend that Governor Kevin Stitt commute Benjamin Cole's death sentence.

Yours sincerely,

ADDITIONAL INFORMATION

Benjamin Cole was charged with the first-degree murder of his nine-month-old daughter, who died on 20 December 2002, with the official cause of death recorded as fracture of the spine with aortic laceration. In a videotaped statement to the police, Benjamin Cole said he had been trying to get the child, who was lying on her stomach, to stop crying. He had pushed her forcefully by the ankles, causing her to flip over on to her back. This action resulted in the fatal injuries. The prosecution offered Benjamin Cole a plea deal to avoid the death penalty – if he pled guilty, he would receive a sentence of life imprisonment without the possibility of parole. He rejected the deal, and the case went to trial in late 2004. He was convicted as charged and sentenced to death.

Lawyers representing Benjamin Cole have described a client unable to engage in rational and coherent communication with them. For example, in 2003, his trial lawyers questioned his “ability to understand the nature of the charges against him and meaningfully assist his attorneys”, and in 2004, they reported that his “responses to questions pertaining to his defense are unrelated and unresponsive to what was asked and appear to be based on unrealistic and irrational thoughts and ideas.” He was twice found competent to stand trial.

In 2008, Benjamin Cole’s appeal lawyers retained a psychiatrist to reassess their client’s mental status. The psychiatrist concluded that Benjamin Cole was incompetent to assist his appeal attorneys and that this was “not based on rational thought” but stemmed from “schizophrenia, paranoid type”, manifesting in “hyper-religiosity” and “persecutory and grandiose delusions”. The psychiatrist opined that this mental disability existed “long before” the crime (and may have contributed to it). He pointed to the possibility of post-traumatic stress disorder, and to a family history of mental disability and a childhood of substance abuse, incest, and emotional, physical, and sexual abuse. Because his report was not part of appeals in state court, the federal courts have not taken it into account under the 1996 Antiterrorism and Effective Death Penalty Act which limits federal review of state court decisions.

Benjamin Cole received an execution date in 2015 (eventually stayed under lethal injection litigation). In this context, a psychologist retained by the defence concluded that Benjamin Cole “presents as a classic example of a severely regressed chronic schizophrenic patient (with catatonic features), whose condition is likely further compromised by the previously detected brain disorder captured by neuroimaging studies.” The psychologist described the mental disability in this case as “chronic”, “persistent” and “severe”. He further noted that the effect of the “brain lesion located in the deep white matter of the frontal-parietal region of the left hemisphere of his brain that was discovered by neuroimaging studies in September 2004”, but not followed up, was unknown. The psychologist concluded in 2016 that Benjamin Cole was not competent to be executed. In April 2022, he accompanied Benjamin Cole’s lawyers to death row and reported that he did not observe any behaviour on the part of Benjamin Cole that he would consider “rational or coherent”, and that his “current clinical presentation is consistent with his diagnosis of severe and chronic schizophrenia with catatonia, as well as MRI-documented organic brain damage”.

In 2022, a physician qualified in neuroradiology conducted a review of the 2004 MRI scan and concluded that it revealed “markedly abnormal” detail and “demonstrates multiple pathologic findings”. He concluded that the location of the brain lesion “may be exacerbating” Benjamin Cole’s schizophrenia, and that his need for and use of a wheelchair may relate to this brain damage and possible Parkinsonism.

Executing someone who lacks a rational understanding of their punishment violates the US Constitution. International human rights law prohibits the use of the death penalty against people with psychosocial (mental) and intellectual disabilities. The UN Human Rights Committee, established under the International Covenant on Civil and Political Rights (ICCPR) to oversee its implementation, has said that “States parties must refrain from imposing the death penalty on individuals who face special barriers in defending themselves on an equal basis with others, such as persons whose serious psychosocial or intellectual disabilities impede their effective defence, and on persons who have limited moral culpability. They should also refrain from executing persons who have a diminished ability to understand the reasons for their sentence”. The USA ratified the ICCPR in 1992. The treaty body for the Convention on the Rights of Persons with Disabilities (CRPD) has similarly clarified that the CRPD prohibits the imposition of the death penalty on people whose mental and intellectual disabilities have impeded their effective defence. The USA has not ratified the CRPD, but in signing it in 2009 bound itself under international law not to do anything that would undermine its object or purpose.

Amnesty International opposes the death penalty in all cases, unconditionally. There have been 10 executions in the USA in 2022, three in Oklahoma. Oklahoma accounts for 117 of the 1,550 executions carried out in the USA since the US Supreme Court approved new capital statutes in 1976, second only to neighbouring Texas. Combined, Texas and Oklahoma account for 10% of the USA’s population and 45% of its executions since 1976.

PREFERRED LANGUAGE TO ADDRESS TARGET: English.

You may also write in your own language.

PLEASE TAKE ACTION AS SOON AS POSSIBLE UNTIL: 27 September 2022

NAME AND PRONOUNS: Benjamin Cole (He/His).

ADDITIONAL TARGET

Ms Jane D Hartley
U.S. Embassy
33 Nine Elms Lane, London SW11 7US