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Criminal Justice Issues and Prisoners' Rights

<https://solitarywatch.org/2011/02/09/death-row-inmates-sue-the-fda-over-execution-drugs/>

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by [Jean Casella and James Ridgeway](#) | February 9, 2011

In keeping with established practice, FDA does not review or approve products for the purpose of lethal injection. FDA has not reviewed the products in this shipment to determine their identity, safety, effectiveness, purity, or any other characteristics.

This is the statement now imprinted on shipments of lethal injection drugs that are brought into the country from foreign sources. Now, a group of six death row inmates is suing the Food and Drug Administration, claiming that the agency's decision to allow one execution drug across U.S. borders without FDA approval is manifestly contrary to law and amounts to an abdication of the obligations imposed by the Food, Drug and Cosmetic Act of 1938.

The prisoners' lawsuit stands to throw a serious monkey wrench into the machinery of death. Sodium thiopental, an anesthetic, is one component of the three-drug death cocktail used by most death penalty states and it is now seriously hard to come by in the United States. This fact has already delayed executions or changed execution protocols in several states.

Hospira, the only company approved to make sodium thiopental for use in the United States, suspended manufacture in 2009 because of a shortage of raw materials, and supplies were already running low in 2010. Last fall, Hospira announced that it would be making the drug only at its plant in Liscate, Italy. But Italy, like most of Europe, eschews capital punishment. [As the AP reported](#) in December, Italy's Radical Party brought a motion to Parliament, which passed overwhelmingly, requiring Hospira to ensure that the drug would be used only for medical purposes and would not find its way into prisons. In January, Hospira announced that it would simply stop importing sodium thiopental to the United States.

In the face of shortages, several states were already casting around for other sources. They included California, which just christened a new \$900 million execution chamber at San Quentin in the hopes of overcoming a court-imposed ban on executions. According to KALW's blog [The Informant](#), documents obtained by the ACLU of Northern California shed light on California's frenzied scramble for lethal injection drugs, in a search that would eventually take them through Texas, Arizona, England, and Pakistan.

Along with several other states, including Arizona and Tennessee, California ended up ordering sodium thiopental made in Britain, through a West London pharmaceutical supplier that doubles as a driving school, [according to the BBC](#). That supply was soon cut off as well under a British government ban, but not before states received their first shipments of the drug, with the tacit cooperation of the FDA.

It's these shipments that are at issue in the lawsuit filed last week against the FDA by the high-powered D.C. law firm of [Sidley Austin](#). According to [The Informant](#), many death penalty watchers have raised questions about the quality and legality of those drugs, saying that if the drug malfunctions, inmates could [experience tremendous pain while dying](#), which they say violates the Eighth Amendment's ban on cruel and unusual punishment. It is the FDA's job to make sure that drugs imported to the United States are safe and effective, the lawsuit claims, and their actions with regard to the execution drug is illegal. (The full text of the suit, filed in U.S. District Court for Washington, D.C. on behalf of six inmates from Arizona, California, and Tennessee, can be found [here](#).) The plaintiffs in the civil suit are seeking a declaratory judgment. If they succeed or even if their case simply takes its time making its way through the courts, they could delay executions in several states.

That's unlikely to happen, however, in Oklahoma and Ohio, which have begun using a substitute drug, pentobarbital, the drug commonly used to euthanize animals. In December, [Oklahoma](#) became the first state to execute a prisoner using pentobarbital, in place of sodium thiopental as part of a three-drug cocktail. In January, Ohio announced that it, too, would use pentobarbital but alone, and in one massive dose. According to the [Cincinnati Enquirer](#), Ohio is on pace to set a modern-day state record for executing the most condemned killers in one year. On Tuesday, the Ohio Supreme Court set execution dates for nine condemned prisoners approximately one a month through October and may yet add more. These men will, quite literally, die like dogs.

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James Ridgeway (1936-2021) was the founder and co-director of Solitary Watch. An investigative journalist for over 60 years, he served as Washington Correspondent for the Village Voice and Mother Jones, reporting domestically on subjects ranging from electoral politics to corporate malfeasance to the rise of the racist far-right, and abroad from Central America, Northern Ireland, Eastern Europe, Haiti, and

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