

USA

**INTENT TO KILL,
INTENT TO DIE**

**FIRST EXECUTION IN NEVADA SINCE
2006 IMMINENT**

**AMNESTY
INTERNATIONAL**



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CALCULATED KILLING

There is a killing on the cards in Nevada. Although some may say it has quasi-suicidal features, it is in fact a thoroughly premeditated and calculated homicide.¹ It has been pursued for more than a dozen years.²

This would be the first judicial execution in Nevada since 26 April 2006; the first to take place in Nevada's new death chamber at Ely State Prison; and the first in the whole of the USA to be carried out using the particular three-drug combination chosen by Nevada.

While the emotions often tied to the death sentence are undeniable, the facts remain unavoidable. Beyond the logistical problem of the state's inability to acquire the chemicals required to carry out a death sentence, it is an inescapable truth that the death penalty is unfair, ineffective, and extremely costly to our taxpayers. It is time that the Nevada Legislature recognizes these truths and ends capital punishment in Nevada

Nevada Assemblyman James Ohrenschall, co-sponsor of Assembly Bill 237 to abolish the death penalty, Assembly Committee on Judiciary, 29 March 2017

The execution has been set for 8pm on Tuesday 14 November 2017.

This would be the 13th execution in Nevada in the past 40 years, since the US Supreme Court upheld new capital laws in 1976 and Nevada passed its current capital law in 1977. During that period, 16 death row prisoners have died for reasons other than execution – as a result of natural causes (12) and suicide (4).³

Eleven of Nevada's 12 executions have been of so-called "volunteers" – prisoners who had waived their appeals. Even the state's sole "non-consensual" execution, carried out 21 years ago, was a case that

contained a substantial element of "volunteerism". At his trial, the defendant had "essentially volunteered himself for execution", noted two US Supreme Court Justices in 1993. Three months after the crime and his own suicide attempt, and while "deeply medicated", he was found competent to waive counsel and allowed to plead guilty. He presented no defence, called no witnesses, and offered no mitigation. "Not surprisingly", noted the two Justices, "he was sentenced to death".⁴

Today, the State of Nevada is again receiving the "assistance" of the prisoner it intends to kill. On death row since December 2007 for a murder in Las Vegas in April 2002, this prisoner moved to waive his appeals in 2016, and at a hearing in early 2017 told a judge on the Eighth Judicial Circuit Court in Clark County that "my goal is to be executed, first and foremost". His preference was apparently to be killed by firing squad, but Nevada abolished that as an

¹ See USA: Prisoner-assisted homicide: More 'volunteer' executions loom, May 2007, <https://www.amnesty.org/en/documents/amr51/087/2007/en/> ("the execution of "'volunteers' is often compared to state-assisted suicide. However, 'prisoner-assisted homicide' may be a more appropriate description of this phenomenon").

² On 20 September 2005, the state filed its Notice of Intent to Seek the Death Penalty in the case.

³ Fiscal costs of the death penalty 2014, *op. cit.* One person has received clemency since 1977 in Nevada. See USA: Nevada's planned killing of Thomas Nevius, March 2001, <https://www.amnesty.org/en/documents/amr51/001/2001/en/>, and Urgent Actions: <https://www.amnesty.org/en/documents/amr51/047/2001/en/>; <https://www.amnesty.org/en/documents/amr51/061/2001/en/>; <https://www.amnesty.org/en/documents/amr51/174/2002/en/>

⁴ *Godinez v. Moran*, 1993. Richard Moran dropped his appeals for a period, but changed his mind.

execution method in 1921 and has used only lethal injection since 1983. In July 2017, the judge found him competent to waive his appeals, and later that month she signed the death warrant.⁵

NEVADA AND THE DEATH PENALTY

1861 – Nevada Territory organized. Executions, by hanging, are conducted at local level

1864 – Nevada becomes a state, the 36th of the Union

1868 – The State of Nevada conducts its first hanging

1875 – Nevada legislature prohibits public executions

1901 – Legislature requires executions to take place at the State Prison in Carson City, beginning in 1903

1905 – First execution in Nevada State Prison

1911 – State legislature passes bill allowing death row inmates to choose between hanging and shooting

1911 – Last execution in Nevada by hanging

1913 – First and only execution by firing squad

1913 – Legislature passes bill to provide for execution by electrocution, but it is vetoed by governor

1921 – Legislature removes hanging and shooting as execution methods and replaces them with lethal gas

1924 – Nevada's first execution by lethal gas

1961 – Nevada's last execution before *Furman v. Georgia*

1972 – In *Furman v. Georgia*, the US Supreme Court overturns country's death penalty laws

1973 – Nevada revises capital statute, making death penalty mandatory for capital murder

1976 – US Supreme Court issues *Gregg v. Georgia*, giving green light to resumption of executions in the USA. In a separate ruling it finds mandatory death penalty unconstitutional

1977 – Nevada passes a revised capital statute

1979 – Nevada's conducts its first post-*Gregg* execution, and the last of 32 executions by lethal gas since 1924

1983 – Execution method changed to lethal injection

1985 – Nevada's first execution by lethal injection

2006 – Last execution in Nevada State Prison (closes 2012)

2017 – First execution scheduled for Ely State Prison

In an increasingly abolitionist world, Nevada and other US states have had trouble sourcing drugs for their lethal injection regimes.⁶ Director of Nevada's Department of Corrections (NDOC) James Dzurenda explained its problem at a meeting with other officials in 2016:

"Director Dzurenda explained the challenges with the two types of medications required to complete a successful execution. Nevada has one that expired in July 2016, but the other one is still good. However, you cannot use one without the other. NDOC received a certified letter from Pfizer that they will no longer provide any medications that would be used in any type of execution and they notified their suppliers not to release any supplies to the NDOC."⁷

In September 2016 Nevada issued an "Invitation to Bid for Pharmaceutical Drugs Used for Lethal Injections" in an attempt to procure hydromorphone and midazolam for the state's two-drug protocol. The bid required that the drugs be "FDA-approved for human consumption" and come with "certification that the drug is authorized for use in an execution".⁸

The Invitation to Bid went out to 247 vendors, was advertised in the Reno Gazette Journal and the Las Vegas Review Journal, as well as on the

state's Purchasing Division website, but the state received no bids. Announcing this result on 6 October 2016, the NDOC Director said that NDOC would "work closely with the Attorney General, the Governor and the Legislature to examine our options and decide the best course

⁵ The prisoner must make a knowing, voluntary, and intelligent waiver of his or her rights to appeal and must be mentally competent (*Godinez v. Moran* 1993; *Rees v. Peyton* 1966).

⁶ An embarrassment of hitches, July 2011, <https://www.amnesty.org/en/documents/amr51/058/2011/en/>

⁷ Minutes of meeting of Board of Prison Commissioners, 16 August 2016, *op. cit.*

⁸ FDA is the Food and Drug Administration.

of action moving forward.”

On 17 August 2017, NDOC announced that it would use a combination of diazepam (a sedative), fentanyl (an opioid) and cisatracurium (a muscle relaxant) for the scheduled execution.⁹ None of these drugs has previously been used in an execution in the USA, and as such Nevada is engaging in what four US Supreme Court Justices described in 2015 as, “in effect human experimentation” in the ongoing efforts of death penalty states to overcome their lethal injection sourcing challenges.”¹⁰ The combination was chosen by the NDOC Director, after consultation with the Chief Medical Officer. On 30 October 2017, the Chief Medical Officer resigned with immediate effect after little more than a year in the job.¹¹

This would be the first execution in the state’s new death chamber. Following the closure in 2012 of Nevada State Prison in Carson City, where executions had been conducted since 1905,¹² a \$93,700 contract to design a new death chamber in Ely State Prison was awarded to an architectural company in 2015.¹³ Contracted to remodel the administration building at Ely State Prison “to accommodate executions”, they “took a large room and reorganized it to the four rooms required to include: the medical room, witness room for the victim’s family, a media room and actual execution room”.¹⁴ The contract for the building work in 2016 was won by a construction company at a budget of \$632,945.

The final period of this long-planned lethal operation currently costs about \$50,000, comprising “salary and fringe benefits” for up to 50 people, “transportation and meals”, and the costs of lethal drugs, medical supplies, autopsy and burial or cremation.¹⁵ The bill for the time it takes to get from death warrant to execution is of course a fraction of the cost to get a person from being charged to the issuing of this death warrant.

Funding the death penalty could be said to invest in the “the pointless and needless extinction

⁹ Press release, Nevada Department of Corrections, 17 August 2017, http://doc.nv.gov/uploadedFiles/docnvgov/content/About/Press_Release/press%20release%20exec%20odrugs.pdf.

¹⁰ *Glossip v. Gross*, Justice Sotomayor dissenting (with Justices Ginsburg, Breyer and Kagan). See also, Man awaiting lethal injection to review Nevada prison execution manual, Las Vegas Review Journal, 14 September 2017, <https://www.reviewjournal.com/crime/courts/man-awaiting-lethal-injection-to-review-nevada-prison-execution-manual/>

¹¹ Nevada chief medical officer resigns two weeks before upcoming execution, Reno Gazette Journal, 31 October 2017, <http://www.rgj.com/story/news/2017/10/31/nevada-chief-medical-officer-resigns-two-weeks-before-upcoming-execution/819271001/>. See also Chief Medical Officer report to the Board of Health for September 8, 2017 meeting, available at <http://dpbh.nv.gov/uploadedFiles/dpbhngov/content/Boards/BOH/Meetings/2017/MeetingHandouts9-8-17.pdf> (“The novel Nevada lethal injection protocol has come into question by various news media sources and political groups.”)

¹² Nevada State Prison (NSP) was closed down after being found to be in breach of the Americans with Disabilities Act. Fifty-four executions were carried out in NSP – 10 by hanging, one by firing squad, 32 by lethal gas and 11 by lethal injection – between 1905 and 2006.

¹³ The contract was “to provide professional architectural / engineering services to remodel the administration building (courtroom area and part of the visitation area) to accommodate executions at the Ely State Prison”. http://budget.nv.gov/uploadedFiles/budgetnvgov/content/Meetings/Board_of_Examiners/2015/December_Agenda_Complete.pdf

¹⁴ Minutes of meeting of Board of Prison Commissioners, 16 August 2016, http://doc.nv.gov/uploadedFiles/docnvgov/content/Home/Prison_Commissioners/Minutes%20BOP%20mtg%208-16-16%20approved%20by%20the%20Board%2011-15-16.pdf

¹⁵ Performance Audit. Fiscal costs of the death penalty 2014. Legislative Auditor, Carson City, Nevada. Salary costs “include approximately 40 NDOC [Nevada Department of Corrections] employees and 8 personnel from other state and county agencies”. This estimate uses December 2013 prices.

of life with only marginal contributions to any discernible social or public purposes”, to use the words of the then most senior Justice on the US Supreme Court in 2008. He suggested that “the time for a dispassionate, impartial comparison of the enormous costs that death penalty litigation imposes on society with the benefits that it produces has surely arrived.”¹⁶ In 2015, arguing that the time had come for the Court to consider the constitutionality of the death penalty per se, given the errors and arbitrariness that riddle its application, another two Justices added that “legislators, unlike judges, are free to take account of matters such as monetary costs”.¹⁷ In 2014, Nevada’s Legislative Auditor had produced a report on the Fiscal Costs of the Death Penalty in Nevada, concluding that “the death penalty, from arrest through the end of incarceration, costs about \$532,000 more than other murder cases where the death penalty is not sought”.¹⁸ After an abolitionist effort failed in the legislature earlier in 2017, after a hearing in the House judiciary committee that included discussion of the Legislative Auditor’s findings, Nevada is now preparing to conduct another pointless and needless killing.

Amnesty International opposes the death penalty unconditionally, regardless of the crime, the execution method chosen by the state, how much it costs to get an inmate to the death chamber, or indeed whether the condemned prisoner “consents” to his or her execution or not. Today 141 countries are abolitionist in law or practice. Twenty-one have abolished the death penalty for all or ordinary crimes since Nevada last conducted an execution.¹⁹

Twenty-two people were sentenced to death in Nevada in the 15 years between 2002 and 2016. In the 15 years from 1986 to 2000, there were exactly four times this many death sentences passed in the state – 88. This is particularly noteworthy, given that Nevada had the fourth highest per capita rate of death sentencing in the USA between 1977 and 2013.²⁰ But it also reflects a broader pattern of declining use of the death penalty in the USA in the past decade or so, a downward trend that officials should seize upon to lead the USA away from this punishment altogether.

A bill to abolish the death penalty in Nevada introduced in the legislature in early 2017 was unsuccessful. However, even with the death penalty still on the books, nothing requires the state to go ahead with this killing, even if its intent to kill effectively matches the prisoner’s intent to die. The State of Nevada should impose a moratorium on executions as a first step, and do so before 14 November 2017. This would be consistent with international human rights principles as well as repeated resolutions at the UN General Assembly over the past decade for a moratorium on executions, pending abolition of the death penalty.

BACKGROUND ON THE ‘VOLUNTEER’ PHENOMENON

The fact that 92 per cent of Nevada’s post-1976 executions have been “consensual” puts it in a club with a surprising number of members. Almost three quarters of the 42 prisoners put to death in Nevada and 10 other US states since 1976 had given up their appeals – all seven in Connecticut, New Mexico, Oregon and Pennsylvania, and 24 of the 35 prisoners executed in Washington State, South Dakota, Utah, Montana, Idaho, Kentucky and Nevada.

¹⁶ *Baze v. Rees*, 16 April 2008, Justice Stevens concurring in judgment.

¹⁷ *Glossip v. Gross*, Justice Breyer joined by Justice Ginsburg, dissenting.

¹⁸ Performance Audit. Fiscal costs of the death penalty 2014. Legislative Auditor, Carson City, Nevada.

¹⁹ Albania, Argentina, Benin, Bolivia, Burundi, Congo (Republic of), Cook Islands, Fiji, Gabon, Kyrgyzstan, Latvia, Madagascar, Mongolia, Nauru, Philippines, Rwanda, Suriname, Togo, and Uzbekistan abolished the death penalty for all crimes. Guinea and Kazakhstan abolished the death penalty for ordinary crimes.

²⁰ See Death Penalty Information Center, <https://deathpenaltyinfo.org/death-sentences-capita-state>

All in all, one in 10 of the prisoners put to death in the USA since 1976 had waived their appeals. Outside of eight of the main executing states – Texas, Virginia, Oklahoma, Florida, Missouri, Georgia, Alabama and Ohio (responsible for 78 per cent of the USA's post-1976 executions) – the ratio rises to one in five for the remaining 27 jurisdictions that have executed since 1976.²¹

Four of the first five executions in the USA after 1976 were of “volunteers”. Nevada, and 14 other US states, and the federal government, resumed executions after 1976 with the execution of a prisoner who had waived his appeals. Some of these states have had second thoughts since then. Two of the states that have executed only “volunteers” – Connecticut and New Mexico – have abolished the death penalty in the past decade. Oregon, Pennsylvania and Washington State – with nine executions between them, eight of which were of “volunteers” – currently have moratoriums on executions in place because of concerns about the capital justice system.

Eighty-five per cent of “volunteers” executed in the USA since 1976 were white (143 men and three women).²² This compares to 56 per cent of executions overall being of white prisoners. Thirty-four per cent of prisoners executed in the USA since 1976 were African American, while only five per cent of “volunteers” were black. Also of note is that the “volunteer” phenomenon has slowed in the past decade to around four per cent of executions, dropping from around 11 per cent in the 15 years before that.

As a leading death penalty lawyer wrote over a decade ago, “sweeping generalizations are misleading” when it comes to the question of what motivates a person to waive their appeals.²³ Any number of factors or combination of them may contribute to a prisoner's decision not to pursue appeals against his or her death sentence, including mental disorder, physical illness, remorse, bravado, religious belief, a quest for notoriety, the severity of conditions of confinement, including prolonged isolation and lack of physical contact visits, the bleak alternative of life imprisonment without the possibility of parole, pessimism about appeal prospects, or being worn down by the cycle of hope and despair that is an integral part of life on death row.²⁴

“[N]early all death penalty States keep death row inmates in isolation for 22 or more hours per

²¹ Many other prisoners have given up their appeals, only to resume them. In May 2000 in Pennsylvania, a state that has only executed “volunteers” since 1976, the execution of Joseph Miller was stayed 48 hours before it was due to be carried out after he allowed a federal appeal to be filed on his behalf. He had earlier waived his appeals. He attempted suicide by overdose on anti-depressant medication. In December 2002, his death sentence was commuted to life imprisonment in the wake of the US Supreme Court's decision earlier that year prohibiting the execution of people with intellectual disability.

²² In Nevada, eight of the 11 “volunteers” executed since 1977 were white (78 per cent), while one was a Filipino, one was African American and one Latino. All were male.

²³ Blume, John H., *Killing the Willing: 'Volunteers,' Suicide and Competency* (2004). Cornell Law Faculty Publications. Paper 16. http://scholarship.law.cornell.edu/lrsp_papers/16

²⁴ See for example *Rumbaugh v. McCotter*, US Supreme Court (1985), Justices Marshall and Brennan dissenting from denial of certiorari (“The courts below relied on a determination that Rumbaugh ‘logically’ chose death because he had become a victim of mental illness, suffering from ‘frequent bouts of paranoia,’ ‘auditory hallucinations,’ and severe ‘depression.’ Rumbaugh seeks death because he knows himself to be mentally ill and has lost hope of obtaining treatment. If not for his illness and his pessimism regarding access to treatment, he would probably continue to challenge his death sentence; but faced with his vision of life without treatment for severe mental illness, Rumbaugh chooses to die. The choice the courts below describe is a choice of a desperate man seeking to use the State's machinery of death as a tool of suicide.”). Charles Rumbaugh was executed in Texas in September 1985 after waiving his appeals. See also: *Butko v. Budge*, US Court of Appeals for the Ninth Circuit, 30 July 2004 (“we think it very probable, given the circumstances that perforce accompany a sentence of death, that in every case where a death-row inmate elects to abandon further legal proceedings, there will be a possibility that the decision is the product of a mental disease, disorder, or defect.”)

day”, noted US Supreme Court Justice Stephen Breyer in 2015, adding that “it is well documented that such prolonged solitary confinement produces numerous deleterious harms... The dehumanizing effect of solitary confinement is aggravated by uncertainty as to whether a death sentence will in fact be carried out.”²⁵ Death row conditions in the USA have become increasingly harsh over the years, with inmates spending more time in isolation. As a study of “volunteers” pointed out over a decade ago, “in virtually every state, death row inmates are ‘locked down’ in their cell for most of the day, have little or no access to educational or other prison programs and experience great isolation and loss of relationships”.²⁶ Such relationships include those with fellow inmates who may leave death row through a successful appeal or because they die, including at the hands of the state executioners.

“Given the negative effects of confinement and uncertainty”, continued Justice Breyer, “it is not surprising that many inmates volunteer to be executed, abandoning further appeals”. Justice Breyer’s 2015 dissent, in which he was joined by Justice Ruth Bader Ginsburg, argued that the time had come for the Court to consider the constitutionality of the death penalty *per se*, including because of the evidence of error and arbitrariness in its application.

While the cruelties of the death penalty may indeed be a contributor to the phenomenon of “volunteering”, the phenomenon itself may be yet another contributor to arbitrariness in the application of the death penalty in the USA. For, given the rate of reversible error found in capital cases, if the nearly 150 “volunteers” executed since 1977 had pursued their appeals, there is a significant possibility that a number of them would have had their death sentences overturned to prison terms. Instead, in such cases, “the State’s mechanism of execution [is] triggered by an entirely arbitrary factor: the defendant’s decision to acquiesce in his own death.”²⁷ Only in New Jersey, however, were prisoners prevented from waiving their post-conviction (as opposed to initial direct) appeals. The New Jersey Supreme Court said, in the case of a death row inmate who was trying to drop his appeals:

“It is difficult to explain why a murderer who has admitted his guilt and had his conviction and sentence of death affirmed on direct appeal should not be granted his request to be executed immediately. For some, no explanation may be necessary. For others, no explanation will suffice. For those who wish to understand, we explain that under our form of government it is not the inmate on death row or the accused who determines when and whether the State shall execute a prisoner; rather, the law itself makes that determination. The public has an interest in the reliability and integrity of a death sentencing decision that transcends the preferences of individual defendants.”²⁸

Before it executed anyone, New Jersey abolished the death penalty in 2008. The death penalty has been abolished in another five states since then: New Mexico (2009), Illinois (2011), Connecticut (2012), Maryland (2013) and Delaware (2016). Ten of the 35 executions

²⁵ *Glossip v. Gross*, Justice Breyer dissenting. See also *Davis v. Ayala*, 18 June 2015, Justice Kennedy concurring (“So in many cases, it is as if a judge had no choice but to say: ‘In imposing this capital sentence, the court is well aware that during the many years you will serve in prison before your execution, the penal system has a solitary confinement regime that will bring you to the edge of madness, perhaps to madness itself.’ Even if the law were to condone or permit this added punishment, so stark an outcome ought not to be the result of society’s simple unawareness or indifference. Too often, discussion in the legal academy and among practitioners and policymakers concentrates simply on the adjudication of guilt or innocence. Too easily ignored is the question of what comes next. Prisoners are shut away – out of sight, out of mind.”)

²⁶ *Killing the willing: ‘volunteers’, suicide and competency*, by John H. Blume, Cornell Law School, Legal Studies Research Paper Series, No. 04-022, September 2004.

²⁷ *Lenhard v. Wolff*, 444 U.S. 807 (1979), Justice Marshall dissenting.

²⁸ *State v. Martini*, New Jersey Supreme Court, 28 June 1996.

conducted in those five states before abolition were of “volunteers”.

A condemned inmate’s decision to waive his or her appeals may simply stem from a desire to gain a semblance of control over a situation in which they are otherwise powerless. Over a century ago, the US Supreme Court recognized that “when a prisoner sentenced by a court to death is confined in the penitentiary awaiting the execution of the sentence, one of the most horrible feelings to which he can be subjected during that time is the uncertainty during the whole of it..., as to the precise time when his execution shall take place.”²⁹ One way for a prisoner to end this cruel uncertainty is to ask to be executed by the state.

TIME FOR A MORATORIUM

At a hearing on an abolitionist bill in front of the Judiciary Committee of the Nevada Assembly in late March 2017, the current District Attorney of Clark County, the jurisdiction responsible for most death sentences in Nevada, asserted:

“The citizens of this state strongly favour the death penalty... I work for those people... When almost 70 per cent of Nevadans still support the death penalty, I have an obligation to seek the death penalty in appropriate cases... That is what people want. They do not want to abolish the death penalty.”³⁰

While the death penalty is frequently defended by officialdom in terms of giving the public

The death penalty has no place in the twenty-first century... The world is now moving in the right direction. Ever more countries are abolishing the death penalty and establishing moratoria on its use

UN Secretary General António Guterres, 10 October 2017

what they are said to want, the members of the public tasked with direct involvement in capital justice – as jurors – do not accurately represent the community because “no one can serve on a capital jury who is not willing to impose the death penalty”.³¹ And, as four Supreme Court Justices noted in 2007, “A cross section of virtually every community in the country includes citizens who firmly believe the death penalty is unjust”.³² A public defender took up this issue at the March 2017 hearing before the

Judiciary Committee of the Nevada Assembly:

“This is part of the unfairness of this whole system. If you are morally opposed to the death penalty, you are removed from the jury venire [pool]; you cannot sit on a death penalty jury. What that means is 20 to 30 percent of our panels are flat-out removed because they say they have an objection to the death penalty, so you do not get a cross section.”³³

It has long been shown (and recognized by the US Supreme Court) that “death qualification” of capital jurors in the USA “skews juries towards guilt and death”.³⁴ In 2008, Justice Stevens

²⁹ *In re Medley*, 134 U.S. 160 (1890).

³⁰ Steven Wolfson, District Attorney, Clark County District Attorney’s Office.

³¹ *Glossip v. Gross*, Justice Breyer dissenting.

³² *Uttecht v. Brown*, 2007, Justice Stevens dissenting, joined by Justices Souter, Ginsburg and Breyer.

³³ Scott Coffee, Clark County Public Defender’s Office, for Nevada Attorneys for Criminal Justice.

³⁴ *Glossip v. Gross*, Justice Breyer dissenting (citing studies).

argued that “prosecutorial concern that death verdicts would rarely be returned by 12 randomly selected jurors should be viewed as objective evidence supporting the conclusion that the penalty is excessive.”³⁵ Reason enough under the US Constitution, in other words, to abolish the death penalty.

But there are so many reasons to end this policy. The death penalty is the ultimate cruel, inhuman and degrading punishment. It runs the risk of irrevocable error.³⁶ It is costly, not just for the public purse, but also in social and psychological terms. It has not been shown to have a special deterrent effect.³⁷ It tends to be applied discriminatorily on grounds of race and class.³⁸ It denies the possibility of rehabilitation.³⁹ It can prolong the suffering of the murder victim’s family, and extend that suffering to the loved ones of the condemned prisoner.⁴⁰ It diverts resources that could be better used to work against violent crime and assist those affected by it.⁴¹

Nevada should call a halt to executions before they resume. The state legislature and executive branch should work together to abolish the death penalty once and for all.

Take action for a moratorium on executions and abolition of the death penalty in Nevada at <https://www.amnesty.org/en/documents/amr51/7400/2017/en/>

³⁵ *Baze v. Rees*, Justice Stevens concurring in judgment.

³⁶ Roberto Miranda was released in 1996 after his conviction was overturned on appeal and the Clark County prosecution declined to retry him. He had maintained his innocence throughout his 14 years on death row in Nevada. The risk of irrevocable error is also illustrated in the case of Ha'im Al Matin Sharif (aka Charles Robins) who was released from prison in June 2017 after more than 28 years on Nevada's death row. He had been sentenced to death in 1988 for the murder of an 11-month-old girl. A post-conviction investigation produced evidence that the baby had not been murdered, but had suffered scurvy. In 2016, the Nevada Supreme Court ordered a hearing on the innocence claim and on claims of police and prosecutorial misconduct. Prosecutors offered to amend the judgment to second-degree murder with a sentence of time served, which resulted in Ha'im Sharif's immediate release.

³⁷ *Baze v. Rees* (2008), Justice Stevens concurring in judgment (“Despite 30 years of empirical research in the area, there remains no reliable statistical evidence that capital punishment in fact deters potential offenders”). In *Glossip* in 2015, Justice Breyer noted that “the National Research Council... reviewed 30 years of empirical evidence and concluded that it was insufficient to establish a deterrent effect and thus should ‘not be used to inform’ discussion about the deterrent value of the death penalty.”

³⁸ See, for example, *State v. Santiago* (2015), in which the Connecticut Supreme Court found the death penalty unconstitutional, “the selection of which offenders live and which offenders die appears to be inescapably tainted by caprice and bias... [T]he death penalty must be equally available for similarly culpable offenders if a capital sentencing scheme is to fulfil a valid retributive purpose. To the extent that the ultimate punishment is imposed on an offender on the basis of impermissible considerations such as his, or his victim’s, race, ethnicity, or socio-economic status, rather than the severity of his crime, his execution does not restore but, rather, tarnishes the moral order”. The Court noted that Connecticut had managed to execute just one prisoner, a “volunteer”, since 1977.

³⁹ Surely, “justice is not better served by terminating the life of the perpetrator rather than confining him and preserving the possibility that he and the system will find ways to allow him to understand the enormity of his offense.” *Kennedy v. Louisiana*, US Supreme Court (2008).

⁴⁰ “In study after study, in state after state, we see the same distressing pattern. The death penalty does not deter crime. It does not even save us money. In fact, the death penalty actually costs states more than a life sentence does, because of an endless appeals process that tears at the hearts of victims’ surviving family members.” Why the death penalty needs to go, by Martin O’Malley, 6 November 2015, <http://www.cnn.com/2015/11/06/opinions/omalley-capital-punishment/index.html>. As Governor of Maryland, Martin O’Malley signed abolitionist legislation into law in 2013.

⁴¹ “I find it hard to believe that we spend 93 million dollars on sentencing people to death and we spend \$1,000 each on victims for counselling”. Nevada Assemblywoman Sandra Jauregui, Meeting of the Assembly Committee on the Judiciary, Nevada Assembly, 29 March 2017.

TABLE 1: 'CONSENSUAL' AND 'NON-CONSENSUAL' EXECUTIONS, USA, JANUARY 1977 – NOVEMBER 2017

Jurisdiction	Total executions	'Volunteers'	% 'consensual'	Notes
* Connecticut	1	1	100%	Now abolitionist
* New Mexico	1	1	100%	Now abolitionist
* Oregon	2	2	100%	Moratorium on executions
* Pennsylvania	3	3	100%	Moratorium on executions
* Nevada	12	11	92%	First execution since 2006 set for 2017
* Washington	4	3	75%	Moratorium on executions
*South Dakota	3	2	66%	Last execution 2012
Kentucky	3	2	66%	Last execution 2008
* Utah	7	4	57%	Last execution 2010
Montana	3	1	33%	Last execution 2006
* Idaho	3	1	33%	Last execution 2012
* US Government	3	1	33%	Last execution 2003
* Delaware	16	5	31%	Now abolitionist
* Indiana	20	5	25%	Last execution 2009
South Carolina	43	9	21%	Last execution 2011
* Maryland	5	1	20%	Now abolitionist
* Illinois	12	2	17%	Now abolitionist
Tennessee	6	1	17%	Last execution 2009
California	13	2	15%	Last execution 2006
Arkansas	31	4	13%	Last execution 2017
* Ohio	55	7	13%	Last execution 2017
Alabama	61	7	11%	Last execution 2017
Arizona	37	4	11%	Last execution 2014
Florida	94	10	11%	Last execution 2017
North Carolina	43	4	9%	Last execution 2006
Oklahoma	112	7	6%	Last execution 2015
* Virginia	113	9	6%	Last execution 2017
Texas	544	30	5%	Last execution 2017
Mississippi	21	1	5%	Last execution 2012
Missouri	88	4	5%	Last execution 2017
Louisiana	28	1	4%	Last execution 2010
Georgia	70	1	1%	Last execution 2017
Colorado	1	0	0%	Moratorium on executions
Nebraska	3	0	0%	Last execution 1997
Wyoming	1	0	0%	Last execution 1992
Kansas	0	0	-	Last execution 1965
New Hampshire	0	0	-	Last execution 1939
New Jersey	0	0	-	Now abolitionist
New York	0	0	-	Now abolitionist
US Military	0	0	-	Last execution 1961
Total	1463	146	10%	-

* = Jurisdictions which resumed judicial killing after 1976 with the execution of a "volunteer"

TABLE 2: PERCENTAGE OF “VOLUNTEERS” AMONG EXECUTIONS SINCE 1983

5-year Period	No of executions	Percentage volunteers
1983 – 1987	87	8%
1988 – 1992	95	11%
1993 – 1997	244	13%
1998 – 2002	388	11%
2003 – 2007	279	11.5%
2008 – 2012	221	4.5%
2013 – 2017	141	4%

TABLE 3: EXECUTIONS IN NEVADA SINCE 1976

Name	Execution	Prosecuting county	Notes
Jesse Bishop	1979	Clark	Pled guilty, represented himself and presented no mitigation evidence. He then waived his appeals. The refusal of the US Supreme Court to stop the execution led two Justices to dissent that “today the Court grants a man's wish to be put to death even though the sentencing hearing accorded to him failed to comply with the procedural requirements imposed by the prior decisions of this Court... Bishop has, in effect, sought the State's assistance in committing suicide. Society is not powerless, however, to resist a defendant's effort to prompt the exercise of capital force.”
Carroll Cole	1985	Clark	Pled guilty to first degree murder, did not object to any evidence presented against him, did not allow any mitigation evidence, and asked to be sentenced to death
William Thompson	1989	Washoe	Waived his appeals
Sean Flanagan	1989	Clark	Pled guilty, refused to allow mitigating evidence to be presented
Thomas Baal	1990	Clark	Pled guilty. " Four US Supreme Court Justices dissented from the decision to allow the execution go forward, pointing to what the US Court of Appeals for the Ninth Circuit had said, namely that “the record also reveals that Baal has been hospitalized for behavioural and mental problems on numerous occasions since he was fourteen years old, has attempted suicide on at least four occasions since 1987, and has been diagnosed in the past as a latent schizophrenic, a borderline personality, depressed, and as suffering from organic brain syndrome.”
Richard Moran	1996	Clark	Three months after the crime, at which he had attempted to kill himself also, pled guilty, represented himself, presented no witnesses, no defence, no mitigation, heavily drugged, dropped his appeals but changed his mind (so recorded as a “non-consensual” execution).
Roderick Abeyta	1998	Clark	His last words, according to the state Prison Director were "expressions of true remorse" and hope that his death "would help in the healing process for the family." The execution was delayed several minutes because of difficulty locating a "good vein" for a backup needle. The Prison Director said that the prisoner “tried to assist in what vein might work. The inmate suggested the second needle go in his left arm also, and he flexed his hand to help in the process.”

Alvaro Calambro	1999	Washoe	<p>Pled guilty and waived his appeals. The Chief Judge of the Nevada Supreme Court dissented against the decision to allow the execution to go forward: "My position is a rather simple one, namely this: Because the Nevada Constitution and laws do not permit the execution of an insane person, the question of whether Calambro (who is concededly 'mentally ill') is insane should be carefully examined by the court in habeas corpus proceedings. . . . It is difficult to avoid the conclusion that the court's inexplicable willingness to order the death of a mentally ill person without adjudicating his legal capacity results from the court's having succumbed to public clamor and media pressure. There is little else that would explain what is happening in this case. . . . In the case before us we have a condemned man who is mentally retarded, psychotic and not fluent in the English language. . . . It is very hard to deny that Calambro is a man desperately in need of some help in our judicial system and that he is plainly incapable of acting on his own behalf. . . . [A] brief overview of what I see as being the uncontradicted evidence presented to the trial court: 1. Calambro is "suffering from a mental disorder, probably schizophrenia." 2. Calambro's mental disorder "precludes his understanding the nature of what is going on." 3. Calambro's mental disorder is "compounded by his low intellectual functioning." (71 I.Q.) 4. Calambro "refused to talk because he had a delusion that talking would allow the psychologist to control his thoughts." 5. Calambro displayed a "psychotic thought process." 6. Calambro's father is schizophrenic, which "increased Calambro's chances of being schizophrenic tenfold." 7. Calambro has been on Haldol ("fifty times more potent than Mellaril," another anti-psychotic drug), a very powerful anti-psychotic drug, in a "dose that's usually given to what we call floridly psychotic individuals, people who are actively difficult to manage, because of a thought disorder that's out of control."</p>
Sebastien Bridges	2001	Clark	<p>Represented himself. In closing argument, prosecutor David T. Wall reviewed the procedure for determining the penalty. Bridges then spoke: "If what [the prosecutors say] is true, there's only one equation, and I don't think I have to even tell you what that is. I know I didn't murder Hunter Blatchford. You've made a determination; it took you twenty-five minutes to determine my innocence versus my guilt. If you could make that determination in twenty-five minutes based on lies, then it shouldn't even take your twenty-five minutes to come to a conclusion. There's only one answer to the equation, and that is to execute me. Thank you." In rebuttal, prosecutor Gary L. Guymon remarked that Bridges had on several occasions invited the jury to take his life.</p>
Lawrence Colwell	2004	Clark	<p>According to the Nevada Supreme Court in 2002, "After Colwell was arrested and arraigned, the State informed the district court it would not be seeking the death penalty. However, Colwell offered to plead guilty to all charges if the State changed its position and sought the death penalty. The State agreed and filed a notice of intent to seek death. Colwell also sought to represent himself. After canvassing Colwell on the matter, the court allowed him to represent himself but appointed standby counsel. Colwell pleaded guilty to murder in the first degree, burglary, and robbery of a victim 65 years of age or older. He requested that the penalty hearing be conducted as soon as possible. During a two-day penalty hearing before a three-judge panel, Colwell</p>

			did not conduct meaningful cross-examination of the State's witnesses and even attempted to elicit damaging evidence not presented by the prosecution. He made no objections to the State's evidence and refused to introduce any mitigating evidence. During closing argument, the State argued the existence of seven aggravating factors and the nonexistence of any mitigating evidence. Colwell asked that he be put to death. Before returning a sentence, the panel gave Colwell another chance to introduce mitigating evidence; he declined. The panel found four aggravating circumstances, found no mitigating circumstances, and sentenced Colwell to death."
Terry Dennis	2004	Washoe	Terry Dennis entered a guilty plea. At the sentencing hearing, evidence was presented that he had a mental disability - including bipolar disorder and post-traumatic stress disorder - that he had a long history of suicide attempts, and that he suffered abuse at the hands of his family. A three-judge panel sentenced him to death. On death row, Terry Dennis moved to waive his appeals. A psychiatrist who assessed him said that "the defendant's desire to both seek the death penalty and to refuse appeals in his behalf are directly a consequence of the suicidal thinking and his chronic depressed state, as well as his self-hatred. Clearly, an alternative to consider is whether or not the defendant's view of himself is simply a realistic incorporation of society's view of his "monstrous" behavior. On the other hand, it is conceivable and, in my mind, likely that both the defendant's offense and his current court strategy springs from his psychiatric disorder and his substance abuse disorder, that he wishes to die and he wishes to be certain of a reasonably humane death. Consequently, the death penalty, as provided by the state, is quite congruent with both his intent and his psychiatric disorder."
Daryl Mack	2006	Clark	Daryl Mack's mother attempted to stop the execution, filing a petition claiming her son held "a delusional belief in his innocence", and stressing his "history of mental illness", his forcible medication, and his desire to commit suicide via execution. One court-appointed psychiatrist concluded that Daryl Mack was "suffering from a psychotic disorder which is currently incompletely treated and is influencing his decision to relinquish further appeals." Another concluded that Mack's "psychotic disorder is so well controlled that there is no evidence that he is out of touch with reality" or "is unable to advise his attorney as to his preference in pursuing further appeals". The judge ordered another evaluation, and a third psychiatrist concluded that the prisoner was competent. The judge agreed, and added "whether Mack would like to commit suicide is not relevant, as long as he is competent. He has been duly convicted of first-degree murder and sentenced to death. His execution will be on that basis, which is lawful and dependent on neither his desire nor his reluctance to die."