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USA: Supreme Court orders evidentiary hearing into Troy Davis's claim of innocence

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On 17 August 2009, the US Supreme Court ordered an evidentiary hearing in the case of Troy Davis who has been on death row in Georgia for 18 years for the murder of a police officer in August 1989 he maintains he did not commit. Troy Davis has faced three execution dates in the past two years as the State of Georgia has continued to seek to kill him despite the fact that most of the witnesses it relied upon to convict Troy Davis in August 1991 have since recanted their testimony.[1]

Amnesty International welcomes the Supreme Court's decision. The organization, which opposes the death penalty unconditionally in all cases, has campaigned for the past two and a half years against the execution of Troy Davis. His is one in a long line of cases in the USA which should give even ardent supporters of the death penalty pause for thought about this cruel, degrading and irrevocable punishment.

US Supreme Court Justice Antonin Scalia was not persuaded that there should be any such pause in the state's bid to take Troy Davis to its death chamber. Dissenting from the majority's decision to transfer Troy Davis's habeas corpus petition to the US District Court for the Southern District of Georgia for an evidentiary hearing, Justice Scalia characterized the transfer as a "fool's errand" and Troy Davis's claim as a "sure loser". Transferring the petition to the District Court, Justice Scalia wrote, "is a confusing exercise that can serve no purpose except to delay the State's execution of its lawful criminal judgment".

Justice Scalia's dissent prompted a separate opinion from the most senior Justice on the Court, Justice John Paul Stevens. Justice Scalia's dissent, he wrote, "is wrong", including because "he assumes as a matter of fact that petitioner Davis is guilty of the murder of Officer [Mark Allen] MacPhail". Concurring in the decision to transfer the case to District Court, Justice Stevens wrote:

> "The substantial risk of putting an innocent man to death clearly provides an adequate justification for holding an evidentiary hearing".

Justice Stevens noted that "seven of the State's key witnesses have recanted their trial testimony; several individuals have implicated the State's principal witness as the shooter; and no court, state or federal, has ever conducted a hearing to assess the reliability of the score of post-conviction affidavits that, if reliable, would satisfy the threshold showing for a truly persuasive demonstration of actual innocence".

This case, Justice Stevens said, was "sufficiently exceptional" to warrant the Supreme Court taking this step, even with the stringent rules imposed by the Antiterrorism and Effective Death Penalty Act of 1996:

> "Without briefing or argument, [Justice Scalia] concludes that Congress chose to foreclose relief and that the Constitution permits this. But imagine a petitioner in Davis's situation who possesses new evidence conclusively and definitively proving, beyond any scintilla of doubt, that he is an innocent man. The dissent's reasoning would allow such a petitioner to be put to death nonetheless. The Court correctly refuses to endorse such reasoning".

Under the Supreme Court's order, the District Court judge "should receive testimony and make findings of fact as to whether evidence that could not have been obtained at the time of the trial clearly establishes [Troy Davis's] innocence".

[1] For more details on the Troy Davis case, see USA: 'Unconscionable and unconstitutional': Troy Davis facing fourth execution date in two years, May 2009, http://www.amnesty.org/en/library/info/AMR51/069/2009/en.

Justice Stevens is the most senior Justice on the US Supreme Court. He took his seat on the Court just over a year before executions resumed in the USA in January 1977. In 2008, he revealed that his three decades on the Court had led him to believe that the death penalty represents "the pointless and needless extinction of life with only marginal contributions to any discernible social or public purposes". A penalty "with such negligible returns to the State", he wrote, is "patently excessive and cruel and unusual punishment". Among other things, Justice Stevens pointed to the "real risk of error" in capital cases, and wrote that "the irrevocable nature of the consequences is of decisive importance to me".[2]

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[2] *Baze v. Rees* (2008), Justice Stevens, concurring in judgment.