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Arizona Case Challenges the Constitutionality of the Death Penalty Before the U.S. Supreme Court

State fails to narrow the class of people eligible for the death penalty and a national consensus has emerged against the punishment in all cases

(Washington, D.C.) Arizona's death penalty violates the Eighth Amendment because it allows capital punishment to be applied arbitrarily and, with 31 states abandoning the punishment, a national consensus has emerged against it, according to a petition for certiorari filed with the U.S. Supreme Court today. Attorneys for Abel Daniel Hidalgo, who is on death row in Arizona, are asking the high court to accept Mr. Hidalgo's case and strike down Arizona's death penalty statute as unconstitutional or, in the alternative, abolish capital punishment nationwide.

Mr. Hidalgo's petition can be viewed at <http://www.phillipsblack.org/abel-hidalgo>.

The petition comes on the heels of Justice Breyer's repeated invitations to the Court to reconsider the constitutionality of the death penalty. Mr. Hidalgo's petition states:

With each passing month, the Court receives more last-minute pleas for relief from individuals sentenced to die by a punishment whose constitutionality is in grave doubt. There is no point in waiting any longer for 'more evidence.' Caprice and mistake have proven ineradicable in the administration of death. The Eighth Amendment tolerates neither. (Pages 4-5.)

Mr. Hidalgo's lead attorney is Neal Katyal, a former Acting Solicitor General and a partner at Hogan Lovells, who has argued 34 cases before the U.S. Supreme Court.

Arizona's capital sentencing scheme includes so many aggravating circumstances that virtually every person convicted of first-degree murder is eligible for death. This system violates the Eighth Amendment's requirement that the class of people eligible for capital punishment be narrowed to the worst offenders. In the lower courts, Mr. Hidalgo presented evidence showing that one or more aggravating circumstances were present in 856 of 866 murders in Maricopa County over an 11-year period. In other words, 99 percent – virtually all – first-degree murders were eligible for the death penalty. Thus, Arizona has failed to meet its constitutionally required duty to identify only those people "most deserving" of the death penalty. (Petition at p. 7.)

The arbitrary nature of Arizona's death penalty scheme has opened the door to disturbing racial disparities. Studies in the state show that minorities accused of murdering whites are more than three times as likely to be sentenced to death as minorities accused of murdering other minorities. In addition, geography and

county resources – rather than the characteristics of the offender or the crime – play an outsized role in Arizona’s arbitrary application of the death penalty. Maricopa County, where Mr. Hidalgo was tired, imposed the death penalty at a rate 2.3 times higher than the rest of Arizona between 2010 and 2015. The increased use of the death penalty was driven, in part, by an overzealous County Attorney, Andrew Thomas, who was disbarred for abusing his power. (Petition at pp. 19, 20.)

Mr. Hidalgo’s petition further states that the death penalty, in and of itself, violates the Eighth Amendment in light of contemporary standards of decency. A widespread consensus has emerged that the death penalty offends human dignity and is not an acceptable form of punishment under any circumstances. Thirty-one states have abandoned capital punishment, including 19 states that have formally abolished the punishment, four states that have suspended the death penalty, and eight states that have not carried out an execution in the past 10 years. (Petition at pp. 22, 23.)

New death sentences and executions have steadily declined since the 1990s, according to the Death Penalty Information Center. In 1996, 315 people were sentenced to death. Last year, 31 people received death sentences. In the last five years, the numbers of death sentences and executions have dropped by more than half. A significant majority of executions – more than 85 percent over the last five years – are concentrated in just five states. Two percent of counties make up the majority of the nation’s death penalty statistics. (Petition at pp. 23, 24.)

As Justice Breyer noted in his dissent in *Glossip v. Gross*, states have been unable to administer the death penalty without taking the lives of innocent people. Since 1973, 159 people have been exonerated and freed from death row with evidence of their innocence. At least four percent of people sentenced to death in the U.S. are innocent, according to a study published in the National Academy of Sciences. These figures strongly suggest that some innocent people have been executed and some will be in the future, if the death penalty is not abolished. (Petition at p. 30.)

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