

# URGENT ACTION

## EXECUTION SET IN CIRCUMSTANTIAL ALABAMA CASE

**Robert Melson is scheduled to be executed in Alabama on 8 June. He was convicted on circumstantial evidence and sentenced to death in May 1996 for three murders during a robbery in 1994. He has consistently maintained that he was not involved in the crime.**

Two males, faces covered, robbed a Popeye's restaurant in Gadsden, Alabama shortly before midnight on 15 April 1994. Three employees, Nathaniel Baker, 17, Darrell Collier, 23, and Tamika Collins, 18, were shot dead. A fourth, 17-year-old Bryant Archer, was also shot but survived. He identified one of the assailants as Cuhuatemoc Peraita, who had quit his job at the restaurant a week earlier, but could only describe the other as a "black man". Police stopped Robert Melson and Cuhuatemoc Peraita in the latter's car at about 1:20am on 16 April and arrested them.

Cuhuatemoc Peraita, a 17-year-old with mental disabilities, gave police a statement implicating Robert Melson. Robert Melson, 22, denied involvement. None of the fingerprints matched his. No blood or other forensic material was found on his clothing or his shoes. The prosecution relied upon expert testimony that a shoe imprint in a nearby ditch was similar to Robert Melson's left shoe. This imprint was taken from an unsecured area five rainy days after the crime, but the defence called no expert witness to challenge the state's case. In a 2016 report on forensic science in criminal cases, the President's Council of Advisors on Science and Technology found that "there are no appropriate black-box studies to support the foundational validity of footwear analysis to associate shoeprints with particular shoes based on specific identifying marks. Such associations are unsupported by any meaningful evidence or estimates of their accuracy and thus are not scientifically valid."

The murder weapon belonged to Cuhuatemoc Peraita, whose brother had disposed of it after the crime and led police to it. Cuhuatemoc Peraita was sentenced to life imprisonment in March 1996, the month before Robert Nelson was brought to trial. In 2001 Cuhuatemoc Peraita was sentenced to death for killing a fellow prisoner. He has since said that Robert Melson was not involved in the 1994 murders. In 2001, he said that he had robbed the restaurant with "someone else" and afterwards had picked Robert Melson up near Frankie's bar. He said that at that time, "I was high" and the police "scared me into say[ing] Robert helped me rob Popeyes. He did not!" In 2002, he said he had not testified at Robert Melson's trial because the prosecutor "wanted me to say Robert accompanied me to Popeye's! He was not with me that night at Popeye's. That is the truth!"

At Robert Melson's trial, the prosecution portrayed letters he had written to a friend as an attempt to establish a false alibi that he was with her at "Frankie's" bar at the time of the crime. The prosecutor elicited testimony from this witness that she had not seen him at all in the two months before the crime. This witness now says that she in fact did see Robert Melson at Frankie's bar between 11 and 11.30pm on 15 April 1994. According to the clemency petition, several other prosecution witnesses have contradicted their trial testimony or admitted that their testimony was false. One of the jurors from the trial has signed an affidavit saying that "based on this new evidence, along with the evidence presented at trial, I would not have found Mr Melson guilty beyond a reasonable doubt".

### **Please write immediately in English or your own language:**

- Calling on the governor to stop the execution of Robert Melson and to commute his death sentence;
- Noting the circumstantial nature of the case, and that no appeal court has considered the merits of his post-conviction appeals as a result of missed filing deadlines (noting what the governor said in the Arthur case).

### **PLEASE SEND APPEALS BEFORE 8 JUNE 2017:**

Governor Kay Ivey

Alabama State Capitol, 600 Dexter Avenue, Montgomery, Alabama 36130, USA

Fax: +1 334 353 0004

Email: <http://governor.alabama.gov/contact> (NB this requires a US based address, please use AI USA address: 5 Pennsylvania

Plaza, 16th Floor, New York, NY 10001, Phone: 212 807 8400)

**Salutation: Dear Governor**

**Also send copies to diplomatic representatives accredited to your country.** MR. LEWIS LUKENS, Chargé d'Affaires ad interim, American Embassy, 24 Grosvenor Square, London W1A 6AE, tel: 020 7499 9000. Salutation: Dear Mr. Lukens **Please check with your section office if sending appeals after the above date.**

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### ADDITIONAL INFORMATION

No court has considered the merits of Robert Melson's post-conviction appeals because his lawyers missed filing deadlines. When Governor Kay Ivey allowed the execution of Thomas Arthur to go forward on 25 May 2017, she said that "his case was reviewed thoroughly at every level of both our state and federal courts, and the appellate process has ensured that the rights of the accused were protected". She cannot make the same claim here.

Robert Melson's case has fallen foul of the Antiterrorism and Effective Death Penalty Act (AEDPA) of 1996, which imposes severe time limits on prisoners raising constitutional claims, restricts the federal courts' ability to review state court decisions, places limits on federal courts granting and conducting evidentiary hearings, and prohibits "successive" appeals except in very narrow circumstances. Under the AEDPA, state prisoners must file their federal habeas corpus petitions within one year of their convictions and sentences becoming final, that is when affirmed on direct (mandatory) state appeal. The clock will be stopped for the time during which a state post-conviction appeal (i.e., other than direct review) has been properly filed and is pending.

Robert Melson's direct appeal ended on 5 March 2001, when the US Supreme Court declined to take his case. This meant that his state post-conviction petition had to be filed by 6 March 2002 to stop the one-year clock ticking on his federal petition filing deadline. Because Alabama does not provide lawyers to indigent capital defendants in state post-conviction proceedings, Robert Melson was unrepresented when his direct appeal was ended. Some eight months later, he was advised that a volunteer lawyer from Colorado had been found to be his state post-conviction counsel. She visited him in December 2001, and assured him that although she was not licensed to practice law in Alabama, she would obtain the necessary status to represent him. Robert Melson did not hear from her again, and wrote to her in February 2002 to say that he was losing sleep because he did not know whether the AEDPA deadline had passed. On 4 March 2002, the lawyer filed a post-conviction petition in state court. However, she had not obtained the necessary status to do so in Alabama and had failed to "verify" the petition as required under state law. The court dismissed the petition as improperly filed. The lawyer filed an amended petition with the requisite verification on 25 March 2002, that is, 19 days after the AEDPA deadline had passed.

On 17 October 2002, the state court denied relief, finding that the amended petition had failed to raise any material issue of fact or law, or to state any claim on which relief could be granted. The lawyers did not properly file a notice of appeal from this decision and the appeal they filed was dismissed as untimely on 16 December 2002. On 11 February 2003, the state Attorney General's office sent Robert Melson a letter to inform him that the state would move to set an execution date unless a federal petition was filed, adding that in its view any such petition would be too late. Eventually, through different counsel, a federal petition was filed on 13 December 2004, more than two years after the AEDPA deadline had passed. In 2011, a US district court judge dismissed the petition as time-barred, finding no justification for the fact that the state petition had not been properly filed before the federal statute of limitations had run out. In 2013, the Eleventh Circuit Court of Appeals upheld the dismissal, saying that "Melson did not exercise reasonable diligence... to ensure that his federal habeas corpus petition was timely filed".

On 26 May 2017, Governor Ivey signed the Fair Justice Act, which aims to reduce the time between conviction and execution in capital cases in Alabama. The state attorney General thanked her for signing the bill into law "so that justice may be dispensed in Alabama as it should be, in a fair and swift manner". Critics of the Fair Justice Act, including the American Bar Association, argue that it will increase the likelihood of an innocent person being put to death. Among those wrongfully convicted in capital cases in Alabama is Ray Hinton, who was acquitted and released in 2015 after nearly 30 years on death row.

The 12 executions in the USA so far this year bring to 1,454 the total there since judicial killing resumed in 1977 under new capital statutes approved by the US Supreme Court in 1976. Alabama accounts for 59 of these executions, the last one of which occurred on 25 May 2017 (see <https://www.amnesty.org/en/documents/amr51/6373/2017/en/>). Amnesty International opposes the death penalty unconditionally. Today some 141 countries are abolitionist in law or practice.

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