

URGENT ACTION

EXECUTION SET FOR CRIME MAN CANNOT REMEMBER

Vernon Madison is scheduled to be executed in Alabama on 25 January. His lawyers maintain that he lacks a rational understanding of the reason for his execution as a result of severe strokes which have left him with dementia and unable to remember the crime.

Vernon Madison, a 67-year-old African American man, is on death row for the shooting murder of Julius Schulte, a white police officer, on 18 April 1985. He has been tried three times for the crime – in 1985, 1990, and 1994. His first two convictions were reversed on appeal. At his third trial, the jury again voted to convict. At the sentencing, the defence presented undisputed evidence that Vernon Madison had a mental disability marked by paranoid delusions, and had experienced this disability since he was a teenager. The jury recommended a life sentence by eight votes to four. However, the judge overrode the recommendation and sentenced Vernon Madison to death.

Three decades after the crime, Vernon Madison has diabetes and chronic hypertension, is blind, cannot walk independently, is incontinent as a result of brain damage, and has slurred speech. He has suffered a number of strokes, most recently in May 2015 and January 2016. After each of these last two strokes, he exhibited signs of memory loss, as well as confusion, disorientation and difficulty communicating. His condition continues to decline.

In 2016, a trial-level judge agreed to hold a hearing into Vernon Madison's competency for execution – that is, whether he has a rational understanding of the reality of and reason for his punishment. A neuropsychologist retained by the defence concluded that the Vernon Madison had experienced "significant cognitive decline" because of his strokes, was operating in the borderline range of intelligence and with an IQ of 72, and had a "very substantial deficit" in memory. He diagnosed Vernon Madison with vascular dementia characterized by retrograde amnesia, and found that the prisoner could not remember the murder of Julius Schulte and did not believe he had killed anyone. However, a court-appointed psychologist concluded that despite his cognitive deficits Vernon Madison was competent for execution, which the judge accepted.

In March 2017, the US Court of Appeals for the 11th Circuit found that the court-appointed expert's assessment was inadequate and that the judge's decision was "plainly unreasonable" and therefore not owed the deference required under the 1996 Antiterrorism and Effective Death Penalty Act (AEDPA) limiting federal judicial review of state court decisions. The two judges in the majority held that "on the record before us it is uncontroverted that, due to his mental condition, Mr Madison has no memory of his capital offense". They concluded that "due to his dementia and related memory impairments, Mr Madison lacks a rational understanding of the link between his crime and his execution" and therefore "is incompetent to be executed". The third judge agreed that Vernon Madison was incompetent. On 6 November, the US Supreme Court reversed the 11th Circuit's decision, on the grounds that under the AEDPA's "deferential standard", "Madison's claim to federal habeas relief must fail". The Court said that it was expressing "no view on the merits of the underlying question" of his competence for execution.

Please write immediately in English or your own language:

■ Calling on the governor to commute Vernon Madison's death sentence, pointing to the compelling evidence that he is incompetent for execution because he lacks a rational understanding of his punishment as a result of stroke-related dementia and amnesia, as three federal judges concluded.

PLEASE SEND APPEALS BEFORE 25 JANUARY 2018:

Governor Kay Ivey

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

Fax: +1 334 353 0004

Email: <http://governor.alabama.gov/contact> (please use the AI USA details: 5 Penn Plaza, 16th Floor, New York, NY 10001, Phone: 212 807-8400 Fax: 212 627-1451)

Salutation: **Dear Governor**

Also send copies to diplomatic representatives accredited to your country. HIS EXCELLENCY WOODY JOHNSON, Embassy of the United States of America, 24 Grosvenor Square W1A 6AE, tel: 020 7499 9000, *There is at present no general embassy email address Please check with your section office if sending appeals after the above date.*

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ADDITIONAL INFORMATION

Injustice riddles the state's efforts to get Vernon Madison to the execution chamber, a pursuit that has now gone on for nearly 33 years. In 1987, the Alabama Court of Criminal Appeals found that the prosecution had engaged in racially discriminatory jury selection tactics when it summarily dismissed all seven qualified African Americans from the jury pool at the 1985 trial. Then, at the 1990 retrial, the prosecution engaged in misconduct when it elicited expert testimony partly based on facts not in evidence before the court. Again the state Court of Criminal Appeals overturned the conviction. At the third trial, the elected judge overrode the jury's vote for a life sentence, effectively giving the state its fourth attempt to achieve the death sentence denied it twice by its own misconduct and then by the jurors after they had heard evidence of Vernon Madison's mental disability.

International law and standards on the use of the death penalty hold that it may not be imposed or carried out on people with mental or intellectual disabilities. This applies whether the disability was relevant at the time of their alleged commission of the crime or developed after the person was sentenced to death. In the USA, the 1986 Supreme Court decision, *Ford v. Wainwright*, prohibits the execution of those who are mentally "incompetent" – those who cannot understand the reason for or reality of their punishment. In *Panetti v. Quarterman* in 2007, the Court elaborated that under *Ford*, "A prisoner's awareness of the State's rationale for an execution is not the same as a rational understanding of it... Gross delusions stemming from a severe mental disorder may put an awareness of a link between a crime and its punishment in a context so far removed from reality that the punishment can serve no proper purpose." Yet, on this issue, Vernon Madison faces injustice wrought by the AEDPA.

Signed into law on 24 April 1996 by President Bill Clinton, the AEDPA compromises fairness in pursuit of finality. In 1998, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions wrote that this legislation had "further jeopardized the implementation of the right to a fair trial as provided for in the ICCPR [International Covenant on Civil and Political Rights] and other international instruments". The AEDPA placed unprecedented restrictions on prisoners raising claims of constitutional violations. The US Supreme Court has said that under the AEDPA federal courts must operate a "highly deferential standard for evaluating state-court rulings, which demands that state court decisions be given the benefit of the doubt". When the Supreme Court overturned the 11th Circuit's incompetency finding in Vernon Madison's case, three of the Justices noted that "the issue of whether a State may administer the death penalty to a person whose disability leaves them without memory of his commission of a capital offense is a substantial question not yet addressed by the Court". It was an issue, they said, that warranted a "full airing", but that the AEDPA's "restraints... preclude consideration of the question" in Vernon Madison's case. Without the AEDPA's strictures, the 11th Circuit's finding that Vernon Madison was incompetent for execution would surely have been allowed to stand (on AEDPA, see also <https://www.amnesty.org/en/documents/amr51/0004/2015/en/>).

When the 11th Circuit issued its decision, the two judges in the majority noted that the court-appointed psychologist upon whose testimony the Alabama judge had relied in finding Madison competent for execution "simply wasn't looking at the right issues" for a competency determination under *Ford/Panetti*. Even the dissenting third judge expressly acknowledged that this court-appointed expert "may not have performed the most exhaustive of examinations, may not have asked the best questions, and may not have provided the most pristine opinion". In December 2017, Vernon Madison's lawyers presented newly emerged evidence that the psychologist had been suspended from practicing psychology after being arrested and charged on four counts of possession of a controlled substance, one of which occurred shortly after the competency hearing for Vernon Madison.

There have been 1,466 executions in the USA since judicial killing resumed there in 1977 under new capital statutes approved by the Supreme Court in 1976. Alabama accounts for 61 of these executions, including three of the 23 conducted in 2017. There has been one execution in the USA so far this year. Amnesty International opposes the death penalty, unconditionally. Today some 142 countries are abolitionist in law or practice.

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