

URGENT ACTION



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UA 148/11

Death penalty

USA

Carey Dean Moore (m)

The US state of Nebraska is moving to conduct its first execution since 1997. An execution date of 14 June has been set for Carey Dean Moore, who has been on death row for three decades.

Carey Dean Moore was re-sentenced to death in 1995 after his original 1980 sentence was overturned on appeal. He was one of more than 300 people sentenced to death in 1995. Indeed, in 1994, 1995 and 1996, over 300 people were sentenced to death each year in the USA, the most recorded in any years since executions resumed in 1977. In the past decade one of the signs that the USA is beginning to turn against the death penalty is that the number of death sentences passed each year has substantially declined. Since 2006 just over 100 people have been sentenced to death each year. The annual number of executions peaked at 98 in 1999, and has since fallen to around half that number each year. The last execution in Nebraska was in December 1997.

In the past four years, three states – New Jersey, New Mexico and Illinois – have legislated to abolish the death penalty. Signing these bills into law, the three state governors pointed to the death penalty's flaws, such as the risk of irrevocable error and unfairness, its discriminatory application, its costs and diversion of resources from crime prevention and victim assistance, the lack of any proven special deterrent effect, and its potentially brutalizing effect on society. In 2008, the then most senior member of the US Supreme Court, Justice John Paul Stevens, revealed that his 33 years on the Court had persuaded him that the "imposition of the death penalty represents the pointless and needless extinction of life". In the 14 years since Nebraska last carried out an execution, some three dozen more countries have abolished the death penalty, and today 139 countries are abolitionist in law or practice. The UN General Assembly has called on all retentionist countries to impose a moratorium on executions. During scrutiny of the USA's human rights record under the UN Human Rights Council's Universal Periodic Review Process in late 2010, numerous countries called on the USA to end its use of the death penalty.

Carey Dean Moore, who was 21 years old at the time of the crime and is now 53, is not currently seeking executive clemency. While there is therefore no clemency petition before these authorities, Amnesty International nevertheless is urging them to act to prevent Nebraska from taking the backward step of carrying out its first execution in 14 years. Carey Dean Moore is allowing his lawyers to seek a stay of execution in the courts in the context of issues relating to lethal injection, including the state's recent purchase of drugs from a company in India.

BACKGROUND INFORMATION

The death penalty in the USA is supposed to be applied only to the "worst of the worst" crimes and offenders. But selecting from the thousands of murders that occur in the USA each year, the few that "deserve" to be punished with execution has repeatedly been shown to be marked by arbitrariness, discrimination and error.

Carey Dean Moore, 21 years old at the time of the crime having emerged from a childhood marked by parental abuse, was convicted in 1980 for the murder of two taxi drivers, Reuel Eugene Van Ness and Maynard Helgeland, both aged 47, after having called their cabs out to remote locations. His death sentence was overturned in 1990 by the US Court of Appeals for the Eighth Circuit on the grounds that one of the aggravating factors making the crime punishable by death – namely that it had shown "exceptional depravity" – was unconstitutionally vague. In 1992, the US Supreme Court declined to intervene and the case was sent back for re-sentencing. Despite a request by the state to redefine what was meant by "exceptional depravity", the Nebraska Supreme Court declined to do so. At the re-sentencing, the trial court therefore constructed its own definition of the term, under which it could consider an open-ended range of factors. This included whether there was "cold, calculated planning of the victim's death as exemplified... by the purposeful selection of a particular victim on the basis of special characteristics", including age. Because of evidence that Carey Dean Moore had selected

Amnesty International's mission is to undertake research and action focused on preventing and ending grave abuses of the rights to physical and mental integrity, freedom of conscience and expression, and freedom from discrimination, within the context of its work to promote all human rights.

victims who were older than him, the three-judge panel decided that this constituted "exceptional depravity" and sentenced him to death in 1995.

In 2000, a federal magistrate judge concluded that the death sentence should not stand because the state had failed to narrow the sentencing court's discretion and that the trial court had then effectively fashioned its new sentencing criteria to fit the facts of Moore's case and in so doing had violated his due process rights. In 2002, a three-judge panel of the Eighth Circuit similarly decided that Nebraska had done nothing to narrow the aggravating factor and that Moore should be re-sentenced. However, the state appealed for a rehearing by the full Eighth Circuit. In 2003, seven judges voted to uphold the death sentence. Six dissented. Four of the dissenting judges argued that "throughout the entirety of this case, one thing has remained static: neither the Nebraska Legislature nor the Nebraska Supreme Court has fashioned a death penalty sentencing scheme that provides the sentencing body with a cogent, meaningful basis for distinguishing the few cases in which the death penalty is imposed from the many cases in which it is not". The US Supreme Court again declined to intervene.

Carey Dean Moore has been facing execution for more three decades. In 1999, a US Supreme Court Justice expressed concern at the "astonishingly long delays flowing in significant part from constitutionally defective death penalty procedures". He suggested that "where a delay, measured in decades, reflects the State's own failure to comply with the Constitution's demands, the claim that time has rendered the execution inhuman is a particularly strong one."

Nebraska was the last state in the USA to use electrocution as its sole execution method. In 2008, the Nebraska Supreme Court ruled that use of the electric chair violated the state's constitution. In 2009, a bill providing for lethal injection in Nebraska passed into law. The state's adoption of lethal injection has coincided with a national shortage of sodium thiopental – one of the three drugs used in such executions -- and the decision in early 2011 by the only US manufacturer of this drug to withdraw from the market. States have been seeking alternatives and have engaged in some questionable practices in so doing, including importing sodium thiopental from foreign companies under circumstances that have been challenged under federal law. The Drug Enforcement Administration at the US Department of Justice is currently conducting an investigation of some such imports. In early January 2011, the Nebraska Department of Corrections received a shipment of sodium thiopental it had purchased from a company in India. That company has since announced that it will not sell any more drugs if they are to be used in executions.

Amnesty International opposes the death penalty in all cases, regardless of the crime, the offender, or the method of execution. There have been 1,252 executions in the USA since judicial killing resumed there in 1977, including 18 so far this year.

RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible:

- Expressing concern that the State of Nebraska is looking to conduct its first execution in 14 years;
- Welcoming the growing recognition in the USA of the inherent flaws of the death penalty;
- Welcoming the recent abolition of the death penalty in Illinois, New Mexico and New Jersey;
- Noting the growing isolation of the USA on the death penalty, and the international calls for a worldwide moratorium on executions;
- Urging the authorities to do all they can to prevent any executions in Nebraska, including of Carey Dean Moore.

APPEALS TO:

Secretary of State

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Salutation: Dear Secretary of State

Attorney General

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Salutation: Dear Attorney General

COPIES TO:

Governor

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Salutation: Dear Governor

PLEASE SEND APPEALS IMMEDIATELY.

Check with the AIUSA Urgent Action office if sending appeals after 14 June 2011.