US Supreme Court overturns death row appeal

By Tom Carter
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Last week, the United States Supreme Court overturned the appeal of death row inmate Hector Ayala. The case offers a glimpse—behind a veneer of sterile and convoluted legal procedures—of the real workings of America's ham-fisted regime of institutionalized murder known as "capital punishment."

At Ayala's criminal trial, the prosecutor brazenly struck all of the potential black and Hispanic jurors from the jury pool, and the judge excluded Ayala's attorney from the hearings regarding these removals. While this conduct was clearly unconstitutional, the Supreme Court decided last week by a vote of 5 to 4 that it was "harmless."

The majority opinion by Justice Samuel Alito invoked the authoritarian and chillingly named "Antiterrorism and Effective Death Penalty Act of 1996" (AEDPA). Expressly designed to "streamline" the process of state killings, among other things, the AEDPA erects numerous procedural and substantive obstacles to legal appeals by inmates on death row.

The AEDPA imposes strict limits on the writ of habeas corpus, the historic procedural vehicle for challenging the legality of a prisoner's confinement. Under the AEDPA, even if the constitution was violated in a state criminal proceeding, the prisoner can only successfully challenge his conviction in federal court if he or she can prove that the error was "contrary to clearly established federal law" or an "unreasonable application" of that law. In the intervening years, the Supreme Court has further narrowed the availability of habeas corpus, imposing additional arbitrary legal doctrines and standards that prevent condemned prisoners from challenging their convictions.

Joined by the usual suspects—Justices Antonin Scalia, Clarence Thomas, Anthony Kennedy, and John Roberts—Justice Samuel Alito wrote that even if the constitution was violated in Ayala's trial, the violations were "harmless." The Supreme Court's decision reverses a decision of the Ninth Circuit Court of Appeals, which had sided with Ayala.

The *Davis v. Ayala* case arises from the prosecution of Ayala for the attempted robbery of an automobile body shop in San Diego, California, in April 1985. Ayala was charged with multiple counts of murder and robbery, and the prosecution announced that it would seek the death penalty.

During jury selection in Ayala's trial, the prosecution peremptorily (i.e., without giving reasons) struck all seven of the African Americans and Hispanics who were available for service on the jury. There were already a disproportionately low number of such jurors in the jury pool, and Ayala, who is Hispanic, objected to these exclusions as racially motivated.

In a case called *Batson v. Kentucky* (1986), the Supreme Court imposed limits on this kind of overt racist jury-packing, a hated practice with a long history in many areas of the country, After the *Batson* case, prosecutors were ostensibly required to give race-neutral rationales for striking non-white jurors. Notwithstanding this requirement, the deliberate removal of non-white jurors by prosecutors in criminal cases remains a systematic and widespread practice. (As justifications, prosecutors simply point vaguely to the "demeanor" of jurors or other pretexts.)

The judge in Ayala's trial then excluded Ayala's attorney from hearings that were conducted in private with the prosecutor, over the attorney's objections, during which the judge approved of the removal of all of the black and Hispanic jurors.

As dissenters Sonia Sotomayor, Ruth Bader Ginsburg, Stephen Breyer, and Elena Kagan pointed out, these one-sided private meetings violated a fundamental principle of legal procedure, that it must be an "an adversary proceeding in which both parties may participate."

The dissenters highlighted the prosecutor's obvious attempt to clear the jury of non-white jurors. Prospective juror Oleanders D., who was black, wrote on a jury questionnaire that "he does not believe" in the death penalty, and this was the supposed reason the prosecutor peremptorily struck him from the jury. Meanwhile, white juror Ana L. was seated on the jury even though she wrote, "I don't believe in taking a life." The fact that the prosecutor struck black juror Oleanders D. and not white juror Ana L., even though their responses were indistinguishable, exposed the prosecutor's supposed "race-neutral" rationale as a pretext.

The Ayala case also illustrates how the judicial process of "capital punishment" tramples over the more humane sentiments of the population. Jurors who are opposed to the death penalty at the outset are systematically excluded or

browbeaten into submission.

For example, asked whether she "would like to serve as a juror and why," juror Ana L. initially said, "no—If I am selected as a juror and all jurors voted for the death penalty I probably would not be able to vote for the death penalty." However, both Ana L. and Olanders D. later changed their positions under intense pressure to the "correct" one, indicating that they would be willing to consider imposing the death penalty on Ayala.

The Supreme Court's opinion regarding the "harmlessness" of constitutional violations in a death penalty case comes amid a wave of exonerations of death row inmates and those serving long sentences in the US. In April, Anthony Ray Hinton was released after spending 28 years on death row in Alabama. In March, 64-year-old Glenn Ford was released after spending 30 years in a brutal Angola penitentiary.

According to the Innocence Project, a total of 18 prisoners awaiting execution on death row have been proven innocent and exonerated through DNA testing. There have been more than 300 total DNA exonerations in the US, but this likely represents only the tip of the iceberg. The United States incarcerates nearly 2.3 million adults, of whom more than 3,000 are on death row awaiting execution.

In their arguments to the Supreme Court, Hector Ayala's attorneys revealed that he has spent most of the last 25 years in "administrative segregation," or solitary confinement—a crime in itself, and certainly a violation of the spirit of the Eighth Amendment, part of the Bill of Rights, which prohibits "cruel and unusual punishment."

While agreeing with the majority that the constitutional violations in Ayala's case were "harmless," Justice Anthony Kennedy wrote separately to call attention to the Guantanamo-like conditions of Ayala's confinement. Ayala, he wrote, has likely "been held for all or most of the past 20 years or more in a windowless cell no larger than a typical parking spot for 23 hours a day; and in the one hour when he leaves it, he likely is allowed little or no opportunity for conversation or interaction with anyone."

In his concurring opinion, Kennedy referred to the case of Kaleif Browder, and he cited Fyodor Dostoevsky's observation: "The degree of civilization in a society can be judged by entering its prisons." Kennedy was clearly responding to popular outrage at the barbaric conditions inside the country's prisons, which serve to expose and discredit the entire judicial system.

The embittered, corrupt, and fascistic Justice Clarence Thomas—who very seldom speaks or writes anything—penned a separate concurring opinion to respond to Kennedy. Thomas angrily declared that "the accommodations in which Ayala is housed are a far sight more spacious than those in which his victims…now rest. And, given that his victims were all 31 years of age or under, Ayala will soon have had as much or more time to enjoy those accommodations as his victims had time to enjoy this Earth." In other words, according to Justice Thomas—vindictive mistreatment of prisoners is encouraged, and anyway hurry up with the execution!

Justice Thomas, who would be perfectly comfortable presiding on the Supreme Court of a police state dictatorship, penned a separate tirade in the death penalty case of Kevan Brumfield, decided on the same day. Brumfield's attorneys claimed that he was denied a hearing as to whether he was mentally disabled, which would have taken the death penalty off the table. Justice Thomas responded with an unhinged rant full of graphic details of the underlying crime, and a bizarre advertisement of the memoir of the victim's son, Warrick Dunn, who apparently had a successful football career.

Thomas wrote, "Like Brumfield, Warrick's father was not a part of his life. But, unlike Brumfield, Warrick did not use the absence of a father figure as a justification for murder. Instead, he recognized that his mother had been 'the family patriarch' when she was alive, and that he had a responsibility to take on that role after her death at 37."

Even Justices Alito and Roberts, who joined part of Thomas's dissent, sought to distance themselves from Thomas's gratuitous and unjudicial moralizing: "I do not want to suggest that it is essential to the legal analysis in this case." The embarrassing antics of Justice Thomas are an expression of the degeneration of the judiciary in the US, in the context of the collapse of democratic institutions more generally.

The Supreme Court's decision last week clears the way for Ayala's death sentence to be carried out. Thanks to the Supreme Court's decision, the fact that a condemned prisoner's constitutional rights were violated during his trial does not present a problem in terms of moving ahead with the execution.