



Smith v. Arizona (2007) JUSTICE BREYER, dissenting from denial of certiorari. Joe Clarence Smith was first sentenced to death in 1977. That was reversed and he was again sentenced to death in 1979. Due to ineffective assistance of counsel, the federal courts in 1999 set this second sentencing aside and he was again sentenced to death in 2004. In my view, Smith can reasonably claim that his execution at this late date would be "unusual." Whether it is "cruel" to keep an individual for decades on death row or otherwise under threat of imminent execution raises a serious constitutional question...I would grant the petition for certiorari in this case.