v. Collins,[1392] the Court appeared, though ambiguously, to take the position that, although it requires a showing of actual innocence to permit a claimant to bring a successive or abusive petition, a claim of innocence is not alone sufficient to enable a claimant to obtain review of his conviction on *habeas*. Petitioners are entitled in federal *habeas* courts to show that they are imprisoned in violation of the Constitution, not to seek to correct errors of fact. But a claim of innocence does not bear on the constitutionality of one's conviction or detention, and the execution of a person claiming actual innocence would not, by this reasoning, violate the Constitution.[1393] In a subsequent part of the opinion, however, the Court assumed for the sake of argument that "a truly persuasive demonstration of 'actual innocence' made after trial would render the execution of a defendant unconstitutional," and it imposed a high standard for making this showing.[1394] Then, in *In re Troy Anthony Davis*,[1395] the Court found a death-row convict with a claim of actual innocence to be entitled to a District Court determination of his *habeas* petition. Justice Stevens, in a concurring opinion joined by Justices Ginsburg and Breyer, noted that the fact that seven of the state's key witnesses had recanted their trial testimony, and that several people had implicated the state's principal witness as the shooter, made the case "exceptional."[1396]

In *Schlup v. Delo*,[1397] the Court adopted the plurality opinion of *Kuhlmann v. Wilson* and held that, absent a sufficient showing of "cause and prejudice," a claimant filing a successive or abusive petition must, as an initial matter, make a showing of "actual innocence" so as to fall within the narrow class of cases implicating a fundamental miscarriage of justice. The Court divided, however, with

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[1392] 506 U.S. 390 (1993).

[1393] 506 U.S. at 398–417.

[1394] 506 U.S. at 417–419. Justices Scalia and Thomas would have unequivocally held that "[t]here is no basis in text, tradition, or even in contemporary practice . . . for finding in the Constitution a right to demand judicial consideration of newly discovered evidence of innocence brought forward after conviction." Id. at 427–28 (concurring). However, it is not at all clear that all the Justices joining the Court believe innocence to be nondispositive on *habeas*. Id. at 419 (Justices O'Connor and Kennedy concurring), 429 (Justice White concurring). In House v. Bell, 547 U.S. 518, 554–55 (2006), the Court declined to resolve the issue that in *Herrera* it had assumed without deciding: that "a truly persuasive demonstration of 'actual innocence' made after trial would render the execution of a defendant unconstitutional." *See* Amendment 8, Limitations on *Habeas Corpus* Review of Capital Sentences.

[1395] 557 U.S. ___, No. 08–1443 (2009).

[1396] Justice Scalia, joined by Justice Thomas, dissented, writing, "This Court has *never* held that the Constitution forbids the execution of a convicted defendant who has had a full and fair trial but is later able to convince a habeas court that he is 'actually' innocent." He also wrote that the defendant's "claim is a sure loser" and that the Supreme Court was sending the District Court "on a fool's errand."

[1397] 513 U.S. 298 (1995).