

# URGENT ACTION

## CLEMENCY PETITION FILED FOR TEXAS INMATE

**Lawyers for Yokamon Hearn, who remains scheduled to be executed in Texas on 18 July, are making a final bid in the courts and before the Texas clemency authorities to stop the execution, highlighting what they say was his earlier inadequate legal representation.**

On 27 June, the lawyers for **Yokamon Hearn** filed a clemency petition with the Texas Board of Pardons and Paroles. In addition to the question of his mental impairment that they have been litigating since 2004, they assert in the petition that his trial lawyers failed to adequately investigate his background for the purposes of presenting mitigating evidence at the December 1998 trial. Furthermore they state that the claim of inadequate trial representation was never investigated by the original appeal lawyers and because of this has not been considered by any court, state or federal. After a defendant is sentenced to death in Texas, claims outside the trial record itself – such as the failure of the defence lawyer to present particular evidence – are for submission via habeas corpus appeal. The latter therefore requires that the inmate's appeal lawyer conduct a thorough investigation of the case.

The clemency petition asserts that the trial lawyers failed to properly investigate Yokamon Hearn's background to prepare for the sentencing. This failure meant that the jury never heard the full range of evidence of the defendant's childhood of poverty, parental mental disabilities, parental neglect, his *in utero* exposure to alcohol, his possible exposure to lead poisoning, his suicidal ideation as a child, and his own mental impairment, and how such factors may have contributed to his conduct leading up to and during the crime he committed as a teenager for which he now faces execution. Yokamon Hearn's initial appeal lawyers filed no claims in his state habeas corpus petition based on evidence outside the trial record, including the question of his trial representation. They "did not know that [trial] counsel failed to investigate Mr Hearn's life history, because they did not investigate his life history", the clemency petition asserts. Generally, until recently at least, if a state habeas lawyer failed to raise issues, such claims would forever be forfeited from judicial review under the doctrine of 'procedural default'. Yokamon Hearn's lawyers are trying to file a new petition in court, following a US Supreme Court ruling in March 2012 that for the first time provided some recourse in such cases, but fear that executive clemency may in the end be his final hope.

Yokamon Hearn was sentenced to death for the murder of 23-year-old stockbroker Frank Meziere, committed in Dallas in March 1998. In addition to Yokamon Hearn's youth at the time of the crime – he was 19 years old – he has a developmental mental disability that, according to expert opinion obtained by his current lawyers, amounts to "mental retardation" which would render his execution unconstitutional.

**Please write immediately, in English or your own language, citing Yokamon Hearn's Inmate No. #999292:**

- Explaining that you are not seeking to excuse the murder of Frank Meziere or to downplay the suffering caused;
- Raising concern that no court has considered the claim that Yokamon Hearn was denied his right to effective assistance of counsel at his trial, because of the failure of the state habeas appeal lawyers to present this claim;
- Noting evidence of Yokamon Hearn's mental disability and that he was only 19 at the time of the crime;
- Opposing the execution of Yokamon Hearn and calling for his death sentence to be commuted.

**PLEASE SEND APPEALS BEFORE 18 JULY 2012 TO:**

Clemency Section, Texas Board of Pardons and Paroles  
8610 Shoal Creek Blvd. Austin, TX 78757-6814, USA  
Fax +1 512 467 0945  
Email: [bpp-pio@tdcj.state.tx.us](mailto:bpp-pio@tdcj.state.tx.us)

**Salutation: Dear Board members**

Governor Rick Perry, Office of the Governor,  
PO Box 12428, Austin, Texas 78711-2428, USA  
Fax: + 1 512 463 1849

**Salutation: Dear Governor**

**Send copies to diplomatic representatives accredited to your country. Please insert local diplomatic addresses below:**

Name Address 1 Address 2 Address 3 Fax Fax number Email Email address Salutation Salutation

Please check with your section office if sending appeals after the above date. This is the first update of UA 166/12

<http://www.amnesty.org/en/library/asset/AMR51/044/2012/en>

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### ADDITIONAL INFORMATION

On 20 March 2012, the US Supreme Court provided for the first time a potential remedy for those prisoners denied effective assistance in state habeas corpus proceedings. In *Martinez v. Ryan*, the Court ruled that in a case in which a state habeas corpus lawyer failed to investigate a claim of ineffective assistance of trial counsel, or the inmate was without any lawyer for his or her habeas corpus appeal, procedural default can be overridden and a federal court can hear the claim that the trial lawyers were ineffective. However, it seems so far that the federal courts have only allowed consideration of such claims in cases that were pending in federal court at the time of the *Martinez* decision. This would exclude Yokamon Hearn's case. In the week of 2 July 2012, Yokamon Hearn's lawyers asked the Texas courts for permission to file a new habeas corpus petition to raise the claim of inadequate trial representation for the first time. If the state courts refuse, the lawyers will go to the federal courts. If this fails, executive clemency would be Yokamon Hearn's final chance to avoid execution.

For further information on Yokamon Hearn's case, see 'USA: Senseless killing after senseless killing: Texas inmate with mental disability claim facing execution for murder committed as teenager', June 2012, <http://www.amnesty.org/en/library/info/AMR51/042/2012/en>

Name: Yokamon Laneal Hearn

Gender m/f: m

Further information on UA: 166/12 Index: AMR 51/055/2012 Issue Date: 4 July 2012.