

URGENT ACTION

MEXICAN NATIONAL FACING EXECUTION IN TEXAS

A 46-year-old Mexican national is due to be executed in Texas on 22 January in violation of international law. He was denied his consular rights after arrest and he has not received the judicial review of this issue ordered by the International Court of Justice.

Edgar Arias Tamayo, then 26 years old, was arrested on 31 January 1994 and charged with the capital murder of Officer Guy Gaddis of the Houston Police Department. Officer Gaddis had been shot in his patrol car a few hours earlier when driving Edgar Tamayo and another suspect to jail following a robbery outside a night club.

A Mexican national who had come to the USA as a 19-year-old to find work, Edgar Tamayo had the right to seek consular assistance "without delay" after arrest, as required under article 36 of the Vienna Convention on Consular Relations (VCCR). He was not advised of this right and the Mexican authorities did not learn of the case until a week before the trial. Without access to the sort of assistance the consulate has since provided for appeals, Edgar Tamayo's trial lawyer failed to present evidence of the deprivations and abuse his client suffered as a child, his developmental problems, a serious head injury he sustained when he was 17 and its impact on his behaviour, including a worsening dependency on drugs and alcohol. In 2008 a psychologist put Edgar Tamayo's intellectual functioning in the "mild mental retardation" range, which would render his execution unconstitutional under US law.

Nearly a decade ago the International Court of Justice (ICJ) ruled that the USA had violated article 36 of the VCCR in the cases of 51 Mexican men who had been sentenced to death in the USA, including Edgar Tamayo. The ICJ ordered the USA to provide judicial "review and reconsideration" of the convictions and sentences to determine if the defence of these individuals had been harmed by the VCCR violations. After the 2008 execution in Texas of one of these men, Mexico returned to the ICJ, which confirmed in 2009 that its original ruling was "fully intact" and placed an obligation on the USA which "must be performed unconditionally; non-performance of it constitutes internationally wrongful conduct". Any aspect of domestic law hindering compliance was no excuse, the ICJ said.

In 2011, a bill was introduced in US Congress aimed at implementing the ICJ judgment but has not yet been passed. Edgar Tamayo has not had the judicial review ordered by the ICJ, and executive clemency is currently his last chance for mercy. His lawyers are seeking a public hearing on his case before the Texas Board of Pardons and Paroles, and a recommendation from the Board to the governor to commute the death sentence to life imprisonment, or at least a reprieve to allow time for US Congress to pass the above legislation and for the Inter-American Commission on Human Rights to be able to review Edgar Tamayo's petition now pending before it.

Please write immediately in English or your own language:

- Acknowledging the seriousness of the crime for which Edgar Tamayo was sentenced to death;
- Opposing his execution and pointing out that it would violate international law and a binding ICJ order;
- Calling on the Board to hold a public hearing on the case and to recommend clemency;
- Noting evidence, not heard at trial, of Edgar Tamayo's mental impairments and childhood deprivations.

PLEASE SEND APPEALS BEFORE 22 JANUARY 2014 (TO BOARD BEFORE 7 JANUARY IF POSSIBLE) 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

Salutation: Dear Board members

Governor Rick Perry

Office of the Governor

PO Box 12428

Austin, Texas, USA

Fax: + 1 512 463 1849

Salutation: Dear Governor

And copies to:

Governor's Press office

Fax: +1 512 463 1847

Office of the General Counsel

Fax: +1 512 463 1932

Also 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.

**AMNESTY
INTERNATIONAL**



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ADDITIONAL INFORMATION

Timely access to consular assistance for individuals arrested outside of their home countries can be a critical fair trial safeguard. In the context of a US capital sentencing a consulate can assist defence lawyers, including in developing a mitigation case to counter the prosecution's arguments for the death penalty. This is particularly important in a country where defence representation for indigent capital defendants has frequently been inadequate. For example, in the case of Juan Leonardo Quintero, a Mexican national charged with shooting a Houston police officer in 2006 after being put in the back seat of the officer's vehicle, the suspect was advised of his consular rights and the Mexican authorities provided substantial assistance. In 2008, a Harris County jury voted that Juan Leonardo Quintero should be sentenced to life imprisonment – not the death penalty, which the state had sought.

According to his current lawyers, Edgar Tamayo grew up in poverty in Mexico, and he and his siblings suffered parental abuse and neglect. He struggled in school as a result of learning difficulties and began abusing alcohol, drugs and inhalants from the age of nine. At the age of 17 he suffered an accident at a rodeo where he was working, when a bull stamped on his head, leaving him in a coma for several days. His current lawyers state that his trial lawyer conducted less than 16 hours of investigation on the case prior to the trial. Since then, the Mexican authorities have provided funds for experts. One such expert's assessment in 1997 described the brain injury Edgar Tamayo sustained as an adolescent as "life-changing" and that the mitigating effect of this injury coupled with the "neurotoxic effects" of drugs and alcohol Tamayo had consumed at the time of the crime "should be considered in his case". A neuro-psychologist found that Edgar Tamayo was in the "impaired" range on all the tests she conducted, and "significantly impaired" in the area of problem solving and reasoning. In 2008, a psychologist assessed Edgar Tamayo as having "mild mental retardation", and an IQ of 67.

Mexico brought its VCCR case against the USA in 2003, resulting in the ICJ's 2004 judgment in *Avena and Other Mexican Nationals*. In 2005, then President George W. Bush responded to the ICJ decision by seeking to have the state courts provide the necessary "review and reconsideration" in all of the affected cases. The Texas Court of Criminal Appeals later ruled that the President lacked the constitutional authority to order state court compliance and that the *Avena* decision was not enforceable in the domestic courts. The case went to the US Supreme Court which on 25 March 2008 unanimously found that the *Avena* decision "constitutes an international law obligation on the part of the United States". The Court also unanimously agreed that the reasons for complying with the ICJ judgment were "plainly compelling," since its domestic enforcement would uphold "United States interests in ensuring the reciprocal observance of the Vienna Convention, protecting relations with foreign governments, and demonstrating commitment to the role of international law". However, a 6-3 majority ruled that the ICJ's decision "is not automatically binding domestic law" and that the authority for implementing it rested not with the President but with Congress.

In September 2013, US Secretary of State John Kerry wrote to Governor Perry, urging that an execution date not be set for Edgar Tamayo. The letter reiterated that the ICJ's ruling "is binding on the United States under international law" and that setting his execution would be "extremely detrimental to the interests of the United States", to its relations with Mexico and other allies, and "could impact the way American citizens are treated in other countries". He stressed that "seeking an execution date would be particularly egregious, in light of the fact that no court has yet addressed Mr Tamayo's claim of prejudice on the merits, which the state of Texas pledged it would do in a July 18, 2008, letter to my predecessor, Condoleezza Rice, and former Attorney General Michael Mukasey".

In November 2013, the Inter-American Commission on Human Rights requested the USA not to execute Edgar Tamayo while the Commission's review of his claims of "mental retardation" and the impact of the VCCR violation on his case.

Amnesty International opposes the death penalty in all cases, unconditionally. There have been 1,358 executions in the USA since judicial killing resumed there in 1977. Texas accounts for 508 of these executions, and 16 of the 38 conducted this year.

Name: Edgar Arias Tamayo

Gender m/f: m

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