
amnesty international

**UNITED STATES OF
AMERICA**

**Open letter to the US Attorney
General concerning the imminent
execution of Juan Raul Garza**

15 June 2001

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Dear Attorney General,

Amnesty International is deeply concerned at your continued support for the execution of Juan Raul Garza, scheduled to be carried out on 19 June in the US Penitentiary in Terre Haute, Indiana. The organization believes that the Justice Department has failed to dispel serious concern about the fairness and consistency with which the federal death penalty is applied. What is more, even in the US Government's own terms as a proponent of capital punishment, it would surely be an unconscionable act to allow the execution to go ahead while a comprehensive study into the evidence of racial and geographic bias revealed by the Justice Department last September is pending. We understand that you have ordered such a study.

On 11 May, postponing Timothy McVeigh's execution after it had been revealed that the Federal Bureau of Investigation had withheld evidence in the case, you said: *"Our system of justice requires basic fairness, evenhandedness and dispassionate evaluation of the evidence and the facts. These fundamental requirements are essential to protecting the constitutional rights of every citizen and to sustaining public confidence in the administration of justice. It is my responsibility as attorney general to promote and protect the integrity of our system of justice."* We believe that the execution of Juan

Garza in the face of continuing concerns about possible bias, in addition to concern about the fairness of his trial as highlighted in the recent finding of the Inter-American Commission on Human Rights, will undermine both the integrity of the US system of justice and public confidence in it. There is little doubt that public disquiet about the fairness and reliability of the capital justice system is already at a level unprecedented in the modern era of the US death penalty. There is also little doubt, as recognized by nine former diplomats in a brief filed last week in the US Supreme Court, that your country's use of capital punishment is having serious ramifications for its international image and diplomatic relations.

On 6 June, the Justice Department released a follow-up report to its September survey. Like others, we are troubled by the timing of this publication, occurring less than two weeks before Juan Garza's scheduled execution, thereby giving his lawyers minimal time to respond on an issue of direct relevance to their client's case. President Clinton noted this relevance when he granted Juan Garza a reprieve in December: "*I am not satisfied that, given the uncertainty that exists, it is appropriate to go forward with an execution in a case that may implicate the very issues at the center of that uncertainty.*" [emphasis added].

The uncertainty persists. The question raised by the September survey – whether race, ethnicity, or where the crime was committed, in any way determine who receives a federal death sentence – remains a legitimate one despite your assertion that the Justice Department's follow-up report has given the federal capital justice system a clean bill of health.

In a speech on the floor of the US Senate on 7 June, Senator Russ Feingold said: "The supplemental report released yesterday lacks credibility: It is a case of "we looked at ourselves and there's no evidence of bias". Instead of completing a thorough analysis of the racial and regional disparities with outside experts, as outlined by Attorney General Reno, Attorney General Ashcroft collected the additional data – also ordered separately by Attorney General Reno – threw in some statements that there is no evidence of bias and then simply released it as a supplemental report. This report does not dig behind the raw data in the way that an in-depth research and analysis could do."

Amnesty International shares Senator Feingold's concern. The follow-up report cannot be described as an in-depth analysis of the disparities revealed in September. It provides little additional data, and makes some sweeping conclusions without providing hard evidence to back them up. Professor David C. Baldus of the University of Iowa, a renowned expert in this field, has stated that "the latest DOJ report utterly fails to convince me that there is no significant risk of racial unfairness and geographic arbitrariness in the administration of the federal death penalty. I believe that there is still just as much reason to be concerned about these issues as there was when the September 2000 report was issued." Another expert, James Alan Fox, a criminologist at Northeastern University in Boston, has said: "The prosecutorial decision-making here is what needs to be reviewed. The problem may well be at the front end, and this seems to ignore that".¹

¹ *US death penalty system not biased, Ashcroft declares.* Washington Post, 7 June 2001.

In a 43-page memorandum on the federal death penalty sent to President Clinton in November, Amnesty International noted that federal prosecutors, as at state level, have wide ranging discretion in whether or not to pursue the death penalty and that any bias stemming from this discretionary power will likely remain unremedied by the Justice Department's screening process: "According to the Justice Department's own statistics, the Review Committee on Capital Cases rarely disagrees with the local prosecutors' recommendations for or against the death penalty, and the Attorney General likewise rarely disagrees with the Review Committee. As a consequence, 87 per cent of the case recommendations by the local prosecutor were approved – almost the same rate as pertained prior to 1995 (90 per cent). In other words, the screening process has screened very little. If bias of any sort intruded in the prosecutor's initial recommendations, or in a subsequent decision to offer a plea bargain, the Justice Department's procedures do nothing to remedy that flaw."²

This concern, and others in our memorandum to President Clinton, have not been dispelled by the Justice Department's follow-up report. The report skirts around the issue of prosecutorial discretion, places a blind faith in the system's ability to prevent any form of racial discrimination from influencing outcomes, and states that geographic disparities are the "neither avoidable nor undesirable" result of the various, complex and blurred relationships between federal and state jurisdictions.

The 6 June report offers little information to help to explain why, for example, the federal government targeted Juan Raul Garza with death, offered him no plea bargain unlike either his equally culpable co-defendants (as found by the trial jury) or a disproportionate number of white defendants over the years and why, in contrast, federal prosecutors did not pursue a death penalty in at least 35 federal capital cases involving organized crime enterprises and white defendants.³

As Professor Baldus states in his 11 June memorandum to Senator Feingold: "The concern about racial unfairness in the system is whether defendants with similar levels of criminal culpability and deathworthiness are treated comparably or differently because of their race or the race of their victims. The reasons for differential treatment by U.S. Attorneys - and by agents of the FBI, the DEA and other are federal law enforcement agencies - are almost certainly nonconscious. More importantly, the reasons for the differential treatment of similarly situated offenders on the basis of their race or the race of the victim are irrelevant. It is the fact that differential treatment cannot be explained by legitimate case characteristics that makes it morally and legally objectionable, when it exists. Without a systematic study based on full information concerning the criminal culpability and the race of the victims of all of the death eligible offenders, we will remain in the dark about whether unexplained differential treatment based on the race of the defendant and victim exists in the federal death penalty system, and if so, what causes it."

² *Memorandum to President Clinton: An appeal for human rights leadership as the first federal execution looms.* (AMR 51/158/00, November 2000). Available on www.amnesty.org

³ In re Juan Raul Garza. Supplemental clemency petition. 12 June 2001.

The Justice Department's follow-up report also does not help to explain why, for example, federal prosecutors did not seek authorization for the death penalty, or under what circumstances they reached plea agreements, in at least 27 cases which, like the Garza case, involved multiple murder victims.⁴ As Juan Garza's lawyers stated in their original clemency petition to President Clinton: "This is not to suggest that a decision to seek the death penalty must be based on a mechanical tallying of murders or other generic facts. However, fairness in the administration of the death penalty clearly does require, at a minimum, that the reasons for seeking the death penalty in some cases but not others be articulable and understandable and founded neither on quirks of geography or other arbitrary or ephemeral factors nor on more insidious factors such as race or ethnicity."

In its memorandum to President Clinton, Amnesty International gave examples of federal prosecutorial discretion which appears to have been influenced by the "death penalty culture" of the state in which the prosecutor was operating. The Justice Department's follow-up report fails to confront the issue of how the federal capital justice system is a program largely operating out of federal districts in Southern states. This is an issue of direct relevance to Juan Garza's case, prosecuted in Texas, one of the handful of states accounting for the vast majority of capital prosecutions.

We are particularly concerned by one of the reasons given by yourself and other officials when opposing a stay of execution for Juan Garza, namely that he is guilty of the crime of which he was convicted. With respect, the issue of Juan Garza's guilt or innocence is of no relevance to the central question at issue here. For there are many people guilty of potentially federal capital crimes in the USA, against whom US Attorneys have not pursued death sentences, or with whom such prosecutors have entered into plea agreements. The Justice Department has provided the public with no reason to be confident in the fairness and consistency of the decision-making process that determines, out of the total number of potential federal capital defendants, who lives and who dies in the Terre Haute lethal injection chamber.

The central question bears repeating, with particular reference to this case – *if the crime for which Juan Garza was convicted and condemned had been committed by a white defendant, and/or in a different federal district, would it have resulted in pursuit of a federal death sentence?* Amnesty International believes that the US Government cannot, in good faith, currently answer this question in the affirmative.

We also feel that it is worth recalling the reactions of the previous US administration at the time the Justice Department statistics were released in September.

- President Clinton referred to the "astonishing geographic disparity", along with the racial imbalance, "since we're supposed to have a uniform law of the land".

⁴ In re Juan Raul Garza. Supplemental clemency petition. 21 May 2001.

- Deputy Attorney General Eric Holder, lead author of the survey, said: “I can’t help but be both personally and professionally disturbed by the numbers we are discussing today. We have to be honest with ourselves. Ours is still a race-conscious society. And yet, people are afraid to talk about race. . . . It is imperative morally and legally that we respond.”
- Attorney General Janet Reno, who ordered the survey, said that she was “sorely troubled” by its findings; “We must do all we can in the federal government to root out bias at every step”.

The only thing that lies between those expressions of profound concern and your own assertions that the system is bias-free is the follow-up report issued on 6 June. Amnesty International strongly believes that the information contained in that report does not justify this new found confidence within the US administration.

In her statements in September, Attorney General Reno continued: “More information is needed to better understand the many factors that effect how homicide cases make their way into the federal system, and once in the federal system, why they follow different paths. An even broader analysis must therefore be undertaken to determine if bias does, in fact, play any role in the federal death penalty system. I’ve asked the National Institute of Justice to solicit research proposals from outside experts, to study the reasons why, under existing standards, homicide cases are directed to the state or federal systems, and charged either as capital cases or non-capital cases, as well as the factors accounting for the present geographic pattern of submissions by the US Attorney’s Offices. The department will also welcome related research proposals that outside experts may suggest.”

The follow-up report itself contains a particularly telling paragraph on the issue of independent studies into the system: *With respect to the potential solicitation of external research proposals, the National Institute of Justice held a meeting with researchers and practitioners on January 10, 2001. The discussion at the meeting indicated that attempting to obtain a comprehensive understanding of the statistical proportions found in federal capital (and potential capital) cases would entail a highly complex, multi-year research initiative.... It was also clear that this approach could not produce policy-relevant findings within the time frame specified by President Clinton, or in time to inform decisions about carrying out death sentences whose execution dates were approaching.*

Amnesty International fears that fairness is being sacrificed for finality. We recall that on 1 February, on the occasion of your confirmation as Attorney General, you said: “Let me send a clear message today, I will confront injustice by leading a professional Justice Department that is free from politics; **that is uncompromisingly fair**; a Department defined by integrity and dedicated to upholding the rule of law.” [emphasis added]. If obtaining “*a comprehensive understanding of the statistical proportions found in federal capital (and potential capital) cases would entail a highly complex, multi-year research initiative*”, will not fairness be compromised by allowing a person to be put to death who could yet benefit from the findings and recommendations of such research?

We understand that you have now ordered such a study to be carried out, but at the same time are opposing a stay of execution for Juan Garza. We are shocked by the inconsistency of this position. Either the system is fair or it is not. If there is any doubt about its fairness, as even you yourself now seem to be suggesting by ordering a study, the US Government cannot, in good conscience, permit the execution of Juan Garza to go ahead.

Finally, Amnesty International is deeply concerned that the execution of Juan Garza remains scheduled despite a decision by the Inter-American Commission on Human Rights (IACHR) that Juan Garza's death sentence is "arbitrary and capricious" because of evidence used by the prosecution in securing it: arguing for the death penalty at the sentencing phase of the trial, the government introduced evidence that Juan Garza had committed four other unsolved murders in Mexico. There was no clear evidence linking Garza to these crimes, for which he has never been prosecuted or convicted. Instead, the prosecution relied on the testimony of three co-defendants who were alleged to have either committed or participated in the Texas murders, but who were offered reduced sentences in return for their testimony. Juan Garza's jury voted to sentence him to death despite finding that "another defendant or defendants, equally culpable in the crime, will not be punished by death".

The IACHR issued its findings on the case on 4 April 2001. Stressing the need for adherence to stringent safeguards in capital cases, the Commission concluded that Juan Garza was not only convicted and sentenced for the three Texas murders, but also for the four Mexico murders "without having been properly and fairly charged and tried for these additional crimes". The IACHR said that the introduction of the evidence of the four Mexico murders was "antithetical to the most basic and fundamental judicial guarantees". It concluded that Juan Garza's execution would be a "deliberate and egregious violation" of the USA's international obligations. It called on the USA to commute Juan Garza's death sentence: "For the State to proceed with Mr Garza's execution in these circumstances would give rise to its responsibility for serious and deliberate violations of its international obligations under the OAS Charter and the American Declaration".

In an urgent communication transmitted to the US Government yesterday, 14 June, the Inter-American Commission on Human Rights requested information on "measures that have been taken to implement the Commission's recommendations in this case". The communication reminded the government that "*the United States will perpetrate a grave and irreparable violation of the right to life under Article 1 of the American Declaration, should it proceed with Mr Garza's execution...*".

Attorney General, we urge you to consider the international standing of the United States, to reflect upon the unprecedented level of domestic concern about the fairness of the capital justice system, and to reconsider your support for the execution of Juan Raul Garza.

Yours sincerely

Javier Zúñiga
For the interim Secretary General