

PUBLIC

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Further information on EXTRA 67/97 (AMR 51/23/97, 13 May 1997) and follow-ups (AMR 51/31/97, 10 June 1997 and AMR 51/85/98, 26 October 1998) - Death Penalty

USA (TEXAS) Joseph Stanley FAULDER, Canadian national

Joseph Stanley Faulder, scheduled to be executed on 10 December 1998, received a stay of execution 20 minutes before he was to be put to death.

According to press reports, the stay of execution was issued by the US Supreme Court on the grounds that it needed more time to examine the impact of the violation of Faulder's right to consular assistance (under the Vienna Convention on Consular Relations) on the trial proceedings. However, the one-page order staying Faulder's execution does not clearly indicate the Supreme Court's reasons for intervening. The Court is expected to review its stay order and to take a decision on further action in early 1999.

The stay followed a frantic few days of legal activity as Faulder watched his life hang in the balance while numerous legal issues were presented to various courts.

Stanley Faulder was one of the named plaintiffs in a class action law suit (a law suit on behalf of a group of people) brought against the Texas Board of Pardons and Paroles (BPP), claiming that current BPP procedures for reviewing clemency procedures violate the Texas constitution and state law. On 30 November, a state court judge ordered the BPP to convene a public meeting before making a recommendation on Faulder's application for the commutation of his death sentence. The Board refused to comply with the court order and state authorities appealed the judge's ruling to the Texas Supreme Court.

In a bizarre move, the Texas Supreme Court quashed the order against the BPP and scheduled oral arguments to determine whether they (the Texas Supreme Court) had the legal authority to do so. The hearing was set for 14 December--four days after Faulder would have been put to death and therefore too late to provide him with any legal remedy, were it to be found that his rights had been violated. The BPP later voted 17-0 against recommending clemency for Stanley Faulder, without holding a meeting.

On 9 December a federal court judge granted Faulder a stay of execution and ordered a hearing to determine whether BPP clemency deliberations were so arbitrary as to violate minimum standards of due process. Danny Barber, scheduled for execution in Texas that same evening, was also granted a stay on the same grounds. On 10 December, the 5th Circuit Court of Appeals lifted Faulder's stay of execution, even though it had upheld Barber's reprieve granted for identical reasons.

The violation by Texas of Faulder's consular rights under the Vienna Convention attracted widespread media attention following an unprecedented intervention by the US Secretary of State, Madeleine Albright. At the end of November, Albright wrote a 15-page letter to Governor Bush and to the Texas Board of Pardons and Paroles. In her letter to the Board of Pardons, Albright wrote: "I am deeply troubled by the failure of consular notification in this case...We are particularly troubled by the facts that Mr. Faulder's legal counsel has been found by the courts to have been deficient in his handling of the sentencing phase of trial, that no mitigation evidence was presented

to the jury in the sentencing phase...These are all areas in which Canadian consular officials might well have taken some action...we believe that this is a case in which consular notification issues may provide sufficient grounds for according discretionary clemency relief."

"We have not previously made such a submission. For example, this case is quite unlike the recently highly-publicized case of Ángel Breard. We have decided to make a submission here because the breakdown of consular assistance mechanisms in this case had implications for Mr. Faulder's ability to enlist the assistance of his government and his family in ensuring that he had competent counsel and presented relevant information in his defence, particularly in the sentencing phase. Failure to examine these issues carefully would be inconsistent with the United States' policy of supporting respect for the consular notification and access requirements of the VCCR both here and abroad. I am prepared to have Department officials who are experts in these matters travel to Texas to meet with the Board, if that would be helpful."

Amnesty International welcomes the efforts to the Secretary of State in addressing the violation of Faulder's Vienna Convention rights, but is appalled that she views Faulder's case as quite unlike that of Ángel Breard. The impact of the lack of consular assistance (when available) once the trial is completed is almost impossible to ascertain. The US authorities should therefore declare a moratorium on the execution of foreign nationals who were denied their Vienna Convention rights and conduct a study into how to remedy damage caused by the denial of these rights. Over 70 foreign nationals remain on death row in the USA, the vast majority of whom were never informed of their right to obtain consular assistance following their arrest.

The stay of execution was welcomed by the Canadian authorities, who had campaigned against the execution of Faulder. Canada's foreign minister, Lloyd Axworthy, was quoted as stating: "I think tonight we saw an example of how it is important to strengthen the [Universal] Declaration of Human Rights and all the protocols...like the Vienna Convention."

No further action is required by the Urgent Action Network. Thank you to all those who sent appeals on behalf of Joseph Stanley Faulder.