

PUBLIC

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Further information on UA 39/04 (AMR 51/022/2004, 4 February 2004) - Death penalty / Legal concern

USA (Texas) Edward Brian Capetillo (m), Hispanic, aged 26

On 2 March 2004, Edward Capetillo received a stay of execution from the US Supreme Court. He had been scheduled to be executed in Texas on 30 March. He was sentenced to death in 1996 for the murder of Kimberly Williamson in 1995. Edward Capetillo was 17 at the time of the murder. An unequivocal and fundamental principle of international law prohibits the use of the death penalty against child offenders – anyone who was under 18 at the time of the crime.

On 26 January 2004, in *Simmons v Roper*, the US Supreme Court agreed to revisit its 1989 decision, *Stanford v Kentucky*, in which it had ruled that people who were 16 or 17 at the time of the crimes could be executed. Edward Capetillo's lawyer filed a motion in a Texas trial court seeking a stay of execution pending the Supreme Court's ruling on this issue, expected in 2005. However, on 29 January, the judge rejected the appeal. The case was appealed to the US Supreme Court and the stay was issued.

Texas authorities had indicated their intention to pursue such executions despite the US Supreme Court's pending review, and had scheduled five people to be executed before the end of June who were 17 at the time of the crime: Edward Capetillo (30 March), Anzel Jones (29 April), Efrain Perez (23 June), Raul Villarreal (24 June) and Mauro Barraza (29 June). The US Supreme Court has now stayed the executions of Edward Capetillo and Anzel Jones. The other three executions are still scheduled.

There have been other positive developments on this aspect of the death penalty in recent weeks. Both chambers of the legislatures of Wyoming and South Dakota passed bills raising the minimum age for the death penalty to 18 at the time of the crime. On 3 March, Governor Dave Freudenthal of Wyoming and Governor Mike Rounds of South Dakota signed the bills into law. In addition, the Senate of New Hampshire passed such a bill on 19 February, and it will be considered by the House of Representatives in the near future.

In 2002, the US Supreme Court banned the execution of people with mental retardation. Its decision, *Atkins v Virginia*, overturned a 1989 decision, *Penry v Lynaugh*, in which it had ruled that there was not a national consensus against such executions. In *Atkins*, the Court primarily looked at the number of states which prohibited the execution of people with mental retardation, and found that a "national consensus" had emerged since *Penry*. It also noted that "within the world community, the imposition of the death penalty for crimes committed by mentally retarded offenders is overwhelmingly disapproved". The Supreme Court then considered the issue of the death penalty and mentally retarded offenders and the majority opinion held that: "Our independent evaluation of the issue reveals no reason to disagree with the judgment of the legislatures that have recently addressed the matter and concluded that death is not a suitable punishment for a mentally retarded criminal". The Court ruled by six votes to three that such use of the death penalty was unconstitutional.

At the time of the *Atkins* decision, 18 states with the death penalty had abolished it for people with mental retardation. Today, with the addition of South Dakota and Wyoming, 19 states with the death penalty prohibit it for those under 18 at the time of the crime. With the 12 states that do not use the death penalty against anyone, this means that 31 of the 50 US states currently do not use the death penalty against child offenders.

In 2002, Amnesty International issued a 100-page report arguing that the US Supreme Court must revisit its 1989 *Stanford v Kentucky* decision. The organization argued that if the Court applied its reasoning in *Atkins*

to the issue of the execution of child offenders, and if it claimed to be a consistent arbiter of the US Constitution, the Justices must outlaw this practice as well (see *USA: Indecent and internationally illegal: The death penalty against child offenders*, AMR 51/143/2002, September 2002 <http://web.amnesty.org/library/Index/ENGAMR511432002>). In October 2002 four of the nine Supreme Court Justices dissented against the Court's refusal to revisit its *Stanford* decision in the light of *Atkins*, holding that the execution of child offenders was a "relic of the past" and a "shameful practice".

The recent developments in New Hampshire, Wyoming and South Dakota are further evidence of a "national consensus" against the execution of child offenders, to add to the clear international consensus that such executions are wrong.

For background information on the UA Network's work against this aspect of the death penalty, see: *USA: Appeal-writers campaign against the injustice of death row*, ACT 60/003/2004, February 2004, <http://web.amnesty.org/library/index/ENGACT600032004>.

No further action by the UA Network is requested. Edward Capetillo's lawyer has asked for her thanks to be passed on to all who sent appeals.