

# URGENT ACTION

## COURT BLOCKS EXECUTION OF NICARAGUAN MAN

**A Texas appeals court issued a stay of execution in the case of Bernardo Abán Tercero a day before he was due to be put to death. The stay has been granted so that the courts can consider the claim that the prosecution presented false testimony at the 2000 trial.**

On 25 August, the Texas Court of Criminal appeals issued a stay of execution in the case of Nicaraguan national **Bernardo Abán Tercero**, who was due to be put to death on 26 August for the murder in March 1997 of Robert Berger during a robbery of a Houston dry-cleaning business. The appeals court remanded the case to the trial level court to review the merits of the claim raised in a petition filed on 24 August that a key prosecution witness had lied at trial. She had testified that Bernardo Abán Tercero had told her that he had shot the victim after becoming angry that he did not have any money, because the man's daughter had seen him, and because the victim himself "had seen his face" and therefore could identify him. She also said that Bernardo Abán Tercero had threatened her not to say anything to the authorities. Her testimony, the petition argues, "created a powerful 'false impression' about Mr Tercero's mental status during the offense, establishing intent and motives for the conviction of murder in the course of his robbery of the cleaners".

A declaration signed on 23 August 2015 by the witness in question was filed with the petition. In it, she said that she had met Bernardo Abán Tercero in early 1997 and they became friends. After the shooting, she said that he had been "traumatized and scared" and that he had told her that the man in the dry-cleaners had tried to get the gun and it had gone off in the ensuing struggle. She said that a few years later, government agents came to her home and told her that Bernardo Abán Tercero had been arrested and that he would be facing the death penalty. They also told her that Bernardo Abán Tercero had said that she was involved in the robbery and had kept the money and the gun used in the murder. She said that she was "very afraid" that she would face prosecution, prison and deportation to her native Mexico, "leaving my children alone". She said she "did not have anything to do with the case" but was angry and wanted to "cause pain" to Bernardo Abán Tercero because of what he was said to have told the authorities. She stated in her declaration: "I said things in my testimony that were not true".

The declaration continues: "He never told me about the amount of money he robbed nor that he was angry because the man did not have very much money. What I said about these things in my testimony wasn't the truth. Bernardo did not tell me that the man saw his face and because of this he had to kill him or that he killed the man because the girl saw his face. Bernardo only explained to me that he went to the dry-cleaners to rob it and that the man and he exchanged words and the man tried to force Bernardo to give him the gun. When the people from the court asked me why I hadn't told anyone what Bernardo had told me, I did not know how to explain. But I did not tell anyone for fear of putting myself in immigration problems. Living in this country without papers is living with fear; I did not want to put myself in problems when I did not even have permission to be here. But I did not stay in silence for fear of Bernardo... I wasn't like how I testified that he threatened me so I would not tell anyone about the crime. I never took it seriously. I never had fear of him".

The petition argues that this witness was central to the prosecution's case for capital murder and a death sentence. Apart from this witness, "no one testified that they saw Tercero aim or point his gun at anyone". Without this witness's testimony, the petition concludes, it was plausible that the shooting was accidental, as Bernardo Abán Tercero testified at trial.

**No further action by the UA Network is requested. Many thanks to all who sent appeals.**

This is the second update of UA 176/15. Further information: <https://www.amnesty.org/en/documents/AMR51/2326/2015/en/>

Name: Bernardo Abán Tercero  
Gender m/f: m

Further information on UA: 176/15 Index: AMR 51/2355/2015 Issue Date: 1 September 2015

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