

EXTERNAL (for general distribution)

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Death Penalty

15 April 1993

USA (Texas)

Leonel HERRERA

Leonel Herrera, Hispanic, is scheduled to be executed in Texas, USA, on 5 May 1993.

Herrera was convicted and sentenced to death in January 1982 for the murder of police officer Enrique Carrisalez in September 1981. The officer had been fatally shot by the driver of a speeding car which he had tried to stop. Moments earlier, another police officer was found shot dead on the same stretch of road. Herrera was arrested days later and charged with both murders. After being sentenced to death for Carrisalez' murder, he pleaded guilty at a separate trial in July 1982 to the murder of the other officer. According to his present attorneys, Herrera was severely beaten after his arrest and was hospitalized. The case against him at trial included evidence that the car he used was involved in both crimes, plus eye-witness identification made by another police officer and Carrisalez before he died.

However, in February 1992, Leonel Herrera's appeal lawyers presented new evidence alleging that his brother Raul Herrera Sr - who died in 1984 - had committed both murders. This was presented in the form of sworn affidavits from several people, including a former cell-mate and a former attorney of Raul Herrera's, who both said that Raul had told them that he had carried out the killings. In February 1992, Raul Herrera's son, Raul Jr, also signed an affidavit stating that he had been in the car when the killings had taken place and had witnessed his father kill the officers. It was also alleged that the killings were related to drug trafficking, and that police had threatened Raul Sr not to reveal the truth behind them. This new evidence was discovered too late to be presented in the Texas courts, as Texas law requires a new trial motion based on newly discovered evidence to be made within 30 days of sentence (a more restrictive time limit than in most other US states and in the federal system).

Leonel Herrera lodged a petition alleging that he was innocent of the murders and that his execution would therefore violate the US Constitution. Although two execution dates were set, in February 1992 and in April 1992, stays were granted to allow the US Supreme Court to rule on the issue. On 25 January 1993, by a majority of 6 votes to 3, the Supreme Court denied Herrera's appeal. The ruling, cited as Herrera v Collins, held that there was no constitutional right to federal relief based on newly discovered evidence of actual innocence, when the defendant's original trial had been free from procedural error. The majority opinion assumed, for the sake of argument, that a "truly persuasive post-trial demonstration of actual innocence" in a capital case would render an execution unconstitutional. However, it found the affidavits in Herrera's case insufficiently credible to meet the standard required, citing discrepancies in the new testimony and evidence presented at trial.

The majority opinion also said that "Clemency ... is the historic remedy for preventing miscarriages of justice where judicial process has been exhausted". However, since the death penalty was reinstated, the Texas Board of Pardon and Paroles has never recommended clemency in a capital case, despite strong grounds presented in a number of cases.

The **dissenting opinion** criticized the Court for dismissing Herrera's claim when no hearing had been held into the substance of the new evidence. The dissent noted that the US District Court had earlier remanded the case for a further hearing (a decision that was overturned on appeal) and "clearly did not think that petitioner's evidence was so insubstantial that it could be dismissed without any hearing at all".

In letters to the Texas authorities, Amnesty International said that it would be "contrary to justice to allow this execution to go ahead without there having been an examination by any court of the merits of Herrera's innocence claim". Amnesty

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International said its concern was "reinforced by the knowledge that there have been many cases over the years in the USA and elsewhere in which prisoners convicted on what appeared to be valid evidence at trial were later able to demonstrate their innocence".

Amnesty International opposes the death penalty in all cases as a violation of the right to life, and the right not to be subjected to cruel, inhuman and degrading treatment or punishment, as enshrined in the Universal Declaration of Human Rights.

BACKGROUND INFORMATION:

As of 15 January 1993, there were 367 prisoners under sentence of death in Texas. Texas has carried out 56 executions under its current death penalty statute, almost twice as many as other US states. The most recent prisoner to be executed by the state was Ramon Montoya, also of Hispanic origin, on 25 March 1993. The method of execution is lethal injection. In Texas, the governor may commute a death sentence only if she receives a favourable clemency recommendation from the state Board of Pardons and Paroles.

RECOMMENDED ACTIONS: Faxes/telephone calls/telegrams/telexes/express and airmail letters in English if possible:

Appeals to Board of Pardons and Paroles

- urging that the Board recommend that Governor Richards grant clemency to Leonel Herrera
- noting that there has not been an examination by any court of the merits of Leonel Herrera's innocence claim, and that it would be unjust to carry out Leonel Herrera's death sentence while this issue remains unresolved.
- drawing attention to the US Supreme Court ruling in Herrera v Collins that executive clemency is the traditional remedy or 'fail safe' for claims of innocence based on new evidence, discovered too late to file a new trial motion.

APPEALS TO

Texas Board of Pardons and Paroles
8610 Shoal Creek Boulevard, PO Box 13401
Capitol Station
Austin, TX 78711-3401
USA

**Telegrams: Texas Board Pardons/Paroles, Austin, TX
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Telegrams: Texas Board Pardons/Paroles, Austin, Texas 78711, USA

Salutation: Dear Board Members

COPIES TO:

The Honorable Ann Richards
Governor of Texas

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Faxes: +1 512 463 1849

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Salutation: Dear Governor

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and to diplomatic representatives of the USA in your country.

PLEASE SEND APPEALS IMMEDIATELY, TO ARRIVE BY 4 MAY 1993.