

EXTERNAL (for general distribution)

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Further information on EXTRA 50/91 (AMR 51/25/91, 7 August 1991 and follow-ups AMR 51/29/91, 22 August 1991; AMR 51/22/92, 13 February 1992 ; AMR 51/23/92, 20 February 1992) - Death Penalty

USA (Texas): Leonel HERRERA

Leonel Herrera is scheduled to be executed in Texas on 15 April 1992 despite the fact that the US Supreme Court has agreed to hear his case. Four votes are required for the Court to grant review, but it takes five votes to stay an execution. On 18 February 1992, the US Supreme Court, on a 4-5 vote, agreed both to rule on the constitutional issue Herrera raised and to allow his execution to proceed meanwhile. After intense activity back and forth in the courts (see below) Herrera's execution was halted temporarily by the Texas Court of Criminal Appeals just minutes before he was due to be executed on 19 February. The new execution date set by the trial court is considered to be extremely serious.

The issue before the US Supreme Court is whether the US Constitution permits the execution of an innocent person (Herrera v Collins, decision expected in 1993). Leonel Herrera was convicted of the murder of two police officers. Some years after his conviction, an attorney who had represented Herrera's brother, Raul, came forward with evidence that Raul had confessed to the murders for which Leonel Herrera was sentenced to death. In addition, Raul's son presented a sworn statement that he was an eye witness to the crime and saw his father commit the murders.

On 18 February 1992, the day before Leonel Herrera's execution, the federal district court granted a stay to enable the new evidence to be considered. The stay was rapidly overturned by the federal appeals court on the ground that claims of actual innocence are constitutionally irrelevant. The state of Texas argued that the execution should proceed, saying that state prisoners should not be permitted to litigate their cases endlessly in federal court. According to the Texas Attorney General, the correction of unjust sentences belongs in the state courts or in the clemency power of state executives.

Clemency has not been granted to any prisoner under sentence of death in Texas since the death penalty was reintroduced there in the mid-1970s. Since 1976 Texas has, however, been forced by the courts to release four death row prisoners after evidence emerged which cast doubt on their guilt. Under the Texas clemency rules, the governor may commute a death sentence only if she receives a favourable clemency recommendation from the 18-member Board of Pardons and Paroles. The Board has convened only very rarely to consider petitions for clemency. Their reluctance to hold full clemency hearings is

a matter of great concern to Amnesty International.

Since 1982, Texas has executed 46 prisoners: nearly twice as many as any other state. Three of those executed were juvenile offenders. There are some 345 prisoners currently under sentence of death in Texas. The method of execution is lethal injection.

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 or degrading punishment, as proclaimed in the Universal Declaration of Human Rights.

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FURTHER RECOMMENDED ACTION: Please send telegrams/telephone calls/faxes/express and airmail letters

In appeals to the Texas Board of Pardons and Paroles:

- urging the Texas Board of Pardons to convene a clemency hearing to consider the case of Leonel Herrera;

- appealing to them to recommend that he be granted clemency in light of the lingering doubts about his guilt;

- as a minimum measure, requesting that Leonel Herrera's execution be stayed pending the US Supreme Court's ruling on the important constitutional issue his case raises;

- expressing grave alarm at the move by the state of Texas to proceed with Leonel Herrera's execution despite new evidence that a miscarriage of justice may have occurred;

In appeals to the Attorney General:

- asking why the state of Texas is moving forward to execute Leonel Herrera in the face of evidence that he may not be guilty;

- asking how evidence of possible innocence can be "irrelevant" in a death penalty case.

APPEALS TO:

1. Texas Board of Pardons and Paroles
[Salutation: Dear members of the Board]
8610 Shoal Creek Boulevard, PL Box 13401
Capitol Station
Austin, TX 78711-3401
USA

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

Telephone: +1 512 459 2782

Faxes: +1 512 459 2790

2. The Hon Dan Morales
Attorney General of Texas
[Salutation: Dear Attorney General]
PO Box 12548
Capitol Station
Austin, TX 78711-2548
USA

Telegrams: Attorney General, Austin TX 78711, USA

Telephone: +1 512 463 2100

Faxes: +1 512 463 1849

COPIES OF YOUR APPEALS TO THE LETTERS EDITOR OF THE FOLLOWING TEXAS NEWSPAPERS:

Austin American Statesman

Box 670
Austin, TX 78767

USA

Faxes: +1 512 445 3679

Houston Chronicle
801 Texas Avenue
Houston, TX 77002
USA

Faxes: +1 713 220 7868

and to diplomatic representatives of USA in your country.

PLEASE SEND APPEALS IMMEDIATELY to arrive in the USA by 14 April 1992.