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£UNITED STATES OF AMERICA

@Imminent execution of juvenile offender (update II)

9 JULY 1993

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This document updates information contained in AMR 51/23/93 and AMR 51/28/93.

Gary Graham, a juvenile offender under sentence of death in Texas, has been given a new date of execution; he will be put to death by lethal injection on 17 August 1993. This is the third time a date has been set for his execution.

Background

Gary Graham, black, was convicted and sentenced to death in November 1981, for the murder of a white man in May 1981. Graham was 17 years-old at the time of the crime.

He had been scheduled to be executed on 29 April (stay granted) and then on 3 June 1993. The Texas Court of Criminal Appeals granted him a stay just a few hours before the appointed date, pending a decision by the US Supreme Court in another Texas death penalty case, *Dorsie Johnson v State of Texas*. Johnson who was 19 at the time of the crime claimed that the Texas law in force from 1976 until 1991 under which he was sentenced, was unconstitutional in not allowing a defendant's youth as a separate mitigating circumstance at the sentencing stage of a capital trial.

On 24 June 1993 the US Supreme Court rejected Johnson's appeal by a narrow majority of 5-4 votes. The Court ruled that the jury could adequately consider the mitigating effect of a defendant's youth in answering the second question regarding his or her likely future threat to society - although they conceded that youth could also be seen as an aggravating circumstance under this same issue. In a strong dissenting opinion, Justice Sandra O'Connor, joined by three other justices, said she would have allowed the appeal as the former Texas law ignored the most relevant mitigating aspect of youth: its relation to a defendant's "culpability for the crime he committed". The dissent also noted that most other US death penalty states either specifically listed the age of the defendant as a mitigating circumstance or barred the execution of those under 18.

The ruling effectively paves the way for the execution of at least a dozen young offenders in Texas (including other juveniles who were under 18 at the time of the crime), whose cases had been stayed pending the outcome of the Dorsie Johnson appeal. The execution of Curtis Harris, a black juvenile offender, was the first of these and was carried out on 1 July in Texas. Unless clemency is exercised, Gary Graham will be next.

Gary Graham has consistently maintained his innocence of the crime for which he was sentenced to death, and his attorneys have recently presented among other things, new evidence relating to his innocence as grounds for clemency. Although this issue was not considered by the Texas Court of Criminal Appeals in granting the stay of execution, four judges agreed that there should be a review of other issues in Gary Graham's case including his claim of innocence. Three of the justices went so far as to say that a state district court should hold an evidentiary hearing to allow a judge to hear new evidence on whether Gary Graham should be granted a new trial.

The Texas Board of Pardons has still not held a hearing into the case, but can do so at any time.

KEYWORDS: DEATH SENTENCE / JUVENILES / MINORITIES /

INTERNATIONAL SECRETARIAT, 1 EASTON STREET, LONDON WC1X 8DJ, UNITED KINGDOM

WHAT YOU CAN DO

We request that you write, in your own private capacity or in AI's name, by

fax, express and airmail letters, in English if possible, to:

- ◆ Board of Pardons and Paroles
 - urging the Board to recommend Governor Richards to grant clemency to Gary Graham on humanitarian grounds.
 - citing international standards against the execution of juvenile offenders;
 - urging that the Board, at the very least, convene to review the new evidence in Gary Graham's case;
 - noting the fact that three of the judges in the Texas Court of Criminal Appeals recommended that the new evidence should be given thorough review in state court.
- ◆ Governor Ann Richards
 - urging her to intervene to prevent the execution of Gary Graham.

Names and addresses

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**PLEASE SEND APPEALS IMMEDIATELY, TO ARRIVE IN TEXAS BY 16
AUGUST 1993.**