

8 June 2001

Further information on EXTRA 32/01 (AMR 51/076/2001, 29 May 2001) - Death penalty / Legal concern**USA (Oklahoma) Gerardo Valdez Maltos, Mexican national, aged 41**

Following a clemency hearing on 6 June, the Oklahoma Pardon and Parole Board voted 3 to 1 to recommend that Governor Keating commute the death sentence of Gerardo Valdez Maltos, a Mexican national sentenced to death in 1990 for the 1989 murder of Juan Barron.

The Governor has the power to accept or ignore the board's recommendation, or to grant a reprieve not exceeding 60 days. Gerardo Valdez remains scheduled for execution on 19 June.

A number of factors appear to have contributed to the Board's vote in favour of clemency. It heard newly-discovered facts concerning Valdez's background and medical history, including evidence that he sustained brain damage as the result of a serious head injury during his youth. Attorneys for Gerardo Valdez also noted his exemplary conduct while on death row and his lack of a prior record of violent behavior. Gerardo Valdez himself testified at the hearing, expressing his remorse for the crime and telling the panel that he had prayed for forgiveness.

The Mexican government reportedly submitted a letter to the Board expressing its grave concerns over the failure of local authorities to inform Gerardo Valdez of his consular rights upon arrest. The letter noted that the resulting absence of consular assistance contributed to his deficient trial representation and the failure to present mitigating evidence during the sentencing phase of his trial. The US Department of State also sent a letter to the Board, asking it to give careful consideration during its clemency deliberations to Mexico's concerns over the violation of the Vienna Convention on Consular Relations (VCCR) in this case.

Oklahoma Attorney General Drew Edmondson was later quoted as saying that his office will urge Governor Keating to allow the execution to proceed, stating that the clemency board "crossed a dangerous line by substituting their judgment for the decision of the judge and jury." However, none of the new evidence presented to the Board was available for the trial jury to consider, nor has it been reviewed by any court on appeal.

This is only the second time in 35 years that the Oklahoma Pardon and Parole Board has recommended the commutation of a death sentence. In April of this year, Governor Keating acted on a recommendation from the Board by commuting the death sentence of Phillip Dewitt Smith to life in prison without parole because of doubts about his guilt (see EXTRA 10/01, AMR 51/021/2001, 8 February, and updates).

FURTHER RECOMMENDED ACTION: Please send telegrams/faxes/express/airmail letters in English or your own language, in your own words: to Governor Keating:

- expressing sympathy for the family and friends of Juan Barron;
- noting that the Pardon and Parole Board has recommended that the Governor commute the death sentence of Gerardo Valdez following the presentation of

evidence never heard by any court, including the violation of Valdez's consular rights, its impact on the quality of his trial representation and on the presentation of mitigating evidence during sentencing;

- noting Valdez's expression of remorse for the crime, his good conduct while in prison and the newly discovered evidence of brain damage that was not available for the jury to weigh in its sentencing decision;
- urging the Governor to act on the Board's recommendation by commuting the death sentence of Gerardo Valdez.

to the US Secretary of State:

- welcoming that the Department of State formally requested by letter that the Oklahoma Pardon and Parole Board give careful consideration to the clemency petition for Gerardo Valdez, based on the violation of the Vienna Convention on Consular Relations;
- noting that the Oklahoma Pardon and Parole Board has now recommended that Gerardo Valdez's death sentence be commuted;
- urging the Secretary of State to support the clemency recommendation by calling on Governor Keating to commute the death sentence of Gerardo Valdez.

APPEALS TO:

Governor Frank Keating
Capitol Building, Oklahoma City, OK 73105, USA
Fax: + 1 405 521 3353
Telegrams: Governor Keating, Oklahoma City, OK, USA
E-mail: governor@gov.state.ok.us
Salutation: Dear Governor

The Honourable Colin Powell
Office of the Secretary of State
2201 C Street, N.W.
Washington, DC 20520, USA
Fax: +1 202 261 8577
Telegrams: Secretary of State Powell, Washington DC, USA
Salutation: Dear Secretary of State

COPIES TO: diplomatic representatives of the USA accredited to your country.

PLEASE SEND APPEALS IMMEDIATELY.