

URGENT ACTION

STAY OF EXECUTION FOR CUBAN NATIONAL

Manuel Valle, a Cuban national who was due to be executed in Florida on 2 August, has received a stay of execution until 1 September. He was convicted of the murder of a police officer in 1978. He was 27 years old when first sent to death row. He is now 61.

On 25 July, by four votes to three, the Florida Supreme Court granted the stay of execution to allow an evidentiary hearing to be conducted on Florida's switch from sodium thiopental to pentobarbital as the anaesthetic component of its three-drug lethal injection protocol. The Florida Department of Corrections made the change to its protocol on 8 June, as have a number of other states in the face of a shortage of sodium thiopental (see USA: An embarrassment of hitches, <http://www.amnesty.org/en/library/info/AMR51/058/2011/en>). Lundbeck, the Denmark-based manufacturer of pentobarbital, has condemned use of its drug in executions, and has also questioned its efficacy for this purpose. On 1 July, it announced that it would now use a "specialty pharmacy" programme that would deny distribution of the drug to prisons in US states using lethal injection.

The majority on the Florida Supreme Court ruled that the switch to pentobarbital "warrants an evidentiary hearing" in trial-level court, and that expert and other evidence presented by Manuel Valle's lawyers had raised "a factual dispute, not conclusively refuted," as to whether Florida's use of pentobarbital would subject the prisoner to an unconstitutional risk of pain during execution. Among other things, the court's majority ordered the Florida authorities to produce correspondence and documents it had received from Lundbeck regarding pentobarbital's use in executions, "including those addressing any safety and efficacy issues".

The Florida authorities appealed to the US Supreme Court to lift the stay of execution. The appeal was denied on 29 July.

The execution is now stayed until 5pm on 1 September 2011. Under the Florida Supreme Court's order, the hearing in trial court has to be concluded and the judge's finding made by 2pm on 5 August 2011. The final day of testimony is taking place today, 2 August. The case will then be briefed to the Florida Supreme Court, which will conduct oral arguments on the morning of 24 August before ruling thereafter.

Manuel Valle could face execution on or soon after 1 September if the courts rule against him.

Please continue to write, in your own language:

- Acknowledging the seriousness of the crime for which Manuel Valle was sentenced to death and explaining that you are not seeking to downplay the suffering caused;
- Expressing concern that Manuel Valle has not had access to a meaningful and transparent clemency procedure, as required under international law, and urging Governor Scott to rectify this;
- Pointing to the cruelty of the death penalty, not least subjecting someone to 33 years on death row, and noting that in that time, scores of countries have abolished the death penalty as they have come to recognize its risks, costs, ineffectiveness and incompatibility with fundamental human rights principles;
- Urging Governor Scott to prevent this execution and ensure commutation of Manuel Valle's death sentence.

PLEASE SEND APPEALS AS SOON AS POSSIBLE, AND BEFORE 1 SEPTEMBER 2011 TO:

Office of Governor Rick Scott, State of Florida, The Capitol, 400 S. Monroe St., Tallahassee, FL 32399-0001, USA

Fax: +1 850 487 0801

Email: <http://www.flgov.com/contact-gov-scott/email-the-governor> , alternatively Rick.Scott@myflorida.com

Salutation: Dear Governor

Also send copies to diplomatic representatives accredited to your country. Please insert local diplomatic addresses below:

Please check with your section office if sending appeals after the above date.

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ADDITIONAL INFORMATION

On 2 April 1978, Officer Louis Peña of the Coral Gables Police Department in Miami, Florida, was shot dead after stopping Manuel Valle and Felix Ruiz in their car. Officer Gary Spell, who arrived at the scene separately, testified that Manuel Valle had shot Officer Peña and then fired two shots at Officer Spell. Manuel Valle was charged with murder and attempted murder. Felix Ruiz was charged as an accessory and sentenced to 10 years in prison.

Manuel Valle was sentenced to death in May 1978. In 1981, the Florida Supreme Court ruled that his lawyer had been prevented from adequately preparing a defence due to the speed with which the case had been brought to trial. At a new trial in 1981, Manuel Valle was again sentenced to death, but this sentence was overturned by the US Supreme Court in 1986. In 1988, a new jury voted by eight to four that Manuel Valle be sentenced to death.

On 30 June 2011, Governor Rick Scott signed a death warrant in Manuel Valle's case setting his execution date. The warrant stated that executive clemency was not appropriate. The state has said that a clemency process has been held, but the only information on any such process found by Manuel Valle's current lawyers is a request made in 1992 by the then Governor, Lawton Chiles, that a clemency investigation be conducted. Manuel Valle's lawyers have said that they can find no evidence of any clemency proceedings having been conducted, either in the 1990s or under the current governor. They have stated that "without notice, without the opportunity to be heard, without counsel, Mr Valle's clemency proceedings, if any, did not comport with due process". If any such proceeding has been conducted, the lawyers have asserted, "it was conducted in complete secrecy without counsel".

The US Supreme Court has stated that executive clemency is the "fail-safe" in the criminal justice system, to provide the possibility for remedy or relief not provided by the judiciary. Under article 6.4 of the International Covenant on Civil and Political Rights, a treaty ratified by the USA in 1992, "anyone sentenced to death shall have the right to seek pardon or commutation of the sentence". Respect for this right can only be achieved through a meaningful, transparent process, with the participation of the prisoner and his or her counsel. No such process has been conducted here, in violation of the USA's international obligations.

Manuel Valle has been facing execution for 33 years, a torment deepened by the fact that during his time on death row more than 60 of his fellow inmates have been taken from their cells and killed by the State of Florida. The US Supreme Court has not ruled on whether prolonged confinement on death row violates the US Constitution, but individual Justices have raised concerns. In 1995, for example, Justice John Paul Stevens wrote that executing a prisoner who had been on death row for 17 years arguably negated any deterrent or retributive justification for the punishment, supposedly the two main purposes of the death penalty. In 2002, in the case of an inmate who had been on death row for more than 25 years, Justice Stephen Breyer stated that if executed, the prisoner would have been "punished both by death and also by more than a generation spent in death row's twilight. It is fairly asked whether such punishment is both unusual and cruel." Three years earlier, he had written that "It is difficult to deny the suffering inherent in a prolonged wait for execution – a matter which courts and individual judges have long recognized", and added that "death row conditions of special isolation may well aggravate that suffering." In 1996, a Florida Supreme Court judge noted that death row prisoners in Florida, as now, "are maintained in a six- by nine-foot cell with a ceiling nine and one-half feet high. These prisoners are taken to the exercise yard for two-hour intervals twice a week. Otherwise, these prisoners are in their cells except for medical reasons, legal or media interviews, or to see visitors.... These facilities and procedures were not designed and should not be used to maintain prisoners for years and years."

Name: Manuel Valle

Gender: m

Further information on UA: 225/11 Index: AMR 51/069/2011 Issue Date: 2 August 2011

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