Karl and Walter LaGrand (brothers) are scheduled to be executed in Arizona on 24 February and 3 March 1999 respectively. They were sentenced to death in 1984 for the murder of Ken Hartsock during a bank robbery in 1982.

Attorneys representing the LaGrands have appealed to the federal courts on the grounds that the defendants were denied their rights under the Vienna Convention by the failure by the state of Arizona to inform them of their right to contact and seek assistance (as German nationals) from the German authorities - Article 36 of the Vienna Convention of Consular Relations, states that any foreign national detained by the authorities must be informed of their right to contact the embassy of their nationality. (For further information see Violations of the Rights of Foreign Nationals Under Sentence of Death, AI index AMR 51/01/98)

Although the Courts have acknowledged that this claim is “undisputed”, they have said that the claim is procedurally defaulted (i.e. had been lost to the defendants) because it was not raised during appeals in Arizona’s state courts. The federal courts have, therefore, refused to examine the issue.

Because awareness of the Vienna Convention in the USA is limited (although it has improved recently) it is likely that the LaGrand’s original attorneys were unaware of it. It therefore appears that the courts are refusing to look at the denial of the LaGrand’s rights because of the ignorance or ineffectiveness of their original attorneys in not raising it in state courts. Amnesty International deplores this refusal to consider correcting the denial of a defendant’s rights.

According to attorneys currently representing the LaGrands, officials tried to correct the Vienna Convention violation (over 16 years after their arrest) by recently asking at least one of the brothers to sign a statement informing him of his right to contact the German consulate.

The LaGrands are currently appealing against their execution on the grounds that the method to be used would constitute cruel and unusual punishment, in violation of the US Constitution. Death row inmates in Arizona sentenced before 1992 are given a choice of execution: by lethal gas or by lethal injection. If the inmate does not or refuses to choose lethal injection, as the LaGrands have, the execution must be carried out by lethal gas (as the legally prescribed method at the time of sentencing).

In 1994, an US District Court and the 9th US Circuit Court of Appeals ruled that execution by lethal gas constituted “cruel and unusual punishment”. The District Court judge ruled that prisoners suffered “excruciating pain for between 15 seconds and several minutes” and that a gas chamber execution violates “evolving standards of human decency and has no place in a civilised society.” After appeals by 14 states against these rulings the Supreme court ruled that where the inmate is given a choice of execution, lethal gas did not constitute cruel and unusual punishment. The Supreme Court instructed the lower courts, however, to examine the issue further.
Amnesty International is unaware of the current state of the law regarding execution by lethal gas but believes that all forms of execution constitute an extreme physical and mental assault on a person already rendered helpless by government authorities. The physical pain caused by the action of killing a human being cannot be quantified. Nor can the psychological suffering caused by the foreknowledge of death at the hands of the state. Therefore, all executions constitute cruel, inhuman and degrading treatment in violation of Article 5 of the Universal Declaration of Human Rights.

BACKGROUND INFORMATION
Amnesty International is currently aware of 74 foreign nationals, from 26 countries, under sentence of death in the USA. The vast majority were not informed by the arresting authorities of their right to seek assistance under the Vienna Convention. The US courts continually refuse to rectify the possible prejudice caused to the trials of foreigners on death row by the violation of their Vienna Convention rights. In the case of Canadian national Joseph Faulder, however, the State Department wrote to the authorities in Texas requesting his execution be stayed on the grounds that had he been granted his rights under the Vienna Convention he may not have been sentenced to death (see UA AMR 51/106/98 for further details).

On 1 October 1998, there were 121 prisoners under sentence of death in Arizona. The most recent execution was that of Arthur Martin Ross on 29 April 1998. Eleven prisoners have been executed under the state’s current death penalty laws. In Arizona the Governor may only grant clemency or reprieves if a positive recommendation comes from the state Board of Clemency.

RECOMMENDED ACTION: Please send telegrams/faxes/express/airmail letters in English or your own language:
To the Arizona Board of Pardons and Paroles:
- urging the Board to recommend that Governor Hull grant clemency to Karl and Walter LaGrand;
To Governor Jane Dee Hull:
- requesting that she commute the death sentences of Karl and Walter LaGrand;
To both:
- expressing concern that the LaGrands were denied their rights under the Vienna Convention;
- acknowledging the seriousness of the offence for which the LaGrands were sentenced to death and expressing sympathy for the victims of violent crime and their families.

APPEALS TO:
Chairperson
Arizona Board of Executive Clemency
1645 West Jefferson, Suite 326
Phoenix, AZ 85007, USA
Telegrams: Arizona Board of Executive Clemency, Phoenix, USA
Telephone: + 1 602 542 5656
Faxes: + 1 602 542 5680
Salutation: Dear Chairperson and Board Members

The Honorable Jane Dee Hull
Governor of Arizona,
1700 West Washington,
Phoenix, AZ 85007 USA
Telephone: + 1 602/ 542-4331
Dear Governor

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The Letters Editor
Arizona Republic
Box 1950, Phoenix, AZ 85004, USA
Faxes: +1 602 8500

and to diplomatic representatives of the USA accredited to your country.

PLEASE SEND APPEALS IMMEDIATELY.