

EXTERNAL (for general distribution)

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Death Penalty

3 November 1997

USA (Texas)

Cesar R FIERRO, Mexican national

Cesar Fierro, a Mexican national from Ciudad Juarez, is scheduled to be executed in Texas on 19 November 1997.

Cesar Fierro was sentenced to death in February 1980 for the murder of a white taxi driver, Nicolas Castanon, in El Paso (one mile from the Mexican border) in February 1979. Fierro was convicted on the testimony of a juvenile eyewitness, who is allegedly mentally-impaired, some five months after the murder, and his own testimony which, it has since emerged, was obtained under duress by US police. The eyewitness claimed to have accompanied Fierro in the taxi on the night of the murder and witnessed him shoot Castanon.

According to Fierro's attorneys, Juárez police (working in collaboration with US police to establish Fierro's whereabouts subsequent to the eyewitness statement) raided the home of Cesar Fierro in Juárez and arrested his mother and step-father, taking two letters from their home. They proceeded to interrogate them for several hours at a police station in an isolated mountain area. At trial Fierro's step-father testified that Juárez police threatened to attach a cattle prod to his genitals unless he gave them the information they were looking for.

At Fierro's appeal it emerged that Fierro had testified, at a pre-trial suppression hearing, that during his interrogation the chief investigating officer informed him that his family would remain in the detention of Juárez police unless he signed the confession. He was shown the letters taken from his family's home and allowed to verify this with the Juárez police themselves by phone. Immediately after speaking with them, Fierro signed a confession. His mother and step-father were released hours later.

At Fierro's trial, however, US police denied having knowledge of the detention of Fierro's family in Mexico. His attorneys have appealed to state courts to demonstrate that the police suppressed this important information at trial and that they used this information to coerce his confession. Evidence to substantiate this has emerged in a police report, dated 1 August 1979 and signed by the chief investigating officer, indicating that US police were aware of the detention of Fierro's family during the interrogation of Fierro. This is substantiated by affidavits obtained recently from both the said officer and a former police officer.

A recent affidavit from the prosecutor at Fierro's trial (no longer the District Attorney) states that, given that the US police were aware of the arrest of Fierro's family during his interrogation, this evidence was in fact *"highly relevant"* and that the police concealed this information from him. He goes on to say *"I am familiar with the reputation of the Juárez police for engaging in torture...I believe that [the investigating officer] and [the Juárez police] colluded to coerce Fierro's confession"*, and that had he known about this information previously *"...I would have joined in a motion to suppress the confession. Had the confession been suppressed, I would have moved to dismiss the case unless I could have corroborated [the eye-witness'] testimony. My experience as a prosecutor indicates that the judge would have granted the motion as a matter of course."*

In the light of new evidence of police misconduct and perjury an El Paso district

judge recommended, in 1994, that Cesar Fierro be given a new trial. In 1996, however, the Texas Court of Criminal Appeals refused to follow the recommendation after creating a new "harmless error" rule. This enabled the Court to dismiss the appeal by stating that the police misconduct did not require the conviction to be overturned.

In an opinion dissenting from the majority, Judge Oversheet stated: *"One can have eyewitness testimonial evidence, circumstantial evidence, scientific evidence, and even videotaped evidence; but a confession explicitly admitting guilt signed by the defendant is the most powerful piece of evidence that can ever be introduced against him and will surely serve as the key that will lock the jail-house door and provide the juice to power the electric chair; and in these more civilized times, the juice for the needle. Because the majority finds that the perjurious testimony which paved the way for the erroneous admission of applicant's involuntary coerced confession was immaterial, i.e. not harmful, I strongly dissent with principle."*

The Texas authorities have additionally failed to carry out the requirement of the Vienna Convention on Consular Relations (1963), ratified by the USA in 1969, which entitled Fierro to contact the Mexican Embassy for assistance.

The Convention stipulates that the appropriate foreign government officials must be informed when one of their nationals is arrested, in order that they may have the opportunity to offer their citizen legal assistance. Article 36(1b) of the Convention clearly states: **The said authorities shall inform the person concerned without delay of his rights under this sub-paragraph.**" (Emphasis added).

Mexican officials believe that, had they been notified of Fierro's arrest, their timely intervention would have prevented Fierro's forced confession. The Attorney General for the State of Chihuahua has also submitted a sworn statement that his office would have intervened to prevent the illegal detention of Fierro's family members.

BACKGROUND INFORMATION

In Texas the governor may commute a sentence of death only if he receives a favourable recommendation from the Board of Pardons and Paroles. The Board consistently refuses to hold full clemency hearings in death penalty cases.

Apart from a number of commutations granted in the 1980s as the result of two key court rulings the Board has never recommended clemency in any death penalty case in recent years.

On 14 October 1997, there were 440 prisoners under sentence of death in Texas.

On 28 October 1997 Kenneth Ranson became the most recent person to be executed and the 32nd in Texas this year. The method used is lethal injection.

Two Mexican nationals have been executed in the USA during 1997, despite the violation of the Vienna Convention in their cases; Irineo Montoya was executed in Texas on 18 June and Mario Murphy was executed in Virginia on 17 September.

RECOMMENDED ACTION: Please telephone/send telegrams/faxes/express letters in English or your own language:

To the Board of Pardons and Paroles

- expressing deep concern that Cesar Fierro is scheduled to be executed in Texas on 19 November;
- urging the Board to recommend that Governor Bush grant clemency to Cesar

Fierro;

- expressing concern that Cesar Fierro's confession was made under duress and that this issue has not been addressed by the courts (please quote from Judge Oversheet's dissenting opinion;
- expressing concern that Cesar Fierro was denied his right to seek legal assistance from the Mexican authorities under the rules of the Vienna Convention;
- referring to the recent statement by the prosecutor at the time of Fierro's trial.

APPEALS TO

Texas Board of Pardons and Paroles
Executive Clemency Unit
Texas Department of Criminal Justice
Pardons and Paroles Division
PO Box 13401, Austin, TX 78711, USA

Telephone: + 1 512 406 5852

Telegrams: Pardons and Paroles Board, Austin, Texas, USA

Faxes: + 1 512 467 0945

Salutation: Dear Board Members

COPIES TO:

The Honourable Madeleine Albright
Secretary of State, State Department
2201 C Street N.W., Washington DC 20520, USA

Telephone: + 1 202 647 5291

Faxes: + 1 202 647 1533

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

PLEASE SEND APPEALS IMMEDIATELY.