

EXTRA 29/01

Death penalty / Legal concern

23 May 2001

USA (Federal)

Juan Raul GARZA, Latino, aged 44

Federal death row inmate Juan Raul Garza is due to be executed at the US Penitentiary in Terre Haute, Indiana, on 19 June 2001, despite serious concern about evidence introduced at his 1993 trial, continuing concern about racial and geographic disparities in federal death sentencing, and a 38-year *de facto* moratorium on federal executions.

Juan Garza was tried for the killings of three men in Texas in the course of a marijuana trafficking enterprise based in Brownsville on the Mexican border. Arguing for the death penalty at the sentencing phase of the trial, the government introduced evidence that Juan Garza had committed four other unsolved murders in Mexico. There was no physical evidence linking Garza to these crimes, for which he has never been prosecuted or convicted. Instead, the prosecution relied on the testimony of three accomplices in the Brownsville drug ring who were alleged to have either committed or participated in the Texas murders, but who were offered reduced sentences in return for their testimony. Juan Garza's jury voted to sentence him to death despite finding in mitigation that "another defendant or defendants, equally culpable in the crime, will not be punished by death".

The Inter-American Commission on Human Rights (IACHR) issued its findings on the case on 4 April 2001. Stressing the need for adherence to stringent safeguards in capital cases, the Commission concluded that Juan Garza was not only convicted and sentenced for the three Texas murders, but also for the four Mexico murders "without having been properly and fairly charged and tried for these additional crimes". The IACHR found that the introduction of the evidence of the four Mexico murders was "antithetical to the most basic and fundamental judicial guarantees". It concluded that Juan Garza had been sentenced to death "in an arbitrary and capricious manner" and that his execution would be a "deliberate and egregious violation" of the American Declaration of the Rights and Duties of Man. It called on the USA to provide "an effective remedy, which includes commutation of sentence" and to review its capital laws, procedures and practices to ensure compliance with international standards, including by prohibiting the introduction of evidence of unadjudicated crimes at the sentencing phase of capital trials.

This is Juan Garza's third execution date in less than a year. President Clinton twice issued stays. The first reprieve came because federal clemency guidelines were not yet ready (see update to UA 40/00, AMR 51/118/00, 3 August 2000), and the second to "allow the Justice Department time to gather and properly analyse more information" after it had released statistics showing marked racial and geographic disparities in the application of the federal death penalty. (see update to EXTRA 85/00, AMR 51/185/00, 11 December 2000).

The Justice Department's statistics are of direct relevance to Juan Garza's case, given his ethnic origin and the fact that he was prosecuted in Texas, one of the handful of states accounting for the vast majority of cases in which federal prosecutors have sought the death penalty. The statistics suggest that the same crime committed by a different person in a different state may have resulted in a sentence of less than death. There are numerous examples in which the death penalty was not sought against federal defendants accused of killing several victims in drug-related murders.

The onus is on the government to prove that neither bias nor discrimination plays any role in federal capital justice. Yet with Juan Garza less than a month from execution, the Justice Department has not released any further analysis. There are indications that the Department may release further information a matter of days before Juan Garza's execution.

BACKGROUND INFORMATION

Juan Garza is one of two federal inmates scheduled for execution. The other is Timothy McVeigh, who is currently considering whether to resume appeals following revelations that the FBI withheld evidence in his case (see update to EXTRA 25/01, AMR 51/073/2001, 22 May 2001). While there have been 713 state-level executions in the USA since it resumed judicial killing in 1977, there have been no executions of federal prisoners since 1963.

As the USA prepares to end a 38-year *de facto* moratorium on federal executions, much of the rest of the world has turned against this cruel and irrevocable punishment, with 108 countries abolitionist in law or practice. This is also a time of unprecedented domestic concern about the reliability and fairness of US capital justice in light of overwhelming evidence that its hallmarks are discrimination, arbitrariness and error.

This is an issue crying out for leadership at the highest level. Amnesty International has been calling on President Bush, who promised at his inauguration to be a leader who would "speak for greater justice and compassion", to announce a moratorium on federal executions as a first step towards leading his country away from this failed and outdated policy.

RECOMMENDED ACTION: Please send telegrams/faxes/express/airmail letters in English or your own language, in your own words, using the following guide:

- expressing sympathy for the victims of violent crime and their families;
- urging that the US Government comply with the recommendations of the Inter-American Commission on Human Rights, stating that to proceed with Juan Garza's execution in the light of the IACHR ruling would be to further seriously damage the USA's international reputation;
- expressing concern that only weeks from Juan Garza's execution, no official analysis of the racial and geographic disparities in the federal death penalty has been released, noting that such analysis bears direct relevance to this case;
- arguing that no one can have any confidence that the decision to seek the death sentence against Juan Garza was not influenced by his ethnicity or the state where the prosecution took place;
- expressing deep concern that the federal government is planning to resume executions after nearly four decades, out of step with world abolitionist trends and growing domestic concern about the death penalty;
- calling on the President to commute Juan Garza's death sentence and to declare a moratorium on federal executions.

APPEALS TO:

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E-mail: president@whitehouse.gov
Telegrams: President Bush, Washington DC, USA
Salutation: Dear Mr President

COPIES TO:

The Honourable John Ashcroft, Attorney General, Department of Justice, 950 Pennsylvania Ave, N.W., Room 440, Washington, DC 20530-0001, USA
Fax: +1 202 307 6777
Salutation: Dear Attorney General

and to diplomatic representatives of USA accredited to your country.

PLEASE SEND APPEALS IMMEDIATELY.

