

URGENT ACTION

EXECUTION WOULD BREACH INTERNATIONAL LAW

Texas intends to execute Andre Thomas, a Black man, on 5 April 2023. He was sentenced to death in 2005 by an all-white jury after his lawyers failed to challenge dubious prosecutorial jury selection tactics, the impartiality of certain jurors, or their client's competence to stand trial. Andre Thomas has a long history of serious mental disability, including schizophrenia, and was experiencing a prolonged and severe psychosis at the time of the crime. Soon after his arrest, he gouged out his right eye, and has since extracted the other. He is held in a prison psychiatric facility. His current lawyers are challenging his competence for execution.

TAKE ACTION: WRITE AN APPEAL IN YOUR OWN WORDS OR USE THIS MODEL LETTER

Texas Board of Pardons and Paroles

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Dear Board members,

Before you is the clemency petition for Andre Lee Thomas (TDCJ No: 999493), whose case Judge Cathy Cochran on the Texas Court of Criminal Appeals described as "extraordinarily tragic", involving a man who has "a severe mental illness" and "suffers from psychotic delusions". The Texas courts have nevertheless upheld his death sentence, as have federal courts, applying the highly deferential standard for federal review of state court decisions under US law, a requirement which has undermined international fair trial standards.

This is a case that cries out for your compassion and intervention, and many mental health professionals and organizations, as well as faith leaders across the USA have called on you to act.

There are deep concerns that the trial of Andre Thomas was infected by racial bias. Twelve white jurors, a quarter of whom had made clear their opposition to interracial marriage and procreation, were chosen to determine the fate of a Black man accused of the murder of his white estranged wife and her two mixed race children. A judge on the US Court of Appeals for the Fifth Circuit has said that allowing these three to sit on this jury was in itself "objectively unreasonable". However, the defence lawyers only cursorily questioned the views of one of these three jurors, and not at all in the case of the other two. The defence neither sought to summarily dismiss them, nor object when they were selected. As three US Supreme Court Justices noted in 2022, Andre Thomas was thereby convicted and sentenced to death "by a jury that included three jurors who expressed bias against him" and maintained that he had clearly been denied his constitutional right to effective assistance of counsel. The trial lawyers had also failed to question his competency to stand trial despite the sedative effects of the heavy medication used to quell his psychosis.

International law prohibits the use of the death penalty against people with mental (psychosocial) disabilities, requires the administration of justice to be free and seen to be free of racial discrimination, and for anyone facing the death penalty to be ensured adequate legal assistance at all stages of proceedings. This execution would violate international law binding on all jurisdictions in the USA.

The mental health and public safety systems failed Andre Thomas long before the state decided to kill him. I urge you to recommend that Governor Abbott commutes his death sentence.

Yours sincerely,

ADDITIONAL INFORMATION

Sent to death row for a murder committed 10 days past his 21st birthday in 2004, Andre Thomas turns 40 on 17 March 2023. Born into poverty, neglect and abuse in a family with a multigenerational history of mental disability, he began to experience auditory hallucinations when he was aged 9 or 10. The first of his numerous suicide attempts occurred around that time. By the age of 19, his auditory hallucinations had increased in frequency and severity.

On 5 March 2004, a friend took Andre Thomas to a mental health facility because he was suicidal. An emergency detention order was signed by a judge but was never enforced. Two weeks later, he stabbed himself in the chest. At the hospital, he was seen by a doctor who concluded Andre Thomas was paranoid, hallucinating and suicidal, but left unattended, the young man went home. Another emergency detention order was issued, the police were informed, but the order was never carried out. Two days later, on 27 March 2004, Andre Thomas stabbed to death his 20-year-old estranged wife, their four-year-old son, and her 13-month-old daughter, and then stabbed himself. After he was discharged from the hospital following surgery for his stab wound, he told police that he had heard a voice he thought was God telling him the three victims were Jezebel (wife of the devil), the anti-Christ, and another evil spirit, and ordering him to kill them. After he did so, he stabbed himself hoping to die. In jail five days later, still under active psychosis, he cited the Bible verse that “if thy right eye offend thee, pluck it out” and gouged out his own right eye. Three psychologists agreed he was not competent to stand trial and he was diagnosed with paranoid schizophrenia. Forty-seven days later, after treatment with high doses of powerful anti-psychotic medication, he was deemed competent. His lawyers did not raise the issue of competency even though their client was being heavily medicated before and during trial, compromising his ability to communicate with them.

At jury selection in early 2005, the prosecution used its right under Texas law to have the jury pool “shuffled” (randomly re-seated), leading to 10 of the 12 Black prospective jurors being moved back to beyond the first 100 individuals to be questioned, effectively removing them. The one Black person who reached individual questioning was questioned by the prosecution in a manner markedly different than it employed for the white prospective jurors. The prosecution then dismissed the Black would-be juror as unsuitable. The resulting jury was all-white, in a county (Grayson) with a population that was 18% non-white. Three of the jurors had openly admitted on their questionnaire forms that they opposed interracial marriage and procreation – saying such things as “I don’t believe God intended for this” and “we should stay with our Blood Line”. One of them said that he “vigorously” opposed such relationships and was “not afraid to say so”. Despite the racially sensitive facts of the case – Andre Thomas is Black, his former wife was white, and the two children were mixed race – the defence failed to object to the jury shuffle (or to ask for its own), to adequately question the jurors’ views on interracial marriage and whether this would impact their impartiality, or to challenge the prosecution’s disparate questioning of the Black prospective juror. It also failed to object to the prosecution’s racially charged closing argument for the death penalty asking the white jurors whether they were willing to countenance Andre Thomas being released after a 40-year life sentence and the subsequent risk of “him asking your daughter out, or your granddaughter out?”

There was no dispute that Andre Thomas was psychotic at the time of the crime. The defence position was that his psychosis stemmed from his mental disability, and that he was not guilty by reason of insanity. The prosecution argued that ingestion of alcohol, marijuana, and cough medicine in the weeks before the crime had induced the psychosis and amounted to “voluntary intoxication” which defeats the insanity claim under Texas law. The defence retained no neuropharmacological expert to rebut the state’s theory of substance-induced psychosis and failed to present a cohesive mitigating picture of Andre Thomas’s life-long struggle with serious mental disability. The jury rejected the insanity plea, convicted him of the capital murder of the 13-month-old baby, and after only an hour’s deliberation, sentenced him to death (the murders of his wife and son were on a separate indictment which has not been tried). On death row in December 2008, again under a psychotic episode causing him to believe that the government could see his thoughts, he removed his remaining eye, thereby completely and permanently blinding himself. Since then, he has been held in a prison psychiatric facility where he is medicated with anti-psychotic drugs. Doctors there have described him as “severely and persistently mentally ill”.

International law prohibits the death penalty against people with mental (psychosocial) disabilities. The UN Human Rights Committee, established under the International Covenant on Civil and Political Rights, has said that States parties, of which the USA is one, “must refrain from imposing the death penalty on individuals who face special barriers in defending themselves on an equal basis with others, such as persons whose serious psychosocial... disabilities impede their effective defence... They should also refrain from executing persons who have a diminished ability to understand the reasons for their sentence.” His current lawyers are challenging his competence for execution, that is that he does not have a rational understanding of the reality of, and reason for, his punishment.

Amnesty International opposes the death penalty unconditionally. There have been 1,565 executions in the USA since the US Supreme Court upheld new capital laws in 1976. There have been seven executions in 2023; three of them in Texas, which accounts for 581 or 37% of all executions in the country since 1976.

PREFERRED LANGUAGE TO ADDRESS TARGET: English. You may also write in your own language.

PLEASE TAKE ACTION AS SOON AS POSSIBLE UNTIL: 5 April 2023

NAME: Andre Lee Thomas