

URGENT ACTION

EXECUTION SET DESPITE FAIR TRIAL CONCERNS

Ivan Cantu, a 50-year-old Hispanic man, is scheduled to be executed in Texas on 28 February 2024. He was convicted and sentenced to death in 2001 for a double murder in November 2000. A recent independent investigation conducted has compounded questions about the adequacy of his legal representation at trial and raised doubts about the testimony of the state's key witness and the physical evidence that appeared to corroborate her testimony. International safeguards prohibit the imposition of the death penalty on anyone whose conviction is not based on "clear and convincing evidence leaving no room for an alternative explanation of the facts".

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 Member

Ivan Cantu (TDCJ #999399) is due to be executed on 28 February 2024. He has been on death row for over two decades. He did not receive effective legal representation at trial or for state habeas appeal and has consistently maintained his innocence of the two murders of which he was convicted.

An independent investigation over the past four years has uncovered evidence not heard by the jury which compounds concern about the effectiveness of Ivan Cantu's trial counsel and raises doubts about the reliability of his conviction. Two of the trial jurors, after seeing this new evidence, signed affidavits in 2023 expressing concern at the situation and the wish to have a court consider the new evidence. One said that the state's key witness testimony appears to have been "false or misleading in many significant respects, which leads me to question the truthfulness of her testimony as a whole". The other said he was "dismayed" to learn that the investigation had thrown into doubt "much of the testimony and evidence which I and the other jurors relied upon at the time of trial. I am now concerned that the State may be wrongfully putting a man to death based on my verdict".

In 2023, Ivan Cantu's execution was set for 26 April 2023. His lawyers filed a successive application for writ of habeas corpus on 18 April, and the next day a Collin County judge ordered the execution date withdrawn. However, in August the Texas Court of Criminal Appeals (TCCA) issued an order denying authorization to file a successive habeas application on the grounds that the high bar under Texas law for such an application had not been met, thereby refusing consideration of the merits of claims based on the newly discovered evidence.

Without a court examining the merits of this new evidence, executive clemency remains the only route for remedy.

What might on its face have seemed like a safe conviction at the time it was obtained in 2001 has been thrown into doubt. Please recommend to Governor Abbott that he commute Ivan Cantu's death sentence.

Yours sincerely,

ADDITIONAL INFORMATION

Ivan Cantu was sentenced to death in October 2001 for the murders of his cousin JM and JM's fiancée AK in their home in North Dallas, Texas in November 2000. His conviction was based principally on the testimony of AB, his fiancée at the time of the murders, coupled with physical evidence that appeared to corroborate her testimony. Indeed, the prosecution told the jury that "you can convict him based on her testimony alone" and in upholding the conviction in 2004, the TCCA said that her "testimony about the offense wholly incriminated [Cantu] in the murders and robbery". On cross-examination, a detective testified that during the investigation, police had received an anonymous tip that JM, who dealt drugs in large quantities, owed a rival drug dealer a substantial amount of money at the time of his death. The police investigation, however, had quickly become focussed on Ivan Cantu.

In preparation for trial, Ivan Cantu's court-appointed lawyers did not request the appointment of an investigator, leaving them reliant on examining witnesses and evidence provided by the prosecution. Neither did they seek the assistance of a DNA expert, a ballistics expert, a fingerprint examiner, a blood-spatter expert, or a medical examiner, as the prosecution did. For state habeas corpus review, Ivan Cantu was appointed a lawyer who never met with him to discuss the case, and filed an appeal without discussing it with him, challenging the death sentence but not the conviction. The lawyer raised a single claim of ineffective assistance of counsel (IAC) at the sentencing. The federal courts have therefore not reviewed the question of IAC in the first phase because it has not been reviewed by the state courts. International standards require that anyone facing the death penalty be provided "adequate legal assistance at all stages of the proceedings", "above and beyond the protections afforded in non-capital cases".

AB testified that in the late evening of 3 November 2000, Ivan Cantu told her he was going to kill JM and AK and came back an hour later with blood on his jeans. She said that she put his jeans and socks into the kitchen waste bin, and that the couple later went to the crime scene to look for drugs and money but found none. They left home around midday on 4 November on a preplanned trip to visit AB's mother and stepfather in Arkansas, before driving back on 7 November. The bodies of the two victims were discovered on the afternoon of 4 November. Both had been shot. The jeans and socks were found in the kitchen bin during a search of Ivan Cantu's apartment on 7 November, and DNA testing showed the blood was from the victims. On 8 November, after Ivan Cantu was arrested, AB called her stepfather, stating, "I'm scared to death they are going to kill me. Get me out of here." She flew back to Arkansas that day, gave statements to the authorities implicating Ivan Cantu and agreed to testify against him.

An investigation by a private investigator over the past four years has called into doubt AB's testimony, including:

- Shortly after the bodies were discovered on 4 November, police went to Ivan Cantu's apartment. One of the officers has since stated that the jeans and socks were not in the kitchen bin at that time, and she was "positive" that the "thorough search" would have revealed them if they had been. At the trial, telephone records admitted into evidence showed that a long-distance call was made from Ivan Cantu's apartment that evening after the police search, and by which time he and AB were hundreds of miles away in Arkansas. The jeans recovered from the bin, which AB testified were Ivan Cantu's, were men's size 34/32. Ivan Cantu wore size 30/30.
- AB testified that on the night of the murders she saw Ivan Cantu wear JM's Rolex watch and later dispose of it. It was revealed in 2019 that AK's brother had taken the watch at the crime scene and given it to the police, who had returned it to JM's mother not long afterwards.
- AB testified that, on the night of the crime, Ivan Cantu asked her to marry him and gave her a diamond engagement ring that she later learned he had taken from AK's body. She said that he took the ring back and discarded it on the return to Dallas. It has never been found. Witnesses have since said that the couple had announced their engagement, and that AB was wearing an engagement ring, a week before the murders.
- AB testified that Ivan Cantu disposed of a pair of her boots she had worn to the crime scene in case they could be linked to the crime, but the boots were recovered from Ivan Cantu's car after his arrest.
- AB testified that the murders occurred between about 11:30pm and midnight on 3 November. Two forensic pathologists have now concluded that the murders were likely to have occurred the following morning. Police reports kept from the jury state that a man who had been living with JM and AK for weeks before the murders said after their bodies were found on 4 November, "They weren't killed last night, they were killed today."
- AB's brother testified that before the crime, Ivan Cantu had told him he planned to kill JM and had sought to recruit him to "clean up" after it. He recanted his testimony in 2022, saying he was not a credible witness due to his drug abuse, had been on drugs when he testified, and that the conversation with Ivan Cantu had "never happened". Only he and AB testified that Ivan Cantu owned a gun and identified the murder weapon as his.

International safeguards state that "Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts." The UN Human Rights Committee, established under the International Covenant on Civil and Political Rights (which the USA ratified in 1992) to oversee compliance with that treaty, has said that "States parties must... take all feasible measures in order to avoid wrongful convictions in death penalty cases". There have been 1,583 executions in the USA since 1976, 586 of them in Texas. Amnesty International opposes the death penalty unconditionally.

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

PLEASE TAKE ACTION AS SOON AS POSSIBLE UNTIL: 28 February 2024

NAME: Ivan Abner Cantu