

**PUBLIC**

**AI Index: AMR 51/021/2004**

**4 February 2004**

**Further information on UA 320/03 (AMR 51/137/2003, 7 November 2003) and follow-ups (AMR 51/152/2003, 10 December 2003 and AMR 51/163/2003, 22 December) - Death penalty / Legal concern**

**USA (Oklahoma)**

**Hung Thanh Le (m), Vietnamese national, aged 36**

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On 28 January, Governor Brad Henry of Oklahoma denied clemency for Hung Thanh Le, thereby rejecting a unanimous recommendation by the state Pardon and Parole Board that this former Vietnamese refugee's death sentence should be commuted to life imprisonment.

In an Executive Order, Governor Henry stated that he had "thoroughly reviewed the arguments and evidence presented in this case...After having listened to presentations and thoroughly reviewing the record in this matter, as well as the information presented at the clemency hearing, I have determined that clemency should be denied in this case." The Executive Order gave no further explanation, and the Governor's legal counsel has told Amnesty International that there is no other public information available to explain the Governor's decision.

The state Attorney General, who had urged the Governor to reject the Board's recommendation, immediately sought a new execution date for Hung Thanh Le of 10 February 2004. The Oklahoma Court of Criminal Appeals has not yet set a date. Under state law, the execution date set should be within 30 days of the dissolution of the stay. The Court could therefore choose to set a date up to 27 February.

Amnesty International deeply regrets Governor Henry's decision. This is the third time in a year that he has rejected a clemency recommendation by the Board (the other two were for Bobby Joe Fields and Jackie Willingham, who were subsequently executed). Governor Henry's predecessor rejected a number of other clemency recommendations made by the Board of Pardons and Paroles. In two cases, after the former governor denied clemency, the Oklahoma Court of Criminal Appeals granted relief. In one of these cases, Gerardo Valdez, a Mexican national, was granted a new sentencing hearing and subsequently received a life sentence. It is clear that executive clemency in Oklahoma is not a "fail-safe" option if courts have had to step in even after the clemency decision has been made. In addition, it is unclear what the purpose of the Oklahoma Pardon and Parole Board is in capital cases, if its recommendations for clemency are routinely rejected.

Only one recommendation for clemency by the Oklahoma board has been accepted in a death penalty case since 1977, involving a prisoner whose guilt was in serious doubt (Philip Dewitt Smith in 2001). While the Board of Pardons and Paroles appears in the past two or three years to have begun rightly to broaden its view of what issues can be a cause for clemency, the Governor's office, pressed by the Attorney General's Office, appears not to have done so.

Amnesty International is also concerned that the Governor's office did not inform Hung Thanh Le's lawyer of the Governor's decision, and she only learned about it in the press. Not least, the attorney had wanted to be able to ensure that Hung Thanh Le's elderly parents would be informed of the decision before learning about it via the media. In a telephone call to the Governor's legal counsel on 29 January, Amnesty International was told that it was an error that the attorney was not informed.

Hung Le was sentenced to death in September 1995 in Oklahoma County for the murder of Hai Hong Nguyen in 1992. Hai Nguyen and Hung Le fled their native Vietnam and later met in 1985 in a refugee camp

in Thailand. Hung Le's trial was tainted by prosecutorial misconduct. There are also questions about the adequacy of his legal representation at the trial (see original action).

The State of Oklahoma last executed a former Vietnamese refugee on 10 December 1998, Human Rights Day, when it killed Tuan Nguyen, a seriously mentally ill prisoner. He is one of 70 people to have been killed in Oklahoma's lethal injection chamber since the state resumed executions in 1990. It has carried out more than 50 executions since 2000 alone. The state ranks 28<sup>th</sup> in population and third in the number of executions carried out since 1977, and now has the highest execution rate per capita of population of all the USA's death penalty states. For further information see *Old Habits Die Hard: The death penalty in Oklahoma*, April 2001 <http://web.amnesty.org/library/Index/ENGAMR510552001>

**Please send appeals, in your own words, expressing regret at Governor Henry's decision to reject the state Pardon and Parole Board's unanimous recommendation in Hung Thanh Le's case, and urging him to reconsider his decision, in the interest of justice and the reputation of the State of Oklahoma.**

**APPEALS TO:**

Governor Brad Henry

212 State Capitol

2300 N. Lincoln Blvd

Oklahoma City, OK 73105, USA

**Fax: + 1 405 521 3353**

**Email: <http://www.governor.state.ok.us/main.php?main=correspondences&head=transitionh>**

**Salutation: Dear Governor**

**COPIES TO:** diplomatic representatives of the USA accredited to your country.

You may also write a brief letter of concern (not more than 250 words) to

Your Views

*The Oklahoman*

PO Box 25125

Oklahoma City, OK 73125, USA

**Fax: "Attn: Your Views" +1 405 475 3971**

**E-MAIL: [Yourviews@oklahoman.com](mailto:Yourviews@oklahoman.com)**

**PLEASE SEND APPEALS IMMEDIATELY. At the time of writing the execution date had not been set. In case the Attorney General is successful in obtaining a 10 February execution date, we have reissued this action now. In the event that a later date is set, we will issue an update to inform participants.**