

EXTRA 32/01

Death penUSA (Oklahoma)Gerardo Valdez Maltos, Mexican national, aged 41

Gerardo Valdez is scheduled to be executed in Oklahoma on 19 June 2001. He was sentenced to death in 1990 for the murder of Juan Barron in 1989. His clemency hearing before the Pardon and Parole Board is set for 6 June.

According to the trial record, Valdez met Barron, who was homosexual, at a bar. Following an evening of heavy drinking, Valdez went home with Barron and a friend. Valdez began preaching to Barron that the Bible taught that homosexuality was a sin, and threatened to castrate or kill him. When Juan Barron rejected this proselytizing, Valdez began hitting and slapping him. When Barron fought back, Valdez shot him, cut his throat and disposed of the body by burning it in the back yard.

Confronted by police three months later, Gerardo Valdez confessed to the crime after signing a form waiving his right to remain silent and to have a lawyer present. Asked by police whether his statement and signature had been voluntarily given, his taped reply strongly suggests that he thought he was signing a form to obtain legal assistance: "Yes, I understand it a little bit and I sign it because I understand it something about a lawyer and he want to ask me questions and that's what I'm looking for a lawyer".

The authorities were obliged under the Vienna Convention on Consular Relations (VCCR) to inform Valdez upon arrest that, as a foreign national, he had the right to seek assistance from his consulate. They failed to do so, despite being fully aware of his Mexican nationality. This violation only recently came to light, and has not been considered on appeal. Mexican consular officials maintain that they would have explained Valdez's legal rights to him after his arrest, assisted in obtaining competent trial counsel, and ensured the collection of all available mitigating evidence.

In the event, Valdez was represented by an attorney with little experience in criminal trial procedures. For example, he did not file a motion challenging Valdez's confession, and despite evidence of his client's mental illness and the defence being one of not guilty by reason of insanity, he offered minimal challenge concerning Valdez's competency to stand trial. At the trial, he called one expert witness, who had evaluated the defendant for about five hours. The expert testified that, in his opinion, Valdez had been incapable of knowing right from wrong at the time of the murder, that he was operating under a religious delusion, and might be suffering from schizophrenia. Two psychiatrists for the prosecution testified that Valdez knew right from wrong at the time of the crime, although one of them said he was "uncomfortable" in so testifying. Between them they had interviewed Valdez for less than an hour and a half. The jury convicted Valdez of first-degree murder.

At the sentencing phase, the defence lawyer offered an opening argument of just five sentences, presented two mitigation witnesses - Valdez's mother and wife, who testified to his normally non-violent character - and gave a closing argument that lasted less than three minutes. Despite the earlier testimony that Valdez was mentally ill, his attorney called him to the stand, as he had at the guilt stage. Valdez told the jury that he was carrying out the Bible's teachings by preventing Barron from sinning again and that he might do the same again if faced with similar circumstances. The jury unanimously voted

for death, finding as one of the aggravating factors that Valdez represented a future threat to society.

Gerardo Valdez has no prior history of violent behaviour and has had a perfect disciplinary record while on death row. It has recently emerged that Valdez was once so severely injured in a car accident that he was pronounced dead, raising the unconsidered possibility that he sustained brain damage. Tests administered by prison officials indicate that Gerardo Valdez has an IQ of 76, indicating borderline mental retardation.

The governor may commute a death sentence if he receives a recommendation to do so from a majority of the Pardon and Parole Board. He also has the independent authority to issue reprieves not exceeding 60 days.

BACKGROUND INFORMATION

In 1999, after the Oklahoma Court of Criminal Appeals rejected an appeal by a Mexican national whose VCCR rights had been violated, one of its judges expressed his concern at the decision: "Why should Mexico, or any other signatory country, honor the Treaty if the US will not enforce it? The next time we see a [TV report] on a US citizen locked up in a Mexican jail without notice to any US governmental official we ought to remember these cases". The USA's continuing failure to provide any meaningful remedies for VCCR violations is a growing concern for the international community. Last November, Texas permitted the execution of Mexican national Miguel Flores, despite a formal request by the Inter-American Commission on Human Rights for a stay pending an inquiry into the treaty violation. Last month, the European Union urged the Illinois governor to commute the death sentence of Polish national Gregory Madej, also denied his consular rights and adequate trial representation. The International Court of Justice is expected shortly to issue its binding ruling on the remedies which may be required of the USA under international law for the VCCR violation in the cases of two German nationals executed in Arizona in 1999.

Oklahoma is currently executing at the highest per capita rate in the USA, and among the highest rates in the world (see *Old habits die hard: The death penalty in Oklahoma*, AMR 51/055/2001, April 2001). It has already executed 12 prisoners this year, more than any other US state.

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

- expressing sympathy for the family and friends of Juan Barron, explaining that you are not seeking to belittle the seriousness of the crime;
- noting that the arresting authorities deprived Gerardo Valdez of access to the crucial assistance of his consulate and that the implications of this treaty violation have never been considered by the courts;
- expressing concern at the quality of Gerardo Valdez's legal representation, particularly at the sentencing phase when minimal defence against the death penalty was offered;
- urging the Board to recommend that the governor grant clemency;
- urging the Governor to uphold the USA's binding consular obligations by doing everything in his power and influence to stop this execution. At a minimum, he should grant a reprieve to permit more time for an investigation into what impact the treaty violation had on the outcome, particularly given emerging evidence of the defendant's mental impairment.

APPEALS TO:

To arrive before 6 June:

Pardon and Parole Board

4040 North Lincoln, Suite 219, Oklahoma City, OK 73105, USA

Fax: + 1 405 427 6648**Salutation: Dear Board Members****Before and after 6 June:**

Governor Frank Keating

Capitol Building, Oklahoma City, OK 73105, USA

Fax: + 1 405 521 3353**E-mail: governor@gov.state.ok.us****Salutation: Dear Governor****COPIES TO:** diplomatic representatives of the USA accredited to your country.**PLEASE SEND APPEALS IMMEDIATELY.**