
USA (Texas) Javier Suárez Medina (m), aged 33, Mexican national

Mexican national Javier Suárez Medina is scheduled to be executed in Texas on 14 August 2002. He was sentenced to death in 1989 for the murder of Lawrence Rudy Cadena, a police officer, in 1988. Javier Suárez was aged 19 at the time of the crime. This is his 14th execution date since 1995 and he has now exhausted all normal avenues of appeal.

Javier Suárez shot Lawrence Cadena as the 19-year-old was delivering a bag of cocaine to him, unaware that Cadena was an undercover narcotics officer. Javier Suárez claims that he only made the delivery under threat from the actual dealers. He has never denied shooting Officer Cadena, but maintains that he fired in fear when he heard what he thought were gunshots.

A death sentence can only be imposed in Texas if the jury unanimously agrees that "there is a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society" - so-called "future dangerousness". Before the shooting, Javier Suárez had no criminal record. The defence presented 15 witnesses who testified to his non-violent character.

The prosecution had little or no evidence to give to the jury that Javier Suárez would pose a danger if allowed to live. It presented alleged instances of school disobedience, and of an occurrence of joyriding with others in a stolen car. However, after both sides had concluded their presentations, the state produced a surprise witness who had just come forward. While watching the trial coverage on television, Michael Mesley said he had recognized Javier Suárez as the man who had shot him in the face in a 1987 night time robbery. He was allowed to testify, over the objections of the defence.

The defence was given only days to confront this dramatic testimony which the state used to argue "future dangerousness". They produced Javier Suárez's employment records showing that he had worked until two hours after Michael Mesley had been shot. However, the prosecution implied that he could have arranged for a fellow employee to "punch" his time card, thus allowing him to leave early.

Javier Suárez maintains that he did not shoot Michael Mesley. No physical evidence links him to that crime, which remains unsolved, and post-conviction investigations have undermined the state's theory that a colleague could have covered for his absence at work. In addition, an expert has concluded that Mesley's positive identification is unreliable, since it is based on a brief view of the robber's face under poor lighting and highly stressful circumstances.

In many US states outside Texas, Javier Suárez's death sentence would have been overturned on appeal because the prosecution's introduction of this "unadjudicated" evidence would have been illegal. Use of such testimony to support a death sentence has also been found to violate international law. In 2001, federal death row prisoner Juan Raul Garza was executed despite a call for commutation by the Inter-American Commission on Human Rights (IACHR). The IACHR had found that the introduction of evidence of Garza's involvement in unsolved crimes for which he had never been tried or convicted had been "antithetical to the most basic and fundamental judicial guarantees". It

concluded that Garza had been sentenced to death "in an arbitrary and capricious manner" and that his execution would be a "deliberate and egregious violation" of US obligations under international law (see EXTRA 29/01, AMR 51/074/2001, 23 May 2001). Javier Suárez has appealed to the IACHR, which is expected to issue "precautionary measures", that is, to call for a stay of execution while it considers the case.

Despite knowing from the outset that Javier Suárez was a Mexican national, the Texas authorities never informed him of his right, under the Vienna Convention on Consular Relations, to contact his consulate for assistance. Around 100 foreign nationals are on death row in the USA, the majority of whom were denied their consular rights, in violation of international law. In June 2001, the International Court of Justice found that the USA had breached its Vienna Convention obligations in the case of two German nationals, and must allow review and reconsideration of similar cases.

With the assistance of the Mexican government, Javier Suárez's appeal lawyers have uncovered powerful mitigating evidence not heard by the jury. The new evidence includes a diagnosis that Javier Suarez suffers from significant mental impairments, including Post Traumatic Stress Disorder (PTSD) as a result of traumatic events and abuse during his childhood and adolescence. In his late teens, he witnessed at close quarters the drive-by shooting of an acquaintance at a party.

A psychological expert has concluded that Javier Suárez's mental impairments affected his behaviour at the time of the crime. He further concludes that Javier Suárez's description of having fired at Cadena because he heard loud noises that he thought were gunshots "is consistent with an exaggerated acoustic startle response, one of the classic symptoms" of PTSD. The introduction of this evidence at the trial could have persuaded the jury that Javier Suárez had not acted deliberately, a necessary requirement for the imposition of a death sentence in Texas.

RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible, in English or your own language, in your own words:

- expressing sympathy for the family of Lawrence Rudy Cadena;
- expressing concern at the state's use of unadjudicated evidence to secure a death sentence, illegal in many US states and under international law;
- noting the serious questions that surround the reliability of the eyewitness testimony in the unadjudicated crime;
- expressing concern that the Javier Suárez Medina was denied his consular rights, in violation of international law;
- noting that the jury did not hear powerful mitigating evidence, including evidence that he suffers from Post Traumatic Stress Disorder, which supports his claim that the shooting was not premeditated;
- calling for a recommendation by the Board that his sentence be commuted;
- urging the Board at a minimum to grant a reprieve, so that the violations of international law in this case may be adequately reviewed.

PLEASE INCLUDE JAVIER SUÁREZ MEDINA'S PRISONER IDENTIFICATION NUMBER IN YOUR APPEALS -- (TDCJ#944).

APPEALS TO:

Texas Board of Pardons and Paroles
Executive Clemency Section

PO Box 13401, Capitol Station
Austin, Texas 78711, USA

Fax: + 1 512 467 0945

Salutation: Dear Board Members

COPIES TO:

Governor Rick Perry

Office of the Governor

PO Box 12428, Austin, Texas 78711-2428, USA

Fax: + 1 512 463 1849 / 463 0039 / 463 1932

and to diplomatic representatives of the USA accredited to your country.

You may copy your appeals to, or write brief letters (under 250 words) to:

Letters to the Editor, *Dallas Morning News*, Box 655237, Dallas, Texas 75265,
USA. **Fax: +1 972 263 0456. E-mail: letterstoeditor@dallasnews.com**

PLEASE SEND APPEALS IMMEDIATELY.