

PUBLIC

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Death penalty

05 November 2004

USA (Texas) Demarco Markeith McCullum (m), black, aged 30  
Frederick Patrick McWilliams (m), black, aged 30  
Anthony Guy Fuentes (m), Hispanic, aged 30

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The three men above are due to be executed in Texas in the next two weeks. All were prosecuted in Harris County, the leading death penalty county in the leading death penalty state of the USA.

Demarco McCullum is scheduled to be executed on 9 November. He was sentenced to death in 1996 for the murder of Michael Burzinski in Houston in July 1994. Michael Burzinski, a 29-year old white male, was abducted, robbed and shot dead. Demarco McCullum was 19 years old at the time of the crime, which involved three other defendants. He is reported to have been a model prisoner.

Frederick McWilliams is scheduled to be executed on 10 November. He was sentenced to death in 1997 for the murder of Alfonso Rodriguez, a Hispanic male who was shot dead during a robbery in Houston in September 1996. Frederick McWilliams was 22 years old at the time of the crime, which involved two other men. Concern has been raised about the performance of the lawyer appointed for his state-level appeals. He reportedly never met with McWilliams and did no investigation into the case. The quality of legal representation for death row prisoners during their state appeals is a serious problem in Texas (see <http://web.amnesty.org/library/Index/ENGAMR510102003>).

Anthony Fuentes is scheduled to be executed on 17 November. He was sentenced to death in 1996 for the February 1994 murder of Robert Tate, a white male who was shot dead during a robbery of the Houston shop where he worked. Anthony Fuentes was 20 years old at the time of the crime, which involved three other defendants, all of whom received prison terms. There are reported to be serious questions surrounding the reliability of the evidence used to convict Anthony Fuentes as the gunman.

### BACKGROUND INFORMATION

Texas accounts for more than a third of all US executions carried out since judicial killing resumed in 1977. Of 940 executions nationwide, Texas has carried out 333, many in violation of international legal safeguards. Texas has carried out 20 of the 55 executions in the USA so far this year. The current governor, Rick Perry, has overseen 94 executions since taking office in December 2000. There were 152 executions during the five-year governorship of his predecessor, George W. Bush.

Demarco McCullum, Frederick McWilliams and Anthony Fuentes were all prosecuted in Harris County, where the city of Houston is located. Of the 446 people now on death row in Texas, 158 were prosecuted in Harris County. Seventy-eight people prosecuted there have been executed. If Harris County was a state it would be ranked third, behind Texas and Virginia, in the number of people executed since 1977. Five men prosecuted in Harris County – four African Americans and one Latino – have been put to death this year.

In March 2003, an independent audit of the Houston Police Department (HPD) crime laboratory revealed serious defects in the lab's DNA analysis section, including poorly trained staff relying on outdated scientific techniques. The DNA section was shut down, and hundreds of criminal cases opened for review. In a number of cases, discrepancies between new tests and the original HPD analysis emerged. Several cases suggest that the lab's problems extended beyond its DNA section, for example into its ballistics expertise (see *Dead wrong: The case of Nanon Williams, child offender facing execution on flawed evidence*, <http://web.amnesty.org/library/Index/ENGAMR510022004>).

A Texas Senator and the Houston Police Chief have urged executions of people prosecuted in Harris County to be suspended until a full re-examination of all evidence. Most recently, on 21 October 2004, a judge on the Texas Court of Criminal Appeals said that there should be "a moratorium on all executions in cases where convictions were based on evidence from the HPD crime lab until the reliability of the evidence has been verified". His was the only dissenting voice when the Court denied death row inmate Dominique Green's request for a stay of execution on the basis of concern around the accuracy of the HPD's ballistics work in his case, and the recent discovery of 280 boxes of mislabelled evidence that could impact thousands of criminal cases. A federal judge granted a stay until the HPD could complete the cataloguing of the boxes. The stay was overturned by the US Court of Appeals for the Fifth Circuit, and Dominique Green was executed on 26 October 2004.

Before it can pass a death sentence a Texas capital jury must decide that the defendant would likely commit future criminal acts of violence if allowed to live, even in prison – the so-called "future dangerousness" question. A recent study reviewed disciplinary records of 155 Texas current or former death row inmates and concluded that in 95 per cent of cases the prediction of future dangerousness was inaccurate: "many inmates sentenced to death based on predictions of future dangerousness have proven to be non-assaultive, compliant inmates who pose no risk to other inmates or prison guards".

Unconscious racial biases may also infect a jury's determination of future dangerousness. A study published in 2001, for example, concluded that white jurors believed black defendants were more dangerous than white defendants. Studies have consistently shown that race plays a role in capital sentencing, particularly race of victim. A person who kills a white victim is most likely to receive a death sentence, a situation exacerbated if the defendant is not white. In Texas, for example, 79 per cent of those executed were convicted of crimes involving white victims. One in five of those put to death were African Americans convicted of killing white victims.

Amnesty International opposes the death penalty in all cases. It is an affront to human dignity and a symptom of a culture of violence rather than a solution to it. It is a punishment that denies the possibility of rehabilitation or reconciliation. Today 118 countries are abolitionist in law or practice.

**RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible, in English or your own language in your own words, using any of the above information as you see fit:**

- expressing sympathy for those affected by the crimes in these cases, explaining that you are not seeking to condone the crimes or minimize the suffering caused;
- expressing deep concern that executions of Harris County defendants are continuing despite the problems surrounding the Houston Police Department crime laboratory;
- urging the governor to reflect upon the damage being done to the USA's reputation by its continuing resort to executions in the face of the global abolitionist trend, and on the failure of the death penalty to offer a constructive solution to violent crime, noting evidence that the US capital justice system is marked by arbitrariness, discrimination and error;
- calling on the governor to do all he can to stop these and other executions and to support a moratorium on executions in Texas.

**APPEALS TO:**

Governor Rick Perry; Office of the Governor; PO Box 12428, Austin; Texas 78711-2428, USA

**Fax:** +1 512 463 1849

**Email:** (via webpage) <http://www.governor.state.tx.us/contact#contactinfo>

**Salutation:** Dear Governor

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

**PLEASE SEND APPEALS IMMEDIATELY.** All appeals must arrive by 17 November 2004.