

EXTRA 85/00

Death pen**USA (Federal) Juan Raul Garza, Hispanic, aged 44**

Juan Raul Garza is set to become the first federal prisoner to be executed in the USA since 1963. He is scheduled to be lethally injected at the US Penitentiary in Terre Haute, Indiana, on 12 December. He was convicted in the killings of Erasmo de la Fuente, Gilberto Matos and Thomas Albert Rumbo, which took place in Texas in 1990 and 1991 during the course of a marijuana trafficking operation based in Brownsville on the Mexican border.

Arguing for the death penalty at the sentencing phase of the 1993 trial, the government introduced evidence that Juan Garza had committed four unsolved murders in Mexico. There was no physical evidence linking Garza to these crimes, for which he has never been prosecuted or convicted. Instead, the prosecution relied on the testimony of three accomplices in the Brownsville drug ring. These three, all Hispanic men, were alleged to be either participants or perpetrators in the three Texas murders, but were offered reduced sentences in return for their testimony. Garza was the only one of the four co-defendants not to benefit from a plea bargain.

Juan Garza's jury decided that the aggravating factors in the case outweighed the mitigating circumstances and voted for a death sentence. However, the jurors specifically found that the discrepancy between Garza's death sentence and the sentences of his co-defendants could not be justified on the grounds that Garza was more culpable. For it found one mitigating factor to be that "another defendant or defendants, equally culpable in the crime, will not be punished by death".

On 12 September, the US Justice Department released the findings of its review into the federal capital justice system. Its statistics showed widespread geographical and racial disparities in the application of the federal death penalty. For example, 80 per cent of the defendants who faced federal capital charges since 1995 were members of racial or ethnic minorities. Also, whites were more likely than blacks or hispanics to benefit from a plea bargain whereby federal prosecutors drop their pursuit of the death penalty in return for a guilty plea.

As at state level, the discretion open to local federal prosecutors appears to be a major factor behind the disparities. Indeed, federal prosecutors appear to be influenced by the state-level death penalty climate; in the 12 states which do not allow for capital punishment, federal prosecutors have sought authorization to pursue the death penalty much less frequently than their counterparts in states where most executions occur. Thus, federal prosecutors in Texas, Missouri and Virginia, where more than half of the country's executions since 1977 have been carried out, account for nearly one third of the recommendations for the federal death penalty received by the US Justice Department since 1995. Of the 21 people under federal sentence of death in October, 14 were prosecuted in these three states.

The Justice Department's findings are of direct relevance to Juan Garza's case. He is a Hispanic man prosecuted in Texas. The statistics suggest that the same crime committed by a different person in a different state may well have resulted in a sentence less than death. There are numerous examples of cases in which the death penalty was not sought against defendants accused of killing several victims in drug-related murders.

BACKGROUND INFORMATION

The US Attorney General has admitted to being "sorely troubled" by the Justice Department's findings. President Clinton has also expressed his concern. In 1996, the US Government informed Amnesty International that it was "unalterably opposed" to any unfair application of the death penalty. President Clinton has often spoken of his commitment to international human rights standards. In August he claimed that the USA is the world's leading force for human rights, and has become a "more decent, more humane" country under his presidency.

On 14 November, Amnesty International published a 43-page memorandum sent to President Clinton on 3 November, making detailed recommendations. The memorandum explains the organization's concerns both as regards the federal death penalty, and the federal government's responsibility when state-level applications of the death penalty violate international standards. (See *Memorandum to President Clinton - An appeal for human rights leadership as first federal execution looms* (AMR 51/158/00), available with an open letter to President Clinton (AMR 51/164/00) on www.amnesty.org).

The first federal execution for 37 years is looming at a time of unprecedented national and international concern about the US death penalty. Amnesty International believes that President Clinton must grasp the opportunity to send a strong message to his country that it is time for it to rethink its attachment to the death penalty.

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

- expressing sympathy for the victims of violent crime and their families, and explaining that you are not seeking to condone such crimes or belittle the suffering they cause;
- calling on President Clinton to commute Juan Raul Garza's death sentence, noting that the Justice Department's findings of widespread racial and geographic disparities in the application of the federal death penalty are of direct relevance to his case;
- expressing concern that the federal government is planning to resume executions after nearly four decades;
- arguing that, even for those who support the death penalty, it is surely inappropriate for federal executions to resume in the knowledge that the system may be tainted by arbitrariness and discrimination;
- noting the unprecedented national and international concern about the fairness and reliability of the US death penalty;
- urging President Clinton to live up to his often stated commitment to international human rights standards and his recent claim that the USA had become a "more decent, more humane" country under his presidency;
- calling on the President to declare a moratorium on federal executions, in light of the Justice Department's findings, and as a step toward leading his country away from its lethally flawed attachment to the death penalty.

APPEALS TO:

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Telegrams: President Clinton, Washington DC, USA

Salutation: Dear Mr President

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

PLEASE SEND APPEALS IMMEDIATELY.