

URGENT ACTION

TEXAS EXECUTION SET DESPITE MENTAL DISABILITY

Ramiro Hernandez Llanas is due to be put to death on 9 April in Texas. His lawyers say his execution would be unconstitutional because of his intellectual disability, an assessment supported by six different IQ tests administered over almost 10 years.

Ramiro Hernandez Llanas, a Mexican national, was sentenced to death in February 2000 for the murder of his employer, Glen Lich, who was bludgeoned to death at his ranch in Kerr County on 14 October 1997.

In tests conducted over the past decade, Ramiro Hernandez Llanas has been assessed as having an IQ in the 50s or 60s. In addition, his March 2014 clemency petition details evidence of his adaptive functioning deficits across a range of skill areas including linguistic, academic, conceptual, social, work and domestic. While he had no IQ testing before he turned 18 due to his circumstances – he was born into a childhood of abuse and severe poverty in Mexico, with the family living in a cardboard shack next to a rubbish dump on which they would scavenge – the petition details evidence from relatives, neighbours and teachers of his “severe intellectual limitations as a child”.

The US Supreme Court ruled in 2002, in *Atkins v. Virginia*, that the execution of people who had “mental retardation” violated the Constitution. The Court did not define retardation (now usually known as intellectual disability), but pointed to definitions used by professional bodies under which it is a disability, manifested before the age of 18, characterized by significantly sub-average intellectual functioning (generally indicated by an IQ under 70), with limitations in two or more adaptive skill areas such as communication, self-care, work, and functioning in the community. The Court left it to individual states to develop “appropriate ways” to comply with the *Atkins* ruling.

In successfully defending Ramiro Hernandez’s death sentence in a post-*Atkins* challenge in 2008, the prosecution relied on a psychiatrist who had not himself tested the prisoner’s mental ability – he had never even met him – but who suggested that his impaired functioning was “in keeping with his cultural group”. A state’s reliance on prejudiced stereotyping violates its obligation to ensure equality before the law and non-discrimination.

The clemency petition seeks at a minimum a 150-day reprieve to allow the impact on this case of the forthcoming US Supreme Court ruling in *Hall v. Florida*, expected before the end of June, to be assessed. The Court is considering whether Florida’s scheme to assess capital defendants’ intellectual functioning violates the *Atkins* ruling, a decision which could impact such determinations in other states, including Texas.

Please write immediately in English or your own language (please cite inmate #999342 in appeals):

- Noting the compelling evidence that Ramiro Hernandez Llanas has “mental retardation”;
- Calling on the authorities to commute his death sentence, or order at a minimum a 150-reprieve to allow full consideration of his intellectual disability claim after the US Supreme Court’s *Hall v. Florida* decision;
- Expressing serious concern at the stereotyping opinion of the state’s expert;
- Expressing your understanding of the seriousness of the crime and its consequences.

PLEASE SEND APPEALS BEFORE 9 APRIL 2014 TO:

Clemency Section, Board of Pardons
and Paroles, 8610 Shoal Creek Blvd.
Austin, Texas 78757-6814, USA
Fax: +1 512 467 0945
Email: bpp-pio@tdcj.state.tx.us

Salutation: Dear Board members

Governor Rick Perry
Office of the Governor
PO Box 12428
Austin, Texas, USA
Fax: +1 512 463 1849

Salutation: Dear Governor

And copies to:

Governor’s Press office
Fax: +1 512 463 1847

Office of the General Counsel
Fax: +1 512 463 1932

Also send copies to diplomatic representatives accredited to your country. Please insert local diplomatic addresses below:

Please check with your section office if sending appeals after the above date.

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ADDITIONAL INFORMATION

Nearly a dozen years after *Atkins*, the Texas legislature has yet to enact a law to comply with the ruling. In the absence of such legislation, in 2004 the Texas Court of Criminal Appeals issued guidelines, a “temporary” solution which has caused growing concern that people who should be protected by *Atkins* are being put to death. At the post-*Atkins* hearing in state court in 2008 for Ramiro Hernandez Llanas, his lawyers presented two neuropsychologists who had assessed him. Both were Spanish-speakers, and one, according to a US federal judge in 2011, had “extensive experience in the area of mental retardation, particularly with evaluating the neuropsychological functioning of Spanish speakers”. Both doctors found that Ramiro Hernandez Llanas had “mental retardation”. For its part, the state presented a psychiatrist who had not met or assessed the condemned man, but instead criticized the opinion of the defence experts and suggested that the prisoner was malingering, something that the defence experts had ruled out. The state’s expert also gave an affidavit in which he asserted that “for his cultural group, Mr Hernandez has seemed to adapt in terms of personal independence and has... exhibited the level of social responsibility of the criminal element of his cultural group. Mr Hernandez’s cultural group tends to have low socioeconomic status, low achievement, decreased social skills, increased substance abuse, and increased levels of criminal behavior. Mr Hernandez’s adaptive behavior is in keeping with his cultural group”. The judge credited the state expert’s views, and in upholding the death sentence, also focused on the details of the defendant’s crime and previous criminal conduct, as well as his illegal entry into the USA and his ability to obtain employment, as demonstration of his lack of adaptive functioning deficits.

The American Association on Intellectual and Developmental Disabilities (AAIDD), founded in 1876 (formerly the American Association on Mental Retardation), and The Arc of the United States, the largest community-based organization in the USA working with people with intellectual and developmental disabilities, have filed a brief in the US Supreme Court urging the latter to take the case. The brief argues that “the courts below engaged in a superficial, reductionist exercise”, rather than the proper use of clinical judgment. It also noted that the “clinical community demands the assessments of a person’s intellectual ability be undertaken based on actual knowledge of a precise culture, not indefensible racial stereotypes”. It added that “if courts are permitted to make unsound presumptions about what people with mental retardation can and cannot do, then considerable evidence of real adaptive behavioral deficits can be trumped, as it was here, by any evidence that the individual had a menial job or formed social relationships, however dysfunctional. Yet many people with mental retardation can secure employment; they can have romantic relationships; they can obtain a license and drive; they can engage in rational thought, plan, and display verbal coherence. To suggest otherwise is a matter of prejudice and uninformed conjecture”.

The Mexican government has also filed a brief in support of Ramiro Hernandez Llanas in the US Supreme Court. Among other things, the brief asserts that the “discriminatory character” of the state expert’s position at the post-*Atkins* hearing “becomes all the more clear” given the fact that this expert had “never met” the prisoner, “did not evaluate him”, and “did not personally score the intellectual disability tests that were administered to Mr Hernandez by other experts”. Moreover, the expert had “never met with anyone from Mr Hernandez’s community or wider cultural group who had first-hand knowledge of his adaptive functioning”. The treatment of Ramiro Hernandez Llanas, the brief argues, “raises serious questions about the status of equal protection in American courts of law, and demonstrates the courts’ disregard of the United States’ international obligation to ensure its fact-finding procedures are applied equally, and without discriminatory intent or effect”.

There have been 12 executions in the USA this year, three of them in Texas. Since judicial killing resumed in the USA in 1977 under revised capital statutes, there have been 1,371 executions nationwide. Texas accounts for 511 of these executions.

Name: Ramiro Hernandez Llanas, aka Ramiro Hernandez

Gender m/f: m

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