

URGENT ACTION

THREE WEEKS LEFT FOR GOVERNOR TO DECIDE

The outgoing Illinois Governor has until 11 January to decide if he will grant clemency to Jacqueline Montanez. She is serving a sentence of life imprisonment without the possibility of parole for a crime committed when she was a child, a punishment which violates international law. She has been in prison for more than half her life.

In 1992 Jacqueline Montanez was charged with first degree murder, and automatically tried in adult criminal court despite being only 15 years old. If she had been tried in juvenile court, factors such as her age, history of abuse, mental health issues, and amenability to rehabilitation could have been considered. She was convicted of two murders and given a mandatory sentence of life imprisonment without the possibility of parole. The imposition of this sentence on anyone under the age of 18 at the time of the crime violates international law.

From the age of nine Jacqueline Montanez abused drugs and alcohol and joined a street gang, which was a rival to her stepfather's gang. She was repeatedly hospitalized for suicidal behaviour, including a drug overdose at the age of 12. She recalls that "for 15 years of my life I lived being beat up or watching my parents shoot up or delivering drugs for my [step]father, or being raped...I woke up to beatings, cooking his drugs and bagging them. I thought it was normal." Now 37 years old, Jacqueline Montanez has been incarcerated for 21 years and has expressed remorse about the murders. She has obtained a high school equivalency diploma, is a certified trainer of service dogs for disabled people and a published poet. She mentors other inmates and advocates for troubled youth who have been abused and those trapped in the gang lifestyle into which she herself was born.

Jacqueline Montanez submitted an application for clemency on 26 January 2012. Four months later a clemency hearing was held before the Illinois Prisoner Review Board who then issued a confidential, non-binding recommendation to Governor Pat Quinn. Almost three years since Jacqueline Montanez applied for clemency, and with Governor Quinn due to leave office on 11 January, no decision has been issued.

Please write immediately in English or your own language:

- Explain that you are not suggesting that crimes committed by under-18-year-olds should be excused, but that the question of accountability should be addressed in a manner that reflects their immaturity and capacity for development, and that aims at maximising their potential for successful reintegration into society;
- Emphasise that a sentence of life without the possibility of parole for anyone who was under 18 years old at the time of the crime violates international human rights law;
- Urge Governor Quinn to act on Jacqueline Montanez's clemency petition, and end a sentence incompatible with international human rights law and principles of juvenile justice respected across the globe.

PLEASE SEND APPEALS BEFORE 11 JANUARY 2014 TO:

Governor of Illinois, Governor Pat Quinn
Office of the Governor, 207 State House,
Springfield, IL, 62706
Email contact form at:
<https://www2.illinois.gov/gov/Pages/ContacttheGovernor.aspx>
Salutation: Dear Governor

Governor Pat Quinn, c/o Era Lauder milk
Associate General Counsel, Office of the
Governor, James R. Thompson Center,
100 W. Randolph, Suite 16-100,
Chicago, IL 60601, USA
Fax: +1 312 814 3806
Salutation: Dear Associate General

And copies to:

Children and Family Justice Center
Ms. Alison R. Flaum, Bluhm Legal Clinic,
Northwestern University School of Law,
357 East Chicago Avenue,
Chicago, IL, 60611, USA
Email: a-flaum@aw.northwestern.edu

Also send copies to diplomatic representatives accredited to your country.

Please check with your section office if sending appeals after the above date. This is the second update of UA 96/12. Further information:
<http://www.amnesty.org/en/library/info/AMR51/033/2012/en>

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ADDITIONAL INFORMATION

On 12 May 1992, Jacqueline Montanez drove to a park with two girls, also members of her street gang, and met with two men, Hector Reyes and James Cruz, both members of her stepfather's gang. She shot and killed Hector Reyes and gave the gun to one of the girls who then shot and killed James Cruz. She was arrested the following day, and confessed during questioning, with neither a youth officer nor her mother present. Jacqueline Montanez was initially convicted and sentenced in 1993. She was transferred to adult jail on her 17th birthday and to adult prison four months later, where she was the youngest inmate in the prison system. On arrival she was placed in the mental health unit and remained there for almost three years. A mental health evaluation noted that she had flashbacks of the crimes and it recommended that she be kept in the unit to ensure her protection. She was granted a new trial which took place in 1999, at which she was again convicted and sentenced to life without parole, a mandatory sentence for first degree murder in the State of Illinois. At the sentencing hearing her lawyers presented no mitigating evidence, stating that "the law is clear that it is natural life [imprisonment]. We have no mitigation [factors] to present in light thereof". She has spent more than half her life in prison.

On 25 June 2012, the US Supreme Court outlawed mandatory life imprisonment without the possibility of parole for offenders who were under 18 years old at the time of the crime in its *Miller v. Alabama* ruling. States have responded inconsistently ways to the 2012 US Supreme Court decision. The Illinois Supreme Court has ruled that the ban on mandatory life without parole sentences for juveniles should be applied retroactively to trigger resentencing for those juvenile offenders issued these sentences prior to the *Miller v. Alabama* ruling. On 12 December 2014, the US Supreme Court announced it would hear the *Toca v. Louisiana* case regarding the issue of retroactivity in juvenile life without parole sentences. While the banning of mandatory life without parole sentences in 2012 was welcome, and despite the Court commenting that "we think appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon", life without parole remains a sentencing option for juveniles in many jurisdictions across the USA.

The International Covenant on Civil and Political Rights (ICCPR), which the USA ratified in 1992, specifically acknowledges the need for special treatment of children in the criminal justice system and emphasizes the importance of their rehabilitation. Article 14(4) of the ICCPR states: "In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation". In 2006, the UN Human Rights Committee, the expert body established by the ICCPR to oversee implementation of the treaty, reminded the USA that sentencing children to life imprisonment without parole is incompatible with the ICCPR. It called on the USA to ensure that no children were subjected to this sentence. The 194 countries which have ratified the UN Convention on the Rights of the Child (CRC) have further agreed to be bound by the principle, enshrined in Article 37(a), that no person under the age of 18 at the time of the offence should be sentenced to "life imprisonment without the possibility of release". The USA is the only country apart from Somalia and South Sudan not to have ratified the CRC. However, the USA has signed the Convention and as a signatory, the USA is bound under international law to do nothing which would defeat the object and purpose of the treaty. Article 37(b) of the Convention also calls upon states to use imprisonment against a child "only as a measure of last resort and for the shortest appropriate period of time." The USA is believed to stand alone in sentencing children to life without parole. Although several countries technically permit the practice, Amnesty International knows of no cases outside the USA where such a sentence has been imposed in recent years.

Name: Jacqueline Montanez
Gender m/f: f

Further information on UA: 96/12 Index: AMR 51/062/2014 Issue Date: 18 December 2014