

## I. Executive Summary

Although we welcome the Second and Third Periodic Report of the United States of America to the United Nations Human Rights Committee, we are troubled by its failure to adequately address human rights violations relating to the administration of the death penalty nationwide.

In its Concluding Observations regarding the United States' initial report under Article 40 of the ICCPR, this Committee noted specific concerns about the way in which death sentences were imposed in this country.<sup>1</sup> In the eleven years that have passed since then, the United States Supreme Court has taken important measures to prohibit the application of the death penalty to juvenile offenders and to the mentally retarded. We applaud those decisions, and welcome the Supreme Court's newfound willingness to consider international law in assessing whether certain aspects of the death penalty violate the Eighth Amendment to the United States Constitution.

At the same time, and contrary to the Committee's specific recommendations in 1995, the United States has failed to take measures to restrict the death penalty to the most serious crimes and has failed to ensure that death sentences are carried out in full compliance with the human rights obligations contained in the Covenant. While the application of the death penalty in the United States raises many troubling questions, this report focuses on only five issues: (1) the arbitrary and discriminatory imposition of death sentences; (2) the application of the death penalty to offenses that do not constitute the "most serious crimes;" (3) the execution of the severely mentally ill; (4) evidence that the practice of executing prisoners by lethal injection amounts to cruel, inhuman or degrading treatment or punishment; and (5) death row conditions and their effects on the mental health of prisoners awaiting execution. These practices violate several provisions of the ICCPR, including Articles 6(1), 6(2), 7, 10, and 26.

*First*, there is ample evidence that death sentences in the United States are imposed arbitrarily and on the basis of impermissible factors such as race and poverty. These systemic problems are compounded by the poor quality of legal representation routinely provided to indigent defendants facing the death penalty. Moreover, there are no uniform standards to guide the discretion of state prosecutors in seeking the death penalty. As a result, there are enormous geographical disparities in the sorts of crimes for which the death penalty is imposed. The administration of the death penalty in the United States therefore violates Articles 6(1) and 26 of the ICCPR.

*Second*, the United States continues to impose capital sentences on individuals who have not committed the "most serious crimes," in violation of Article 6(2). The "felony murder" rule allows for individuals to be sentenced to death, even if they did not kill, intend to kill, or even contemplate that another human being would die as a result of their actions. And since the United States last appeared before this Committee, it has taken no steps to reduce the number of crimes for which individuals are "death-eligible."<sup>2</sup>

*Third*, executions of the severely mentally ill are commonplace in the United States, despite a decision from the United States Supreme Court prohibiting the execution of the “insane.”<sup>3</sup> In the last ten years, the United States has put to death dozens of prisoners suffering from schizophrenia, bipolar disorder, and other incapacitating mental illnesses. Moreover, the United States has allowed at least one mentally ill prisoner to be forcibly medicated with anti-psychotic medication so that he could be rendered “competent” for execution. These practices constitute cruel, inhuman or degrading treatment or punishment in violation of Article 7.

*Fourth*, there is mounting evidence that current lethal injection protocols violate Article 7. Lethal injection is the most common method of execution in the United States. While lethal injection was once believed to cause a painless death, experts have testified that death by lethal injection can cause excruciating agony.<sup>4</sup> Prisoners have sought to obtain stays of execution while lethal injection is subjected to further study and analysis, but courts in several states have repeatedly denied them even a temporary reprieve.

*Fifth*, death row prisoners in states such as Texas and California are routinely subjected to inhumane and degrading treatment in violation of Articles 7 and 10. Of the thirty-eight states that allow for the application of the death penalty in the United States, Texas and California have, by far, the largest number of condemned inmates. The prisons housing death row inmates in these two states have been severely criticized by the federal judiciary for imposing inhumane and degrading conditions of detention, and for failing to provide necessary mental health treatment for incarcerated prisoners. These conditions have had grave effects on death row inmates’ mental and physical health.

The conditions of death row confinement cannot be viewed in isolation from the length of time that prisoners spend on death rows awaiting their executions. As several international tribunals have recognized, prisoners forced to anticipate their own deaths face a unique form of mental torment. This Committee has stressed that the mere length of time that a prisoner spends on death row does not give rise to a violation of Articles 7 and 10 of the ICCPR,<sup>5</sup> and we do not quarrel with that conclusion in this report. Rather, we contend that the inhumane conditions on death rows nationwide, coupled with the cumulative effects of those conditions on prisoners who typically spend over a decade awaiting execution, amount to cruel, inhuman or degrading treatment or punishment.<sup>6</sup>

We are hopeful that the discussion in this report will assist the Committee in evaluating the United States’ record of compliance with the International Covenant on Civil and Political Rights (ICCPR).

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## **II. Relevant Articles of the ICCPR**

### **Article 2(1)**

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

### **Article 6 (1):**

Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

### **Article 6 (2):**

In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.

**Article 7:**

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

**Article 10 (1):**

All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

**Article 26:**

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

**III. Violations of Article 6 of the ICCPR**

**A. The Death Penalty in the United States is Imposed Arbitrarily**

1. There is ample evidence that the death penalty in the United States is imposed arbitrarily and on the basis of impermissible factors such as race and poverty. Studies have repeatedly shown that race matters in the determination of who is sentenced to death.<sup>7</sup> It has been said that, as a statistical matter, race is more likely to affect death sentencing than smoking affects the likelihood of dying from heart disease.<sup>8</sup> In Philadelphia, the odds of receiving a death sentence are nearly four times higher when the defendant is black.<sup>9</sup> A 2006 study confirmed that defendants' skin color and facial features play a critical role in capital sentencing.<sup>10</sup> And over the last twenty years, social scientists have repeatedly observed that capital defendants are much more likely to be sentenced to death for homicides involving white victims.<sup>11</sup> In short, racial discrimination is inherent in the administration of the death penalty in the United States – giving rise to a violation of Articles 2(1) and 26 as well as Article 6(1).
2. Rather than taking measures to eliminate racial disparities in capital sentencing, the United States has chosen to ignore them. Only one state has passed legislation authorizing courts to consider statistical evidence of racial disparities in determining whether a defendant should be subjected to the death penalty.<sup>12</sup> Virtually without exception, courts in other states have refused to consider such evidence – and the legislatures have failed to take corrective measures.<sup>13</sup> These failures violate the United States' obligations under Article 2 to provide an effective remedy for violations of the Covenant.

3. There are also enormous geographical disparities in the application of the death penalty.<sup>14</sup> This derives, in part, from the lack of uniform standards to guide the discretion of state prosecutors in seeking the death penalty. Prosecutors are almost always elected officials, and their support or opposition to the death penalty in a given case is often influenced by the level of popular support for capital punishment within a given community. In San Francisco, for example, the local prosecutor never seeks the death penalty because she is morally opposed to it.<sup>15</sup> In Kern County, located in California's conservative Central Valley – the prosecutor is a zealous advocate of capital punishment.<sup>16</sup> As a result, two individuals who commit the same crime, and who are ostensibly subject to the same penal laws, may be subject to two radically different punishments.<sup>17</sup>
4. Finally, individuals facing capital charges are routinely represented by lawyers who lack the experience and the resources to properly defend them. As Supreme Court Justice Ruth Bader Ginsburg observed in 2001, “[p]eople who are well represented do not get the death penalty. I have yet to see a death case in the dozens coming to the Supreme Court. . . in which the defendant was well-represented at trial.”<sup>18</sup>
5. Accounts of incompetent legal representation are legion. In Texas, George McFarland's lead trial attorney slept through large portions of his trial, failed to ask any questions of the vast majority of the prosecution's witnesses, and failed to present any testimony supporting a life sentence for his client. A Texas court agreed that McFarland's attorney was napping during critical phases of his capital murder trial. Nonetheless, it refused to vacate his death sentence or grant him a new trial.<sup>19</sup> Appellate lawyers are often equally incompetent, particularly in states like Texas that lack a state-wide public defender system.<sup>20</sup>

**B. The Death Penalty Is Imposed for Offenses That Do Not Constitute the “Most Serious Crimes.”**

6. In 1995, after hearing the United States' initial report pursuant to Article 40 of the ICCPR, this Committee expressed concern about the excessive number of offences punishable by death in a number of states. Since that time, the United States Supreme Court has determined that the death penalty may not be imposed on juvenile offenders and the mentally retarded. While we welcome those decisions, it is important to recognize that they affected only a small handful of condemned prisoners in the United States.<sup>21</sup> There are currently 3,393 men and women awaiting execution – 319 more than in 1995. And while execution rates have decreased slightly in recent years, the federal government has taken no steps to reduce the number of offenses for which individuals can be sentenced to death.
7. Article 6 (2) of the ICCPR provides that the death penalty may only be imposed for the “most serious crimes.”<sup>22</sup> The Committee has observed that this expression must be “read restrictively to mean that the death penalty should be a quite exceptional measure.”<sup>23</sup> And in a case where the petitioner received a death sentence for

participating in an armed robbery, the Committee held that the sentence was not compatible with Article 6(2), since the petitioner's use of firearms did not produce the death or wounding of any person."<sup>24</sup> Yet in the United States, the death penalty continues to be applied to individuals convicted under the felony murder doctrine. This doctrine allows for the imposition of the death penalty on a defendant who is a "major participant" in a felony, such as burglary or robbery, even if he never killed, intended to kill, or even contemplated that someone would be killed during the commission of the crime.<sup>25</sup> In certain states, individuals may also be sentenced to death for accidental killings during a felony or attempted felony.<sup>26</sup> Moreover, the state of Louisiana allows for the death penalty for the rape of a minor – even if the victim did not die.<sup>27</sup>

8. The application of the death penalty to individuals who did not kill or intend to kill violates Article 6(2), a conclusion that finds further support from a report of the United Nations Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions. Referring to the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, which define "most serious crimes" as "intentional crimes with lethal or other extremely grave consequences," the Special Rapporteur determined that the term "intentional" in the Safeguards should be "equated to *premeditation* and should be understood as *deliberate intention to kill*."<sup>28</sup>

#### **IV. Violations of Article 7 and 10 of the ICCPR**

##### **A. The Execution of the Severely Mentally Ill**

9. The execution of the mentally ill is squarely prohibited by international law.<sup>29</sup> Although the United States Supreme Court has held that it is cruel and unusual punishment under the Eighth Amendment of the United States Constitution to execute persons who are mentally incompetent,<sup>30</sup> the states have defined the term so narrowly that it is virtually meaningless. As a result, the United States regularly executes prisoners suffering from severe forms of mental illness.
10. The cases of these inmates are too numerous to recount in this report, but they have been cogently summarized by Amnesty International in its recent report about the execution of mentally ill offenders in the United States.<sup>31</sup> Amnesty found that one of every ten individuals executed in the United States suffered from a serious mental disorder other than mental retardation. In all, Amnesty found that at least 100 severely mentally ill men and women have been executed in the United States since 1977.<sup>32</sup>
11. One of the most tragic cases was that of Kelsey Patterson, a man who suffered from paranoid schizophrenia and spent many years in and out of state mental hospitals.<sup>33</sup> Shortly before he was charged with capital murder, his family had attempted to have him committed to a mental facility, but the state rejected the request because he had not harmed anyone. In 1992, Mr. Patterson shot two people, then removed all of his

clothing except for a pair of socks. He was arrested while wandering naked through the streets.<sup>34</sup>

12. During his trial, Mr. Patterson frequently spoke of “remote control devices” and “implants” that controlled his behavior.<sup>35</sup> The prosecution conceded that he was severely mentally ill. Nevertheless, he was convicted and condemned to death.
13. After his appeals were concluded, the Texas Board of Pardons and Paroles recommended that his sentence be commuted to life imprisonment. The Governor rejected that recommendation. The courts found him “competent” to be executed, because United States law merely requires that a condemned inmate understand that he will be executed, and the reason for his execution.<sup>36</sup> When he was escorted to the room where he was put to death on May 18, 2004, the warden asked him if he had a final statement. Reporters described Kelsey Patterson’s response as follows:

Statement to what? Statement to what? . . .They’re doing this to steal my money. My truth will always be my truth. No kin to you . . . undertaker. . . murderer. Go to hell. Get my money. Give me my rights. Give me my rights. Give me my life back.”<sup>37</sup>

14. Steven Staley, who likewise suffers from paranoid schizophrenia, is currently facing execution in Texas. Unlike Mr. Patterson, a court found Mr. Singleton incompetent to be executed. Rather than commute his death sentence, however, the state has sought and obtained a court order authorizing prison officials to forcibly administer anti-psychotic drugs to restore his competency so that Mr. Staley can be executed.<sup>38</sup> Mr. Staley’s lawyer objected to the court order, observing that “[t]he whole idea of holding somebody down and injecting them so that we can then say, with a straight face, this person is now competent so we can kill them, I think that smacks of an Orwellian-Soviet-style approach to criminal justice.”

## **B. Lethal Injection as Cruel, Inhuman or Degrading Treatment or Punishment**

15. The overwhelming majority of executions in the United States are carried out by lethal injection.<sup>39</sup> Medical professionals have raised grave concerns that, far from producing a rapid and sustained loss of consciousness and humane death, the lethal injection techniques employed by a majority of states may cause the inmate to consciously suffer an excruciatingly painful and protracted death.<sup>40</sup>
16. Lethal injection is accomplished in most states by injecting the prisoner with a combination of three chemical substances: (1) sodium thiopental, or sodium pentothal; (2) pancuronium bromide, or Pavulon; and (3) potassium chloride.<sup>41</sup>
17. The first drug administered to the condemned prisoner is sodium thiopental, or sodium pentothal, an ultra-short-acting barbiturate that is ordinarily used to render a surgical patient unconscious for mere minutes. Because it is a short-acting drug, medical experts have expressed concerns that it may not sedate the inmate

throughout the entire lethal injection process.<sup>42</sup> These concerns are heightened by the lack of medical personnel participating in the lethal injection process. Because medical personnel infrequently participate in executions, the dosages of sodium thiopental can be improperly measured and mixed with the other chemicals, compounding the risk that the death row inmate will not be “put to sleep,” but will rather experience his own death in agonizing clarity.<sup>43</sup>

18. The second chemical involved in the lethal injection process, pancuronium bromide, paralyzes the muscles, but does not affect sensation, consciousness, or the ability to feel pain and suffocation.<sup>44</sup> In other words, pancuronium bromide serves no purpose in the lethal injection process other than to guarantee that the condemned inmate will be forced into a chemical straightjacket, unable to react or move even if the sodium thiopental has not caused unconsciousness. Unlike in a surgical context where paralysis during delicate procedures serves a legitimate and beneficial surgical purpose (preventing the patient from unconsciously moving), in the execution process where the end sought is death rather than the preservation of life, and where the “patient” is rendered sufficiently immobile for the task by strapping him onto a gurney, paralysis serves *no* rational or legitimate purpose. A paralytic agent does, however, serve to make the execution *appear* humane to witnesses, since there is no way for witnesses to gauge whether the inmate is experiencing a peaceful or an agonizing death.<sup>45</sup>
19. If the sedative effect of the sodium thiopental is ineffective or neutralized, the pancuronium bromide would serve both to *inflict* and to *mask* the excruciating pain of the condemned inmate. As Dr. Mark Heath, Assistant Professor of Clinical Anesthesia at Columbia University, explains:

If administered alone, a lethal dose of pancuronium would not immediately cause a condemned inmate to lose consciousness. It would totally immobilize the inmate by paralyzing all voluntary muscles and the diaphragm, ***causing the inmate to suffocate to death while experiencing an intense, conscious desire to inhale.*** Ultimately, consciousness would be lost, but it would not be lost as an immediate and direct result of the pancuronium. Rather, the loss of consciousness would be due to suffocation, and would be preceded by the torment and agony caused by suffocation. This period of torturous suffocation would be expected to last at least several minutes and would only be relieved by the onset of suffocation-induced unconsciousness.<sup>46</sup>

20. He adds:

It is my opinion based on a reasonable degree of medical certainty that pancuronium, when properly and successfully administered, effectively nullifies the ability of witnesses to discern whether or not the condemned prisoner is experiencing a peaceful or agonizing death. Regardless of the experience of the condemned prisoner, whether he or she is deeply unconscious or experiencing the excruciation of suffocation, paralysis, and



potassium injection, he or she will appear to witnesses to be serene and peaceful due to the relaxation and immobilization of the facial and other skeletal muscles.<sup>47</sup>

21. The third drug, potassium chloride, would cause excruciating pain if injected alone, or in an inmate who had not been rendered sufficiently anesthetized. And, if administered to a conscious inmate after pancuronium bromide, that pain would be undetectable to witnesses. According to Dr. Heath:

Intravenous injection of concentrated potassium chloride solution causes excruciating pain. The vessel walls of veins are richly supplied with sensory nerve fibers that are highly sensitive to potassium ions. The intravenous administration of concentrated potassium in doses intended to cause death therefore would be extraordinarily painful. [The state's] selection of potassium chloride to cause cardiac arrest needlessly increases the risk that a prisoner will experience excruciating pain prior to execution.<sup>48</sup>

22. Although executions have been temporarily halted in California, Florida, and Missouri while the courts consider whether current methods of lethal injection create an unacceptable risk of suffering, other states have continued to use the same questionable methods to execute death row inmates. Since January 24, 2006, at least thirteen prisoners have been executed in six states after filing legal challenges to lethal injection protocols.<sup>49</sup> And on May 2, 2006, Ohio's attempt to execute Joseph Clark was horribly botched after his vein collapsed during the execution process.<sup>50</sup>

### **C. Death Row Conditions and Their Effects on Prisoners Awaiting Execution**

23. In most states, death row prisoners are segregated from the general prison population and subjected to exceedingly harsh conditions of confinement. In light of the time that most condemned inmates spend on death row, and the existence of secure and humane prison facilities that house other prisoners convicted of violent crimes, there is no legitimate reason why inmates under sentence of death should be isolated from the general prison population or deprived of educational and occupational outlets.<sup>51</sup>

#### **1. Death Row Conditions in Texas**

##### **a. Overview**

24. Since 1999, all male Texas death row prisoners have been incarcerated in the Polunsky Unit in Livingston, Texas. They are housed in small (approximately 60 square feet) cells, with a sink, a toilet, and a thirty-inch wide bunk. The cells have solid doors. In addition to being single-celled, death row prisoners are segregated from other prisoners in every aspect of their lives. They eat alone, exercise alone, and worship alone. Communication on death row – accomplished by yelling between cells – is extremely difficult.<sup>52</sup>

25. Prisoners are allowed no physical contact with family members, friends, or even their attorneys. Generally, a death row prisoner will have physical contact with no one other than prison staff from his entry onto death row until the time of his execution. Even in the days and hours before his execution, the prisoner is not permitted to touch any family member or loved one.
26. The best-behaved death row prisoners spend twenty-three hours per day in their cells. They are ordinarily given access to small indoor or outdoor “cages” for one hour per day. Prisoners considered to be disciplinary problems, which usually includes the most mentally ill inmates,<sup>53</sup> are only allowed outside of their cells only three to four hours per week.
27. Texas’ death row – unlike any death row in the nation – does not offer any television, making radio the primary source of mental stimulation for the average semi-literate death row prisoner. Radios are routinely taken from prisoners as a disciplinary sanction. Death row prisoners are not provided any opportunities to participate in “programming,” *i.e.*, structured activities in or out of their cells.<sup>54</sup> They receive no educational or occupational training.
28. The conditions on Texas’ death row are harsher than those found in many of the nation’s highest security prisons and segregation units. Thus, the conclusions of federal courts and mental health experts evaluating the effects of less severe conditions apply with even greater force here. And those experts have repeatedly observed that prolonged confinement without sensory stimulation or human contact exacerbates pre-existing psychological disorders and can precipitate mental illness in otherwise healthy individuals.<sup>55</sup>

b. Mentally Ill Prisoners and Death Row Conditions

29. It is well-established that a large percentage of death row inmates suffer from mental disabilities.<sup>56</sup> Yet, as of February 2006, dozens of severely mentally ill death row prisoners were housed in the conditions described above. James Coburn, a Texas death row inmate who suffered from schizophrenia, “deteriorated on death row to the point that he was psychotic and eating his own feces.”<sup>57</sup> He was executed on March 26, 2003.
30. Conditions on Texas’ death row are virtually indistinguishable from administrative segregation conditions<sup>58</sup> in other Texas prisons that have been found to be “virtual incubators of psychoses – seeding illness in otherwise healthy inmates and exacerbating illness in those already suffering from mental infirmities.”<sup>59</sup> Experts who have evaluated the Texas system of administrative segregation have observed that the denial of contact and social stimuli is particularly harmful for the mentally ill, and that the quality of mental health care they receive in administrative segregation is “medically inadequate.”<sup>60</sup>

31. As a result of the prison's negligence, mentally ill death row prisoners are not receiving the care they need, and several actively psychotic prisoners – including prisoners who have been identified in court pleadings as psychotic – remain on death row receiving little to no treatment at all.

## 2. Death Row Conditions in California

32. There are 645 inmates on death row in California. All of the male inmates are housed in the San Quentin State Prison,<sup>61</sup> the oldest prison in California. San Quentin was recently described as “so old, antiquated, dirty, poorly staffed, poorly maintained, with inadequate medical space and equipment and over-crowded that . . . it is dangerous to house people there with certain medical conditions.”<sup>62</sup>
33. Judge Thelton Henderson visited San Quentin on February 10, 2005, in connection with litigation surrounding the abysmal conditions at the prison. Judge Henderson characterized the tour as “horrifying,” observing that “[e]ven the most simple and basic elements of a minimally adequate medical system were obviously lacking.”<sup>63</sup> He concluded that prisoners in San Quentin (and throughout California) were “subjected to an unconstitutional system fraught with medical neglect and malfeasance.”<sup>64</sup> The prison's neglect of the incarcerated population is so severe that inmates have died “as a direct result of this lack of care, and . . . more are sure to suffer and die if the system is not immediately overhauled.”<sup>65</sup>
34. The cumulative effect of those conditions is clearly aggravated by the length of time that California prisoners typically await their executions.<sup>66</sup> According to the California Department of Corrections, there are currently two inmates who have been awaiting their execution for 28 years.<sup>67</sup> There are 8 more inmates who were sentenced to death 27 years ago.<sup>68</sup> There are 10 who were sentenced 26 years ago.<sup>69</sup> There are 24 who were sentenced 24 years ago.<sup>70</sup>
35. Since the death penalty was reinstated in 1978, California has executed 13 inmates. During that same time however, 31 inmates were on death row so long that they died of natural causes.<sup>71</sup> Of the 13 inmates actually executed in California the average time the inmates spent on death row was 17 years and 7.82 months.<sup>72</sup>
36. Daniel B. Vasquez, the warden of San Quentin from 1983-1993, recently described what inmates experience as a result of their extended incarceration under deplorable conditions: “I have observed that the weight and pressure of living as a condemned man on Death Row is extremely debilitating and wears a prisoner out both physically and emotionally. Every court petition brings a ray of hope and rescue to the condemned prisoner, every court reprieve promises more and every court denial dashes that hope and engenders despair. The condemned prisoner must constantly adjust to these extremities of emotion, which grinds at his spirit. The process can be especially debilitating for prisoners who must contend with death warrants.”<sup>73</sup>

### 3. The Effects of Lengthy Incarceration and Inhumane Conditions on Death Row Inmates: A Case Study

37. Prolonged incarceration on death row, particularly under the conditions described above,<sup>74</sup> has devastating psychological effects on condemned prisoners – particularly those who are mentally ill. Indeed, the torturous effects of "death row phenomenon" -- that is, the psychological impact of a lengthy stay on death row -- have been widely noted by jurists and scholars over the last three decades.<sup>75</sup>
38. It is both necessary and appropriate for nations to provide adequate procedural safeguards to ensure condemned inmates receive full and fair appellate review of their convictions and sentences. Nonetheless, prolonged incarceration on death row amid unendurable conditions of confinement gives rise to violations of Articles 7 and 10 of the ICCPR.<sup>76</sup> The case of César Roberto Fierro Reyna, a Mexican national on Texas' death row, provides a particularly disturbing example of the destructive psychological effects of extended solitary confinement on death row.<sup>77</sup>
39. César Roberto has been under a sentence of death since February 27, 1980. He has been scheduled for execution on fourteen separate occasions, coming within days of execution before receiving court-ordered stays on six different occasions.<sup>78</sup> According to the prison's classification records, Mr. Fierro contacted the prison's psychiatric department for the first time on May 15, 1986, stating that he was hearing voices and he might injure himself.<sup>79</sup>
40. As the years passed, Mr. Fierro's mental condition continued to deteriorate. On December 28, 1999, Mr. Fierro learned that his mother had died four days earlier. In a grievance submitted to the prison on January 25, 2000, he wrote that he made an appointment with the psychiatrist because he "went down emotionally and was feeling real bad[.]" The prison sent a psychiatrist or a psychologist to his cell, but Mr. Fierro requested a private consultation. He was told that only outwardly psychotic prisoners are allowed private psychiatric consultations, and hence his request was refused. In the grievance, Mr. Fierro wrote:
- I don't look sick and I can do things as you can see by this grievance, but I hear the voices at the same time and I can do things I don't want to do and that's what I would like to avoid completely.<sup>80</sup>
41. He reiterated his request for a private meeting with a psychiatrist, and asked that the psychiatrist "get my old medication back or whatever he deems appropriate." *Id.* The prison responded that its records indicated that Mr. Fierro had been seen by the unit psychiatrist, and that the psychiatrist had found no indication that Mr. Fierro was in need of further treatment.<sup>81</sup>
42. Mr. Fierro's attorneys as well as reporters have observed a marked deterioration in Mr. Fierro's mental health over the years of his incarceration on death row. Until March 1999, he was able to communicate with his attorneys in a regular and fairly

rational manner. From that point forward, however, Mr. Fierro's letters to his attorneys became increasingly bizarre and irrational. He lost a great deal of weight. He became convinced that his attorneys were conspiring against him.<sup>82</sup>

43. One of the hundreds of irrational letters he sent to his attorneys included the following message:

NO ACCESS TO GRIEVANCES. STOLEN PENS AND STAMPS. LIMITED ACCESS TO SAME INK AND STAMPS. NO TYLENOLS. NO FLOSS. SCARED OF DENTIST BECAUSE A DRILLED HOLE OR SOMETHING AND CAVITIES. NO MEDICAL. INCOMPETENT EMPLOYEES. FORGOT, GUM/TOOTH BLEEDS. NO FAIR HEARINGS, CONFISCATION OF DOCUMENTS AND ORCHASTRATED [*sic*] CASES. NO RULES. NO MAIL. PSYCHOLOGICAL SUICIDE BY HYPNOSIS OR OTHER INSINUATED. ALSO THE ATTEMPT TO CONFUSE AND MANIPULATE, ALSO CUTS, GASSING AND BEATING SO FAR IN THIS RUN.<sup>83</sup>

44. What is particularly tragic about Mr. Fierro's case is that he may actually be innocent of the crime for which he was convicted. Numerous media reports have described the miscarriage of justice that led to his conviction.<sup>84</sup> Although a Texas court has found that his confession was coerced by the El Paso police,<sup>85</sup> and his former prosecutor has urged the courts to grant him a new trial, he remains on death row. As of February 27, 2006, he has spent twenty-six years awaiting his execution for a crime he may not have committed.

## **V. Recommendations and Conclusion**

1. The United States should suspend executions in those areas in which racial disparities in death sentences have been documented. The United States should also pass legislation mandating judicial consideration of statistical evidence regarding racial disparities in capital sentencing, so that courts will take that evidence into account in determining whether individuals should be subjected to the death penalty.
2. The United States should restrict the application of the death penalty by reducing the number of crimes for which individuals may be sentenced to death, and by strictly limiting the application of the death penalty to those who have committed an intentional homicide. The "felony murder" doctrine should not be invoked to justify the application of the death penalty to individuals who did not kill.
3. The United States should discontinue executions of the mentally ill, and should refrain from forcibly medicating prisoners to render them competent for execution.
4. The United States should adopt a moratorium on all executions nationwide until current methods of lethal injection have been thoroughly studied by the courts and by medical professionals.

5. The United States should discontinue the practice of segregating prisoners on death row, and should give death row prisoners access to educational and occupational training. In the meantime, the United States should improve conditions on death row so that they comply with applicable international standards. The United States should ensure that mentally ill death row prisoners are housed in mental institutions apart from the death row population and are provided with appropriate treatment.

We are grateful to the Committee for considering this submission in evaluating the United States' compliance with its obligations under the ICCPR.

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<sup>1</sup> Concluding Observations of the Human Rights Committee: United States of America, ¶¶281, 296, U.N. Doc. CCPR/C/79/Add.50, A/50/40 (1995).

<sup>2</sup> See Concluding Observations at ¶281.

<sup>3</sup> *Ford v. Wainwright*, 477 US 399 (1986).

<sup>4</sup> A declaration from Dr. Mark Heath, describing these problems in detail, has been provided as an exhibit to this report.

<sup>5</sup> See, e.g., *Johnson v. Jamaica*, ¶8.4 (No. 588/1994), U.N. Doc. CCPR/C/56/D/588/1994 (1996).

<sup>6</sup> *Id.* ¶8.5.

<sup>7</sup> DEATH PENALTY INFORMATION CENTER, *The Death Penalty in Black and White: Who Lives, Who Dies, Who Decides* (1998) (available at <http://www.deathpenaltyinfo.org/article.php?scid=45&did=539>).

<sup>8</sup> *Id.*

<sup>9</sup> David C. Baldus, et. al., *Racial Discrimination and the Death Penalty in the Post-Furman Era: An Empirical and Legal Overview, With Recent Findings from Philadelphia*, 83 CORNELL L. REV. 1638-1770 (1998).

<sup>10</sup> Jennifer Eberhardt, et. al., *Looking Deathworthy: Perceived Stereotypicality of Black Defendants Predicts Capital Sentencing Outcomes*, 17 PSYCH. SCI. 383 (2006) (attached as an Exhibit to this Report).

<sup>11</sup> See generally AMNESTY INTERNATIONAL, *Death by Discrimination: The Continuing Role of Race in Capital Cases*, April 24, 2003 (available at <http://web.amnesty.org/library/index/engamr510462003>). See also Samuel Gross & Robert Mauro, *Patterns of Death: An Analysis of Racial Disparities in Capital Sentencing and Homicide Victimization*, 37 STAN. L. REV. 27, 78, 96 (1984); SAMUEL GROSS & ROBERT MAURO, *DEATH AND DISCRIMINATION: RACIAL DISPARITIES IN CAPITAL SENTENCING* 65-66 (1989).

<sup>12</sup> Kentucky Revised Statutes Ann, §532.300.

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<sup>13</sup> Human Rights Committee, General Comment 18, Non-discrimination, ¶10 (Thirty-seventh session, 1989), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 26 (1994).

<sup>14</sup> See, e.g., DEATH PENALTY INFORMATION CENTER, *Arbitrariness and the Death Penalty* (available at <http://www.deathpenaltyinfo.org/article.php?did=1328>); DEPT. OF JUSTICE, THE FEDERAL DEATH PENALTY SYSTEM: A STATISTICAL SURVEY (1988-2000) (finding that 40% of the 682 cases sent to the Justice Department for approval to seek the death penalty were filed by only five jurisdictions) (available at <http://www.usdoj.gov/dag/pubdoc/dpsurvey.html>).

<sup>15</sup> Harriet Chiang, *DA Defends Decision Not to Seek Execution*, S.F. CHRONICLE, April 25, 2004, at B1.

<sup>16</sup> David Kravets, *Death Penalty Varies by Geography in California*, SAN MATEO DAILY J., Feb. 6, 2004 (available at [http://www.smdailyjournal.com/article\\_preview.php?id=27725&eddate=02/06/2004](http://www.smdailyjournal.com/article_preview.php?id=27725&eddate=02/06/2004)).

<sup>17</sup> See Glenn L. Pierce & Michael L. Radelet, *The Impact of Legally Inappropriate Factors on Death Sentencing for California Homicides, 1990-1999*, 46 SANTA CLARA L. REV. 1, 25-36 (2005) (noting that San Francisco had 910 homicides from 1990-1999 but had not sentenced a single person to death, whereas Kern County had only 661 homicides yet sentenced ten individuals to death).

<sup>18</sup> Associated Press, April 10, 2001.

<sup>19</sup> *Ex parte McFarland*, 163 S.W.3d 743 (Tex. Crim. App. 2005).

<sup>20</sup> See TEXAS DEFENDER SERVICE, *Lethal Indifference: The Fatal Combination of Incompetent Attorneys and Unaccountable Courts in Texas Death Penalty Appeals* (2002) (available at <http://www.texasdefender.org/front.pdf>).

<sup>21</sup> The Supreme Court's decision in *Roper v. Simmons*, 543 U.S. 551 (2005), affected only 72 juvenile offenders in twelve states. See DEATH PENALTY INFORMATION CENTER, *U.S. Supreme Court: Roper v. Simmons* (2005) (available at <http://www.deathpenaltyinfo.org/article.php?scid=38&did=885>). The decision in *Atkins v. Virginia*, 536 U.S. 304 (2002), which prohibited the imposition of the death penalty on mentally retarded offenders, has had an even more limited impact. Daryl Atkins, whose case led to the Supreme Court's seminal decision, has once again been sentenced to death after a Virginia jury rejected evidence of his mental retardation. See INTERNATIONAL JUSTICE PROJECT, *Daryl Renard Atkins* (available at: <http://www.internationaljusticeproject.org/retardationDatkins.cfm>).

<sup>22</sup> See also Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, ¶1, E.S.C. res. 1984/50, annex, 1984 U.N. ESCOR Supp. (No. 1) at 33, U.N. Doc. E/1984/84 (1984) (death penalty may only be imposed "for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences").

<sup>23</sup> Human Rights Committee, General Comment 6, Article 6 (Sixteenth session, 1982), para. 7; Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 6 (1994).

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<sup>24</sup> *Lubuto v. Zambia*, ¶7.2 (No. 390/1990), U.N. Doc. CCPR/C/55/D/390/1990/Rev.1 (1995).

<sup>25</sup> *See Tison v. Arizona*, 481 U.S. 137, 157-58 (1987).

<sup>26</sup> *See, e.g.*, Cal. Penal Code §190.2(b) (“Unless an intent to kill is specifically required under subdivision (a) for a special circumstance enumerated therein, an actual killer . . . need not have had any intent to kill at the time of the commission of the offense which is the basis of the special circumstance in order to suffer death”); Ga. Code Ann. §16-5-1 ) (“A person also commits the offense of murder when, in the commission of a felony, he causes the death of another human being irrespective of malice”).

<sup>27</sup> Louisiana Revised Statutes 14:42D(2)(a); *State v. Wilson*, 685 So. 2d 1063 (La. 1996).

<sup>28</sup> United Nations, Report of the Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions, UN Doc. CCPR/C/79/Add.85, 19 Nov. 1997, para. 13.

<sup>29</sup> *See, e.g.*, Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, E.S.C. Res. 1984/50, U.N. ESCOR, Supp. No. 1, at 33, U.N. Doc. E/1984/92 (1984) (death sentence shall not be carried out on persons who have become insane); United Nations Economic and Social Council, *Implementation of the Safeguards Guaranteeing Protection of Rights of Those Facing the Death Penalty*, E.S.C. Res. 1989/64, U.N. Doc. E/1989/91 (1989), at 51 ¶ 1 (d) (death penalty shall not be imposed on “persons suffering from...*extremely limited mental competence*, whether at the stage of sentence or execution”) (emphasis added); U.N. Commission on Human rights, Question of the Death Penalty, U.N. Doc. E/CN.4/2005/L.77 (2005) (calling on retentionist countries “not to impose the death penalty on a person suffering from *any form of mental ...disabilities* or to execute any such person”); Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, U.N. Doc. E/CN.4/1997/60 (1996) (calling on retentionist states that impose the death penalty on the mentally ill to “bring their domestic criminal laws into conformity with international legal standards”).

<sup>30</sup> *Ford v. Wainwright*, 477 US 399 (1986).

<sup>31</sup> AMNESTY INTERNATIONAL, UNITED STATES OF AMERICA: THE EXECUTION OF MENTALLY ILL OFFENDERS (available at <http://web.amnesty.org/library/print/ENGAMR510032006>).

<sup>32</sup> *Id.*

<sup>33</sup> An excellent summary of Mr. Patterson’s case is provided in AMNESTY INTERNATIONAL, *Another Texas Injustice: The Case of Kelsey Patterson, Mentally Ill Man Facing Execution*, March 18, 2004 (available at <http://web.amnesty.org/library/Index/ENGAMR510472004>).

<sup>34</sup> *Texas Executes Mentally Ill Man*, N.Y. TIMES, May 19, 2004.

<sup>35</sup> Mike Tolson, *Plea Rejected, Mentally Ill Man Executed*, HOUSTON CHRONICLE, May 19, 2004.

<sup>36</sup> *Ford v. Wainwright*, 477 U.S. at 422 (Powell, J., concurring).

<sup>37</sup> *Id.*



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<sup>38</sup> See Melody McDonald, *Judge Rules Condemned Man Must Take Anti-psychotic Drug*, FORTH WORTH STAR TELEGRAM, April 11, 2006 (Attached as an exhibit to this report).

<sup>39</sup> Currently, 37 of the 38 states that retain the death penalty in the United States use lethal injection as their primary method. Only Nebraska solely uses electrocution. See DEATH PENALTY INFORMATION CENTER, *Facts About the Death Penalty* (available at <http://www.deathpenaltyinfo.org/FactSheet.pdf>) (last updated March 1, 2006).

<sup>40</sup> See, e.g., HUMAN RIGHTS WATCH, *So Long as They Die: Lethal Injection in the United States*, April 2006 (available at <http://hrw.org/reports/2006/us0406/>); Declaration of Dr. Mark Heath, ¶¶19-20, filed in *Morales v. Hickman*, No. 5:06-cv-00219-JF, (N. D. Cal. Jan. 20, 2006).

<sup>41</sup> See DEATH PENALTY INFORMATION CENTER, *Lethal Injection: Some Cases Stayed, Other Executions Proceed*, (available at <http://www.deathpenaltyinfo.org/article.php?did=1686&scid=64>) (last visited March 11, 2006); Heath Declaration, ¶9.

<sup>42</sup> Heath Declaration, ¶¶17-19.

<sup>43</sup> Heath Declaration, ¶28.

<sup>44</sup> *Id.* ¶37.

<sup>45</sup> *Id.* ¶¶37-43.

<sup>46</sup> *Id.* ¶40.

<sup>47</sup> *Id.* ¶43.

<sup>48</sup> *Id.* ¶11.

<sup>49</sup> See DEATH PENALTY INFORMATION CENTER, *Lethal Injection: Some Cases Stayed, Other Executions Proceed*, (available at <http://www.deathpenaltyinfo.org/article.php?did=1686&scid=64>) (last visited May 15, 2006).

<sup>50</sup> Associated Press, *Botched Execution Leads to Ohio Review*, May 12, 2006.

<sup>51</sup> THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK, *Dying Twice: Conditions on New York's Death Row* (observing that death row prisoners in Missouri are integrated with the general population) (available at [http://www.abcnyc.org/Publications/reports/show\\_html.php?rid=51&searchterm=dying%20twice](http://www.abcnyc.org/Publications/reports/show_html.php?rid=51&searchterm=dying%20twice)).

<sup>52</sup> The information presented here regarding the conditions on Texas' death row has been confirmed by numerous interviews with death row inmates and with the attorneys who represent those inmates. Compelling individual accounts of life on Texas' death row have been published on the internet. See, e.g., Alvin Kelly, *Trial by Fire*, Feb. 19, 2002 (available at <http://www.ccadp.org/alvinkelly.htm>); G. Wilford Hathorn, *Animus* (2001) (available at <http://www.deathrow.at/hathorn/home1.html>).

<sup>53</sup> See Shadow Report of the Criminal Justice Working Group at ¶44.

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<sup>54</sup> Texas has passed legislation banning the education of prisoners in administrative segregation. Whether this ban applies to death row prisoners is not clear, but more importantly, it should not prohibit other kinds of mentally stimulating activity.

<sup>55</sup> See, e.g., *Madrid v. Gomez*, 889 F. Supp. 1146, 1265 (N.D. Cal. 1995); *Davenport v. DeRobertis*, 844 F.2d 1310, 1313 (7th Cir. 1988), Stuart Grassian and N. Friedman, *Effects of Sensory Deprivation in Psychiatric Seclusion and Solitary Confinement*, AMERICAN JOURNAL OF LAW AND PSYCHIATRY 49-65 (1986); Stuart Grassian, *Psychopathological Effects of Solitary Confinement*, AMERICAN JOURNAL OF PSYCHIATRY 1450-54 (1983). See also HUMAN RIGHTS WATCH, *Ill-Equipped: U.S. Prisons and Offenders with Mental Illness*, Part XII (2003) (available at <http://www.hrw.org/reports/2003/usa1003/>).

<sup>56</sup> See, e.g., Laura Mansnerus, *Damaged Brains and the Death Penalty*, N.Y. TIMES, Jul. 21, 2001; David Freedman and David Hemenway, *Precursors of Legal Violence: A Death Row Sample*, SOCIAL SCIENCE AND MEDICINE 1757-1770 (June 2000).

<sup>57</sup> Renee Feltz, *Cruel and Unusual? Texas Death Row Conditions*, KPFT Radio Transcript, Nov. 8, 2002 (available at <http://www.kpft.org/news/110802story3.html>).

<sup>58</sup> Administrative segregation conditions are identical to death row prisoners' in all but name. Administrative segregation prisoners have the same out-of-cell time, recreate and worship alone, and have comparable restrictions on property. See *Ruiz v. Johnson*, 37 F. Supp. 2d 855, 908 (S.D. Texas 1999).

<sup>59</sup> *Id.* at 907.

<sup>60</sup> *Id.* at 911-12.

<sup>61</sup> California Department of Corrections and Rehabilitation Division of Adult Operations, Death Row Tracking System, available at <http://www.corr.ca.gov/ReportsResearch/docs/InmateSecured.pdf> (last updated Feb. 27, 2006).

<sup>62</sup> *Plata v. Schwarzenegger*, 2005 WL 2932243 at \*3 (N.D. Cal. May 10, 2005) (Order to Show Cause Re. Civil Contempt and Appointment of Interim Receiver).

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.* at \*1. For a more detailed description of prisoner deaths caused by improper medical care, see *Plata v. Schwarzenegger*, 2005 WL 2932253 (N.D. Cal. Oct. 3, 2005) (Findings of Fact and Conclusions of Law Re. Appointment of Receiver). Some of the deaths are also described in James Sterngold, *U.S. Seizes State Prison Health Care*, S.F. CHRONICLE, July 1, 2005, at A-1.

<sup>66</sup> See Declaration of Dr. George Woods (describing the deterioration in the mental health of California death row inmate James Blair, a sixty-three year old man incarcerated on death row for fourteen years). The declaration of Dr. Woods has been provided as an exhibit to this report.

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<sup>67</sup> California Department of Corrections and Rehabilitation Division of Adult Operations, Death Row Tracking System, available at: <http://www.corr.ca.gov/ReportsResearch/docs/Summary.pdf> (last updated Feb. 27, 2006).

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> California Department of Corrections and Rehabilitation, Office of Public and Employee Communications, January 16, 2006, available at <http://www.corr.ca.gov/ReportsResearch/docs/CIWHD.pdf>

<sup>72</sup> California Department of Corrections and Rehabilitation , Inmates Executed, available at: <http://www.corr.ca.gov/ReportsResearch/InmatesExecuted.html>.

<sup>73</sup> Declaration of Daniel B. Vasquez in Support of Ray Allen's Petition for Clemency and Petition for Writ of Habeas Corpus, ¶ 14, available at: <http://www.aclunc.org/deathpenalty/051227-Vasquez%20Declaration.pdf>

<sup>74</sup> By focusing on Texas and California, we do not mean to imply that death row conditions elsewhere in the United States are humane. *See, e.g.*, Associated Press, *Inmates Waiting to Die Want More Privileges*, May 14, 2006 (describing conditions on Connecticut's death row); THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK, *Dying Twice: Conditions on New York's Death Row* (available at [http://www.abcnyc.org/Publications/reports/show\\_html.php?rid=51&searchterm=dying%20twice](http://www.abcnyc.org/Publications/reports/show_html.php?rid=51&searchterm=dying%20twice)). But keeping in mind the need for brevity, we have decided to concentrate on California and Texas since their combined death row populations constitute nearly one-third of the death row population nationwide.

<sup>75</sup> *See, e.g.*, *Soering v. United Kingdom*, 11 EUR. HUM. RTS. REP. 439 (1989)(European Court of Human Rights refused to extradite a German national to face capital murder charges because of anticipated time that he would have to spend on death row if sentenced to death); *Pratt & Morgan v. The Attorney General of Jamaica*, Privy Council Appeal No. 10 of 1993, 3 WLR 995, 143 NLJ 1639 (British Commonwealth Privy Council Nov. 2, 1993)(en banc); *Catholic Comm'n for Justice & Peace in Zimbabwe v. Attorney General*, No. S.C. 73/93 (Zimb. June 24, 1993 (reported in 14 HUM. RTS. L. J. 323 (1993))); Wood, *Competency for Execution: Problems in Law and Psychiatry*, 14 FLA. ST. U. L. REV. 35, 37-39 (1986) ("The physical and psychological pressure besetting capital inmates has been widely noted .... Courts and commentators have argued that the extreme psychological stress accompanying death row confinement is an eighth amendment violation in itself or is an element making the death penalty cruel and unusual punishment.") (citing authorities); Holland, *Death Row Conditions: Progression Towards Constitutional Protections*, 19 AKRON L. REV. 293 (1985); Johnson, *Under Sentence of Death: The Psychology of Death Row Confinement*, 5 LAW & PSYCHOLOGY REVIEW } 141, 157-60 (1979); Gallemore & Parton, *Inmate Responses to Lengthy Death Row Confinement*, 129 AMER. J. PSYCHIATRY 167 (1972); Bluestone & McGahee, *Reaction to Extreme Stress: Impending Death By Execution*, 119 AMER. J. PSYCHIATRY 393 (1962); Note, *Mental Suffering Under Sentence of Death: A Cruel and Unusual Punishment*, 57 IOWA L. REV. 814, 830 (1972); G.

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Gottlieb, *Testing The Death Penalty*, 34 S. CAL. L. REV. 268, 272 & n.15 (1961); A. Camus, *Reflections on the Guillotine*, in RESISTANCE, REBELLION & DEATH 205 (1966).

<sup>76</sup> See, e.g., *Francis v. Jamaica*, ¶9.2 (No. 606/1994), U.N. Doc. CPR/C/54/D/606/1994 (1995).

<sup>77</sup> See Patricia Giovine, *Pide Ayuda César Fierro*, EL DIARIO DE EL PASO, July 27, 2005, at A1; John Carlin, *César Fierro, 25 Años a La Espera de la Ejecución*, EL HERALDO, Aug. 18, 2005, at 2.

<sup>78</sup> Affidavit of Jean Terranova, ¶3 (Attached as an Exhibit to this Report).

<sup>79</sup> Affidavit of Dr. Pablo Stewart, ¶4 (Attached as an Exhibit to this Report).

<sup>80</sup> *Id.*, ¶7.

<sup>81</sup> *Id.*, ¶8.

<sup>82</sup> Terranova Aff'd., ¶¶4-8.

<sup>83</sup> *Id.* ¶6.

<sup>84</sup> See, e.g., Dianne Jennings, *U.S. Courts Haven't Considered Effect of Man's Coerced Confession*, DALLAS MORNING NEWS, Mar. 4, 2002, at A17; Ken Armstrong and Steve Mills, *Gatekeeper Court Keeps Gates Shut*, CHICAGO TRIBUNE, June 12, 2000, at A1; Mark Donald, *Stuck in Habeas Hell: Bush Breathes New Life Into Texas Death Row Inmate's Case*, TEXAS LAWYER, May 2, 2005.

<sup>85</sup> *Ex Parte Cesar Roberto Fierro*, No. 33,752-171-4, slip op. at 2 (171<sup>st</sup> Dist. Ct. – El Paso May 1, 1995).