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001. memo	[Personally Identifiable Information] [partial] (3 pages)	11/00/2000	b(6)

COLLECTION:
Clinton Presidential Records
Staff Secretary
Lisel Loy (Chron Files)
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FOLDER TITLE:
Friday, December 8, 2000

2019-0680-S
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RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
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b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Withdrawal/Redaction Sheet
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November 2, 2000

Carol:

As we discussed, here's the information needed for the POTUS birthday letters for my niece and nephew (twins).

Asha Alagiri (DOB: (b)(6)
1668 Los Altos Road
San Diego, CA 92109

and

Sajan Alagiri (DOB:
1668 Los Altos Road
San Diego, CA 92109

Their parents names are Madhu and Amee Alagiri of the address listed above. I'd very much appreciate if the letters were slightly different from each other.

Please also send me the completed letters, as I will be having them framed for their birthday. My address is:

Priya Alagiri
1811 Vernon St., NW
#301
Washington, DC 20009

or just call me, and I will pick them up - (202) 622-5761.

12-8-00
To Cohen to
handle per
Lisel Loy.
D Bird

Thanks!

Priya

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

Fax

To:	Debbie Bird	From:	Priya Alagiri
Fax:		Date:	12/8/00
Phone:		Pages:	
Re:		CC:	

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

•Comments:

As we discussed, here's the fax I sent to Carol.

Thanks,
Priya

Sender's Fax # (202) 622-0073

THE PRESIDENT HAS SEEN
12-8-00

Angry Young Men Don't Want Mideast Peace

By Robert D. Kaplan

Israelis will continue to disagree in the coming election campaign over the different approaches to the Palestinians advocated by Prime Minister Ehud Barak and Likud Party leader Ariel Sharon. But psychologically the bulk of Israeli voters have all become Likudniks following the October killings of two Israeli reservists in Ramallah and the rise of Palestinian vigilantes who have thrown the West Bank into chaos. Israelis have no trust—if they ever did—in the power of democratic processes and civil society to stabilize the West Bank after they withdraw. They will demand a treaty that protects them from a worst-case scenario of political evolution in the West Bank and Jordan.

* That's because the volatile young men in Ramallah who tortured and mutilated the Israeli reservists—before throwing their bodies from a window and mutilating them some more—do not represent a traditional, politically disaffected class. These young men are beyond politics, and therefore may not be assuaged by any compromises at the negotiating table. An extra few square miles of sovereign territory will make little difference to them. Rather, they are products of changing demography, urbanization and other non-political forces that have altered the face of the Arab world in recent decades.

Forty percent of all Arabs are under 14 years old, and two-thirds under 25. Real unemployment and under-employment is 20% and higher in many Arab societies. Meanwhile, per capita water availability in the Arab world will drop by almost half by 2025, curtailing water for irrigation, and driving even more young people from rural farming villages to cities and shanty towns. Arab cities are increasingly dominated by concrete streets of low-end shops crowded with knots of frustrated young men at corners with little or nothing to do. And as the marriage age rises because of the lack of money for adequate dowries, marriage and the sexual fulfillment it can offer become increasingly a luxury for the better-off.

The situation will worsen as Arab regimes such as Jordan's will be unable to sustain the high levels of public spending that employ much of their workforces. Because of the higher Palestinian birth-rate, Jordan's population will be 85% urban Palestinian in the early 21st century. Politics in the Arab world will not be state politics per se, but the messy municipal politics of sprawling cities dominated by the working poor, in which governing elites have only flimsy institutions with which to exert control.

Of course, Ramallah represents relative wealth, education and sophistication vis-à-vis other places in the West Bank and the Arab world. But that only increases the frustration of its bored, young men. They have long since stopped comparing themselves to other Arabs, and instead have been overwhelmed by their envy of the Israelis, who are so close-by and whose lifestyles appear so much more alluring. If this continues, their only gratification may be found within an extreme version of Islam, whose very severity provides both a rationalization for their plight and an outlet for their powerful frustrations.

Expect similar thugs to be undermining regimes in Jordan, Syria and elsewhere in the future. And after the establishment of an independent Palestinian state, they may turn on the upper-middle class Palestinian elite that now claims to be speaking in their name. The articulate Palestinians on CNN are often Christians with no power bases of their own. After a complete separation from Israel, the politics of the West Bank could evolve very bloodily, with the flames veering eastward eventually toward Amman. A population pyramid so wide at the bottom with young people is a population without loyalty to any regime, unless it provides them with demonstrably better material opportunities.

The "peace" agreement that Israel will sign sooner or later with the Palestinians—contrary to what the Clinton administration and many pundits have said—will be made on the basis of fear, not hope. And that's not necessarily a bad thing. Fear can lead to the most sustainable treaties, just as it can lead to a responsible foreign policy in general. The disengagement accord between Syria and Israel brokered by the Nixon administration was based purely on mutual fear, and it has lasted a quarter-century. The so-called peace process of the past seven years was based heavily on an optimistic faith and it has led directly to mob violence.

Fear can make leaders see clearly and act morally, like Churchill, whose fear allowed him to see through Hitler early on, whereas Chamberlain based his policy on hope and trust. Churchill knew that men are creatures of passion more than of reason, however much they may deny it. Likewise, following the footage of the lynching of the two reservists that was played over and over again on Israeli television, Israelis will only accept a peace treaty that mitigates their fears more than it stimulates their hopes. They have seen in the most tangible manner how passion more than reason defines the Palestinian "street."

A treaty of separation may come faster than many think, and may eventually lead even to peaceful and fruitful coexistence—but only if the treaty itself is based on mutual fear and the inspiring phrases regarding a shared future are mainly for the benefit of Western publics watching on CNN.

Mr. Kaplan, a senior fellow at the New America Foundation, is author of "Eastward to Tartary: Travels in the Balkans, the Middle East, and the Caucasus" (Random House, 2000).

THE WALL STREET JOURNAL
THURSDAY, DECEMBER 7, 2000

THE PRESIDENT HAS SEEN
12-8-00

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U.S. Warns Of 50% Rise In Heat Costs

Price of Natural Gas Quadruples Over Year

By NEELA BANERJEE

Just as winter tightens an icy grip on much of the United States, the federal government warned yesterday that consumers can expect to pay about 50 percent more than a year ago to heat their homes with natural gas.

In its latest short-term energy outlook, the Energy Information Administration estimated that consumers who rely on natural gas would spend an extra $300 on average than last winter. Slightly more than half of American homes are heated with gas, according to 1997 census figures.

But a quadrupling of the price of natural gas over the last year will spread its effects through the economy as a whole, as factories, electric utilities and retailers join suburbanites in the scramble to pay their mounting gas bills.

"This will be a hardship for many families," said Martin Cohen, executive director of the Citizens Utilities Board, a utility watchdog group in Illinois, where residential consumers are expected to spend $400 more this winter on natural gas. "That will be $400 less going into the economy, into food, clothing and entertainment."

With demand soaring in a hot economy and supplies tight, wholesale prices for natural gas had nearly doubled by early July to about $4.44 for a million British thermal units, compared with $2.39 one year earlier. At that time, experts predicted that prices would level off or decline, and that consumers might have to pay 25 percent to 30 percent more for heat this winter.

Instead, the supply-demand imbalance grew more severe, and the price of natural gas continued to climb. Prices jumped sharply in the last week, as a cold snap rippled through the Northeast, Midwest and South, raising both demand for gas and concern that wellheads could freeze, further curtailing supplies. The price of natural gas for January delivery was $8.49 per million B.T.U.'s at the close of trading on the New York Mercantile Exchange yesterday, an increase of $1.10, or 15 percent, from the day before.

Although Energy Information Administration analysts expect that prices will settle back from the spikes this week, they nonetheless decided to revise their earlier estimates about how much it would cost to heat with natural gas this winter. The new estimate projects that it will cost the average family about $834 to heat their home, compared with about $540 last year, said David Costello, an analyst with the agency, the statistical arm of the Energy Department.

"This assumes that spot market prices won't stay as high as they are," Mr. Costello said, "but it presumes that we have something like normal temperatures," rather than the mild winters of the last two years.

In some big urban areas that rely heavily on natural gas for heating, bills are poised to rise more steeply than the average.

In the Chicago area, where more than 90 percent of residents heat with gas, People's Gas, a unit of **People's Energy**, predicts that gas bills will rise 64 percent this winter. Mr. Cohen's estimate for Chicago residents was even higher: an 80 percent increase.

In San Diego, where summer electric bills doubled or more under a much-criticized deregulation program, December gas bills are expected to double to an average of $70, utility executives said; in the Los Angeles area, bills could rise to $80 from $50 last year.

"We have given a great deal of warning to people about the situation," said Steve Baum, chairman and chief executive of **Sempra Energy**, the parent company of San Diego Gas and Electric and Southern California Gas. "But people are just now seeing higher bills. I don't know if there will be the same revolt as we had on electricity prices. I think there will be outrage."

In New York City, **Keyspan** and **Consolidated Edison** expect to keep price rises within the 25 percent to 30 percent range predicted earlier in the year.

But the utilities may be hard pressed to meet that pledge if the winter — like fall — turns out to be colder than expected. In the 24 hours ending Wednesday morning, for instance, Keyspan customers used more than twice the amount of natural gas they had a year ago, because temperatures were so much lower.

The rise in natural gas prices began in late spring, and the fear now is that it will not abate soon. Because gas prices were low over the last two years, oil and gas companies lacked the capital to invest in new drilling, so supplies gradually fell.

At the same time, the economy — and hence demand — was growing briskly. Manufacturers that use natural gas for their industrial processes demanded more. Electric power plants that kept the economy running needed more natural gas, too; nearly all the latest plants use gas, which burns more cleanly than other fuels.

(Consumers who heat with electricity generated by gas-burning plants generally pay regulated rates, and so will not bear the brunt of rising gas prices.)

There is no shortage looming, but inventory has been slow to build at many factories and some utilities that rely on natural gas. Market nervousness about those lower storage rates has also fueled higher prices.

"A lot of people feel that if we have normal winter temperatures, we could move to record low levels of storage, and that could drive prices up," Mr. Costello said.

Many gas utilities appear to have hedged their costs by purchasing natural gas through long-term contracts. But long stretches of cold weather could send them to the spot market for additional supplies. And that would be costly. At the New York citygate — the pipeline's point of entry into the city — bids ranged from $15 to $30 per million B.T.U.'s yesterday.

The inexorable rise of natural gas prices has spurred significantly more drilling in the United States than last year, and that could lead to a decline in prices — but not for the another year or two.

"We will make a transition, hopefully, into a period of more supply," Mr. Costello said, "but that is not going to do much for us this winter."

REMEMBER THE NEEDIEST!

The New York Times
THURSDAY, DECEMBER 7, 2000

THE PRESIDENT HAS SEEN
12-8-00

JP
another SPR release?

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U.S. Accord Being Sought On U.N. Dues And on Court

By BARBARA CROSSETTE

UNITED NATIONS, Dec. 6 — With less than two days to go at a meeting to put finishing touches on the International Criminal Court, a group of nations friendly to the United States is scrambling, with diminishing confidence, to strike a deal that would let the Clinton administration sign on to the tribunal.

"Delegations are twisting themselves into pretzels to bring the Americans in," said Richard Dicker, a lawyer at Human Rights Watch and an expert on the court.

A similar drama is being played out this week on the issue of reducing American dues to the United Nations. On both issues, many nations, especially the Europeans, have been working overtime to keep the United States from drifting farther away from international organizations just as world trends become more global.

This evening, delegations said they hoped that the United States would introduce some new proposals on the court on Thursday.

The new court will be the first permanent international tribunal for trying individuals charged with war crimes, genocide and crimes against humanity. Since the Nuremberg trials of Nazis, criminal tribunals have been ad hoc creations like the courts for war crimes in Rwanda and the Balkans.

This week, several countries — among them Australia, Britain and Switzerland — have suggested that a limited exemption given to France in 1998 when the treaty establishing the court was approved in Rome should be extended to the United States and other countries who sign. That exemption gave France seven years of immunity for war crimes in return for a promise to sign and ratify the treaty, which France subsequently did. The French said they needed time to align their military training and laws.

The United States poses a different problem, however. It is arguing for a permanent exemption for itself and for countries that do not sign. The Pentagon has demanded guarantees that no American soldier or official on duty abroad could ever be tried by the court, a stipulation that President Clinton, while professing to support the court, has shrunk from overruling. If the administration signs before Dec. 31, it does not have to ratify the treaty immediately. After that date, any country has to both sign and ratify the treaty to take part.

In Congress, opposition among Republican leaders has been extremely strong. Senator Jesse Helms, the North Carolina Republican who is chairman of the Senate Foreign Relations Committee, has repeatedly said the court treaty will not be ratified on his watch.

"We're not against war crimes tribunals," a spokesman for the committee, Marc Thiessen, said. But without better checks on the court's jurisdiction and operation, particularly through the Security Council, the court is "fundamentally dangerous," he said in an interview.

"This court is the League of Nations of international war crimes," Mr. Thiessen said. "It is a flawed and failed first effort. Maybe in 30 years it can be improved."

In both the Senate and the House, a bill was introduced this year that would prohibit any court and all levels of government in the United States from cooperating with the International Criminal Court, though officials would be permitted to deal with ad hoc tribunals. The bill would also require permanent immunity for Americans before the United States could participate in any peacekeeping operation.

Moreover, the bill would stop military aid to any country that accepts the court, with the exception of NATO nations and important allies, virtually all of whom have already signed the treaty.

On Nov. 29, Congress picked up support from a significant list of former American officials, among them prominent advisers to Gov. George W. Bush. In a letter to Representative Tom DeLay, the House majority whip, 12 high-level officials, including four former secretaries of state, James A. Baker III, Lawrence S. Eagleburger, Henry A. Kissinger and George P. Shultz, and three former national security advisers, Richard V. Allen, Zbigniew Brzezinski and Brent Scowcroft, said the court would infringe basic American constitutional rights.

The letter writers called the Congressional bill, the American Servicemen's Protection Act, "an appropriate response to the threat to American sovereignty and international freedom of action posed by the International Criminal Court."

The New York Times
THURSDAY, DECEMBER 7, 2000

THE PRESIDENT HAS SEEN
12-8-00

Sandy
any chance we can join the court?
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The New York Times
WEDNESDAY, DECEMBER 6, 2000

THE PRESIDENT HAS SEEN
12-8-00

Rates of Gonorrhea Rise After a Long Decline

By LAWRENCE K. ALTMAN

Gonorrhea rates in the United States have increased for two consecutive years, reversing a downward trend that had continued since the mid-1970's, federal health officials said yesterday.

Though the rise in rates reflects wider use of improved tests to screen for the bacterial infection and more thorough reporting, the increase needs to be addressed in public health programs, said Dr. Judy Wasserheit, who directs the program for sexually transmitted diseases at the Centers for Disease Control and Prevention, a federal agency in Atlanta.

Dr. Wasserheit said in a telephone interview that the reversed trend for gonorrhea was "extremely disturbing" and that it "should serve as a wake-up call" about the seriousness of sexually transmitted diseases that can cause infertility and other serious complications.

A nationwide trend reverses itself after more than 20 years.

The cause of the increase is unclear.

After falling steadily for more than 20 years, the rates for gonorrhea increased 9 percent from 1997 to 1999, officials at the centers said. The rate peaked at 467.7 cases per 100,000 people in 1975, then fell steadily in all regions by 72 percent until stabilizing at rates of 133.2 in 1996 and 122.0 in 1997. The rate is now 133.2, with a total of 360,078 cases.

Gonorrhea rates are now highest in the South, probably because of high poverty and low access to quality health and preventive care, said Dr. Ron Valdiserri, an official at the disease control agency.

Dr. Wasserheit and other health workers released the new figures at a meeting on sexually transmitted diseases sponsored by the centers and the American Social Health Association in Milwaukee this week. Participants are trying to increase public awareness, testing and surveillance, and to give people with such diseases better access to care. The meeting also is aimed at helping the disease control agency eliminate syphilis from the United States. Syphilis rates reached a record low last year, officials said.

The centers also released findings from the first national survey on human papilloma virus, or H.P.V. It is believed to be the most common sexually transmitted infection among young, sexually active people, but the agency did not specify the age range. The 30 types of the virus have been linked to several diseases like genital warts and cancer of the cervix, penis and anus. Papilloma virus accounts for 93 percent of cervical cancer, and one type, H.P.V.-16, accounts for half of all such cases.

In many, the immune system clears the virus without causing illness. A major question is why a large percentage of women are infected with H.P.V. but only a much smaller percentage develop cervical cancer.

The national survey involved 7,218 participants who, from 1991 to 1994, had their blood tested for H.P.V.-16.

The survey found H.P.V.-16 infection in 17.9 percent of women of all races compared with 8 percent of men. Black women ages 20 to 29 had the highest prevalence, 36 percent, and the prevalence among blacks overall was 19.1 percent, compared with 12.5 percent in whites.

The prevalence of H.P.V.-16 increased with the number of an individual's lifetime sex partners: 7 percent of people with one lifetime sex partner were infected, compared with 20.1 percent of people with 50 or more lifetime sex partners.

The centers also reported that another sexually transmitted infection that is caused by the chlamydia bacteria remains the most frequently reported infectious disease.

A total of 659,441 chlamydia cases were reported to the centers, with a rate of 254.1 cases per 100,000 people.

Both infections are believed to be underreported. Most of those who are infected with chlamydia do not know it because they experience no symptoms. The disease control agency estimates that three million Americans are infected with chlamydia each year.

No new syphilis cases were reported last year in 79 percent of the 3,115 counties in this country. But Dr. Valdiserri warned that syphilis remained a significant health threat in specific areas. For example, small outbreaks were reported among gay men in Los Angeles and Seattle.

Once More, California Comes Close to Running Out of Electricity

By LAURA M. HOLSON

LOS ANGELES, Dec. 5 — For the second time in as many days, power companies today were forced to shut down electricity to customers statewide as California came the closest it has this season to running out of power, state officials said.

As late as tonight, energy officials were concerned that they would be forced to announce a last-resort emergency as power reserves crept close to a dangerous level of 1.5 percent, and utility companies would have been required to institute rolling hourlong blackouts in various parts of the state. Such last-resort steps have never been taken in California before.

On Monday, Californians were urged to postpone turning on Christmas lights until later in the evening as use hit near record levels for this time of year.

Then, as today, state officials declared an intermediate-level emergency, which meant power reserves dipped to 5 percent and utilities began cutting service to large customers who had agreed to the cuts in exchange for lower rates. In a Stage 3 emergency, the worst situation, any customer's service can be shut off.

"We are riding the edge right now," said Patrick Dorinson, a spokesman for the California Independent System Operator, which manages the electricity system for 75 percent of the state and charged with ensuring that there is enough power for users. "This will only get tougher."

Mr. Dorinson said the shortfall was the result of several factors, including the fact that a number of power plants were not running because of maintenance or would have violated air quality standards if they had. Additionally, power imports from the Northwest were cut in half because of a cold snap there, he said.

Californians have been plagued since last May by both an electricity supply shortage as well as high prices, the result of deregulation. Consumers in San Diego revolted last summer when electricity bills nearly tripled and when officials said the state had severe energy shortfalls 23 times. But emergencies like the one this week are almost unheard of in late fall when usage is usually low compared with summer.

"If you have rolling blackouts, that shows that the system is failing," said Paul Jaskow, a professor of economics at the Massachusetts Institute of Technology who has studied the deregulation of California's electricity market. Before deregulation, he added, "the system was designed so that this happened rarely. If it happens repeatedly businesses and customers will get angry."

Steve Maviglio, the press secretary for Gov. Gray Davis, said: "It is the perfect storm of the energy situation in California. This is Day 1 of what is to be a two-week problem."

THE PRESIDENT HAS SEEN
12-8-00

Jennings
can we do
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this? BC

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THE WHITE HOUSE

WASHINGTON

12-8-00

December 7, 2000

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MEMORANDUM FOR THE PRESIDENT

FROM: BETH NOLAN BN
BRUCE LINDSEY BL by ME
MEREDITH CABE ME

SUBJECT: Attached Department of Justice Recommendation on Executive Clemency for Juan Raul Garza

Attached is a letter from the Attorney General and a memorandum from the Deputy Attorney General containing the Department's analysis and recommendation in the clemency request of Juan Raul Garza.

The Attorney General recommends that you issue a reprieve in this case delaying Mr. Garza's execution date for six months. We concur in that recommendation.

DECISION:

GRANT: ✓

DENY: __________

DISCUSS: __________

Office of the Attorney General
Washington, D.C. 20530

December 7, 2000

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

As you know, federal defendant Juan Raul Garza, who was convicted of multiple murders and sentenced to death, is scheduled to be executed on Tuesday, December 12, 2000. He has filed a petition for executive clemency that is thoroughly analyzed in the Deputy Attorney General's report to you.

Mr. Garza claims that the decision to seek the death penalty was influenced to some degree by the fact that he was a Hispanic Defendant prosecuted in Texas, citing The Federal Death Penalty System: A Statistical Survey (1988-2000). That survey found that minorities are over-represented in the federal death penalty system - relative to the general population. It also found geographic variances with respect to the numbers of cases submitted by the United States Attorneys and the frequency of recommendations to seek the death penalty.

When the Study was published, we asked the United States Attorneys for additional data about capital eligible cases which were not required to be submitted to the Department for review. We have now received that information. To be fair and just, we should review it in light of any application that can be made to this case and determine whether there is any research that would produce relevant information to support Mr. Garza's petition for clemency.

I want to emphasize that granting the reprieve we recommend does not lead to the conclusion that doubts about the role of race and geography warrant a moratorium on all federal executions pending further study. Concerns about the role of race and geography can and should be addressed on a case-by-case basis as they were in this case. This is because the facts of certain cases do not allow for the possibility that race and geography could have played any role in the decision to seek and apply the federal death penalty.

Mr. President, I do not believe that Mr. Garza is correct in asserting that the decision to seek the death penalty in his case was influenced to some degree by the fact that he was a Hispanic defendant prosecuted in Texas. I am confident that there was no conscious decision by anyone involved in Mr. Garza's prosecution to allow race or geography to affect the decision to seek the death penalty. Mr. Garza adduced no direct evidence that discrimination against him existed at any state of his case. At the same time, I believe that fairness requires doing all we reasonably can to make sure that we are right before proceeding with the irrevocable decision to take Mr. Garza's life.

Therefore, I urge you to grant a six-month reprieve to Mr. Garza.

Respectfully,

Janet Reno

Janet Reno

REPORT TO THE PRESIDENT

ON PROPOSED GRANT OF SIX MONTH REPRIEVE FOR

JUAN RAUL GARZA

SYNOPSIS:

Petitioner, who is scheduled to be executed on December 12, 2000, seeks commutation of the sentence of death imposed upon him on August 10, 1993, as a result of being convicted in the Southern District of Texas of three counts of intentionally killing in furtherance of a continuing criminal enterprise. From the early 1980's to 1992, he ran a drug-trafficking business, importing marijuana into the United States through workers he sent to Mexico to drive the drugs across the border and selling thousands of pounds of marijuana in Texas, Louisiana, and Michigan. The three victims of the offenses for which a death sentence was imposed worked for him or his associates in the drug business and were killed because he suspected them of stealing from him or betraying him to law enforcement. He personally shot one of the victims and paid his subordinates to kill the other two.

After a raid on his home by law enforcement officers, petitioner fled to Mexico, from which he was deported to the United States to stand trial on outstanding drug charges. Upon his return to this country, capital charges were brought against him. A jury found him guilty and made the binding recommendation that he be sentenced to death. He pursued unsuccessfully both an appeal and a collateral attack pursuant to 28 U.S.C. § 2255. In each court proceeding, he was represented by two or more attorneys. Petitioner now accepts responsibility for the murders for which he was convicted. No claim of innocence of these homicides is presently raised, nor is a claim of ineffective assistance of counsel made in support of his clemency request.

In addition to the three homicides for which he was convicted, the Government alleged during the punishment phase of his case that petitioner was responsible for the murders of five additional victims, four in Mexico and one in the United States. He was neither charged with nor convicted of any of these additional murders. He disputes the fairness of sentencing based on uncharged homicides, particularly homicides that occurred in a foreign country. This claim is currently the subject of a pending proceeding before the Inter-American Commission on Human Rights.

Petitioner's execution date was originally set for August 5, 2000, by United States District Judge Filemon B. Vela. By a warrant of reprieve of August 2, 2000, you postponed petitioner's execution date to December 12, 2000, in order to allow him to apply for clemency under then-anticipated capital clemency rules and to allow him to review the results of a statistical study then still in progress concerning the implementation of the federal death penalty. After the reprieve was granted, rules governing clemency in capital cases were approved by you and published on August 8, 2000. In addition, the Department provided the results of its study on the implementation of the federal death penalty to petitioner for use in preparing his request for clemency and publicly released the report of the study on September 12, 2000.

Petitioner now asks that you commute his death sentence to life imprisonment without the possibility of parole. He seeks clemency based on the following claims: there is evidence of racial and geographic bias in the implementation of the federal death penalty; his sentencing was unfair because the jury was not advised that the only realistic alternative to a death sentence was a sentence of life imprisonment without parole and was allowed to consider evidence of unadjudicated homicides, including homicides that occurred in Mexico; his sentence is disproportionate to the sentences imposed on his codefendants and to those imposed on other offenders who committed death-eligible offenses but were not charged with capital offenses or sentenced to death; the United States' extradition treaty with Mexico was violated by effecting petitioner's deportation from Mexico without advising the Government of Mexico that he would face capital charges in the United States; and a sentence of life imprisonment without parole would adequately protect the public while avoiding the devastating effect his execution would have upon his family. He is represented in the clemency proceeding by Gregory W. Wiercioch of the Texas Defender Service and Bruce W. Gilchrist of the law firm of Hogan & Hartson, along with several other attorneys of the firm. They submitted an application for clemency, accompanied by a lengthy brief with numerous exhibits, and made an oral presentation on petitioner's behalf. Petitioner's personal plea for mercy is included in the videotape submitted as an exhibit to the brief. In addition, he wrote a letter to you in December 1999 seeking clemency, which states in part: "I take full responsibility for my actions, I know right from wrong, and I am sorry for the pain and grief that I cause[d] on the victims['] famil[ies], including my family." He states that he asks God for forgiveness and you for mercy.

The United States Attorney for the Southern District of Texas opposes clemency, as does the Criminal Division of this Department. The trial judge declined to make a recommendation about clemency, although he offered a number of observations about petitioner's case. Family members of two of the victims made an oral presentation to the Pardon Attorney in which they strongly opposed clemency and asked that the execution be carried out.

The last federal execution in the United States took place in 1963. Petitioner's case presents the first occasion a President has had to consider clemency in a capital case in more than 35 years. For the reasons set forth in this report, we recommend that you grant a six-month reprieve.

I. Summary of essential facts:[1]

From the early 1980's to 1992, petitioner, using a group of childhood acquaintances from his old neighborhood, ran a marijuana-trafficking organization that came to import thousands of pounds of the drug into the United States. From his base in Brownsville, Texas, petitioner dispatched workers to travel to Mexico to pick up drugs and deliver them to confederates in

[1]The facts set forth in this report are taken from a number of sources, including: the court opinions in petitioner's case; the briefs of the defendant and the Government concerning the direct appeal of his conviction and concerning his petition under 28 U.S.C. § 2255; the transcript of the punishment phase of petitioner's trial; various court documents, including the indictment, the judgment, and the presentence report prepared concerning petitioner's non-capital offenses; the clemency petition and the comments on it offered by the United States Attorney, the Criminal Division of this Department, the sentencing judge, and the victims' families; consultation with the State Department; documents filed in the Inter-American Commission on Human Rights; the Department's report of its statistical survey on the implementation of the federal death penalty; and various newspaper articles.

several states. After the drugs were sold, workers transported the cash proceeds in hidden compartments in vehicles petitioner purchased for the purpose.

A. Murder of Gilberto Matos

Over time, petitioner experienced a number of substantial losses of drugs and money, resulting from surveillance by law enforcement officials. For example, nearly $274,000 in drug proceeds hidden in the panels of a car purchased by petitioner and driven by his underling, Israel Flores, was seized on November 14, 1989. Inferring from such incidents that his confederates were either cooperating with the police or stealing from him, petitioner over time directed his subordinates to kill people he suspected of duplicity. Two of the counts of intentionally killing in furtherance of a continuing criminal enterprise for which petitioner was ultimately convicted relate to the murders of Erasmo de la Fuente, a drug smuggler who worked with petitioner, and his associate Gilberto Matos.

After a shipment of 1,350 pounds of marijuana was seized from one of petitioner's storage houses on January 1, 1990, he suspected that a tip to the police by De la Fuente was the cause. He therefore commissioned his confederates to kill De la Fuente. When the task proved difficult because De la Fuente was constantly with associates, Manuel Flores and his cousin Israel Flores, on petitioner's instruction, broke into Matos' auto repair shop on April 3, 1990, to wait for either Matos or De la Fuente to come, and then kill De la Fuente if he arrived or kill Matos as a warning to De la Fuente if Matos appeared instead. When Matos arrived, Manuel and Israel Flores held him face down on the floor and waited for the possible arrival of De la Fuente. After 45 minutes passed and De la Fuente did not appear, Manuel Flores shot Matos in the back of the head. Petitioner paid Manuel and Israel Flores with cash and a car for killing Matos.

B. Murder of Erasmo de la Fuente

Petitioner continued with his plan to kill De la Fuente. On September 8, 1990, he gave guns to Israel Flores and Israel's cousin Jesus Flores and transported the men to De la Fuente's nightclub so that they could murder him. Because Israel became too drunk to carry out the order, Jesus picked up his brother Manuel instead and went back to the nightclub. When De la Fuente left the nightclub and got into his car, Manuel Flores shot him twice through the driver's window while Jesus fired shots into the air to distract police from following Manuel. Jesus Flores waited a few hours in a ditch, and then called petitioner to pick him up. Petitioner retrieved Jesus, and paid him and Manuel Flores $10,000 each for their services in killing De la Fuente.

C. Murder of Thomas Rumbo

Petitioner personally killed Thomas Rumbo, the victim of the third count of intentionally killing in furtherance of a continuing criminal enterprise for which petitioner was convicted. In January 1991, law enforcement officers saw Rumbo loading marijuana into a trailer and stopped him. When confronted, he agreed to cooperate and turn over the 360-pound shipment. To support his cover story that the drugs had been stolen, he cut a hole in the fence surrounding the area in which the trailer was parked and told petitioner's associates that there had been a theft. Petitioner, however, believed that Rumbo had taken the drugs and went to Rumbo's house with two subordinates to find him. After Rumbo got into petitioner's truck, they traveled to another subordinate's house to get a gun and stopped at the house of Jesus Flores, who volunteered to go along. On the way to a rural farm road, Jesus Flores questioned Rumbo about the drugs, but Rumbo insisted they had been stolen. Petitioner told Rumbo he knew Rumbo had taken the drugs, ordered him out of the car, and told him to walk home. When Rumbo got out, petitioner shot him in the back of the head. He and Jesus Flores dragged Rumbo's body into the brush, where petitioner shot him four more times.

D. Law enforcement closes in

On September 18, 1991, petitioner was arrested by state law enforcement agents while participating in a delivery of 98 pounds of marijuana to an undercover agent; at the time of arrest, petitioner was armed with a 9mm pistol. He failed to appear for his court date, but the investigative net nonetheless continued to tighten when, in February 1992, the United States Customs Service searched the homes of petitioner and his associates, an undertaking that involved a massive deployment of law enforcement agents, a helicopter, and a SWAT team. As a result of the raid, petitioner and 15 of his associates were indicted on two drug-trafficking counts on February 3, 1992.

Twelve of the defendants agreed to cooperate with the Government, and pleaded guilty on April 8, 1992. Among the defendants who pleaded guilty was petitioner's wife, Maria Elizabeth Garza, who was sentenced on July 14, 1992, to five years' probation. Also among the defendants who pleaded guilty were petitioner's nephew Emilio Garza III, David Davila, Israel and Jesus Flores, and Emilio Gonzalez, who were all sentenced on June 19, 1992, and Greg Srader (petitioner's nephew by marriage), who was sentenced on July 9, 1992. As a result of the cooperation, the Government learned of additional criminal acts that petitioner had committed and in return sought very substantial sentence reductions for some of the cooperating defendants. For example, the sentences of Israel and Jesus Flores were ultimately reduced from 292 months to 10 years, the sentence of Emilio Gonzalez was reduced from life imprisonment to 10 years, and the sentence of Emilio Garza III was reduced from 120 to 36 months. In addition, in some cases, cooperation resulted in the compromise of potential liability for state criminal offenses and/or waiver of further federal prosecution.

One of the 16 defendants indicted in February ultimately went to trial and was convicted. Three of the 16 defendants became fugitives, including petitioner, who was already a fugitive on state drug charges. He fled to Mexico and was not captured until he called an associate in the United States to sell drugs to him in order to replenish his dwindling supply of money. Unbeknownst to petitioner, the associate was cooperating with law enforcement, and the calls were traced, leading to petitioner's apprehension. As a result of a joint effort with the United States Customs Service, the Mexican Government arrested petitioner on November 6, 1992, and thereafter deported him as an undesirable person. He was handed over to the Customs Service at the border, where he was arrested on the criminal charges pending in this country.

E. Capital prosecution initiated

In late November 1992, the United States Attorney for the Southern District of Texas at that time, the Honorable Ronald G. Woods, sought the approval of the Attorney General to pursue capital charges against petitioner.[2] Then Attorney General William P. Barr authorized capital prosecution on December 23, 1992, and instructed the United States Attorney not to negotiate a plea agreement for a reduced penalty in the absence of a substantial change in circumstances and to submit any proposed plea agreement to the Attorney General for approval.

The original indictment against petitioner was dismissed and on January 5, 1993, another indictment was returned against petitioner, Jorge Vela, Manuel Flores, José Luis Garza Valdez, and Antonio Alvarado, charging them with various drug-trafficking offenses and charging petitioner and Flores with intentionally killing in furtherance of a continuing criminal enterprise, in violation of 21 U.S.C. § 848(e)(1)(A). In all, petitioner was named in 10 counts: the three homicide counts for which he now stands convicted, operating a continuing criminal enterprise, conspiracy to import more than 1,000 kilograms of marijuana, conspiracy to possess with intent to distribute more than 1,000 kilograms of marijuana, two counts of possession with intent to distribute more than 100 kilograms of marijuana, one count of possession with intent to distribute more than 50 kilograms of marijuana, and one count of money laundering.

On January 7, 1993, the Government gave notice of its intention to seek the death penalty against petitioner, specifying that two additional uncharged murders – the April 1991 killing of Oscar Cantu and the May 1991 murder of Antonio Nieto – would be relied upon as aggravating circumstances. The notice was amended, over petitioner's objection, on February 12, 1993, to add as an aggravating circumstance the July 3, 1991, murder of Diana Flores Villareal, and was amended again on March 29 and April 20, 1993, to add as aggravating circumstances the May 1991 murder of Fernando Escobar-Garcia and the January 1992 murder of Bernabe Sosa. Four of these five additional murders took place in Mexico.

One of petitioner's four codefendants (Valdez) was and remained a fugitive, one (Vela) pleaded guilty, and two (Flores and Alvarado) went to trial in March 1993, resulting in the conviction of each. The Government did not seek the death penalty against Flores. He was sentenced upon conviction to total terms of life imprisonment. Alvarado pleaded guilty during the trial and was sentenced to 10 years' imprisonment, with a five-year period of supervised release.

F. Guilt phase of petitioner's trial; punishment phase

The court initially set petitioner's trial on the new indictment for March 1993, but continued that date, ultimately to July. A substantial portion of the evidence against petitioner

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[2]At that time, the statute under which petitioner's capital sentences were ultimately imposed, 21 U.S.C. § 848(e), was the only federal statute for which constitutionally adequate procedures for seeking a death sentence were spelled out, and the Justice Department did not have in place a formal procedure for reviewing and authorizing United States Attorneys' decisions to seek, or decline to seek, the death penalty. The currently followed protocol for authorizing capital prosecution was instituted by the Department in January 1995, following Congress' enactment in 1994 of more generally applicable death penalty provisions and procedures. See 18 U.S.C. §§ 3591-3598.

consisted of the testimony of the confederates who cooperated with the Government, notably Israel and Jesus Flores. Petitioner did not testify at his trial. The jury found petitioner guilty of each of the offenses with which he was charged, and the punishment phase of the case began.

Under 21 U.S.C. § 848(k), the death penalty could not be imposed unless the Government established beyond a reasonable doubt two categories of statutory aggravating circumstances, each in petitioner's case relating to the charged homicides. Pursuant to 21 U.S.C. §§ 848(j), (m), and (n), the Government was also permitted to prove additional, non-statutory aggravating circumstances of which it had given proper notice, and petitioner was permitted to prove mitigating circumstances. Ultimately, the jury's task was to determine whether the aggravating factors sufficiently outweighed the mitigating factors and were themselves sufficient to justify a sentence of death. 21 U.S.C. § 848(k).

1. Unadjudicated homicides

During the punishment phase, the Government relied upon proof of the five uncharged murders as additional, non-statutory aggravating circumstances that could be taken into account by the jury once it had found beyond a reasonable doubt that statutory aggravating circumstances relating to the charged homicides existed. In addition to the testimony of Israel and Jesus Flores, the Government elicited testimony from other confederates who had participated in or witnessed the murders, or who were witnesses to statements by petitioner or others admitting involvement in them. These witnesses included Emilio Garza III, Emilio Gonzalez, David Davila, and Greg Srader. Federal law enforcement officers also testified about information they had learned about the homicides as a result of consultation with Mexican officials and witnesses in Mexico.[3]

a. *Murder of Oscar Cantu*

As described in the testimony during the punishment phase of the trial, Oscar Cantu was a pilot for petitioner's drug organization who was shot to death in April 1991 near Rio Bravo, Mexico. Srader and Israel Flores testified that petitioner questioned Cantu about Cantu's loss of money petitioner had supplied to him for a drug deal. These witnesses testified that petitioner vowed to have Cantu killed because he did not believe Cantu's statement that the money had been taken by the Mexican police, who Cantu said had tortured him. Srader further testified that petitioner admitted killing Cantu, and that Cantu was also a paid pilot for another drug trafficker named Medina. Testimony by federal investigators related that Cantu's body had been found in Mexico, with a gunshot wound to the head.

b. *Murder of Fernando Escobar-Garcia*

The May 1991 murders of Fernando Escobar-Garcia and Antonio Nieto in Mexico were ordered by petitioner to retaliate against them for their involvement in misusing $20,000 petitioner had supplied to Israel Flores for a drug deal. Part of the money had actually been spent

[3]Under 21 U.S.C. § 848(j), relevant information may be presented during the penalty phase of a capital case by either the Government or defense irrespective of whether it would be admissible under the rules of evidence applicable in criminal trials, although evidence may be excluded if its "probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury."

to post bail for Nieto after he was arrested while driving a car belonging to Escobar-Garcia, one of petitioner's Mexican contacts. Nieto did not pay the money back as he promised. Upon learning of this diversion of funds, petitioner threatened to kill Escobar-Garcia because he believed Escobar-Garcia had instigated the misuse of his money by Nieto and Israel Flores. Although petitioner told Escobar-Garcia that he could work off the debt, he told Flores that he instead would kill Escobar-Garcia. According to Israel Flores, petitioner drove to a secluded area with Flores, Antonio Nieto, Escobar-Garcia, and another man known to Flores only as "Gil." Flores testified that petitioner shot Escobar-Garcia twice in the head and then a third time in the heart after Escobar-Garcia was dragged out onto the sand dunes. A federal investigator testified that Escobar-Garcia's brother identified as Escobar-Garcia a body found in Mexico that had several gunshot wounds.

c. *Murder of Antonio Nieto*

Israel Flores also testified that petitioner threatened to kill Flores if Flores did not kill Antonio Nieto because Flores had been complicit in Nieto's conversion of some of the money petitioner had supplied to Flores for the drug deal. Petitioner provided a gun to Flores, and went along when they drove to a deserted road in Matamoros, Mexico. According to Flores' testimony, petitioner shot Nieto four times, twice in the head. A federal investigator testified that Nieto's father identified as his son's body a previously unidentified corpse that was exhumed from a grave in Mexico and transported to the United States for an autopsy after it was linked to petitioner.

d. *Murder of Bernabe Sosa*

Also shot to death in Mexico on orders of petitioner was Bernabe Sosa, petitioner's son-in-law. According to the testimony of Israel Flores, petitioner did not like his son-in-law because he had once brought a gun into petitioner's house. Jesus Flores, who witnessed the shooting, testified that petitioner ordered Sosa killed because he suspected Sosa of cooperating with law enforcement after two loads of marijuana with which he was involved were seized. Two of petitioner's associates, Emilio Gonzalez and Raul Amaro, carried out the murder near Rio Bravo on January 22, 1992, as petitioner had ordered, handcuffing Sosa after he was dead to make it appear that the Mexican police had killed him. Gonzalez used guns provided by petitioner and was paid with three ounces of cocaine. Jesus Flores participated as repayment of a debt of $14,000 he owed to petitioner. A forensic pathologist from Mexico testified that Sosa's body was found with three gunshot wounds to the head and neck and with handcuffs on his hands.

e. *Murder of Diana Flores Villareal*

One of the five uncharged homicides took place in the United States. That murder involved the July 1991 strangling and drugging of Diana Flores Villareal, the ex-wife of Manuel Flores. Petitioner wanted to kill Villareal because he was angry with her for having introduced him to Emilia Galvan, another person he suspected of being an informant. He devised a plan to have Villareal killed by an overdose of cocaine. The murder took place at the home of Emilio Gonzalez in Brownsville. According to the testimony of David Davila, who lived next door and was present when the killing took place, Gonzalez knocked Villareal out by punching her and then began to strangle her. Petitioner, not satisfied with Gonzalez' efforts, also began to choke

Villareal. While that was occurring, Jesus Flores injected her with a massive amount of cocaine, which caused Villareal to have convulsions. On petitioner's order, a plastic bag was put over her head, and, after she was dead, her body was dumped in a secluded area of Brownsville, where it was found a few days later.

2. Other violent acts

As part of its proof of the aggravating circumstance that petitioner posed a continuing danger to others, the Government adduced evidence of petitioner's participation in other violent acts not resulting in a homicide. For example, Jesus Flores testified that in July 1990 he and other associates, at petitioner's direction, wounded Hilario "Layo" Cisneros, a friend of Erasmo de la Fuente, in a drive-by shooting, for which he was paid $1,000 by petitioner. In another incident about which Jesus Flores testified, petitioner ordered Jesus and Manuel Flores and Emilio Gonzalez to engage in a drive-by shooting of the Brownsville home of Martin Lozano, petitioner's rival in the drug business. On July 26, 1991, Jesus Flores fired a 12-gauge shotgun "street sweeper" and Gonzales fired an Uzi assault weapon at Lozano's house. Acting on petitioner's order to kill Lozano, Manuel Flores later shot at Lozano in a shopping center in Brownsville, slightly wounding Lozano and his girlfriend. Flores was identified, arrested, and ultimately prosecuted for attempted murder as a result. Yet another incident involved an effort to kill Emilia Galvan. Israel Flores testified that petitioner told him he was going to have Galvan killed because he suspected her of being an informant. Petitioner and Flores therefore tracked her down outside her house, where petitioner ordered Flores to get out of the car and shoot her. Although Flores got out of the car with a gun, Galvan fled and was not harmed.

3. Mitigating evidence

In mitigation of sentence, petitioner adduced testimony from a social worker[4] and several family members about his impoverished childhood as the youngest of seven children of migrant farm workers. For example, there was testimony that from a very young age petitioner worked to help support the family and did not have a close relationship with his father. He was, however, close to his mother, and became very upset when she died in 1990 after a long bout with arthritis. Testimony was also elicited concerning petitioner's relationships with his immediate family, which includes his present wife (Maria Elizabeth Garza), two minor children (Juan Raul Garza, Jr., now approximately 13 years old, and Elizabeth Ann, now approximately 10 years old), two young adult daughters by his ex-wife (Norma Garza and Maribel Sosa), and an elderly father. Petitioner did not testify in the punishment phase of the case.

4. Verdict and sentence

On August 2, 1993, the jury returned a verdict of death. In its special findings, the jury unanimously concluded that the following statutory aggravating circumstances had been proved beyond a reasonable doubt: that petitioner intentionally killed Rumbo and De la Fuente; that petitioner had intentionally engaged in conduct intending that Rumbo, Matos, and De la Fuente be killed and/or that lethal force be employed, resulting in their deaths; that petitioner committed

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[4]It appears, however, that the source of the social worker's knowledge was limited, comprising statements made to her during interviews of petitioner, his father, wife, brother-in-law, and sister-in-law, and a review of petitioner's school records.

the killings of Rumbo, Matos, and De la Fuente after substantial planning and premeditation; and that petitioner procured the killings of Matos and De la Fuente by paying and/or promising to pay something of pecuniary value. In addition, the jury found that the following non-statutory aggravating circumstances had been proved beyond a reasonable doubt: that petitioner intentionally killed Villareal and Escobar-Garcia; that petitioner had intentionally engaged in conduct intending that Cantu, Nieto, Sosa, and Villareal be killed and/or that lethal force be employed, resulting in their deaths; that petitioner committed the killings of Cantu, Nieto, Sosa, and Escobar-Garcia after substantial planning and premeditation; and that petitioner represents a continuing danger to the lives of others based on his pattern of violent and brutal acts.

The jury further found the following mitigating circumstances[5] existed: that petitioner was under unusual and substantial duress; that he was youthful; that "another defendant or defendants, equally culpable in the crime, will not be punished by death"; and that "the victim consented to the criminal conduct that resulted in the victim's death." In addition, the jury answered "yes" to the question whether it found another mitigating factor, either a factor set forth in a list of 18 described in the verdict form or any other mitigating factor.[6] The jury unanimously found that "the aggravating factors presented in this case sufficiently outweigh any mitigating factor or factors that have been found to exist, . . . and recommend[ed] that a sentence of death sentence shall be imposed." Under 21 U.S.C. § 848(l), the jury's recommendation of a death sentence is binding on the court. As required by 21 U.S.C. § 848(o), the jury members returned with their verdict a certification, signed by each, that stated:

> [C]onsideration of the race, color, religious beliefs, national origin, or sex of the defendant, JUAN RAUL GARZA, and of the victims, were [*sic*] not involved in reaching our respective decisions. Each of us individually further certifies that the same decision regarding a sentence for the crime in question would have been made no

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[5]Under 21 U.S.C. §§ 848(j) and (k), the defendant must establish the existence of a mitigating factor by a preponderance of the evidence, but only one juror need conclude that the mitigating factor has been proved in order for the jury to return a finding that it has been established and to consider it in determining whether a death sentence should be imposed.

[6]The specified mitigating circumstances, quoted *verbatim* from the verdict form, were: his "mental and/or emotional disturbances were caused in part by the emotional instability of his family members during his early development stages"; he "never developed the ability to cope with daily tensions"; he "endured harsh and impoverished living conditions at home during [his] developmental stage"; his "childhood was very difficult and demanding in both a physical and emotional nature"; he was "deprived of a stable home environment due to constant relocation"; "[b]y the age of 10 years" he "was forced to earn his own money to buy items of both necessity and survival"; he "was never able to develop a father-son relationship with his father"; he "was never able to show his emotional feelings or emotions due to conditions at home during his developmental years"; he "values life and was emotionally distraught over losing his mother to a disabling illness"; he "was deprived of a normal and stable education and withdrawn from school by his father"; he "showed initiative and desire to fulfill requirements to earn his G.E.D."; he "was primarily responsible for the emotional and physical support of his invalid mother"; his "wife and two young children . . . face the emotional trauma of losing his physical and mental support"; he "has two children, ages 2 and 4, who face growing up without a father to provide for them"; he "valued his children responsibility and Christian values and has personally introduced them into a religious teaching environment"; he "has established and provided a well rounded relationship with his son and daughter"; and he "has established a reputation in the business of home construction in his community."

> matter what the race, color, religious beliefs, national origin, or sex of JUAN RAUL GARZA or any of the victims may have been.

On August 10, 1993, the sentencing judge, the Honorable Filemon B. Vela, imposed a sentence of death in accord with the jury's verdict on each of the three counts of killing in furtherance of a continuing criminal enterprise. By judgment entered on October 14, 1993, petitioner was also sentenced to concurrent terms of life imprisonment for operating a continuing criminal enterprise, conspiracy to import more than 1,000 kilograms of marijuana, and conspiracy to possess with intent to distribute more than 1,000 kilograms of marijuana; to concurrent terms of 40 years' imprisonment on each count of possession with intent to distribute more than 100 kilograms of marijuana; and to concurrent terms of 20 years' imprisonment for money laundering and possession with intent to distribute more than 50 kilograms of marijuana.

5. Codefendant Manuel Flores

In a separate trial, petitioner's codefendant Manuel Flores, who was already serving a 15-year state sentence for two counts of attempted murder, was convicted of two counts of killing in furtherance of a continuing criminal enterprise (involving the murders of Matos and De la Fuente), for which he was sentenced to life imprisonment. He was also convicted of conspiring to import more than 1,000 pounds of marijuana and possession with intent to distribute more than 1,000 pounds of marijuana, for which he received a concurrent sentence of 327 months' imprisonment.

G. Judicial review

Petitioner unsuccessfully appealed his conviction.[7] Rehearing of the affirmance of his conviction was denied,[8] and the Supreme Court denied review.[9] A motion to vacate his sentence pursuant to 28 U.S.C. § 2255 was denied by the district court, as well as a request for a certificate of appealability,[10] a motion for relief from judgment pursuant to Fed. R. Civ. P. 60(b), and a motion to alter or amend the judgment pursuant to Fed. R. Civ. P. 59(e). The Fifth Circuit Court of Appeals affirmed the denial of a certificate of appealability. Again, the Supreme Court denied

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[7]*United States v. Flores*, 63 F.3d 1342 (5th Cir. 1995). Although petitioner and Manuel Flores were convicted in separate trials, their appeals were consolidated. Hence, the title of the case lists the lead defendant as Flores rather than petitioner.

[8]*United States v. Garza*, 77 F.3d 481 (5th Cir. 1995).

[9]*Garza v. United States*, 519 U.S. 825, 1022 (1996).

[10]*United States v. Garza*, 165 F.3d 312 (5th Cir. 1999). Under 28 U.S.C. § 2253(c)(1)(B), an appeal of the denial of a petition under § 2255 cannot be taken unless the district court or the court of appeals issues a certificate of appealability (COA). The issuance of such a certificate requires a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The defendant "need not establish that he will win on the merits in order to obtain a COA; he need only demonstrate that the questions he raises are debatable among reasonable jurists." *United States v. Garza*, 165 F.3d at 313.

review.[11]

H. Inter-American Commission on Human Rights

Other relevant proceedings involving petitioner are those before the Inter-American Commission on Human Rights of the Organization of American States. Those proceedings were initiated on January 27, 2000, when petitioner filed a complaint before the Commission alleging that he was being denied the right to life, the right to a fair trial, and the right to due process of law because the Government, during the penalty phase of his case, relied upon proof of four unadjudicated homicides that occurred in Mexico. After his complaint was filed, he added another claim based on the issue of racial and geographic disparity in the implementation of the federal death penalty. The Commission requested information from the United States concerning the complaint and asked the United States to "take all necessary measures to preserve [petitioner's] life and physical integrity so as not to hinder the processing of his case before the Inter-American system."

The United States, through the Department of State, has responded to petitioner's complaint, arguing that the petition fails to allege facts that reflect a violation of the right to due process, the right to life, or the right to a fair trial and asking that the petition be declared inadmissible. A hearing on petitioner's complaint was held before the Organization of American States on October 12, 2000.

I. Incarceration history; criminal record

Now nearly 44 years old, petitioner has been continuously incarcerated since his arrest by Mexican authorities on November 6, 1992. While incarcerated in state prisons in Texas during the pretrial and trial phases of his case, petitioner incurred disciplinary reports in March 1997 for possessing marijuana and a hand-made 8½-inch shank,[12] and for other misbehavior.[13] He also

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[11]*Garza v. United States*, 120 S. Ct. 502 (1999).

[12]The shank was found secreted in a mattress. Petitioner denied that it was his or that he put it there.

[13]Petitioner received the following additional incident reports while in the custody of the Texas Department of Criminal Justice: a December 1993 report for possessing gambling paraphernalia; a November 1994 incident report for interfering with the taking of the inmate count (by hanging a blanket in the window of his cell door); a May 1995 report for creating a disturbance and assaulting a staff member (by throwing a whisk broom at an officer and striking him in the shoulder, as well as throwing trash and other items on the housing range); a December 1996 report for refusing to obey an order (by refusing to stop gambling when so ordered); a December 1996 report for refusing to obey an order (by refusing to produce an identification card when so ordered); a January 1997 report for unauthorized storage of property (by having excess food in his cell); a March 1997 report for refusing to obey an order and creating unnecessary noise (by playing his radio without headphones); a March 1997 report for refusing to obey an order (by refusing to be handcuffed); and a June 1998 report for possessing contraband (by having 194 postage stamps). In addition, according to a 1994 progress report prepared while he was in the custody of the Texas Department of Corrections, petitioner was reported to have made comments concerning his intent to escape, and to have continued his gang affiliation with members of the "Texas Syndicate," in that he received a visit from one known gang member and continued to correspond with them. Very recently, however, one of petitioner's attorneys submitted information just provided to him in confidence by the Texas Department of Corrections that it does not

was involved in a failed effort in March 1993 to have a girlfriend smuggle into the prison hacksaw blades and $900, hidden in the soles of tennis shoes delivered to another prisoner, in contemplation of an attempt to escape. Since being moved to federal custody in July 1999, however, he has not had any incident reports. His prior criminal history includes several convictions and numerous arrests. As to convictions, petitioner's record reflects: a 1983 conviction for driving while intoxicated, for which he received a suspended sentence of 30 days in jail and a $300 fine; a 1988 conviction in a Texas state court for possession of less than two ounces of marijuana (a Class B misdemeanor), for which he received a suspended sentence of 15 days in jail, six months' probation, and a $300 fine; and a 1991 conviction for unlawfully carrying a weapon (relating to his having a 9mm pistol under the driver's seat of a truck he was driving), for which he was fined $250 and ordered to pay court costs.

As to arrests, petitioner, as noted (see p. 4, *supra*), faced state charges for selling 98 pounds of marijuana to an undercover agent in 1991. Those charges were dismissed as a result of the sentence imposed in the present case. Petitioner's criminal record includes the following additional state charges: a 1974 arrest for possession of 56 grams of marijuana, involving his apprehension at the border with drugs, a .38 caliber gun, and six .38 caliber bullets, for which the probation office reported there was no formal disposition, but he apparently was fined $100 plus court costs; a 1974 arrest for possession of 14 ½ pounds of marijuana, as to which prosecution was deferred because petitioner was less than 18 years old at the time, and which was ultimately dismissed in 1976; a 1981 indictment for attempted murder, which was dismissed because the complaining witness could not be located; a 1985 arrest on a felony warrant for aggravated sexual assault, as to which Jesus Flores was named as a codefendant and which was dismissed due to insufficient evidence; a 1985 arrest for driving while intoxicated, the disposition of which was unknown at the time of sentencing for the present offenses; and eight arrests for public intoxication between July 1982 and July 1991, the dispositions of which the probation office could not verify.

Concerning substance abuse, petitioner advised the probation officer who prepared the presentence report for his non-capital offenses that he began using marijuana as a young man, a fact he reiterated in his December 1999 letter to you. In addition, the probation officer reported that petitioner had a drinking problem.

II. Grounds for clemency:

Petitioner asks that you commute his death sentence to a sentence of life imprisonment without the possibility of parole and raises six arguments in support. Each of those arguments is summarized immediately below, but is described in greater detail in Sections II. A through E, following:

1) there is racial and geographic bias in the federal death penalty system, which is reflected in the recently released report of the Justice Department's statistical study on the implementation of the federal death penalty;

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consider petitioner "to be a member of a security threat group (a gang)." Counsel further asserts that the "known gang members" with whom petitioner had contact included one of his co-defendants, "whom he had other reasons to contact."

2) he was denied critically important procedural safeguards in his sentencing proceedings by the failure to inform the jury that, if he was not sentenced to death, he would be sentenced to life imprisonment without parole and by the prosecution's use of inherently unreliable evidence relating to four unadjudicated murders committed in Mexico that he had no meaningful opportunity to deny or explain;

3) his sentence is disproportionate compared to the sentences imposed on others who have committed similar offenses, including three of his codefendants who were direct participants in the same crimes for which he was sentenced to death;

4) his execution would contravene international law and the United States' treaty obligations to Mexico because his deportation from Mexico was effected without advising the Government of Mexico that he would face capital charges, thus circumventing the extradition treaty's reservation of Mexico's right to refuse extradition for a capital offense, and because the United States conducted criminal investigations in Mexico without advising the Mexican Government as required by the treaty on mutual legal assistance;

5) he will not present a future danger to society if his sentence is commuted; and

6) granting clemency would protect his family, including his wife and two minor children, from the devastating effects of his execution.

To assist you in considering petitioner's claims, a copy of his clemency petition, along with an accompanying brief and all its exhibits, was previously supplied to you by petitioner's counsel. Among the exhibits is a videotape of petitioner and his family making personal pleas for mercy. Also for your consideration, I have appended to this report as Exhibit A a copy of petitioner's December 1999 letter to you.

A. Racial and geographic disparity

Petitioner argues that the Department's recently released report on the implementation of the federal death penalty, *The Federal Death Penalty System: A Statistical Survey (1988-2000)*, "demonstrates that [petitioner's] sentence was the product of a death penalty system that is grossly biased against the racial/ethnic group to which [he] belongs." He asserts that the Department's data reflect that

> Hispanic and African-American defendants are grossly overrepresented among defendants as to whom U.S. Attorneys and the Justice Department either consider seeking or decide to seek the death penalty. Hispanic and African-American defendants together make up 70 to 80 percent of these groups – three to four times the representation of white defendants in the same groups. At the same time, Hispanic and African-American defendants are

> about 43 percent <u>less</u> likely than white defendants to avoid the death penalty through plea agreements.

The result, he concludes, is that 17 of the 21 federal prisoners on death row – 81 percent – are members of a racial or ethnic minority. Extrapolating from numbers reflecting the racial and ethnic composition of defendants convicted of homicide in the state criminal justice systems, he reckons that "Hispanics are 2.3 times more likely to be authorized for federal capital prosecution than whites."

Petitioner further argues that the selection process for federal capital defendants is arbitrary because it results in pronounced geographic disparity in selecting defendants for the death penalty. He notes that six of the 21 men under a federal sentence of death were convicted in Texas, and 14 altogether were convicted in Texas, Virginia, or Missouri. Further, more than half the cases submitted for approval of capital prosecution before the 1995 death penalty protocol was established were from only five of the 94 judicial districts, with 21 states submitting no cases for possible capital prosecution. Although petitioner asserts that the procedures adopted by the Department in 1995 for reviewing potential capital cases (see note 2, *supra*) have been inadequate to prevent arbitrariness and bias in the administration of the federal death penalty, he points out that he did not have even their benefit.[14] He further argues that the Department's comments when the study on the implementation of the federal death penalty was released reflect a belief that the handling of pre-protocol cases resulted in disparities. Petitioner notes, for example, that every one of the capital defendants prosecuted by United States Attorneys in Texas during the period before 1995 was Hispanic, including petitioner.

Petitioner's clemency counsel acknowledge that race and geography are not truly independent variables and recognize the vulnerability of aggregating statistics on a national level over time, but, to help address these issues, they submitted during their oral presentation an additional chart showing a comparison with death-eligible state offenders in the State of Texas. Based on this comparison, petitioner concludes that Hispanic homicide defendants in Texas are 6.9 times more likely to be prosecuted for federal capital murder than whites in Texas. Petitioner's counsel further acknowledge that using state statistics for comparison purposes may be problematic, among other reasons because of the differences between the scope and nature of the conduct embraced by state homicide statutes compared to that addressed by federal statutes authorizing capital punishment. Yet, they urge that they have done their best to make relevant comparisons in order to evaluate the statistics generated by the Department's study and that reasonable inferences can be drawn from the comparisons they make, even taking into account the limitations of the statistics. Finally, they urge that the need for further consideration of the statistics generated by the Department's study is precisely why petitioner's death sentence should not be carried out.

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[14]A key difference between the way capital cases were handled before the protocol was implemented and the way they are handled under the protocol is the requirement that all potentially capital cases be submitted for the Attorney General's review even if the United States Attorney recommends against capital punishment. Further, the Attorney General's review process includes an evaluation by the Death Penalty Review Committee, which was created by the protocol to consider the cases and make recommendations on them to the Attorney General.

Concerning the need for further and more comprehensive study to determine the full extent and causes of the asserted disparities in capital prosecution, petitioner cites the announcement of the Attorney General at a press conference attending the release of the death penalty study that further examination is needed:

> More information is needed to better understand the many factors that affect how homicide cases make their way into the federal system, and once in the system, why they follow different paths. An even broader analysis must therefore be undertaken to determine if bias does, in fact, play any role in the federal death penalty system.

In this regard, the Attorney General announced that the Department will solicit research proposals from outside experts to study "the reasons why, under existing standards, homicide cases are directed to the state or federal systems and charged either as capital cases or non-capital cases, as well as the factors accounting for the present geographic pattern of submissions by the U.S. Attorneys' Offices." The Department further announced that within 60 days United States Attorneys would submit data about capital-eligible cases not required to be submitted to the Department for review under the 1995 protocol, which would be used by the Deputy Attorney General in "an effort to examine the factors used to decide which homicide cases are taken into the federal system when there is joint state and federal jurisdiction, and to identify the ways to improve how such decisions are made across the country." Finally, petitioner notes that although the Attorney General stated she believes that the study does not raise issues of innocence and therefore a moratorium on the death penalty is not warranted, she nonetheless referred to clemency as the process to "'address any question' regarding the implications of the Justice Department findings for current death row inmates."[15]

Even apart from the possibility that evidence of bias will be obtained through further studies, petitioner asserts that "the available data and analyses already provide solid evidence that bias has contributed significantly to the racial/ethnic disparities reflected in the new Justice Department data." Noting that "no state in the country has as high a percentage of racial minorities condemned to death as the federal government," he argues, citing a number of studies, that "analyses of similar disparities in the administration of capital punishment and in the overall criminal justice system leave no question that bias plays a leading role." Petitioner contends:

> It would be fundamentally unjust, unfair and unwarranted to carry out a death sentence that is a product of a system in which arbitrary results are produced by long-standing racial bias and geographic disparity. In the face of such profound doubts and uncertainties about the fundamental fairness of the federal death penalty, [petitioner's] application for clemency should be granted.

Petitioner also argues that any racial bias or arbitrariness in imposing the death penalty

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[15]The Attorney General's statement was that "the clemency process is in place to address any question other than that the system is as fair as we can possibly make it."

contravenes international law by violating the obligations of the United States under the Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the International Covenant on Civil and Political Rights (ICCPR). The CERD was ratified by the United States Senate in 1994, subject to a proviso that it would not be self-executing. The ICCPR was ratified in 1992, subject to the same proviso. The effect of the limitation was to make the CERD and ICCPR unenforceable by an individual in a United States court. *See, e.g.*, *United States v. Duarte-Acero*, 208 F.3d 1282, 1284 n. 8 (11th Cir. 2000). By Executive Order 13107, signed by you on December 10, 1998, it was declared to be "the policy and practice of the Government of the United States . . . fully to respect and implement its obligations under the international human rights treaties to which it is a party, including the ICCPR . . . and the CERD." E.O. 13107, *Implementation of Human Rights Treaties*, § 1(a), December 10, 1998.[16]

Petitioner argues that the CERD prohibits laws and regulations "which have the effect of creating or perpetuating racial discrimination wherever it exists," and defines "racial discrimination" as any race-based distinction that has "the purpose or effect of impairing the exercise of human rights and fundamental freedom." Although petitioner acknowledges that the ICCPR is subject to the reservation in Article 6 that expressly allows for the imposition of capital punishment, he argues that the reservation does not apply to the arbitrary-deprivation clause of Article 6(1). Therefore, petitioner argues, racial bias in the imposition of the federal death penalty violates international law whether or not it is intentional because it has a discriminatory effect and results in arbitrary punishment.

B. Unfair sentencing

Petitioner argues that his sentencing was unfair for two reasons: first, because the jury was misled into believing that he might be released on parole if not sentenced to death, and second, because the prosecution relied upon evidence of uncharged and unadjudicated homicides that took place in Mexico and were proved by the uncorroborated, implausible, and contradictory testimony of accomplices given reduced sentences in exchange for their testimony.

With respect to the issue of advising the jury about a defendant's eligibility for parole, the Supreme Court has held that when the prosecutor in a capital case seeks to justify the death sentence on the basis of the defendant's future dangerousness and the alternative to a death sentence is a sentence of life imprisonment without parole, the court must instruct the jury that the defendant would be ineligible for parole.[17] In petitioner's case, one of the aggravating

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[16]But see 145 Cong. Rec. E139-04 and E149-01 (February 4, 1999), criticizing the executive order and introducing a revised version of H.R. 62 and H.R. 63, "The United States Federal Government Preservation Act," intended "to nullify the provisions of Executive Order 13107."

[17]*Simmons v. South Carolina*, 512 U.S. 154 (1994) (plurality opinion). The Supreme Court has addressed this issue again recently in *Ramdass v. Angelone*, 120 S. Ct. 2113 (2000), rejecting the defendant's claim that such an instruction should have been given. The plurality reasoned that the defendant was not ineligible for parole because, although he would be ineligible for parole under the state's three-strikes law once his third conviction became final, his third conviction was not final at the time the jury considered the sentence in his murder case. Even more recently, the Court granted *certiorari* on this general issue again, to address the question whether an

circumstances alleged by the Government was that petitioner represented a continuing danger to others. The federal statute under which petitioner was convicted specifies that the possible sentences for his capital offenses – intentionally killing in furtherance of a continuing criminal enterprise – are death or imprisonment for any term of 20 years or more. 18 U.S.C. § 848(e)(1)(A). However, parole was abolished in the federal system with the implementation of the United States Sentencing Guidelines, and for the offense of murder the Guidelines, at the time of petitioner's offenses and now, require a sentence of imprisonment for life unless a ground for a downward departure exists. U.S.S.G. § 2A1.1 & *app. notes* 1 and 2. One specified ground for departure is that the defendant did not cause death knowingly or intentionally. Petitioner's counsel argued in the trial court that because the jury had already found the killings to be intentional in finding him guilty of the capital offenses, it was clear that he would be sentenced to life imprisonment without parole if the jury did not recommend a sentence of death. The trial judge refused to instruct the jury that petitioner would not be eligible for parole, relying on the view that the jury should be told only that, if the jury did not recommend a death sentence, the sentence would be imposed by the judge and the sentence could be for any term of 20 years or more. Petitioner's claim concerning this issue was raised unsuccessfully in a motion for a new sentencing hearing and was raised on appeal but rejected, in part because a finding that the killing was unintentional is not the sole ground for a downward departure under the Sentencing Guidelines.[18]

In his clemency request, petitioner's counsel argue that the failure to instruct the jury about his ineligibility for parole was exacerbated by the fact that the prosecutor, during the closing argument in the punishment phase of the case, argued that the jury had no way of knowing what sentence petitioner would receive if not sentenced to death and that he could be sentenced to 20 years' imprisonment.[19] They note that all other death-eligible defendants convicted of the capital offense for which petitioner was convicted but not sentenced to death received a sentence of life imprisonment without parole. Finally, they note that in 1994 the law was changed to permit the jury to make a binding recommendation of a sentence of life

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instruction is required when under state law the alternative to the death sentence is a sentence of either life imprisonment without parole or a mandatory minimum sentence of 30 years' imprisonment. *Shafer v. South Carolina*, 2000 WL 1057649 (2000).

[18] *United States v. Flores*, 63 F.3d at 1367-69. The court of appeals concluded that even if the jury's finding during the guilt phase of the trial that the killings were intentional would bar the sentencing judge from concluding otherwise for the purpose of considering a departure, the judge "could not predict before the jury begins its deliberation whether it is going to find the necessary intent. Thus, when the attorneys make their final arguments in the penalty phase and when the court gives its penalty instructions, no one would know whether life imprisonment would be the only permissible sentence." *Id.* at 1368. Further, the court of appeals concluded that the Sentencing Guidelines permit downward departures for other reasons and "[t]hus, even if [petitioner] did not fall within an express departure category, the court would not have been legally barred from finding a different, legitimate reason to reduce his life sentence." *Id.* The court, however, cautioned: "If the court knows that a twenty-year sentence is highly unlikely, it should, in its discretion, preclude the government from arguing that the defendant may be free to murder again two decades hence." *Id.* at 1369.

[19] For example, the prosecutor argued to the jury: "The defense says, well, he is going to die in prison, but the law is twenty years to life. We don't know that he is going to die in prison. The judge can give him any term." A similar comment was made during voir dire. Further, the prosecutor, commenting on the reduced sentences petitioner's codefendants received, said during closing argument in the penalty phase of the case that "ten years . . . is more than most murderers spend in jail these days, as we all know."

imprisonment without parole as an alternative to the death sentence. 18 U.S.C. § 3593(f).

Concerning the issue of relying on unadjudicated murders during the punishment phase of the case, petitioner argues that the evidence of these offenses was inherently unreliable due to the fact that he was never tried for these offenses under the ordinary rules of procedure and proved guilty beyond a reasonable doubt and due to the fact that the evidence of his connection with these offenses consists of the uncorroborated and contradictory testimony of co-conspirators whose sentences were greatly reduced in return for their testimony. He further points to a number of factors that impeded the ability of his trial counsel to impeach the evidence implicating him. For example, compulsory process was unavailable to him to obtain documents from Mexico or the testimony of witnesses who resided there. Further, petitioner's trial counsel did not speak Spanish, but a number of important documents were written in Spanish and a number of witnesses spoke only Spanish. Petitioner further notes that the standard for admissibility of evidence during the punishment phase was changed after the time petitioner was tried, to permit exclusion when the "probative value" of the evidence is "outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury," 18 U.S.C. § 3593(c), rather than permitting exclusion if the probative value is "*substantially* outweighed" by the specified dangers, as the law in effect at the time petitioner was tried provided. 21 U.S.C. § 848(j) (emphasis added). The claim concerning unadjudicated homicides was unsuccessfully raised in petitioner's direct appeal and in his collateral challenge to his conviction and sentence pursuant to 28 U.S.C. § 2255.[20] As noted, a claim concerning reliance on unadjudicated homicides is also being pursued by petitioner in the Inter-American Commission on Human Rights.

C. Disparity of sentence

Petitioner was the only person associated with the murders of any of the victims in this case for whom the death penalty was sought, including Manuel Flores, who was charged with petitioner and convicted after a separate trial. Several other confederates pleaded guilty pursuant to plea agreements whereby the Government, in return for their cooperation and testimony, agreed to seek reduced sentences for them, and some also had their federal criminal liability limited and/or received a compromise of possible state charges. Among the defendants who received sentencing concessions were Jesus and Israel Flores and Emilio Gonzalez, the actual killers of two of the victims of the offenses for which petitioner was sentenced to death and several of the victims of the uncharged murders. Each of these three defendants ultimately received a sentence of 10 years' imprisonment. Petitioner further points to the fact that the jury's findings on mitigating factors indicate that it concluded one or more of these defendants was "equally culpable" as petitioner, not less culpable, in the homicides.

[20]The court of appeals found that petitioner "was given express notice that the Government intended to rely on the extraneous murders at sentencing, was provided full pretrial discovery of all evidence in the Government's possession, and was given the opportunity to cross-examine all witnesses presented by the Government at sentencing." It concluded: "Vague allegations of unidentified favorable witnesses and unspecified exculpatory evidence simply will not suffice to show a violation of due process. [Petitioner] has therefore failed to make a substantial showing that his right to due process of law was denied." *United States v. Garza*, 165 F.3d at 314.

Petitioner's attorneys further argue that the Department's study reveals that federal prosecutors recommend the death penalty in only 43 percent of cases involving multiple victims, and that, as a result of plea bargains and decisions made during the Department's review process for potentially capital cases, an even smaller percentage of defendants actually face capital prosecution. They describe at pages 68 through 75 of their brief the facts of 20 cases that they believe involve circumstances similar to or more egregious than those presented by petitioner's case but in which the defendant was not sentenced to death. While acknowledging that the facts of those cases "do not mitigate the magnitude of the offenses for which [petitioner] was convicted," they assert that "fairness in the administration of the death penalty clearly does require, at a minimum, that the reasons for seeking the death penalty in some cases but not others be articulable and understandable and founded neither on quirks of geography or other arbitrary or ephemeral factors nor on more insidious factors such as race or ethnicity." They conclude: "Given the sheer volume of prosecutions that are otherwise identical to or more severe than [petitioner's] in terms of the offenses and numbers of murders involved, yet in which U.S. Attorneys have not sought the death penalty, there is strong reason to believe that this safeguard was in fact dishonored in [petitioner's] case."

Petitioner's counsel argue that clemency provides the traditional remedy for addressing disproportionately severe sentences. They cite a number of cases in the past, including during your Administration, in which the stated or apparent ground for commuting a sentence was that the sentence was disproportionate to the crime or to the sentences imposed on others for similar offenses.

D. International law

Petitioner argues that the manner in which he was returned to the United States to face the charges for which he stands convicted violated international law. He asserts that the extradition treaty between the United States and Mexico permits refusal of extradition when the defendant faces capital charges, and that the Government of Mexico has refused to extradite fugitives unless the death penalty is waived. He argues that seeking petitioner's deportation from Mexico without telling the Mexican authorities that prosecution on capital charges was contemplated circumvented the limitations of the extradition treaty. Petitioner further asserts that the United States conducted investigation in Mexico without advising the Government of Mexico, as required by the Mutual Legal Assistance Cooperation Treaty with Mexico.

E. Petitioner will not present a continuing danger if incarcerated for life without parole

Petitioner argues that a sentence of life imprisonment without the possibility of parole is an adequate punishment for his offenses. He disputes the claim that he presents a continuing risk to the life and safety of others, and argues that the Government's evidence of future dangerousness was based in part on ethnic considerations. In particular, the Government called as a witness during the penalty phase of petitioner's case Captain Daniel Alberts, the Chief Correctional Supervisor at the Federal Correctional Institution at Bastrop, Texas. Captain Alberts testified that petitioner would be at the "highest risk" to commit violent crimes in prison because he would be courted by prison gangs, possibly to commit contract murders. Captain Alberts explained that there are five primary security threat groups, which he described as "gangs that are based along ethnicity."

In support of his position that he will not pose a continuing risk to others, petitioner submitted an affidavit of Thomas Keohane, the former warden of the federal prison at Terre Haute. Mr. Keohane's affidavit describes his experience in federal corrections and relates that he reviewed the trial testimony of Captain Alberts and the presentence report concerning petitioner's non-capital offenses. Based on his experience and the information he reviewed, Mr. Keohane disagreed with Captain Alberts' view that the federal Bureau of Prisons has no effective way to prevent a prisoner serving a sentence of life without parole from committing violent offenses while incarcerated, and enumerated methods available to federal prison officials to control inmate behavior. He further disagreed with Captain Alberts' testimony that inmates like petitioner posed the highest risk for committing violent offenses while incarcerated. He finally stated that, had he been called to testify as a witness in petitioner's trial, he would not have predicted that petitioner "would commit homicides, contract murders, or other violent offenses while incarcerated in the federal prison system."

Petitioner also submitted information recently supplied by the Texas Department of Corrections that it does not consider petitioner "to be a member of a security threat group (a gang)." Because gang-affiliation information is considered sensitive by the Texas Department of Corrections, it was supplied to petitioner with an understanding that it would be kept confidential and not disseminated outside the clemency review process. Petitioner's counsel, therefore, filed this information under seal.

F. Commutation of sentence will protect the interests of petitioner's family

Petitioner urges that commuting his sentence will spare his family the devastating effects of his execution. He states that he is from a large family, which includes his wife, two minor children, two grown children, an elderly father, and several siblings. The videotape he submitted in support of his clemency request includes the personal pleas of his family for mercy.

III. Official comments:

The United States Attorney for the Southern District of Texas, the Honorable Mervyn M. Mosbacker, recommends that petitioner's clemency request be denied. The United States Attorney points to the fact that petitioner does not deny that he committed the three murders for which he was convicted, and asks that your attention be returned to the "particularly cold-blooded and heinous manner in which [petitioner] personally committed and/or orchestrated at least eight 'execution-style' murders in order to further his continuing drug trafficking enterprise." Regarding petitioner's plea for mercy, the United States Attorney asserts that his "claims of remorse and his concern for his family come only on the eve of his execution." In rebuttal to petitioner's expressed concern about his family, the United States Attorney points out that petitioner "had his son-in-law murdered while his daughter was pregnant; he beat and abused his wife; he threatened one daughter; and he took his young son along with him on his last drug deal."

Concerning petitioner's legal arguments, the United States Attorney concludes that petitioner "neither identifies nor establishes any defect or deficiency in his death sentence that would justify . . . the President overriding the judgment of the community which convicted and sentenced him. What he effectively seeks is to relitigate the legal issues finally resolved against him by the Fifth Circuit and the Supreme Court. [Petitioner] availed himself of each and every avenue for review provided by Congress; he comprehensively and exhaustively presented his legal claims, and he was denied relief only after full review." The United States Attorney specifically contests the "claim that the jury was denied critically relevant information regarding the possibility of life imprisonment without parole," arguing that the jury "was expressly and unambiguously informed that [petitioner] could be sentenced to life imprisonment without possibility of parole."

On the issue of disparity of sentence, the United States Attorney argues that the "Constitution does not command that the sentence of death imposed upon a defendant be proportionate to the sentences imposed on codefendants; rather, it requires that the sentence not be disproportionate to the offense." He further argues that "certain factual differences distinguish the level of [petitioner's] culpability from those of his accomplices," citing the following:

> First and foremost, [petitioner] commanded his drug trafficking organization — the murders carried out by his accomplices were at his instruction or order in exchange for either payment or under threat of death if the accomplice did not comply. . . . Second, [petitioner's] accomplices who received lesser sentences agreed to cooperate with the United States.

Concerning petitioner's claims of racial disparity, the United States Attorney notes that petitioner

> presents absolutely no evidence — because none exists — that the decision to prosecute him in fact was racially motivated. Almost all of the persons who[m he] either personally murdered or ordered murdered were Hispanic members of the community in which [he] resides and in which he conducted his drug trafficking activities. This is a predominantly Hispanic community, proud of its heritage, in Brownsville, Texas, located on the border with Mexico. [He] was tried by two prosecutors, one Hispanic, before a Hispanic judge, and seven of his twelve jurors were Hispanic. The community which was affected by his criminal activities and which imposed justice in this case is largely a Hispanic community.

The United States Attorney further argues that geographic disparities do not make death penalty selection arbitrary. He notes that since 1988 only one of six eligible defendants in the Southern District of Texas has been recommended for the death penalty. Further, he asserts that in only half the cases submitted to the Attorney General for review by the four federal districts in Texas since 1995 – 14 out of 28 cases – was the death penalty recommended, and of those only three involved Hispanic defendants. Conversely, six of 14 defendants for whom a recommendation against seeking the death penalty was made by those offices during that period were Hispanic.

Finally, the United States Attorney notes that although the current death penalty protocol had not been adopted at the time petitioner's case was submitted to the Attorney General for review, "every procedure established by the protocol was followed in the submission and review of his case. The case [was] approved for prosecution by the United States Attorney only after comprehensive review of a prosecution memorandum and indictment. It was submitted to the Department, where it was reviewed by senior attorneys who made a recommendation to the Attorney General, who, in turn, authorized seeking a death sentence." He concludes by asserting that the "sentence that the jury imposed serves the interest of justice and reflects the judg[]ment of the community in South Texas," and requesting that petitioner's execution be carried out as scheduled.

The Assistant Attorney General for the Criminal Division of this Department, the Honorable James K. Robinson, objects to clemency, urging that petitioner has demonstrated no compelling reason to commute his sentence. The Criminal Division argues that petitioner's claim for clemency based on racial and geographic disparity in capital prosecution at the federal level should be rejected because it does not establish, nor has petitioner adduced evidence of, intentional discrimination.[21] Further, the Criminal Division disputes the validity of making comparisons to a pool of state offenders, noting that state capital offenses are different in nature from the federal offenses for which capital punishment is authorized, the former comprising more individual acts and the latter focusing on organized crime and drug-related enterprises. The Criminal Division further notes that state or regional comparisons of the racial makeup of a population will differ from figures aggregated on a national level because of the uneven distribution of minorities among states. For example, the Criminal Division points out that in 1998 the population of Cameron County, Texas (where Brownsville is located) was 85.2 percent Hispanic, and that of Texas was 29.7 percent Hispanic, thus undermining the significance of any asserted disproportionate numbers of Hispanic capital defendants in Texas.

The Criminal Division further points out that the legal claims petitioner urges as grounds for clemency have been rejected by the courts. Concerning the claim that the jury was misled about petitioner's parole eligibility, for example, the Criminal Division notes that not only did petitioner litigate and lose this claim, but the Supreme Court rejected retroactive application of the case on which the claim is based, finding that the rule established in that case is not essential

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[21]The Criminal Division notes that the Attorney General, at the time the Department's study was released, commented on the fact that the overrepresentation of minorities among actual and potential capital defendants reflects a number of social factors outside the direct operation of the criminal justice system:

> The survey today finds that minorities are over-represented in the federal death-penalty system, as both victims and defendants, relative to the general population. Sadly, the same is true of the entire criminal justice system, both state and federal. This should be of concern to us all. It is my view, based on more than 25 years as a state and federal prosecutor, that crime is often the product of social ills and harsh conditions, such as poverty, drug abuse, and lack of opportunity, that disproportionately affect minorities. So long as those conditions remain, we will continue to see disparities in the number of minorities in the criminal justice system.

to a fair trial.[22] Concerning his claim about reliance on unadjudicated homicides, the Criminal Division argues that petitioner has not demonstrated that any of the evidence on which the Government relied was false, and points out that, as noted by the court of appeals in rejecting petitioner's claim, "[t]he Government turned over to [petitioner] every document that it received from Mexico, including the police reports, investigative reports, and certified translations of the autopsy reports."[23] The Criminal Division disputes petitioner's claim that the evidence of the unadjudicated homicides was unreliable, asserting that the testimony of petitioner's confederates was corroborated and, in any event, legally sufficient.[24] The Criminal Division further argues that, since the testimony establishing those homicides was tested by cross-examination and argued to the jury, it would be inappropriate in the clemency process to substitute the assessment of reviewing officials for that of the jury.

Similarly, the Criminal Division urges that clemency officials uphold the jury's conclusion that mercy is not justified in this case by the fact that petitioner's codefendants received lesser sentences. More generally concerning the claim of disproportionality, the Criminal Division notes that petitioner, unlike any of his codefendants, was responsible for eight murders altogether and that "the decision not to seek the death penalty in what he considers to be comparable cases may be based on a variety of prosecutorial and evidentiary considerations."

On the issue of alleged circumvention of the Extradition Treaty with Mexico, the Criminal Division argues that the treaty is designed to regulate relations between the countries, not provide rights to individual defendants, especially defendants who are United States citizens and who are fugitives from the justice system of this country. In that regard, the Division notes that Mexico had its own reasons for arresting and deporting petitioner and has not lodged a formal protest concerning the manner of petitioner's return to the United States. Further, the Criminal Division argues that the Supreme Court has held that the Extradition Treaty with Mexico does not purport to specify the only way in which the United States may obtain custody of a defendant found in Mexico.[25] Finally, the Criminal Division disputes that petitioner's behavioral record while incarcerated demonstrates that he will not pose a continuing danger to others, and argues that his clear conduct record since being moved to Terre Haute proves nothing

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[22]In *O'Dell v. Netherland*, 521 U.S. 151 (1997), the Supreme Court held that the rule of *Simmons v. South Carolina*, see n. 17, *supra*, was a "new rule" within the meaning of *Teague v. Lane*, 489 U.S. 288 (1989) (plurality opinion), and declined to apply it retroactively. That decision necessitated a finding that the rule was not a "watershed rule[] of criminal procedure implicating the fundamental fairness and accuracy of the criminal proceeding," *Graham v. Collins*, 506 U.S. 461, 478 (1993), *quoting Teague*, 489 U.S. at 311 (internal quotation marks omitted).

[23]*United States v. Garza*, 165 F.3d at 314.

[24]In the Fifth Circuit, a conviction may be sustained on the uncorroborated testimony of a cooperating witness. *United States v. Cisneros*, 112 F.3d 1272, 1283 (5th Cir. 1997). Furthermore, the Fifth Circuit has held that evidence of unadjudicated offenses is admissible during the punishment phase of a capital case. *E.g., United States v. Hall*, 152 F.3d 381, 403-404 (5th Cir. 1998).

[25]*United States v. Alvarez-Machain*, 504 U.S. 655 (1992).

because petitioner has been in 23-hour lockdown while on death row.[26]

The sentencing judge, the Honorable Filemon B. Vela, declined to make a recommendation on the clemency application, but offered a number of comments concerning it. Generally, Judge Vela noted that, although he "is not an advocate of the death penalty," he is "duty bound to seek the execution of judgments rendered in [his] court and to give special deference to jury verdicts." He adds that, contrary to petitioner's assertions, "there were exhaustive endeavors to assure that fairness and justice would govern the entire proceedings regardless of the result." Judge Vela states that the jury "suffered through the journey, and to assess their considered judgment as an exercise devoid of respect to their duty is not coincident with true particulars." He further notes that the arguments against the death penalty now advanced by petitioner "were fully advocated before Congress and notwithstanding, the provisions of law in question were adopted. It remains the law of the land."

Concerning the issue of geographic disparity in the selection of defendants for capital prosecution, Judge Vela notes that the statute under which petitioner was convicted "principally addressed drug activities and it is very likely that a study would reveal that border sectors such as Florida, Texas, New Mexico, Arizona and California experience a distinct disparity with the rest of the country." Finally, concerning the issue of racial disparity, he asks that the following be considered in assessing any inference of discrimination:

> The Defendant is Hispanic. But for one victim, all were Hispanic. The Prosecutor is Hispanic.[27] The Presiding Judge is Hispanic. At least six of the deliberating jurors are Hispanic. All jurors individually certified that race, color, religious beliefs, natural [*sic*] origin or sex were not "involved in reaching [their] respective decisions."

Finally, as part of my review process in this case, I requested that the Death Penalty Review Committee consider whether petitioner's case would be approved for capital prosecution if it were submitted for consideration today under the new capital protocol. By a four-to-one vote, the committee voted to authorize capital prosecution on the facts of petitioner's case.

IV. Public comment:

In support of his petition for commutation of the death sentence, petitioner submitted two letters from the American Bar Association requesting that you impose a moratorium on federal

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[26]The Criminal Division also notes that a federal court has held that the Bureau of Prisons may not keep a prisoner in a control unit indefinitely based solely on the nature of the inmate's offense. *United States v. Johnson*, 223 F.3d 665 (7th Cir. 2000).

[27]For clarification, Judge Vela is presumably referring to one of the two prosecutors who tried the case, José Angel Moreno. The other trial prosecutor is not Hispanic. The United States Attorney who sought and received permission to bring capital charges is not Hispanic, but the current United States Attorney, who was involved in that process, is.

executions "so that a thorough investigation of the federal capital punishment system can be undertaken." The first is a letter of May 2, 2000, from William G. Paul, then the President of the ABA, and the second is a letter dated September 15, 2000, from the present President of the ABA, Martha W. Barnett. Ms. Barnett, noting that the Department has undertaken additional study of the federal death penalty system, urges that the review "should be a public process," and argues that "[a]n open, thoughtful process of re-examination is essential to restore public confidence in our justice system." Petitioner has also submitted a letter to me dated August 4, 2000, from Julian Bond, the Chairman of the NAACP, asking that "no federal execution be scheduled, at minimum, until the Department of Justice completes a sufficiently wide-ranging study to identify all possible forms of racial bias in potential federal capital prosecutions." Two bills are presently pending in Congress to impose a moratorium on the federal death penalty while a national commission established by each bill studies the federal system for capital punishment.[28]

Letters in support of clemency have been written by a number of religious and political figures. By letter of November 20, 2000, a group of prominent individuals calling themselves Citizens for a Moratorium on Federal Executions[29] wrote you in support of granting petitioner a reprieve until the Department's studies of the federal death penalty process are completed. The Reverend Edward A. Malloy, C.S.C., President of the University of Notre Dame in Indiana, wrote to you in support of commutation of petitioner's death sentence, noting that "the position of the Catholic Church is strongly opposed to the application of the death penalty." By letter of June 30, 2000, Archbishop Gabriel Montalvo of Apostolic Nunciature (USA) appealed to you on behalf of Pope John Paul II and the Most Reverend Daniel M. Buechlein, O.S.B., Archbishop of Indianapolis, to commute petitioner's sentence. Robert Sayer, the President of the Law Society in England, wrote to you on June 7, 2000, asking that you comply with the request of the Inter-American Commission on Human Rights to delay the execution until the Commission can issue a decision and "take all other steps to ensure that [petitioner's] rights to a fair trial are upheld." Francisco José Ormazabal Zamakona of the Departmento de Ordenacion del Territorio in Vitoria-Gasteiz, Spain, wrote to the Attorney General and you in support of commutation of petitioner's death sentence and in opposition to all capital punishment. Petitioner also submitted a copy of a July 12, 2000, letter to you from French Ambassador François Bujon de l'Estang on behalf of the European Union, asking for clemency for petitioner. Approximately 200 letters have been received from citizens, both in the United States and outside this country, supporting a reprieve or commutation of petitioner's death sentence.

The only letter received opposing clemency came from Senator Orrin G. Hatch. In a July 20, 2000, letter to the Attorney General, Senator Hatch wrote that he "was disturbed to learn" about the then-anticipated reprieve of petitioner's execution date and expressed his

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[28]See S. 2463, "National Death Penalty Moratorium Act of 2000" (introduced on April 26, 2000) and S. 3048, "Federal Death Penalty Moratorium Act of 2000" (introduced on September 14, 2000).

[29]The group comprises religious, civic, academic, and cultural figures, and includes among others: Dr. Mary Frances Berry, Chair of the United States Commission on Civil Rights; Julian Bond, Chairman of the Board of the NAACP; former United States Senators Alan Cranston, Thomas Eagleton, and Paul Simon; former White House Counsel Lloyd Cutler; Reverend Jesse Jackson; former United States Secretary of Labor Robert Reich; Nobel Peace Laureate Elie Wiesel; and entertainers Barbra Streisand, Jack Lemmon, and Norman Lear.

concern "about the senseless delay in this execution." One citizen called the Office of the Pardon Attorney to oppose clemency in any capital case.

V. Victim impact:

The families of the three victims of the homicides for which petitioner was convicted were contacted by the United States Attorney's Office for their comments concerning clemency. Jim Rumbo, the brother of Thomas Rumbo, initially advised that he would submit a letter to the United States Attorney's Office expressing his comments concerning clemency, but later advised the Office of the Pardon Attorney that he was "wasting his time" writing a letter without a specific promise that you would personally read it. Lizbeth Matos, the daughter of Gilberto Matos, met with the Office of the Pardon Attorney to express her family's opposition to clemency. Ms. Matos, who was 12 years old when her father was murdered, made clear in an emotional appeal that she believes her father was "not involved" in petitioner's criminal activities, that she is upset petitioner is even permitted to ask for clemency, and that he does not deserve another chance. She also delivered a note written in Spanish from her mother Guadelupe Matos, the widow of Gilberto Matos, which voices Mrs. Matos' opposition to clemency. Mrs. Matos' letter expresses the view that petitioner's death sentence should be carried out because petitioner chose to kill her husband and people who make choices have to live with the consequences of their actions, whether good or bad.

On behalf of the family of Erasmo de la Fuente, his son Erasmo de la Fuente, Jr., and his widow Sonia de la Fuente also attended the oral presentation to the Office of the Pardon Attorney. Mr. De la Fuente, who was seven years old when his father was murdered, voiced his strong opposition and that of his mother and his older brother Mario to any clemency for petitioner. He told of the shock of learning of his father's death, the difficulty of growing up without a father, the personal problems his brother had suffered as a result of the trauma of his father's death, and the hardship his mother had endured having to raise two children on her own. Mrs. De la Fuente was too emotionally distraught to speak at length, but did convey how distressing it was to have to think about her husband's death again.

Both the De la Fuente and the Matos families expressed concern and fear that petitioner or his family would become aware that they had participated in the oral presentation and had opposed clemency. Both indicated they feared retaliation for doing so, and sought assurance that their letters and comments would not be disclosed outside the clemency decision-making process. A copy of the transcript of the oral presentation and of Mrs. Matos' letter, along with an English translation, are attached as Exhibit B.

VI. Recommendation:

After a careful consideration of all the circumstances of this case, I recommend that you grant Juan Raul Garza a reprieve of six months to allow further review of the role of race and geography in selecting the defendants against whom the government seeks the death penalty. Relying on statistics gathered by the Department of Justice, Garza claims that the decision to seek the death penalty in his case was influenced to some degree by the fact that he was a Hispanic defendant prosecuted in Texas. I do not believe he is correct, but I agree that the statistics raise a troubling question that the federal government is not yet in a position to answer with sufficient clarity. For that reason, I believe fairness requires that we take a closer look at the issue before proceeding with an irrevocable decision to take Garza's life. Further, I am troubled that Garza did not have the benefit of a vitally important procedural safeguards – the ability to have the jury recommend a life sentence without possibility of release – that the federal government now allows all capital defendants. Ultimately I do not recommend a grant of clemency on that basis, but I believe it is a significant enough issue that you should give it a careful, independent review before making a determination to deny commutation. Finally, I do not think that Garza's remaining arguments warrant any relief.

1. Racial and Geographic Disparities

In support of his argument that his death penalty may have resulted from racial and geographic discrimination in the selection of capital cases, Garza relies on the Department's recent survey of the federal death penalty system. Briefly stated, that survey found that minorities are over-represented in the federal death penalty system – as both victims and defendants – relative to the general population. It also found geographic variances with respect to the numbers of cases submitted by United States Attorneys and the frequency of recommendations to seek the death penalty. For example, from 1995 to 2000, the four United States Attorneys' Offices located in Texas recommended seeking the death penalty for half of all the defendants submitted for review, whereas prosecutors across the nation recommended seeking the death penalty for 27 percent of defendants submitted for review. This disparity was even more pronounced with respect to racial and ethnic minorities: the four Texas districts recommended seeking the death penalty for 57 percent of the non-white defendants submitted for review, compared to a corresponding national rate of 25 percent. Such statistics are troubling, and warrant further research into the causes of such disparities. I should caution, however, that the necessary research could be difficult, costly and time-consuming.

Further, while I believe that further study of the matter is warranted, I do not recommend that you grant an outright commutation of sentence on the basis of alleged racial and geographic disparities for two reasons. First, I am confident that there was no conscious decision by anyone involved in Garza's prosecution to allow race or geography to affect the decision to seek the death penalty. My confidence in that regard is bolstered by the result of a recent review of Garza's case by the Attorney General's Review Committee on Capital Cases. The Committee concluded that, in the absence of a negotiated plea, a capital prosecution of Garza would likely have been approved under current Justice Department policies and procedures. My confidence in the lack of conscious bias in this case is further bolstered by, though not controlled by, the fact that one of the two prosecutors was Hispanic, as were the trial judge and seven of the jurors who decided that Garza should be sentenced to death.

Second, I am not persuaded that the statistical evidence relating to Hispanic defendants in Texas is a controlling consideration in Garza's case. It is somewhat artificial to focus on statistics for the entire state of Texas. That state has four separate United States Attorneys' Offices, each of which engages in independent decision-making. And the recommendations of the United States Attorney's Office for the Southern District of Texas are much less troubling than the aggregate statistics for the entire state of Texas: although all six of the defendants submitted for review by that office from 1988 to 2000 were Hispanic, only Garza was selected for capital prosecution. The rate at which prosecutors in the Southern District of Texas sought the death penalty for Hispanic defendants was thus consistent with the national rate of 20 percent.

Nevertheless, I am sufficiently troubled by the national statistics reported in the Justice Department's survey that I would prefer to have a clearer understanding of the role of race and geography in the federal death penalty system study before carrying out the execution of a defendant who, like Garza, claims that he has been selected for capital prosecution on the basis of arbitrary factors. Specifically, I would recommend that in the next six months the Department of Justice (a) analyze additional statistical data concerning race and geography and (b) determine whether it is feasible, through a detailed examination of the decision-making processes at all levels of the state and federal law enforcement system, to obtain a clearer understanding of how some homicides, but not others, lead to federal capital prosecutions.

In making this recommendation, I do not intend to suggest that doubts about the role of race and geography warrant a moratorium on all federal executions pending further study. There can be no question that among those now under a federal death sentence are some who have committed such uniquely heinous offenses that any society that endorses capital punishment would agree they should be executed, regardless of whether others convicted of less serious offenses should also be so punished. I would not argue that concerns about how others are selected for capital prosecution should in any way interfere with the just execution of such defendants. Instead, I suggest that concerns about the role of race and geography, taking into account the further assessment I propose can be addressed on a case-by-case basis as part of the overall review of any application for executive clemency.

2. The Jury's Inability to Recommend Life Without Parole

Current federal policy, as reflected in the Federal Death Penalty Act of 1994, ensures that a jury that recommends a death sentence against a given defendant will have done so knowing that it had the option to impose, instead of death, a sentence of life imprisonment without possibility of release. Juan Raul Garza's jury did not have that option. I am troubled by the prospect that he may be the only person (or at most one of two such defendants) whom the federal government will ever execute under such circumstances. While I do not recommend a commutation on this basis, I urge you to give it careful consideration in reaching your final decision.

The issue of the jury's sentencing options arises in two distinct ways. First, there is a question as to whether the jury was properly instructed on the law as it existed at the time of Garza's trial. Garza has litigated that question, and the courts have correctly rejected his claim. I have no reservations about the legality of Garza's sentencing under applicable law or the propriety of the government's arguments in seeking the death penalty in accord with the then-existing legal regime.

The second, related question is more troubling: did the law that applied to Garza's case provide sufficient safeguards to assure that the jury would make a reasoned moral judgment in determining the sentence? I am concerned about this because the jury did not have the option to impose a sentence of life without the possibility of release.

At the time of Garza's trial, the federal death penalty was available only for violations of Title 21, United States Code, Section 848(e) (also known as the "Drug Kingpin Act" of 1988). Under that statute, if the jury had not recommended a death sentence, the district court could have sentenced Garza to "any term of imprisonment. which shall not be less than 20 years, and which may be up to life imprisonment." The jury therefore did not have the authority to make a binding recommendation that Garza be sentenced to life without parole. In 1994, you signed into law the Federal Death Penalty Act. One of the procedural safeguards in that statute is a provision that explicitly requires sentencing juries in federal capital cases to "recommend whether the defendant should be sentenced to death, to life imprisonment without possibility of release or some other lesser sentence."

The importance of allowing juries to select life without parole as an alternative to death is widely recognized. As four dissenting Justices acknowledged in a recent Supreme Court opinion, "[h]ow long a defendant will remain in jail is a critical factor for juries."[30] Studies show that jurors are less likely to impose death if they are confident that the defendant will never be released from prison, and more generally, public support for the death penalty decreases dramatically where life without parole is an option.[31]

Allowing juries to choose between death and life without parole is sufficiently important in achieving fairness as a general matter that federal law now requires it in capital prosecutions.[32] In Garza's case, the potential unfairness in denying the jury such a choice was exacerbated by two specific, related aspects of the prosecution. First, the government persuaded the jury to find beyond a reasonable doubt, as an aggravating factor supporting a death sentence, that Garza "represents a continuing danger to the lives of others based upon his pattern of violent and brutal acts." Second, in arguing in favor of a death sentence, the prosecutor explicitly relied on the possibility that Garza could someday be released from prison.[33] In fact, it was highly unlikely

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[30]*Ramdass v. Angelone,* 120 S. Ct. 2113, 2136 (2000) (Stevens, J., dissenting).

[31]*See id.* at 2136-37 (citing studies); Eisenberg & Wells, Deadly Confusion: Juror Instructions in Capital Cases, 79 Cornell L. Rev. 1, 7 (1993) (providing statistical support for the conclusion that "jurors who believe the alternative to death is a relatively short time in prison tend to sentence to death" and that "[j]urors who believe the alternative treatment is longer tend to sentence to life").

[32]Because the Drug Kingpin Act was not repealed when the Federal Death Penalty Act was enacted in 1994, it could be argued that the more recent provision concerning jury recommendations does not apply to Title 21 cases. While the matter is not free from doubt, it is also arguable that the 1994 procedures apply in all federal capital cases, including those prosecuted under the Drug Kingpin Act. Regardless of the correct legal interpretation, there is no doubt that the jury must be given the option of sentencing the defendant to life without possibility of release in the vast majority of federal capital prosecutions. Further, no federal defendant has been sentenced to death since the passage of the 1994 Act without the jury having had such an option.

[33]*See* Trial Transcript at 3625 ("The defense says, well, he is going to die in prison, but the law says twenty years to life. We don't know that he is going to die in prison. The Judge can give him any term.");*id.* at 3637 ("And there are people who get out of prison. Maybe he never would. Maybe he would, if you didn't give him the

(although technically possible) that Garza, if not sentenced to death, would have received any sentence less than life imprisonment without parole. But the jury that sentenced him, which was persuaded that he represented a future danger to society, was neither told that fact nor given the option to ensure that he could never be released.

Even if clemency were warranted in this case, I do not mean to suggest a rule that would automatically result in a grant of clemency in any case where the jury was not given the option of recommending life without possibility of release. As noted in the preceding discussion, there are, however, specific facts about the manner in which Garza's case was prosecuted that make the absence of such a safeguard troubling. I do not know whether similar facts obtained in other cases where the jury was not given the option to impose a life sentence.[34]

3. Other Considerations

Petitioner stands convicted of, and admits committing, three murders. The jury found that there were several mitigating factors in his case, but nonetheless concluded that they were outweighed by aggravating factors that were proved beyond a reasonable doubt and therefore recommended a sentence of death. I am not persuaded that the arguments concerning the reliance on unadjudicated murders, the disproportionality of Garza's sentence compared to those imposed on others, or the circumstances surrounding Garza's deportation warrant executive intervention.

In evaluating these remaining arguments in support of clemency, it is highly relevant that most of his claims were raised in connection with his trial or post-trial proceedings and were rejected as a basis for relief. Thus, the issue of reliance on unadjudicated murders was litigated adversely to petitioner on appeal. While intuitively it would appear to be more difficult to investigate a homicide in Mexico, petitioner does not indicate what evidence, realistically, he would have been able to challenge. The witnesses to petitioner's admissions of involvement in unadjudicated homicides were fully subject to cross-examination, and the fact that his admissions related to acts that took place in Mexico does not make the witnesses who testified about them less vulnerable to challenge concerning their possible bias and motive to falsify. In any event, any alleged difficulties in obtaining evidence did not apply to one of the unadjudicated homicides – a particularly brutal one – because it occurred in the United States and was witnessed by several persons who testified against petitioner. Further, it must be recalled that, while the rules of evidence did not apply in the punishment phase of petitioner's trial, the jury was required to find that each aggravating circumstance was proved beyond a reasonable doubt.

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death penalty."), *id.* at 3641 ("His future victims, the next one, is asking, 'Please, do it [impose the death penalty] for us.' You have got to stop him."). All of these arguments were made during the rebuttal summation, after defense counsel argued that a life term would be sufficient punishment for Garza's crimes.

[34]There are only four other federal defendants who were sentenced by juries who were not given the option of imposing a life sentence: David Chandler, who was prosecuted in the Northern District of Alabama; and Cory Johnson, James Roane and Richard Tipton, who were prosecuted together in the Eastern District of Virginia. However, in the Virginia case, the jury was told that each of the three defendants, if not sentenced to death by the jury, would in fact be sentenced to life without possibility of parole. Therefore, Chandler is the only defendant other than Garza with a potentially comparable claim based on the jury's sentencing options.

While it is impossible to know with certainty what effect four or five additional murders had on the jury's decision to impose a death sentence, the fact that petitioner was actually convicted of three homicides tends to undercut an assertion that the death penalty would not have been imposed absent proof of five more killings. Petitioner had already been proved beyond a reasonable doubt to have intentionally killed or given orders to kill on multiple occasions, and he admits responsibility for these acts.

Concerning petitioner's claim of disproportionality of his sentence, the jury found beyond a reasonable doubt that the aggravating factors outweighed the mitigating factors, although it found to be among the mitigating factors the circumstance that a sentence less severe than death was imposed on one or more equally culpable participants in the offense. Similarly, the jury was presented with evidence during the punishment phase of the trial concerning the issue of petitioner's future dangerousness and concerning his family ties and nonetheless concluded that petitioner does present a future danger to others. Again, the jury's verdict reflects a conclusion that the asserted mitigating factors, including his family relationships, were outweighed by the aggravating circumstances in his case. To the extent petitioner argues that the jury's finding of future dangerousness is undercut because the jury was misled concerning his parole eligibility, that claim was litigated and rejected on appeal. Given the evidence of an effort (albeit unsuccessful) to help him escape and his misbehavior while in state custody, the jury may well have concluded that he would present a danger to other prisoners and guards even if incarcerated for life. The fact that he has incurred no incident reports since being moved to federal custody in mid-1999 does not alter that analysis because in that relatively short time petitioner, due to the conditions of his confinement, has had limited contact with prison staff and other prisoners.

The circumstances relating to petitioner's deportation from Mexico do not afford a basis for granting clemency. Petitioner is an American citizen who fled to Mexico to avoid prosecution. He can hardly claim that his actions in absconding imbue him with an immunity from the death penalty. Further, concerning investigation by the United States in Mexico, the testimony reflected that this country worked with the local police departments in obtaining relevant evidence, which, according to the State Department, is sufficient to comply with treaty obligations to notify Mexico of an ongoing investigation. Whatever issues, if any, might be raised by the manner in which petitioner was investigated in Mexico and returned to the United States, they are matters pertinent only to the relationship between the two countries and Mexico has not lodged an official protest concerning either matter. These issues do not touch on the fairness of imposing the death penalty on petitioner.

VII. Conclusion:

I have no doubt that Juan Raul Garza is guilty of heinous offenses, including a total of eight murders that have been proved beyond a reasonable doubt. It is therefore with great difficulty and reluctance that I recommend any form of clemency, and it is particularly difficult to do so where the sentence was imposed upon the recommendation of a unanimous jury. But our experience has shown that the government does not seek the death penalty in every equally serious case, and even where the government does do so, juries do not always decide that death is warranted. The federal government does not seek the death penalty in approximately one-third of all cases involving multiple homicides, and federal juries recommend against a death sentence in roughly half of the cases where they have the power to impose it. As a result, there are many defendants in our prisons now serving life sentences for crime as serious or even more serious than those committed by Mr. Garza. Because we can never ensure that all equally culpable criminals will receive capital punishment, I believe it is all the more important for the government to assure itself, before putting one of its citizens to death, that the decision to seek capital punishment in a given case was not based on arbitrary factors such as race or geography.

In my opinion, in light of troubling national statistics about the use of the federal death penalty and in light of the specific claims made by Mr. Garza, we are not yet in a position to have such assurance in this case. I therefore recommend that you grant Juan Raul Garza a reprieve of six months to allow further research into the role of race and geography in selecting the defendants against whom the government seeks the death penalty.

Respectfully submitted,

Deputy Attorney General

DATE: 12-7-00

'00 DEC 8 PM4:03

Ambassador Gilbert A. Robinson
1020 19th Street, NW, Suite 250
Washington, DC 20036
202-872-9800
Fax: 202-872-9810

12-8-00
Scheduling
to ~~Cotten for reply~~?
Yes __ No __
cc Scheduling
Yes No
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cc: Fed widner.
B.

FACSIMILE TRANSMI

To:	Betty Currie, The Office of the President	**Date:**	I
Fax :	4561210	**Pages:**	1
From:	Gil Robinson Gil		

Message:

Betty,

Following our conversation this morning, this is an official request from the Center for the Study of the Presidency for an appointment with President Clinton for Dr. David M. Abshire, who is the President and CEO of the Center, our Board member, Mack McLarty, (whom you know of course) and myself, Ambassador Gilbert A. Robinson, National Director and COO.

The Center which is 40 years old, works closely with all of the Presidential Libraries and we would like to come in and talk to President Clinton about the cooperation with his library

I think it would be helpful if we could come in before Christmas

Thanks for your help. Gil

'00 DEC 8 PM4:03

Ambassador Gilbert A. Robinson
1020 19th Street, NW, Suite 250
Washington, DC 20036
202-872-9800
Fax: 202-872-9810

FACSIMILE TRANSMISSION

To:	Betty Currie, The Office of the President	**Date:**	December 8, 2000
Fax:	4561210	**Pages:**	1, including this cover sheet
From:	Gil Robinson Gil		

Message:

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Thanks for your help. Gil

RANDALL GRAY PARKER
FPC SEYMOUR JOHNSON AFB * CALLER BOX 8004 * GOLDSBORO, NC 27533-8004

Mum staff secretary
Counsel's office

December 3, 2000

The President
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

'00 DEC 8 PM4:00

Dear Mr. President:

Re: A Paraplegic's Plea for (

12-8-00

During this season of love, compassion, and forg
you, Mr. President, for Clemency.

To Counsel ?
Yes ✓ No —
B.

First, I am a paraplegic with no feeling nor mov
have been incarcerated for nine years for Posses
with the intent to sell cocaine. These past nir
excruciating and demoralizing time of my life.
terrible for the average citizen, but are brutal
almost inconceivable to imagine the trials and t
Secondly, as you have demonstrated this past yea
if they repent, ask for forgiveness with a humbl

Yes, my crime of ten years ago was wrong. It wa
However, it was done despite its illegality bec
only source of income to pay the rising cost of
this period was astronomical as a result of my 1987 accident which left me paralyzed. My use of the drug at the time also alleviated the stress and emotional scars and suffering of being a paraplegic. This, coupled with the loss of my wife led me down the road of pain and ultimately, shame.

There comes a time, Mr. President, when one reaches the depths of dispair, the bottom--and, begins a gradual ascent into a life of redemption, beginning anew. What is beginning anew for me? As you can imagine, I am extremely limited in what I can physically acoomplish. However, my mind, heart, and soul have seen incredible transformations. I was truly angry at the world when I was originally sentenced to 60 years. The Courts have, however, reduced my sentence to fifteen years and I have completed nine thus far.

It doesn't take nine years to realized and come to grips with the errors of my past. One year of incarceration, complete separation from family in addition to my physical condition, would have more than sufficed. Over the years, I have learned to emulate those fallen heroes like Lt. Governor John Hager of Virginia who is wheelchair bound. His courage and accomplishments despite his condition gives me great hope. Yes, I was honorably discharged from the United States Navy. Service to my country was a duty I cherished. My current condition is a far cry from that robust period in my life. However, I have regained my once lost faith and I know I can continue to contribute and make a difference.

R A N D A L L   G R A Y   P A R K E R
FPC SEYMOUR JOHNSON AFB * CALLER BOX 8004 * GOLDSBORO, NC 27533-8004

Thru Staff Secretary
Counsel Office

December 3, 2000

'00 DEC 8 PM4:00

The President
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear Mr. President:

Re: A Paraplegic's Plea for Clemency

During this season of love, compassion, and forgiveness, I, hereby,appeal to you, Mr. President, for Clemency.

First, I am a paraplegic with no feeling nor movement from the waist down. I have been incarcerated for nine years for Possession of Cocaine and Conspiracy with the intent to sell cocaine. These past nine years have been the most excruciating and demoralizing time of my life. The horrors of confinement are terrible for the average citizen, but are brutal for a paraplegic. It is almost inconceivable to imagine the trials and tribulations one must go through. Secondly, as you have demonstrated this past year, anyone can receive forgiveness if they repent, ask for forgiveness with a humble heart and contrite spirit.

Yes, my crime of ten years ago was wrong. It was wrong for a number of reasons. However, it was done despite its illegality because at the time, it was my only source of income to pay the rising cost of medical care. Medical care at this period was astronomical as a result of my 1987 accident which left me paralyzed. My use of the drug at the time also alleviated the stress and emotional scars and suffering of being a paraplegic. This, coupled with the loss of my wife led me down the road of pain and ultimately, shame.

There comes a time, Mr. President, when one reaches the depths of dispair, the bottom--and, begins a gradual ascent into a life of redemption, beginning anew. What is beginning anew for me? As you can imagine, I am extremely limited in what I can physically acoomplish. However, my mind, heart, and soul have seen incredible transformations. I was truly angry at the world when I was originally sentenced to 60 years. The Courts have, however, reduced my sentence to fifteen years and I have completed nine thus far.

It doesn't take nine years to realized and come to grips with the errors of my past. One year of incarceration, complete separation from family in addition to my physical condition, would have more than sufficed. Over the years, I have learned to emulate those fallen heroes like Lt. Governor John Hager of Virginia who is wheelchair bound. His courage and accomplishments despite his condition gives me great hope. Yes, I was honorably discharged from the United States Navy. Service to my country was a duty I cherished. My current condition is a far cry from that robust period in my life. However, I have regained my once lost faith and I know I can continue to contribute and make a difference.

It is difficult for me to even express all that I have been through as an incarcerated paraplegic. The non-medical nor handicapped equipped facilities enhance my anguish as I try to maneuver through narrow hallways and other facilities. Prison authorities are not accustomed to accommodating handicapped nor paraplegic inmates. I am often mishandled, forced to crawl, or thrown about in ways because of indifference or undertrained personnel. During episodes of transportation to medical facilities across the country, I have had to crawl up stairs and across the floor of aircraft used for inmate transportation. The most demeaning, however, is being forced to empty my urine bag on the ground behind buildings when I am at my work assignment for lack of handicap accessible toilets. These are but a few, repetitive events that I must endure. Yet, they attack the very soul as one makes monstrative efforts to remain humble and make the best of life.

I have two children, oldest is 20. I have been incarcerated most of their life. They have been my moral support because they continue to hold out hope and visit me. Their young lives have been robbed because of my past errors. I am 44 years old now and I desperately want to spend quality time with them. I look forward to being the father I have not been. I want to recoup those missing years. I have overcome many obstacles, but I am blessed by still having my children in my life.

Now that I have become a kind, gentle individual, I feel I am a worthy candidate for Clemency. I ask for a second chance--a chance to make a difference in my life and the lives of my children. I appeal to you, Mr. President, because my pain, suffering, and rehabilitation are proven grounds--grounds I hope you will consider as you deliberate the many request you will receive this holiday season.

Please accept my heartfelt thanks in consideration of my request.

With kind and warm regards,

Randall Parker
Randall Gray Parker
B.O.P. # 14624-057

Petition for Commutation of Sentence

I respectfully request a reduction of Prison Sentence Only,
To: The President of the United States

Petitioner: Randall Gray Parker
14624-057
FPC Seymour Johnson AFB
Caller Box 8004
Goldsboro, NC 27533-8004

in seeking a commutation of sentence, states that he was born on [redacted] (b)(6) and has Social Security No. [redacted]

Petitioner was convicted on a plea of guilty in the United States District Court for the Middle District of North Carolina of the crime of: Count one: conspiracy to possess with intent to distribute cocaine hydrochloride (21 U.S.C.§846). Counts 2, 4, 5, 7, 10, & 11: possession with intent to distribute cocaine (21 U.S.C. §841).

Involving the following circumstances I conspired with others in the sale of cocaine. And at times kept cocaine in my possession. I also carried a fire arm and I was sentenced on January 10, 1992 and then resentenced on January 25, 1993 to imprisonment for 188 months and to pay restitution of $400, and to supervised release or special parole for 5 years. My restitution has been paid.

Petitioner began the service of his sentence on January 15, 1992 and I will be released from confinement on May 24, 2006. I am not eligible for parole.

Petitioner appealed to the United States Court of Appeals where the judgement was affirmed (I could not find this date.)

I challenged the conviction of the 3 924C charges and they were vacated on February 10, 1997.

My criminal record is as follows:

5 924c charges.	
Driving while impaired	February 15, 1985
Carrying a concealed weapon (2 cases)	
Simple possession of marijuana	June 12, 1988
Possession of drug paraphernalia	
Driving while impaired, failure to use a seat belt	January 31, 1989
Possession with intent to distribute cccaine hydrochloride	December 24, 1987

Petitioner respectfully prays that he be granted clemency for the following reasons:

See Attached Letter to the President

12 · 3 - 2000
Date

Randall Parker
Signature of Petitioner

NH -
I know this girl's brother. Good Democrats.

FARM BUREAU INSURANCE

FARM BUREAU MUTUAL INSURANCE COMPANY OF ARKANSAS, INC.
SOUTHERN FARM BUREAU CASUALTY INSURANCE COMPANY
10720 Kanis Road • P.O. Box 31 • Little Rock, AR 72203-0031 • (501) 224-4400 • (501) 228-1570

POLICY SERVICES DEPARTMENT
FACSIMILE ROUTE SHEET
FAX # (501) 228-1570

Thru Staff Sec.
Help if you can

PLEASE DELIVER THE FOLLOWING PAGES TO:

NAME: LYNDA DIXON

FIRM/ DEPARTMENT: CLINTON - AR. OFFICE

FAX NUMBER: 375-0512

12-8-00

To Agency Liaison?

FROM:

Yes ✓ No —

NAME: PAM PAZ

B.

FIRM/ DEPARTMENT:

SAVE AND RETURN ORIGINALS TO SEN

Total number of pages are 6, including this cover page.

Date: Time:

If you do not receive all the pages, please call us back as soon as possible.
Telephone Number: 1-501-228-

Comments:

ORDER OF ACTION

1. Armando Paz entered the US 10/94 . He went from Guatemala City to Mexico City by bus and continued to McAllen, Tx. by bus and walked across the border and was stopped by no one.

2. Armando then came by car to Arkansas. He started playing soccer at Soccer USA in North Little Rock, Ar. in the fall of 1994. He was unable to speak english but I knew him from playing on the same team for 2 years.

3. September of 1996 Armando & I started dating and dated until we got married July 3, 1998.

4. In June of 1999 we filed a I-130 with the INS in Mesquite, Tx.

5. September of 1999 we received notification of the approval - receipt #SRC-99-195-50311 and he was assigned A76 928 547, This notice said we should file a I-485 or a I-824.

6. We filed a I-485 11/99 with the Mesquite, Tx. service center. The Texas service center sent the I-485 back to us with a note on 12/99 stating that a I-485 should be sent to our local office and sent a list of INS offices. The closest office was in Memphis so we forwarded the papers to that office.

7. February 2000 the INS office in Memphis returned our I-485 and told us that since Armando entered the US without permission that we would need to file a I-824 in order for him to obtain an immigrant Visa.

8. At this time I sent an I-824 to Mesquite, Tx. which they received 3/22/2000. We received a form letter from Texas stating that they had received our application and that we would hear back from them by 120 to 180 days. The letter also stated that we could receive case status per automated telephone system or call the service center.

9. I called the Tx. service center in September 2000 and heard the following recorded message: The port of entry was notified of approval 6/13/2000.

This is the last information I have received and that info was received due to my phone call. You can not call the Tx. service center as the number is always busy. I called the Tn service center and they said they could not call the Texas service center.

October of 2000 I started trying to get help through Congressman Vic Snyders office. A gentleman by the name of Devon has made several calls to the Tx. service center and finally Dec. 1 he called me and told me that the process now is that the I-130 had to be sent to the NVC for denial and that at that time I would need to file an I212 waiver to ask for an interview with the consula

at the American Embassy in Guatemala. He said in the meantime that my husband should return to Guatemala and wait for his appointment. He also stated that he needed a passport that had to be obtained in or through the Embassy to return. I called the American Embassy in Guatemala Dec. 1 and was asked for a form number for the passport application. I do not have a form number for this. They also told me to call back Mon. between 1 & 2;30 and talk to the consulates office.

To make this all even more confusing the Catholic Immigration Service in Little Rock said do not return to Guatemala without an appointment.

We are trying to correct an error my husband made 6 years AGO when he came here to visit a childhood friend after being rejected twice in Guatemala for a Visa. We are not expecting anyone to just erase the fact that he came to this country without permission, however I cannot just erase my husband. We would appreciate any correct guidance in order for our case to be heard and processed.

Armando would like to be able to get a drivers license, a social security card and take a job he has already been offered with the UAW doing body work.

I WOULD APPRECIATE GREATLY ANY ASSISTANCE.

Pamela M. Paz

Pamela M. Paz
1406 Westhampton Dr
Little Rock, Ar. 72211

501-954-8068

SS#- (b)(6)

U.S. Department of Justice
Immigration and Naturalization Service

Notice of Action

THE UNITED STATES OF AMERICA

RECEIPT NUMBER SRC-99-195-50311		CASE TYPE I130 IMMIGRANT PETITION FOR RELATIVE, FIANCE(E), OR ORPHAN	
RECEIVED DATE June 14, 1999	PRIORITY DATE	PETITIONER PAZ, PAMELA M.	
NOTICE DATE June 22, 1999	PAGE 1 of 1	BENEFICIARY PAZ, ARMANDO	

PAMELA M. PAZ
11708 ELMRIDGE CR
LITTLE ROCK AR 72211

Notice Type: Receipt Notice

Amount received: $ 110.00

Section: Husband or wife of U.S. Citizen, 201(b) INA

The above application or petition has been received. It usually takes 180 to 270 days from the date of this receipt for us to process this type of case. Please notify us immediately if any of the above information is incorrect. Our customer service phone number is listed below.

We will send you a written notice as soon as we make a decision on this case. You can also use the phone number below to obtain case status information direct from our automated system 24 hours a day with a touch-tone phone and the receipt number for this case (at the top of this notice).

Please see the additional information on the back. You will be notified separately about any other cases you filed.

IMMIGRATION & NATURALIZATION SERVICE
TEXAS SERVICE CENTER
P O BOX 851488 - DEPT A
MESQUITE TX 75185-1488
Customer Service Telephone: (214) 381-1423

U.S. Department of Justice
Immigration and Naturalization Service

Notice of Action

THE UNITED STATES OF AMERICA

RECEIPT NUMBER SRC-99-195-50311	CASE TYPE I130 IMMIGRANT PETITION FOR RELATIVE, FIANCE(E), OR ORPHAN
RECEIPT DATE June 21, 1999 — PRIORITY DATE June 14, 1999	PETITIONER PAZ, PAMELA M.
NOTICE DATE September 25, 1999 — PAGE 1 of 1	BENEFICIARY A76 928 547 PAZ, ARMANDO

PAMELA M. PAZ
11708 ELMRIDGE CR
LITTLE ROCK AR 72211

Notice Type: Approval Notice
Section: Husband or wife of U.S. Citizen, 201(b) INA

The above petition has been approved. The petition indicates that the person for whom you are petitioning is in the United States and will apply for adjustment of status. He or she should contact the local INS office to obtain Form I-485, Application for Permanent Residence. A copy of this notice should be submitted with the application.

If the person for whom you are petitioning decides to apply for a visa outside the United States based on this petition, the petitioner should file Form I-824, Application for Action on an Approved Application or Petition, with this office to request that we send the petition to the Department of State National Visa Center (NVC).

The NVC processes all approved immigrant visa petitions that require consular action. The NVC also determines which consular post is the appropriate consulate to complete visa processing. It will then forward the approved petition to that consulate.

THIS FORM IS NOT A VISA NOR MAY IT BE USED IN PLACE OF A VISA.

Please see the additional information on the back. You will be notified separately about any other cases you filed.

IMMIGRATION & NATURALIZATION SERVICE (9015440256 X106 107 or 108)
TEXAS SERVICE CENTER
P O BOX 851488 - DEPT A
MESQUITE TX 75185-1488
Customer Service Telephone: (214) 381-1423

800-688 9889 - Fax.
324 5504 - Local

1800-8703676 Forms

Form I-797 (Rev. 09/07/93)N

U.S. Department of Justice
Immigration and Naturalization Service

Notice of Action

THE UNITED STATES OF AMERICA

RECEIPT NUMBER SRC-00-132-51857		CASE TYPE I824 APPLICATION FOR ACTION ON AN APPROVED APPLICATION OR PET.
RECEIVED DATE March 22, 2000	PRIORITY DATE June 14, 1999	PETITIONER PAZ, PAMELA M.
NOTICE DATE March 31, 2000	PAGE 1 of 1	BENEFICIARY A76 928 547 PAZ, ARMANDO

PAMELA M. PAZ
1406 WESTHAMPTON DR
LITTLE ROCK AR 72211

Notice Type: Receipt Notice

Amount received: $ 120.00

The above application or petition has been received. It usually takes 120 to 180 days from the date of this receipt for us to process this type of case. Please notify us immediately if any of the above information is incorrect. Our customer service phone number is listed below.

We will send you a written notice as soon as we make a decision on this case. You can also use the phone number below to obtain case status information direct from our automated system 24 hours a day with a touch-tone phone and the receipt number for this case (at the top of this notice).

Please see the additional information on the back. You will be notified separately about any other cases you filed.
IMMIGRATION & NATURALIZATION SERVICE
TEXAS SERVICE CENTER
P.O. BOX 851488 - DEPT A
MESQUITE TX 75185-1488
Customer Service Telephone: (214) 381-1423

Form I-797C (Rev. 09/07/93)N

NEIL W. OSTERGREN

'00 DEC 8 PM4:03

FAX

12-8-00
(1) POTUS letter + cover to Cohen for reply?
Yes ✓ No __
(2) HRC letter to her office?
Yes ✓ No __
B.

TO: BETTY CURRIE

FROM: NEIL OSTERGREN

DATE: 12/6/00

SUBJECT: HOLIDAY GREETINGS

Number of Pages (Including Cover Page): 3

HAVING BEEN ON THE DISTRIBUTION LIST FOR CHRISTMAS CARDS FROM PRESIDENT & MRS. CLINTON OVER THE YEARS, I WOULD BE REMISS IF I DID NOT EXTEND MY HOLIDAY GREETINGS TO YOU AND THE OTHERS ON THE STAFF. I ALSO WANT TO ADD MY THANKS TO YOU FOR ALL PAST COURTESIES, ESPECIALLY SINCE HAROLD ICKES LEFT AND I STARTED USING YOUR FAX NUMBER INSTEAD OF HIS.

ALL BEST WISHES, TOO, FOR THE YEARS AHEAD

2 Park Avenue
Suite 1400
New York, NY 10016
Phone: ~~212.686.2914~~ 917 534-0438
Fax: 212.686-5652
Email: nwo@banet.net

HSMAI
Past President

NEIL W. OSTERGREN

December 5, 2000

President Bill Clinton
The White House
Washington, DC 20500

Dear Mr. President:

I wrote to you a year ago to thank you for your leadership for the past seven years and I am writing again today to make that eight years. I only wish that there was no two-term limitation that made it impossible for you to run for a third term. Had you been able to do so, I firmly believe that you would have been re-elected.

Our country is better off today because of your leadership and vision and your efforts to bring peace to the middle east are worthy of praise even if peace is not yet at hand.

As I have indicated in past years, I consider your appointment of me as one of your first 42 of 100 delegates to the White House Conference on Travel and Tourism to be the high-water mark of my 43-year career in the hotel and travel industry. I thank you again for appointing me as I also thank Harold Ickes for his role in making my appointment possible.

On another subject, I am very pleased that, your wife has been elected to the United States Senate to represent New York. Hillary will be a real asset, not just for my state but also for the nation, especially with an evenly divided Senate and an almost equally divided House.

Thank you, again, for the past eight years and Best Wishes for the holiday season as well as for the years ahead.

Cordially,

Neil W. Ostergren

2 Park Avenue
Suite 1400
New York, NY 10016
Phone: 917.534.0438
Fax: 212.686.5652
Email: nwo@hanet.net

HSMAI
Past President

NEIL W. OSTERGREN

December 5, 2000

Hon. Hillary Rodham Clinton
The White House
Washington, DC 20500

Dear Mrs. Clinton:

My reason for writing you today is two-fold. First, let me extend my warmest and most sincere "Congratulations!" on your election last month to the United States Senate. As a New Yorker, I am very pleased to have you as one of my senators.

I had in fact intended to become very active in your campaign as far back as August of last year when I was put in touch with Samara Rifkin by Harold Ickes and Janice Enright. Samara and I exchanged e-mails for two months before I realized that my schedule would not permit a fulltime volunteer effort.

Although I was unable to report to 450 Seventh Avenue as I had initially planned, I was able to do my own campaigning for you through dialogue with industry colleagues and friends as well as through e-mail to other contacts. As limited as my effort was, I can assure you that I did get some votes for you, especially upstate where I thought the need was greatest.

On another but related subject, I have been involved with the hotel and travel industries for 43 years. As I have indicated to President Clinton, I consider his appointment of me as one of his first 42 delegates to the White House Conference on Travel and Tourism, out of 100 appointees that he made, to be my high-water mark during my career. In addition to that appointment, I was also very active with other travel-related organizations, including the Travel and Tourism Government Affairs Council, now part of TIA, and the Hospitality Sales & Marketing Association International (HSMAI) of which I am a past president.

If there is any way that I can ever be of any assistance after you assume office within my area of expertise, please feel free to have someone call on me. But for now, Congratulations and Best Wishes as you prepare to become Senator Clinton.

Cordially,

Neil Ostergren

2 Park Avenue
Suite 1400
New York, NY 10016
Phone: 917.534.0438
Fax: 212.686.5652
Email: nwo@banet.net

HSMAI
Past President

U.S. Department of Justice
Office of Justice Programs

THE PRESIDENT HAS SEEN
12-8-00

DRAFT

Bruce
interesting

Bureau of Justice Statistics
Bulletin

12/10

01-25

December 2000, NCJ 184795

Capital Punishment 1999

By Tracy L. Snell
BJS Statistician

Copied
Reed
Podesta

Twenty States executed 98 prisoners during 1999. The number executed was 30 greater than in 1998 and was the largest annual number since the 105 executed in 1951. The prisoners executed during 1999 had been under sentence of death an average of 11 years and 11 months, 13 months more than that for inmates executed in 1998.

At yearend 1999, 3,527 prisoners were under sentence of death. California held the largest number on death row (553), followed by Texas (460), Florida (365), and Pennsylvania (230). Twenty were under a Federal death sentence.

During 1999, 32 States and the Federal prison system received 272 prisoners under sentence of death. Texas (48 admissions), California (43), North Carolina (24) and Florida (20) accounted for half of those sentenced to death in 1999.

During 1999, 98 men were executed: 61 whites, 33 blacks, 2 American Indians, and 2 Asians. The executed inmates included 9 Hispanics (8 white and 1 American Indian). Ninety-four of the executions were carried out by lethal injection; 3, by electrocution; and 1, by lethal gas.

From January 1, 1977, to December 31, 1999, 598 executions took place in 30 States. Sixty-four percent of the executions occurred in 5 States: Texas (199), Virginia (73), Florida (44), Missouri (41), and Louisiana (25).

Highlights

Status of the death penalty, December 31, 1999

Executions during 1999		Number of prisoners under sentence of death		
Texas	35	California	553	
Virginia	14	Texas	460	
Missouri	9	Florida	365	
Arizona	7	Pennsylvania	230	
Oklahoma	6	North Carolina	20	
Arkansas	4	Ohio	19	
North Carolina	4	Alabama	18	
South Carolina	4	Illinois	15	
Alabama	2	Oklahoma	13	
California	2	Georgia	11	
Delaware	2	Arizona	116	Vermont
Florida	1	Tennessee	100	West Virginia
Illinois	1	Nevada	86	Wisconsin
Indiana	1	Louisiana	85	
Kentucky	1	Missouri	83	
Louisiana	1	South Carolina	65	
Nevada	1	Mississippi	60	
Ohio	1			
Pennsylvania	1	21 other jurisdictions	332	
Utah	1			
Total	98	Total	3,527	

• At yearend 1999, 37 States and the Federal prison system held 3,527 prisoners under sentence of death, 2% more than in 1998.

Persons under sentence of death, by race

	1990	1999
White	1,379	1,948
Black	945	1,514
American Indian	25	28
Asian	15	24
Other	1	13

• The 325 Hispanic inmates under sentence of death accounted for 10% of inmates with a known ethnicity.

• Fifty women were under a death sentence in 1999, up from 35 in 1990.

• Among persons for whom arrest information was available, the average age at time of arrest was 28; 2% of inmates were age 17 or younger.

• At yearend the youngest inmate was 18; the oldest was 84.

• Of the 6,365 people under sentence of death between 1977 and 1999, 9% were executed, 3% died by causes other than execution, and 32% received other dispositions.

• The number of States authorizing lethal injection increased from 20 in 1989 to 34 in 1999. In 1999, 96% of all executions were by lethal injection, compared to 44% in 1989.

*For preliminary 2000 data on executions, see page 12.

Capital punishment laws

At yearend 1999 the death penalty was authorized by 38 States and the Federal Government (tables 1 and 2). During 1999 no State enacted new legislation authorizing capital punishment.

Statutory changes

During 1999, 9 States revised statutory provisions relating to the death penalty. Most of the changes involved additional aggravating circumstances and procedural amendments.

By State, the changes were as follows:

Alabama — Added to the criminal code as aggravating circumstances murder of two or more persons in the course of one "scheme" and murder that was one of a series of intentional killings committed by the defendant (Ala. Code 13A-5-49(9),(10)), effective 9/1/99.

Colorado — Added as an aggravating factor any Class 1 felony committed "because of the victim's race, color, ancestry, religion, or national origin" (CRS 16-11-103(5)(n)), effective 7/1/99.

Kansas — Revised the code of criminal procedure. Changes became effective 7/1/99.

Kansas added language to keep confidential the identity of persons carrying out the execution and providing for certification that substances used in the execution will "result in death in a swift and humane manner" (K.S.A. 22-4001).

Kansas legislators revised the statute designating witnesses to the execution: witnesses must be at least 18 years old; the Secretary of Corrections may select 10 witnesses, including family members of the victim; the identity of a witness cannot be divulged by anyone other than the witness himself; any witness may be barred from attending for security reasons (K.S.A. 22-4003).

Kansas also amended its procedural code for issuance of orders by the courts regarding implementation of the execution (K.S.A. 22-4006, 22-4009, and 22-4011 through 22-4014).

Nevada — Added to both the definition of first degree murder and the list of aggravating factors murder committed on school property or in any venue related to a school-sponsored activity when the perpetrator "intended to cause death or substantial bodily harm to more than one person by means of a weapon, device or course of action that would normally be hazardous to the lives of more than one person" (NRS 200.033(14) and NRS 200.030(1)(d)). These changes became effective 10/1/99.

New Jersey — Amended an aggravating factor, felony murder, to include the murder where the victim had a domestic violence restraining order filed against the defendant (NJSA 2C:11-3(c)(4)(g)), effective 9/17/99

Oregon — Amended its procedural code. The changes became effective 10/23/99.

Oregon revised the procedures for issuing and carrying out a death warrant. The revisions established guidelines for a death warrant hearing, which will include a review of the offender's mental competency (ORS 137.463).

Another procedural amendment set forth circumstances under which a person other than the defendant may file for post-conviction relief on behalf of the defendant (ORS 138.510).

Oregon amended procedural guidelines pertaining to appointment of counsel and a defendant's right to waive counsel (ORS 183.590). The amendment also added a provision insulating licensed health care professionals from disciplinary action for participation in an execution.

Lawmakers added a provision requiring that any documents filed on the behalf of the defendant are to be served personally to the defendant by providing a copy to the defendant's current custodian. (ORS 144.126).

Pennsylvania — Revised provisions of the capital statute to clarify the exact time period in which the Pennsylvania Supreme Court is required to provide the Governor with a complete record of court proceedings and its opinion and order in death penalty cases (42 Pa.C.S. §9711(i)), effective 12/12/98.

Texas — Amended the Texas Code of Criminal Procedure to allow during the sentencing phase of a capital trial, upon written request of the defendant's attorney, a court instruction to the jury that any person not sentenced to death will be sentenced to life imprisonment and will not be eligible for parole until the actual time served by the offender equals 40 years (TCCP Art. 37.071 Subsection 2(e)(2)), effective 9/1/99.

Wyoming — Amended an aggravating factor to include among capital felonies murder in the commission of abuse of a child under 16 years of age (W.S. § 6-2-102(h)(xii)), effective 7/1/99.

Automatic review

Of the 38 States with capital punishment statutes at yearend 1999, 36 provided for review of all death sentences regardless of the defendant's wishes. The Federal death penalty procedures did not provide for automatic review after a sentence of death had been imposed.

In Arkansas, case law held that the supreme court review the trial court record for error in capital cases (State v. Robbins, 339 Ark. 379, 5 S.W.3d 51 (1999)). Such review is independent of a defendant's right to waive appeals.

In South Carolina the defendant had the right to waive sentence review if the defendant was deemed competent by the court (State v. Torrence, 473 S.E.2d. 703 (S.C. 1996)). In Mississippi the question of whether a defendant could waive the right to automatic review of the sentence had not been addressed. In Wyoming neither statute nor case law clearly precluded a waiver of appeal.

While most of the 36 States authorized an automatic review of both the conviction and sentence, Idaho, Indiana, Kentucky, Oklahoma, and Tennessee required review of the sentence only. In Idaho review of the conviction had to be filed through appeal or forfeited. In Indiana and Kentucky, a defendant could waive review of the conviction.

The review is usually conducted by the State's highest appellate court regardless of the defendant's wishes. If either the conviction or the sentence was vacated, the case could be remanded to the trial court for additional proceedings or for retrial. As a result of retrial or resentencing, a death sentence could be reimposed.

Table 1. Capital offenses, by State, 1999

Alabama. Capital murder with a finding of at least 1 of 10 aggravating circumstances (Ala. Code § 13A-5-40 and § 13A-5-49).

Arizona. First-degree murder accompanied by at least 1 of 10 aggravating factors.

Arkansas. Capital murder (Ark. Code Ann. 5-10-101) with a finding of at least 1 of 10 aggravating circumstances; treason.

California. First-degree murder with special circumstances; train wrecking; treason; perjury causing execution.

Colorado. First-degree murder with at least 1 of 14 aggravating factors; treason. Capital sentencing excludes persons determined to be mentally retarded.

Connecticut. Capital felony with 9 categories of aggravated homicide (C.G.S. 53a-54b).

Delaware. First-degree murder with aggravating circumstances.

Florida. First-degree murder; felony murder; capital drug trafficking.

Georgia. Murder; kidnaping with bodily injury or ransom where the victim dies; aircraft hijacking; treason.

Idaho. First-degree murder; aggravated kidnaping.

Illinois. First-degree murder with 1 of 15 aggravating circumstances.

Indiana. Murder with 16 aggravating circumstances (IC 35-50-2-9). Capital sentencing excludes persons determined to be mentally retarded.

Kansas. Capital murder with 7 aggravating circumstances (KSA 21-3439). Capital sentencing excludes persons determined to be mentally retarded.

Kentucky. Murder with aggravating factors; kidnaping with aggravating factors.

Louisiana. First-degree murder; aggravated rape of victim under age 12; treason (La. R.S. 14:30, 14:42, and 14:113).

Maryland. First-degree murder, either premeditated or during the commission of a felony, provided that certain death eligibility requirements are satisfied.

Mississippi. Capital murder (97-3-19(2) MCA); aircraft piracy (97-25-55(1) MCA).

Missouri. First-degree murder (565.020 RSMO).

Montana. Capital murder with 1 of 9 aggravating circumstances (46-18-303 MCA); capital sexual assault (45-5-503 MCA).

Nebraska. First-degree murder with a finding of at least 1 statutorily-defined aggravating circumstance.

Nevada. First-degree murder with 14 aggravating circumstances.

New Hampshire. Six categories of capital murder (RSA 630:1 and RSA 630:5).

New Jersey. Purposeful or knowing murder by one's own conduct; contract murder; solicitation by command or threat in furtherance of a narcotics conspiracy (NJSA 2C:11-3C).

New Mexico. First-degree murder in conjunction with a finding of at least 1 of 7 aggravating circumstances (Section 30-2-1 A, NMSA).

New York. First-degree murder with 1 of 12 aggravating factors. Capital sentencing excludes persons determined to be mentally retarded.

North Carolina. First-degree murder (N.C.G.S. 14-17).

Ohio. Aggravated murder with at least 1 of 8 aggravating circumstances. (O.R.C. secs. 2903.01, 2929.01, and 2929.04).

Oklahoma. First-degree murder in conjunction with a finding of at least 1 of 8 statutorily defined aggravating circumstances.

Oregon. Aggravated murder (ORS 163.095).

Pennsylvania. First-degree murder with 18 aggravating circumstances.

South Carolina. Murder with 1 of 10 aggravating circumstances (§ 16-3-20(C)(a)). Mental retardation is a mitigating factor.

South Dakota. First-degree murder with 1 of 10 aggravating circumstances; aggravated kidnaping.

Tennessee. First-degree murder.

Texas. Criminal homicide with 1 of 8 aggravating circumstances (TX Penal Code 19.03).

Utah. Aggravated murder (76-5-202, Utah Code annotated).

Virginia. First-degree murder with 1 of 12 aggravating circumstances (VA Code § 18.2-31).

Washington. Aggravated first-degree murder.

Wyoming. First-degree murder.

Table 2. Federal laws providing for the death penalty, 1999

8 U.S.C. 1342 — Murder related to the smuggling of aliens.

18 U.S.C. 32-34 — Destruction of aircraft, motor vehicles, or related facilities resulting in death.

18 U.S.C. 36 — Murder committed during a drug-related drive-by shooting.

18 U.S.C. 37 — Murder committed at an airport serving international civil aviation.

18 U.S.C. 115(b)(3) [by cross-reference to 18 U.S.C. 1111] — Retaliatory murder of a member of the immediate family of law enforcement officials.

18 U.S.C. 241, 242, 245, 247 — Civil rights offenses resulting in death.

18 U.S.C. 351 [by cross-reference to 18 U.S.C. 1111] — Murder of a member of Congress, an important executive official, or a Supreme Court Justice.

18 U.S.C. 794 — Espionage.

18 U.S.C. 844(d), (f), (i) — Death resulting from offenses involving transportation of explosives, destruction of government property, or destruction of property related to foreign or interstate commerce.

18 U.S.C. 924(i) — Murder committed by the use of a firearm during a crime of violence or a drug-trafficking crime.

18 U.S.C. 930 — Murder committed in a Federal Government facility.

18 U.S.C. 1091 — Genocide.

18 U.S.C. 1111 — First-degree murder.

18 U.S.C. 1114 — Murder of a Federal judge or law enforcement official.

18 U.S.C. 1116 — Murder of a foreign official.

18 U.S.C. 1118 — Murder by a Federal prisoner.

18 U.S.C. 1119 — Murder of a U.S. national in a foreign country.

18 U.S.C. 1120 — Murder by an escaped Federal prisoner already sentenced to life imprisonment.

18 U.S.C. 1121 — Murder of a State or local law enforcement official or other person aiding in a Federal investigation; murder of a State correctional officer.

18 U.S.C. 1201 — Murder during a kidnaping.

18 U.S.C. 1203 — Murder during a hostage taking.

18 U.S.C. 1503 — Murder of a court officer or juror.

18 U.S.C. 1512 — Murder with the intent of preventing testimony by a witness, victim, or informant.

18 U.S.C. 1513 — Retaliatory murder of a witness, victim, or informant.

18 U.S.C. 1716 — Mailing of injurious articles with intent to kill or resulting in death.

18 U.S.C. 1751 [by cross-reference to 18 U.S.C. 1111] — Assassination or kidnaping resulting in the death of the President or Vice President.

18 U.S.C. 1958 — Murder for hire.

18 U.S.C. 1959 — Murder involved in a racketeering offense.

18 U.S.C. 1992 — Willful wrecking of a train resulting in death.

18 U.S.C. 2113 — Bank-robbery-related murder or kidnaping.

18 U.S.C. 2119 — Murder related to a carjacking.

18 U.S.C. 2245 — Murder related to rape or child molestation.

18 U.S.C. 2251 — Murder related to sexual exploitation of children.

18 U.S.C. 2280 — Murder committed during an offense against maritime navigation.

18 U.S.C. 2281 — Murder committed during an offense against a maritime fixed platform.

18 U.S.C. 2332 — Terrorist murder of a U.S. national in another country.

18 U.S.C. 2332a — Murder by the use of a weapon of mass destruction.

18 U.S.C. 2340 — Murder involving torture.

18 U.S.C. 2381 — Treason.

21 U.S.C. 848(e) — Murder related to a continuing criminal enterprise or related murder of a Federal, State, or local law enforcement officer.

49 U.S.C. 1472-1473 — Death resulting from aircraft hijacking.

Method of execution

As of December 31, 1999, lethal injection was the predominant method of execution (34 States) (table 3).

Eleven States authorized electrocution; 4 States, lethal gas; 8 States, hanging; and 3 States, a firing squad.

Sixteen States authorized more than 1 method — lethal injection and an alternative method — generally at the election of the condemned prisoner; however, 5 of these 16 stipulated which method must be used, depending on the date of sentencing; 1 authorized hanging only if lethal injection could not be given; and if lethal injection is ever ruled unconstitutional, 1 authorized lethal gas, and 1 authorized electrocution.

The Federal Government authorizes the method of execution under two different laws. Offenses prosecuted under 28 CFR, Part 26, mandate lethal injection, while those prosecuted under the Violent Crime Control act of 1994 (18 U.S.C. 3596) call for the method of the State in which the conviction took place.

Minimum age

In 1999 seven jurisdictions did not specify a minimum age for which the death penalty could be imposed (table 4).

In some States the minimum age was set forth in the statutory provisions that determine the age at which a juvenile may be transferred to criminal court for trial as an adult. Fourteen States and the Federal system required a minimum age of 18. Seventeen States indicated an age of eligibility between 14 and 17.

Table 3. Method of execution, by State, 1999

Lethal injection		Electrocution	Lethal gas	Hanging	Firing squad
Arizona[a,b]	New Hampshire[a,e]	Alabama	Arizona[a,b]	Delaware[a,c]	Idaho[a]
Arkansas[a,d]	New Jersey	Arkansas[a,d]	California[a]	New Hampshire[a,e]	Oklahoma[f]
California[a]	New Mexico	Florida	Missouri[a]	Washington[a]	Utah[a]
Colorado	New York	Georgia	Wyoming[a,g]		
Connecticut	North Carolina	Kentucky[a,h]			
Delaware[a,c]	Ohio[a]	Nebraska			
Idaho[a]	Oklahoma[a]	Ohio[a]			
Illinois	Oregon	Oklahoma[f]			
Indiana	Pennsylvania	South Carolina[a]			
Kansas	South Carolina[a]	Tennessee[a,i]			
Kentucky[a,h]	South Dakota	Virginia[a]			
Louisiana	Tennessee[a,i]				
Maryland	Texas				
Mississippi	Utah[a]				
Missouri[a]	Virginia[a]				
Montana	Washington[a]				
Nevada	Wyoming[a]				

Note: The method of execution of Federal prisoners is lethal injection, pursuant to 28 CFR, Part 26. For offenses under the Violent Crime Control and Law Enforcement Act of 1994, the method is that of the State in which the conviction took place, pursuant to 18 U.S.C. 3596.
[a]Authorizes 2 methods of execution.
[b]Arizona authorizes lethal injection for persons whose capital sentence was received after 11/15/92; for those sentenced before that date, the condemned may select lethal injection or lethal gas.
[c]Delaware authorizes lethal injection for those whose capital offense occurred after 6/13/86; for those whose offense occurred before that date, the condemned may select lethal injection or hanging.
[d]Arkansas authorizes lethal injection for those whose capital offense occurred on or after 7/4/83; for those whose offense occurred before that date, the condemned may select lethal injection or electrocution.
[e]New Hampshire authorizes hanging only if lethal injection cannot be given.
[f]Oklahoma authorizes electrocution if lethal injection is ever held to be unconstitutional, and firing squad if both lethal injection and electrocution are held unconstitutional.
[g]Wyoming authorizes lethal gas if lethal injection is ever held to be unconstitutional.
[h]Kentucky authorizes lethal injection for persons whose capital sentence was received on or after 3/31/98; for those sentenced before that date, the condemned may select lethal injection or electrocution.
[i]Tennessee authorizes lethal injection for those whose capital offense occurred after 12/31/98; those whose offense occurred before that date may select lethal injection or electrocution.

Table 4. Minimum age authorized for capital punishment, 1999

Age 16 or less	Age 17	Age 18	None specified
Alabama (16)	Georgia	California	Arizona
Arkansas (14)[a]	New Hampshire	Colorado	Idaho
Delaware (16)	North Carolina[b]	Connecticut[c]	Louisiana
Florida (16)	Texas	Federal system	Montana[d]
Indiana (16)		Illinois	Pennsylvania
Kentucky (16)		Kansas	South Carolina
Mississippi (16)[e]		Maryland	South Dakota[f]
Missouri (16)		Nebraska	
Nevada (16)		New Jersey	
Oklahoma (16)		New Mexico	
Utah(14)		New York	
Virginia (14)[g]		Ohio	
Wyoming (16)		Oregon	
		Tennessee	
		Washington	

Note: Reporting by States reflects interpretations by State attorney generals' offices and may differ from previously reported ages.
[a]See Ark. Code Ann. 9-27-318(c)(2)(Supp. 1999).
[b]Age required is 17 unless the murderer was incarcerated for murder when a subsequent murder occurred; then the age may be 14.
[c]See Conn. Gen. Stat. 53a-46a(g)(1).
[d]Montana law specifies that offenders tried under the capital sexual assault statute be 18 or older. Age may be a mitigating factor for other capital crimes.
[e]The minimum age defined by statute is 13, but the effective age is 16 based on interpretation of U.S. Supreme Court decisions by the Mississippi Supreme Court.
[f]Juveniles may be transferred to adult court. Age can be a mitigating factor.
[g]The minimum age for transfer to adult court by statute is 14, but the effective age is 16 based on interpretation of U.S. Supreme Court decisions by the State attorney general's office.

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Table 5. Prisoners under sentence of death, by region, State, and race, 1998 and 1999

Region and State[b]	Prisoners under sentence of death, 12/31/98			Received under sentence of death			Removed from death row (excluding executions)[a]			Executed			Prisoners under sentence of death, 12/31/99		
	Total[c]	White[d]	Black[d]	Total[c]	White	Black	Total[c]	White	Black	Total[c]	White	Black	Total[c]	White	Black
U.S. total	3,465	1,917	1,489	272	157	104	112	65	46	98	61	33	3,527	1,948	1,514
Federal[e,j]	19	5	13	1	0	1	0	0	0	0	0	0	20	5	14
State	3,446	1,912	1,476	271	157	103	112	65	46	98	61	33	3,507	1,943	1,500
Northeast	247	86	150	21	12	8	12	8	4	1	1	0	258	89	154
Connecticut	5	2	3	1	1	0	0	0	0	0	0	0	6	3	3
New Hampshire	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
New Jersey	14	8	6	1	1	0	1	1	0	0	0	0	14	8	6
New York	1	0	1	4	4	0	0	0	0	0	0	0	5	4	1
Pennsylvania	227	76	140	15	6	8	11	7	4	1	1	0	230	74	144
Midwest	488	242	254	29	21	8	19	10	9	12	7	5	496	246	248
Illinois	158	59	99	8	3	5	9	5	4	1	1	0	156	56	100
Indiana	45	30	15	2	2	0	3	1	2	1	1	0	43	30	13
Kansas	2	2	0	1	1	0	0	0	0	0	0	0	3	3	0
Missouri[g]	89	47	42	7	6	1	4	2	2	9	4	5	83	47	36
Nebraska	11	9	1	0	0	0	2	1	1	0	0	0	9	8	0
Ohio	191	93	97	10	8	2	1	1	0	1	1	0	199	99	99
South Dakota	2	2	0	1	1	0	0	0	0	0	0	0	3	3	0
South	1,902	1,050	830	162	87	72	74	42	31	74	46	27	1,916	1,049	844
Alabama	178	95	82	12	6	6	8	7	1	2	0	2	180	94	85
Arkansas	40	20	20	5	1	4	1	1	0	4	4	0	40	16	24
Delaware	17	7	10	2	2	0	0	0	0	2	1	1	17	8	9
Florida	376	242	132	20	11	9	29	17	12	1	1	0	365	235	129
Georgia[h]	109	57	52	8	4	3	1	1	0	0	0	0	116	60	55
Kentucky	37	29	8	4	4	0	1	0	1	1	1	0	39	32	7
Louisiana	77	24	53	10	3	6	1	0	1	1	0	1	85	27	57
Maryland	17	5	12	1	0	1	1	1	0	0	0	0	17	4	13
Mississippi	63	28	35	4	1	3	7	3	4	0	0	0	60	26	34
North Carolina	187	79	102	24	8	15	5	3	2	4	2	2	202	82	113
Oklahoma[i]	144	88	48	6	2	4	5	2	2	5	3	2	139	85	48
South Carolina	68	33	35	5	2	3	4	0	4	4	2	2	65	33	32
Tennessee	99	63	34	6	5	1	5	5	0	0	0	0	100	63	35
Texas[j]	452	258	180	48	34	14	5	2	3	35	24	11	460	266	190
Virginia	39	22	17	7	4	3	1	0	1	14	8	6	31	18	13
West	799	534	242	89	37	15	7	5	2	11	7	1	840	559	254
Arizona[e,k]	121	105	11	6	4	2	4	3	1	7	6	0	116	100	12
California	512	310	188	43	25	13	0	0	0	2	0	1	553	335	200
Colorado	3	1	2	1	1	0	0	0	0	0	0	0	4	2	2
Idaho	20	20	0	1	1	0	0	0	0	0	0	0	21	21	0
Montana	6	5	0	0	0	0	0	0	0	0	0	0	6	5	0
Nevada	84	48	35	5	4	0	2	1	1	1	0	0	86	51	34
New Mexico	4	4	0	0	0	0	0	0	0	0	0	0	4	4	0
Oregon	23	22	0	2	2	0	0	0	0	0	0	0	25	24	0
Utah	10	7	2	1	0	0	0	0	0	1	1	0	10	6	2
Washington	14	10	4	0	0	0	1	1	0	0	0	0	13	9	4
Wyoming	2	2	0	0	0	0	0	0	0	0	0	0	2	2	0

Note: Some figures shown for yearend 1998 are revised from those reported in *Capital Punishment 1998*, NCJ 179012. The revised figures include 20 inmates who were either reported late to the National Prisoner Statistics program or were not in custody of State correctional authorities on 12/31/98 (5 in Pennsylvania; 2 each in Illinois, Florida, Louisiana, Tennessee, and Texas; and 1 each in Kansas, Kentucky, Arizona, California, and Idaho) and exclude 8 inmates who were relieved of the death sentence on or before 12/31/98 (2 each in Pennsylvania and Mississippi; and 1 each in Illinois, Missouri, Texas, and California. Data for 12/31/98 also includes 1 inmate in Florida who was erroneously reported as being removed from under sentence of death.

[a]Includes 19 deaths from natural causes (5 in Florida; 4 in Tennessee; 3 in Texas; 2 in Pennsylvania; and 1 each in Ohio, Alabama, Georgia, North Carolina, and Arizona); 2 suicides (in Alabama and Florida); 2 inmates murdered by another inmate (in New Jersey and Mississippi); and 1 inmate who died following an altercation with correctional officers (in Florida).

[b]Alaska, the District of Columbia, Hawaii, Iowa, Maine, Massachusetts, Michigan, Minnesota, North Dakota, Rhode Island, Vermont, West Virginia, and Wisconsin did not authorize the death penalty as of 12/31/98.

[c]Totals include persons of other races.

[d]The reporting of race and Hispanic origin differs from that presented in tables 9 and 11. In this table white and black inmates include Hispanics.

[e]Excludes persons held under Armed Forces jurisdiction with a military death sentence for murder.

[f]Race has been changed from white to Asian for 1 inmate.

[g]Race has been changed from black to white for 1 inmate.

[h]Race has been changed from American Indian to white for 1 inmate.

[i]Race has been changed from white to black for 1 inmate.

[j]Race has been changed from "other" to white for 1 inmate.

Characteristics of prisoners under sentence of death at yearend 1999

Thirty-seven States and the Federal prison system held a total of 3,527 prisoners under sentence of death on December 31, 1999, a gain of 62, or 1.8% more than at the end of 1998 (table 5).

The Federal prison system count rose from 19 at yearend 1998 to 20 at yearend 1999. Three States reported 39% of the Nation's death row population: California (553), Texas (460), and Florida (365). Of the 39 jurisdictions with statutes authorizing the death penalty during 1999, New Hampshire had no one under a capital sentence, and Kansas, South Dakota, Colorado, New Mexico, and Wyoming had 4 or fewer.

Among the 38 jurisdictions with prisoners under sentence of death at yearend 1999, 19 had more inmates than a year earlier, 11 had fewer inmates, and 8 had the same number. California had an increase of 41, followed by North Carolina (15). Florida had the largest decrease (10).

During 1999 the number of black inmates under sentence of death rose by 26; the number of whites increased by 31; and the number of persons of other races rose from 59 to 65.

The number of Hispanics sentenced to death rose from 315 to 325 during 1999 (table 6). Thirty-three Hispanics were received under sentence of death, 14 were removed from death row, and 9 were executed. Three-quarters of the Hispanics were held in 3 States: California (107), Texas (100), and Florida (34).

During 1999 the number of women sentenced to be executed increased from 49 to 50. Three women were received under sentence of death and two were removed from death row.

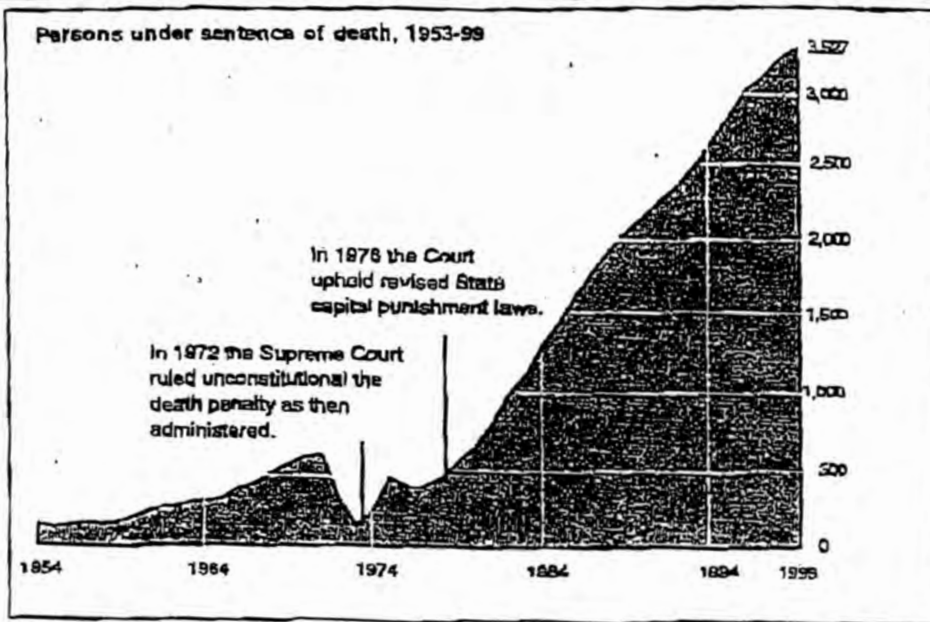

Figure 1

Table 6. Hispanics and women under sentence of death, by State, 1998 and 1999

Region and State	Under sentence of death, 12/31/98[a]		Received under sentence of death		Death sentence removed[b]		Under sentence of death, 12/31/99	
	Hispanics	Women	Hispanics	Women	Hispanics	Women	Hispanics	Women
U.S. total[c]	315	48	33	3	23	2	325	50
Alabama	0	3	0	0	0	1	0	2
Arizona	20	1	1	0	2	0	19	1
Arkansas	1	1	0	0	0	0	1	1
California	97	10	10	1	0	0	107	11
Colorado	1	0	1	0	0	0	2	0
Florida	43	4	1	0	10	0	34	4
Georgia	1	1	1	0	0	0	2	1
Idaho	0	1	0	0	0	0	0	1
Illinois	8	3	0	0	1	0	7	3
Indiana	2	1	0	0	0	0	2	1
Louisiana	1	1	0	0	0	0	1	1
Mississippi	1	1	0	0	0	0	1	1
Missouri	0	1	0	0	0	0	0	1
Nevada	8	1	1	0	0	0	9	1
New Mexico	1	0	0	0	0	0	1	0
New York	0	0	1	0	0	0	1	0
North Carolina	3	3	0	1	1	0	2	4
Ohio	5	0	0	0	0	0	5	0
Oklahoma	7	3	0	0	1	0	6	3
Oregon	2	0	0	0	0	0	2	0
Pennsylvania	17	4	1	0	0	1	18	3
Tennessee	1	2	1	0	0	0	2	2
Texas	93	8	15	1	6	0	100	9
Utah	2	0	0	0	0	0	2	0

[a]The count of Hispanics and women under sentence of death at yearend 1998 has been revised: an inmate in Texas was erroneously reported as Hispanic in previous years, and a female inmate in Louisiana was previously unreported.
[b]Includes nine Hispanic men who were executed in 1999 (7 in Texas and 1 each in Oklahoma and Arizona).
[c]Yearend totals include one Hispanic male under Federal jurisdiction.

Women were under sentence of death in 18 States. More than half of all women on death row at yearend were in California, Texas, Florida, and North Carolina.

State	Women under sentence of death, 12/31/99 Total	White	Black
Total	50	29	1
California	11	7	2
Texas	9	6	3
Florida	4	2	2
North Carolina	4	3	1
Oklahoma	3	2	1
Pennsylvania	3	0	3
Illinois	3	0	3
Tennessee	2	2	0
Alabama	2	1	1
Missouri	1	1	0
Arkansas	1	1	0
Georgia	1	1	0
Mississippi	1	1	0
Arizona	1	1	0
Idaho	1	1	0
Indiana	1	0	1
Louisiana	1	0	1
Nevada	1	0	1

Men were 99% (3,477) of all prisoners under sentence of death (table 7). Whites predominated (55%); blacks comprised 43%; and other races (1.8%) included 28 American Indians, 24 Asians, and 13 persons of unknown race. Among those for whom ethnicity was known, 10% were Hispanic.

The gender, race, and Hispanic origin of those under sentence of death at yearend 1999 were as follows:

	Persons under sentence of death, by gender, race, and Hispanic origin, 12/31/99 White	Black	Other
Male	1,919	1,495	63
Hispanic	296	13	12
Female	29	19	2
Hispanic	1	1	2

Among inmates under sentence of death on December 31, 1999, for whom information on education was available, three-fourths had either completed high school (38%) or finished 9th, 10th, or 11th grade (38%). The percentage who had not gone beyond eighth grade (14%) was larger than that of inmates who had attended some college (10%). The median level of education was the 11th grade.

Table 7. Demographic characteristics of prisoners under sentence of death, 1999

Characteristic	Prisoners under sentence of death, 1999 Yearend	Admissions	Removals
Total number under sentence of death	3,527	272	210
Gender			
Male	98.6%	98.9%	99%
Female	1.4	1.1	1.0
Race			
White	55.2%	57.7%	60.0%
Black	42.9	38.2	37.6
Other*	1.8	4.0	2.4
Hispanic origin			
Hispanic	10.2%	14.9%	11.6%
Non-Hispanic	89.8	84.1	88.4
Education			
8th grade or less	13.9%	14.2%	20.3%
9th-11th grade	37.7	38.6	38.5
High school graduate/GED	38.2	38.6	33.5
Any college	10.1	8.6	7.7
Median	11th	11th	11th
Marital status			
Married	22.9%	16.5%	31.7%
Divorced/separated	21.8	24.5	19.6
Widowed	2.8	3.8	2.6
Never married	53.0	55.3	46.0

Note: Calculations are based on those cases for which data were reported. Missing data by category were as follows:

	Yearend	Admissions	Removals
Hispanic origin	332	51	11
Education	499	39	28
Marital status	341	35	21

*At yearend 1998, "other" consisted of 27 American Indians, 20 Asians, and 12 self-identifiedHispanics. During 1999, 4 American Indians, 6 Asians, and 1 self-identified Hispanics were admitted; 3 American Indians and 2 Asians were removed.

Persons under sentence of death, by race, 1968-99

Number under sentence of death on December 31

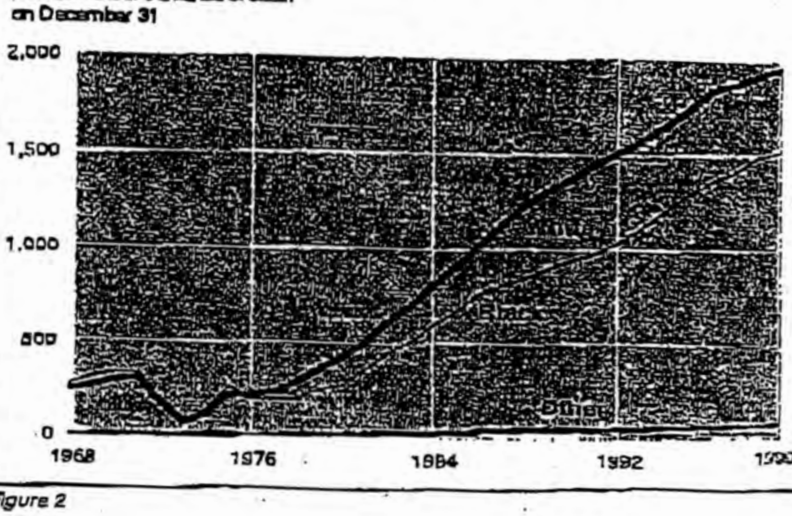

Figure 2

Of inmates under a capital sentence and with reported marital status, more than half had never married; more than a fifth were married at the time of sentencing; and a fifth were divorced, separated, or widowed.

Among all inmates under sentence of death for whom date of arrest information was available, about half were age 20 to 29 at the time of arrest for their capital offense; 13% were age 19 or younger; and less than 1% were age 55 or older (table 8). The average age at time of arrest was 28 years. On December 31, 1999, 37% of all inmates were age 30 to 39, and 69% were age 25 to 44. The youngest offender under sentence of death was age 18; the oldest was 84.

Table 8. Age at time of arrest for capital offense and age of prisoners under sentence of death at yearend 1999

	Prisoners under sentence of death			
	At time of arrest		On December 31, 1999	
Age	Number*	Percent	Number	Percent
Total number under sentence of death on 12/31/99	3,232	100 %	3,527	100 %
17 or younger	80	2.5	0	
18-19	343	10.6	16	0.5
20-24	871	26.9	251	7.1
25-29	729	22.6	514	14.6
30-34	534	16.5	594	16.8
35-39	341	10.6	707	20.0
40-44	170	5.3	601	17.0
45-49	101	3.1	370	10.5
50-54	36	1.1	280	7.9
55-59	16	0.5	114	3.2
60 or older	11	0.3	80	2.3
Mean age	28 yrs		38 yrs	
Median age	27 yrs		37 yrs	

Note: The youngest person under sentence of death was a black male in Texas, born in December 1981 and sentenced to death in November 1999. The oldest person under sentence of death was a white male in Arizona, born in September 1915 and sentenced to death in June 1983.
*Excludes 295 inmates for whom the date of arrest for capital offense was not available.

Entries and removals of persons under sentence of death

Between January 1 and December 31, 1999, 32 State prison systems reported receiving 271 prisoners under sentence of death; the Federal Bureau of Prisons received 1 inmate. Half of the inmates were received in 4 States: Texas (48), California (43), North Carolina (24), and Florida (20).

All 272 prisoners who had been received under sentence of death had been convicted of murder. By gender and race, 155 were white men, 103 were black men, 4 were American Indian men, 6 were Asian men, 1 was a self-identified Hispanic male, 2 were white women, and 1 was a black woman. Of the 272 new admissions, 33 were Hispanic men.

Twenty-one States reported a total of 88 persons whose sentence of death was overturned or removed. Appeals courts vacated 48 sentences while upholding the convictions and vacated 31 sentences while overturning the convictions. Florida (22 exits) had the largest number of vacated capital sentences. Illinois reported two commutations of death sentences; Alabama, Arkansas, Maryland, Missouri, North Carolina, and Virginia each reported one. Illinois removed one inmate when the Governor granted him a pardon.

As of December 31, 1999, 58 of the 88 persons who were formerly under sentence of death were serving a reduced sentence, 17 were awaiting a new trial, 9 were awaiting resentencing, 1 was found not guilty upon retrial, 2 had all capital charges dropped, and 1 had no action taken after being removed from under sentence of death.

In addition, 24 persons died while under sentence of death in 1999. Nineteen of these deaths were from natural causes — 5 in Florida, 4 in Tennessee, 3 in Texas, 2 in Pennsylvania, and 1 each in Ohio, Alabama, Georgia, North Carolina, and Arizona. Two suicides occurred — 1 each in Alabama and Florida. Two inmates were killed by other inmates — 1 each in New Jersey and Mississippi. One inmate in Florida died from injuries received during an altercation with a correctional officer.

From 1977, the year after the Supreme Court upheld the constitutionality of revised State capital punishment laws, to 1999, a total of 5,985 persons entered prison under sentence of death. During these 23 years, 598 persons were executed, and 2,240 were removed from under a death sentence by appellate court decisions and reviews, commutations, or death.[1]

Among individuals who received a death sentence between 1977 and 1999, 2,956 (49%) were white, 2,453 (41%) were black, 483 (8%) were Hispanic, and 93 (2%) were of other races. The distribution by race and Hispanic origin of the 2,240 inmates who were removed from death row between 1977 and 1999 was as follows: 1,156 whites (52%), 922 blacks (41%), 130 Hispanics (6%), and 32 persons of other races (1%). Of the 598 who were executed, 334 (56%) were white, 211 (35%) were black, 43 (7%) were Hispanic, and 10 (2%) were of other races.

[1]An individual may have been received and removed from under sentence of death more than once. Data are based on the most recent sentence.

Criminal history of inmates under sentence of death in 1999

Among inmates under a death sentence on December 31, 1999, for whom criminal history information was available, 64% had past felony convictions, including 8% with at least one previous homicide conviction (table 9).

Among those for whom legal status at the time of the capital offense was reported, 40% had an active criminal justice status. Less than half of these were on parole, and a quarter were on probation. The others had charges pending, were incarcerated, had escaped from incarceration, or had some other criminal justice status.

Criminal history patterns differed by race and Hispanic origin. More blacks (68%) than whites (62%) or Hispanics (58%) had a prior felony conviction.

About the same percentage of blacks (9%), whites (8%), and Hispanics (7%) had a prior homicide conviction. A slightly higher percentage of Hispanics (24%) or blacks (19%) than whites (16%) were on parole when arrested for their capital offense.

Since 1988, data have been collected on the number of death sentences imposed on entering inmates. Among the 3,448 individuals received under sentence of death during that time, about 1 in every 7 entered with 2 or more death sentences.

Number of death sentences received	Inmates
Total	100%
1	85
2	10
3 or more	5
Number admitted under sentence of death, 1988-99	3,448

Table 9. Criminal history profile of prisoners under sentence of death, by race and Hispanic origin, 1999

	Prisoners under sentence of death							
	Number				Percent[a]			
	All[b]	White	Black	Hispanic	All[b]	White	Black	Hispanic
U.S. total	3,527	1,651	1,500	325	100%	100%	100%	100%
Prior felony convictions								
Yes	2,085	949	939	172	64.1%	61.9%	68.3%	58.3%
No	1,166	584	436	123	35.9	38.1	31.7	41.7
Not reported	276							
Prior homicide convictions								
Yes	290	134	128	22	8.4%	8.3%	8.7%	6.9%
No	3,166	1,487	1,337	297	91.6	91.7	91.3	93.1
Not reported	71							
Legal status at time of capital offense								
Charges pending	228	127	90	11	7.4%	8.6%	6.9%	4.0%
Probation	311	134	144	27	10.0	9.1	11.1	9.8
Parole	554	229	250	65	17.9	15.5	19.2	23.8
Prison escapee	39	25	10	3	1.3	1.7	0.8	1.1
Incarcerated	86	36	44	5	2.8	2.4	3.4	1.8
Other status	21	11	8	1	0.7	0.7	0.6	0.4
None	1,860	916	755	161	60.0	62.0	58.0	58.0
Not reported	428							

[a]Percentages are based on those offenders for whom data were reported. Detail may not add to total because of rounding.
[b]Includes persons of other races.

Executions

According to data collected by the Federal Government, from 1930 to 1999, 4,457 persons were executed under civil authority (table 10).[2]

[2]Military authorities carried out an additional 160 executions, 1930-99.

Table 10. Number of persons executed, by jurisdiction, 1930-99

State	Number executed: Since 1930	Since 1977
U.S. total	4,457	598
Texas	496	199
Georgia	389	23
New York	329	
California	299	7
North Carolina	278	15
Florida	214	44
South Carolina	186	24
Ohio	173	1
Virginia	165	73
Louisiana	158	25
Mississippi	158	4
Pennsylvania	155	3
Alabama	154	19
Arkansas	139	21
Kentucky	105	2
Missouri	103	41
Illinois	102	12
Tennessee	93	
Oklahoma	79	19
New Jersey	74	
Maryland	71	3
Arizona	57	19
Washington	50	3
Indiana	48	7
Colorado	48	1
District of Columbia	40	
West Virginia	40	
Nevada	37	8
Federal system	33	
Massachusetts	27	
Delaware	22	10
Oregon	21	2
Connecticut	21	
Utah	19	6
Iowa	18	
Kansas	15	
Montana	8	2
Wyoming	6	1
New Mexico	8	
Nebraska	7	3
Idaho	4	1
Vermont	4	
New Hampshire	1	
South Dakota	1	

After the Supreme Court reinstated the death penalty in 1976, 30 States executed 598 prisoners:

1977	1	1990	23
1979	2	1991	14
1981	1	1992	31
1982	2	1993	38
1983	5	1994	31
1984	21	1995	56
1985	18	1996	45
1986	18	1997	74
1987	25	1998	68
1988	11	1999	98
1989	16		

During this 23-year period, 6 States executed 406 prisoners: Texas (199), Virginia (73), Florida (44), Missouri (41), Louisiana (25), and South Carolina (24). These States accounted for two-thirds of all executions. Between 1977 and 1999, 331 white non-Hispanic men, 211 black non-Hispanic men, 43 Hispanic men, 5 American Indian men, 5 Asian men, and 3 white non-Hispanic women were executed.

During 1999 Texas carried out 35 executions; Virginia executed 14 persons; Missouri, 9; Arizona, 7; Oklahoma, 6; Arkansas, North Carolina, South Carolina, 4 each; Alabama, California, and Delaware, 2 each: and Florida, Illinois, Indiana, Kentucky, Louisiana, Nevada, Ohio Pennsylvania, Utah, and Washington, 1 each. All persons executed in 1999 were male. Fifty-three were white; 33 were black; 9 were Hispanic; 1 was American Indian: and 2 were Asian.

From 1977 to 1999, 6,365 prisoners were under death sentences for varying lengths of time (table 11). The 598 executions accounted for 9% of those at risk. A total of 2,240 prisoners (35% of those at risk) received other dispositions. About the same percentage of whites (11%), blacks (8%), and Hispanics (9%) were executed. Somewhat larger percentages of whites (37%) and blacks (35%) than Hispanics (26%) were removed from under a death sentence by means other than execution.

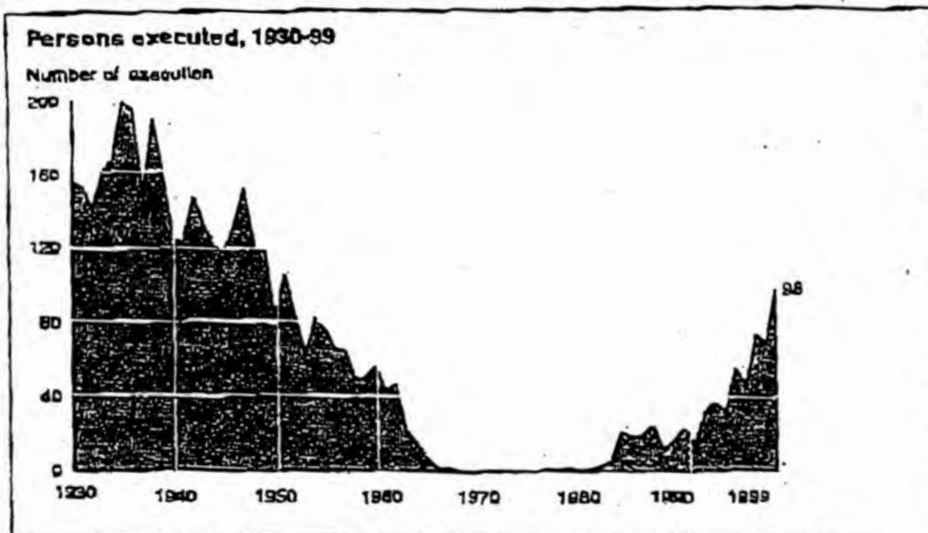

Figure 3

Table 11. Prisoners under sentence of death who were executed or received other dispositions, by race and Hispanic origin, 1977-99

	Total under sentence of death, 1977-99[a]	Prisoners executed		Prisoners who received other dispositions[a]	
Race/Hispanic origin[b]		Number	Percent of total	Number	Percent of total
Total	6,365	598	9.4%	2,240	35.2%
White	3,141	334	10.6%	1,156	36.8%
Black	2,633	211	8.0	922	35.0
Hispanic	498	43	8.6	130	26.1
Other	93	10	10.8	32	34.4

[a]Includes persons removed from under a sentence of death because of statutes struck down on appeal, sentences or convictions vacated, commutations, or death other than by execution.
[b]White, black, and other categories exclude Hispanics.
[c]Includes persons sentenced to death prior to 1977 who were still under sentence of death on 12/31/99 (9), persons sentenced to death prior to 1977 whose death sentence was removed between 1977 and 12/31/99 (371), and persons sentenced to death between 1977 and 12/31/99 (5,985).

Among prisoners executed from 1977 to 1999, the average time spent between the imposition of the most recent sentence received and execution was nearly 10 years (table 12). White prisoners had spent an average of 9½ years, and black prisoners, 10½ years. The 98 prisoners executed in 1999 were under sentence of death an average of 11 years and 11 months.

For the 598 prisoners executed between 1977 and 1999, the most common method of execution was lethal injection (438). Other methods were electrocution (144), lethal gas (11), hanging (3), and firing squad (2).

Method of execution	Executions, 1977-99 White	Black	Hispanic	American Indian	Asian
Total	334	211	43	5	5
Lethal injection	246	142	41	4	5
Electrocution	75	66	2	1	0
Lethal gas	8	3	0	0	0
Hanging	3	0	0	0	0
Firing squad	2	0	0	0	0

Among prisoners under sentence of death at yearend 1999, the average time spent in prison was 7 years and 7 months, up 3 months from that of 1998.

The median time between the imposition of a death sentence and yearend 1999 was 78 months. Overall, the average time for women was 6.6 years, slightly less than that for men (7.7 years). On average, whites, blacks, and Hispanics had spent from 80 to 95 months under a sentence of death.

Inmates under sentence of death	Elapsed time since sentencing Mean	Median
Total	91 mo	78 mo
Male	92	78
Female	79	75
White	95	83
Black	90	77
Hispanic	80	63

Table 12. Time under sentence of death and execution, by race, 1977-99

Year of execution	Number executed All races*	White	Black	Average elapsed time from sentence to execution for: All races*	White	Black
Total	598	374	213	118 mo	114 mo	126 mo
1977-83	11	9	2	51 mo	49 mo	58 mo
1984	21	13	8	74	76	71
1985	18	11	7	71	65	80
1986	18	11	7	87	78	102
1987	25	13	12	86	78	96
1888	11	6	5	80	72	88
1988	16	8	8	95	78	112
1990	23	16	7	95	97	91
1991	14	7	7	116	124	107
1992	31	19	11	114	104	135
1993	38	23	14	113	112	121
1994	31	20	11	122	117	132
1995	56	33	22	134	128	144
1996	45	31	14	125	112	153
1997	74	45	27	133	126	147
1998	68	48	18	130	128	132
1998	98	61	33	143	143	141

Note: Average time was calculated from the most recent sentencing date.
*Includes American Indians and Asians.

Advance count of executions: January 1, 2000 - November 30, 2000

To provide the latest data on capital punishment, BJS initiated an ongoing collection effort in 1997 that gathers information following each execution. The data include the date of execution, the jurisdiction, the method used, and the name, race, and gender of each person executed.

Between January 1 and November 30, 14 States had executed 79 prisoners, a 19% decrease from the 98 executed in 1999.

Texas has carried out 37, 47% of the executions in 2000. This is more executions in a single state than in any year since the Federal Government began tracking executions on an annual basis. Tennessee carried out its first execution since 1960.

Lethal injection accounted for 74 of the executions, and 5 were carried out by electrocution.

Forty-four of those executed were white, 34 black, and 1 American Indian. Two women were executed (1 each in Texas and Arkansas).

State	Number of executions	Method used
Texas	37	Lethal injection
Oklahoma	11	Lethal injection
Virginia	7	Lethal injection*
Florida	5	Lethal injection
Missouri	5	Lethal injection
Alabama	4	Electrocution
Arizona	3	Lethal injection
Arkansas	1	Lethal injection
Delaware	1	Lethal injection
Louisiana	1	Lethal injection
North Carolina	1	Lethal injection
South Carolina	1	Lethal injection
Tennessee	1	Lethal injection
California	1	Lethal injection
Total	79	

*Virginia executed 1 person by electrocution.

Final counts for all of 2000 will appear in *Capital Punishment 2000*, a BJS Bulletin, released in late 2001. This annual report will comprise data collected from State and Federal departments of correction. The report will cover all persons under sentence of death on December 31, 2001, as well as those received from court and removed from under sentence of death.

Methodology

Capital punishment information is collected annually as part of the National Prisoner Statistics program (NPS-8). This data series is collected in two parts: data on persons under sentence of death are obtained from the department of correction in each jurisdiction currently authorizing capital punishment and are updated annually; information on the status of death penalty statutes is obtained from the Office of the Attorney General in each of the 50 States, the District of Columbia, and the Federal Government. Data collection forms and more detailed tables are available in *Correctional Populations in the United States*, published annually. NPS-8 covers all persons under sentence of death at any time during the year who were held in a State or Federal nonmilitary correctional facility. Included are capital offenders transferred from prison to mental hospitals and those who may have escaped from custody. Excluded are persons whose death sentences have been overturned by the court, regardless of their current incarceration status.

The statistics reported in this Bulletin may differ from data collected by other organizations for a variety of reasons: (1) NPS-8 adds inmates to the number under sentence of death not at sentencing but at the time they are admitted to a State or Federal correctional facility. (2) If in one year inmates entered prison under a death sentence or were reported as being relieved of a death sentence but the court had acted in the previous year, the counts are adjusted to reflect the dates of court decisions. (See the note on table 5 for the affected jurisdictions.) (3) NPS counts are always for the last day of the calendar year and will differ from counts for more recent periods.

All data in this report have been reviewed for accuracy by the data providers in each jurisdiction prior to publication.

Appendix table 1. Prisoners sentenced to death and the outcome sentence, by year of sentencing, 1973-99

		Number of prisoners removed from under sentence of death								Under sentence of death, 12/31/99
				Appeal or higher courts overturned						
Year of sentence	Number sentenced to death	Execution	Other death	Death penalty statute	Conviction	Sentence	Sentence commuted	Other or unknown reasons		
1973	42	2	0	14	9	8	8	0		0
1974	149	10	4	65	15	30	22	1		2
1975	298	6	4	171	24	67	21	2		3
1976	233	13	5	136	17	43	15	0		4
1977	137	19	3	40	26	32	7	0		10
1978	185	34	5	21	35	62	8	0		19
1979	152	26	12	2	28	58	5	1		20
1980	173	40	13	3	28	49	7	0		33
1981	227	48	13	0	43	75	4	1		43
1982	268	54	13	0	35	68	7	1		88
1983	253	53	14	1	25	60	7	2		91
1984	285	46	10	2	37	60	6	8		116
1985	289	31	5	1	43	68	4	3		114
1986	300	41	16	0	45	50	6	5		137
1987	290	34	14	4	38	56	2	6		138
1988	292	31	11	0	33	52	3	0		162
1989	259	19	9	0	29	49	3	0		150
1990	253	19	7	0	32	35	2	0		158
1991	264	13	9	0	30	33	3	0		176
1992	288	15	7	0	21	35	4	0		206
1993	290	13	8	0	15	20	5	0		228
1994	319	11	7	0	20	22	2	0		257
1995	319	10	7	0	13	19	1	0		269
1996	316	7	3	0	13	19	1	0		273
1997	276	1	3	0	5	6	0	0		201
1998	300	2	1	0	0	0	0	0		297
1999	272	0	0	0	0	0	0	0		272
Total, 1973-99	6,707	598	205	460	657	1,076	154	30		3,527

Note: For those persons sentenced to death more than once, the numbers are based on the most recent death sentence.

Appendix table 2. Prisoners under sentence of death on December 31, 1999, by State and year of sentencing

State	Year of sentence for prisoners sentenced to and remaining on death row, 12/31/99: 1974-79	1980-81	1982-83	1984-85	1986-87	1988-89	1990-91	1992-93	1994-95	1996-97	1998	1999	Under sentence of death, 12/31/99	Average number of years sentence death as 12/31/99
Florida	22	10	17	31	31	37	48	44	47	31	27	20	365	6.7
California	8	17	44	37	48	64	54	72	59	78	31	43	553	5.0
Texas	8	11	9	17	31	42	41	63	83	67	40	48	460	4.8
Georgia	7	3	6	5	13	9	11	11	14	18	11	8	116	5.9
Tennessee	3	6	8	11	16	10	10	5	8	12	6	8	100	5.5
Nevada	2	3	7	10	4	10	11	1	15	16	2	5	86	5.2
Nebraska	2	2		1	1				1	2			9	*
Illinois	1	11	13	13	10	16	19	20	19	18	8	8	156	5.3
Alabama	1	3	9	9	16	17	11	14	33	31	24	12	180	4.1
North Carolina	1	2	3	4			13	45	48	42	20	24	202	4.3
Arizona	1	1	10	9	6	14	16	18	12	14	7	6	116	5.5
Kentucky	1	1	7	2	4	1	2	4	3	4	6	4	39	4.4
Arkansas	1				1	2	1	7	9	10	4	5	40	4.5
Indiana		2	4	4	8	3	6	5	5	4	3	2	43	5.2
Pennsylvania		1	14	14	28	33	16	27	41	25	16	15	230	4.6
Oklahoma		1	4	12	19	15	18	9	17	26	15	6	139	4.3
Mississippi		1	4		3	1	10	9	7	13	8	4	60	4.8
Maryland		1		3		2	1	1	1	5	2	1	17	3.8
Ohio			10	30	21	18	19	21	27	27	16	10	199	4.6
Louisiana			2	5	7	1	2	10	17	21	10	10	85	3.5
Missouri			2	5	6	5	8	11	17	16	6	7	83	4.4
Idaho			2	4	1	4	2	2	2	2	1	1	21	4.9
South Carolina			1	2	2	5	7	8	15	12	8	5	65	4.4
Utah			1	2		2	1	1		2		1	10	4.3
Montana			1		1			2		2			6	*
Delaware			1			1		7		4	2	2	17	4.3
New Jersey					1		2	1	4	4	1	1	14	4.6
Virginia					1		1	2	7	5	8	7	31	2.9
Colorado					1				1	1		1	4	*
Washington							2	2	2	4	3		13	4.5
Connecticut							2	1	1	1		1	6	*
Oregon							1	6	7	6	3	2	25	4.4
Federal system							1	4	2	7	5	1	20	3.5
South Dakota								1		1		1	3	*
New Mexico									2	2			4	*
Wyoming										1	1		2	*
Kansas											2	1	3	*
New York											1	4	5	*
Total	58	78	179	230	275	312	334	434	526	534	297	272	3,527	4.9

Note: For those persons sentenced to death more than once, the numbers are based on the most recent death sentence.
*Averages not calculated for fewer than 10 inmates.

Appendix table 3. Number sentenced to death and number of removals, by jurisdiction and reason for removal, 1973-99

State	Total sentenced to death, 1973-99	Number of removals, 1973-99					Under sentence of death, 12/31/99
		Executed	Died	Sentence or conviction overturned	Sentence commuted	Other removals	
U.S. total	6,707	598	205	2,183	154	30	3,527
Federal	22	0	0	2	0	0	20
Alabama	314	19	13	100	2	0	180
Arizona	223	19	9	73	5	1	116
Arkansas	94	21	1	30	2	0	40
California	722	7	31	116	15	0	553
Colorado	17	1	1	10	1	0	4
Connecticut	7	0	0	1	0	0	6
Delaware	40	10	0	13	0	0	17
Florida	821	44	29	363	18	2	365
Georgia	289	23	9	134	8	1	115
Idaho	37	1	1	12	2	0	21
Illinois	273	12	9	85	3	8	156
Indiana	92	7	1	37	2	2	43
Kansas	3	0	0	0	0	0	3
Kentucky	71	2	2	27	1	0	39
Louisiana	196	25	3	76	6	1	85
Maryland	48	3	1	24	3	0	17
Massachusetts	4	0	0	2	2	0	0
Mississippi	163	4	2	94	0	3	60
Missouri	158	41	7	25	2	0	83
Montana	15	2	0	6	1	0	6
Nebraska	24	3	2	8	2	0	9
Nevada	127	6	5	25	3	0	86
New Jersey	48	0	3	23	0	8	14
New Mexico	26	0	1	16	5	0	4
New York	8	0	0	3	0	0	5
North Carolina	468	15	9	237	5	0	202
Ohio	351	1	8	133	9	0	199
Oklahoma	294	19	7	128	1	0	139
Oregon	46	2	1	18	0	0	25
Pennsylvania	323	3	10	80	0	0	230
Rhode Island	2	0	0	2	0	0	0
South Carolina	163	24	4	67	3	0	65
South Dakota	3	0	0	0	0	0	3
Tennessee	192	0	9	81	0	2	100
Texas	828	199	21	103	45	1	460
Utah	26	6	0	9	1	0	10
Virginia	123	73	3	8	9	1	31
Washington	34	3	1	17	0	0	13
Wyoming	11	1	1	7	0	0	2
Percent	100%	8.9%	3.1%	32.7%	2.3%	0.4%	52.6%

Note: For those persons sentenced to death more than once, the numbers are based on the most recent death sentence.

The Bureau of Justice Statistics is the statistical agency of the U.S. Department of Justice. Jan M. Chaiken, Ph.D., is director.

BJS Bulletins present the first release of findings from permanent data collection programs.

This Bulletin was written by Tracy L. Snell under the supervision of Allen J. Beck. Todd D. Minton provided assistance and statistical review.

Tina Dorsey and Tom Hester edited the report. Jayne Robinson prepared the report for final printing.

At the Bureau of the Census, Patricia A. Clark collected the data under the supervision of Gertrude B. Odom and Marilyn M. Monahan.

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Appendix table 4. Executions, by State and method, 1977-99

State	Number executed	Lethal injection	Electro-cution	Lethal gas	Firing squad	Hanging
Total	598	438	144	11	3	2
Alabama	19	0	19	0	0	0
Arizona	19	17	0	2	0	0
Arkansas	21	20	1	0	0	0
California	7	5	0	2	0	0
Colorado	1	1	0	0	0	0
Delaware	10	9	0	0	1	0
Florida	44	0	44	0	0	0
Georgia	23	0	23	0	0	0
Idaho	1	1	0	0	0	0
Illinois	12	12	0	0	0	0
Indiana	7	4	3	0	0	0
Kentucky	2	1	1	0	0	0
Louisiana	25	5	20	0	0	0
Maryland	3	3	0	0	0	0
Mississippi	4	0	0	4	0	0
Missouri	41	41	0	0	0	0
Montana	2	2	0	0	0	0
Nebraska	3	0	3	0	0	0
Nevada	8	7	0	1	0	0
North Carolina	15	13	0	2	0	0
Ohio	1	1	0	0	0	0
Oklahoma	19	19	0	0	0	0
Oregon	2	2	0	0	0	0
Pennsylvania	3	3	0	0	0	0
South Carolina	24	19	5	0	0	0
Texas	199	199	0	0	0	0
Utah	6	4	0	0	0	2
Virginia	73	48	25	0	0	0
Washington	3	1	0	0	2	0

Data will be available from the National Archive of Criminal Justice Data at the University of Michigan, 1-800-999-0960. The data sets are archived as Capital Punishment, 1973-99.

The data and the report, as well as others from the Bureau of Justice Statistics, are also available through the Internet:

http://www.ojp.usdoj.gov/bjs/

Key Facts at a Glance — Trends in Capital Punishment, charts and supporting data in tables on Executions, 1930-00; Persons under Sentence of Death, 1954-99; and Persons under Sentence of Death by Race, 1968-99.

http://www.ojp.usdoj.gov/bjs/glance.htm#cptrends

Prisoners executed under civil authority in the United States, by year, Federal, State-by-State, and region, 1977-1999.

http://www.ojp.usdoj.gov/bjs/dtdata.htm#exe

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FAX NUMBER: (202) 456-6703

SENDER: Martin Sheen

NUMBER OF PAGES: 3
(including cover sheet)

PERSONAL

December 6, 2000

William Jefferson Clinton
President of the United States
The White House
Washington, D.C.

Dear Mr. President;

I very much appreciate your response to my recent letter, and your enthusiasm for the Judicorps program I proposed. My lawyer and friend, Joe Cosgrove, met with several of your advisors at The White House last month to discuss this idea and left with a sense that, despite the limited time remaining, the creation of Judicorps was indeed possible. Particularly excited about the Judicorps concept was Thurgood Marshall, Jr., whom Joe was delighted to meet. I also heard that support for Judicorps was also expressed by the people at Americorps, with Senator Wofford himself quoted in a recent article in the Chronicle of Higher Education. As I understand, the funding authority for Americorps would allow establishment of Judicorps as one of its sub elements, which could be created through executive order. With the uncertainty of the future, it would be a fine addition to your legacy to see this program dedicated to legal service to the poor planted on the federal lawn. As do you, I have great hope for this plan, and again, offer you any help in promoting or creating it as you deem needed.

May I also, Mr. President, draw your attention to another pressing matter, namely the pending execution of Juan Garza, scheduled for December 12. As you know, that date is the Feast of Our Lady of Guadalupe, the Patroness of The Americas, who appeared to a poor Mexican man also named Juan. The Justice Department recently issued a report recognizing the disparate manner in which minorities are treated in the implementation of the federal death penalty. Sharing Mr. Garza's Hispanic heritage, I implore you to exercise the most awesome power available to a president and spare his life. Granting clemency to Garza would not diminish his responsibility for this crime, but would instead subject him to the severity of a life in prison without parole. Such a result is consistent with the public will, where recent polls, for example, show that support for the death penalty drops below fifty percent when life imprisonment without parole is offered as an alternative. Sparing Mr. Garza would allow us as a nation to show the true depth of our greatness by treating even the most despised with human respect and dignity, and would earn for you personally the long promised blessing reserved for those who show mercy.

I have worked personally with Sister Camille D'Arienzo, a Roman Catholic nun who knows Mr. Garza and has related his story to me, which includes the depth of his nine-year old daughter's love for her father. In this season where spiritual light is celebrated, it seems that the execution of one of our fellow human beings, especially someone from an ethnic class which has consistently struggled for its place at our table, would not be a lighted candle, but instead a curse of darkness. I beg you, Mr. President, to prevent this from happening.

You have my deepest admiration and respect, as well as my prayers. I hope that we can speak sometime on these important issues, and as always send you my

Faith, hope and love,
Martin Sheen
Martin Sheen

cc: Joe Cosgrove
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George Frazier – Your trip to Vietnam was a great success. He forwards letter from **Chancellor James Taylor** advising about the default rate problem at the U of A Community College at Hope and requesting your assistance in retaining their loan and Pell Grant program. (Original to Staff Secretary)

'00 DEC 8 AM10:09

FROM THE DESK OF

GEORGE FRAZIER

NOV. 20, 2000

DEAR MR. PRESIDENT –

WELCOME HOME. YOUR TRIP TO VIETNAM IS A GREAT SUCCESS!

IF YOU CAN GIVE OUR COLLEGE ANY HELP ON THE ATTACHED, WE ALL WILL APPRECIATE IT.

LOVE TO CHELSEA AND SENATOR HILLARY
(WE ARE SO PROUD!)

LOVE,

George

TO COHEN FOR REPLY;

BELIEVE ORIGINAL CAME THRU EARLIER

12-8

Jane Bellingale
Staff Sec

your bridge to the future

University of Arkansas Community College at Hope

2500 South Main, P.O. Box 140
Hope, Arkansas 71802-0140
870/777-5722; FAX: 870/777-5957

November 7, 2000

The President
The White House
1600 Pennsylvania Avenue
Washington, D.C. 20500-2000

Dear Mr. President:

As you may know, the University of Arkansas Community College at Hope has, according to the Department of Education numbers, a cohort default rate in excess of 25% for three years (1996, 28.0%, 1997, 32.4%, 1998, 25.9%). These rates are based on the Federal Family Education Loan (FFEL) Program and the William D. Ford Direct Loan Program. A brief summary of our history with these programs is enclosed.

The college is now in the process of requesting appeals. We are appealing and alleging that some of the departments data elements are incorrect (our documentation differs). We are also appealing and alleging that some of the loans for 1998 were improperly serviced. If the Department were to agree with the appeals we could avoid losing our financial aid eligibility for either the loan program or the Pell Grant Program.

Mr. President, you know Southwest Arkansas and how important federal financial aid is to the students of the region. Approximately 66% of our 1179 students receive such aid.

As the Chancellor of the institution since January 2000, I was unaware of the problem until February. Since that time, we have implemented a Default Management Plan and have taken other steps to reduce the default rate. Some steps had been taken between the 1997 and 1998 years. These steps reduced the rate, but not below the 25% level, without the data changes requested in one appeal.

Earlier this fall, visitors from the Department in Dallas and Washington, D.C. told us that we do not fit the typical pattern of institutions with default problems. For example, our audit reports are without findings.

We are doing everything possible to correct the problem and are asking for your assistance in retaining our loan and Pell Grant programs.

Sincerely,

James Taylor

James Taylor, Ph.D.
Chancellor

JT:lj

Encl.