

I. Introduction

Although we welcome the Second and Third Periodic Report of the United States of America to the United Nations Human Rights Committee, we are troubled by its failure to adequately address human rights violations relating to the administration of the death penalty nationwide. While the application of the death penalty in the United States raises many troubling questions, we focus today on only three issues: (1) death row conditions and their effects on the mental health of prisoners awaiting execution; (2) the execution of the severely mentally ill; and (3) evidence that the practice of executing prisoners by lethal injection amounts to cruel, inhuman or degrading treatment or punishment. We are hopeful that the discussion in this report will assist the Committee in evaluating the United States' record of compliance with the International Covenant on Civil and Political Rights (ICCPR).

In the interest of brevity, our description of death row conditions focuses on Texas and California. Of the thirty-eight states that allow for the application of the death penalty in the United States, Texas and California have, by far, the largest number of condemned inmates. The prisons housing death row inmates in these two states have been severely criticized by the federal judiciary for imposing inhumane and degrading conditions of detention, and for failing to provide necessary mental health treatment for incarcerated prisoners. These conditions have had grave effects on death row inmates' mental and physical health.

The conditions of death row confinement cannot be viewed in isolation from the length of time that prisoners spend on death rows awaiting their executions. As several international tribunals have recognized, prisoners forced to anticipate their own deaths face a unique form of mental torment. This Committee has stressed that the mere length of time that a prisoner spends on death row does not give rise to a violation of Articles 7 and 10 of the ICCPR,¹ and we do not quarrel with that conclusion in this report. Rather, we contend that the inhumane conditions on death rows nationwide, coupled with the cumulative effects of those conditions on prisoners who typically spend over a decade awaiting execution, amount to cruel, inhuman or degrading treatment or punishment.²

Executions of the severely mentally ill are commonplace in the United States, despite a decision from the United States Supreme Court prohibiting the execution of the "insane." In the last ten years, the United States has put to death dozens of prisoners suffering from schizophrenia, bipolar disorder, and other incapacitating mental illnesses. Moreover, the United States has allowed at least one mentally ill prisoner to be forcibly medicated with anti-psychotic medication so that he could be rendered "competent" for execution. These practices violate established international norms prohibiting the execution of prisoners who are mentally impaired.

Lethal injection is the most common method of execution in the United States. While lethal injection was once believed to cause a painless death, mounting evidence indicates that death by lethal injection can cause excruciating agony. Prisoners have sought to obtain stays of execution while lethal injection is subjected to further study and

analysis, but courts in Texas and Indiana have repeatedly denied them even a temporary reprieve. Given the very real risk that lethal injection inflicts significant pain and suffering, the United States should adopt a moratorium on executions until the medical community can carry out further study of the execution protocols and assess the level of suffering caused by lethal injection.

II. Death Row Conditions And Their Effects on Prisoners Awaiting Execution

A. Death Row Conditions in Texas

1. Overview

Since 1999, all male Texas death row prisoners have been incarcerated in the Polunsky Unit in Livingston, Texas. They are housed in small (approximately 60 square feet) cells, with a sink, a toilet, and a thirty-inch wide bunk. The cells have solid doors. In addition to being single-celled, death row prisoners are segregated from other prisoners in every aspect of their lives. They eat alone, exercise alone, and worship alone. Communication on death row – accomplished by yelling between cells – is extremely difficult.³

Prisoners are allowed no physical contact with family members, friends, or even their attorneys. Generally, a death row prisoner will have physical contact with no one other than prison staff from his entry onto death row until the time of his execution. Even in the days and hours before his execution, the prisoner is not permitted to touch any family member or loved one.

The best-behaved death row prisoners spend twenty-three hours per day in their cells. They are ordinarily given access to small indoor or outdoor “cages” for one hour per day. Prisoners considered to be disciplinary problems, which usually includes the most mentally ill inmates, are only allowed outside of their cells only three to four hours per week.

Texas’ death row – unlike any death row in the nation – does not offer any television, making radio the primary source of mental stimulation for the average semi-literate death row prisoner. Radios are routinely taken from prisoners as a disciplinary sanction. Death row prisoners are not provided any opportunities to participate in “programming,” *i.e.*, structured activities in or out of their cells.⁴ They receive no educational or occupational training.

The conditions on Texas’ death row are harsher than those found in many of the nation’s highest security prisons and segregation units. Thus, the conclusions of federal courts and mental health experts evaluating the effects of less severe conditions apply with even greater force here. And those experts have repeatedly observed that prolonged confinement without sensory stimulation or human contact exacerbates pre-existing

psychological disorders and can precipitate mental illness in otherwise healthy individuals.⁵

2. Mentally Ill Prisoners and Death Row Conditions

It is well-established that a large percentage of death row inmates suffer from mental disabilities.⁶ Yet, as of February 2006, dozens of severely mentally ill death row prisoners were housed in the conditions described above. James Coburn, a Texas death row inmate who suffered from schizophrenia, “deteriorated on death row to the point that he was psychotic and eating his own feces.”⁷ He was executed on March 26, 2003.

Conditions on Texas’ death row are virtually indistinguishable from administrative segregation conditions⁸ in other Texas prisons that have been found to be “virtual incubators of psychoses – seeding illness in otherwise healthy inmates and exacerbating illness in those already suffering from mental infirmities.”⁹ Experts who have evaluated the Texas system of administrative segregation have observed that the denial of contact and social stimuli is particularly harmful for the mentally ill, and that the quality of mental health care they receive in administrative segregation is “medically inadequate.”¹⁰

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

B. Death Row Conditions in California

There are 645 inmates on death row in California, all of whom are housed in the San Quentin State Prison.¹¹ San Quentin is the oldest prison in California and was recently described as “so old, antiquated, dirty, poorly staffed, poorly maintained, with inadequate medical space and equipment and over-crowded that . . . it is dangerous to house people there with certain medical conditions.”¹²

Judge Thelton Henderson visited San Quentin on February 10, 2005, in connection with litigation surrounding the abysmal conditions at the prison. Judge Henderson characterized the tour as “horrifying,” observing that “[e]ven the most simple and basic elements of a minimally adequate medical system were obviously lacking.”¹³ He concluded that prisoners in San Quentin (and throughout California) were “subjected to an unconstitutional system fraught with medical neglect and malfeasance.”¹⁴ The prison’s neglect of the incarcerated population is so severe that inmates have died “as a direct result of this lack of care, and . . . more are sure to suffer and die if the system is not immediately overhauled.”¹⁵

The cumulative effect of those conditions is clearly aggravated by the length of time that California prisoners typically await their executions. According to the California Department of Corrections, there are currently two inmates who have been awaiting their

execution for 28 years.¹⁶ There are 8 more inmates who were sentenced to death 27 years ago.¹⁷ There are 10 who were sentenced 26 years ago.¹⁸ There are 24 who were sentenced 24 years ago.¹⁹

Since the death penalty was reinstated in 1978, California has executed 13 inmates. During that same time however, 31 inmates were on death row so long that they died of natural causes.²⁰ Of the 13 inmates actually executed in California the average time the inmates spent on death row was 17 years and 7.82 months.²¹

Daniel B. Vasquez, the warden of San Quentin, recently described what inmates experience as a result of their extended incarceration under deplorable conditions: "I have observed that the weight and pressure of living as a condemned man on Death Row is extremely debilitating and wears a prisoner out both physically and emotionally. Every court petition brings a ray of hope and rescue to the condemned prisoner, every court reprieve promises more and every court denial dashes that hope and engenders despair. The condemned prisoner must constantly adjust to these extremities of emotion, which grinds at his spirit. The process can be especially debilitating for prisoners who must contend with death warrants."²²

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

Prolonged incarceration on death row, particularly under the conditions described above,²³ has devastating psychological effects on condemned prisoners – particularly those who are mentally ill. Indeed, the torturous effects of "death row phenomenon" -- that is, the psychological impact of a lengthy stay on death row -- have been widely noted by jurists and scholars over the last three decades.²⁴

It is both necessary and appropriate for nations to provide adequate procedural safeguards to ensure condemned inmates receive full and fair appellate review of their convictions and sentences. Nonetheless, prolonged incarceration on death row amid unendurable conditions of confinement gives rise to violations of Articles 7 and 10 of the ICCPR.²⁵ The case of César Roberto Fierro Reyna, a Mexican national on Texas' death row, provides a particularly disturbing example of the destructive psychological effects of extended solitary confinement on death row.²⁶

César Roberto has been under a sentence of death since February 27, 1980.²⁷ He has been scheduled for execution on fourteen separate occasions, coming within days of execution before receiving court-ordered stays on six different occasions. According to the prison's classification records, Mr. Fierro contacted the prison's psychiatric department for the first time on May 15, 1986, stating that he was hearing voices and he might injure himself.

As the years passed, Mr. Fierro's mental condition continued to deteriorate. On December 28, 1999, Mr. Fierro learned that his mother had died four days earlier. In a grievance submitted to the prison on January 25, 2000, he wrote that he made an

appointment with the psychiatrist because he "went down emotionally and was feeling real bad[.]" The prison sent a psychiatrist or a psychologist to his cell, but Mr. Fierro requested a private consultation. He was told that only outwardly psychotic prisoners are allowed private psychiatric consultations, and hence his request was refused. In the grievance, Mr. Fierro wrote:

I don't look sick and I can do things as you can see by this grievance, but I hear the voices at the same time and I can do things I don't want to do and that's what I would like to avoid completely.

He reiterated his request for a private meeting with a psychiatrist, and asked that the psychiatrist "get my old medication back or whatever he deems appropriate." *Id.* The prison responded that its records indicated that Mr. Fierro had been seen by the unit psychiatrist, and that the psychiatrist had found no indication that Mr. Fierro was in need of further treatment.

Mr. Fierro's attorneys as well as reporters have observed a marked deterioration in Mr. Fierro's mental health over the years of his incarceration on death row. Until March 1999, he was able to communicate with his attorneys in a regular and fairly rational manner. From that point forward, however, Mr. Fierro's letters to his attorneys became increasingly bizarre and irrational. He lost a great deal of weight. He became convinced that his attorneys were conspiring against him.

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

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

What is particularly tragic about Mr. Fierro's case is that he may actually be innocent of the crime for which he was convicted. Numerous media reports have described the miscarriage of justice that led to his conviction.²⁸ Although a Texas court has found that his confession was coerced by the El Paso police,²⁹ and his former prosecutor has urged the courts to grant him a new trial, he remains on death row. As of February 27, 2006, he has spent twenty-six years awaiting his execution for a crime he may not have committed.

III. The Execution of the Severely Mentally Ill

The execution of the mentally ill is squarely prohibited by international law.³⁰ Although the United States Supreme Court has held that it is cruel and unusual punishment under the Eighth Amendment of the United States Constitution to execute persons who are mentally incompetent,³¹ the states have defined the term so narrowly that it is virtually meaningless. As a result, the United States regularly executes prisoners suffering from severe forms of mental illness.

The cases of these inmates are too numerous to recount in this report, but they have been cogently summarized by Amnesty International in its recent report about the execution of mentally ill offenders in the United States.³² Amnesty found that one of every ten individuals executed in the United States suffered from a serious mental disorder other than mental retardation. In all, Amnesty found that at least 100 severely mentally ill men and women have been executed in the United States since 1977.³³

One of the most tragic cases was that of Kelsey Patterson, a man who suffered from paranoid schizophrenia and spent many years in and out of state mental hospitals.³⁴ Shortly before he was charged with capital murder, his family had attempted to have him committed to a mental facility, but the state rejected the request because he had not harmed anyone. In 1992, Mr. Patterson shot two people, then removed all of his clothing except for a pair of socks. He was arrested while wandering naked through the streets.³⁵

During his trial, Mr. Patterson frequently spoke of “remote control devices” and “implants” that controlled his behavior.³⁶ The prosecution conceded that he was severely mentally ill. Nevertheless, he was convicted and condemned to death.

After his appeals were concluded, the Texas Board of Pardons and Paroles recommended that his sentence be commuted to life imprisonment. The Governor rejected that recommendation. The courts found him “competent” to be executed, because United States law merely requires that a condemned inmate understand that he will be executed, and the reason for his execution.³⁷ When he was escorted to the room where he was put to death on May 18, 2004, the warden asked him if he had a final statement. Reporters described Kelsey Patterson’s response as follows:

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

He continued to mumble until the flow of lethal chemicals stopped his speech.³⁸

Charles Singleton, who likewise suffered from schizophrenia, was executed in the state of Arkansas on January 6, 2004. Unlike Mr. Patterson, the courts found Mr. Singleton incompetent to be executed. Rather than commute his death sentence,

however, the state chose to forcibly administer anti-psychotic drugs to restore his competency so that Mr. Singleton could be executed.³⁹

IV. Lethal Injection as Cruel, Inhuman or Degrading Treatment or Punishment

A. Introduction

The overwhelming majority of executions in the United States are carried out by lethal injection.⁴⁰ Medical professionals have raised grave concerns that, far from producing a rapid and sustained loss of consciousness and humane death, the lethal injection techniques employed by a majority of states may cause the inmate to consciously suffer an excruciatingly painful and protracted death.⁴¹

A very brief overview of the three chemicals used to kill condemned prisoners is necessary to provide the background for our concerns.

B. The Lethal Injection Protocol

Lethal injection is accomplished in most states by injecting the prisoner with a combination of three chemical substances: (1) sodium thiopental, or sodium pentothal; (2) pancuronium bromide, or Pavulon; and (3) potassium chloride.⁴²

The first drug administered to the condemned prisoner is sodium thiopental, or sodium pentothal, a short-acting barbiturate that is ordinarily used to render a surgical patient unconscious for mere minutes. Because it is a short-acting drug, medical experts have expressed concerns that it may not sedate the inmate throughout the entire lethal injection process.⁴³ These concerns are heightened by the lack of medical personnel participating in the lethal injection process. Because medical personnel infrequently participate in executions, the dosages of sodium thiopental can be improperly measured and mixed with the other chemicals, compounding the risk that the death row inmate will not be “put to sleep,” but will rather experience his own death in agonizing clarity.⁴⁴

The second chemical involved in the lethal injection process, pancuronium bromide, paralyzes the muscles, but does not affect sensation, consciousness, or the ability to feel pain and suffocation.⁴⁵ In other words, pancuronium bromide serves no purpose in the lethal injection process other than to guarantee that the condemned inmate will be forced into a chemical straitjacket, unable to react or move even if the sodium thiopental has not caused unconsciousness. Unlike in a surgical context where paralysis during delicate procedures serves a legitimate and beneficial surgical purpose (preventing the patient from unconsciously moving), in the execution process where the end sought is death rather than the preservation of life, and where the “patient” is rendered sufficiently immobile for the task by strapping him onto a gurney, paralysis serves *no* rational purpose. A paralytic agent does, however, serve to make the execution *appear* humane to witnesses, since there is no way for witnesses to gauge whether the inmate is experiencing a peaceful or an agonizing death.⁴⁶

If the sedative effect of the sodium thiopental is ineffective or neutralized, the pancuronium bromide would serve both to *inflict* and to *mask* the excruciating pain of the condemned inmate. As Dr. Mark Heath, Assistant Professor of Clinical Anesthesia at Columbia University, explains:

If administered alone, a lethal dose of pancuronium would not immediately cause a condemned inmate to lose consciousness. It first would totally immobilize the inmate by paralyzing all voluntary muscles and the diaphragm, ***causing the inmate to suffocate to death while experiencing an intense, conscious desire to inhale.*** Ultimately, consciousness would be lost, but it would not be lost as an immediate and direct result of the pancuronium. Rather, the loss of consciousness would be due to suffocation, and would be preceded by the torment and agony caused by suffocation. Depending on the physiological attributes of the individual it may take from one to several minutes before suffocation leads to unconsciousness.⁴⁷

He adds:

It is my opinion based on a reasonable degree of medical certainty that the use of pancuronium effectively nullifies the ability of witnesses to discern whether or not the condemned prisoner is experiencing a peaceful or agonizing death. Regardless of the experience of the condemned prisoner, whether he or she is deeply unconscious or experiencing the excruciation of suffocation, paralysis, and potassium injection, he or she will appear to witnesses to be serene and peaceful due to the relaxation and immobilization of the facial and other skeletal muscles.⁴⁸

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

If administered alone, without prior administration of an anesthetizing dose of pentothal or other anesthetic agent, a lethal dose of potassium chloride would not immediately cause a condemned inmate to lose consciousness. It would first cause excruciating pain as it traveled through the venous system to the heart, and, once it reached the heart, it would cause a painful cardiac arrest that would deprive the brain of oxygen and rather quickly (but not immediately) cause death. If pancuronium was administered prior to the potassium chloride, any visible signs of pain or agony caused by the potassium would be completely masked and undetectable to onlookers or witnesses.⁴⁹

Researchers have discovered that in Texas and Virginia, which together have executed approximately forty-five percent of all prisoners since 1976,⁵⁰ lethal injections are administered by individuals with no training in anaesthesia.⁵¹ In these two states,

unknown executioners – “typically one to three emergency medical technicians or medical corpsmen” – remotely administer the lethal chemicals to the conscious inmate from behind a wall or curtain. The executioners do not undertake any direct observation, physical examination, or electronic monitoring of the prisoner, no do they make any attempt afterward to assess the depth of anesthesia of the executed inmate.⁵²

C. In Many States, Animals Cannot Be Euthanized Using the Combination of Chemicals Used to Execute Humans Due to the Risks That Animals May Suffer During Their Death.

Recent research in, and subsequent legal changes regarding, animal euthanasia provides additional concerns that lethal injections can cause excruciating pain.⁵³ At least nineteen states have passed laws that preclude the use of a sedative in conjunction with a neuromuscular blocking agent.⁵⁴ Moreover, the American Veterinary Medical Association has now explicitly forbidden the combined use of a sedative with a neuromuscular blocking agent during euthanasia.⁵⁵

These recent alterations of euthanasia protocol for animals underscore the inhumanity of the lethal injection protocols. It can hardly be disputed that if certain euthanasia techniques are banned as overly cruel to animals, those same practices must violate norms prohibiting cruel, inhuman, or degrading treatment or punishment when employed to execute human beings.

D. Despite This Evidence, Certain States Have Refused To Halt Executions

Although executions have been temporarily halted in California, Florida, and Missouri while the courts consider whether current methods of lethal injection create an unacceptable risk of suffering, other states have continued to use the same questionable methods to execute death row inmates. Since January 24, 2006, Texas and Indiana have executed at least five prisoners who filed legal challenges to the lethal injection protocols used in those states.⁵⁶

V. Recommendations and Conclusion

Prisoners in Texas and California who have been exposed to the conditions described in Part II, above, and who have experienced those conditions for over a decade, have been subjected to cruel, inhuman or degrading treatment or punishment in violation of Articles 7 and 10(1) of the ICCPR. The Committee should call upon the United States to improve conditions on death row so that they comply with applicable international standards.

The execution of mentally ill prisoners constitutes cruel, inhuman or degrading treatment or punishment in violation of Article 7 of the ICCPR. The United States should discontinue executions of the mentally ill, and should refrain from forcibly medicating prisoners to render them competent for execution.

The United States should adopt a moratorium on all executions nationwide until current methods of lethal injection have been thoroughly studied by the courts and by medical professionals.

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

¹ See, e.g., *Johnson v. Jamaica*, ¶8.4 (No. 588/1994), U.N. Doc. CCPR/C/56/D/588/1994 (1996).

² *Id.* ¶8.5.

³ The information presented here regarding the conditions on Texas' death row has been confirmed by numerous interviews with death row inmates and with the attorneys who represent those inmates. Compelling individual accounts of life on Texas' death row have been published on the internet. See, e.g., Alvin Kelly, *Trial by Fire*, Feb. 19, 2002 (available at <http://www.ccadp.org/alvinkelly.htm>); G. Wilford Hathorn, *Animus* (2001) (available at <http://www.deathrow.at/hathorn/home1.html>).

⁴ Texas has passed legislation banning the education of prisoners in administrative segregation. Whether this ban applies to death row prisoners is not clear, but more importantly, it should not prohibit other kinds of mentally stimulating activity.

⁵ See, e.g., *Madrid v. Gomez*, 889 F. Supp. 1146, 1265 (N.D. Cal. 1995); *Davenport v. DeRobertis*, 844 F.2d 1310, 1313 (7th Cir. 1988), Stuart Grassian and N. Friedman, *Effects of Sensory Deprivation in Psychiatric Seclusion and Solitary Confinement*, AMERICAN JOURNAL OF LAW AND PSYCHIATRY 49-65 (1986); Stuart Grassian, *Psychopathological Effects of Solitary Confinement*, AMERICAN JOURNAL OF PSYCHIATRY 1450-54 (1983). See also HUMAN RIGHTS WATCH, *Ill-Equipped: U.S. Prisons and Offenders with Mental Illness*, Part XII (2003) (available at <http://www.hrw.org/reports/2003/usa1003/>).

⁶ See, e.g., Laura Mansnerus, *Damaged Brains and the Death Penalty*, N.Y. TIMES, Jul. 21, 2001; David Freedman and David Hemenway, *Prescursors of Legal Violence: A Death Row Sample*, SOCIAL SCIENCE AND MEDICINE 1757-1770 (June 2000).

⁷ Renee Feltz, *Cruel and Unusual? Texas Death Row Conditions*, KPFT Radio Transcript, Nov. 8, 2002 (available at <http://www.kpft.org/news/110802story3.html>).

⁸ Administrative segregation conditions are identical to death row prisoners' in all but name. Administrative segregation prisoners have the same out-of-cell time, recreate and worship alone, and have comparable restrictions on property. See *Ruiz v. Johnson*, 37 F. Supp. 2d 855, 908 (S.D. Texas 1999).

⁹ *Id.* at 907.

¹⁰ *Id.* at 911-12.

¹¹ California Department of Corrections and Rehabilitation Division of Adult Operations, Death Row Tracking System, available at <http://www.corr.ca.gov/ReportsResearch/docs/InmateSecured.pdf> (last updated Feb. 27, 2006).

¹² *Plata v. Schwarzenegger*, 2005 WL 2932243 at *3 (N.D. Cal. May 10, 2005) (Order to Show Cause Re. Civil Contempt and Appointment of Interim Receiver).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at *1. For a more detailed description of prisoner deaths caused by improper medical care, see *Plata v. Schwarzenegger*, 2005 WL 2932253 (N.D. Cal. Oct. 3, 2005) (Findings of Fact and Conclusions of Law Re. Appointment of Receiver). Some of the deaths are also described in James Sterngold, *U.S. Seizes State Prison Health Care*, S.F. CHRONICLE, July 1, 2005, at A-1.

¹⁶ California Department of Corrections and Rehabilitation Division of Adult Operations, Death Row Tracking System, available at: <http://www.corr.ca.gov/ReportsResearch/docs/Summary.pdf> (last updated Feb. 27, 2006).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ California Department of Corrections and Rehabilitation, Office of Public and Employee Communications, January 16, 2006, available at <http://www.corr.ca.gov/ReportsResearch/docs/CIWHD.pdf>

²¹ California Department of Corrections and Rehabilitation , Inmates Executed, available at: <http://www.corr.ca.gov/ReportsResearch/InmatesExecuted.html>.

²² Declaration of Daniel B. Vasquez in Support of Ray Allen's Petition for Clemency and Petition for Writ of Habeas Corpus, ¶ 14, available at: <http://www.aclunc.org/deathpenalty/051227-Vasquez%20Declaration.pdf>

²³ By focusing on Texas and California, we do not mean to imply that death row conditions elsewhere in the United States are humane. But keeping in mind the need for brevity, we have decided to concentrate on these two states since their combined death row populations constitute nearly one-third of the death row population nationwide.

²⁴ See, e.g., *Soering v. United Kingdom*, 11 EUR. HUM. RTS. REP. 439 (1989)(European Court of Human Rights refused to extradite a German national to face capital murder charges because of anticipated time that he would have to spend on death row if sentenced to death); *Pratt & Morgan v. The Attorney General of Jamaica*, Privy Council Appeal No. 10 of 1993, 3 WLR 995, 143 NLJ 1639 (British Commonwealth Privy Council Nov. 2, 1993)(en banc); *Catholic Comm'n for Justice & Peace in Zimbabwe v. Attorney General*, No. S.C. 73/93 (Zimb. June 24, 1993 (reported in 14 HUM. RTS. L. J. 323 (1993)); Wood, *Competency for Execution: Problems in Law and Psychiatry*, 14 FLA. ST. U. L. REV. 35, 37-39 (1986) ("The physical and psychological

pressure besetting capital inmates has been widely noted Courts and commentators have argued that the extreme psychological stress accompanying death row confinement is an eighth amendment violation in itself or is an element making the death penalty cruel and unusual punishment." (citing authorities); Holland, *Death Row Conditions: Progression Towards Constitutional Protections*, 19 AKRON L. REV. 293 (1985); Johnson, *Under Sentence of Death: The Psychology of Death Row Confinement*, 5 LAW & PSYCHOLOGY REVIEW } 141, 157-60 (1979); Gallemore & Parton, *Inmate Responses to Lengthy Death Row Confinement*, 129 AMER. J. PSYCHIATRY 167 (1972); Bluestone & McGahee, *Reaction to Extreme Stress: Impending Death By Execution*, 119 AMER. J. PSYCHIATRY 393 (1962); Note, *Mental Suffering Under Sentence of Death: A Cruel and Unusual Punishment*, 57 IOWA L. REV. 814, 830 (1972); G. Gottlieb, *Testing The Death Penalty*, 34 S. CAL. L. REV. 268, 272 & n.15 (1961); A. Camus, *Reflections on the Guillotine*, in RESISTANCE, REBELLION & DEATH 205 (1966).

²⁵ See, e.g., *Francis v. Jamaica*, ¶9.2 (No. 606/1994), U.N. Doc. CPR/C/54/D/606/1994 (1995).

²⁶ See Patricia Giovine, *Pide Ayuda César Fierro*, EL DIARIO DE EL PASO, July 27, 2005, at A1; John Carlin, *César Fierro, 25 Años a La Espera de la Ejecución*, EL HERALDO, Aug. 18, 2005, at 2.

²⁷ The facts regarding Mr. Fierro's case are derived from interviews and documents provided by Mr. Fierro's attorneys.

²⁸ See, e.g., Dianne Jennings, *U.S. Courts Haven't Considered Effect of Man's Coerced Confession*, DALLAS MORNING NEWS, Mar. 4, 2002, at A17; Ken Armstrong and Steve Mills, *Gatekeeper Court Keeps Gates Shut*, CHICAGO TRIBUNE, June 12, 2000, at A1; Mark Donald, *Stuck in Habeas Hell: Bush Breathes New Life Into Texas Death Row Inmate's Case*, TEXAS LAWYER, May 2, 2005.

²⁹ *Ex Parte Cesar Roberto Fierro*, No. 33,752-171-4, slip op. at 2 (171st Dist. Ct. – El Paso May 1, 1995).

³⁰ See, e.g., Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, E.S.C. Res. 1984/50, U.N. ESCOR, Supp. No. 1, at 33, U.N. Doc. E/1984/92 (1984) (death sentence shall not be carried out on persons who have become insane); United Nations Economic and Social Council, *Implementation of the Safeguards Guaranteeing Protection of Rights of Those Facing the Death Penalty*, E.S.C. Res. 1989/64, U.N. Doc. E/1989/91 (1989), at 51 ¶ 1 (d) (death penalty shall not be imposed on "persons suffering from...*extremely limited mental competence*, whether at the stage of sentence or execution") (emphasis added); U.N. Commission on Human rights, Question of the Death Penalty, U.N. Doc. E/CN.4/2005/L.77 (2005) (calling on retentionist countries "not to impose the death penalty on a person suffering from *any form of mental ... disabilities* or to execute any such person"); Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, U.N. Doc. E/CN.4/1997/60 (1996) (calling on retentionist states that impose the death penalty on the mentally ill to "bring their domestic criminal laws into conformity with international legal standards").

³¹ *Ford v. Wainwright*, 477 US 399 (1986).

³² AMNESTY INTERNATIONAL, UNITED STATES OF AMERICA: THE EXECUTION OF MENTALLY ILL OFFENDERS (available at <http://web.amnesty.org/library/print/ENGAMR510032006>).

³³ *Id.*

³⁴ An excellent summary of Mr. Patterson's case is provided in AMNESTY INTERNATIONAL, *Another Texas Injustice: The Case of Kelsey Patterson, Mentally Ill Man Facing Execution*, March 18, 2004 (available at <http://web.amnesty.org/library/Index/ENGAMR510472004>).

³⁵ *Texas Executes Mentally Ill Man*, N.Y. TIMES, May 19, 2004.

³⁶ Mike Tolson, *Plea Rejected, Mentally Ill Man Executed*, HOUSTON CHRONICLE, May 19, 2004.

³⁷ *Ford v. Wainwright*, 477 U.S. at 422 (Powell, J., concurring).

³⁸ *Id.*

³⁹ See Alan A. Stone, M.D., *Condemned Prisoner Treated and Executed*, PSYCHIATRIC TIMES, March 2004 (available at <http://www.deathpenaltyinfo.org/article.php?scid=66&did=946>).

⁴⁰ Currently, 37 of the 38 states that retain the death penalty in the United States use lethal injection as their primary method. Only Nebraska solely uses electrocution. See DEATH PENALTY INFORMATION CENTER, *Facts About the Death Penalty* (available at <http://www.deathpenaltyinfo.org/FactSheet.pdf>) (last updated March 1, 2006).

⁴¹ See, e.g., Declaration of Dr. Mark Heath, ¶19, filed in *Oken v. Sizer, et. al.*, No. 24-C-004242, (Cir. Ct. Balt. City 2004); Koniaris L.G., Zimmers T.A., Lubarsky D.A., Sheldon J.P., *Inadequate Anesthesia in Lethal Injection for Execution*, Vol. 365, THE LANCET 1412-14 (Apr. 16, 2005).

⁴² See DEATH PENALTY INFORMATION CENTER, *Lethal Injection: Some Cases Stayed, Other Executions Proceed*, (available at <http://www.deathpenaltyinfo.org/article.php?did=1686&scid=64>) (last visited March 11, 2006); Declaration of Dr. Mark Heath, ¶¶6, 8-9.

⁴³ *Id.*

⁴⁴ *Id.* ¶¶10-12, 17.

⁴⁵ *Id.* ¶8.

⁴⁶ *Id.* ¶¶19-20.

⁴⁷ *Id.* ¶21.

⁴⁸ *Id.* ¶22.

⁴⁹ *Id.* ¶25.

⁵⁰ See DEATH PENALTY INFORMATION CENTER, *Facts About the Death Penalty* (available at <http://www.deathpenaltyinfo.org/FactSheet.pdf>) (last updated March 1, 2006).

⁵¹ Koniaris L.G., et. al, *supra* n. 40, at 1412.

⁵² See *id.*

⁵³ Declaration of Dr. Mark Heath, ¶23.

⁵⁴ See Tex. Health & Safety Code, § 821.052(a) (Vernon Supp. 2004-2005); Fla. Stat. Ann. §§ 828.058, 828.065 (West 2000 & Supp. 2005); Ga. Code Ann. § 4-11-5.1 (1995); Me. Rev. Stat. Ann. tit. 17, § 1044 (West Supp. 2004); Md. Code Ann., Criminal Law, § 10-611 (2002); Mass. Gen. Laws ch. 140 § 151A (2002); N.J. Stat. Ann. § 4:22-19.3 (West 1998); N.Y. Agric. & Mkts. § 374 (McKinney 2004); Okla. Stat. Ann. tit. 4, § 501 (West 2003); Tenn. Code Ann. § 44-17-303 (Supp. 2004). Other States have implicitly prohibited such practices. See Colo. Rev. Stat. Ann. §§ 18-9-201(2.7), 35-80-102(7) (West 2004); Conn. Gen. Stat. § 22-344a (2001); Del. Code Ann. tit. 3, § 8001 (2001); 510 Ill. Comp. Stat. Ann. 70/2.09 (Supp. 2003); Kan. Stat. Ann. § 47-1718(a) (2000); Ky. Rev. Stat. Ann. § 321.181(17) (Michie Supp. 2004); 201 Ky. Admin. Regs. 16:090, § 5(1) (2005); La. Rev. Stat. Ann. § 3:2465 (West 2003); Mo. Rev. Stat. §§ 578.005, 578.007 (2003); Mo. Code Regs. Ann. tit. 2, § 30-9.020(F)(5) (2005); R.I. Gen. Laws § 4-1-34 (1998); S.C. Code Ann. § 47-3-420 (Law Co-op Supp. 2004).

⁵⁵ See *2000 Report of the American Veterinary Medical Association Panel on Euthanasia*, 218 *Journal of the American Veterinary Medical Association*, 669, 681 (2001).

⁵⁶ See DEATH PENALTY INFORMATION CENTER, *Lethal Injection: Some Cases Stayed, Other Executions Proceed*, (available at <http://www.deathpenaltyinfo.org/article.php?did=1686&scid=64>) (last visited March 11, 2006).