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Death Penalty

Submitted by:¹

National Association of Criminal Defense Lawyers (NACDL)

Death Penalty Focus

The World Coalition Against the Death Penalty

The Texas Defender Service

The Southern Center for Human Rights

Human Rights Advocates

The Equal Justice Initiative

Endorsed by:

Advocates for Human Rights; American Association of Jewish Lawyers and Jurists; Arizona Capital Representation Project; Arizona Death Penalty Forum; California Attorneys for Criminal Justice; Coloradans for Alternatives to the Death Penalty; Colorado Criminal Defense Bar; Connecticut Network to Abolish the Death Penalty; Equal Justice USA; Gulf Region Advocacy Center (GRACE); Metro Atlanta Task Force for the Homeless; Mexican Capital Legal Assistance Program; New Mexico Criminal Defense Lawyers Association; Oregon Capital Resource Center; Pennsylvanians for Alternatives to the Death Penalty; Public Interest Projects; Reprieve; Sentencing Advocacy Group of Evanston; StandDown Texas Project; Three Treaties Task Force of the Social Justice Center of Marin; UNC School of Law Clinical Program; Ute Ritz-Deutch, Ph.D.; Virginia Capital Case Clearinghouse; Washington Coalition to Abolish the Death Penalty; World Organization for Human Rights USA; Youth Justice Coalition.

Executive Summary

This submission provides information on the United States' failure to implement certain international human rights obligations pertaining to the application of the death penalty, and raises a number of concerns about the administration of the death penalty in the United States. Specifically, the report addresses four areas in which the United States has failed to meet its international legal obligations: (1) the discriminatory and arbitrary imposition of the death penalty; (2) lack of compliance with the International Court of Justice's judgment in *Avena and Other Mexican Nationals*; (3) the execution of persons with mental disabilities; and (4) inhuman and degrading conditions of death row facilities.

Discriminatory and Arbitrary Imposition of the Death Penalty

1. There is ample evidence that the imposition of the death penalty in the United States is influenced by race and poverty. In 2006, the Human Rights Committee recommended that the United States “assess the extent to which [the] death penalty is disproportionately imposed on ethnic minorities and on low-income population groups, as well as the reasons for this, and adopt all appropriate measures to address the problem.” The Committee recommended that “[i]n the meantime, the State party should place a moratorium on capital sentences. . . .”¹ This recommendation was reiterated by the Committee on the Elimination of Racial Discrimination (CERD) in 2008, which recommended that the United States “undertake further studies to identify the underlying factors of the substantial racial disparities in the imposition of the death penalty, with a view to elaborating effective strategies aimed at rooting out discriminatory practices.” The Committee further recommended that the United States “adopt all necessary measures, including a moratorium, to ensure that [the] death penalty is not imposed as a result of racial bias on the part of prosecutors, judges, juries and lawyers.”²
2. Although a small number of states in the United States have assessed the discriminatory nature of the death penalty's application, the great majority have failed to undertake the assessments recommended by the Human Rights and CERD Committees. The United States has also failed to enact a moratorium. Nevertheless, race and socioeconomic status continue to influence the administration of the death penalty in violation of the United States' obligations under Article 6(1) and Article 26 of the ICCPR as well as Article 5(a) of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).

¹ U.N. H.R.C., *Concluding Observations of the Human Rights Committee on the Second and Third U.S. Reports to the Committee: United States of America*, ¶ 29, U.N. Doc. CCPR/C/USA/CO/3/Rev. 1 (Dec. 18, 2006).

² U.N. Committee on the Elimination of Racial Discrimination, *Concluding Observations of the Committee on the Elimination of Racial Discrimination: United States*, ¶ 23, U.N. Doc. CERD/C/USA/CO/6 (Feb. 2008).

3. Studies have repeatedly shown that race is a critical factor in the determination of who is sentenced to death.³ In the state of Pennsylvania, for example, black defendants in Philadelphia County are sentenced to death at a significantly higher rate than similarly situated non-black defendants.⁴ And over the last three decades, social scientists have repeatedly observed that capital defendants are much more likely to be sentenced to death for homicides involving white victims.⁵
4. Another aspect of capital prosecution where racial animus comes into play is jury selection. Throughout the United States, African-Americans and other racial minorities are systematically excluded from capital juries that typically make sentencing decisions, even in communities with substantial minority populations. According to a report published by Amnesty International, one in five of African-Americans executed in the modern era was convicted by an all-white jury. Ninety percent of these cases involved victims who were white.⁶ Diverse and representative juries have been shown to be critical in ensuring fair trials in criminal proceedings,⁷ and the absence of such has serious consequences for people of color who must frequently overcome presumptions of guilt based on negative stereotypes.⁸
5. Socioeconomic status, like race, plays an influential yet inappropriate role in determining who is sentenced to death. The ranks of death row are filled by the poor, who cannot afford to retain well-trained and properly funded defense attorneys. United States Supreme Court Justice Ruth Bader Ginsburg famously observed that “[p]eople who are well-represented at trial do not get the death penalty.”⁹ Without access to resources and competent counsel, impoverished defendants are inherently disadvantaged in the criminal justice system. Yet income, like race, should never be a factor in who is sentenced to death.
6. Another form of arbitrariness is present in Alabama, the only state that gives judges free rein to impose death sentences notwithstanding the jury’s determination that the defendant should be sentenced to life without parole. As a result, several prisoners have been executed in Alabama after a judge overruled a jury’s life verdict—

³ DEATH PENALTY INFORMATION CENTER, *The Death Penalty in Black and White: Who Lives, Who Dies, Who Decides* (1998), <http://www.deathpenaltyinfo.org/article.php?scid=45&did=539>.

⁴ AMERICAN BAR ASSOCIATION, *Evaluating Fairness and Accuracy in State Death Penalty Systems: The Pennsylvania Death Penalty Assessment Report* xxviii (2007), <http://www.abanet.org/moratorium/assessmentproject/pennsylvania/finalreport.pdf>.

⁵ See generally AMNESTY INTERNATIONAL, *Death by Discrimination: The Continuing Role of Race in Capital Cases* (Apr. 24, 2003), <http://web.amnesty.org/library/index/engamr510462003>. See also Samuel Gross & Robert Mauro, *Patterns of Death: An Analysis of Racial Disparities in Capital Sentencing and Homicide Victimization*, 37 STAN. L. REV. 27, 78, 96 (1984); SAMUEL GROSS & ROBERT MAURO, *DEATH AND DISCRIMINATION: RACIAL DISPARITIES IN CAPITAL SENTENCING* 65-66 (1989).

⁶ *Death by Discrimination*, *supra* n. 5, at 19.

⁷ See, e.g., William Bowers, et. al., *Death Sentencing in Black and White: An Empirical Analysis of the Role of Jurors Race and Jury Racial Composition*, 3 U. PS. J. CONST. L 1, 187 (2001).

⁸ *Id.* at 179 (noting opinion polls showing that the public identifies blacks as more prone to criminality than other racial groups).

⁹ Ruth Bader Ginsburg, Justice, United States Supreme Court, Address at the University of the District of Columbia: In Pursuit of the Public Good: Lawyers Who Care (Apr. 9, 2001).

including some unanimous life verdicts—and imposed a sentence of death. Standardless judicial override is particularly problematic in Alabama because Alabama judges are selected in hotly contested partisan elections in which judges campaign on their records of imposing death sentences. This practice raises serious concerns about the fairness and reliability of death sentencing in Alabama.

7. Arbitrariness in capital prosecutions also contributes to the wrongful conviction of the innocent. Since 1973, 139 individuals have been released from death rows in the United States after presenting evidence of their innocence. There were nine exonerations in 2009 alone.¹⁰ Wrongful convictions result from a number of factors, including police misconduct and prosecutorial overreaching, racial bias, poverty, inadequate legal representation, and the denial of access to potentially exculpatory DNA evidence, even when the defendant is willing to pay for additional testing. Moreover, the United States does not always compensate individuals who have been wrongly convicted and sentenced to death. Punishment of the innocent as a result of government-sanctioned misconduct or discrimination violates Article 7 of the ICCPR.

Ongoing Violations of the *Avena* Judgment of the International Court of Justice

8. The United States ratified the Vienna Convention on Consular Relations (VCCR) without reservations in 1969. That same year, the United States ratified the treaty's Optional Protocol, giving its consent to the jurisdiction of the International Court of Justice (ICJ) over any claims arising under the VCCR.¹¹ Under Article 36 of the VCCR, detaining authorities must inform detained foreign nationals of their rights to consular notification and access without delay.
9. In January 2003, Mexico initiated proceedings before the ICJ on behalf of a group of Mexican nationals who had been sentenced to death in the United States without being advised of their Article 36 rights to consular notification and access. The United States participated fully in the case, entitled *Avena and Other Mexican Nationals*.¹²
10. The ICJ issued its final judgment on March 31, 2004, finding violations of Article 36 in 51 of the 52 cases that it reviewed. The Court held that United States courts must provide “review and reconsideration” of the conviction and sentence of each Mexican national to determine whether the violation of consular rights was harmful.¹³ Although Article 94 of the U.N. Charter obligates each member state “to comply with the [ICJ’s] decision...in any case to which it is a party,”¹⁴ the United

¹⁰ DEATH PENALTY INFORMATION CENTER, *The Innocence List*, <http://www.deathpenaltyinfo.org/innocence-list-those-freed-death-row> (last visited Feb. 24, 2010).

¹¹ Optional Protocol to the Vienna Convention on Consular Relations Concerning the Compulsory Settlement of Disputes, art. I, *opened for signature* Apr. 24, 1963, 596 U.N.T.S. 487.

¹² *Case Concerning Avena and Other Mexican Nationals (Mex. v. U.S.)*, 2004 I.C.J. 12 (2004).

¹³ *Id.* at ¶138, 153 (9).

¹⁴ U.N. Charter art. 94, ¶1.

States has thus far failed to implement the ICJ's judgment. Former President George W. Bush attempted to enforce *Avena* through an executive order, but the United States Supreme Court determined that legislation was necessary to implement the ICJ's decision. As of April 2010, the United States Congress had failed to enact the necessary legislation, and only two of the Mexican nationals affected by *Avena* had received some form of review in accordance with the ICJ's judgment.¹⁵

11. In August 2008, the state of Texas executed José Ernesto Medellín, one of the 51 Mexican nationals named in *Avena*, without providing him review and reconsideration. His execution defied the original ICJ decision as well as a subsequent order issued by the Court on July 16, 2008, which specifically directed the United States to refrain from executing Medellín until he had received review and reconsideration.¹⁶ In January 2009, the court unanimously found that “the United States had breached the obligation incumbent upon it” by executing Medellín.¹⁷ Other Mexican nationals are now facing execution, and the United States has failed to provide them review and reconsideration consistent with the ICJ's judgment. Until all of the nationals named in *Avena* receive the remedy mandated by the ICJ, the United States will remain in continued breach of its international legal obligations under the U.N. Charter.

Imposition of Capital Sentences on Persons with Mental Disabilities

12. In the last ten years, the United States has put to death dozens of prisoners suffering from schizophrenia, bipolar disorder, and other incapacitating mental disabilities. This practice constitutes cruel, inhuman or degrading treatment or punishment in violation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) as well as Article 7 of the ICCPR.
13. The execution of persons with mental disabilities is squarely prohibited by international law.¹⁸ Although the United States Supreme Court has held that it is

¹⁵ Osbaldo Torres received review and reconsideration in the State of Oklahoma. His death sentences were commuted to life imprisonment without the possibility of parole. Another Mexican national, Rafael Camargo, received a life sentence in exchange for his agreement to forgo the review and reconsideration mandated by the ICJ.

¹⁶ *Avena and other Mexican Nationals (Mex. v. U.S.)*, 2008 I.C.J. (Provisional Measures Order of July 16) (No. 139).

¹⁷ *Request for Interpretation of the Judgment of 31 March 2004 in the Case Concerning Avena and Other Mexican Nationals (Mex. v. U.S.)*, 2009 I.C.J., ¶55(2009) (No. 139).

¹⁸ See, e.g., U.N. Econ. & Social Council [ECOSOC], 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); ECOSOC, *Implementation of the Safeguards Guaranteeing Protection of Rights of Those Facing the Death Penalty*, U.N. Doc. Res. 1984/50 (May 25, 1984); ECOSOC Res. 1989/64; U.N. Doc. E/1989/91, 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 [C.H.R.], *Question of the Death Penalty*, Res. 2003/67 (April 24, 2003); 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

cruel and unusual punishment under the Eighth Amendment of the United States Constitution to execute persons who have mental retardation¹⁹ or who are mentally incompetent,²⁰ it defines these terms narrowly, and continues to apply the death penalty to individuals who suffer from severe mental illnesses, brain damage, and other mental disabilities.

14. The cases of these inmates are too numerous to recount in this report, but they have been cogently summarized by Amnesty International in its 2006 report on the execution of mentally ill offenders in the United States.²¹ Amnesty found that one in 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 1977.²²
15. In December 2009, Bobby Wayne Woods was executed²³ despite compelling evidence of mental retardation. His entire life, Woods had had difficulty completing even the most basic tasks and had to be told by family even when to go to bed. He was never able to live by himself and was functionally illiterate as an adult. Despite professional analysis of his test scores throughout childhood that determined he had an IQ of about 70, which is in the zone of mental retardation, he was executed in December 2009.²⁴

Death Row Conditions

16. Death row conditions are harsh and inhumane in many parts of the United States. The effects of such conditions must be assessed in conjunction with the length of time that prisoners spend on death rows awaiting their executions. Bearing in mind the need for brevity, this report focuses only on Texas and California, as they (along with Florida), have the largest death rows in the nation – with 342 and 701 death-sentenced prisoners respectively.

Death Row Conditions in Texas

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”).

¹⁹ *Atkins v. Virginia*, 536 U.S. 304 (2002).

²⁰ *Ford v. Wainwright*, 477 U.S. 399 (1986).

²¹ AMNESTY INTERNATIONAL, *United States of America: The Execution of Mentally Ill Offenders* (2006), <http://www.amnesty.org/library/asset/AMR51/003/2006/en/73c0b3fe-d46f-11dd-8743-d305bea2b2c7/amr510032006en.pdf>.

²² *Id.* at 6.

²³ *Bobby Wayne Woods, Killer of 11-year-old girl executed in Texas*, Financial, Dec. 4, 2009, available at http://www.finchannel.com/news_flash/World/53360_Bobby_Wayne_Woods,_killer_of_11-year-old_girl_executed_in_Texas/.

²⁴ Petition for a Writ of *Certiorari* at 12-25, *Woods v. Texas*, No. 09-7879 (2009).

17. Since 1999, all male Texas death row prisoners have been incarcerated in the Polunsky Unit in Livingston, Texas. Death row prisoners are segregated from other prisoners in every aspect of their lives. They eat alone, exercise alone and worship alone. Communication between prisoners on death row – accomplished by yelling between cells – is extremely difficult.²⁵
18. Prisoners are allowed no physical contact with family members, friends or even their attorneys. Generally, a death row prisoner will not have physical contact with anyone other than prison staff from the time of 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.
19. The best behaved death row prisoners spend twenty-two hours per day in their cells. They are ordinarily given access to small indoor or outdoor “cages” for two hours per day. Prisoners considered to be disciplinary problems, which usually includes the most mentally ill inmates, are allowed outside of their cells only three to four hours per week. Death row prisoners are not provided any opportunities to participate in “programming,” *i.e.*, structured activities in or out of their cells. They receive no educational or occupational training.
20. The conditions on Texas’ death row are harsher than those found in many of the nation’s highest security prisons and segregation units. Mental health 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.²⁶
21. It is well-established that a large percentage of death row inmates suffer from mental disabilities.²⁷ Yet, dozens of severely mentally disabled death row prisoners are housed in the conditions described above. James Colburn, 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.”²⁸ He was executed on March 26, 2003.

²⁵ 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>).

²⁶ *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*, 8 INT’L J. L. & PSYCHIATRY 49 (1986); Stuart Grassian, *Psychopathological Effects of Solitary Confinement*, 140 AM. J. PSYCHIATRY 1450 (1983). *See also* HUMAN RIGHTS WATCH, *Ill-Equipped: U.S. Prisons and Offenders with Mental Illness* Part XII (2003), <http://www.hrw.org/reports/2003/usa1003/>.

²⁷ *See, e.g.*, Laura Mansnerus, *Damaged Brains and the Death Penalty*, N.Y. TIMES, Jul. 21, 2001; David Freedman and David Hemenway, *Precursors of Lethal Violence: A Death Row Sample*, 50 Soc. Sci. & Med. 1757 (2000).

²⁸ Renee Feltz, *Cruel and Unusual? Texas Death Row Conditions*, Address at KPFT Radio (Nov. 8, 2002) (transcript available at KPFT Radio, <http://www.kpft.org/news/110802story3.html>).

Death Row Conditions in California

22. California has the largest death row in the nation, with 701 inmates awaiting execution as of March 2, 2010. Of these, the men are housed at San Quentin State Prison, while the sixteen women are housed at the Central California Women's facility near Chowchilla, California.²⁹ San Quentin is one of the oldest prisons in California and has been 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."³⁰
23. The treatment of mentally ill prisoners in all California prisons, including death row, is governed by *Coleman v. Wilson*.³¹ The *Coleman* monitors visited San Quentin's death row to assess the treatment of mentally ill prisoners and found that the conditions in which the most severely ill prisoners were kept "were substandard and included filthy and badly lit cells, with many inmates in poor, unsanitary conditions. Several inmates were symptomatically psychotic on sight; inmates complained of harassment by other inmates and staff and being compelled to make choices between going to health and mental health appointments, visits or yard."³²
24. Prisoners who are not among the most severely ill, but who nevertheless have been diagnosed with a major mental illness, are not offered therapeutic mental health counseling, which is available to non-condemned prisoners.³³
25. All San Quentin condemned prisoners are locked down for at least 19 hours each day in single cells. They are segregated from non-condemned, "mainline" prisoners. They live in cells that are four-and-a-half feet wide and eleven feet long.³⁴
26. Approximately 100 of the highest security male prisoners are locked down 24 hours a day, and kept in secure "hard" cells, with only a food port through which to communicate with the outside world. Those prisoners are permitted a maximum of 10 hours of exercise a week, under ideal conditions. These high security prisoners are not allowed contact visits with anyone, including attorneys, and are not permitted to use the phones.

²⁹ California Commission on the Fair Administration of Justice: Official Recommendations on the Fair Administration of the Death Penalty in California at 4 (2008), available at <http://www.ccfaj.org/documents/reports/dp/official/FINAL%20REPORT%20DEATH%20PENALTY.pdf>.

³⁰ *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).

³¹ *Coleman v. Wilson*, 912 F.Supp. 1282 (E.D. Cal. 1995).

³² Special Master's 20th Monitoring Report, p. 107, reflecting October 2007 visits, *Coleman v. Schwarzenegger*, E.D. Cal, No. Civ. S-90-0520 LKK JFM.

³³ *Id.* at p. 108, reflecting October 2007 visits.

³⁴ The rules and regulations for San Quentin are contained in the San Quentin Institutional Procedures Manual. The rules for the condemned are contained in IP 608, which was last updated in November of 2007.

27. The cumulative effect of the conditions on San Quentin's death row is clearly aggravated by the length of time that California prisoners typically await their executions. The elapsed time between pronouncement of a judgment of death and execution in California exceeds that of every other death penalty state; the average is currently 17.2 years.³⁵ Even worse, delays increase every year. As the population of California's death row has grown, the length of the delay between sentence and disposition of appellate reviews has grown as well. Thirty persons have been on California's death row for more than 25 years; 119 have been on death row for more than 20 years; and 240 have been on death row for more than 15 years.³⁶ Since 1978, seventeen California death row prisoners have committed suicide.³⁷

The Effects of Lengthy Incarceration and Inhuman Death Row Conditions: A Case Study

28. Prolonged incarceration on death row, particularly under the conditions described above, 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.
29. 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 violates the United States' obligations to treat individuals with dignity under Article 10(1) of the ICCPR and constitutes cruel, inhuman or degrading treatment in violation of the CAT as well as Article 7 of the ICCPR. The case of César Roberto Fierro Reyna, a Mexican national condemned to death in Texas, provides a particularly disturbing example of the destructive psychological effects of extended solitary confinement on death row.³⁸
30. César Roberto Fierro has been under a sentence of death since February 27, 1980.³⁹ He has been scheduled for execution on 14 separate occasions. Six times, he has come within days of execution before receiving a court-ordered reprieve. 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.
31. As the years passed, Mr. Fierro's mental condition continued to deteriorate. 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

³⁵ California Commission on the Fair Administration of Justice, *supra* at 4, 24.

³⁶ *Id.* at 28, 29.

³⁷ California Department of Corrections and Rehabilitation, Office of Public and Employee Communications, *Condemned Inmates Who Have Died Since 1978*, February 3, 2010.

³⁸ 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.

³⁹ The facts regarding Mr. Fierro's case are derived from interviews and documents provided by Mr. Fierro's attorneys.

attorneys became increasingly bizarre and irrational. He lost a great deal of weight. He became convinced that his attorneys were conspiring against him.

32. 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. . . .

33. What is particularly tragic about Mr. Fierro's case is that he may actually be innocent of the crime for which he was convicted.⁴⁰ Although a Texas court has found that his confession was coerced by the El Paso police,⁴¹ and his former prosecutor has urged the courts to grant him a new trial, he remains on death row. As of 2010, he has spent 30 years awaiting his execution for a crime he may not have committed.

Recommendations

In light of these violations, and considering the information submitted above, we ask the Human Rights Council to adopt the following recommendations:

1. The United States should immediately adopt a moratorium on executions as well as on the imposition of new death sentences until it revises its laws and practices that allow for the discriminatory and arbitrary application of the death penalty and the execution of individuals with mental disabilities.
2. The United States should implement the ICJ judgment in *Avena* by any means necessary, including Congressional legislation. Stays of execution should be granted to anyone named in the judgment until they are provided judicial "review and reconsideration" of their convictions and sentences.
3. The United States should revise its laws to prohibit the imposition of the death penalty against those with mental disabilities. The laws should be reformulated so that they are consistent with resolutions of the Commission on Human Rights calling on states to refrain from executing individuals with "any form of mental disorder."⁴²

⁴⁰ 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.

⁴¹ *Ex Parte Cesar Roberto Fierro*, No. 33,752-171-4 (171st Dist. Ct. – El Paso May 1, 1995).

⁴² See, e.g., UN Doc. E/2005/3, ¶ 89 (Mar. 9, 2005).

4. The United States should review conditions of detention on death row and should ensure that death row inmates are provided with access to educational opportunities, sufficient means of exercise, and occupational training. The United States should treat all persons on death row in accordance with Articles 7 and 10 of the ICCPR, the Standard Minimum Rules for the Treatment of Prisoners, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and the Basic Principles for the Treatment of Prisoners.

ⁱ *The National Association of Criminal Defense Lawyers (NACDL)* is an organization in the United States whose mission is to ensure justice and due process for persons accused of crime. *Death Penalty Focus* is one of the largest nonprofit advocacy organizations in the nation dedicated to the abolition of capital punishment. *The World Coalition Against the Death Penalty* is an alliance of more than 100 NGOs, bar associations, local bodies and unions from 35 nations around the world that aims to strengthen the international dimension of the struggle for abolition of capital punishment. *The Texas Defender Service* was established in 1995 and aims to improve the quality of representation afforded to those facing a death sentence and to expose and eradicate the systemic flaws plaguing the Texas death penalty. *The Southern Center for Human Rights* provides legal representation to people facing the death penalty, challenges human rights violations in prisons and jails, and advocates for criminal justice system reforms on behalf of those affected by the system in the Southern United States. *Human Rights Advocates* is a non-governmental organization with ECOSOC special consultative status and has worked on various aspects of the application of the death penalty before United Nations treaty and Charter organs. *The Equal Justice Initiative* is a law office that advocates on behalf of condemned prisoners, juvenile offenders, people wrongly convicted or charged with violent crimes, poor people denied effective representation, and others whose trials are marked by racial bias or prosecutorial misconduct.