

PETITION FOR COMMUTATION OF SENTENCE

Relief sought: *(check one)*

Reduction of Prison Sentence Only

Reduction of Prison Sentence and Remission of Fine

Remission of Fine Only

Other: Commutation of death sentence to life in prison without the possibility of parole.

TO THE PRESIDENT OF THE UNITED STATES:

PETITIONER, JUAN RAUL GARZA, a Federal prisoner, 62728-079D, confined in the Federal Institution at Terre Haute, Indiana,

in seeking a commutation of sentence, states that he was born on November 18, 1956; and has Social Security No. 371-58-1628. (If not a United States citizen, indicate country of citizenship: _____.)

PETITIONER was convicted on a plea of not guilty* in the United States District Court for the Southern District of Texas of the following crimes: See Attachment 1

involving the following circumstances: Mr. Garza was convicted of importing marijuana into the United States from Mexico and distributing that marijuana in the United States. He also was convicted of murdering one person in furtherance of the marijuana business, and of arranging the murder of two other people in furtherance of the marijuana business.

and was sentenced on August 2, 1993 to ~~imprisonment for~~ Death.

and/or to pay (fine restitution) of \$ _____ and/or to supervised release or special parole for _____ and/or to probation for _____. My (fine restitution) (has has not) been paid; the balance owed is \$ _____.

PETITIONER has been in custody since November 6, 1992. He will be released from confinement on N/A, 2000. If eligible for parole, he (was will be) eligible on N/A, 2000, and his application for parole was (granted denied).

* Mr. Garza was not given the opportunity to plead guilty in order to avoid a death sentence.

If your conviction or sentence is appealed or otherwise challenged, complete the following paragraph.

PETITIONER appealed to the United States Court of Appeals, where the judgment was affirmed on September 1, 1995. A petition for a writ of certiorari (was was not) sought from the Supreme Court, and (granted denied) on October 7, 1996. Petitioner (did did not) challenge his conviction or sentence under 28 U.S.C. § 2255 (habeas corpus). (Provide citations to court opinions, if known): United States v. Garza, Civ. No. B-97-273 (S.D.Tex. Apr. 9, 1998); affirmed, 165 F.3d 312 (5th Cir. 1999), cert. denied 120 S.Ct. 502 (1999).

In this paragraph, list every arrest, either as a juvenile or an adult, whether or not resulting in a conviction. For each incident list date, nature of offense charged, law enforcement authority involved, location, and disposition, if known.

PETITIONER'S criminal record, other than the instant offense, is as follows: See Attachment 2.

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

See Attachment 3.

PETITIONER requests an opportunity for his counsel to make an oral presentation pursuant to 28 C.F.R. § 1.10(c).

The statements contained herein are true to the best of my knowledge and belief, and I understand that any misstatements of material fact contained herein may subject me to criminal prosecution and/or cause adverse action on my petition for executive clemency.

9/13/2000

Date

s/ Bruce W. Gilchrist

Signature of Authorized Representative
(SEE ATTACHED)

If space is insufficient, additional pages may be added. Letters and/or other supporting material may be submitted with petition.

ATTACHMENT 1

Petitioner was convicted on a plea of not guilty in the United States District Court for the Southern District of Texas of the following crimes:

COUNT 1: Conspiracy to import into the United States from Mexico, a quantity exceeding 1,000 kilograms of marijuana, in violation of 21 U.S.C. §§ 963, 952(a)(2) and 960(b)(1)(G).

COUNT 2: Conspiracy to possess, with intent to distribute, a quantity exceeding 1,000 kilograms of marijuana, in violation of 21 U.S.C. §§ 846, 841(a)(1) and 841(b)(1)(A)(vii).

COUNT 3: Possession, with intent to distribute, a quantity exceeding 100 kilograms, that is, approximately 163.6 kilograms (360 pounds) of marijuana, in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(B)(vii) and 18 U.S.C. § 2.

COUNT 4: Possession, with intent to distribute, a quantity exceeding 50 kilograms, that is, approximately 95.4 kilograms (210 pounds) of marijuana, in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(C) and 18 U.S.C. § 2.

COUNT 5: Possession, with intent to distribute, a quantity exceeding 100 kilograms, that is, approximately 596.3 kilograms (1,312 pounds) of marijuana, in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(B)(vii) and 18 U.S.C. § 2.

COUNT 6: Continuing criminal enterprise, in violation of 21 U.S.C. §§ 848(a) and 848(c).

COUNTS 7, 8 and 9: Continuing criminal enterprise murders, in violation of 21 U.S.C. §§ 848(a), 848(c), and 848 (e)(1)(A) and 18 U.S.C. § 2.

COUNT 10: Money laundering, in violation of 18 U.S.C. § 1956(a)(1)(A)(I) and 18 U.S.C. § 2.

ATTACHMENT 2

Petitioner's criminal record, other than the instant offenses, is as follows:

On March 28, 1983, pleaded guilty to driving while intoxicated, Cameron County, Texas (Brownsville Police Department).

On October 11, 1988, pleaded guilty to possession of under 2 ozs. of marijuana, Cameron County, Texas. (Mr. Garza was also arrested for driving while intoxicated in conjunction with this offense.)

On July 15, 1991, pleaded guilty to unlawful carrying of a weapon, Cameron County, Texas (Brownsville Police Department).

On April 24, 1974, arrested by the U.S. Customs Service at the Gateway International Bridge port of entry in Brownsville, Texas. Claim of possession of 56 grams of marijuana was not adjudicated.

On September 18, 1974, arrested at Sarita Border Checkpoint for possession of 14½ pounds of marijuana. Case dismissed on February 5, 1976.

On June 14, 1981, indicted for attempted murder by District Attorney's Office of Cameron County, Texas. Case dismissed on October 6, 1981.

On September 30, 1985, arrested for aggravated sexual assault, Cameron County, Texas (Brownsville Police Department). Case dismissed on December 12, 1985.

Arrested 8 times for public intoxication by Brownsville Police Department from July 18, 1982 through July 23, 1991.

Arrested on November 17, 1985 for driving while intoxicated by Cameron County Sheriff's Office.

Arrested on September 18, 1991 (with 5 co-defendants) by Cameron County Drug Enforcement agents for selling marijuana to an undercover agent.

ATTACHMENT 3

STATEMENT OF GROUNDS IN SUPPORT OF CLEMENCY PETITION

Juan Raul Garza, who has been sentenced to death by order of the United States District Court for the Southern District of Texas and is presently scheduled to be executed on December 12, 2000, requests that, pursuant to Article II, § 3, cl. 1, of the United States Constitution, his petition for clemency be granted and that the sentence of death imposed upon him be commuted to a sentence of life in prison without the possibility of release.

Mr. Garza bases his petition for clemency on the information set forth therein and on a memorandum and other papers and materials to be filed in support thereof (the "Supporting Materials") within fifteen days after the date of the petition for clemency pursuant to 28 C.F.R. § 1.10(b). As will be more fully set forth in the Supporting Materials, which are incorporated by reference herein, the grounds on which Mr. Garza requests clemency include the following:

1. The process by which Mr. Garza was selected for capital punishment is plagued by systemic bias, disparity and arbitrariness.

- (a) The Department of Justice's report titled *The Federal Death Penalty System: A Statistical Survey (1988-2000)*, released September 12, 2000 (the "DOJ Report"), and other available data demonstrate that racial and ethnic bias infects the manner and means by which the few for whom the death penalty is authorized are chosen from among the much larger pool of

individuals who are eligible for such prosecution. The evidence demonstrates that racial and ethnic bias was endemic to the selection process in 1992-93 when the federal government decided to seek the death penalty for Mr. Garza.

(b) The DOJ Report and other available evidence confirm that the federal death penalty suffers from geographic disparities so pronounced that selection of who will live and who will die can only be described as arbitrary. Had Mr. Garza been indicted for federal offenses in any but a handful of other states, the evidence suggests that it is highly unlikely that he would face execution today.

(c) Mr. Garza did not have the benefit of the authorization procedures adopted by the Clinton administration in 1995. In 1995, the Department of Justice adopted authorization procedures that were intended to ensure the federal death penalty would be applied in a fair, effective manner. The DOJ Report and other available data make clear that these procedures have failed to achieved that objective and that many questions regarding the administration of the federal death penalty remain unanswered. Mr. Garza, however, was selected for capital prosecution without benefit of even these minimal safeguards that were intended to prevent arbitrariness and bias in the administration of the federal death penalty.

(d) The DOJ Report demonstrates that further and more comprehensive study is necessary to determine the full extent of these systemic inequities and to develop a more thorough understanding of their causes.

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, Mr. Garza's application for clemency should be granted.

2. Mr. Garza was denied procedural safeguards at his trial necessary to ensure that the death penalty was requested and imposed in a fair, rational and consistent manner. In particular:

(a) Mr. Garza was denied an informed jury because the jury that sentenced him was prevented from learning that Mr. Garza, if not executed, would be sentenced by the trial judge to life imprisonment without the possibility of release — information that was not only relevant but critical to a fully informed, fair and reliable sentencing determination. Carrying out the death penalty under these circumstances would contravene both fundamental principles of due process and established federal policy regarding imposition of the death penalty.

(b) Mr. Garza was sentenced to death on the basis of materially unreliable and prejudicial information. The vast majority of the non-statutory aggravating factors identified by the prosecution concerned offenses allegedly committed by Mr. Garza in Mexico for which he has never been charged or prosecuted, much less convicted. The prosecution sought to prove those offenses based on the uncorroborated testimony of admitted murderers and drug dealers, who obtained dramatically reduced sentences in exchange for their testimony, and on files compiled by the Mexican police, whose investigative methods and files are not subject to any of the constitutional restraints imposed upon U.S. law

enforcement officials. As a result, the information on which the prosecution predicated the non-statutory aggravating factors fell far short of the standards for reliability to which such information must be held.

3. Mr. Garza's sentence is disproportionate to penalties imposed upon his co-defendants, who were direct participants in the same crimes for which Mr. Garza has been sentenced to death and were offered more lenient treatment. It would be unfair and unjust to execute Mr. Garza when other similarly culpable defendants receive lesser sentences. Moreover, Mr. Garza's sentence is disproportionate to penalties imposed upon other persons convicted of similar offenses, including individuals who were engaged in other drug trafficking activities or organizations.

4. Mr. Garza was deported from Mexico in circumvention of a bilateral treaty between the United States and Mexico, and in violation of international law. Article 8 of the extradition treaty between Mexico and the United States prohibits extradition for a prosecution where the defendant faces the death penalty absent assurances from the requesting country that the defendant will not be executed. Mexico has in the past taken the view that there is no reservation to this treaty for surrendering custody to the United States outside the extradition context. Mr. Garza's deportation also violated international laws prohibiting a foreign government from turning an individual over to United States authorities to face capital punishment. Further, the current record suggests that United States law enforcement personnel investigated murders in Mexico without properly informing Mexican authorities. Such investigations were in violation of

the Treaty on Cooperation Between the United States and the United Mexican States for Mutual Legal Assistance.

5. Mr. Garza will not present a future danger to society if his sentence is commuted. The government's prediction that Mr. Garza would commit violent acts in prison if given a life sentence has been proven wrong. Mr. Garza would not present a danger while incarcerated at a federal maximum security facility for the remainder of his life.

6. In seeking clemency, Mr. Garza acknowledges and fully accepts responsibility for the irreparable pain and suffering he has caused to the families of the victims of his criminal conduct. However, Mr. Garza's execution would bring further pain and suffering to another group of innocent persons. Mr. Garza has a large family, including two adult and two young children, an elderly father, four sisters and two brothers, all of whom seek the President's mercy in commuting Mr. Garza's sentence. Executing Mr. Garza would have a devastating impact on each of them.

For the foregoing reasons and the reasons that will be set forth more fully in our Supporting Materials, Mr. Garza petitions the President to commute his sentence to life without the possibility of release.