

# Second US federal execution set for Tuesday morning

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Juan Raul Garza, a 44-year-old Mexican-American, will die by lethal injection at the federal penitentiary in Terre Haute, Indiana at 7 a.m. Central Daylight Time on June 19. Garza was convicted of three drug-related murders in 1993. His execution is to follow by only eight days the state killing of Oklahoma City bomber Timothy McVeigh, the first federal prisoner put to death in 38 years.

Although 38 US states have sent 718 people to their deaths since the US Supreme Court reinstated the death penalty in 1977, no federal inmate had been executed since 1963 until McVeigh's execution on June 11.

On Monday, the US Supreme Court rejected without comment an appeal filed on Garza's behalf. The motion argued that the trial judge had erred in his instructions to the jury in the sentencing phase of Garza's case, incorrectly stating that Garza might be paroled in 20 years if he were not given a death sentence.

The high court also rejected another motion requesting a stay on the grounds that Garza's execution would violate the charter of the Organization of American States (OAS), to which the US is a signatory. An OAS commission held in April that Garza's execution would violate the treaty because testimony given by US Customs agents at his sentencing concerning alleged criminal activity in Mexico could not be rebutted by the defense.

US Attorney General John Ashcroft and Solicitor General Theodore Olson both urged the Supreme Court to reject Garza's request for a stay of execution. Olson argued that Garza had long ago lost his right to question what the jury should have been told. Last week, the Justice Department filed a 30-page refutation of Garza's request for a stay, including the claim that his execution would violate international treaties.

Garza's attorneys said the Justice Department's position is that the US government's view of how the treaties apply to the case is "so incontestably right that Mr. Garza should be killed before being heard to argue a contrary interpretation."

Garza also called on President Bush to commute his sentence to life in prison without parole on the grounds that application of the death penalty in the US is racially biased. The president turned down Garza's clemency request.

Last month, Attorney General Ashcroft delayed Timothy McVeigh's execution for less than a month after it was revealed that the FBI withheld more than 3,000 pages of documents from the defense. The trial judge and federal appeals court refused a request by McVeigh's attorneys to stay the execution in order to give the defense time to fully study the new evidence.

The McVeigh execution opened the way for execution dates to be set for 19 other inmates on federal death row. Juan Garza had been scheduled to die last December 12, but then-President Clinton delayed his execution pending the results of a Justice Department study into whether the federal death penalty is administered disproportionately against minorities.

Five days before McVeigh's execution, Ashcroft issued a report by the Justice Department asserting that federal death penalty procedures were not racially biased. The report said the high proportion of black and Hispanic federal death row inmates was due to the fact that a disproportionate number of minorities were involved in drug trafficking.

Juan Garza was convicted and sentenced to death in August 1993 in Texas for committing one drug-related murder and ordering two others. He was part of a marijuana smuggling ring in Brownsville, Texas and was prosecuted under provisions of the federal Anti-

Drug Abuse Act of 1988, which allows the death penalty for certain drug-related offenses.

Garza fled to Mexico in 1992 to evade prosecution, and was returned to the US by Mexican law enforcement officials seven months later. But the Mexican government says it never received a formal request for Garza's deportation to the United States. Mexican official Rodolfo Quilantan commented, "Mexico would have refused to extradite Mr. Garza until the United States furnished assurances that the death penalty would not be imposed, or, if imposed, would not be executed, against Mr. Garza."

In their appeal for clemency to President Bush on Monday, Garza's attorneys claimed that Garza was prosecuted and convicted in the capital case because he is Hispanic. They asserted that if he were a white Mafia boss from the Northeast he would not have been sentenced to death, pointing to such cases as Anthony Spero in New York City, who received a life sentence last April for similar crimes.

Three other federal death row inmates—Richard Tipton, Cory Johnson and James H. Roane, Jr, all African-Americans—were prosecuted and sentenced under the Anti-Drug Abuse Act of 1988. They were convicted for their participation in a series of drug-related murders in Richmond, Virginia.

Twenty federal inmates have been sentenced to death under the Federal Death Penalty Act of 1994, which was signed into law by Clinton. These inmates included Timothy McVeigh, as well as four men whose death sentences were overturned, but are awaiting resentencing.

The 1994 act added additional circumstances for which the death penalty could be applied. These include killing in the course of another serious offense, a prior criminal history of serious violent offenses, homicide involving planning and premeditation, multiple killings, or endangering the lives of others during the commission of a crime. Non-homicide offenses, such as treason and espionage, are also included.

Prosecutors must get the approval of the US attorney general before seeking the death penalty in a federal case. Former Attorney General Janet Reno personally authorized all of the cases prosecuted under the 1994 Federal Death Penalty Act. Another Clinton administration measure, the Anti-terrorism and

Effective Death Penalty Act of 1996, severely restricts the ability of death row inmates to appeal their sentences.

Of the 19 federal inmates presently facing death sentences, including Garza, 14 are African-American, 2 are white and 3 are Hispanic, including 2 Colombian nationals. Minority prisoners make up a higher proportion of federal inmates sentenced to death than on the death rows of any of the 38 states that impose the death penalty. According to the Death Penalty Information Center, of the more than 3,700 prisoners on state death rows, 46 percent are white and 43 percent are black.

Not only are federal death row inmates disproportionately minority, but the geographic location of a crime largely determines whether prosecutors will seek the death penalty. Thirteen of the current federal prisoners sentenced to death were prosecuted for crimes committed in just three states—Texas, Virginia and Missouri. These three states alone have carried out 379 of the 719 executions since the Supreme Court reinstated the death penalty. None of the condemned federal inmates come from states that bar the death penalty, although prosecutors in these states can seek the death penalty for federal crimes.



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