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# **amnesty international**

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## **UNITED STATES OF AMERICA**

### **900<sup>th</sup> execution looms**

#### **A call to the President as Vietnamese refugee and Vietnam veteran set to be killed**

**18 February 2004**

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On 11 February 2004, the White House spokesman accused those raising questions about President Bush's military service record during the Vietnam War of engaging in "gutter politics", asserting that "the American people deserve better". What the country needed, Scott McClellan added, was an "honest discussion" about leadership.

The subject of Vietnam will again come into view as the United States of America approaches another chilling milestone in its ugly history of judicial killing. Next week, the USA is set to carry out its 900<sup>th</sup> execution since this policy resumed in 1977. A former Vietnamese refugee is scheduled to become the 900<sup>th</sup> prisoner to be put to death, and a Vietnam War veteran is due to become the 901<sup>st</sup> a few hours later. While their cases show how the death penalty is part of a cycle of violence, they also illustrate the unfair nature of the capital justice system and why there is an urgent need for principled leadership on this issue.

Amnesty International believes that an honest assessment of the death penalty, free from the distorting effects of "tough on crime" politics, can only lead to the conclusion that this is a fundamentally flawed policy – cruel and brutalizing, prone to discriminatory and arbitrary application, and carrying the inescapable risk of irrevocable error.

More than 600 executions have occurred in the USA since 1995 alone. President Bush is a leader who is indelibly linked with this period of the death penalty – one in three of the execution warrants carried out between 1995 and 2000 crossed his desk as Texas governor. As such, Amnesty International believes that this President could, if he so chose, lead his country into a much-needed rethink on its increasingly isolated position on capital punishment.

Hung Thanh Le is due to be put to death on 26 February for a murder of a fellow Vietnamese refugee in Oklahoma City in 1992. Hung Le's lawyers had done almost no investigation into his background or preparation of the witnesses. As a result, the mitigation testimony was brief, and did not include any expert evidence about the possible impact of Hung Le's refugee past. A juror from the trial later stated that a Vietnamese woman who was on the jury had not wanted to impose a death sentence, and had unsuccessfully tried to persuade the other jurors that Hung Le's actions may have been affected by his cultural and personal background. Since the trial, a Vietnamese psychologist has concluded that, as a result of his life experiences, Hung Le was suffering from post-traumatic stress disorder (PTSD) at the time of the crime. Hung Le was 16 years old when he fled Vietnam. He witnessed, and was subjected to, violence and deprivation in his years in refugee camps in Cambodia and Thailand.

Hung Le's post-arrest interrogation was marked by questionable police conduct against this foreign national who did not have access to consular or other assistance to help him overcome language and cultural barriers. Moreover, his trial was riddled with prosecutorial misconduct. The prosecutor made inflammatory remarks, misstated the law as it related to mitigating evidence, referred to facts that were not in evidence, and repeatedly dehumanized Hung Le. Despite finding that the prosecution had engaged in improper conduct, the appeal courts have allowed Hung Le's death sentence to stand, leaving it to the clemency authorities to provide a remedy. The members of the state Pardon and Parole Board did the right thing, voting unanimously that Hung Le's death sentence should be commuted to life imprisonment. However, in what is becoming something of a gubernatorial habit in Oklahoma, the state with the highest execution rate in the country, Governor Brad Henry rejected their recommendation. Amnesty International members worldwide are appealing to him to reconsider, as are members of the Vietnamese community in Oklahoma. President Bush should do the same. After all, in his inaugural speech on 20 January 2001, he promised to be a leader who would "speak for greater justice and compassion".

North Carolina's Governor, Michael F. Easley, is being petitioned for clemency in the case of George Franklin Page, a 63-year-old man scheduled to be put to death on 27 February a few hours after Hung Thanh Le. George Page, who served in the military for 16 years, has a long history of mental problems. His former wife has stated in an affidavit that her husband "completely changed" after his return from the Vietnam War, suggesting that "something traumatic must have happened to George while he was in Vietnam". She did not testify at the trial because she was not contacted by the defence lawyers. A recent psychiatric assessment concluded that George Page suffers from post traumatic stress disorder and bipolar disorder. There is evidence that he might have been undergoing a PTSD flashback at the time of the crime, during which a police officer, tragically, was shot dead.

In an interview on 8 February 2004 on NBC's "Meet the Press", President Bush said: "I'm a war president. I make decisions here in the Oval Office in foreign policy matters with war on my mind." In a speech in London on 16 February, Nobel Peace Laureate Archbishop Desmond Tutu made a link between the President's record on executions and his administration's pre-emptive military policy. The Archbishop argued that the death penalty is a flawed policy that brutalizes society while making it no safer, and that the war on Iraq was based on flawed intelligence and has made the world "a great deal less safe than before". Archbishop Tutu suggested that a positive development would be if politicians would more readily admit their human fallibility, adding that it is "large hearted and courageous people who are not diminished by saying 'I made a mistake'."

As an organization seeking an end to all executions everywhere, Amnesty International believes that a year ago President Bush made a mistake in refusing to commute the death sentence of another former soldier, Louis Jones, who had presented evidence of Gulf War Syndrome in his clemency petition. While it is too late for President Bush to make a difference in his case – Louis Jones became the third federal prisoner to be executed since this President took office – he should consider the possible impact of war on the crime for which George Page was sentenced to death, reflect upon the impact that executions have on the international reputation of the USA, and join Amnesty International activists appealing to Governor Easley to commute George Page's death sentence. In North Carolina, there have been more than 500 resolutions in favour of a moratorium on executions, passed by local government authorities, commercial businesses, religious organizations and congregations, political parties, community groups and student bodies. President Bush should add his voice to these calls for executions to be halted.

Amnesty International is well aware of the federal system of government in the USA, and that while the President can intervene directly in federal executions he does not have the power of

reprieve over state-level executions as he did over Texas executions when he was governor there. This does not preclude him from making a personal appeal to the clemency authorities in the state concerned. Amnesty International is also mindful that the Vienna Convention on the Law of Treaties does not allow a government to hide behind its domestic law in order to escape its international obligations. The US administration should work to ensure, for example, that states are providing death row prisoners genuine clemency opportunities as required under the International Covenant on Civil and Political Rights which the USA ratified in 1992. In Texas and Oklahoma there are serious questions about the clemency process.

Similarly, the US administration should be doing all it can to ensure that four internationally illegal executions of child offenders scheduled to take place in Texas in the next four months are not carried out. The US Government should urge the Supreme Court to end this shameful practice nationwide once and for all when the Court considers the issue later this year. Amnesty International recalls what the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions wrote in 1998 following his mission to the USA, namely that “a serious gap exists between federal and state governments, concerning implementation of international obligations undertaken by the United States Government... It is clear that the Federal Government in undertaking international obligations also undertakes to use all of its constitutionally mandated powers to ensure that the human rights obligations are fulfilled at all levels”. The gap identified by the Special Rapporteur still exists six years on.

In the cases of Hung Thanh Le and George Page, the States of Oklahoma and North Carolina arguably contravened the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, which require that capital defendants be provided adequate legal assistance at all stages of proceedings. The Safeguards were endorsed by the United Nations General Assembly in 1984. Two decades later, the USA still violates these safeguards on a regular basis. The prosecutorial misconduct in Hung Le’s case flew in the face of the UN Guidelines on the Role of Prosecutors, which require prosecutors to “perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights”. The Guidelines were adopted in 1990 and welcomed by the UN General Assembly.

In his pre-war speech at the UN General Assembly on 12 September 2002, arguing that Iraq posed “a grave and gathering danger” and was “unilaterally subverting” UN resolutions, President Bush noted that the UN Commission of Human Rights had found Iraq to have violated human rights. He said that the “United States helped found the United Nations. We want the United Nations to be effective, and respected, and successful.” At the General Assembly again on 23 September 2003, he said: “As an original signer of the UN Charter, the United States of America is committed to the United Nations. And we show that commitment by working to fulfil the UN’s stated purposes, and give meaning to its ideals.”

The UN Commission on Human Rights has repeatedly expressed its conviction that “abolition of the death penalty contributes to the enhancement of human dignity and to the progressive development of human rights”. In recent years, the Commission has repeatedly called on all governments to impose a moratorium on executions with a view to abolition and not to use the death penalty against anyone suffering from a mental disorder. There are mental health issues in the cases of Hung Thanh Le and George Page, including the psychological impact of war or other violence on both these people prior to their undoubtedly violent and tragic crimes. The juries were not presented the full picture in either case.

Amnesty International believes that executions are a symptom of a culture of violence rather than a solution to it, and consume resources that could otherwise be used towards constructive strategies to combat violent crime and to offer assistance to its victims and their families. The death penalty not only prolongs the suffering of the murder victim’s family through the

necessarily long appeals process, it extends the suffering to the relatives of the condemned. Perhaps the state is simply prepared to write off such suffering as the “collateral damage” of this outdated policy.

Some argue that lethal injection is a humane way to kill condemned prisoners. The current legal challenges being made to the lethal injection process on the grounds that one of the chemicals used may be masking the prisoner’s suffering during the execution suggest otherwise. The chemical, pancuronium bromide, has been banned in animal euthanasia in a number of states. On 12 February, Bobby Hopkins became the 319<sup>th</sup> person to be killed in Texas using this method. A judge on the Texas Court of Criminal Appeals dissented from the Court’s refusal to stay the execution pending a determination that the state’s lethal injection process was constitutional. He wrote: “Especially poignant is our own legislature’s action in banning the chemical [for use in killing animals]... It stands to reason that what is cruel and inhumane for use in animals is also cruel and inhumane for use in human beings.”

No execution technique can rid the death penalty of its cruelty. The death penalty is not just the act of execution, but the death sentence itself. If holding a gun against someone’s head in an interrogation room is torture, why is holding a person for years under the threat of the lethal injection needle considered acceptable? To characterize execution by lethal injection as a non-violent activity suggests that the same label should be applied to the action of a private citizen who captures a fellow human being, promises to murder that captive at some time in the future, and after several years, straps him or her down and kills them by injecting poison into their veins. Clearly, nobody would characterize this activity as non-violent. Yet this is precisely how the state has killed more than 700 human beings in the USA since 1982.

In a speech in New Mexico on 22 January 2004, President Bush said that “the great strength of America” is that “we believe everybody has dignity, everybody has worth”. The USA’s continued pursuit of executions directly contradicts these words. A repeated message of this administration has been that the USA will stand firm for the “non-negotiable demands of human dignity”. The death penalty is an affront to human dignity and diminishes us all.

Amnesty International urges President Bush to offer the USA the leadership it needs on this fundamental human rights issue.

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Please send an appeal to the President, urging him to impose a moratorium on federal executions, and to do all he can to lead his country away from the death penalty.

President George W. Bush, The White House, Washington, DC 20500, USA

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Email: [president@whitehouse.gov](mailto:president@whitehouse.gov)

Salutation: Dear Mr President

See also:

*A lethal ideology* <http://web.amnesty.org/library/Index/ENGAMR511492003>

*Death and the President* <http://web.amnesty.org/library/Index/ENGAMR511582003>

*Evolving standards of decency* <http://web.amnesty.org/library/Index/ENGAMR510032004>

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