

Reply of the Government of the United States to
January 27, 2000 Petition
Case No. 12.243 Juan Raul Garza

The Government of the United States submits this Reply to the petition filed in the case of Juan Raul Garza, Case No. 12.243. The United States respectfully requests that the Inter-American Commission on Human Rights ("Commission") declare the petition inadmissible under Commission Regulations 35(c) and 41(b)-(c): The petition fails to state facts that constitute a violation of rights set forth in the American Declaration of the Rights and Duties of Man ("American Declaration") and is manifestly groundless.

FACTUAL AND PROCEDURAL HISTORY

For over a decade, Juan Raul Garza controlled and operated a major drug trafficking enterprise through which he sold thousands of pounds of marijuana in the United States smuggled from Mexico. As his criminal enterprise grew in scope, Garza decided to eliminate individuals from his organization who had earned his suspicion. To this end, Garza either ordered or carried out the execution-style murder in the United States of three individuals - Gilberto Matos, Erasmo De La Fuente, and Thomas Rumbo. These facts are undisputed.

After an extensive trial in the United States District Court for the Southern District of Texas, Garza was convicted of five violations of federal drug trafficking laws, operating a continuing criminal enterprise, money laundering, and three counts of killing in furtherance of a continuing criminal enterprise. Later, at a punishment hearing, the government introduced evidence showing that Garza had committed four additional murders - three by gunshot, one by strangulation and suffocation - in Mexico. Following the punishment hearing, the jury recommended a sentence of death.

Garza's conviction and sentence were affirmed by the Fifth Circuit Court of Appeals. United States v. Garza, 63 F.3d 1342 (5th Cir. 1995). The Fifth Circuit denied rehearing en banc, United States v. Garza, 77 F.3d 481 (5th Cir. 1995), and the United States Supreme Court denied certiorari review. Garza v. United States, 519 U.S. 825 (1996).

In December 1997, Garza filed a motion to vacate his sentence under 28 U.S.C. section 2255 (the federal habeas corpus statute), arguing that the Government's introduction of evidence relating to four murders in Mexico violated his rights under the Due Process Clause of the Fifth Amendment to the United States Constitution. Garza's motion was denied by the District Court in April 1998.

Subsequently, Garza requested a certificate of appealability from the District Court, required under 28 U.S.C. section 2253(c)(1) for Garza to appeal the District Court's denial of habeas review. When the District Court denied his request, Garza repeated his request before the Fifth Circuit Court of Appeals. The Fifth Circuit also denied his request. The court concluded that he had not made a "substantial showing of the denial of a constitutional right" required under the statute. United States v. Garza, 165 F.3d 312, 315 (5th Cir. 1999). The United States Supreme Court denied certiorari review of the Fifth Circuit's decision in November 1999. United States v. Garza, __U.S.__, 120 S.Ct. 502 (1999).

On January 27, 2000, Garza lodged this petition with the Commission, alleging violations of Article 1 (right to life), Article 18 (right to a fair trial) and Article 26 (right to due process of law) of the American Declaration. The Commission forwarded Garza's petition to the Government of the United States on the same day, requesting that precautionary measures be taken "to preserve Garza's life and physical integrity so as not to hinder the processing of his case before the Inter-American system."

ARGUMENT

The petition portrays this as a case in which Garza was victimized by a system that failed to afford him adequate protection for his right to a fair trial. This could not be farther from the truth. Garza's proceedings were conducted in complete compliance with United States law, the rights set forth in the American Declaration, and customary international law.

The simple fact is that Garza had every opportunity to present his case, to rebut the Government's case, and to challenge all of the evidence presented against him - during both the guilt and sentencing phases of trial.

Arguments to the contrary merely attempt to divert attention from the facts - Garza ordered or committed each of three execution-style murders during a violent, brutal reign over a transnational drug-smuggling enterprise. The Commission should see through the petition's attempt to disguise the true facts, and it should declare the petition inadmissible.

I. The Commission's Request For The United States To Take Precautionary Measures Is A Recommendation And Therefore Not Obligatory.

The practice of requesting precautionary measures is based on Article 29 of the Commission Regulations. The sole basis this regulation has in the Commission's organic document - the American Convention on Human Rights ("American Convention") - or in the Statute of the Inter-American Commission on Human Rights ("Commission Statute") is the Commission's authority to "make recommendations." Thus, its request for the United States to take precautionary measures in this case is a non-binding "recommendation," of which the U.S. Department of State has taken note.

II. Garza's Sentencing Did Not Violate Any Rights Set Forth In The American Declaration.

Petitioner claims that the United States¹ has violated Article 1 (right to life), Article 18 (right to a fair trial), and Article 26 (right to due process of law) of the American Declaration in the sentencing of Garza. Because the petition fails to state facts that constitute a violation of any rights set forth in the American Declaration and is manifestly groundless, it should be declared inadmissible.

¹ Interestingly, the petition identifies Janet Reno, U.S. Attorney General, and Kathleen Hawk Sawyer, Director of the Federal Bureau of Prisons, as the persons who committed the alleged violations of the American Declaration. However, Garza was not sentenced by either of these persons. His sentence was recommended by a jury of his peers, empanelled by a federal district court and operating pursuant to law. While petitioner takes issue with the U.S. Attorney's use of evidence of "unadjudicated offenses" at the sentencing phase of Garza's trial, such use is entirely lawful under federal authorities, and indeed, was permitted by the federal judge presiding over this case. There is simply no basis in fact or law for the petition's claim that Ms. Reno or Ms. Sawyer violated Garza's rights.

A. The Petition Does Not Allege A Violation Of The Right To Life

In conclusory fashion, the petition alleges that "on a straight reading of the [American Declaration], it would seem that the death penalty constitutes a violation of the right to life." This, however, is not a "straight reading" of the text. At the time of the adoption of the American Declaration there was no international legal prohibition on the death penalty. There is similarly no such prohibition today.

Although Article 1 of the American Declaration protects the right to life, this right does not proscribe capital punishment. Throughout the world, most countries practiced capital punishment at the time the American Declaration was adopted, and a majority of countries still do. The same was and is true for the Universal Declaration of Human Rights. In addition, Article 6 of the International Covenant on Civil and Political Rights, to which the United States is a party, expressly recognizes the right of countries that have not abolished the death penalty to impose it for the most serious crimes.

A number of countries have chosen to become parties to other treaties obligating them to abolish capital punishment, either entirely or in ordinary circumstances. See, e.g., Protocol to the American Convention on Human Rights, reprinted in Basic Documents at 83; Second Optional Protocol to the International Covenant on Civil and Political Rights Aiming at the Abolition of the Death Penalty, U.N. Doc. A/RES/44/128 (1991). These treaties, however, neither bind non-parties, such as the United States, nor change the status of capital punishment under international law.

The simple fact is that a majority of countries retain the death penalty for the most serious offenses. The Secretary-General reported to the U.N. Commission on Human Rights that as of March 10, 1999, 87 countries retained and used the death penalty for the most serious ordinary crimes and that another 26 countries retained the death penalty for ordinary crimes but had not executed anyone within the last 10 years; indeed, only 65 countries have formally abolished the death penalty for all crimes. See U.N. Doc. E/CN.4/1999/52/ Corr.1. State practice is clear and

consistent: there is no prohibition in international law on the use of the death penalty.

When carried out in accordance with due process, capital punishment for the most serious crimes is consistent with international law, including applicable human rights treaties. This case is no different. Garza's crimes - three execution-style murders - were sufficiently serious to merit a sentence of death. Moreover, he received all appropriate due process, including the review of his case numerous times by the federal district and appellate courts.

Accordingly, the petition fails to state facts which show a violation of the right to life, and is manifestly groundless. On this ground, the Commission should declare this claim inadmissible.

B. The Petition Does Not Allege A Violation Of Either The Right To A Fair Trial Or The Right To Due Process of Law.

According to the petition, Garza's right to a fair trial was violated by the introduction of evidence of "unadjudicated crimes" during the sentencing phase of Garza's trial. The petition also appears to rest its due process argument on the same basis: specifically, the petition claims that the principle of "equality of arms" was violated.²

While the petition is correct in noting that the principle of equality of arms is implicated in the right to a fair trial, it mistakenly attempts to expand the concept beyond that which is recognized under international law. There was nothing about Garza's trial - during either the liability or sentencing phase - that fell short of international standards for both equality of arms and Garza's right to a fair trial.

² The petition alleges that Garza's right to due process of law was violated by merely repeating the argument made in support of its claim that Garza's right to a fair trial was violated, *i.e.*, the use of evidence of "unadjudicated crimes" during the sentencing phase created inequality of arms.

Under international law, the principle of equality of arms is generally considered part of the right to a fair trial. See, e.g., Grant v. Jamaica, Communication No. 353/1988, U.N. Doc. CCPR/C/50/D/353/1988 (1994)(decision of the U.N. Human Rights Committee recognizing "equality of arms" as an element of the right to a fair trial protected by Article 14 of the International Covenant on Civil and Political Rights). In any event, the Government will address the petition's due process and fair trial claims in this section by explaining how the principle of equality of arms was fully observed in this case.

As a preliminary matter, the Commission should note that the petition relies entirely for support on opinions of judicial and quasi-judicial bodies outside the Inter-American System of Human Rights. More important, none of these authorities interpret or apply the American Declaration - the sole instrument the Commission is authorized to interpret and apply to the United States. See Commission Statute, art. 20(a). None of these decisions is binding on the Commission, nor can the paucity of authority cited by the petition be considered as reflective of customary international law on this issue.

Indeed, the law of equality of arms is in stark contrast to the petition's portrayal of the principle. As the International Criminal Tribunal for the Former Yugoslavia ("ICTY") has held, "the principle of equality of arms obligates a judicial body to ensure that neither party is put at a disadvantage when presenting its case." See Prosecutor v. Tadic, Case No. IT-94-1-T, Judgment (Appeals Chamber, Int'l Crim. Trib. Former Yugo., 1999) Equality of arms requires procedural equality, not substantive equality. See id. Here, the petition alleges no facts that would indicate Garza was treated with anything but full procedural equality over the course of his trial and sentencing.

In Tadic, the court rejected the defendant's claim that he was denied equality of arms because he was unable to secure the attendance of witnesses for his defense at trial. Here, the petition presents a remarkably similar claim: because Garza was unable to secure the attendance of alleged favorable witnesses and to obtain unspecified exculpatory evidence at his sentencing, he claims that he was denied equality of arms. Just as the ICTY rejected this improper expansion of this principle, the Commission should also reject it as inconsistent with international law.

Further, contrary to the petition's assertions, the law of the European Court of Human Rights and the Human Rights Committee is in accord. For instance, in Dombo Beheer B.V. v. The Netherlands, 27 Oct. 1993, A. 274, the European Court adopted the view of the European Commission that "equality of arms" implies that each party must be afforded a reasonable opportunity to present his case, including his evidence, under conditions that do not place

him at a substantial disadvantage vis-à-vis his opponent.” And, in B.d.B. et al. v. The Netherlands, Communication No. 273/2989 (30 March 1989), U.N. doc. Supp. No. 40 (A/44/40) at 286 (1989), the Human Rights Committee observed that Article 14 of the International Covenant on Civil and Political Rights (the right to a fair trial) “guarantees procedural equality” to ensure that the conduct of judicial proceedings is fair.

Reviewing this case in light of the above authorities, it is clear that neither the law nor the court imposed any conditions that placed Garza at a substantial disadvantage vis-à-vis the prosecution. While it is true that the prosecution had some advantages – as does the state in any criminal prosecution – the procedural conditions at sentencing were the same for both parties. Garza was free to cross-examine all of the prosecution’s witnesses. Garza was free to impeach the prosecution’s evidence in any manner. Garza was free to call witnesses in his defense. Mere access to greater resources by the prosecution cannot be the basis for inequality of arms. If this were the standard, no criminal trial could possibly satisfy such a broad reading of the principle.³

The very statute which the petition puzzlingly cites as evidence of inequality unambiguously creates procedural equality for both parties: “Any other information relevant to such mitigating or aggravating factors may be presented by either the Government or the defendant . . .” 21 U.S.C. § 848 (emphasis added). The petition is correct in noting that the ordinary rules of evidence do not apply during a

³ The petition places great emphasis on a Mutual Legal Assistance Treaty between the United States and Mexico which it claims “shows clearly that the state and the victim did not have equality of arms.” This conclusion does not flow from either the existence of the treaty or from the petition’s recitation of the treaty’s non-self-executing treaty clause.

First, for the reasons detailed above, the treaty’s existence does not create inequality – it merely enhances the state’s ability to collect evidence against the accused. The treaty in no way restrains the defendant from challenging that evidence or presenting his own.

Second, the fact that the treaty does not create any private rights is irrelevant. Any and all aggravating or mitigating evidence collected by the government is required – under the U.S. Constitution – to be turned over to the defendant before trial. See Brady v. Maryland, 373 U.S. 83 (1963).

Further, the petition’s claim regarding the lack of a letters rogatory process between the United States and Mexico for criminal matters is simply wrong. The existence of a Mutual Legal Assistance Treaty between the two countries in no way affects the ability of a litigant – either civil or criminal – from obtaining evidence through the letters rogatory process. Similarly meaningless is the decision of Mexico and the United States not to apply the Inter-American Convention on Letters Rogatory to criminal matters. The letters rogatory process is one rooted in custom, and it exists between two countries willing to grant comity to each’s judicial process regardless of whether they are in treaty relations.

sentencing proceeding, however this works to the benefit (and detriment) of both parties. Section 848 creates a procedurally level playing field. And, indeed, this is the very nature of the equality of arms principle.⁴

Indeed, U.S. law goes well beyond what is required by this principle. Garza has been represented throughout this case (and continues to be represented) by competent appointed counsel. Federal law requires the appointment of experienced counsel for every capital defendant, and also guarantees the availability of funds for necessary investigative and forensic services. See 21 U.S.C. § 848(q) (4)-(10); 18 U.S.C. § 3005. These procedural protections go far beyond the minimum required by international law.

None of the authorities cited in the petition contradict the notion that equality of arms requires procedural equality, not substantive equality. As pointed out, in Barbera, Messegue and Jabardo v. Spain, the European Court found that the right to a fair trial requires that a defendant be able "to examine or have witnesses against him and to obtain the attendance of witnesses on his behalf under the same conditions as witnesses against him." 11 EHRR 360 (1994). No facts are alleged showing the court either prevented Garza from examining adverse witnesses or from obtaining the attendance of witnesses on his behalf. Similarly, there is no evidence the court treated Garza's witnesses, or his ability to examine them, any differently from the manner in which it treated the prosecution's witnesses. Garza's sentencing was conducted entirely in accordance with the principle articulated in Barbera.

Finally, in Jespers v. Belgium, a case in which the European Commission found that the principle of equality of arms had not been violated, the petition correctly notes that the European Commission observed that equality of arms applied to sentencing, albeit it did so in dicta. See 27 D.R. 61 (1981). More important, however, was the Commission's recognition of the limited scope of this principle, i.e., that under the European Convention,

⁴ Also puzzling is the petition's reference to Justice Marshall's statement in Williams v. Lynagh, 484 U.S. 935, 938 (1987). Justice Marshall indicated his objection to a Texas statute which permitted the introduction of evidence of unadjudicated crimes during sentencing on the defendant's application for a writ of certiorari. At least six other justices found that the case was not worthy of review, therefore, Justice Marshall's statement is of no legal import – the Supreme Court never reviewed the case.

equality of arms requires that a defendant have access to any information in the prosecution's possession that might exonerate him or lead to a reduction in sentencing. Id. This principle is equally applicable in federal courts under the U.S. Constitution, see Brady v. Maryland, 373 U.S. 83 (1963), and indeed, the Fifth Circuit Court of Appeals found that the government fully complied with Brady in this case. United States v. Garza, 165 F.3d 312, 314-15 (5th Cir. 1999). The petition has identified no evidence to the contrary.

U.S. law permits both the government and the defendant to present all relevant evidence of mitigating or aggravating factors during sentencing. And, under U.S. law the prosecution must turn over to the defendant any and all mitigating evidence. Without evidence that the court deviated from these basic guarantees of procedural equality, the petition's claim of inequality of arms is without merit. Accordingly, the Commission should declare this claim inadmissible.

CONCLUSION

In light of the above, it should be clear to the Commission that the petition fails to allege facts that reflect a violation of the right to due process, the right to life, or the right to a fair trial in the case of Juan Raul Garza. Accordingly, the United States respectfully requests that the Commission declare the petition inadmissible.