

Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
UA USA 11/2021

17 February 2021

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on extrajudicial, summary or arbitrary executions and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 44/5 and 43/20.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning Mr. **Iván Serrano Saenz**, a dual citizen of the United States of America and Ecuador. Please note that a copy of the present urgent appeal will also be sent to the Government of Ecuador.

Mr. Serrano spent the past eighteen years imprisoned in Florida, including periods on solitary confinement, with the last thirteen years on death row. He is awaiting re-sentencing since 2017. His physical and mental health is rapidly deteriorating. Due to his age, he is also at a heightened risk of contracting COVID-19 with potentially fatal consequences.

As of 25 November 2020, the facility where Mr. Serrano is held, the Union Correctional Institution in Florida, reportedly identified 189 COVID-19 cases in the inmates' population, and placed 86 prisoners in medical quarantine¹.

As of 4 November 2020, the Facility recorded 13 cases of deaths among inmates due to COVID-19.²

According to the information received:

Florida death penalty case

On 3 December 1997, four business partners of Mr. Serrano were murdered at Erie Manufacturing and Garment Conveyor Systems in Bartow, Florida. The victims were shot execution-style with two firearms (.22 and .32 calibres). According to numerous Erie employees, the relations between Mr. Serrano and at least two of his partners had been difficult.

¹ <http://www.dc.state.fl.us/comm/covid-19.html#stats>

² <https://www.news4jax.com/news/florida/2020/11/05/florida-inmate-covid-19-death-toll-at-180/>

His Excellency
Mr. Daniel B. Smith
Acting Secretary of State

On 4 December 1997, after Mr. Serrano returned to his home from a business trip to Atlanta, he was asked to go to the police station for an interview. At the police, Mr. Serrano detailed his business trip itinerary, which included leaving early on the morning on 2 December, flying from Orlando to Washington DC, and from Washington DC to Atlanta the evening of the same day. He indicated that he remained in Atlanta until 4 December.

Mr. Serrano's alibi in Atlanta testified that he met with him in Atlanta on 3 December at about 9.45 a.m., and that the meeting lasted approximately one hour. Investigators obtained the airport hotel's surveillance videotapes that showed Mr. Serrano in the hotel lobby at 12.19 p.m. on 3 December. At 10.17 p.m., Mr. Serrano was again seen on the video, entering the hotel lobby from the outside, wearing the same sweater and jacket as earlier in the afternoon.

Police considered, however, that Mr. Serrano flew from Atlanta to Orlando on 3 December under an alias and that immediately after the murders he departed on a flight back to Atlanta using another alias. Mr. Serrano's fingerprints were located on a parking garage ticket at Orlando airport, indicating that he departed from the Orlando airport at 3.49 p.m.

On 21 August 2000, Mr. Serrano obtained an Ecuadorian passport at the Consulate of Ecuador in Miami and subsequently entered Ecuador. Since that date, he established residence in Ecuador.

On 17 May 2001, Mr. Serrano was charged by indictment with four counts of first degree murder in Polk County, Florida. It is alleged that the agent in charge in the United States of the investigation had been reassigned to a different case given the belief that Mr. Serrano was out of jurisdictional reach of the United States. He, however, reportedly established contacts in Ecuador, and, after having being reinstated to the case, travelled to Quito.

On 23 August 2002, the United States requested the extradition of Mr. Serrano from Ecuador. In the extradition request, they provided assurance that the death penalty would not be sought or imposed.

While in Ecuador, the US agent in charge of the case reportedly maintained that Mr. Serrano was not an Ecuadorian citizen and therefore he could be deported instead of extradited. The agent later reportedly testified under oath that he paid an Ecuadorian mayor 300 dollars so he could pay off-duty Ecuadorian police officers to conduct the abduction of Mr. Serrano.

On 31 August 2002, Mr. Serrano was arrested in Quito, Ecuador. An order of deportation was issued the same day.

On 1 September 2002, he was deported to the United States.

Following trial, on 11 October 2006, Mr. Serrano was found guilty of first-degree murder.

On 24 October 2006, the jury recommended by a vote of nine to three that Mr. Serrano be sentenced to death for each of the four murders. The Court followed the jury's recommendations and sentenced him to death on 26 June 2007.

On 2 July 2008, Mr. Serrano appealed his conviction. According to the defence, the prosecution's case was circumstantial and the circumstantial evidence available was insufficient for conviction.

The defence also alleged that Florida law enforcement officials kidnapped Mr. Serrano in Ecuador and forcibly brought him to the United States, breaching the United States - Ecuador Extradition Treaty, in violation of Mr. Serrano's right to due process.

On 17 March 2011, the Supreme Court of Florida confirmed the convictions and the death sentence. Mr. Serrano subsequently filed a motion for rehearing, which was denied on 13 June 2011.

On 5 December 2011, the United States Supreme Court denied Mr. Serrano's petition for a writ of certiorari.

On 21 November 2012, Mr. Serrano filed an "Initial Motion for Post-Conviction Relief and Incorporated Memorandum of Law", and five amended motions between 3 July 2013 and 11 April 2014. The defence alleged, among others, that jurisdiction over Mr. Serrano was barred because U.S. officials forcibly removed him from Ecuador, in violation of the extradition treaty that prohibited extradition in death penalty cases.

On 29 December 2014, the motion was rejected.

On 11 May 2017, Mr. Serrano filed an appeal against the denial of the motion for post-conviction relief before the Florida Supreme Court, which was rejected on 11 May 2017.

On 20 February 2018, the U.S. Supreme Court denied a petition for a writ of certiorari.

Case of Hurst v. Florida

A decision by the U.S. Supreme Court in *Hurst v. Florida* issued on 12 January 2016 addressed whether the Florida death sentencing scheme, which did not require a unanimous jury to sentence a defendant to death, violated the Sixth Amendment of the Constitution of the United States.

The Supreme Court held that Florida's capital sentencing scheme was unconstitutional. The Court held that a jury must unanimously find the critical findings necessary before the trial court may consider imposing a death sentence, and that in order for the trial court to impose a sentence of death, the jury's recommendation must be unanimous.³

Since Mr. Serrano was sentenced to death by a jury vote of 9-3 in 2007, he amended the appeal of his death sentence following the Hurst decision.

In May 2017, the Supreme Court of Florida annulled Mr. Serrano's death sentences and ordered a new trial to be conducted.

Notwithstanding the U.S. Supreme Court's decision in *Hurst*, the Florida Supreme Court issued a decision in 2020 confirming that the state constitution does not require a unanimous jury recommendation before a death sentence can be imposed.

At present, Mr. Serrano re-sentencing hearing has not yet been scheduled and remains pending.

IACHR Proceedings

Ecuador

On 10 March 2003, Mr. Serrano filed an application with the Inter-American Commission on Human Rights (IACHR) against Ecuador, alleging that the said State was responsible for his illegal detention and subsequent deportation to the United States.

On 6 August 2009, the IACHR found that Ecuador illegally detained Mr. Serrano, held him incommunicado and in inhumane conditions, and later illegally and summarily deported him to the United States⁴.

The IACHR recommended that Ecuador grants legal assistance to Mr. Serrano and provides him with adequate reparation for the violations he had suffered.

United States of America

On 20 November 2011, Mr. Serrano filed a petition and request for precautionary measures with the IACHR against the United States of America.

On 15 December 2011, the IACHR granted Mr. Serrano precautionary measures and requested that the United States take the measures necessary to preserve his life and physical integrity and not hinder the processing of his case before the Inter-American system.

³ <https://law.justia.com/cases/florida/supreme-court/2016/sc12-1947.html>

⁴ Report No. 84/09, CASE 12.525: <https://www.cidh.oas.org/annualrep/2009eng/Ecuador12525eng.htm>

Subsequently, the IACHR found that Mr. Serrano was subjected to illegal and arbitrary arrest and subsequent deportation from Ecuador to the United States; that the US courts failed to take into account that the diplomatic assurance to not sentence him to death was not respected due to the circumvention of the United States - Ecuador Extradition Treaty; and that the time spent by Mr. Serrano on death row constituted cruel and inhuman treatment.

Based on the information before it, the IACHR also found that the role of the United States leading to the deportation of Mr. Serrano from Ecuador was never investigated.

The IACHR considered that the United States should grant Mr. Serrano effective relief, including the review of his trial and sentence in accordance with the guarantees of fair trial and due process, and the payment of pecuniary compensation⁵.

While we do not wish to prejudge the accuracy of these allegations, we are concerned that Mr. Serrano continues to be held on death row based on a death sentence that he should have not received in the first place; after having already spent on death row 13 years; awaiting re-sentencing since 2017; and while being in an extremely vulnerable situation due to his age and the deteriorating mental and physical health situation.

Under these circumstances, **we respectfully call on Your Excellency's Government to ensure the retrial of Mr. Serrano expeditiously without recourse to the death penalty, in full compliance with international law and standards;** and to provide him with full and effective reparation, as appropriate. Pending retrial, we also call on Your Excellency's Government to ensure that Mr. Serrano is urgently provided with **adequate medical care, assistance and appropriate medical monitoring** in order to preserve his physical and mental integrity⁶.

We stress that the imposition of a death penalty in a manner that is contrary to another provision of the International Covenant on Civil and Political Rights (ICCPR), including insofar as the guarantees of fair trial and due process of law are concerned, would constitute a violation of the right to life, protected by Article 6 of the ICCPR, ratified by the United States in 1992, and render the death sentence arbitrary in nature.

Furthermore, in light of the prolonged period of time endured by Mr. Serrano on death row, his overall detention history, his age and health situation, the ongoing uncertainty on the timing and outcome of his re-sentencing, we are also concerned that his ongoing detention may amount to a violation of Article 7 of the ICCPR and of Articles 2 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by the United States in 1994.

⁵ Report No. 200/20, Case 13.356: <https://www.oas.org/en/iachr/decisions/2020/USad13356en.pdf>

⁶ See also Standard Minimum Rules for the Treatment of Prisoners (the so-called Nelson Mandela Rules) which include provisions on the responsibility of States regarding health care for persons detained in prisons.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of Mr. Serrano in compliance with international instruments.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide detailed information on what measures the Government of the United States of America envisages to adopt in order to adequately protect Mr. Serrano's right to life, as well as his physical and mental integrity, including in relation to potential COVID-19 exposure-related risks.
3. Please provide information on measures taken, or envisaged to be undertaken, in order to implement the recommendations formulated by the Inter-American Commission on Human Rights. Within this context, please provide information on what grounds Mr. Serrano is being held on death row and please explain how such detention is compatible with the United States' international human rights obligations.
4. Please provide detailed information on when Mr. Serrano's re-hearing is scheduled to be held and explain how, given the overall trial history of Mr. Serrano, the time elapsed since May 2017, when the resentencing was ordered by the Supreme Court of Florida, until then it is compatible with the reasonable time requirement of a fair trial and due process of law.
5. Please provide detailed information on the deportation history of Mr. Serrano. Please explain whether an investigation was launched into the alleged circumvention of the Extradition Treaty between Ecuador and the United States and what was the result of it, particularly in terms of accountability of any officials responsible. If no investigation was carried out, please explain the reasons why and how this is compatible with the United States' international human rights obligations.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of our highest consideration.

Agnes Callamard

Special Rapporteur on extrajudicial, summary or arbitrary executions

Nils Melzer

Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment