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## **ADDITIONAL INFORMATION FOR PERSONS INTERESTED IN WRITING A LETTER CONDEMNING THE SENTENCE OF EFREN PAREDES, JR. AS A HUMAN RIGHTS VIOLATION**

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### **INTRODUCTION**

The State of Michigan imposed three life sentences on Efren for the shooting death of a store manager and robbery of the store. Efren and the manager were both employed at. The case was entirely circumstantial and, to date, no eyewitnesses to the crime have come forth, if any exist. He received two life sentences without possibility of parole for the death that occurred and one parolable life sentence for the armed robbery. Efren's sentencing guidelines for the armed robbery was three to eight years.

Three others were charged for their admitted participation in the same crime my husband was convicted of. All three entered guilty pleas to armed robbery and one pled guilty to murder. Two Chinese youth ages 16 and 17 received sentences of 18 to 45 years in adult prison and a White youth age 16 received a sentence of six months in a juvenile correctional center. Another White youth, who admitted involvement in the planning of the crime, was not charged at all. He was 16-years-old at the time.

Efren is Hispanic and received three life sentences in adult prison. (Efren's father was born in Torreón, Mexico and his mother was born in Austin, Texas. Both currently have residency in the USA. The majority of Efren's paternal extended family reside in Mexico.)

As of February 1, 2005, all the youth who entered guilty pleas to the robbery and/or homicide have been released from prison. Efren is the only youth who remains incarcerated.

### **CONVENTION ON THE RIGHTS OF THE CHILD**

In 1989 the United Nations adopted the Convention on the Rights of the Child ("CRC"), which prohibits life sentences being imposed on juveniles. (*See* United Nations Convention on the Rights of the Child, Nov. 20, 1989, art. 37, 1577 U.N.T.S. 3, 28 I.L.M. 1448, 1468-1470 (entered into force Sept. 2, 1990), available at <http://www.unicef.org/crc/crc.htm>). Every country in the world, except the USA and Somalia—which has no organized government—has now ratified the CRC; none has entered a reservation to the article prohibiting the imposition of life sentences on juvenile offenders. (*See* Office of the U.N. High Comm'r for Human Rights, Status of Ratifications of the Principal Human Rights Treaties (June 9, 2004), available at [www.unhchr.ch/pdf/report.pdf](http://www.unhchr.ch/pdf/report.pdf) ("Status of Ratifications"); Office of the U.N. High Comm'r for Human Rights, Declarations and Reservations to the Convention on the Rights of the Child, available at [www.ohchr.org/english/law/crc-reserve.htm](http://www.ohchr.org/english/law/crc-reserve.htm).)

Pursuant to the United Nations Convention On the Rights of the Child, Art. 37, "... Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age."

Under the Vienna Convention On the Law of Treaties the USA can no longer take any actions that would violate the "object and purpose" of the treaty until such time as it declares that it will not take the remaining steps toward ratification. (Vienna Convention on the Law of Treaties, adopted May 22, 1969, 1155 U.N.T.S. 331, UN Doc. A/CONF. 39/27, at art. 18(a)). On this matter, Dr. Cynthia Price Cohen, Executive Director, Child Rights International Research Institute writes in her article, *International Standards vs. U.S. Juvenile Practice*, "What could possibly be more central to the 'object and purpose' of the Convention than the child's right to life and to humane punishment?" (Source: <http://underourwings.org/cohen.html>)

Not only is the USA in violation of the CRC, it is also in clear violation of the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), and the United Nations Guidelines for the Prevention of Juvenile Delinquency ("The Riyadh Guidelines"). To view the complete text of these treaties you can visit the Office of the High Commissioner for Human Rights web site at: [www.unhchr.ch](http://www.unhchr.ch).

The majority of "civilized" nations have ratified the CRC—192 nations in all. The CRC is the most widely supported treaty of all United Nations treaties. These countries condemn the practice of sentencing people to life in prison for crimes they were accused of committing as children. The world community considers these deplorable actions by the State of Michigan against children to be inconsistent with the minimum standards of decency in the international community. Numerous international and regional bodies have passed treaties, resolutions, statements, and pronouncements expressing strenuous opposition to the cruel and unusual nature of imposing sentences of life imprisonment on children.

By continuing to impose sentences of life in prison on children in violation of international norms, the USA not only leaves itself open to charges of hypocrisy, it also endangers the rights of many around the world. These actions also risk undermining critical foreign policy interests of the entire nation. Countries whose human rights records are criticized by the USA have no incentive to improve their records when the USA fails to meet the most fundamental, base-line standards. Unconditional adherence to international law is essential.

Choosing to incarcerate Efen should have only been used as a measure of last resort and for the shortest appropriate period of time. Additionally, any further incarceration should take into account his age at the time of arrest and the desirability of promoting his reintegration and his assuming a constructive role in society. (See United Nations Convention On the Rights of the Child, Art. 37(b) and Art. 40(1)).

### ***JUS COGENS* NORM**

The exclusion of children from the sentence of life without parole is so widely accepted in law and practice that it has become a rule of customary international law. The worldwide rejection of imposing life sentences without the possibility of parole on juveniles has been recognized as being of a sufficiently indelible nature to now constitute a norm of *jus cogens*.

Under Article 53 of the Vienna Convention, a *jus cogens* norm is "a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character."

Norms of *jus cogens* "derive their status from fundamental values held by the international community, as violations of such peremptory norms are considered to shock the conscience of humankind and therefore bind the international community as a whole, irrespective of protest, recognition or acquiescence." (*Michael Domingues v. United States*, Inter-Am. C.H.R., Report No. 62/02, Merits Case 12.285, October 22, 2002, at ¶ 49 (citing *Asylum Case (Colum. v. Peru)*, 1950 I.C.J. 266, 276-77 (Nov. 30), at

<http://www.cidh.org/annualrep/2003eng/USA.12285.htm>).

The Restatement (Third) of the Foreign Relations Law agrees with this standard and provides that a *jus cogens* norm is a "norm accepted and recognized by the international community of States as a whole from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character," and that the norm is established where there is acceptance and recognition by a "large majority" of states, even if over dissent by a very small number of states. Restatement (Third) of the Foreign Relations Law § 102 & rptr. n. 6 (1986) (citing *Report of the Proceedings of the Committee of the Whole*, at 471-72, U.N. Doc. A/Conf. 39/11 (1968)).

As the U.S. Supreme Court has noted, customary international law is "part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction." *The Paquete Habana*, 175 U.S. 677, 700 (1900). See also Lea Brilmayer, *International Law in American Courts: A Modest Proposal*, 100 Yale L. J. 2277, 2284 (1991); Louis Henkin, *International Law as Law in the United States*, 82 Mich. L. Rev. 1555, 1561 (1984); Harold Hongju Koh, *Is International Law Really State Law?*, 111 Harv. L. Rev. 1824 (1998); Richard B. Lillich, *The United States Constitution and International Human Rights Law*, 3 Harv. Hum. Rts. J. 53, 69-70 (1990); Jordan J. Paust, *Customary International Law and Human Rights Treaties are Law of the United States*, 20 Mich. J. Int'l L. 301 (1999).

In this regard, the Restatement (Third) provides that "[i]nternational law and international agreements of the United States are the law of the United States and supreme over the law of the several States" and "[c]ourts in the United States are bound to give effect to international law and to international agreements of the United States." Restatement (Third) of Foreign Relations Law, § 102. "[A]s in the case of treaties, American courts will give effect to the obligations of the United States under customary law; at the behest of affected private parties, courts will prevent violations of international law by the States." Louis Henkin, *Foreign Affairs and the Constitution* 223 (1972); see also Harry A. Blackmun, *The Supreme Court and the Law of Nations*, 104 Yale L.J. 39, 45-46 (1994).

The principle that customary international law is part of United States law applies with even greater force when considering a peremptory norm. See, e.g., *United States v. Mata-Ballesteros*, 71 F.3d 754 (9th Cir. 1995); *In re Estate of Ferdinand E. Marcos Human Rights Litigation ["Marcos II"]*, 25 F.3d 1467 (9th Cir. 1994); *In re Estate of Ferdinand E. Marcos Human Rights Litigation ["Marcos I"]*, 978 F.2d 493 (9th Cir. 1992); *White v. Paulson*, 997 F. Supp. 1380 (E.D. Wash. 1998).

As the United States Court of Appeals for the Ninth Circuit noted in *Siderman de Blake v. Argentina*, courts of this country are obligated to enforce *jus cogens* norms. *Siderman de Blake*, 965 F.2d at 715-16. The U.S. Court of Appeals for the Ninth Circuit observed that "[b]ecause *jus cogens* norms do not depend solely on the consent of states for their binding force, they 'enjoy the highest status within the international law.' [Citation omitted.] For example, a treaty that contravenes *jus cogens* is considered . . . to be void." *Id.* at 715 (citing the Vienna Convention).

The *jus cogens* norm against the imposition of life sentences on children meets the requirements in order to attain the status of a peremptory norm: 1) it is general international law; 2) it is immune from derogation; and 3) it has not been modified by a new norm of the same status—there is no emerging norm that contradicts the current norm.

The prohibition of imposing life sentences on children enjoys near universal acceptance. There is thus no question that the prohibition against the imposition of life sentences on juveniles at the time they were accused of committing their crimes has attained the status of a *jus cogens* norm and is binding on this country.

## U.S. SUPREME COURT BANS JUVENILE DEATH PENALTY

March 1, 2005 the U.S. Supreme Court held that the execution of juvenile offenders is "cruel and unusual punishment" prohibited by the Eighth Amendment to the U.S. Constitution. Reference to one of your above named writings was made on page 15 of the Court's opinion. The Court also held:

[T]he overwhelming weight of international opinion against the juvenile death penalty, resting in large part on the understanding that the instability and emotional imbalance of young people may often be a factor in the crime. See Brief for Human Rights Committee of the Bar of England and Wales et al. as *Amici Curiae* 10-11. The opinion of the world community, while not controlling our outcome, does provide respected and significant confirmation for our own conclusions. (*Roper v. Simmons*, 543 U.S. \_\_\_\_ (2005), page 24 of opinion)

As previously noted, the United Nations Convention On the Rights of the Child, Art. 37, prohibits both the imposition of the death penalty and life sentences on juveniles. Other significant statements in the opinion were:

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[There is] "sufficient evidence that today our society views juveniles, in the words *Atkins [v. Virginia]*, 536 U.S. 304 (2002)] used respecting the mentally retarded, as categorically less culpable than the average criminal." 536 U.S., at 316.

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[J]uvenile offenders cannot with reliability be classified among the worst offenders. ... From a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed. Indeed, "[t]he relevance of youth as a mitigating factor derives from the fact that the signature qualities of youth are transient; as individuals mature, the impetuosity and recklessness that may dominate in younger years can subside." *Johnson, supra*, at 368; see also Steinberg & Scott 1014 ("For most teens, [risky or antisocial] behaviors are fleeting; they cease with maturity as individual identity becomes settled. Only a relatively small proportion of adolescents who experiment in risky or illegal activities develop entrenched patterns of problem behavior that persist into adulthood").

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[I]t is worth noting that the punishment of life imprisonment without the possibility of parole is itself a severe sanction, in particular for a young person.

A full summary of the key points in the *Roper* opinion compiled by Efren which are helpful for juveniles who are challenging sentences of life without parole is available for review upon request.

## INTERNATIONAL DEMARCHES AND LETTERS OPPOSING THE DEATH PENALTY AND LIFE SENTENCES ON CHILDREN

Regional bodies have likewise condemned the execution of juvenile offenders. The Council of Europe and the European Union, whose members include our closest allies, have expressed vehement opposition to the death penalty and sentences of life without parole, particularly as applied to children. The European Union has also repeatedly emphatically expressed their contention that "[a]ll the EU Member States reject the idea of incorrigibility of juveniles." (European Union, *European Union in the U.S.: EU Memorandum on the Death Penalty*, at <http://www.eurunion.org/legislat/DeathPenalty/eumemorandum.htm>.)

Consequently, numerous international and regional organizations have consistently opposed the execution of juvenile offenders in the United States through repeated diplomatic demarches, letters, and press releases. Some of these examples include:

- Letter from Juan Jose Bremer to Texas Board of Pardons and Paroles, May 3, 2002, available at [www.abanet.org/crimjust/juvjus/beazleymexico02.html](http://www.abanet.org/crimjust/juvjus/beazleymexico02.html).
- Letter from the Ambassador of Spain, Ambassador of Denmark, and the Delegation of the European Commission, to the Texas Board of Pardons and Paroles (May 7, 2002), at <http://www.eurunion.org/legislat/DeathPenalty/BeazleyBdPardPar0507.htm>.
- The European Union has expressed its disapproval of the execution of juvenile offenders in the United States through demarches addressing numerous juvenile executions, including the pending execution of Respondent Simmons. (See European Union, *European Union in the U.S.: EU Policy and Action on the Death Penalty* (documenting demarches regarding juvenile offenders facing death penalty), at <http://www.eurunion.org/legislat/DeathPenalty/deathpenhome.htm#ActionUSDeathRowCases>.)
- The Secretary General of the Council of Europe has expressed his "deepest concern and abhorrence" about pending executions of juvenile offenders, and has called the execution of juvenile offenders "particularly distressing." (Letter from Walter Schwimmer, Secretary General, Council of Europe, to Rick Perry, Governor of Texas (July 15, 2002) ("I write to you to express my deepest concern and abhorrence about the imminent execution of T.J. Jones [a juvenile offender] . . . The Council of Europe and its 44 member States are unequivocally opposed to the death penalty, considering that it has no place in a civilised democracy . . . The case of T.J. Jones is particularly distressing, since it is reported that he was a minor at the time of the crime."), at <http://www.abanet.org/crimjust/juvjus/tjcofe.html>.
- Press Release by Council of Europe Secretary General, Walter Schwimmer (calling pending execution of juvenile offender Napoleon Beazley "particularly distressing"), at [http://press.coe.int/cp/2001/555a\(2001\).htm](http://press.coe.int/cp/2001/555a(2001).htm).
- Bruce Shapiro, *Dead Reckoning*, *The Nation* (July 26, 2001) (quoting Walter Schwimmer, Secretary General of the Council of Europe, who declared that the American death penalty is "our greatest concern") available at <http://www.thenation.com/doc.mhtml?Fi=20010806&s=Shapiro>.)
- *Europe Outraged Over Graham Execution*, CBS News, June 23, 2000 (quoting German lawmaker Sabine Leutheusser-Schnarrenberger: "It does not fit: The United States presents itself on the one

hand as the world police defending human rights, and on the other side it carries out the death penalty."'), available at <http://www.cbsnews.com/stories/2000/06/21/national/main207908.shtml>.

- *French Lawmaker Denounces United States' Use of Death Penalty*, Associated Press Worldstream, June 10, 2000 (quoting Raymond Forni, president of France's National Assembly: "'The United States of America's prestigious image bears a tarnish . . . . It is no longer slavery, it is no longer racial segregation, it is the death penalty . . . . We must become America's guilty conscience and ensure that it finally ceases to be the black sheep of the western democracies.'")
- American Bar Association, *Beazley Execution: Assembly President Calls for Clemency*, Aug. 10, 2001 (quoting Lord Russell-Johnston, President of the Parliamentary Assembly of the 43-nation Council of Europe: "'The execution of Napoleon Beazley is set for 15 August . . . . Over eighty others, who were aged only sixteen or seventeen at the time of their crime, are on death row. This is unjustifiable, inexcusable and barbaric. A country which is . . . killing people – including juveniles . . . cannot claim world leadership in justice and human rights. The United States' moral influence in international affairs is being eroded . . . .'"), at <http://www.abanet.org/crimjust/juvjus/beazleycouncil.html>.

## IN CONCLUSION

These governments have issued their declarations because there exists a nearly universal global condemnation of the practice of imposing life sentences without possibility of parole on children which constitutes a norm of *jus cogens*. The CRC expressly prohibits both the imposition of the death penalty and sentences of life without parole on child offenders.

The global leadership's morally correct decision is supported by an overwhelming corpus of research and studies which have concluded that the human brain is not fully mature before reaching adulthood. And, that furthermore the brain regions that are the most important for regulating impulse control, planning, consideration of consequences, abstract reasoning and, most probably, moral judgment, are the very regions that mature last.

As one prominent neurophysiologist put it, "[s]tructural maturation of individual brain regions and their connecting pathways is a condition *sine qua non* for the successful development of cognitive ... functions." (Tomas Paus et al., *Structural Maturation of Neural Pathways in Children and Adolescents: In Vivo Study*, 283 SCI. 1908 (1999) (subjects of study aged 4 to 17 years)).

A country or individual's demarche or letter will serve as a reminder to the USA government of their proclaimed resoluteness on the universality of human rights. In March 2003, Secretary of State Colin Powell reiterated the "steadfast commitment of the United States to advance internationally accepted human rights principles worldwide." Powell also referred to President George W. Bush's "solemn pledge that the United States [would] always stand for the non-negotiable demands of human dignity" when launching the United States' State Department's report on human rights in other countries. (Secretary Colin L. Powell, Remarks at the Briefing on the State Department's 2002 Country Reports on Human Rights Practices, Washington D.C., March 31, 2003, available at <http://www.state.gov/secretary/rm/2003/19218.htm>.)

The USA is the only country in the western hemisphere which still imposes sentences of life without parole on children. When a country deviates from the promotion of "the non-negotiable demands of human dignity" the international community must remind that country of its obligation to return to the norms which have *jus cogens* status. The protection of human dignity is at the very core of international human rights law.

Similarly, the preambles of many human rights treaties state that the concept of human dignity is the bedrock principle upon which human rights are based. ■

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