

# URGENT ACTION

## JUROR AND VICTIM'S PARENTS OPPOSE EXECUTION

**Paul Storey, aged 32, is scheduled to be executed in Texas on 12 April. Among those who are calling for clemency are the parents of the man he was convicted of killing in 2006. One of the jurors who voted for the death sentence also opposes the execution.**

On 16 October 2006, Jonas Cherry, aged 28, was shot dead during a robbery of Putt-Putt Golf and Games in Hurst, Texas, where he was assistant manager. Two young men, Mark Porter, aged 20, and **Paul Storey**, 22, were charged with capital murder. Each was offered a plea bargain by the prosecution – a sentence of life imprisonment without parole in return for a guilty plea. Mark Porter took the deal, and was sentenced in 2008. Paul Storey did not. He went to trial and was sentenced to death. He has been on death row since 25 November 2008.

The defence presented no expert psychological testimony at the sentencing, mainly presenting family members as character witnesses for the defendant. A psychologist retained by the appeal lawyers in 2010 concluded that there were “many mitigating factors” that should have been presented to the jury, including the family history of serious depression on Paul Storey’s maternal side, his own history of this mental disability, and his limited intellectual functioning. She concluded that such information about his “intellectual limitations, his suggestibility, his tendency to be a follower, and his poor coping resources (due to multiple factors) could have been persuasive in terms of mitigation”. With regard to future dangerousness, the psychologist wrote that “the data available at the time of sentencing indicated Mr Storey overall presented a low risk of harm to others”. In 2010, one of the trial jurors signed an affidavit after reading this report. He said: “based on this new information I am certain I would not have voted for the death penalty”, and in particular, “I would have voted that Mr Storey was not a future danger”.

Paul Storey’s clemency petition points out that, at the sentencing, the prosecutor asserted to the jury that while the defendant’s “whole family got up here yesterday and pled for you to spare his life”, it “should go without saying that all of Jonas [Cherry’s] family and everyone who loved him believe the death penalty is appropriate”. Jonas Cherry’s parents have recently written to the authorities calling for commutation of the death sentence. They have also made a video, explaining that “we absolutely do not want Paul Storey to be executed for the murder of our son and request that he be given life in prison without possibility of parole.” His mother stated that “it pains us to think that due to our son’s death, another person will be purposefully put to death”, causing another family to suffer. She said that “An execution will not bring closure to us regarding the death of Jonas and will bring us more pain”.

### **Please write immediately in English or your own language (referencing inmate #999538):**

- Calling for the execution of Paul Storey to be halted and his death sentence commuted;
- Noting that one of the jurors has said he would not have voted for the death penalty if the jury had been presented with the mitigation evidence revealed on appeal, which would have been enough to result in a life sentence, the sentence that the prosecution had offered to both co-defendants;
- Noting the call for commutation of Paul Storey’s death sentence made by the parents of Jonas Cherry.

### **PLEASE SEND APPEALS BEFORE 12 APRIL 2017 TO:**

Clemency Section, Board of Pardons and Paroles  
8610 Shoal Creek Blvd., Austin, Texas 78757-6814, USA  
Fax: +1 512 467 0945  
Email: [bpp-pio@tdcj.state.tx.us](mailto:bpp-pio@tdcj.state.tx.us)  
**Salutation: Dear Board members**

Governor Greg Abbott  
Office of the Governor, P.O. Box 12428  
Austin, Texas 78711-2428, USA  
Fax: +1 512 463 1849  
Email: <https://gov.texas.gov/contact/assistance.aspx> (NB this requires an address, please use AI USA address below)  
**Salutation: Dear Governor**

AI USA’s details: 5 Penn Plaza, 16th Floor, New York, NY 10001, Phone: (212) 807-8400

Also send copies to diplomatic representatives accredited to your country. MR. LEWIS LUKENS, Chargé d’Affaires ad interim, American Embassy, 24 Grosvenor Square, London W1A 6AE, tel: 020 7499 9000. Salutation: Dear Mr. Lukens **Please check with your section office if sending appeals after the above date.**

**AMNESTY  
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### ADDITIONAL INFORMATION

Texas accounts for 37% of the executions (542 of 1,448) carried out in the USA since judicial killing resumed there in 1977 under revised capital laws approved by the US Supreme Court in 1976. The death penalty in the USA is marked by arbitrariness, discrimination and error. Supposedly reserved under constitutional law for the worst crimes and the most culpable offenders, in reality it is often those who lack the resources to mount an effective defence who end up on death row, or those whose crimes were committed in a jurisdiction whose prosecutorial authorities are more willing or better resourced than others to pursue the death penalty. The geographic bias in the system is illustrated in Texas. For example, 40 people have been executed since 1976 who were prosecuted in Tarrant County, Texas, the county where Paul Storey was tried. Only 10 whole states have carried out more than 40 executions in the past 40 years.

In Texas, a prerequisite for a death sentence is a jury's finding that the defendant would likely commit future acts of criminal violence that would constitute a "continuing threat to society" if allowed to live. If the jury is not unanimous in answering this "future dangerousness" question in the affirmative, the judge will impose a life sentence. The jury also has to consider whether there is sufficient mitigation evidence to warrant a life rather than a death sentence. If the jurors are less than unanimous in answering "no" to this question, that again results in a life sentence.

In 2015, US Supreme Court Justice Stephen Breyer, joined by Justice Ruth Bader Ginsburg, argued that the time had come for the Court to revisit the constitutionality of the death penalty in the USA, given the evidence of its arbitrariness and unreliability. Among the contributors to inconsistency or error, he suggested, was the jury selection process: "No one can serve on a capital jury who is not willing to impose the death penalty". He wrote and cited the half-century of research that "has demonstrated that death qualification skews juries toward guilt and death". At jury selection, the defence and prosecution will question prospective jurors and can exclude certain people, either for a stated reason (for cause) or without giving a reason (a peremptory challenge). Those citizens who would be "irrevocably committed" to vote against the death penalty can be excluded for cause by the prosecution, under a 1968 US Supreme Court ruling. In 1985, the Court relaxed the standard, thereby expanding the class of potential jurors who could be dismissed for cause during jury selection. Under this standard, a juror can be dismissed for cause if his or her feelings about the death penalty would "prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and his oath". In 1986, the Supreme Court acknowledged research showing that the "death qualification" of capital jurors "produces juries somewhat more 'conviction-prone' than 'non-death-qualified' juries".

In 2016, the juror who signed an affidavit in 2010 provided his recollections of the jury's deliberation at Paul Storey's trial: "I know we didn't deliberate long – one to two hours, maybe. The room was pretty quiet; it felt like everyone came in already knowing how to vote. All the other jurors thought he should be put to death. If I could have done anything, it would have been to deadlock the jury, but I didn't have the personal strength to do it. I was 28, and not a mature 28. I've grown quite a lot since then, but at the time, I was really uncomfortable speaking out". The state appeal court had dismissed his affidavit under Texas evidentiary rules, and when the federal District Court upheld the death sentence in 2014, the judge said he did "not give this affidavit any weight" as it had not been shown that the state court had acted unreasonably in dismissing it.

There have been six executions in the USA so far in 2017, four of them in Texas. Amnesty International opposes the death penalty in all cases, unconditionally. Today, 141 countries are abolitionist in law or practice.