

URGENT ACTION

SALVADORIAN MAN FACES IMMINENT EXECUTION

Alfredo Prieto, a Salvadorian man, is scheduled to be executed in Virginia on 1 October. He was convicted in 2008 of two capital murders committed in 1988. There is evidence that he has intellectual disability which would render his execution unconstitutional.

Rachael A. Raver and Warren H. Fulton III were murdered near Reston, Virginia in December 1988. In 2005, Salvadorian national **Alfredo Prieto** was identified as a suspect through DNA evidence. His first trial in 2007 ended in a mistrial due to juror misconduct. At his retrial in 2008, he was convicted on two counts of capital murder. The two death sentences were overturned in 2009 because of problems with the jury's verdict forms. Alfredo Prieto was again sentenced to death in 2010 and these death sentences have survived the appeals process.

The question of Alfredo Prieto's intellectual functioning has been an issue throughout the case. In 2002, the US Supreme Court banned the execution of individuals who have intellectual disability (previously known as "mental retardation"). At the time of Alfredo Prieto's trial, Virginia law required a capital defendant to have an IQ of 70 or less in order to be considered a person with intellectual disability. Of Alfredo Prieto's three IQ scores, two were well below 70 (64 and 66), but a third was 73. Prosecutors argued that the two scores below 70 were invalid. The jury agreed and sentenced Alfredo Prieto to death, finding that intellectual disability had not been proved.

In 2014, the US Supreme Court ruled in *Hall v. Florida* that states cannot use a fixed IQ score as the measure of whether an inmate can be put to death. Intellectual disability, it said, "is a condition, not a number... Courts must recognize, as does the medical community, that the IQ test is imprecise". It found that Florida's rigid IQ of 70 cut-off, which blocked the presentation of evidence other than IQ that would demonstrate limitations in the defendant's mental faculties, was unconstitutional. Alfredo Prieto's lawyers argue that Virginia has erred by relying on the unconstitutional definition of intellectual disability to reject Alfredo Prieto's claim, and that procedural technicalities are preventing them from arguing the claim to the Virginia courts in a full and fair hearing.

Governor McAuliffe has indicated that he will make a decision on the case well in advance of 1 October.

Please write immediately in English or your own language:

- Calling on the Governor to commute the death sentence of Alfredo Prieto;
- Noting evidence that he has intellectual disability and expressing concern that procedural technicalities are preventing this claim from being the subject of a full judicial hearing;
- Pointing out that the power of executive clemency is not constrained by procedural rules;
- Explaining that you are not seeking to downplay the seriousness of the crime or the suffering caused.

PLEASE SEND APPEALS BEFORE 1 OCTOBER 2015 TO:

Governor of the Commonwealth of Virginia

Governor Terry McAuliffe

1111 East Broad Street

Richmond, Virginia, USA

Fax: 011 1 804 371 6351

Email: via <http://1.usa.gov/1AMwO17> (for

those out of the USA, use Virginia as

resident State and explain in comment

that you are overseas)

Salutation: Dear Governor

Please let us know if you took action so that we can track our impact! EITHER send a short email to uan@aiusa.org with "UA 198/15" in the subject line, and include in the body of the email the number of letters and/or emails you sent, OR fill out this [short online form](#) to let us know how you took action. Thank you for taking action! Please check with the AIUSA Urgent Action Office if taking action after the appeals date.

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ADDITIONAL INFORMATION

In *Hall v. Florida* issued on 27 May 2014, the US Supreme Court wrote of Florida's rigid IQ of 70 cut-off law: "Pursuant to this mandatory cut-off, sentencing courts cannot consider even substantial and weighty evidence of intellectual disability as measured and made manifest by the defendant's failure or inability to adapt to his social and cultural environment, including medical histories, behavioral records, school tests and reports, and testimony regarding past behavior and family circumstances. This is so even though the medical community accepts that all of this evidence can be probative of intellectual disability, including for individuals who have an IQ test score above 70." *Hall v. Florida* reiterated the Supreme Court's view that dignity is the basic concept underlying the US constitutional ban on "cruel and unusual punishments", and asserted that this "protection of dignity reflects the Nation we have been, the Nation we are, and the Nation we aspire to be." Florida's IQ cut-off law, it ruled, "contravenes our Nation's commitment to dignity and to its duty to teach human decency as the mark of a civilized world". The states of the USA, the *Hall v. Florida* ruling said, "are laboratories for experimentation, but those experiments may not deny the basic dignity the Constitution protects".

There have been 20 executions in the USA this year, bringing the number of prisoners put to death across the country to 1,414 since the US Supreme Court upheld revised capital statutes in 1976, four years after overturning existing laws because of the arbitrary manner in which death sentences were being handed out. Virginia accounts for 110 of these executions. The most recent execution there was carried out on 16 January 2013. Some 140 countries are abolitionist in law or practice. Amnesty International opposes the death penalty in all cases, unconditionally.

Name: Alfredo Prieto (m)

Issues: Imminent execution, Unfair trial, Legal concern

UA: 198/15

Issue Date: 23 September 2015

Country: USA