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Office of the Governor  
1100 San Jacinto Boulevard  
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Dear Governor Abbott,

I am writing to you in my capacity as Council of Europe Goodwill Ambassador about Bernardo Aban Tercero, a Nicaraguan national, who is scheduled to be executed on August 26th, 2015 in Texas. I respectfully appeal to you to stay Mr. Tercero's execution and grant him clemency.

To many, Bernardo Aban Tercero is just one more criminal who must pay with his life for a crime for which he was convicted. But to execute Bernardo Aban Tercero would constitute an egregious miscarriage of justice.

Mr. Tercero was convicted of the murder of Robert Berger, which he committed during the course of a robbery, in Houston, Texas on March 31, 1997. He was sentenced to death on December 13, 2000 and has spent the last 15 years in jail.

### **Legal Representation**

Bernardo Aban Tercero's case has been fraught with errors. During his trial and subsequent incarceration he received shamefully inadequate legal counsel and has never had the opportunity to present critical mitigating evidence to avoid his death sentence.

According to observations made to the Inter-American Commission on Human Rights (IACHR) by Mr. Tercero's current counsel, Michael Charlton, Mr. Tercero's legal representation was so poor that there is no complete record of Mr. Tercero's proceedings because his previous lawyers failed to properly investigate earlier stages of his case.

During the initial stage of his trial, his defense team, Gilberto Villarreal and John Denninger, failed to present a coherent defense. The opportunity was missed to conduct a thorough investigation of mitigating evidence including mental health issues. They didn't investigate his case until the eve of the trial and even then spent only a few days conducting a minimal investigation. In fact, out of the \$21,670 allocated by the court to the defense attorney, \$8,449 was then given back to the Harris County and never spent on Mr. Tercero's defense.

After Mr. Tercero was sentenced to death, Sid Crowley and Richard Wheelan were appointed to represent him on direct appeal. They also failed to investigate or challenge the conduct of the trial counsel. Indeed, one journalist in the Austin Texas American Statesman placed both lawyers among the five worst death row lawyers in Texas. The legal representation afforded to Mr. Tercero has fallen woefully below professional standards.

In addition, even though Mr. Tercero specifically requested to speak with the Nicaraguan Consulate, and the authorities had full knowledge of his status as a foreign national, they denied him his right, a flagrant breach in international law under the Vienna Convention of Consular Relations (VCCR, Article 36). Mr. Tercero did not have the opportunity to choose his own legal representation.

### **Mental Health**

Mr. Tercero suffers from severe mental health issues, but despite his explicit request for a comprehensive investigation of his psychological health and cognitive abilities no such steps were ever taken by his previous counsel. There is evidence of a history of serious mental illness in Mr. Tercero's family.

Mr. Tercero no longer presents a threat to society. As the IACHR's Observations on the Merits Concerning Violations of The Human Rights of Bernardo Aban Tercero states: "Enforcement officers testified, during his pre-trial detention, Mr. Tercero had no disciplinary write-ups for aggressive or violent behavior". Furthermore, during Hurricane Mitch Mr. Tercero helped to save numerous lives in Nicaragua.

Whether one supports or opposes the death penalty, a central tenet of the US system of justice is that those who may receive the government's harshest punishment, the death penalty, must have effective legal counsel and access to a fair trial. Otherwise, there is a risk of an uneven and unfair application of the law. The US judicial system has failed Mr. Tercero. There are also serious doubts as to the extent of Bernardo Aban Tercero's culpability.

I respectfully urge you to stay his execution and grant him clemency. If his execution is carried out, it will be an egregious miscarriage of justice.

I thank you in advance for your attention to this letter and I look forward to hearing from you with a positive response.

Yours faithfully,

Bianca

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