

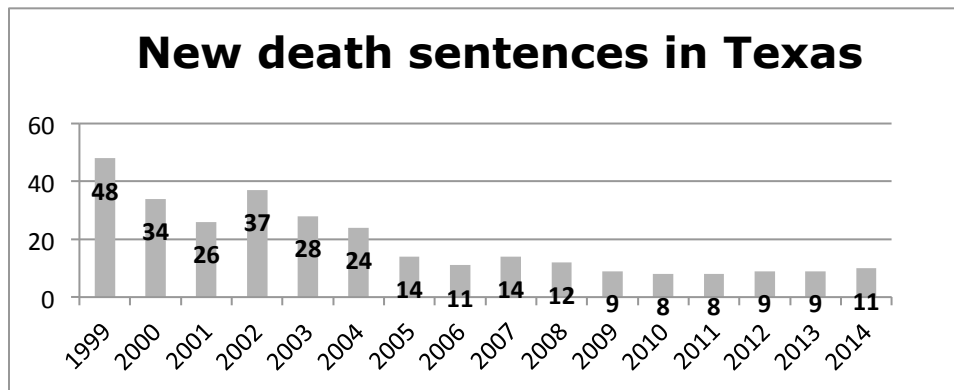
## Texas Death Penalty Developments in 2014: The Year in Review

The Texas Coalition to Abolish the Death Penalty (TCADP) publishes this annual report to inform citizens and elected officials about issues associated with the death penalty in Texas during the past year. It presents information on new death sentences, executions, and stays; reduced sentences; wrongful convictions; judicial developments; and other issues affecting the administration of justice in Texas.

### **Death Sentences**

#### *New Death Sentences*

New death sentences in Texas have dropped nearly 80% since 1999. Juries condemned 11 new individuals to death in Texas to date this year, according to data compiled from media outlets and the Texas Department of Criminal Justice (TDCJ).<sup>1</sup> Death sentences peaked in 1999, when juries sent 48 people to death row. In 2010, new death sentences fell to their lowest number since the U.S. Supreme Court upheld Texas' revised death penalty statute in 1976.



#### *Death Sentences by County*

Four of this year's eleven death sentences were imposed by juries in Harris County. A total of eight counties accounted for the new death row inmates in 2014: El Paso (1); Harris (4); Kaufman (1); Lubbock (1); McLennan (1); Tarrant (1); Travis (1); and Williamson (1).

Among the four individuals sentenced to death in Harris County was Juan Balderas, who was convicted of murdering 16-year-old Eduardo Hernandez in 2005. Balderas waited more than eight years to be tried for a crime that occurred when he was 19 years old. A jury sentenced him to death on March 14, 2014.

The death sentence imposed on Brian Suniga was the first in Lubbock County since 2008; a total of 20 people have been sentenced to death in Lubbock County. He was convicted of murdering 26-year-old David Rowser II in December 2011.

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<sup>1</sup> This includes the case of Eric Williams, who was sentenced to death on December 17, 2014. Williams was found guilty of murdering Kaufman County District Attorney Mike McLelland and his wife Cynthia McLelland in March 2013. The trial was moved from Kaufman to Rockwall County.

El Paso County imposed its first death sentence since 2009, condemning Fidencio Valdez to death for the December 2010 shooting of Julio Barrios. (See *Jury Rejections* below for information about another capital murder trial this year in El Paso.)

The death sentence imposed on Steven Thomas on October 27, 2014 was the first in Williamson County in 15 years. The jury in his capital murder trial sentenced him to death for killing 73-year-old Mildred McKinney in 1980. The murder had gone unsolved until 2012, when police connected Thomas to the crime after obtaining DNA evidence through a drug arrest.

An analysis of data from 2010 to 2014 reveals that only 21 Texas counties have imposed death sentences in the last 5 years; of these, only 13 counties have done so in the last 2 years.

Just five counties – 2% of the 254 counties in Texas – account for more than 60% of new death sentences since 2010.

Prosecutors in the Harris County District Attorney’s Office account for more than 20% of new death sentences since 2010. Out of a total 45 death sentences imposed in this time period, Harris County leads with 10, followed by Dallas County with 7, Tarrant County with 4, and Travis and McLennan Counties with 3 each. The other 16 counties imposed 1-2 sentences each.

Notably, prosecutors in Dallas County did not pursue the death penalty in any new capital murder trials in 2014.

<b>Texas’ Highest Sentencing Counties Since 2010</b>							
	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>Total 2010- 2014</b>	<b>Total Since 1976</b>
<b>Harris</b>	2	3	0	1	4	10	294
<b>Dallas</b>	2	0	2	3	0	7	106
<b>Tarrant</b>	0	1	2	0	1	4	73
<b>Travis</b>	1	1	0	0	1	3	20
<b>McLennan</b>	0	0	1	1	1	3	18
<b>Total</b>	5	5	5	5	7	27	511
<b>Total All Counties</b>	8	8	9	9	<b>11</b>	<b>45</b>	<b>1,087</b>

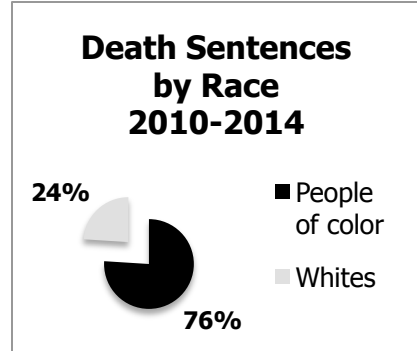
View a map of new death sentences by county from 2010 to 2014 at <http://tcadp.org/2010-2014-new-death-sentences/>.

*Death Sentences by Race*

Five of the new death row inmates in 2014 are African-American, four are white, and two are Hispanic.<sup>2</sup> All are male. Over the last five years, 60% of all new death sentences in Texas have been imposed on African-Americans.

In the two highest sentencing counties, these patterns are even more pronounced:

- In Harris County, 15 of the last 18 defendants sentenced to death are African-American and the other 3 are Hispanic. The last death sentence imposed on a white defendant in Harris County occurred in November 2004, when serial killer Anthony Shore was sent to death row.
- Of the 11 men sentenced to death in Dallas County since 2008, 8 are African-American and 2 are Hispanic.



While African-Americans comprise only 12% of the population of Texas, they comprise 41.8% of death row inmates, according to TDCJ.<sup>3</sup> Hispanics comprise 28.2% of the death row population, and whites comprise 28.6%.

<b>New Death Sentences by Race of Defendant, 2010-2014</b>						
	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>Total Sentences by Race</b>
<b>African-American</b>	4	4	7	7	5	27
<b>Hispanic</b>	1	2	1	1	2	7
<b>White</b>	3	2	1	1	4	11
<b>Total People of Color</b>	5	6	8	8	<b>7</b>	<b>34</b>
<b>Total Sentences</b>	8	8	9	9	11	45

As of November 6, 2014, TDCJ counted 273 death row inmates, which includes 7 women.<sup>4</sup> This remains the lowest Texas death row population since the late 1980s, according to research by TCADP. More than one-third of these individuals were convicted in Harris County.<sup>5</sup> Texas holds the third-largest death row population in the nation, after California (750) and Florida (395). See Appendix A for a list of new death row inmates in Texas.

<sup>2</sup> The Texas Department of Criminal Justice lists Brian Suniga of Lubbock as white, although other records cite his race/ethnicity as Hispanic.

<sup>3</sup> See [http://www.tdcj.state.tx.us/death\\_row/dr\\_gender\\_racial\\_stats.html](http://www.tdcj.state.tx.us/death_row/dr_gender_racial_stats.html) for more information.

<sup>4</sup> Cathy Henderson still appears on this list, even though her conviction was overturned in 2012. The Travis County District Attorney’s Office announced in 2013 that it would not seek another death sentence during her re-trial.

<sup>5</sup> TDCJ counted 97 inmates from Harris County as of November 6, 2014.

### *Jury Rejections*

Death-qualified juries rejected the death penalty in two cases in 2014:

- In the first Texas death penalty trial of 2014, an El Paso County jury determined that 23-year-old Christian Martinez should spend the rest of his life in prison for the 2011 murders of Amalia Flores, 58, and her daughter Jovana Flores, 20. In announcing their decision on February 5, ten of the twelve jurors agreed that mitigating evidence warranted a sentence other than death. Martinez had no history of violence and reportedly attempted suicide at the crime scene.
- In June, Cornelius Harper received a sentence of life in prison without the possibility of parole after the jury in his trial in Fort Bend County determined that mitigating evidence warranted a punishment other than the death penalty. He was convicted of the 2010 murders of his cousin, Yancey Daniels, and Daniels' girlfriend Leiah Jackson, who was pregnant at the time.

Over the last five years, death-qualified juries have rejected the death penalty in at least 14 capital murder trials in Texas. Four of these rejections occurred in cases that were tried or originated in Bexar County. Bexar County, which has sentenced the third highest number of people to death in Texas since 1976, has not imposed any new death sentences since 2009.

### *Resentenced to Death*

Two individuals were resentenced to death this year after courts ordered new punishment hearings:

- On July 23, 2014, a Dallas County jury resentenced Kenneth Wayne Thomas to death for the murders of Fred and Mildred Finch in 1986. According to the *Dallas Morning News*, Thomas' initial trial in 1987 marked the first time that a black defendant in Dallas County faced the death penalty for killing a black person. An all-white jury sentenced him to death.<sup>6</sup> The Texas Court of Criminal Appeals ordered a new sentencing hearing in 2010 after determining that prior jurors could not properly consider whether Thomas' mental impairments mitigated his actions.

After deliberating for three hours, the new jury rejected defense attorneys' contention that his low intelligence, brain damage, and mental illness should exempt him from execution. Thomas has an IQ in the low to mid-70s, which makes him "borderline retarded," according to testimony and court records.<sup>7</sup>

- In November, a jury in Harris County resentenced Warren Rivers to death for the May 1987 slaying of 11-year-old Carl Nance Jr. in Houston. Rivers received a new sentencing hearing as the result of a U.S. Supreme Court ruling in the

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<sup>6</sup> "Kenneth Wayne Thomas sentenced to death for murder of prominent attorney," *Dallas Morning News*, February 28, 1987

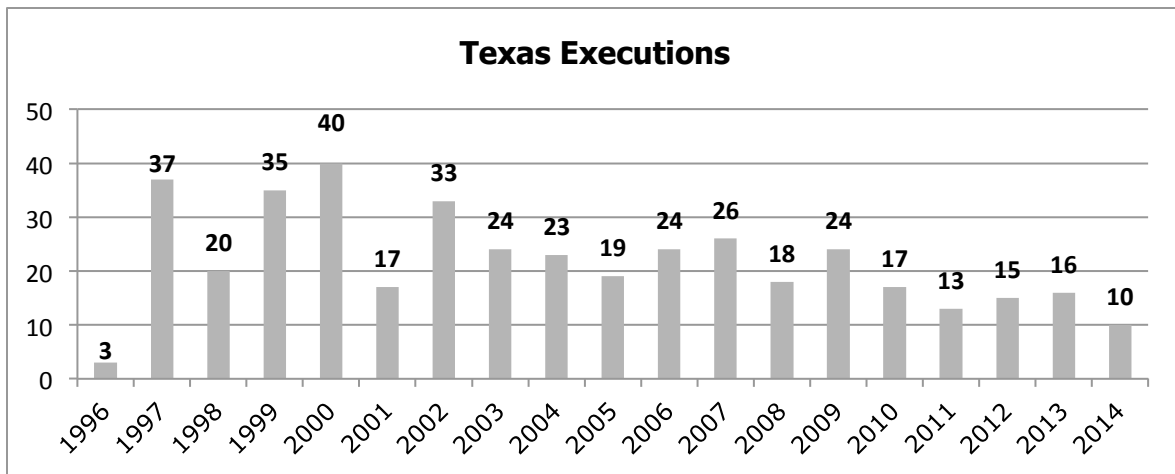
<sup>7</sup> "Brother testifies against brother at capital trial in 1986 Dallas murders," *Dallas Morning News*, July 14, 2014

case of Johnny Paul Penry, which determined that jurors must be given an opportunity to consider mitigating evidence in the punishment phase of death penalty trials. According to the *Houston Chronicle*, "The landmark Penry cases brought almost 20 cases back to Harris County that have slowly wound their way through the retrial process."<sup>8</sup>

### **Executions**

The State of Texas executed 10 people in 2014, the fewest executions to take place in the state since 1996, when 3 people were put to death. Texas accounted for less than 30% of U.S. executions.<sup>9</sup>

Texas has executed a total of 518 people since 1982; of these, 279 occurred during the administration of Texas Governor Rick Perry (2001-2014), more than any other governor in U.S. history. Executions peaked in Texas in 2000, when 40 people were put to death.



Among those executed by the State of Texas in 2014 were individuals with intellectual disabilities, Mexican nationals, and men who were just months past their 18<sup>th</sup> birthdays at the time of the crime. Rulings by the U.S. Supreme Court prohibit the death penalty for persons with intellectual disabilities and those under age 18 at the time of the crime. See Appendix B for a list of individuals executed in 2014.

- Edgar Tamayo was executed on January 22, 2014. He was convicted of the 1994 murder of Houston Police Officer Guy Gaddis. Tamayo, a Mexican national, was denied his right to seek consular assistance after his arrest, as required under Article 36 of the Vienna Convention on Consular Relations. Mexican authorities did not learn of his case until a week before his trial started and therefore were unable to provide him with adequate legal counsel. Tamayo's court-appointed attorney failed to present substantial mitigating evidence about

<sup>8</sup> "New jury returns Harris County man to death row for 1987 slaying," *Houston Chronicle*, November 21, 2014

<sup>9</sup> In 2013, Texas accounted for 41% of U.S. executions.

his abusive childhood and developmental problems, which might have impacted the jury's decision in the sentencing phase of his trial.

- The State of Texas executed Ray Jasper on March 19, 2014 for the 1998 robbery and murder of recording studio owner David Alejandro in San Antonio. Jasper was 18 years old at the time of the crime. His two co-defendants, both age 19 at the time of the crime, avoided the death penalty and received sentences of life in prison. If Jasper had been three months younger, he would have been ineligible for the death penalty, in accordance with a 2005 U.S. Supreme Court decision that declared this punishment unconstitutional for juvenile offenders under the age of 18 at the time of the crime (*Roper v. Simmons*). In their final appeals, Jasper's attorneys argued that prosecutors struck potential African-American jurors on racially discriminatory grounds.
- On March 27, 2014, the State of Texas put Anthony Doyle to death for murdering 37-year-old Hyun Mi Cho in 2003 in Rowlett (Dallas County). Doyle was 93 days past his 18th birthday at the time of the crime.
- On April 9, 2014, the State of Texas executed Ramiro Hernandez Llanas for the 1997 murder of his employer, Kerr County ranch owner Glen Lich, and the sexual assault of Lich's wife, in 1997. It was the second execution this year of a Mexican national. Hernandez Llanas grew up next to a garbage dump, where his family collected and sold trash to survive. His trial, which was moved to Bandera County, lasted two days; the jury took five minutes to convict him. According to Amnesty International, his low I.Q. scores and evidence of his adaptive functioning deficits were rejected by the courts, despite a 2002 U.S. Supreme Court decision that prohibits the death penalty for individuals with intellectual disabilities. The prosecution's expert, who never met Hernandez Llanas, asserted that his "adaptive behavior was in keeping with his cultural group."<sup>10</sup>

The Government of Mexico strongly condemned Hernandez Llanas' execution, arguing that it took place in violation of an International Court of Justice ruling in 2004, which found that Texas and other states had not advised some 50 Mexican nationals on death row of their right to contact their consular offices upon arrest. The Vienna Convention on Consular Relations, to which the United States is a party, stipulates this right.

*Executions by Race and Gender*

Of the 10 people executed by the State of Texas in 2014, four were Hispanic, four were African-American, and two were white. Eight were men and two were women.

For the first time since 2002, two women were executed in the same year.

<b>Executions by Race and Gender</b>		
	<b>Male</b>	<b>Female</b>
<b>African American</b>	3	1
<b>Hispanic</b>	4	0
<b>White</b>	1	1
<b>Total</b>	<b>8</b>	<b>2</b>

<sup>10</sup> See <http://www.amnestyusa.org/sites/default/files/uaa07114.pdf>.

- Suzanne Basso, a white woman, was put to death on February 5, 2014 for the 1998 murder of Louis “Buddy” Musso in Houston. Her trial attorneys failed to present any mitigating evidence during the penalty phase of her trial and conducted virtually no investigation into her background. Had they done so, they would have uncovered pervasive evidence of her impoverished and abusive childhood, including sexual abuse at the hands of relatives. The jury also did not hear about Basso’s long history of delusional thinking and mental illness.
- The State of Texas executed Lisa Coleman, an African-American woman, on September 17, 2014, after the U.S. Supreme Court rejected her request for a stay. She was convicted a decade ago in Tarrant County in the starvation death of 9-year-old Davontae Williams. The boy’s mother, Marcella Williams, took a plea deal to avoid the death penalty and is serving a life sentence. Williams will be eligible for parole in 2044.

Coleman was the sixth woman put to death in Texas since 1982. Three of the women executed were white and three were African-American. Nationally, 15 women have been put to death.

Of the 518 individuals put to death in Texas, 228 were white, 193 African-American, 93 Hispanic, and 4 had another racial identity. Collectively, 363 of these cases involved white victims, 80 involved Hispanic victims, and 70 involved African-American victims. According to the Death Penalty Information Center, 108 cases involved African-American defendants convicted of killing white victims, while just 4 cases involved white defendants convicted of killing African-American victims.<sup>11</sup>

<b>U.S. Executions in 2014</b>	
<b>Texas</b>	<b>10</b>
Missouri	10
Florida	8
Oklahoma	3
Georgia	2
Arizona	1
Ohio	1
<b>Total</b>	<b>35</b>

*Executions by County*

Two counties accounted for half of the executions in 2014: Harris (3) and Bexar (2). Seven counties total accounted for the executed inmates: Bexar (2); Dallas (1); Harris (3); Kerr (1); Nueces (1); Tarrant (1); and Val Verde (1).

Harris County alone accounts for 122 executions, more than any state except Texas. Dallas County accounts for 53 executions, and Bexar accounts for 39.

*Lethal Injection Developments*

Texas’ lethal injection protocol currently calls for a single dose of pentobarbital. Pentobarbital is no longer legally available in FDA-regulated form. It can only be purchased from compounding pharmacies, which operate outside of FDA oversight. This makes it impossible to know if the drugs have been properly prepared and tested in order to ensure executions will be carried out in a manner that comports with the U.S. Constitution.

<sup>11</sup> See <http://www.deathpenaltyinfo.org/views-executions> for details.

On May 29, 2014, Texas Attorney General Greg Abbott reversed the position his office took in three prior opinions in recent years that required transparency in Texas' execution process. Abbott's ruling this spring found that officials with the Texas Department of Criminal Justice (TDCJ) do not have to disclose information about the pharmacy or pharmacist now supplying the lethal injection drugs used in executions.

The Attorney General's Ruling also found that TDCJ may keep secret their "DEA Registration" – a form required to purchase lethal injection drugs. The DEA registration used by TDCJ lists them as the "Huntsville Unit Hospital" – a hospital that no longer exists. This false information has provided TDCJ with a medical persona that has been used previously to mislead pharmacies about the reason for the purchase of lethal drugs.

Editorial boards around the state decried the Attorney General's about-face on the issue and raised critical questions about the lack of transparency in the state's death penalty process.<sup>12</sup>

Attorneys for death row inmates repeatedly asked federal courts to address the constitutionality of the secrecy surrounding Texas' lethal injection drugs, particularly in light of botched executions that occurred in several states this year. They specifically sought information about the source and testing of the drugs Texas plans to use in lethal injections. To date, the courts have declined to intervene.

On December 11, 2014, State District Judge Darlene Byrne granted summary judgment in favor of three attorneys who filed a lawsuit earlier this year seeking to force TDCJ to disclose the name of the drug supplier under the Texas Public Information Act. Judge Byrne ruled that the name of the compounding pharmacy supplying lethal injection drugs for Texas executions must be released because it is public information. TDCJ intends to appeal the ruling.<sup>13</sup>

Twelve executions have been scheduled for the first few months of 2015, including three cases out of Bexar County.

### **Stays of Execution/Dates Withdrawn**

Seven inmates scheduled for execution in 2014 received reprieves, including stays granted by the courts and the withdrawal of execution dates.

- A state district court modified the January 16 execution date of Edgardo Cubas, a Honduran national, in order to give his attorneys time to file litigation challenging his competency to be executed. A later execution date of May 21 also was withdrawn.
- On May 13, 2014, the day of Robert Campbell's scheduled execution, the U.S. Court of Appeals for the Fifth Circuit granted a stay in order to consider newly

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<sup>12</sup> See <http://tcadp.org/2014/06/09/editorials-decry-texas-attorney-generals-decision-uphold-secrecy-lethal-injection-process/>.

<sup>13</sup> "Court Tells TDCJ to Name Death Drug Suppliers" *Texas Tribune*, December 11, 2014



discovered evidence of his mental impairment. Campbell was convicted of the 1991 murder of Alexandra Rendon in Houston. He was just three months past his 18th birthday at the time of the crime and has spent more than half his life on death row. No court has considered evidence of Campbell's intellectual disabilities, which bars his execution under the U.S. Supreme Court's ruling in *Atkins vs. Virginia (2002)*. A recent comprehensive evaluation assessed his IQ at 69, and school records discovered by current counsel provide additional evidence of "significantly sub-average intellectual functioning."

According to Campbell's attorneys, during prior state and federal judicial proceedings the State of Texas failed to disclose two I.Q. test scores indicative of Campbell's intellectual disability. The Harris County District Attorney's Office did not provide counsel with public school records, including the results of a score of 68 from an I.Q. test administered to Campbell when he was a schoolchild.

The Texas Department of Criminal Justice (TDCJ) also failed to disclose results of an I.Q. test that a state-employed prison psychologist administered to Campbell shortly after he arrived on death row at the age of 19; he scored 71 on that test. In fact, TDCJ told Campbell's attorney in 2003 that no such I.Q. tests existed for death row prisoners.

Campbell's trial counsel did not conduct a thorough investigation into his client's background and, subsequently, failed to present substantial mitigating evidence of his turbulent and deprived childhood to the jury during the punishment phase. He also failed to explore obvious questions about Campbell's cognitive impairment. The attorney appointed to represent Campbell on initial state habeas corpus proceedings also was incompetent and filed a meaningless, boilerplate claim – identical to the claims he filed in four other death penalty cases – on behalf of his client, with whom he did not meet before filing the appeal.

Noting the "unique circumstances of this case," the Fifth Circuit granted Campbell the right to file a successive federal habeas petition asserting his claim of ineligibility for execution under *Atkins*.

- On December 3, 2014, less than eight hours before his scheduled execution, the U.S. Court of Appeals for the Fifth Circuit granted a stay to Scott Panetti to consider the "complex legal questions" surrounding his case, specifically, his competency to be executed. Panetti was convicted and sentenced to death for the 1992 murder of his in-laws, Joe and Amanda Alvarado. Kerr County District Judge Stephen Ables allowed Panetti to represent himself despite his long, documented history of paranoid schizophrenia and frequent hospitalizations pre-dating the crime.

In 2004, Texas sought to execute Panetti, but a federal judge stayed the execution and the U.S. Supreme Court ultimately found the Fifth Circuit's standard for determining competency to be executed unconstitutional in *Panetti v. Quarterman*, 551 U.S. 930 (2007). Notwithstanding that decision, Texas

continued to contest Panetti's competence to be executed. In 2013, the Fifth Circuit again found him competent to be executed – despite the District Court's findings that he has a severe mental illness and suffers from paranoid delusions.

Panetti, whose competency has not been evaluated in seven years, has a fixed delusion that Satan, working through the state, is trying to kill him for preaching the Gospel. His attorneys were not notified about the December 3rd execution date; they learned about it from a newspaper article two weeks after it was set.

Among those calling for clemency for Panetti were the nation's largest grassroots advocacy organization on mental illness, National Alliance on Mental Illness (NAMI); NAMI's Texas affiliate; Mental Health America; former prosecutors and conservative leaders; 10 state legislators; 8 active and retired United Methodist Bishops in Texas; former U.S. Representative Ron Paul; more than 50 Evangelical Christians; and the European Union. Several editorial boards from major Texas newspapers also called for officials to stop the execution.

The Fifth Circuit will set a briefing schedule and order oral arguments in the case.

- The Texas Court of Criminal Appeals stayed the execution of Larry Hatten, which was scheduled to take place on October 15, 2014. According to the Associated Press, the court issued the reprieve to resolve a 1997 filing with his trial court in Nueces County that was never decided nor properly forwarded to the appeals court.<sup>14</sup>

A Nueces County jury sentenced Hatten to death for the 1995 murder of five-year-old Isaac Jackson in Corpus Christi. Jackson was killed while in bed with his mother, Tabatha Thompson, who was also severely injured. Hatten reportedly suffers from mental illness and has been forcibly medicated at times while incarcerated. Earlier this year he decided to forego any further appeals in his case. The appeals court gave the trial court six months to resolve the claims in the filing.

The execution dates of Robert Pruett (Bee County), Manuel Vasquez (Bexar County), and Robert Ladd (Smith County) were withdrawn.<sup>15</sup> A comparable number of reprieves have been granted in recent years.

### **Reduced Sentences/Inmates No Longer on Death Row**

Two inmates received reduced sentences in 2014. Since 2011, at least 17 individuals have been removed from death row in Texas.

- The sentence of Kim Lim was reduced to life in August. He was convicted in Harris County.

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<sup>14</sup> "Reprieve for Texas prisoner facing execution," *Associated Press*, October 13, 2014

<sup>15</sup> Robert Ladd has received a new execution date of January 29, 2015; Manuel Vasquez has received a new execution date of March 11, 2015.

- On November 12, 2014, Chris Shuffield was sentenced to life with the possibility of parole after spending 12 years on death row. He was convicted of the 2001 murder of Lance Luke Walker in Bowie County. The Texas Court of Criminal Appeals overturned his death sentence in May 2014 after a fellow inmate acknowledged he provided false information that was used during Shuffield's original punishment hearing.<sup>16</sup> Prosecutors agreed not to seek death on resentencing.

## **Wrongful Convictions**

### *Manuel Velez*

On October 8, 2014, Manuel Velez was released from prison in Huntsville after spending nine years in prison, including four years on death row. One year earlier, the Texas Court of Criminal Appeals overturned his capital murder conviction in the 2008 death of one-year-old Angel Gabriel Moreno in Cameron County. The baby was the child of Velez's then-girlfriend, Acela Moreno, who served five years of a ten-year sentence for her role in the baby's death. The court agreed with a state district judge's assessment that Velez's defense attorneys failed to present critical medical evidence of injuries the baby sustained in the weeks and months before his death – injuries that Velez could not have caused as he was working on a construction site in Tennessee at the time.

In a separate decision in 2012, the Court of Criminal Appeals threw out Velez's death sentence after determining that the jury heard misleading testimony from an expert witness regarding the circumstances of incarceration if Velez was sentenced to life in prison.

Earlier this year, the Cameron County District Attorney's Office announced it would not seek another death sentence for Velez but refused to dismiss the capital murder charge against him unless he took a plea. Velez pleaded no contest to a lesser charge of injury to a child rather than face a new trial that could be plagued by the same injustices that sent him to death row.<sup>17</sup>

### *Anthony Graves*

In July, the Chief Disciplinary Counsel of the State Bar of Texas made a "just cause" determination with respect to allegations of prosecutorial misconduct against former Burleson County District Attorney Charles J. Sebesta, Jr. in his prosecution of Anthony Graves in 1994. As a result of Sebesta's misconduct, Graves spent nearly two decades in prison for a crime he did not commit and of which he was completely exonerated in 2010. He twice faced execution dates during his wrongful incarceration.

Graves filed his grievance against Sebesta on January 20, 2014. During the State Bar's initial investigation, he also submitted an affidavit detailing how Sebesta's unethical prosecutorial misconduct forever changed his life and the lives of those

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<sup>16</sup> "Texas Death Row Inmate Resentenced To Life In Prison," KBTX, November 13, 2014

<sup>17</sup> See <https://www.aclu.org/capital-punishment/innocent-man-released-prison-after-nine-years-four-death-row> for more information.

around him. The State Bar of Texas has the power to sanction Sebesta for his unethical conduct, up to and including disbarment and loss of his license to practice law in Texas. An administrative judge will hear his case.

### *Nationwide*

Nationally, seven individuals were exonerated and released from death rows this year; this includes three men in Ohio and two in North Carolina. Six of these individuals spent more than 30 years in prison for crimes they did not commit. A total of 150 people have been exonerated from death rows nationwide since 1973, including 12 individuals in Texas.<sup>18</sup>

### **Wrongful Executions**

#### *Cameron Todd Willingham*

New evidence in the case of Cameron Todd Willingham significantly undermines the credibility of Johnny Webb, the jailhouse informant whose testimony was instrumental in Willingham's conviction. Willingham was executed in 2004 for the 1991 arson murder of his three daughters in Corsicana, despite compelling evidence of his innocence.

Maurice Possley, writing for The Marshall Project, exposed the fact that the Navarro County man who prosecuted Willingham, John H. Jackson, worked for years "to alter Webb's conviction, speed his parole, get him clemency and move him from a tough state prison back to his hometown jail." Possley notes, "Had such favorable treatment [towards Webb] been revealed prior to his execution, Willingham might have had grounds to seek a new trial."<sup>19</sup> The Innocence Project filed a grievance against Jackson with the State Bar of Texas.

### **Other Case Developments**

There were significant developments in several other death penalty cases this year, including one overturned conviction:

- On November 5, 2014, the Texas Court of Criminal Appeals overturned the conviction and death sentence of Alfred Dewayne Brown, who was convicted in 2005 of murdering Houston Police Officer Charles R. Clark during a burglary two years earlier. Brown has consistently maintained his innocence. The Court found that the Harris County District Attorney's Office withheld material evidence favorable to Brown's case, specifically, a record of a phone call that corroborated his claim that he was at his girlfriend's apartment the morning the murder took place. In 2013, a homicide detective found a box of phone records in his garage that indicated Brown made a call exactly when he asserted. The file was never shared with Brown's defense counsel during his original trial.<sup>20</sup>

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<sup>18</sup> See Death Penalty Information Center for more details on these exonerations.

<sup>19</sup> "Fresh doubts over a Texas execution," *Washington Post/The Marshall Project*, August 3, 2014

<sup>20</sup> "Appeals court resets murder trial after finding evidence withheld," *Houston Chronicle*, November 5, 2014

At his trial, Brown's attorneys presented no evidence of his alibi, and his girlfriend changed her testimony after she was threatened with prosecution by a grand jury. The Harris County District Attorney's Office agreed that relief should be granted and is now reviewing the case to determine whether to retry Brown or dismiss the charges against him.

- In August 2014, lawyers for Max Soffar asked the Texas Board of Pardons and Paroles to recommend that Governor Rick Perry commute their client's death sentence, arguing that Soffar, who is dying of terminal liver cancer, has spent the last 34 years on death row for crimes he did not commit.

No evidence connects Soffar to the murders of three people in a bowling alley in Houston in 1980. His conviction and death sentence hinged solely on a confession he gave to police – one of three inconsistent statements he provided after three days of intense interrogation. According to the National Registry of Wrongful Convictions, false confessions have played a role in 13% of exonerations nationwide. In addition, Soffar did not resemble the description of the perpetrator provided by eyewitness and surviving victim Greg Garner. Substantial evidence supporting the alternative theory of suspect Paul Dennis Reid has never been considered by a jury.

In October, the Texas Board of Pardons and Paroles denied Soffar's petition for clemency, citing the absence of an execution date. His attorneys continue to appeal to Governor Perry to take action in this case before leaving office.<sup>21</sup>

- In June, a judge set a retrial date for former death row inmate Jerry Hartfield, who has been imprisoned for 33 years despite the fact that he does not have a valid conviction. Hartfield's original conviction was overturned in 1980 because of improper jury selection. He was granted a new trial, which he did not receive. Then-Governor Mark White attempted to commute Hartfield's sentence in 1983; however, the Texas Court of Criminal Appeals ruled that Governor White could not commute the sentence because there was no legal conviction.

According to the Associated Press, at the time of the June 2014 hearing, Matagorda County District Attorney Steven Reis offered Hartfield a deal to plead guilty, accept a life prison term, and avoid a new trial and a possible second death sentence if he waives all future appeal rights.<sup>22</sup> In August the 13<sup>th</sup> District Court of Appeals dismissed Hartfield's habeas petition, which claimed his right to a speedy trial had been violated. This lifted the stay in the trial court. Hartfield's retrial is still pending.

### **U.S. Supreme Court Developments**

On March 24, 2014, the U.S. Supreme Court agreed to hear arguments in *Jennings v. Stephens*, a Texas death penalty case involving a claim of ineffective assistance of counsel. A Harris County jury sentenced Robert Mitchell Jennings to death for

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<sup>21</sup> For more information, see <https://www.aclu.org/capital-punishment/state-texas-v-max-soffar>.

<sup>22</sup> "New trial set for man in Texas prison 30 years," *Associated Press*, June 19, 2014

killing a Houston police officer in 1988. During his trial, his lawyer told the jury that he agreed Jennings was eligible for the death penalty.

The Justices limited their review to a procedural issue: whether the claim of ineffective assistance of counsel was barred because lawyers for Jennings failed to raise the issue on appeal. Oral arguments took place on October 15, 2014.<sup>23</sup>

### **New Voices**

On November 26, 2014, in his dissent in the case of Scott Panetti, Republican Judge Tom Price of the Texas Court of Criminal Appeals says he believes the death penalty should be abolished:

I am among a very few number of people who have had a front row seat to this process for the past four decades. I now repeat what I stated originally in my dissenting opinion in *Ex parte [Anthony] Graves*: 'We are the guardians of the process.' Based on my specialized knowledge of this process, I now conclude that the death penalty as a form of punishment should be abolished because the execution of individuals does not appear to measurably advance the retribution and deterrence purposes served by the death penalty; the life without parole option adequately protects society at large in the same way as the death penalty punishment option; and the risk of executing an innocent person for a capital murder is unreasonably high, particularly in light of procedural-default laws and the prevalence of ineffective trial and initial habeas counsel.

Judge Price has served 18 years on the Court of Criminal Appeals; he will leave the court at the end of 2014.<sup>24</sup>

### **Conclusion**

Over the last 15 years, use of the death penalty has dropped significantly in Texas, mirroring national trends. Texas has gone from a peak of 40 executions in 2000 to the fewest executions in nearly two decades. The decline in new death sentences, which more accurately reflects current attitudes towards the death penalty, has been even more precipitous.

The death penalty remains racially based and geographically isolated, as the number of Texas counties devoting resources to costly death penalty trials dwindles each year. The risk of wrongful conviction and evidence of wrongful executions also continue to undermine the fairness and accuracy of the system.

TCADP urges concerned citizens and elected officials at the state and county levels to confront the realities of this irreversible punishment and reconsider the efficacy and cost of the death penalty as a means of achieving justice.

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<sup>23</sup> "Did procedural misstep bar defendant from raising lawyer's capital concession? SCOTUS to decide", *ABA Journal*, March 24, 2014

<sup>24</sup> Judge Price's dissent is available at <https://drive.google.com/file/d/0BxR5nee8pBYQa1czZHmNHk0SXIVU3pKZkpnd0pId1owRnVB/view>

## Appendix A: New Death Sentences in 2014

Last Name	First Name	Date of Birth	Gender	Race	Date Received	County	Date of Offense
Williams	Eric	1967	M	White	Pending	Kaufman	03/30/2013
Thomas	Steven	1961	M	White	Pending	Williamson	11/04/1980
Suniga	Brian	12/27/1979	M	White	10/30/2014	Lubbock	12/26/2011
Lewis, III	Harlem	07/05/1991	M	Black	08/01/2014	Harris	12/24/2012
Valdez	Fidencio	05/30/1979	M	Hispanic	07/24/2014	El Paso	12/10/2010
Ricks	Cedric	09/07/1974	M	Black	05/19/2014	Tarrant	05/01/2013
Petetan, Jr.	Us	02/07/1976	M	Black	05/02/2014	McLennan	09/23/2012
Prevost	Jeffery	07/22/1959	M	Black	04/16/2014	Harris	05/20/2011
Balderas	Juan	09/02/1986	M	Hispanic	03/25/2014	Harris	12/15/2005
Daniel	Brandon	11/11/1987	M	White	03/07/2014	Travis	04/06/2012
Curry	George	11/18/1966	M	Black	03/03/2014	Harris	05/01/2009

*Sources: Texas Department of Criminal Justice; Austin American-Statesmen; Dallas Morning News*

## Appendix B: Executions in 2014

Execution	Last Name	First Name	Age	Date	Race	County
518	Paredes	Miguel	32	10/28/2014	Hispanic	Bexar
517	Coleman	Lisa	38	09/17/2014	Black	Tarrant
516	Trottie	Willie	45	09/10/2014	Black	Harris
515	Villegas	Jose	39	04/16/2014	Hispanic	Nueces
514	Hernandez	Ramiro	44	04/09/2014	Hispanic	Kerr
513	Sells	Tommy	49	04/03/2014	White	ValVerde
512	Doyle	Anthony	29	03/27/2014	Black	Dallas
511	Jasper	Ray	33	03/19/2014	Black	Bexar
510	Basso	Suzanne	59	02/05/2014	White	Harris
509	Tamayo	Edgar	46	01/22/2014	Hispanic	Harris

*Source: Texas Department of Criminal Justice*