

Texas Death Penalty Developments in 2018: The Year in Review

Executive Summary

The Texas Coalition to Abolish the Death Penalty (TCADP) – a statewide advocacy organization based in Austin, Texas – publishes this annual report to inform citizens and elected officials about issues associated with the death penalty in the past year. The report, which includes illustrative charts and graphs, cites these recent death penalty developments in Texas:

- New death sentences remained in the single digits for the ninth time in ten years. Juries condemned seven individuals to death in 2018. More than half a dozen cases in which prosecutors had sought the death penalty resulted in other sentences, while two other cases were declared mistrials.
- All seven men sentenced to death in Texas in 2018 are people of color. Over the last five years, more than 70% of death sentences have been imposed on defendants of color.
- Only four counties in Texas have imposed more than one death sentence in the last five years.
- The two counties that have imposed the most death sentences since 1974 – Harris and Dallas – together account for just two new sentences since 2015.
- The State of Texas put 13 people to death in 2018, matching the number of executions carried out in 2015. Five of these men were white, four were Hispanic, and four were African-American. Texas accounted for more than half of all U.S. executions.
- Six individuals scheduled for execution in 2018 received reprieves, including a rare clemency grant. The Texas Court of Criminal Appeals (CCA) issued stays in just three of these cases, which is half the number of stays it granted in 2017.
- Two of the CCA's stays related to the U.S. Supreme Court's 2017 ruling in *Moore v. Texas*, which found the state of Texas must use current medical standards for determining whether a person is intellectually disabled and therefore exempt from execution. The court also issued orders in six other cases with claims related to intellectual disability. It denied relief to Bobby James Moore, however, despite acknowledgment by the Harris County District Attorney's Office that he is intellectually disabled and should be resentenced to life in prison.
- On February 22, 2018, less than an hour before the execution of Thomas "Bart" Whitaker was set to begin, Texas Governor Greg Abbott issued a proclamation sparing his life and commuting his death sentence to life in prison without the possibility of parole in accordance with a unanimous recommendation from the Texas Board of Pardons and Paroles. It was the first clemency grant in Texas in more than a decade and only the third since the resumption of executions in 1982.
- Since 2014, a total of 25 individuals – including four in 2018 – have been removed from death row in Texas for reasons other than execution. During this same time period, the state executed 50 people.

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Texas Death Penalty Developments in 2018: The Year in Review is available online at <https://tcadp.org/get-informed/reports/>. Contact TCADP Executive Director Kristin Houlé for more information.

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Introduction

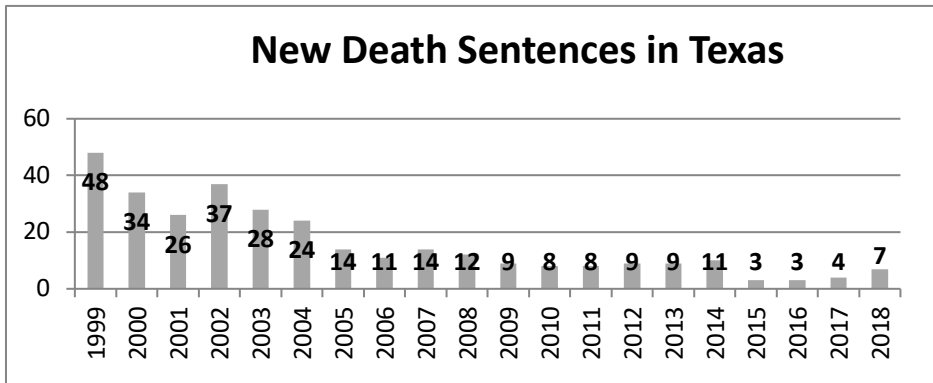
The death penalty landscape in Texas has changed significantly over the last 20 years, mirroring national trends. Death sentences have fallen from a peak of 48 death verdicts in 1999 to single digits in nine of the last ten years. The number of executions in 2018 matched the number carried out in 2015, continuing a pattern of reduced use of the death penalty over the last decade.

This report presents information on new death sentences, executions, and stays; reduced sentences; judicial developments; and other issues impacting the administration of justice in Texas.

Death Sentences

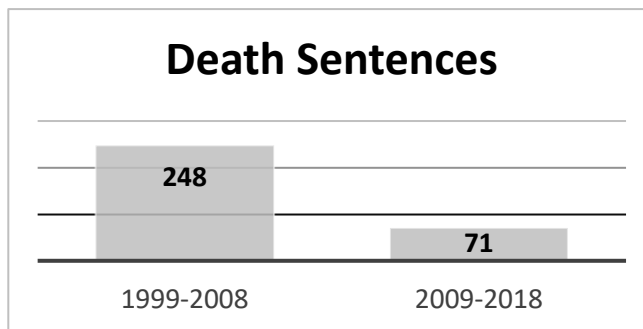
New Death Sentences

Juries condemned seven individuals to death in 2018, according to data compiled from media sources and the Texas Department of Criminal Justice (TDCJ).



For the third year in a row, no one was resentenced to death in Texas.

The total number of death sentences imposed by juries in Texas from 2009 through 2018 represents a 78% decrease over the total number imposed in the previous 10-year period (1999 through 2008).



Death Sentences by County

A total of 21 Texas counties have imposed death sentences in the last five years; of these, only four counties have imposed more than one new death sentence in this time period. Seven different counties were responsible for the new death sentences in 2018: Dallas; Hardin; Harris; Jones; Tom Green; Walker; and Willacy.

For several counties, it was the first new death sentence imposed by a jury in decades. The death sentence of Dillion Compton in Jones County was the first imposed in that jurisdiction in 29 years and only the second sentence overall. The death verdict in the capital trial of Gustavo Tijerina-Sandoval was the first in Willacy County in 81 years.¹ The death sentence imposed on Isidro Delacruz was the first in Tom Green County since 1999.

Texas’ two highest-use counties – Harris and Dallas – saw their first new death sentences in several years. The death sentence of Kristopher Love was the first imposed by a jury in Dallas since 2013. (Two cases Dallas prosecutors took to trial as death penalty cases in 2017 resulted in sentences of life without parole.) The death sentence for Ali Irsan was the first in Harris County since 2014 and the first since Kim Ogg was sworn in as District Attorney, although the case was handled by special prosecutors.

Only four counties in Texas have imposed more than one death sentence in the last five years. Notably, Dallas County does not appear on this list, as jurors there have imposed just one new death sentence since 2013. With 108 total death sentences since 1974, Dallas ranks second overall behind Harris County in use of the death penalty.

Texas Counties with More than One Death Sentence in the Last Five Years							
	2014	2015	2016	2017	2018	Total 2014-2018	Total Since 1974
Harris	4	0	0	0	1	5	295
Tarrant	1	0	1	0	0	2	74
Walker	0	0	0	1	1	2	10
Kaufman	1	0	1	0	0	2	3
Total	6	0	2	1	2	11	382
All Counties	11	3	3	4	7	28	1,106

Death Sentences by Race

All seven of the men sentenced to death in Texas in 2018 are people of color: three are African-American; three are Hispanic; and one identifies with another race/ethnicity. Over the last five years, more than 70% of death sentences have been imposed on people of color; 43% of these death sentences were imposed on African-American defendants.

New Death Sentences by Race of Defendant						
	2014	2015	2016	2017	2018	Total Sentences by Race
African-American	5	0	3	1	3	12
Hispanic	2	1	0	0	3	6
Asian/Other	0	1	0	0	1	2
Total People of Color	7	2	3	1	7	20
White	4	1	0	3	0	8
Total Sentences	11	3	3	4	7	28

¹ Tijerina-Sandoval remains incarcerated in the Cameron County Jail; he has not yet been received on death row and therefore does not appear on TDCJ’s list of death row offenders.

In Texas' highest-use counties, these patterns of racial bias are even more pronounced:

- Fifteen of the last nineteen defendants sentenced to death in Harris County are African-American, three are Hispanic, and one identifies with another race/ethnicity. The last death sentence sought and imposed on a white defendant in Harris County came in November 2004, when serial killer Anthony Shore was sent to death row.²
- All 10 men sentenced to death in Dallas or Tarrant County since 2012 are African-American.

While African-Americans comprise only 12.6% of the population of Texas, they constitute 43.9% of death row inmates, according to TDCJ. Hispanics comprise 26.5% of individuals on death row (39.1% of the population of Texas), and whites comprise 26.9% (42.6% of the Texas population).³

As of December 20, there are 223 death row inmates, which includes six women.⁴ This constitutes the smallest Texas death row population since 1987. More than one-third of these individuals were convicted in Harris County.⁵ Texas has the third-largest death row population in the nation, after California (742) and Florida (344). Texas' death row population peaked in 2000, when more than 450 individuals were awaiting execution.

Jury Rejections and Other Non-Death Outcomes

Jury Rejections

Since 2015, juries have rejected the death penalty in nearly one-third of the cases in which prosecutors sought a death verdict. There were two rejections by death-qualified juries in 2018; both cases involved persons of color.

- On April 6, 2018, Shawn Puente was sentenced to life without parole for the December 2013 shooting of San Antonio Police Officer Robert Deckard during a highway chase that ended in Atascosa County. The case attracted attention when it came to light that Atascosa County District Attorney Audrey Louis had asked local police officers to help find potential jurors "who won't be afraid to kill this guy," as reported in the *San Antonio Express-News*.⁶ State District Judge Donna Rayes denied defense attorneys' motion for a change of venue. It was the first death penalty trial in Atascosa County since 1996.
- On May 31, 2018, jurors in Bell County were unable to come to a unanimous decision in the punishment phase of Rico Doyle's trial after convicting him of capital murder in the 2015 deaths of Kysha D. Edmond-Gray and De-anna Louise Buster in Killeen. While all jurors agreed Doyle was a future danger, four jurors opposed sentencing him to death. The judge sentenced Doyle to life in prison without parole. It was the second jury rejection in Bell County in recent years.

² Shore was executed in January 2018.

³ See http://www.tdcj.state.tx.us/death_row/dr_gender_racial_stats.html for details.

⁴ This figure does not yet include Gustavo Tijerina-Sandoval, who was sentenced to death on June 5, 2018 but has not been "received" on death row.

⁵ TDCJ counts 78 inmates from Harris County as of December 20, 2018.

⁶ "DA asks officers for help picking jury for accused cop-killer," *San Antonio Express-News*, January 21, 2018

Mistrials

Two capital murder cases in which Bexar County prosecutors were seeking the death penalty resulted in mistrials. They represented the first death penalty trials in San Antonio since 2015.

- Visiting Judge Susan Reed declared a mistrial in the capital murder case of Brian Flores on July 5, 2018, after his defense attorney, Ed Camara, suffered a concussion and was deemed unable to proceed with the jury selection process due to his injuries. This decision was the culmination of weeks of litigation during which Judge Reed had refused to postpone Flores's trial and sought to move forward with jury selection in Camara's absence. Flores is charged with killing Joshua Rodriguez and Victoria Dennis in San Antonio in 2015. In August, State District Judge Joey Contreras, who is now presiding over the case, reinstated Camara and appointed an additional lawyer to assist the defense team. A new trial date has not been set.
- On July 26, 2018, State District Court Judge Kevin O'Connell declared a mistrial in the capital murder case of Luis Antonio Arroyo, who was charged with killing Rodney Spring and Quickether Jackson in 2016 in San Antonio. Jurors were unable to reach a verdict on whether Arroyo was guilty of the charges against him after 13 hours of deliberation. Bexar County prosecutors were seeking the death penalty in the case.

Death Penalty Off the Table

Prosecutors took the death penalty off the table in more than half a dozen cases in 2018.

- In Uvalde County, Sabrina Vielma was indicted with capital murder in 2013 and faced the death penalty for causing the death of her four-year-old son in 2011. Her trial was scheduled to begin in December 2017. The jury selection process quickly came to a halt, however, when 75 percent of summoned jurors failed to appear. Three months later, just before jury selection was scheduled to resume, District Attorney Daniel Kindred offered a plea deal that reduced her offense. Vielma subsequently pled guilty to injury to a child by omission in May 2018 and was sentenced to 18 years in prison; she will be eligible for parole in 9 years.
- In Tom Green County, prosecutors declined to seek the death penalty on the eve of Jonathan Jesse Marin's trial for his role in the shooting death of 69-year-old William Valdez in 2015. In May, jury selection for his death penalty trial was underway when the District Attorney's Office elected to drop his capital murder charge. Marin pled guilty to murder and was sentenced to life in prison.
- In June, Coryell County prosecutors entered a plea deal with Chet Shelton, who was accused of raping and killing a two-year-old boy in 2016. Jury selection for Shelton's death penalty trial was scheduled to begin in August. According to KWTX 10, Coryell County District Attorney Dusty Boyd ultimately declined to seek the death penalty and reached a plea deal with Shelton because the victim's family did not want to go through the ordeal of a trial.⁷ Shelton pled guilty to capital murder and received a sentence of life in prison without the possibility of parole.

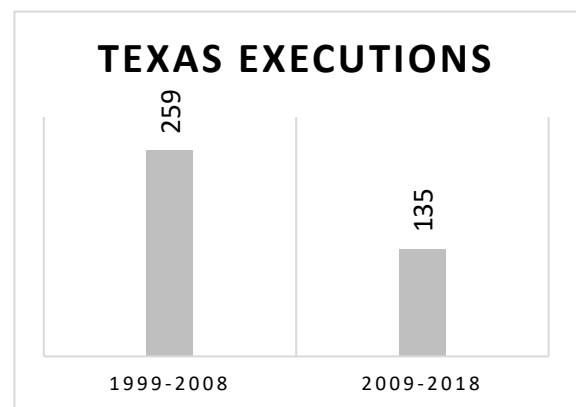
⁷ "Guilty plea brings closure, but little comfort to slain boy's family," KWTX, June 11, 2018

- In Gaines County, Juan Villegas accepted a plea agreement offered by the 106th District Attorney's Office in June and was sentenced to 30 years in prison for the murder of his estranged wife, Ann L. Villegas, in 2013. His guilty plea came as attorneys were in the process of selecting a jury for his murder trial. Prosecutors removed the capital murder charge, for which they were seeking the death penalty.
- In El Paso, Luis Javier Solis-Gonzalez pled guilty on July 12, 2018 to killing his estranged wife, Marysol Saldivar, her boyfriend, Eric DeSantiago, and her daughter, Cassaundra Holt, in 2012. In doing so, he avoided a possible death sentence and instead was sentenced to life in prison without parole. According to the *El Paso Times*, several surviving family members provided impact statements during the hearing and declared they forgave Solis-Gonzalez.⁸ His attorney, Joe Spencer, said that his client had accepted responsibility and did not want to put the families through the trauma of a trial. It has now been four years since anyone was sentenced to death in El Paso County.
- On July 6, 2018, Timothy Kelley pled guilty to capital murder for killing William Dow Schauer in Hunt County in 2014. Jury selection was scheduled to begin later that month. The plea agreement took the death penalty off the table. Kelley was sentenced to life in prison without parole.
- In August, McLennan County prosecutors reversed course and announced they will not seek the death penalty for Todric Deon McDonald if he is convicted of the 2014 murders of Justin Javier Gonzalez and Ulysses Gonzalez. According to the *Waco Tribune*, "Prosecutor Robert Moody told 19th State District Judge Ralph Strother at a status hearing Friday that family members of the victims are fine with the decision as long as there are no more delays in getting the capital murder case to trial."⁹
- In October, Brazoria County District Attorney Jerilynn Yenne elected not to seek the death penalty against Jarrett Angst, who is accused of murdering 49-year-old Don Allen Weido in his home in 2017. His attorneys report that both Angst's background and uncertainties surrounding his culpability relative to other defendants convinced prosecutors not to seek death.

Executions

The State of Texas put 13 people to death in 2018, accounting for more than half of all U.S. executions. It was one of eight states responsible for executions in 2018.¹⁰

The State of Texas has executed 558 people since 1982; 279 of these executions occurred during the administration of former 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.



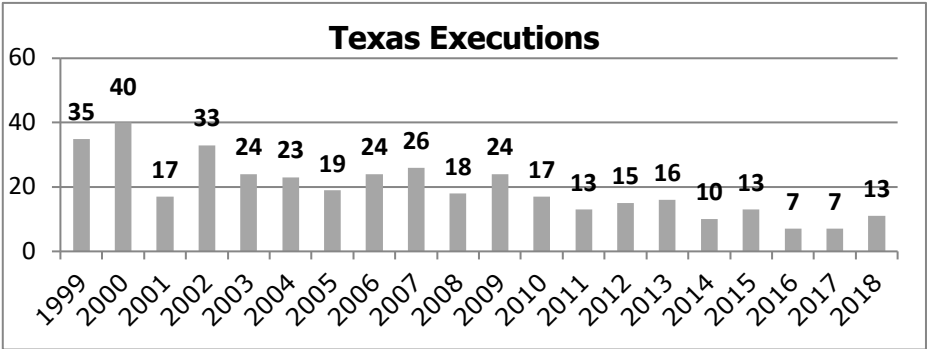
⁸ "Luis Solis-Gonzalez pleads guilty in 3 murders, gets life in prison, avoids death penalty," *El Paso Times*, July 12, 2018

⁹ "State drops death penalty in McDonald case," *Waco Tribune*, August 17, 2018

¹⁰ It was the first execution in Nebraska in 21 years. The three executions in Tennessee were the state's first in nearly a decade.

The number of executions in Texas from 2009 through 2018 is nearly 50% less than the number carried out during the previous 10-year period (1999 through 2008).

See Table 2 on page 20 for a list of individuals put to death in 2018. Six executions are scheduled already for 2019.



Of the men executed in 2018, Erick Davila spent the least amount of time on death row, serving nine years before his execution, while Robert Ramos spent more than 25 years on death row. The average amount of time spent on death row for the 13 men executed in 2018 was 15 years.

The youngest person put to death was Erick Davila at age 31; the oldest was Danny Bible at age 66. Four of the men executed in 2018 were over the age of 60, while two were over the age of 50.

In September, the state carried out back-to-back executions for the first time since 2012, putting Troy Clark and Daniel Acker to death on consecutive nights.

The cases of those put to death in Texas in 2018 involved claims of innocence, ineffective assistance of counsel, religious discrimination in the jury selection process, and false testimony, among other issues. At least three men had prior execution dates.

U.S. Executions in 2018	
Texas	13
Tennessee	3
Alabama	2
Florida	2
Georgia	2
Nebraska	1
Ohio	1
South Dakota	1
Total	25

- On April 25, 2018, the State of Texas executed Erick Davila for the 2008 murders of Annette Stevenson and her granddaughter, Queshawn, in Fort Worth. Davila steadfastly maintained that he did not intend to kill either of the victims. His target was a man thought to be in the same house. During his trial, Davila’s attorney objected to improper jury instructions, but the attorney who represented him in his direct appeal did not raise this issue; his state habeas lawyer then failed to file a claim of ineffective assistance of counsel on those grounds.

The U.S. Supreme Court heard arguments on Davila’s claim of ineffective assistance of counsel in *Davila v. Davis* on April 24, 2017 but ultimately ruled against him. The Justices found that attorney error in state post-conviction proceedings – for which there is no constitutional right to counsel – does not provide an excuse for the direct appeal lawyer’s failure to raise an issue on direct appeal.

- On May 16, 2018, the State of Texas executed Juan Castillo despite the fact that significant evidence of false testimony was never considered by the courts. Castillo was convicted of capital murder in

Bexar County in 2005 for causing the death of Tommy Garcia, Jr. in the course of committing a robbery two years earlier. He faced three execution dates in 2017. No forensic or physical evidence connected Castillo to the crime. His conviction was based largely on the testimony of two codefendants whose involvement in the crime was not disputed. Neither codefendant received the death penalty.

In 2013, jailhouse informant Gerardo Gutierrez recanted his testimony that Castillo had confessed to him. No court evaluated this evidence and the impact it would have had on Castillo's conviction, even though it was the basis of the stay granted by the Texas Court of Criminal Appeals (CCA) in November 2017. Instead, the trial court summarily dismissed the false evidence issue in a matter of days, adopting the prosecution's suggested findings of facts and conclusions of law without providing Castillo's attorneys an opportunity to respond. Castillo's appeals of this denial of due process were likewise ignored by the courts. In the week leading up to his execution, Castillo's lawyers discovered new evidence that the state withheld from his original trial attorneys. The CCA denied their subsequent application for habeas relief, however.

- The State of Texas put Christopher Young to death on July 17, 2018, despite the pleas of Mitesh Patel, who asked the state not to execute the man who murdered his father. Young was convicted of killing Hasmukh "Hash" Patel while robbing his convenience store in San Antonio in 2004. Attorneys for Young challenged his conviction and sought a new trial based on a constitutional violation of the 14th Amendment's Equal Protection Clause. During the jury selection process in his 2006 capital murder trial in Bexar County, an African-American member of the jury panel was struck from service based solely on her association with her Baptist church's Outreach Ministries Program. Young's attorneys argued that this religious discrimination tainted his original conviction.

After the Texas Board of Pardons and Paroles voted 6 to 0 to deny Young's clemency application, his attorneys filed a complaint in federal court arguing that race appeared to have played a decisive role in the Board's decision. Young was African-American. The complaint drew parallels to the case of Thomas Whitaker, a white man who received a unanimous recommendation for clemency from the Board on February 20, 2018 (see Clemency below). U.S. District Judge Keith Ellison held a hearing on the complaint but ultimately denied attorneys' request for a stay of execution because he found Young did not demonstrate a substantial likelihood of success on the merits of the claim.

- On November 14, 2018, the State of Texas put Robert Moreno Ramos to death. His execution was delayed by several hours while the U.S. Supreme Court considered his request for a stay. Earlier in the day, three former judges from the Texas Court of Criminal Appeals filed an amicus brief supporting efforts to halt the execution.

Ramos spent more than 25 years on death row. He was convicted of killing his wife and two youngest children in 1992 in Hidalgo County. In violation of the Vienna Convention on Consular Relations, Ramos was not notified of his right, as a Mexican national, to contact consular officials upon arrest. His trial attorneys provided inadequate legal representation and failed to present important mitigating evidence about his mental illness and abusive childhood to jurors. Mitigating evidence also was not submitted to the courts during his state post-conviction and federal habeas appeals. According to the Death Penalty Information Center, 38 foreign nationals have been executed in the United States since 1977. This includes 17 individuals in Texas.

- The State of Texas executed Joseph Garcia on December 4, 2018. In December 2000, Garcia and six other inmates escaped from a maximum-security prison south of San Antonio, where he was serving time on a murder charge that Garcia long maintained was self-defense. While robbing a sporting goods store in Irving following their escape, the “Texas 7” became involved in a shootout with Officer Aubrey Hawkins.

Garcia was the fourth person to be executed for the death of Officer Hawkins. He was convicted and sentenced to death in Dallas in 2003 under Texas’ law of parties, despite the fact that no evidence directly tied him to the shooting. The law of parties is a Texas statute that holds everyone involved in a crime equally responsible for its outcome. In the days leading up to his execution, Garcia’s attorneys filed a lawsuit in federal court challenging the composition of the Texas Board of Pardons and Paroles as not being representative of the general public, which is required by state law. They also submitted a letter to the Texas Department of Criminal Justice seeking information about the source of the drug to be used in the execution.

Executions by Race

Of the 13 men put to death by the State of Texas in 2018, five were white, four were Hispanic, and four were African-American. Since 1982, the State of Texas has executed 244 individuals who were white, 203 who were African-American, 107 who were Hispanic, and 4 who had another racial identity.

Executions by County

Dallas County accounted for four executions in 2018, while Bexar and Harris Counties each accounted for two executions. Other jurisdictions responsible for executions were Hidalgo, Hopkins, Lubbock, Smith, and Tarrant Counties.

Dallas County accounts for a total of 60 executions since the resumption of executions in Texas on December 7, 1982; Bexar County accounts for 46 executions, and Tarrant County accounts for 41. Harris County alone accounts for a total of 129 executions, more than any state except Texas.

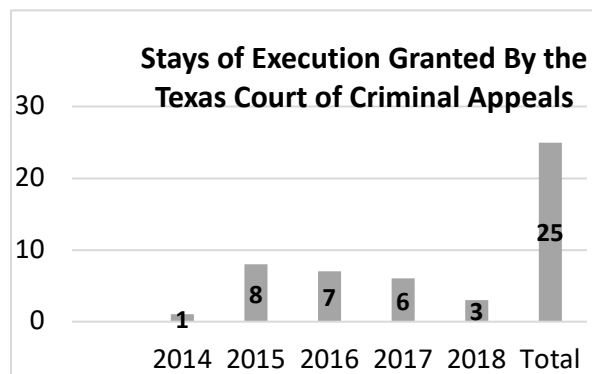
Stays of Execution, Dates Withdrawn, and Clemency Grants

Six individuals scheduled for execution in 2018 received reprieves, including stays granted by state or federal courts (four cases), the withdrawal of execution dates (one case), and one clemency grant. Half of these cases involved individuals who were convicted in Tarrant County. An August execution date for Joseph Garcia also was withdrawn but he ultimately was put to death on December 4.

Stays of Execution

Three stays of execution came from the Texas Court of Criminal Appeals (CCA), while one came from a federal court. Two of these cases involve Hispanic defendants and two involve African-American defendants.

- On June 6, 2018, the CCA stayed the execution of Clifton Williams to review his claim of intellectual disability in light of the 2017 U.S. Supreme Court ruling in *Moore v. Texas*, which found the state’s criteria for determining intellectual disability was not in compliance with current medical standards. Williams’ previous appeals regarding his



intellectual disability had been denied. He was scheduled to be executed on June 21, 2018 for the 2005 murder of Cecilia Schneider in Smith County. It was the first stay granted by the CCA in 2018.

- A federal district judge granted a stay of execution to Ruben Gutierrez on August 22, 2018. He was scheduled to be put to death on September 12 for the 1998 murder and robbery of Escolastica Harrison in Brownsville. Gutierrez received new lawyers at the beginning of August after his previous attorney asked to withdraw from the case; the new attorneys asked the judge for more time to review the case.
- On October 5, 2018, the CCA stayed the execution of Juan Segundo based on a claim of intellectual disability. He was scheduled to be put to death on October 10 for the rape and murder of 11-year-old Vanessa Villa in 1986 in Fort Worth. According to the *Texas Tribune*, Segundo's "attorneys argued he had been diagnosed by multiple professionals as intellectually disabled based on consistently low IQ scores and severe deficits such as being unable to read a clock or tell right from left."¹¹
- The CCA stayed the execution of Kwame Rockwell on October 19, 2018, finding that the trial court had erred in ruling that Rockwell failed to meet the threshold showing required for funds for a mental health expert. Rockwell was scheduled to be put to death on October 24, despite the fact that he has been diagnosed as schizophrenic by doctors retained by both the state and defense. He was convicted of the robbery and murders of store clerk Daniel Rojas and deliveryman Jerry Burnett in Fort Worth in 2010. The jury reportedly deliberated for more than 13 hours over two days before sentencing Rockwell to death.

Dates Withdrawn

The November 7 execution date for Emanuel Kemp was withdrawn after the Tarrant County District Attorney's Office agreed to a request from Kemp's attorneys for DNA testing. Kemp was convicted of hijacking a bus and killing passenger Johnnie Mae Gray in 1987 in Fort Worth.

On August 30, the trial court withdrew Joseph Garcia's execution date due to a defect in the scheduling process. The date was rescheduled and he was put to death on December 4.

Clemency Granted

On February 22, 2018, less than an hour before the execution of Thomas "Bart" Whitaker was set to begin, Texas Governor Greg Abbott issued a proclamation sparing his life and commuting his death sentence to life in prison without the possibility of parole. A key factor in his decision was the unanimous recommendation for clemency he received from the Texas Board of Pardons and Paroles two days earlier. It was the first clemency grant in Texas in more than a decade and only the third since the resumption of executions in 1982.

Whitaker was scheduled to be put to death for his role in the murders of his mother and younger brother in 2003. Christopher Brashear killed Patricia Whitaker and Kevin Whitaker as they returned to

¹¹ "Texas court halts Juan Segundo execution amid questions of intellectual disability, *Texas Tribune*, October 6, 2018

their home in Fort Bend County. Brashear received a life sentence. Another accomplice, Steven Champagne, was sentenced to 15 years in prison. Whitaker allegedly arranged the murders in order to receive an inheritance. His father, Kent, also was shot but survived the ambush. He forgave his son and opposed his death sentence. Governor Abbott cited Kent Whitaker's opposition to the execution in his clemency grant, which was his first since taking office in 2015.

It was an exceptionally rare decision for the Board of Pardons and Paroles, whose members are appointed by the Governor. The Board must recommend clemency for the Governor to grant it. Since 1982, it has recommended clemency in only five cases where the inmate faced imminent execution. Former Texas Governor Rick Perry rejected two of those recommendations and allowed the executions to proceed.

Reduced Sentences and Individuals No Longer on Death Row

In addition to the commutation of Thomas Whitaker's death sentence, three other individuals were removed from death row in 2018.

- In March 2018, Douglas Armstrong was sentenced to life in prison without the possibility of parole after prosecutors decided not to seek another death verdict. In November 2017, the Texas Court of Criminal Appeals (CCA) ordered a new sentencing hearing for Armstrong after finding his trial attorneys had failed to thoroughly investigate his "squalid and dangerous home life." Armstrong was convicted in 2007 of killing Rafael Castelan in Hidalgo County the year before. The court ruled that information about Armstrong's childhood and expert testimony about his mental and physical health issues might have persuaded at least one juror to choose a sentence other than death.
- In May, Michael Norris was resentenced to life in prison for killing his ex-girlfriend, Georgia Rollins, and her infant son in 1986 in Harris County. According to the *Houston Chronicle*, "the complications of decades-old evidence, the uncertainty of going before a jury again, questions about Norris's future dangerousness, and the survivors' consent all factored in the decision not to seek death again."¹² In 2016, the U.S. Court of Appeals for the Fifth Circuit affirmed a district court's grant of habeas relief to Norris, finding he was entitled to a new sentencing hearing in light of a 2001 U.S. Supreme Court ruling, *Penry v. Lynaugh*. In that decision, involving the Texas case of Johnny Paul Penry, the Court determined jurors must have an opportunity to fully consider mitigating evidence in the punishment phase of death penalty trials. It mandated new sentencing hearings for dozens of individuals on death row. According to the *Houston Chronicle*, the Penry decision has brought almost 20 cases back to Harris County for reconsideration.¹³ Many of these cases have resulted in sentences other than the death penalty.
- On December 19, Arthur Lee Williams was resentenced to life in prison plus 60 years for a prior aggravated assault; the new sentences will run consecutively. He had been on death row since 1983 for killing Houston police detective Daryl Shirley. In 2016, a federal judge overturned Williams' death sentence after finding jurors did not receive proper instructions on how to consider mitigating evidence, in accordance with *Penry v. Lynaugh*. According to the *Houston Chronicle*, "since the 1982

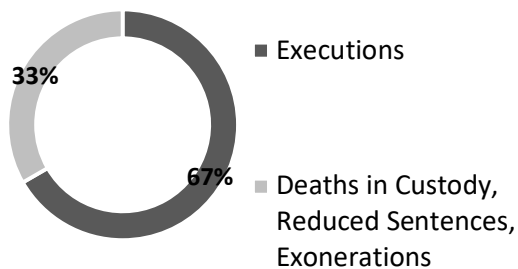
¹² "Harris County killer taken off death row, given two life sentences," *Houston Chronicle*, June 6, 2018

¹³ "New jury returns Harris County man to death row for 1987 slaying," *Houston Chronicle*, November 21, 2014

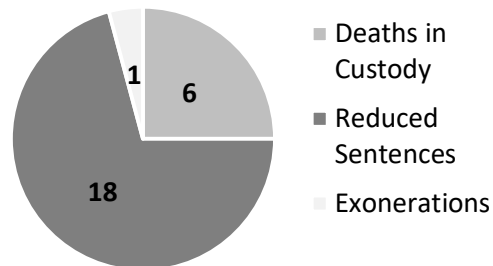
killing, multiple witnesses have died, the laws have changed and the 911 tape was taped over, according to a defense filing entered last month.”¹⁴ Williams is now 59 years old.

Since 2014, a total of 25 individuals have been removed from death row in Texas due to reduced sentences (18), deaths in custody (6), or exonerations (1). More than half of these cases originated in Harris County. During this same timeframe, the State executed 50 people.

No Longer on Death Row 2014-2018



Non-Execution Outcomes 2014-2018



Other Case Developments

There were significant developments in numerous death penalty cases in 2018 with claims related to intellectual disability, outdated or false scientific evidence, and false testimony, among other issues.

Cases Related to Claims of Intellectual Disability

As noted in Stays of Execution on pages 10-11, the Texas Court of Criminal Appeals (CCA) granted reprieves to two individuals based on claims related to intellectual disability in accordance with a 2017 ruling from the U.S. Supreme Court (*Moore v. Texas*) that Texas’ standards for determining intellectual disability did not comply with current medical standards. The CCA also issued orders on the following six cases in light of *Moore* and remanded them to the trial courts:

- On June 6, 2018, the CCA exercised its authority to reconsider the case of Juan Lizcano and remanded it to the habeas court “to allow it the opportunity to develop evidence, make new or additional findings of fact and conclusions of law, and make a new recommendation to this Court on the issue of intellectual disability.” Lizcano was convicted of capital murder and sentenced to death in 2007 for killing Dallas Police Officer Brian Jackson.
- On that same day – June 6, 2018 – the CCA remanded the case of Gilmar Guevera to Harris County to “make a new recommendation to this Court on the issue of intellectual disability.” Guevera was sentenced to death for the robbery and murder of two store employees in Houston in 2000.
- On June 27, 2018, the CCA remanded Steven Long’s application to the convicting court. Long was scheduled to be executed on August 30, 2017 for the assault and murder of 11-year-old Kaitlyn

¹⁴ “Your victims have shown mercy’: Houston cop killer taken off death row, resentenced to life,” *Houston Chronicle*, December 20, 2018

Briana Smith in May 2005 in Dallas County. The court granted a stay to allow for further review of his claim of intellectual disability.

- The CCA exercised its authority to reconsider the case of James Lee Henderson and remanded it to Red River County on October 3, 2018. Henderson was sentenced to death for robbing and killing Martha Lennox in Clarksville in 1994. In 2017, the U.S. Supreme Court returned his case to the U.S. Court of Appeals for the Fifth Circuit for reconsideration based on its opinion in *Moore*.
- On November 7, 2018, the CCA exercised its authority to reconsider the case of Eric Cathey and remanded it to the habeas court to consider all the evidence regarding intellectual disability. In 2017, the U.S. Court of Appeals for the Fifth Circuit authorized Cathey to file a successive habeas petition challenging his eligibility for the death penalty on grounds of intellectual disability. He was sentenced to death in Harris County in 1997.
- On December 5, 2018, the CCA ruled 5 to 4 that Kenneth Wayne Thomas should receive a new punishment hearing based on his claim of intellectual disability. It is the second time the court has acted on this claim. In 2010, the CCA ordered a new sentencing hearing after determining that jurors in his original trial had not properly considered whether Thomas' mental impairments could mitigate his actions. According to the *Dallas Morning News*, Thomas' 1987 trial 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.¹⁵ In 2014, a Dallas County jury resentenced Thomas to death for the murders of Fred and Mildred Finch in 1986.

In its latest ruling, the state's highest criminal court found that the jury in the 2014 sentencing hearing had based its decision on outdated standards for determining intellectual disability and that Thomas is entitled to a new hearing in which jurors employ modern standards.

The CCA denied relief in at least two cases with intellectual disability claims:

- In the case of Bobby James Moore – the petitioner in *Moore v. Texas* – the CCA denied relief on June 6, 2018 by a vote of 5 to 3. Moore's case had been returned to the CCA for further proceedings after the U.S. Supreme Court ruled on March 28, 2017 that the state of Texas must use current medical standards in determining whether a person is intellectually disabled and therefore exempt from execution. The Justices found the CCA had relied on outdated, non-scientific criteria in assessing whether Moore is intellectually disabled, which did not comport "with the Eighth Amendment and this Court's precedents."

In their June 2018 ruling, the five-judge majority on the CCA once again relied on lay stereotypes and non-scientific criteria in rejecting Moore's claim that he is exempt from the death penalty because he is intellectually disabled. They disregarded agreement by the Harris County District Attorney's Office, which acknowledged Moore's intellectual disability and asked the court to resentence him to life in prison; the ruling of Harris County District Court Judge Susan Brown, who deemed Moore intellectually disabled by current medical standards after conducting an evidentiary hearing in 2014; and the views of prominent Texans across the political spectrum, religious

¹⁵ "Kenneth Wayne Thomas sentenced to death for murder of prominent attorney," *Dallas Morning News*, February 28, 1987

institutions and faith leaders, intellectual disability organizations, medical organizations, and leaders of the legal profession that he should be exempt from the death penalty based on evidence of his intellectual disability.

Moore's attorneys have asked the U.S. Supreme Court to accept review of the case and summarily reverse this latest ruling from the CCA, and the Harris County District Attorney's Office has asked for the same. The American Bar Association, the American Psychological Association, and a group of conservatives, including former U.S. Solicitor Kenneth W. Starr, prominent lawyers, and former deputy attorneys general filed amicus briefs supporting Moore's request to reverse the CCA's opinion, as did the Harris County District Attorney's Office. The petition for certiorari is currently pending before the U.S. Supreme Court.

- In the case of David Wood out of El Paso County, the CCA ruled on December 12, 2018 that "having reviewed the record in this case in light of *Moore v. Texas* and our own subsequent decision of *Ex parte Moore*, we conclude that no further record development or fact findings are needed and that Applicant is not entitled to relief." The habeas court had conducted an evidentiary hearing on Wood's claim of intellectual disability and recommended he not receive relief.

Cases Related to Claims of False or Outdated Science

In 2013, the Texas Legislature adopted Article 11.073 of the Texas Code of Criminal Procedure, which provides a remedy for individuals who were convicted based on false or outdated science. The legislation received overwhelming bipartisan support. Since its passage, Article 11.073 has been the basis of several stays of execution granted by the Texas Court of Criminal Appeals (CCA), which remanded the cases to their respective trial courts. In 2018, district courts took the following actions on these cases:

- Just hours after the start of an evidentiary hearing in the case of Robert Roberson on August 14, 2018, the proceedings were delayed indefinitely after long-lost evidence – 15-year-old head scans taken of the decedent – was found in the basement of the courthouse. Roberson had been convicted of capital murder and sentenced to death in Anderson County in 2003 for allegedly causing the death of Nikki Curtis, his two-year-old daughter, who had a history of breathing apnea and chronic infections. The State's experts at trial had opined that the toddler's death was caused by "shaken baby" or "shaken impact" syndrome. Roberson has consistently maintained his innocence.

The CCA had stayed Roberson's scheduled June 21, 2016 execution based on Article. 11.073 and sent his case back to the trial court to consider the merits of four distinct claims, including a "junk science" claim challenging the State's theory of causation.

- Under Article 11.073, the CCA stayed the execution of Charles Flores, which had been set for June 2, 2016. His case was then sent back to the trial court to permit him to develop evidence showing how the use of forensic hypnosis to obtain his conviction for the 1998 murder of Elizabeth Black in Dallas County was junk science. There had been no direct evidence linking Flores to the crime scene, and his conviction hinged largely on an eyewitness who put him outside the crime scene only after the police had conducted a hypnosis session on her and suggested that she would "remember more later." This neighbor made the identification only after she was shown pictures of Flores by the police following the hypnosis session, after she then saw some of the same pictures in the newspaper, and only after she then saw him sitting in the courtroom during his trial a year later.

In October 2018, after presiding over an evidentiary hearing, Judge Hector Garza of the 195th Judicial District adopted findings of fact and conclusions of law drafted entirely by counsel for the State, ruling that Flores had failed to prove by a preponderance of the evidence that he was entitled to relief under Article 11.073. The CCA will now consider Judge Garza's recommendation that Mr. Flores's subsequent application for a writ of habeas corpus be denied. The Innocence Project has filed an amicus brief in support of Flores, highlighting the ways the science of memory and suggestive eyewitness identification procedures have changed considerably since his trial and emphasizing the widespread disavowal of forensic hypnosis as a technique that can accurately "recover" memories of fleeting observations.

- On October 9, 2018, 41st District Court Judge Annabell Perez of El Paso recommended that Rigoberto "Robert" Avila receive a new trial after overseeing a thorough inquiry into his case under Article 11.073. Judge Perez issued an order making two key findings about the implications of newly available scientific evidence for the integrity of Avila's conviction:
 - First, applying Article 11.073, she concluded that if the newly available scientific evidence had been available at trial, the jury probably would have found Avila not guilty.
 - Second, she found that the newly available scientific evidence compels the conclusion that some of the key expert testimony admitted against Avila at trial was false and misleading.

Avila is the first death-sentenced defendant to receive a favorable recommendation from a district court under the new statute. He has been on death row since 2001 and faced four serious execution dates. Newly available scientific evidence casts serious doubt on the jury's verdict and supports his consistent claim of innocence. His case now moves back to the CCA, which will decide whether to accept Judge Perez's recommendation he receive a new trial.

Cases Related to Other Issues

Courts also acted on the following cases in 2018:

- On May 8, 2018, State District Judge Everett Young recommended that Paul Storey's death sentence be commuted to life in prison after finding prosecutors had presented false evidence and withheld evidence from the defense. Storey was sentenced to death for the murder of Jonas Cherry in Tarrant County in 2008. In April 2017, the Texas Court of Criminal Appeals (CCA) stayed his execution and remanded the case to the trial court to determine whether prosecutors had committed misconduct, and if so, whether that misconduct could have been discovered by previous attorneys.

Judge Young found the prosecutorial misconduct could not have been discovered by previous attorneys through due diligence. He also found that the testimony of the two original prosecutors at the recent writ hearing was not credible. Storey's case now moves back to the CCA, which will decide whether to accept Judge Young's recommendation he receive a new sentencing hearing or reduced sentence.

- On June 5, 2018, the U.S. Court of Appeals for the Fifth Circuit considered the case of Andre Thomas, a profoundly mentally ill man who killed his ex-wife and two young children in 2004. While he was in jail awaiting trial, he gouged out his right eye; after he was sentenced to death, while on death row, he took out his second eye and consumed it. Two days after hearing arguments on a range of

issues, the three-judge panel ruled to allow Thomas' attorneys to move forward with claims that his trial lawyers were ineffective and his jury was racially biased.

- On November 14, 2018, the CCA overturned the capital murder conviction of Albert James Turner in light of the U.S. Supreme Court's ruling in *McCoy v. Louisiana* (May 2018). In that case, the Justices ruled defendants have "the right to insist that counsel refrain from admitting guilt, even when counsel's experience-based view is that confessing guilt offers the defendant the best chance to avoid the death penalty." During Turner's 2011 trial for the murders of his wife and mother-in-law in Fort Bend County two years prior, his attorneys told the jury he had committed the crime, despite Turner's testimony that he was innocent.
- On November 21, 2018, the CCA rejected the trial court's recommendation that Jeff Wood receive a new sentencing hearing. On August 19, 2016, the CCA stayed his execution and remanded his case for consideration of his claims related to false testimony during the sentencing phase of his original trial. Wood was scheduled to be put to death on August 24, 2016 even though he did not kill anyone. He was convicted of capital murder and sentenced to death under Texas' law of parties after another man, Daniel Reneau, robbed and killed convenience store clerk Kris Keeran in Kerrville in 1996. Reneau, who was executed in 2002, committed the crime while Wood was sitting in a truck outside the building.

Wood's attorneys filed a petition for writ of habeas corpus requesting a new sentencing hearing based on the fact that his original sentencing hearing was prejudiced by the false and misleading testimony of discredited psychiatrist, Dr. James Grigson, regarding future dangerousness. During the trial, Dr. Grigson testified – without personally evaluating him – that Wood "certainly" would be criminally violent in the future based on a hypothetical presented to him by the prosecution. A jury determination of future dangerousness is required in order to sentence a defendant to death in Texas. In 1995, three years before he testified in Wood's trial, Dr. Grigson was expelled from the American Psychiatric Association and the Texas Society of Psychiatric Physicians for flagrant ethical violations involving this same conduct. In its latest ruling, the CCA determined that Dr. Grigson's testimony "was not material" and didn't affect the judgment of the jury.

Wrongful Convictions

In May, Harris County District Attorney Kim Ogg launched a new investigation into the case of Alfred Dewayne Brown, who was released from death row in 2015 after prosecutors dismissed the charges against him. In 2014, the Texas Court of Criminal Appeals (CCA) overturned his conviction due to evidence of prosecutorial misconduct. Since then, he has fought for compensation from the State of Texas for his wrongful incarceration. Although phone records withheld by the prosecution corroborated Brown's alibi, he has never been declared officially innocent. Without this ruling, Brown is ineligible for compensation. An outside attorney is conducting an independent review of Brown's innocence claim.

Brown spent a decade on death row for the murder of Houston Police Officer Charles R. Clark at a check-cashing business in 2003. He is the 13th person exonerated and released from death row in Texas. Nationally, 164 people have been exonerated and released from death row.

Legislative Developments

On March 26, 2018, the Texas House Criminal Jurisprudence Committee conducted a hearing to gather information related to the following interim charge: "Assess developments in medical science and legal

standards related to the imposition of the death penalty on defendants with serious mental illness or intellectual and developmental disabilities. Review statutorily prescribed jury instructions used during capital sentencing.”

New Voices

In July 2018, State Representative Joe Moody, who represents House District 78 in El Paso and served as Chairman of the Texas House Criminal Jurisprudence Committee during the 85th Texas Legislature, published an opinion piece explaining why he has “moved from longtime support of capital punishment to the moral certainty that it’s time for Texas to abolish the death penalty.”¹⁶ Chairman Moody cited the overly broad and inconsistent application of the death penalty as well as its many procedural problems as some of the reasons for changing his mind on the issue.

Lethal Injection Developments

In June 2018, the Texas Supreme Court declined to review a decision from the 3rd Court of Appeals that the Texas Department of Criminal Justice (TDCJ) must provide information identifying the source of compounded pentobarbital used in executions. That ruling related to a lawsuit filed in 2014 by attorneys for several death row inmates, which has been winding its way through the state’s judicial system. In October, however, the Texas Supreme Court reversed its earlier decision and granted the state’s request for a rehearing. Oral arguments will take place in the case in January 2019.

In a separate case, in August 2018, a federal judge ordered that a hearing about whether TDCJ can import a drug used previously in executions will remain open to the public. Several media outlets had opposed the Food and Drug Administration’s request that the hearing be closed. TDCJ officials attempted to illegally import sodium thiopental from India in 2015; prior to 2012, sodium thiopental was the first drug used in lethal injections in Texas. Officials with the Food and Drug Administration reportedly seized the shipment at the airport in Houston.

Multiple suits have been filed in the wake of the increasing number of Texas prisoners who have described the burning they feel as they are being executed. Courts have yet to consider any of these cases.

Conclusion

The Texas Coalition to Abolish the Death Penalty (TCADP) was incorporated in 1998 in response to the high rate of death sentences and executions across the state. Comparing the death penalty landscape in TCADP’s first decade of existence to the last 10 years, a remarkable and encouraging contrast is clear. From a 20-year high at the turn of the century to historic low numbers of new death sentences in recent years, it is clear that prosecutors and the public are turning away from the death penalty.

Yet as the number of Texas counties devoting resources to costly death penalty trials dwindles each year – and prosecutors in Texas’ highest-use counties seek death sentences less often – capital punishment remains racially biased and arbitrarily applied. Flaws in death penalty cases are frequently identified on the eve of scheduled executions, highlighting the fact that the system is still unreliable and fraught with error.

¹⁶ “It’s time to get rid of the death penalty in Texas,” *TribTalk*, July 11, 2018

As we enter our third decade of advocating for a fairer system of justice in Texas, TCADP urges concerned citizens and elected officials to confront the realities of this irreversible punishment and reconsider the efficacy and cost of the death penalty as a means of achieving justice.

Table 1: New Death Sentences in Texas in 2018

TDCJ Number	Last Name	First Name	Date of Birth	Gender	Race	Date Received	County	Date of Offense
n/a	Tijerina-Sandoval	Gustavo	n/a	M	Hispanic	TBD	Willacy	08/03/2014
999614	Love	Kristopher	03/23/1984	M	Black	11/15/2018	Dallas	09/02/2015
999613	Lewis	Howard	09/20/1967	M	Black	11/09/2018	Walker	07/24/2013
999612	Compton	Dillion	07/27/1994	M	Black	11/06/2018	Jones	07/16/2016
999611	Irsan	Ali	12/27/1957	M	Other	08/20/2018	Harris	01/15/2018
999610	Delacruz	Isidro	10/07/1990	M	Hispanic	04/26/2018	Tom Green	09/02/2014
999609	Delacerda	Jason	07/26/1977	M	Hispanic	03/08/2018	Hardin	08/17/2011

Table 2: Texas Executions in 2018

Execution	Last Name	First Name	TDCJ Number	Age	Date	Race	County
558	Braziel, Jr.	Alvin	999393	43	12/11/2018	Black	Dallas
557	Garcia	Joseph	999441	47	12/04/2018	Hispanic	Dallas
556	Ramos	Robert	999062	64	11/14/2018	Hispanic	Hidalgo
555	Acker	Daniel	999381	46	9/27/2018	White	Hopkins
554	Clark	Troy	999351	51	9/26/2018	White	Smith
553	Young	Christopher	999508	34	7/17/2018	Black	Bexar
552	Bible	Danny	999455	66	6/27/2018	White	Harris
551	Castillo	Juan	999502	37	5/16/2018	Hispanic	Bexar
550	Davila	Erick	999545	31	4/25/2018	Black	Tarrant
549	Rodriguez, III	Rosendo	999534	38	3/27/2018	Hispanic	Lubbock
548	Battaglia	John	999412	62	2/1/2018	White	Dallas
547	Rayford	William	999371	64	1/30/2018	Black	Dallas
546	Shore	Anthony	999488	55	1/18/2018	White	Harris