

URGENT ACTION

Woman's execution would violate international law

Melissa Lucio, a 52-year-old Mexican American woman, is scheduled to be executed in Texas on 27 April 2022. She was convicted in 2008 of the 2007 murder of her two-year-old daughter. New expert evidence bolsters the claim that the death was the result of an accidental fall, that key trial testimony alleging child abuse was unscientific, and that Melissa Lucio's incriminating statements made under interrogation – key in her prosecution – were unreliable. Amnesty International believes her execution would violate international law given the serious concern about the reliability of her conviction and the unfairness of the trial. Amnesty International is urging the Texas Board of Pardons and Paroles and the Texas Governor to grant clemency.

TAKE ACTION: WRITE AN APPEAL IN YOUR OWN WORDS OR USE THIS MODEL LETTER

Texas Governor Greg Abbott
Office of the Governor,
PO Box 12428, Austin
Texas 78711-2428, USA

Dear Governor Abbott

Melissa Lucio is due to be executed in Texas on 27 April 2022 after being convicted in 2008 of the capital murder of her two-year-old daughter, Mariah. There are serious questions about the reliability of her conviction, about how the state obtained and used her incriminating statements, and indeed about whether there was a murder at all.

Given what they have learned since the trial, several jurors now question their verdict. Their signed declarations are before you, as are new declarations and reports of seven leading experts, from various disciplines, who have studied the case in detail and question the outcome. A forensic pathologist, for example, writes how the investigation into the child's death had been "significantly prejudiced, not evidence based, and without an adequate consideration of alternative issues". He also noted that the medical evidence was "consistent with a cause of death related to a fall down the stairs two days before Mariah's collapse". Another expert writes that aspects of the state medical examiner's testimony were "scientifically indefensible", "inflammatory", and amounted to "gross speculation".

According to a leading expert in the field, Melissa Lucio met 10 of the 17 risk factors to making a false confession, including a history of sexual and physical abuse, mental disability including Post-Traumatic Stress Disorder, and poor verbal comprehension. She "was relentlessly pressured and extensively manipulated" by the interrogators who from the outset "presumed her guilty of having murdered the child." A fundamental aspect of the presumption of innocence is the right not to be compelled to incriminate oneself, and any coercion to this end (including but not limited to torture and other ill-treatment) is prohibited under international law, whether direct or indirect, physical or psychological.

The procedural constraints of federal law are why Melissa Lucio remains on death row despite 10 judges on the Fifth Circuit Court of Appeals concluding that the trial judge was wrong to exclude expert testimony which would have sought to explain why the defendant's incriminating statements – the basis of the case against her – were unreliable. The judge's decision deprived Melissa Lucio of a fair trial. As such her execution would violate international law. International law also prohibits the execution of anyone whose conviction is not based upon "clear and convincing evidence leaving no room for an alternative explanation of the facts". Here there is room for serious doubt.

I urge you to stop the execution of Melissa Lucio and to ensure that her death sentence is commuted.

Yours sincerely,

ADDITIONAL INFORMATION

In 2008, a Texas jury found Melissa Lucio guilty of capital murder in the death of her two-year-old daughter. According to the Medical Examiner (ME) who conducted the autopsy, the child died from a brain haemorrhage caused by blunt force trauma to the head. Despite the child's medical history including difficulties walking and falls, the ME testified that the head injuries could not have been the result of a fall down the stairs two days earlier, as Melissa Lucio said. New expert evidence brings the ME's trial testimony into serious question.

The prosecution's case centred on a videotaped interrogation of Melissa Lucio, admitted into evidence on the first day of the trial and immediately played to the jury. The interrogation began soon after Mariah was declared dead on the evening of 17 February 2007. Pregnant with twins, sleep deprived and isolated from her family, and having waived her right to a lawyer, Melissa Lucio was interrogated by five law enforcement officials (four male, one female). After five hours of interrogation into the early hours of 18 February, and after she had asserted more than 100 times that she had never hit her daughter in the head, Melissa Lucio made incriminating statements – portrayed by the prosecution at trial as a full “confession” – that “I guess I did it. I guess I did it.” and “What am I going to say? I'm responsible for it”.

The defence sought to introduce two experts who could have explained to the jury why Melissa Lucio might have made such a “confession” if she was not responsible for her daughter's death. One of them, a psychologist, would have testified that the defendant's traumatic history of emotionally, physically and sexually abusive relationships with men had left her vulnerable to accepting blame and acquiescing under interrogation (as a federal judge put it in 2021, “that reality is strong footing for Melissa's claimed denial of the opportunity to present a complete defense: that she only tried to accept the blame for the acts of others, a phenomenon of personality produced by her own lifetime of abuse in a world of abject poverty”). The trial judge ruled that such testimony was irrelevant to the question of guilt/innocence, a decision that amounted to an outright dismissal of her defence that she had falsely confessed and was innocent. Amnesty International considers that this ruling alone rendered her trial unfair under international law. It undermined the presumption of innocence, breached the principle of “equality of arms”, denying the defendant a full opportunity to challenge the prosecution's central evidence against her.

On appeal, Melissa Lucio faced procedural hurdles under the federal Antiterrorism and Effective Death Penalty Act (AEDPA), a 1996 law enacted to curtail federal judicial review of state court decisions in a bid to speed up executions. The UN expert on the death penalty said in 1998 that the AEDPA had “further jeopardized the implementation of the right to a fair trial”. In Melissa Lucio's case, a three-judge panel of the US Court of Appeals for the Fifth Circuit ruled that the trial judge had deprived her of her constitutional right to present a meaningful defence. The state appealed for a rehearing in front of the full court of 17 judges. Seven judges (who pointed out that “the State presented no physical evidence or witness testimony directly establishing that Lucio abused Mariah or any of her children, let alone killed Mariah”) argued that the trial judge's exclusion of the expert testimony was erroneous and the state appeal court's approval of it a clearly unreasonable application of US Supreme Court precedent, with federal relief therefore not curtailed under the AEDPA. However, 10 judges decided that Melissa Lucio could not overcome the AEDPA's strictures. Three of the 10 nevertheless acknowledged that the excluded testimony “might have cast doubt on the credibility of Lucio's confession”, that the dissent had “shown the factual imperative that jurors hear this testimony”, and that this case was a “clear example that justice to a defendant may necessitate a more comprehensive review of state-court evidentiary rulings that is presently permissible”.

The USA ratified the International Covenant on Civil and Political Rights (ICCPR) in 1992. The execution of a person denied fair trial rights provided under article 14 of the treaty amounts to an arbitrary deprivation of life. The UN Human Rights Committee, the expert body established under the ICCPR to oversee its implementation, has stated that “The execution of sentenced persons whose guilt has not been established beyond reasonable doubt also constitutes an arbitrary deprivation of life. States parties must therefore take all feasible measures in order to avoid wrongful convictions in death penalty cases, to review procedural barriers to reconsideration of convictions... States parties should also consider the implications for the evaluation of evidence presented in capital cases of new reliable studies, including studies suggesting the prevalence of false confessions”.

On 18 February 2022, the Inter-American Commission on Human Rights issued “precautionary measures” calling on the USA not to execute Melissa Lucio before the Commission has been able to reach a decision on the merits of her petition. The UN Human Rights Committee has made it clear that under international law, “death sentences must not be carried out as long as international interim measures requiring a stay of execution are in place”.

There have been three executions in the USA this year. This would be the first in Texas, the state which accounts for 573 of the 1,543 executions carried out in the USA since the US Supreme Court approved new capital statutes in 1976. At least 186 people sentenced to death in the USA since 1973 have later been exonerated. Amnesty International opposes the death penalty in all cases, unconditionally.

PREFERRED LANGUAGE TO ADDRESS TARGET: English.

You may also write in your own language.

PLEASE TAKE ACTION AS SOON AS POSSIBLE UNTIL: 27 April 2022.

NAME AND PRONOUNS: Melissa Elizabeth Lucio (she/her)

ADDITIONAL TARGET

Texas Board of Pardons and Paroles

Clemency Section

8610 Shoal Creek Boulevard

Austin, Texas 78757, USA

Fax: +1 512 406 0945

Email: bpp-clemency@tdcj.texas.gov

Salutation: Dear Presiding Officer Gutiérrez and Members of the Board of Pardons and Paroles

U.S. Embassy London

33 Nine Elms Lane, London SW11 7US