

COPY

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November 20, 1989

The Hon. Gilbert F. Ganucheau, Clerk
United States Court of Appeals
600 Camp Street
New Orleans, LA 70130

Re: Carlos DeLuna
Execution date: December 7, 1989

Sir:

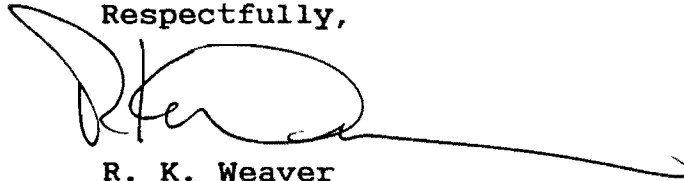
Enclosed please find a copy of the Application for Writ of Habeas Corpus and Memorandum of Law in Support of Application for Writ of Habeas Corpus which have been filed in the 28th Judicial District Court of Nueces County, Texas, on behalf of Carlos DeLuna. In addition, we have requested a stay from the trial judge, the Hon. Eric Brown. We have been advised that the judge will take action on these requests on or before November 22, 1989. In the event that a stay is not granted by the trial judge we intend to refile our Application for Stay of Execution in the Texas Court of Criminal Appeals on or before Monday, November 27. In the event that we do not receive a stay of execution from that court on or before Friday, December 1, 1989, we will refile this Application for Writ of Habeas Corpus in the United States District Court for the Southern District of Texas, Corpus Christi Division, on Friday, December 1, 1989. If we have not received a stay from that court by Tuesday, December 5, 1989, we will be petitioning your court for the stay on Tuesday, December 5, 1989.

This Application for Writ of Habeas Corpus and the Application for Stay of Execution filed in the Texas state courts raises the exact same issue as was raised by the petitioner in *Ex parte Harvey Earvin*, No. 15,021-03, in which a stay of execution was granted and the cause submitted to the Texas Court of Criminal Appeals on September 13, 1989. In addition, it raises the same issue as was raised by the petitioner in *Selvege v. Lynaugh*, No. 87-6700, a case where the United States Supreme

Court granted the petitioner a stay and accepted certiorari to review the petitioner's death sentence. Both cases deal with the application of the United States Supreme Court's holding in *Penry v. Lynaugh*, No. 87-6177, to cases tried before *Penry* was delivered.

If the Court desires any additional information concerning this case, please do not hesitate to contact me.

Respectfully,

A handwritten signature in black ink, appearing to read 'R. K. Weaver', with a long horizontal flourish extending to the right.

R. K. Weaver

KW:ps
enclosures