

**From:** Peter Bellamy pbfieldgates@yahoo.co.uk  
**Subject:** Fw: Re Urgent US Death Penalty case - Bernardo Tercero  
**Date:** 30 November 2014 17:48  
**To:** Emmanuelle Purdon emmanuellepurdon@mac.com

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Hi Emmanuelle

A correction re my previous assertion that I hadn't sought help from Amnesty. The email below shows that I did in 2013, but I had no reply.

On Monday, 18 March 2013, 15:44, Peter Bellamy <pbfieldgates@yahoo.co.uk> wrote:

Hi Chiara

I have been given your contact details by Nicholas Bromley of Reprieve in London. Reprieve had looked into a Texas Death Row case for me re Bernardo Aban Tercero, a Nicaraguan national. Unfortunately, after making inquiries and ascertaining that Bernardo did not qualify under their European citizen criteria, Reprieve told me that they were unable to take on his case. Nicholas Bromley suggested that you might be able to however, in some way.

Bernardo has now exhausted all the usual legal channels, having been Denied his habeas appeal in the Federal District Court in February (2013). His attorney, Don Vernay is making an appeal to the 5<sup>th</sup> Circuit, the FDC having also denied a certificate of appealability, and also a request for an oral hearing to examine evidence for Bernardo's claim he was a Juvenile at the time of the crime for which he was convicted – capital murder.

The evidence that supports his claim includes a birth certificate, further certificates drawn up from microfiche records in the capital, Managua, affidavits of his mother, grandmother, another relative and neighbors who have known the family over many years. A further affidavit is testimony from a certified defense investigator who went to Nicaragua to collect this evidence and to interview officials concerned with the registry of births, birth in Managua, and locally where Bernardo was born.

There are three issues that have apparently caused the US authorities to question the evidence provided:

1. Bernardo had an elder brother who died before Bernardo was born. The birth of each has been recorded as the same day of the same month, but 3 years apart. Also, Bernardo was named, following the common practice in Nicaragua, with exactly the same name. The elder brother died as a result of a scorpion sting before he could be got to a hospital. His burial place has been obliterated as a result of the massive devastation of Hurricane Mitch which killed many people and destroyed a large area as a result of associated mud slides. The event is well documented as a disaster of considerable scale. The clergyman who presided at the funeral is also dead and so cannot testify. Documentation of the family also perished.
2. Bernardo's mother attempted to clarify the birth record of Bernardo sometime in 2005 or 2006. This was a minor record of fact which does not affect the principal record of name, date of birth, place of birth, mother, father, etc. This clarification is noted on the copy of the birth certificate, causing the US authorities to question if fraud is involved. We have affidavits from the local Judge that the birth certificate is authentic and true. The investigator, Norma Villanueva, visited the country's central register of births in Managua, obtaining records from original microfiche entries for both brother. There is an affidavit from Norma that the senior authority in that office confirms that central microfiche records are never amended, and that the clarification on Bernardo's local birth certificate was both requested and recorded in the central microfiche

birth certificate was born unnecessary and was unrecorded in the central microfiche record in Managua. This confirms the fact that there were two brothers, born on the same day three years apart, and both given the exactly same names. Locals and family confirm the death of the first born.

3. When Bernardo entered the US, he found that his age was a bar to obtaining an ID and work. He wrote to his grandmother, complaining of this, and she went to her local registry office in Nicaragua for a certificate of his older brother. This certificate was issued without reference to the official record of the boy, but was based on the information provided by the grandmother. Unfortunately, being old and having a great number of grandchildren etc (see her affidavit), she mistakenly entered a birth date of 20<sup>th</sup> August 1977. It should have been 1976. When Bernardo received this certificate, he used it to obtain an ID, and subsequently used this birth date, and other variants apparently, whilst in the US. It was only after the ruling by the Supreme Court that Juveniles at the time of the offense were not to be eligible for the death penalty, that he realized the importance of revealing his true age. Up to then, he has seen advantage in claiming the age on the ID he had earlier obtained. Bernardo's true date of birth, as shown on the birth certificate and microfiche record is 20th August 1979.

The Texas and Federal Courts have gone along with the position of the prosecution that these late claims of birth and age are made “incredible” and “unbelievable”. They have refused to test the claims and documentation in any oral hearing, and apart from identifying the “clarification” on the copy birth certificate (an authentic original copy), they have presented no evidence of falsehood of the older brother, his death, or of fraud. They rely entirely on a subjective judgment that the story and evidence must be false.

There are other claims which Bernardo makes, concerning the conduct of prosecution and other officials at his trial and subsequently, as well as pertaining to the nature of the crime and the subsequent charge level. These are documented in the attached.

You will know that at this stage the trial judge is empowered to be able to list Bernardo’s execution at any time. While this may not be expected until the 5<sup>th</sup> Circuit has ruled on the appeal, it cannot be ruled out that a date may soon be set. For this reason, Bernardo’s case become critical. I have approached the Inter-American Commission on Human Rights (yesterday), by email, for a Request for Precautionary Measures. This follows an petition by Bernardo some months ago, detailing claims against the Nicaraguan Consulate in Houston, which had failed to support him beyond very rare visits and some correspondence. He has no financial assistance for an attorney, and no ongoing commissary support. The consulate officials failed to maintain an ongoing relationship with his court appointed attorney. The petition also raised claims against the US. In considering the petition, the claim against Nicaragua did not meet the criteria required, but the petition was held with regard to the claims against the US. Bernardo was asked in a letter dated January 2013, to resubmit his petition with regard to the US, in English (his original petition was in Spanish). Bernardo had written a letter for general distribution which he hopes the Commission will accept in lieu of another formal petition. I have submitted that with the Request for Precautionary Measures. How effective this body may be, assuming they accept that the US has a case to answer, I cannot say. Anyway, the relevant documentation is attached. The evidentiary documents are incorporated in a large zipped Word file which I have made available for download at an old website I created soon after I became acquainted with Bernardo as a penfriend in 2008. The address is:

<https://sites.google.com/site/bernardotercero/legaldocs>

The document is named – Exhibits A to J.zip

I have yet to upload the latest court documents, but I will do so shortly when I can find the time. The site has not really been updated for some time, and is just a repository.

You will find more to this story, and the claims Bernardo makes, in the attachments.

My hope is that Amnesty will help create a campaign, or take some other appropriate action, to stop Bernardo's execution, and at least recognize his Juvenile status. As I have pleaded in the Request to the Inter-American Commission on Human Rights, it is clearly a violation of his rights that the Courts and prosecution should dismiss legal documentation from Nicaragua without even an oral hearing and cross-examination of witnesses about the evidence. All contact details are listed in the Request, which is among the documents attached.

Hope to hear from you in due course.

Best regards

Peter Bellamy



REQUEST FOR  
PRECAUTI...URES.doc



INTER - AMERICAN COMMISSION ON HUMAN RIGHTS  
COMISION INTERAMERICANA DE DERECHOS HUMANOS  
COMISSÃO INTERAMERICANA DE DIREITOS HUMANOS  
COMMISSION INTERAMÉRICAINÉ DES DROITS DE L'HOMME



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## ORGANIZATION OF AMERICAN STATES

WASHINGTON, D.C. 20006 U.S.A.

January 24, 2013

**RE: Bernardo Aban Tercero**  
**P-1114-09/ P-1752-09**  
**Nicaragua**

Dear Sirs,

I am pleased to address you on behalf of the Inter-American Commission on Human Rights in connection with the petitions referred to above.

Having completed the study set forth in Article 26 of the Commission's Rules of Procedure, I wish to inform you that it will not be possible to process your petition 1114-09 against Nicaragua, because the information it contains does not satisfy the requirements set forth in those Rules and the other applicable instruments. Specifically, the information provided does not enable us to determine that it concerns a possible violation of rights protected by the applicable Declarations or Treaties within the Inter-American System for the Protection of Human Rights.

Furthermore, we inform you that we have identified in the petition 1114-09 allegations against the United States, so we proceeded to file a new petition that has been assigned the number P-1752-09 and such claim is now under study in accordance with the current Rules of Procedure.

In this regard, please be advised that the documents in this petition must be in English, which is the official language of the concerned State. so it is necessary to send as soon as

possible your allegations in that language or procure the means necessary to translate the documents of the petition. If this presents a difficulty, please explain the reason so that the Commission may consider it. However, if your petition advances to the next stage of processing, it will be necessary to transmit it in the language used by the State.

Mr.  
Bernardo Aban Tercero  
Pulunksy Unit  
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Livingston, Texas - 77351  
USA

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Bucks HP6 6PR, United Kingdom  
  
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1/24/2013-cc-3282975

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Please provide the indicated information as soon as possible, for the evaluation of your petition cannot proceed until it is received.

Sincerely,

20130127E



Elizabeth Abi-Mershed  
Assistant Executive  
Secretary

