

IN THE UNITED STATES PAROLE COMMISSION
UNITED STATES DEPARTMENT OF JUSTICE

In the matter of the parole of

CARLOS ALBERTO TORRES, 88976-024
FCI Oxford, WI

APPEAL FROM NOTICE OF ACTION
TO THE NATIONAL APPEALS BOARD

JAN SUSLER
Attorney for Carlos Alberto Torres
1180 N. Milwaukee
Chicago, IL 60622
312/235-0070

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ARGUMENT

Carlos Alberto Torres appeared before hearing examiners at FCI Oxford, WI on March 29, 1994. On June 13, 1994, he received a Notice of Action dated June 3, 1994, continuing him to a 15 year reconsideration hearing. Pursuant to 28 C.F.R. 2.26 and 2.27, he appeals from this Notice of Action and states:

I. Original jurisdiction

28 C.F.R. 2.17 makes for a special classification with a high degree of stigma--"original jurisdiction":

(b) The following criteria will be used in designating cases as original jurisdiction cases:

(1) Prisoners who have committed serious crimes against the security of the Nation, e.g., espionage or aggravated subversive activity.

(2) Prisoners whose offense behavior (i) involved an unusual degree of sophistication or planning or (ii) was part of a large scale criminal conspiracy or a continuing criminal enterprise.

(3) Prisoners who have received national or unusual attention because of the nature of the crime, arrest, trial, or prisoner status, or because of the community status of the offender or his victim.

(4) *Long-term sentences.* Prisoners sentenced to a maximum term of forty-five years (or more) or prisoners serving life sentences.

28 C.F.R. 2.17 (emphasis in original).

A. Lack of appeal of classification as original jurisdiction violates due process

It is incomprehensible that the Commission rules preclude appeal of its designation of a case as original jurisdiction, but 28 C.F.R. 2.26-11(vi) purports to do precisely that. This preclusion, for which there can be no rational justification, violates due process. Due process rights may not be so flippantly disregarded. See, *Solomon v. Elsea*, 676 F.2d 282, 284-85 (7th Cir.

1982).

B. Failure to state reasons for classification as original jurisdiction violates due process

In its application of original jurisdiction in this case, the Commission further violated due process. Although the Notes and Procedures specify that "[t]he applicant should be told that his case is being referred for possible original jurisdiction consideration and the reasons therefore", [28 C.F.R. 2.17-01] neither in the process of the hearing nor in any document received from the Commission has the Commission ever articulated why Mr. Torres has been designated an original jurisdiction case. He did receive a Notice of Action dated April 29, 1994, stating: "Your case has been designated as Original Jurisdiction and referred to the National Commissioners for decision." The Notice stated as reasons: "Pursuant to 28 C.F.R. 2.17." Failure to specify reasons turns a challenge into a guessing game, robbing him of notice and an opportunity to defend, in violation of his rights to due process. Although Section 2.17-01 provides that "Advising the prisoner of the possible original jurisdiction designation and the reasons therefore is normal practice ... [it] is not a due process requirement", 2.17-02 uses mandatory language, providing that where a Regional Commissioner designates a case as original jurisdiction, "a Notice of Action *shall* be sent to the prisoner *including the basis for his original jurisdiction* (e.g., National or Unusual Attention; Unusual Sophistication or Planning) (emphasis added). The rules further state, also in mandatory language, that where a Regional Commissioner refers a case for original jurisdiction,

"[t]he reasons for designation specified in 28 C.F.R. 2.17 shall be particularized to the individual case and an analysis of the case and the reasons for decision shall be set forth". 28 C.F.R. 2.17-03 (emphasis added). The latter section dictates that Regional Commissioner use forms in Appendix 4, which provide:

A. This case is referred pursuant to 28 C.F.R. 2.17. [give category of referral: (b)(1) National Security; (b)(2)(i) Unusual Degree of Sophistication or Planning; (b)(2)(ii) Large Scale or Continuing Criminal Enterprise; (b)(3) Unusual Attention; (b)(4) Long Term Sentence] based upon the following: [Give Supporting Evidence for Referral].

(emphasis in original). The Commission's failure to comply with any of this mandatory language deprived Mr. Torres of notice and an opportunity to defend.

C. Composition of appeals panel violates due process

A third due process violation arises in the administrative appellate process: the very same Commissioners who already considered the case and voted on the original jurisdiction question [28 C.F.R. 2.17(a)] sit in judgment in the appeal of their own decision denying parole. 28 C.F.R. 2.27(a).

D. Classification as original jurisdiction violates equal protection

These due process violations would be bad enough in a routine parole case handled at the regional level, but they take on added significance because of the stigma accompanying this designation. First, the regulations provide that "[a]ny case designated for the original jurisdiction of the Commission shall remain an original jurisdiction case" unless the Commission deems otherwise. 28 C.F.R. 2.17(c)(1). And second, the separate classification flies

in the face of the Commission's rules which set forth a policy to create objective guidelines for evenness in handling.¹ Commission statistics reveal that nationally a minute portion of cases is so classified, which leads to heightened, and thus unfair, scrutiny:

	Percent	Number of Cases (Original jurisd.)	Number of Cases (Initial Hearing) Total (Regional)
1987	0.4	134	13,029
1988	0.6	133	12,759
1989	0.5	96	8,724
1990	0.6	95	5,438
1991	1.0	101	3,612
1992	1.1	88	2,609

U.S. Parole Commission Annual Report, October 1, 1989-September 30, 1990, pp. 11, 13, 16; Annual Report 1992, pp. 14, 17.

Appeals of original jurisdiction cases, whose numbers are even smaller, are even further stigmatized:

	Number of Cases (Original jurisd.)
1987	68
1988	54
1989	39
1990	48
1991	27
1992	46

U.S. Parole Commission Annual Report, October 1, 1989-September 30, 1990, p. 16; Annual Report 1992, p. 17.

II. Offense Severity Rating

The Notice of Action states: "Your offense behavior has been

¹28 C.F.R. 2.20 provides:
 "PAROLING POLICY GUIDELINES; STATEMENT OF GENERAL POLICY.
 (a) To establish a national paroling policy, promote a more consistent exercise of discretion, and enable fairer and more equitable decision-making without removing individual case consideration..." (emphasis in original).

rated as Category Eight severity because you were part of a group that committed bombings which killed innocent victims." Assigning Category Eight in this case is error, as the offense at issue is seditious conspiracy, and not homicide.

A. Criminal law cannot stand in the way of self-determination
Mr. Torres and his co-defendants are convicted of conspiring to seek an end to illegal U.S. colonial control of their country, of seeking self-determination and independence for Puerto Rico.

Most of us who live in the modern world would agree that the most important right of any sovereign people is to rule itself, on whatever terms it may choose. This belief was already commonplace in 1776; the Declaration [of Independence] announced nothing new when it said 'that whenever any Form of Government becomes destructive of these Ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its Foundation on such Principles, and organizing its Powers in such Form, as to them shall seem most likely to effect their Safety and Happiness.' The greatest immediate consequence of the Declaration was that it gave the people of the former provinces their chance to make such a choice.²

The Clinton administration has articulated the view that throughout the globe justice will prevail in spite of what the law of any land might dictate. Welcoming Nelson Mandela to the United States and awarding him and Mr. de Klerk an award for their work in building freedom, and later sending a delegation to Mr. Mandela's inauguration as President of a new South Africa were perfectly consistent with this view. Of course we are all mindful of the fact that Mr. Mandela spent 27 years in prison for the identical charges as Mr. Torres, during a dark era when those in power in

²Edward Countryman, *The American Revolution* (New York: Hill & Wang, 1985), p. 124.

South Africa deemed that it was in their interest to keep Black South Africans oppressed, and thus to enact laws to criminalize this legitimate struggle against oppression and in search of freedom.

As we approach the fourth of July, we must also be mindful of the history of the country in which this Commission sits. As British policy sharpened against the thirteen colonies, Thomas Jefferson and John Dickinson wrote in 1775, "A Declaration of the Causes and Necessity of Taking Up Arms":

We are reduced to the alternative of choosing an unconditional submission to the tyranny of irritated ministers, or resistance by force. The latter is our choice. [...] In our own native land, in defence of the freedom that is our birth-right...for the protection of our property, acquired solely by the honest industry of our fore-fathers and ourselves, against violence actually offered, we have taken up arms. We shall lay them down when hostilities shall cease on the part of the aggressors, and all danger of their being renewed shall be removed, and not before.

They had "resolved to die freemen rather than to live slaves". Thus, in spite of the law, the inhabitants of the colonies formed secret organizations. They wore disguises. They used extralegal measures when electoral politics failed, including attacking symbols of authority: breaking up courts, kidnapping judges and sheriffs, opening jails and rescuing prisoners, forcing officials to resign, tearing down buildings.³ They formed a people's army, which, of course, was illegal, and used guerrilla tactics: "They sought surprise and ambush; they disengaged quickly; they marched

³Countryman, *The American Revolution*, pp. 80, 87, 97; Howard Zinn, *A People's History of the United States* (New York: HarperCollins Publishers, 1980), pp. 62-63.

rapidly; they violated 18th century rules by fighting at night and attacking despite rain or fog or snow."⁴ "'American' became synonymous with 'sneak' to many of the British rulers."⁵ One British officer observed that "never had the British army so ungenerous an enemy to oppose; they send their riflemen five or six at a time who conceal themselves behind trees, etc., till an opportunity presents itself of taking a shot at our advance sentries, which done they immediately retreat. What an unfair method of carrying on a war!"⁶

We should not allow domestic criminal law to obscure the real criminal conduct here--that of the United States-- in maintaining Puerto Rico as a colony, after twenty years of being instructed by the United Nations to decolonize, and now in the International Decade for the Eradication of Colonialism.

B. Use of Category 8 fails to comply with the U.S. Parole Commission Offense Behavior Severity Index

Under the rules, "the offense severity rating shall reflect the overall circumstances of the present offense behavior. Select the offense rating appropriate to the actual offense behavior that occurred." 28 C.F.R. 2.20-04. While the Commission is entitled to rely on "information in the file describing offense circumstances more severe than reflected by the offense of conviction", it may do

⁴Herbert Aptheker, *The American Revolution 1763-1783* (New York: International Publishers, 1960), pp. 116, 118; Zinn, *A Peoples' History of the United States*, p. 71.

⁵Aptheker, *The American Revolution 1763-1783*, p. 120.

⁶Aptheker, *The American Revolution 1763-1783*, p. 120.

so only if such information is reliable. *Id.* Here, the Commission apparently relied on information which either it failed to disclose, thus violating due process by failing to comply with the law and its own rules [18 U.S.C. 4207, 4208(b)(2) and (c); 28 C.F.R. 2.55 and 2.56; *Pulver v. Brennan*, 912 F.2d 894, 896-97 (7th Cir. 1990)]; and/or it relied upon information which failed to meet its own articulated standards of reliability: that "the report is specific as to the behavior alleged to have taken place"; and that "the allegation is corroborated by established facts". *Id.* We say "apparently", because, since the Notice of Action does not specify from whence it derived its conclusion that Mr. Torres was "part of a group that committed bombings which killed innocent victims" or that his "offense behavior involved conspiracy/conspiracies to commit calculated bombings that resulted in the deaths of multiple innocent victims". The only document disclosed to Mr. Torres in advance of the hearing--and he was not notified that any documents were exempt or non-disclosable--with any information about death is the PreSentence Investigation Report, which states that the FBI and the Assistant U.S. Attorney provided such information. The information addresses generally the FALN and actions for which either it claimed responsibility or responsibility was attributed to it from 1974 through 1980. While the unchallenged government evidence at Mr. Torres' trial purported to prove the allegations of the indictment,⁷ there is no reliable information connecting Mr.

⁷Mr. Torres and his co-defendants asserted international law, insisting that international law prohibits the crime of colonialism and protects efforts to combat this crime, including armed efforts;

Torres to "killing innocent victims" or "the deaths of multiple innocent victims".

Although the indictment, or accusation, against Mr. Torres and nine of the others charged that the FALN (Fuerzas Armadas de Liberación Nacional) took responsibility for 28 bombings in the Chicago area, neither the indictment nor the evidence at trial included murder. The Puerto Rican Independence Movement and the FALN distinguished themselves by seeking to avoid taking innocent lives by committing their actions at night and phoning in advance warnings to clear the targeted sites. Calling this respect for life "humanity", a recent *New York Times* editorial praised these practices in contrast to those of the men convicted of the World Trade Center bombing.⁸ A Chicago editorial more contemporaneous to the events noted that:

Most of the incidents have involved bombs, fortunately so

that international law prohibits the colonizing country from trying armed anti-colonial combatants as common criminals but that it must turn captured anti-colonial combatants over to an impartial tribunal for adjudication of their status; and that international law provides that captured anti-colonial combatants are entitled to the political status of prisoner of war and the protections of the Geneva Conventions. See, e.g., General Assembly Resolution 2621 (XXV) (12 October 1970); Resolution 2708 (14 December 1970); Resolution 3070 (30 November 1973); Resolution 3101 (12 December 1973); Resolution 3103 (12 December 1973); Resolution 3382 (November 1975); Resolution 31/34 (30 November 1976); Resolution 32/14 (7 November 1977); Resolution 33/24 (1978); The Geneva Conventions of 1949 (6 U.S.T. 3516) and Additional Protocols I and II (8 June 1977). Because the court refused to entertain their position, the trial proceeded in their absence, a fact pointed out in the PSI. The government's evidence was thus never challenged.

⁸"Fit Penalty for Terror, and Murder", *New York Times*, May 26, 1994, p. A12.

placed and timed as to damage property rather than persons...But again the terrorists were out to call attention to their cause rather than to shed blood.'

The most serious offense with which Mr. Torres was charged was seditious conspiracy. The indictment charged that as part of the conspiracy, the defendants formed a clandestine army, the FALN, whose goal was to force the U.S. to leave Puerto Rico. Specifically the indictment charged that the FALN planted bombs at 28 military, corporate and commercial sites on 15 dates, collected materiel and weapons, intelligence, disguises, false identification, and vehicles at different safehouses. As for the planting of 28 bombs, the government neither alleged nor proved that anyone was killed. In other words, not a single life was lost as the result of the acts alleged in the indictment. The government did not allege or prove that as a result of acts alleged in the indictment anyone was physically harmed by any of the defendants.

The PSI contains politically charged statements from the FBI and the AUSA that appear to form the basis for the Commission's conclusions about "innocent victims". Yet these statements are offered as vague references, but are never connected directly or specifically to Mr. Torres or any of his codefendants. Thus, there is no rational basis to prolong Mr. Torres' imprisonment.

⁹"Terrorists without a cause," *Chicago Tribune* editorial, March 18, 1980, Sec. 2, p. 2. Although in reference to "terrorism", the FBI has itself conceded that "[t]errorism is theater," adding that "[i]n most cases these people are playing to an audience they want to reach." "FBI moves to stem rise in terrorism," *Chicago Tribune*, November 27, 1982, Sec. 1, p. 2.

C. Arbitrary and capricious manipulation of the Parole Commission Rules in order to accomplish an illicit political end.

The Commission's Guidelines for Decision-Making, which establish the "customary total time to be served before release", provide that "[f]or Category Eight, no upper limits are specified..." 28 C.F.R. 2.20 Guidelines Chart. Thus, by placing a prisoner's offense in Category Eight, the Commission can "justify" detaining the prisoner until he has served his entire sentence behind bars, thus obviating the possibility of parole in spite of purported eligibility, in spite of excellent institutional adjustment and program achievement, in spite of anything. Placement of seditious conspiracy in Category Eight was arbitrary and capricious because the criteria for placement of cases in Category 8 do not relate to the offense for which Mr. Torres was tried and sentenced.

D. Use of Category 8 violates the First Amendment in its punishment for political beliefs and association

The Commission fails to relate its decision to Mr. Torres' individual and specific case, and rather, treats him as if he were an organization whose goals and *raison d'être* are the independence of Puerto Rico. Use of Category 8 ensures that Mr. Torres will continue to be punished for his beliefs and associations supporting the independence of Puerto Rico. Sentences, and by extrapolation, denial of parole, may not be based on political beliefs or associations. *Texas v. Johnson*, 491 U.S. 397 (1989); *U.S. v. Eichman*, 110 S.Ct. 2404 (1990); *United States v. Lemon*, 723 F.2d 922 (D.C. Cir. 1983); *Spence v. Washington*, 418 U.S. 405 (1974);

Street v. New York, 394 U.S. 576 (1969); *Dawson v. Delaware*, 1992 WL 40781 (1992).

E. Use of Category 8 violates the Eighth Amendment in its disproportionate punishment

The Eighth Amendment of the Constitution of the United States prohibits disproportionate sentences. The Supreme Court has explicitly recognized the constitutional principle of proportionality for over 100 years. *Solem v. Helm*, 463 U.S. 277 (1983).

Mr. Torres' politically punitive and disproportionately lengthy sentence was imposed by a politically biased judge. His and his co-defendants' sentences were the highest average sentences imposed in the entire U.S. that year.¹⁰ Records maintained by the Administrative Office of the United States District Courts reveal that their average sentence of 842 months (70.2 years).¹¹ That same year they were sentenced, the next highest average sentence imposed in all the United States was 495 months (41.2 years).¹² In other words, they received average sentences which were 347 months (28.9 years) longer than anyone else sentenced in the same calendar year for any and all offenses.

Given that the government reserved the use of the seditious

¹⁰Administrative Office of the United States Court, *Sentences Imposed Chart for Year Ended June 30, 1981* (Washington, D.C.).

¹¹Administrative Office of the United States District Court, *Sentences Imposed Chart For Year Ended June 30, 1981*, (Washington, D.C.) p. 152

¹²Id. p. 145

conspiracy statute for Puerto Rican independentists,¹³ there are no other cases directly under that statute to compare sentences meted out to others convicted of the same charge.¹⁴ Sentences imposed for other offenses must then give us a sense of proportionality.

In 1980, 31,218 people were prosecuted in United States federal court,¹⁵ 13,766 of whom were sentenced to prison,¹⁶ or 46%.¹⁷ The average sentence for all offenses was 44.3 months (3.7 years); the average sentence for violent offenses, 125.4 months (10.5 years). Average sentences for specific violent offenses for the year 1980 were:¹⁸

¹³The media recognized how "unusual" the charge is. See, e.g., Jane Fritsch, "'End of FALN' seen; 8 get jail," Chicago Tribune, August 27, 1980, Section 2, p. 8; Ronald Koziol and Jane Fritsch, "Millionaire was target of FALN kidnap plot," Chicago Tribune, December 7, 1980, p. 1

¹⁴In 1955, the maximum term for seditious conspiracy was six years. That same year, 17 Puerto Rican independentists were charged, convicted and sentenced under the statute to that maximum term. The following year the congress increased the penalty for seditious conspiracy to 20 years. The legislative history stated that the "need was clearly demonstrated in the recent trial in New York of members of the Nationalist Party of Puerto Rico." 1956 United States Code Congressional and Administrative News at 343

¹⁵Federal Criminal Case Processing, 1980-87, Addendum for 1988 and Preliminary 1989: A Federal Justice Statistics Report, (Washington D.C.: United States Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, 1990), p. 2

¹⁶Id. at 15

¹⁷Id. at 16

¹⁸Federal Criminal Case Processing, 1980-87, Addendum for 1988 and Preliminary 1989: A Federal Justice Statistics Report, (Washington D.C.: United States Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, 1990), p. 17; See also, Federal Criminal Case Processing, 1980-87: A Federal Justice

<u>Offense</u>	<u>Months</u>	<u>Years</u>
Murder	123.4	10.3
Negligent manslaughter	36.6	3.0
Assault	40.7	3.4
Robbery	141.5	11.8
Rape	85.7	7.1
Other sex offenses	39.7	3.3
Kidnapping	262.6	21.9
Threats against the president	39.4	3.3
Weapons offenses	37.6	3.1
Racketeering & extortion	62.6	5.2

Comparing, then, the average sentence of 842 months in Mr. Torres' case to the other 31,208 people prosecuted in the same year, not only did they receive the highest average sentence meted out for all offenses prosecuted that year, but, even when compared to the next highest average (kidnapping, 262.6 months), their sentence is more than three times longer.

A look at the amount of time served by people convicted of felonies also demonstrates how disproportionate his sentence is. The longest time actually served for all prisoners in federal custody is for kidnapping, 63.6 months (5.3 years)¹⁹, or approximately one-third of the time Mr. Torres has already served in prison. The average time served by people convicted of all federal offenses who had their first parole hearing 1979-1980 and who were released before 1987 is far less than Mr. Torres has already served. Those with sentences of over 241 months served, on

Statistics Report (Washington D.C.: United States Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, 1990), p. 21

¹⁹Federal Bureau of Prisons, 1989 State of the Bureau of Prisons (Washington, D.C.), p. 55

average, 119.5 months (9.9 years).²⁰ The average time served for all offenses was 43.3 months (3.6 years).²¹ In that same study, the highest average time served was 138.0 months (11.5 years), for the category which included rape and kidnapping.²²

The average time served by federal prisoners until their first release, 1985-1990, for all offenses ranged from 14.9 months (1.2 years) in 1985 to 19.2 months (1.6 years) in 1990.²³ For violent offenses the highest average time served before first release was 103.5 months (8.6 years), for kidnapping in 1988.²⁴ For weapons offenses the lowest average time served in this period was 19.1 months (1.6 years) in 1986, and the highest was 20.9 months (1.7 years) in 1990.²⁵ A study of state court sentences revealed similar disproportionality.²⁶

Thus, not only was Mr. Torres sentenced to a disproportionately lengthy sentence, he has served a

²⁰Sentencing and Time Served: Federal Offenses and Offenders, Bureau of Justice Statistics Special Report (Washington D.C.: U.S. Department of Justice, Bureau of Justice Statistics, 1987), p. 4

²¹Id.

²²Id.

²³Federal Criminal Case Processing 1980-89, with Preliminary Data for 1990 (Washington D.C.: United States Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, 1991), p. 18

²⁴Id.

²⁵Id.

²⁶Herbert Koppel, Time Served in Prison, Bureau of Justice Statistics Special Report (U.S. Department of Justice, Bureau of Justice Statistics, Washington D.C. 1984), p. 1

disproportionately lengthy amount of time in prison compared to others convicted of severe criminal conduct. Prolonging the length of time he must serve by denying parole further violates the Eighth Amendment.

F. Category 7 is the closest applicable category

Chapter One Section 101 instructs the Commission to "Grade conspiracy in the same category as the underlying offense." The "underlying offense" in Mr. Torres' case was sedition. The indictment charged that "a group of persons wilfully and knowingly combined, conspired, confederated and agreed together with each other to oppose by force the authority of the government of the United States" and further that "the conspirators would form a clandestine group known as the Fuerzas Armadas de Liberación Nacional Puertorriqueña (Armed Forces of Puerto Rican National Liberation) or FALN. Among the stated purposes of this group were the obtaining of independence for Puerto Rico..."²⁷ Had the Commission followed its own instructions, it would have looked at Chapter Ten, Offenses Involving National Defense, Section 1002, Rebellion or Insurrection, found that such a charge is to be placed in Category Seven, applied that category to Mr. Torres, and, with his Salient Factor Score of 9, would have discovered that he should serve within the range of 52 to 80 months. Given that the Commission conceded that he has "been in state and federal confinement as a result of your behavior for a total of 168 months

²⁷United States v. Carlos Alberto Torres, et al., No. 80 CR 494 (N.D. Ill.) Indictment paras. 1, 2.

as of March 28, 1994,"²⁸ the results dictated would have been a grant of parole. Even with the Commission's statement that "a decision more than 48 months above the minimum guideline range is warranted"²⁹ the results dictated would still have been a grant of parole.

III. Exceeding the minimum guideline range

Although the Commission's rules authorize a decision above the guidelines, such a decision was error in this case. 28 C.F.R. 2.20-05.

A. Double-counting violates due process

The Commission may not, as it did here, utilize a factor to assess a prisoner's Offense Severity Rating and then use the same factor to aggravate that rating and justify a decision above the guidelines. *Harris v. Martin*, 792 F.2d 52 (3rd Cir. 1986); *Romano v. Baer*, 805 F.2d 268 (7th Cir. 1986). Nor may the Commission fabricate elements of the offense to fit a higher severity rating than if the guidelines were properly applied.

B. Lack of good cause violates due process

The regulations and the law provide that the Commission can exceed the guidelines "for good cause". 28 C.F.R. 2.20-05; 18 U.S.C. Sec. 4206(c). The Commission failed to demonstrate good cause to exceed the guidelines in Mr. Torres' case.

IV. Denial of parole was arbitrary and capricious

A. Failure to adequately state reasons and underlying facts

²⁸Notice of Action, June 3, 1994.

²⁹Notice of Action, June 3, 1994.

constitutes abuse of discretion and violates due process

B. There is no rational basis in the record for the conclusions in the Commission's statement of reasons

C. There are no facts to support the Commission's reasons

D. The Commission's decision is contrary to the facts; the underlying factual basis on which the decision is based relies on clearly erroneous facts

E. Failure to comply with the parole determination criteria violates due process

V. The Commission abused its discretion in failing to give meaningful consideration to mitigation factors

It would appear that the Commission failed to meaningfully consider the fact that Mr. Torres has served a hugely disproportionate amount of time in prison when compared to the average time served by those in federal and/or state custody. It would further appear that the Commission failed to consider in a meaningful fashion Mr. Torres' exemplary record throughout his more than 14 years in prison. The progress report prepared for the Commission stated that he "was described as getting along well with both co-workers and supervisors, was punctual, completed assignments beyond his assigned duties, and was given outstanding job evaluations." He has worked in food service, weighing ingredients for baked goods; a library aide, and an orderly, both in the unit and in the recreation program. He recently earned a bachelor's degree after "extensive educational program participation", completing 300 hours of college credit and performing as "a very good student". All the while, the report notes, he "assisted Educational Staff by teaching several Spanish courses" and "assisted in the production of a bilingual text book

for Spanish inmates within the prison system". The Commission, it would appear, failed to consider this documented history.

VI. Conclusion

For the foregoing reasons, the Commission should reverse its denial of parole, place Mr. Torres in Category 7, and immediately release him on parole.

Respectfully submitted,

Dated: June 29, 1994

JAN SUSLER
Attorney for Carlos Alberto Torres

1180 N. Milwaukee
Chicago, IL 60622
312/235-0070