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PRESS RELEASE

**Groundbreaking Law Provides Avenue for Newly Available Scientific Evidence
to be brought before Court**

Death Penalty Case First to Test New Law

EL PASO, TEXAS - This week, Rigoberto “Robert” Avila, who is scheduled to be executed on January 15, 2014, will ask the Texas Court of Criminal Appeals to order an evidentiary hearing under a groundbreaking new Texas law, Senate Bill 344, to consider newly available scientific evidence that suggests he is innocent. Mr. Avila’s case will be the first death penalty case in the state to be considered by the courts under this new legislation which allows access to the courts for defendants challenging their convictions based outdated forensic techniques.

Mr. Avila was convicted of causing the tragic death of a nineteen-month old child in his care in El Paso in 2001. He has consistently maintained his innocence over the past twelve years. Newly available scientific evidence has come to light that strongly points to Mr. Avila's innocence.

Attorney for Mr. Avila, Cathryn Crawford of the Texas Defender Service (TDS), says the legislature and Gov. Perry passed SB 344 to create an avenue for defendants to challenge their convictions if they were gained through outdated forensic techniques.

“When passing the law, legislators specifically mentioned its application to infant death cases,” says Crawford. “My client, Mr. Avila, is a prime example for its existence.”

Texas Defender Service argues that before Texas proceeds with the execution of Avila, he should be granted the opportunity to present a biomechanical analysis of the cause of death and the testimony of a forensic pathologist. If the court orders an evidentiary hearing, it will become clear that today’s science shows that this case involves the tragic, accidental death of an infant.

Dr. Janice Ophoven, a pediatric forensic pathologist, agrees that Mr. Avila’s conviction should be re-examined in light of this newly available evidence, “The field of biomechanics is an essential framework that must considered by the court in Mr. Avila’s case.”

In addition to the newly available scientific evidence, which strongly points to Mr. Avila’s innocence, Crawford argues that the case also contains serious flaws that call into question the integrity of the conviction, namely Mr. Avila’s false confession and the questionable testimony of the 4-year old brother.

Professor Steven Drizin, Assistant Dean of the Bluhm Legal Clinic at Northwestern University School of Law and staff attorney at the Center on Wrongful Convictions, says that the signed confession in Mr. Avila’s case contains many of the hallmark problems he has seen in wrongful convictions in which the innocent person confesses to the crime. “False confessions are a tragic but common phenomena and justice requires that we be critical of confessions when they are secured using improper techniques and, mostly importantly, when the case has scientific evidence that points to likely innocence,” says

Drizin. “Both of these factors exist in Mr. Avila’s case, which greatly calls into the question the validity of his alleged confession.”

Additionally, Mr. Avila's conviction rests partly on the testimony of the infant’s four-year-old brother. Dr. Maggie Bruck, child psychologist in the Division of Child and Adolescent Psychiatry at The Johns Hopkins Hospital comments that, “the child’s statements at trial are inconsistent, contradictory, and the result of highly pressurized interviewing techniques.” Crawford adds that, “child psychologists, and common sense, suggest that a death sentence cannot rest on statements made by a suggestible and grieving child.”

After the El Paso trial court certifies the petition this week, Texas Defender Service will deliver copies of an application for writ of habeas to the Texas Court of Criminal Appeals (CCA), asking that the CCA to allow Mr. Avila to present the evidence in an evidentiary hearing in the trial court.

“The State of Texas cannot proceed with an execution without considering legitimate and persuasive claims of innocence,” comments Crawford. “There is no room for uncertainty when it comes to the ultimate punishment.”

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Texas Defender Service (TDS) is a non-profit organization established in 1995 by experienced death penalty attorneys. TDS aims to improve the quality of representation afforded to those facing a death sentence and to expose and eradicate the systemic flaws plaguing the Texas death penalty. For more information, visit: <http://www.texasdefender.org/>