

URGENT ACTION

TEXAS DEFIES WORLD COURT ORDER AND EXECUTES

Mexican national Humberto Leal García was executed in Texas on 7 July. His execution violated international law and a binding order from the International Court of Justice (ICJ). The execution went ahead despite opposition from the US and Mexican governments, and UN officials.

Humberto Leal García was sentenced to death in 1995 for the murder of 16-year-old Adria Saucedo on 21 May 1994 in San Antonio, Texas. A Mexican national, Humberto Leal had a right to seek consular assistance “without delay,” as required under article 36 of the Vienna Convention on Consular Relations (VCCR). However, he was arrested, charged, tried and sentenced without ever being informed of this right.

In 2004 the International Court of Justice (ICJ) ruled that the USA had violated article 36 of the VCCR in the cases of 51 Mexican men – including Humberto Leal – who had been sentenced to death in the USA. The ICJ ordered the USA to provide judicial “review and reconsideration” of the convictions and sentences to determine if the defence of these individuals had been harmed by the VCCR violations. After the 2008 execution in Texas of one of these men, José Medellín, the ICJ confirmed that its original ruling, including that Humberto Leal should not be executed pending such review and reconsideration, was “fully intact”. The ICJ stressed that its judgment placed an obligation on the USA which “must be performed unconditionally; non-performance of it constitutes internationally wrongful conduct”. Any aspects of domestic law hindering compliance were no excuse, the ICJ emphasised.

On 14 June 2011, Senator Patrick Leahy introduced a bill in US Congress aimed at implementing the ICJ judgment, as well as facilitating compliance with article 36 of the VCCR. Lawyers for Humberto Leal sought a stay of execution long enough to allow Congress to act on the legislation. The courts refused to grant a stay. The Texas Board of Pardons and Paroles voted against a reprieve to allow time for Congress to act, despite three judges on the Texas Court of Criminal Appeals urging an executive reprieve. The three judges noted that “it is precisely when the Judicial Department proves institutionally unequal to the task that the exercise of executive clemency is most appropriate”.

The US Supreme Court refused to grant a stay on 7 July, over the dissent of four of the nine Justices. Both the US and Mexican government had filed legal briefs in the Supreme Court supporting the request for a stay of execution (see overleaf). The Court’s majority noted that the US administration and the dissenting Justices “complain of the grave international consequences that will follow from Leal’s execution”, but added that “Congress evidently did not find these consequences sufficiently grave to prompt its enactment of implementing legislation, and we will follow the law as written by Congress. We have no authority to stay an execution in light of an ‘appeal of the President,’ presenting free-ranging assertions of foreign policy consequences, when those assertions come unaccompanied by a persuasive legal claim.”

Among those appealing for the execution not to go ahead was the UN High Commissioner for Human Rights, who wrote directly to Governor Rick Perry calling for his intervention. The UN Special Rapporteur on extrajudicial, summary or arbitrary executions and the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment also called on the authorities to stop the execution.

Governor Perry refused to grant a reprieve. In his final statement before being killed by lethal injection, Humberto Leal expressed his remorse: “I have hurt a lot of people. Let this be final and be done. I take the full blame for this. I am sorry and forgive me, I am truly sorry.” He was pronounced dead at 6.21pm local time.

Humberto Leal was the 26th person to be executed in the USA this year, and the 1,260nd since judicial killing resumed in 1977. Texas accounts for 471 of these executions, seven of which have been carried out this year.

No further action is requested. Many thanks to all who sent appeals.

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ADDITIONAL INFORMATION

Mexico brought its VCCR case against the USA in 2003, resulting in the ICJ's judgment in *Avena and Other Mexican Nationals* handed down on 31 March 2004. The USA has yet to comply with the *Avena* judgment.

On 28 February 2005, then-President George W. Bush responded to the ICJ decision by seeking to have the state courts provide the necessary "review and reconsideration" in all of the affected cases. The Texas Court of Criminal Appeals later ruled that the President lacked the constitutional authority to order state court compliance and that the *Avena* decision was not enforceable in the domestic courts. The case went to the US Supreme Court. On 25 March 2008, in *Medellín v. Texas*, the Supreme Court unanimously found that the *Avena* decision "constitutes an international law obligation on the part of the United States." The Court also unanimously agreed that the reasons for complying with the ICJ judgment were "plainly compelling," since its domestic enforcement would uphold "United States interests in ensuring the reciprocal observance of the Vienna Convention, protecting relations with foreign governments, and demonstrating commitment to the role of international law." However, a 6-3 majority ruled that the ICJ's decision "is not automatically binding domestic law" and that the authority for implementing it rested not with the President but with Congress (see <http://www.amnesty.org/en/library/info/AMR51/025/2008/en>).

In the case of Humberto Leal, on 27 June 2011, the Texas Court of Criminal Appeals refused to stop the execution. Three of the judges noted in a concurring statement that there was "no dispute" that to allow the execution of Leal "to go forward without first affording him a hearing in satisfaction of the International Court of Justice's judgment" would violate US treaty obligations, and that those obligations remain "binding on Texas" under the US Constitution. The three judges encouraged the Texas Board of Pardons and Paroles to recommend that Governor Perry grant a reprieve to Humberto Leal until "legislation passes that finally implements our indisputable treaty obligations and provides a remedy for the applicant's right under international law." On 5 July, however, the Board of Pardons and Paroles voted against commutation and against recommending that Governor Rick Perry grant a 180-day reprieve. This left Governor Perry with the option to grant a 30-day reprieve. He declined to use that option.

Lawyers for Humberto Leal filed a petition in the US Supreme Court for a stay of execution. The Government of Mexico filed a brief urging a stay to allow Congress to enact legislation to bring the USA into compliance with the ICJ judgment. It stressed that "a second execution [of a Mexican national, following the 2008 execution of José Medellín] in violation of the ICJ's judgment would seriously jeopardize the ability of the Government of Mexico to continue working collaboratively with the United States on a number of joint ventures, including extraditions, mutual judicial assistance, and our efforts to strengthen our common border".

The US administration also filed a brief supporting a stay, asserting that the execution would put the USA in "irreparable breach of its international-law obligation" to provide Humberto Leal review and reconsideration of his claim that his conviction and sentence were prejudiced by denial of his VCCR rights. It noted that the issue implicated "vital national interests", including "protecting Americans abroad, fostering cooperation with foreign nations, and demonstrating respect for the international rule of law". The damage to those interests if the execution went ahead would be "permanent and irreparable", whereas a stay of execution would cause Texas only "temporary disruption". The government brief noted the bill introduced in Congress, and that there was not enough time before the scheduled execution for the legislation to be passed, thus requiring a stay of execution.

The US Supreme Court refused to stay the execution, ruling that "Our task is to rule on what the law is, not what it might eventually be." Four of the nine Justices dissented, arguing that "this Court has adequate legal authority to grant the requested stay. Should Senator Leahy's bill become law by the end of September (when we would consider the petition in the ordinary course), this Court would almost certainly grant the petition..., vacate the judgment below, and remand the case for further proceedings consistent with that law."

Amnesty International opposes the death penalty in all cases, unconditionally. For further information on the US death penalty, see USA: An embarrassment of hitches, July 2011 <http://www.amnesty.org/en/library/info/AMR51/058/2011/en>

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