

URGENT ACTION

EXECUTION PLANNED DESPITE WORLD COURT ORDER

Humberto Leal García, a Mexican national, is scheduled to be put to death in Texas on 7 July. He was denied his consular rights after his arrest. If allowed to proceed, his execution would violate international law and a binding order from the International Court of Justice (ICJ).

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. Humberto Leal was 21 years old at the time of the crime. He is now 38. Although he is a Mexican national, he was never informed after his arrest of his right to seek consular assistance “without delay,” as required under article 36 of the Vienna Convention on Consular Relations (VCCR). Indeed, he was charged, tried and sentenced to death without being told of this right. Timely access to consular assistance can be a critical fair trial safeguard, particularly in a capital justice system where the legal representation provided by the state to defendants who cannot afford to retain their own lawyer has often been grossly inadequate. The government of Mexico has asserted that it could have assisted the defence investigation of the case, provided funds for experienced investigators and mental health experts, and taken measures to ensure that Humberto Leal was represented by competent attorneys. In the absence of consular assistance, Humberto Leal, who had no experience of the criminal justice system, was appointed lawyers whose quality of representation has been called into serious question.

It is now over seven years since 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 (see <http://www.amnesty.org/en/library/info/AMR51/089/2008/en>), Mexico returned to the ICJ, which confirmed in 2009 that its original ruling, including that Humberto Leal not be executed pending such review and reconsideration, was “fully intact” and 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, stating that the USA must “rapidly” find an “effective” means of complying.

On 14 June, 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. Nevertheless, Humberto Leal currently faces execution without having received the comprehensive judicial review and reconsideration ordered by the ICJ.

PLEASE WRITE IMMEDIATELY in English or your own language, in your own words:

- Express concern that Texas is set to carry out the execution of Humberto Leal García in flagrant denial of an order of the International Court of Justice (ICJ) that is legally binding on the USA;
- Note that Humberto Leal was never advised of his right to seek consular assistance and that serious questions have been raised about the quality of his legal defence at trial;
- Call for Humberto Leal García’s death sentence to be commuted, or at minimum that a reprieve be granted pending passage in Congress of legislation to implement the ICJ judgment of 2004.

PLEASE SEND APPEALS AS SOON AS POSSIBLE, AND BEFORE 7 JULY 2011 TO:

Clemency Section, Texas Board of Pardons and Paroles
8610 Shoal Creek Blvd. Austin, TX 78757-6814, USA
Fax +1 512 467 0945

Email: bjpp-pio@tdcj.state.tx.us

Salutation: Dear Board members

Governor Rick Perry, Office of the Governor,
PO Box 12428, Austin, Texas 78711-2428, USA
Fax: + 1 512 463 1849

Salutation: Dear Governor

Also send copies to diplomatic representatives of the USA accredited to your country. Check with your section office if sending appeals after the above date.

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ADDITIONAL INFORMATION

Established in 1945, the ICJ is the principal judicial organ of the United Nations. Among other things, its role is to settle, in accordance with international law, legal disputes submitted to it by governments. 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, even though it agrees that it is obliged to do so.

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. Although the State of Texas argued that the President had overstepped his authority, it acknowledged that "Nobody disputes that the United States has an international law obligation to satisfy *Avena*." On 25 March 2008, in *Medellin 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>).

A clemency petition recently filed with the Texas Board of Pardons and Paroles asks the Board to recommend that Governor Perry commute Humberto Leal's death sentence, or at a minimum grant a reprieve of at least 180 days to provide Congress with the time to pass the necessary legislation to implement the *Avena* judgment. A number of retired US military officials, former US diplomats and officials from the US Department of State, former US prosecutors, and former federal and state judges have appealed for such a reprieve, stressing the importance of the USA complying and being seen to comply with its international consular obligations.

In addition, the clemency petition presents evidence of inadequate legal representation by the state-appointed trial lawyers, who called only one witness at the guilt phase of the trial and failed to challenge the reliance by the state on notoriously unreliable "bite-mark" evidence, on misleading testimony from a DNA expert, and on the use of an unreliable test for blood evidence in Humberto Leal's car. The petition also asserts that the state courts have denied Humberto Leal access to biological material that has yet to be submitted to modern DNA testing, evidence that his lawyers argue could establish his innocence of capital murder.

The clemency petition also presents mitigating evidence that the jury never heard that has only recently emerged, with Mexico's assistance. This includes evidence that Humberto Leal was sexually abused by his parish priest at the age of 10 and that he suffers from brain damage resulting from untreated childhood head injuries. The sentencing phase of his 1995 trial lasted less than a day. In order to secure a death sentence, the prosecution had to persuade the jury that Humberto Leal would likely commit acts of criminal violence if allowed to live, even in prison (in his 16 years on death row, Humberto Leal is reported to have committed no acts of violence). The prosecution introduced allegations against Humberto Leal of a sexual assault of another 16-year-old girl about two weeks before the murder of Adria Saucedo. He had never been charged or tried for this alleged crime. In 2009, the Inter-American Commission on Human Rights concluded that Humberto Leal's fair trial rights had been violated as a result of the lack of compliance with the VCCR, the inadequacy of his trial representation, and the state's use against him at the sentencing phase of evidence of a crime for which he had not been charged, tried or convicted. The Commission stated that if this death sentence were to be carried out it would constitute a "deliberate and egregious" violation of the right to life under the American Declaration of the Rights and Duties of Man.

Amnesty International opposes the death penalty in all cases, regardless of the crime, the offender, or the method of execution. There have been 1,254 executions in the USA since judicial killing resumed there in 1977. Texas accounts for 468 of these executions, and has carried out four of the 20 executions in the USA so far this year.

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