

PUBLIC

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Death penalty / Legal concern

USA (Texas)

**José Ernesto Medellín Rojas (m), Mexican national, aged 33**

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Mexican national José Medellín is due to be executed in Texas on 5 August 2008. He was sentenced to death in 1994 for his part in the murders of two girls, 14-year-old Jennifer Ertman and 16-year-old Elizabeth Pena, in Houston in 1993.

José Medellín, who has been on death row for 14 years, was barely 18 years old at the time of the crime (two co-defendants who were 17 subsequently had their death sentences commuted after the US Supreme Court outlawed the death penalty for under-18-year-olds in 2005). He was never advised by Texas authorities of his right as a detained foreign national to seek consular assistance, as required under article 36 of the Vienna Convention on Consular Relations (VCCR). Because of this treaty violation, José Medellín was deprived of the extensive assistance that Mexico provides for the defence of its citizens facing capital charges in the USA. The Mexican Consulate did not learn about the case until nearly four years after José Medellín's arrest, by which time his trial and the initial appeal affirming his conviction and death sentence had already concluded.

According to his clemency petition, during the investigation and prosecution of José Medellín's case, his court-appointed lead lawyer was under a six-month suspension from practising law for acting unethically in another case. He continued to represent José Medellín while suspended. Prior to the trial, the lawyer was held in contempt of court and arrested for violating his suspension. Time that should have been spent preparing his client's defence went instead to preparing and filing a habeas corpus petition to keep himself out of jail. Records indicate that the only investigator for the defence spent a total of just eight hours on the case prior to the trial. The defence failed to oppose the selection of jurors who indicated that they would automatically impose the death penalty. José Medellín's lawyers called no witnesses during the guilt phase of the trial. At the sentencing phase, their presentation of mitigating evidence lasted less than two hours.

An investigation funded by the Mexican Consulate has found that José Medellín grew up in an environment of abject poverty in Mexico and was exposed to gang violence after he came to Houston to join his parents when he was nine. It has also established that he suffered from depression, suicidal tendencies and alcohol dependency. If his trial lawyers had sought consular assistance, experts and investigators could have been retained by the Mexican Consulate to present the full range of mitigating evidence to the sentencing jury. In addition, consular monitoring of the case in the pre-trial stages could have exposed and remedied the inadequate legal representation that José Medellín was receiving.

On 31 March 2004, the International Court of Justice (ICJ) ruled in *Avena and Other Mexican Nationals* that the USA had violated its VCCR obligations in the cases of José Medellín and 50 other Mexican nationals on death row in the USA. As the necessary remedy, the ICJ ordered the USA to provide judicial "review and reconsideration" of the convictions and sentences, to determine if the defendants had been prejudiced by the VCCR violations. On 28 February 2005, President George W. Bush responded to the binding 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.

José Medellín's lawyers appealed to the US Supreme Court. Although the State of Texas argued to the Court 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 *Medellín v. Texas*, the

Supreme Court unanimously found that the ICJ's *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 the US Congress. In a concurring opinion, one of the Justices urged Texas to recognize what was "at stake" and to do its part to ensure compliance with the USA's international obligations (see USA: Government must ensure meaningful judicial review of Mexican death row cases, 27 March 2008, <http://www.amnesty.org/en/library/info/AMR51/025/2008/en>). In a joint letter to the Texas Governor, Rick Perry, on 17 June 2008, US Secretary of State Condoleezza Rice and US Attorney General Michael Mukasey called on Texas to take the "steps necessary to give effect to the *Avena* decision".

On 14 July 2008, a bill known as the *Avena* Case Implementation Act was introduced in the US House of Representatives. Under its terms, José Medellín and other affected foreign nationals would be granted access to "appropriate remedies" through the domestic courts for VCCR violations, including the reversal "of the conviction or sentence, where appropriate." The bill has been referred to the House Judiciary Committee for review, but insufficient time remains for it to be passed into law before Medellín's scheduled execution. Similar legislation is expected to be introduced in the Texas Legislature when it reconvenes in early 2009.

On 16 July 2008, the ICJ issued "provisional measures" in the cases of José Medellín and four other Mexican nationals facing execution in Texas (the other four do not currently have execution dates). The ICJ ordered the United States "to take all measures necessary" to ensure that these individuals "are not executed... unless and until these five Mexican nationals receive review and reconsideration." The Inter-American Commission on Human Rights has also issued "precautionary measures" calling on Texas not to execute José Medellín until the Commission has ruled on his petition asserting that he was deprived of a fair trial.

There have been 1,111 executions in the USA since judicial killing resumed there in 1977, 407 of them in Texas. There have been 12 executions in the USA so far in 2008, two of them in Texas.

**RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible (please include José Medellín's prisoner identification number, TDCJ # 999134):**

- expressing sympathy for the relatives of Jennifer Ertman and Elizabeth Pena, and explaining that you are not seeking to excuse the manner of their deaths or to downplay the suffering caused;
- expressing concern that the violation by Texas authorities of its duty to inform José Medellín of his right to obtain assistance from the Mexican Consulate may have severely undermined the fairness of his trial and the adequacy of his defence;
- pointing out that the US Supreme Court, the State of Texas and the US Government all agree that there is a binding legal obligation to comply with the decision of the International Court of Justice ordering "review and reconsideration" of the consular treaty violation in José Medellín's case;
- noting that the US Congress is currently reviewing legislation that would implement the ICJ decision;
- calling for clemency for José Ernesto Medellín, and that he at least be granted a reprieve from execution to provide time for federal and state legislators to comply with the USA's international obligations in his case.

**APPEALS TO:**

Rissie L. Owens, Presiding Officer, Board of Pardons and Paroles, Executive Clemency Section  
8610 Shoal Creek Boulevard, Austin, TX 78757, USA

**Fax: + 1 512 463 8120**

**Salutation: Dear Ms Owens**

Governor Rick Perry, Office of the Governor, P.O. Box 12428, Austin, Texas 78711-2428, USA

**Fax: + 1 512 463 1849**

**Salutation: Dear Governor**

**COPIES TO:** diplomatic representatives of the USA accredited to your country.

**PLEASE SEND APPEALS IMMEDIATELY.**