

PUBLIC

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Further information UA 204/08 (AMR 51/081/2008, 17 July 2008) – Death penalty / Legal concern

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

Mexican national José Medellín was executed in Texas on the evening of 5 August in violation of the USA's international legal obligations and despite worldwide appeals for the execution to be stopped, including from the UN Secretary-General Ban Ki-moon.

On 4 August, the Texas Board of Pardons and Paroles unanimously voted against recommending that the state governor commute the death sentence or a grant a reprieve. Governor Rick Perry was left with the option of granting a 30-day stay of execution, and calling on the Board to reconsider. He refused to do so.

A last-minute appeal to the US Supreme Court was unsuccessful, with the Court ruling 5-4 against a stay. One of the Justices dissenting from the refusal to stop the execution wrote that to allow it to go forward would leave the USA "irremediably in violation of international law and break our treaty promises". Shortly afterwards, just before 10pm, the execution went ahead, about four hours later than had been scheduled.

José Medellín 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 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.

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. 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 Governor 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 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 also issued “precautionary measures” calling on Texas not to execute José Medellín until the Commission had ruled on his petition asserting that he was deprived of a fair trial.

As the execution approached, UN Secretary-General Ban Ki-moon appealed for the execution to be stopped: “All decisions and orders of the International Court of Justice must be respected by states”, he is reported as saying on television in Mexico City, where he was attending an AIDS conference. He said that “the United States should take every step to make sure the execution does not take place”, adding that he had written to the authorities to this effect.

Under international law, it is the US government that is ultimately responsible for ensuring that the USA adheres to its international obligations. Under Article 27 of the Vienna Convention on the Law of Treaties, a government “may not invoke the provisions of its internal law as justification for its failure to perform a treaty.”

The Government of Mexico issued a statement after the execution which it said had been carried out “in clear contempt” of the ICJ order. The statement continued: “The Government of Mexico sent the US Department of State a diplomatic note of protest for this violation of international law, expressing its concern for the precedent that it may create for the rights of Mexican nationals who may be detained in that country. The Ministry of Foreign Relations reiterates that the importance of this case fundamentally stems from the respect to the right to consular access and protection provided by consulates of every State to each of its nationals abroad... The Government of Mexico will continue to insist on the US obligation to review and reconsider the convictions and sentences of the other Mexican nationals included in the *Avena* decision. The Ministry of Foreign Relations reiterates its commitment with the consular protection of Mexican nationals abroad.”

This is the 1,116th execution in the USA since judicial killing resumed there in 1977. Texas accounts for 410 of them. There have now been 17 executions in the USA this year, five of them in Texas.

No further appeals by the UA Network are requested. Many thanks to all who sent appeals.