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U.S. Supreme Court Urged to Stay Execution of Humberto Leal Garcia Whose Consular Rights were Violated

Government of Mexico will Join Attorneys in Asking Court to Ensure International Treaty Obligations are Upheld by Providing Review to Mexican National

(Washington, D.C., June 28, 2011) Today, attorneys for Humberto Leal Garcia and the Government of Mexico are jointly appealing to the U.S. Supreme Court to stay Mr. Leal's July 7 execution.

Attorneys for Mr. Leal filed a petition for writ of *certiorari* and a stay motion in the U.S. Supreme Court, arguing that the Court "must not allow Texas to subvert Mr. Leal's constitutional rights and the compelling institutional interests of Congress and the Executive in a race to execution, particularly given the overwhelming public interest in achieving compliance with the Avena Judgment." The Government of Mexico, in an *amicus curiae* brief that will be submitted to the Court later today, will note that the United States has been a forceful advocate for U.S. nationals detained in Mexico, and is expected to call upon the United States to live up to its treaty commitments.

The petition and stay motion are attached. The amicus brief will be distributed later today.

The documents filed by Mr. Leal's attorneys point out that the "Consular Notification Compliance Act" would allow for judicial review of Mr. Leal's case and the cases of forty other Mexican nationals on death row who were denied consular access at the time of their arrests, and would bring the U.S. into compliance with Article 36 of the Vienna Convention. The legislation has widespread support from the U.S. government, including the Department of Defense, Department of Justice, Department of Homeland Security, and Department of State.

The petition concludes, "If denying Mr. Leal the review and reconsideration of his conviction and sentence ordered by the ICJ is so important as possibly to justify the serious harm to U.S. interests identified by the President, this Court, and many, many others that would follow from that treaty breach, that judgment should be made by the U.S. Congress, not Texas. The United States' word should not be so carelessly broken, nor its standing in the international community so needlessly compromised."

Prominent bipartisan groups, including former U.S. diplomats, retired military leaders, former judges and prosecutors, and organizations representing Americans abroad, agree that Mr. Leal's execution should be stayed to allow time for Congress to remedy the consular violations in his case. These diverse groups have expressed concern that if Mr. Leal is executed despite the violations, other nations will be emboldened to violate the consular rights of U.S. citizens arrested in foreign countries and all Americans abroad will be put at risk.

In 2004, the International Court of Justice (ICJ) held that Mr. Leal was entitled to judicial review of his conviction and sentence to determine if he was harmed by the United States' violation of the Vienna Convention. The U.S. Supreme Court unanimously agreed that the United States was obligated to comply with the ICJ decision, but held that Congress must act to implement the Court's decision. Both the Bush and Obama administrations have sought to enforce the decision.

The legislation also calls for a stay of execution in any case where a date has been set pending federal review. Mr. Leal is scheduled for execution on July 7.

Having no prior criminal convictions, Mr. Leal was arrested, convicted and sentenced to death in 1994, but not informed of his right as a Mexican national to seek assistance from the Mexican consulate under the Vienna Convention for Consular Relations. Attorneys for Mr. Leal argue that had he been provided consular assistance, he would not have been convicted or sentenced to death. The court-appointed lawyers Mr. Leal received were inexperienced and ineffective. One of them was suspended from the practice of law twice for failing to adequately represent clients and publicly reprimanded on two other occasions.

"The undisputed violation of his Vienna Convention rights in his case goes to the very heart of the validity of his conviction and sentence," Mr. Leal's attorneys argue in their motion for stay of execution. "Among other things, Mexico would have ensured that [Mr. Leal] was represented by highly qualified and experienced defense counsel who would have challenged the prosecution's reliance on junk science to obtain a conviction and would have presented powerful mitigating evidence at the penalty phase, including expert testimony regarding Mr. Leal's learning disabilities, brain damage, and sexual abuse at the hands of his parish priest."

Once the Mexican consulate was given access to Mr. Leal's case, they provided funds for necessary investigators and experts that led to the discovery of Mr. Leal's brain damage

and sexual abuse.

The Consular Notification Compliance Act allows for review of cases precisely like Mr. Leal's where lack of consular assistance may have made the difference between life and death.

Attorneys for Mr. Leal are also awaiting a decision on a clemency petition and stay motion from the Texas Board of Pardons and Paroles and Governor Rick Perry.

Late Monday, three judges on the Texas Court of Criminal Appeals issued a concurring opinion which stated that the pardons board and Governor Perry should stay Mr. Leal's execution until "legislation passes that finally implements our indisputable treaty obligations and provides a remedy for [Mr. Leal's] right under international law."

The CCA judges added: "There is no dispute that allowing [Mr. Leal's] execution to go forward without first affording him a hearing in satisfaction of the International Court of Justice's judgment in the *Avena* case, would violate the United States's treaty obligations under the Vienna Convention on Consular Relations, the Optional Protocol, and Article 94 of the United Nations Charter – obligations that are binding on Texas by way of the Supremacy Clause of the United States Constitution."

Documents and background information on Mr. Leal's case, including letters of support from the bipartisan groups and from victims' organizations representing survivors of sexual abuse, can be found at: www.HumbertoLeal.org.

The legislation and a statement from Senate Judiciary Committee Chairman Patrick Leahy can be accessed here: <http://www.humbertoleal.org/consular-notification-compliance-act.html>_

To speak with Mr. Leal's attorney or one of the prominent supporters, please do not hesitate to contact Laura Burstein, 202-626-6868 (o); 202-669-3411 (c); or lburstein@ssd.com.