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LADB Staff

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U.S. Supreme Court Upholds Rights of U.S. States to Impose Death Penalty

by LADB Staff
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The dispute between the Mexican and the US governments regarding the death penalty flared again this year after the US Supreme Court upheld the right of states to impose capital punishment on foreign nationals without holding a new hearing. In its decision, handed down in March, the US high court rejected a 2004 ruling from the International Court of Justice (ICJ) that the convictions of Mexicans on death row violated the 1963 Vienna Convention. The convention states that people arrested abroad must have access to consular officials from their home country.

The high court's decision opened the door for Texas to set a date for the execution of Jose Ernesto Medellin Rojas, who has been on death row in Texas for 15 years, convicted of murder and rape. A Texas judge has set the execution for Aug. 5.

Justices say World Court has no jurisdiction over US states

The high court's ruling came in response to an appeal by Medellin's attorneys, who challenged the death sentence on the grounds that he was not afforded the right to consult with Mexican consular personnel, as stipulated under the Vienna Convention on Consular Relations. The ICJ, also known as the World Court, ruled in 2004 that the US had to reopen the cases against 51 Mexican nationals because they were not given access to consular officials before their convictions (See SourceMex, 2004-04-14).

A year earlier, the ICJ ordered the US to postpone the execution of three Mexican nationals on death row, also because they were not allowed proper legal representation (see SourceMex, 2003-02-12). Prior to the Supreme Court's recent decision, US President George W. Bush's administration became involved in the case, ordering Texas and other states to hold new trials for Medellin and other Mexican nationals on death row to comply with the World Court ruling. "Even though the administration disagreed with the World Court's decision and has withdrawn from the international pact that gave it force Bush nonetheless issued a memorandum ordering the Texas courts to rehear Medellin's case," said The Washington Post.

The Supreme Court ruled, however, that neither the ICJ nor the Bush administration has the authority to order the state of Texas to reopen the Medellin case. Writing for the majority, Chief Justice John Roberts said international organizations like the ICJ have no jurisdiction regarding decisions of US states. The only way that the ICJ would gain jurisdiction in such cases would be for Congress to pass enabling legislation, said the chief justice. Siding with Roberts were Justices Antonin Scalia, Anthony Kennedy, Clarence Thomas, and Samuel Alito.

Justice John Paul Stevens voted with Roberts but also urged Texas to reconsider the case because the failure to provide Medellin with the appropriate representation had indirectly involved the US
federal government in the situation. The three dissenters were Justices Stephen Breyer, Ruth Bader Ginsburg, and David Souter, who said that properly ratified treaties are equivalent to the "supreme law of the land" and do not require intervention by the US Congress to create jurisdiction. "As a result, the nation may well break its word even though the president seeks to live up to that word and Congress has done nothing to suggest the contrary," Breyer wrote.

The ICJ rulings had some bearing on the decisions of two states to remove Mexican nationals from death row. In 2003, then Gov. George Ryan of Illinois commuted the death sentences of three Mexican nationals (see SourceMex, 2003-02-12). Ryan had already decided in 2000 to impose a moratorium on all executions in his state, but the ICJ ruling in 2003 reinforced his position. In 2004, Oklahoma Gov. Brad Henry took the same action, allowing a Mexican national to serve a life sentence rather than face execution (see SourceMex, 2004-05-19).

**Plea from Bush administration falls on deaf ears**

At least one legal expert was surprised by the Supreme Court's decision, saying he expected the justices to show a little more deference to the president. "It is a matter of diplomacy, after all, and the president is the chief diplomat, and he has acted," said Frederick Kirgis, a professor of international law at Washington and Lee University in Lexington, Virginia.

The Bush administration also expressed disappointment but has apparently decided not to take any further action. Still, White House press secretary Dana Perino said the president would consider its implications for US international relations. Kirgis and others had warned that the reaction of governments such as Mexico was "certain to be negative."

The Calderon administration responded to the court's decision by issuing statements expressing its concern and pledging to review its implications for "other Mexican nationals facing death sentences, to determine immediate legal actions to preserve their rights."

There is particular concern about Cesar Roberto Fierro Reyna, Edgar Tamayo Arias, Humberto Leal Garcia, Ruben Ramirez Cardenas, and Roberto Moreno Ramos, who all face execution in Texas. All are accused of murder, along with other crimes like drug trafficking. Fierro Reyna has been on death row for 28 years. Another Mexican national, Juan Leonardo Quintero Perez, was recently found guilty in the murder of a police officer and could face the death penalty.

**Mexican government's response criticized as "too timid"**

Despite the Calderon administration's statements expressing concern, critics say it should be more forceful in its response to the US Supreme Court decision. The Catholic Church, for example, accused the Mexican president of "passivity, timidity, and cowardice" by failing to make more forceful legal and diplomatic responses to the situation.

"The United States will continue to adopt this arrogant and racist policy as long as our government fails to take a firmer stance that will make it worthy of respect," said an editorial in Desde la Fe, the official newspaper of the Archdiocese of Mexico. The editorial acknowledged the right of the US to impart justice on those who have committed a crime. "But no state can give itself the right to take the life of a human being," said the diocese.
Others concurred that the Calderon administration should be more active in the death-penalty cases, especially since it has the ICJ on its side. "It is outrageous for the United States to refuse to respect such an important international ruling, which is why President Calderon should speak out against it," said Fabian Sanchez, former president of the Comision de Derechos Humanos del Distrito Federal (CDHDF). "The pressure should be increased as much as possible; there is no other way."

Alberto Herrera, a representative in Mexico for the London-based rights watchdog Amnesty International (AI), acknowledged that any challenge by the Calderon government would face an uphill battle. "Mexico must not and cannot let down its guard, but it has certainly begun to run out of options," he told Inter Press Service.

Still, Herrera urged Mexico not to give up. "Courts in the United States openly ignore and contravene international law, but the possibility of challenging the situation and protesting remains open, and Mexico should do that," he said. Mexico's bar association (Barra Mexicana del Colegio de Abogados, BMA) and the Council of Europe, the body that brings together the heads of state of the European Union (EU), also condemned the decision by the US high court to ignore the ICJ ruling.

"Medellin's execution would not only be morally wrong but would also signal a clear indifference to international law and a lack of respect for the highest judicial body in the UN," said Luis Maria de Puig, president of the Parliamentary Assembly of the Council of Europe. "I invite the US to review the case of Mr. Medellin and the other 50 Mexicans on death row who were not given access to consular authorities [before they were sentenced]."

Medellin's attorneys also presented arguments against the death penalty at the May hearing where District Court Judge Caprice Cosper set the date for execution by lethal injection for Aug. 5. Medellin, a resident of Houston, was convicted of capital murder for the gang rape and slaying of two teenage girls. "This country is committed to the rule of law. We have a legal obligation. We should comply with it," said attorney Donald Donovan. Donovan and fellow attorney Sandra Babcock warned that the case could affect US citizens abroad who could be in legal jeopardy if Medellin is executed. They requested that the legal adviser to the Secretaria de Relaciones Exteriores (SRE) be allowed to speak. But Judge Cosper refused. "I did not intend to hold a hearing," she said. "I did intend to set an execution date."

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