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## Death Penalty Controversy Resurfaces after Texas Executes Mexican National in July

by Carlos Navarro

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In early July, the state of Texas executed Humberto Leal García for the rape and murder of a teenage girl in San Antonio in 1994, reigniting the ongoing controversy between Mexico and the US on the use of capital punishment. The issue is controversial not only because the US and Mexico disagree on whether the death penalty is an appropriate punishment for certain violent crimes but also because of complaints that the legal rights of Mexicans on death row have not been respected, according to terms of the Vienna Convention on Consular Relations.

Leal is the eighth Mexican national to be executed since the US Supreme Court ruled in 1976 that US states could apply the death penalty. Six of the seven previous executions occurred in Texas and the other in Virginia. Most of those cases flew under the radar because there was little legal standing on the part of the Mexican government or US federal authorities to challenge the executions ([SourceMex, Sept. 16, 1992](#)). This changed in 2004, when the International Court of Justice (ICJ) in The Hague found that Mexican inmates on death row had been denied their rights under the Vienna Convention ([SourceMex, April 14, 2004](#)). The convention requires that foreigners detained abroad be informed of their right to contact consular officials at the time of their arrest.

The ICJ ruling was very much an issue surrounding the execution of Mexican national José Ernesto Medellín Rojas in Texas in 2008. At that time, the US Supreme Court acknowledged that the international court's ruling was binding but also ruled against the US President George W. Bush's administration's directive that Texas conduct a new trial for Medellín Rojas. In its ruling, the court said the US president could not force states to comply with the Vienna Convention, which opened the door for the state to move forward with Medellín's execution ([SourceMex, May 14, 2008](#)). In its decision, the high court ruled that the decision to comply with the Vienna Convention had to be made jointly by the executive and legislative branches.

### *Right to consular representation is again main issue*

The US high court was again asked to intervene in the Leal García case after President Barack Obama's administration asked the justices for a stay of execution so that so that Congress could consider recently introduced legislation that would provide fresh hearings on whether the rights of Leal and 50 other Mexican citizens on death row in the US had been violated. In a 5-4 decision, the court declined the administration's request. In its unsigned majority opinion, the court argued that Congress had sufficient time to act from the time it handed down the 2008 opinion.

"We decline," the majority wrote, "to follow the United States' suggestion of granting a stay to allow Leal to bring a claim based on hypothetical legislation when it cannot even bring itself to say that his attempt to overturn his conviction has any prospect of success."

In a dissenting view Justice Breyer argued that the court ignored the president's prerogative in setting the US foreign-affairs agenda. "The Court...substitutes its own views about the likelihood of congressional action for the views of executive branch officials who have consulted with members

of Congress, and it denies the request by four members of the Court to delay the execution until the Court can discuss the matter at conference in September. In my view, the Court is wrong in each respect," said Breyer, who was joined by Justices Ruth Bader Ginsburg, Sonia Sotomayor, and Elena Kagan.

The Obama administration raised concerns that the high court's decision not to respect the right of citizens of Mexico and other countries to consular representation could subject US citizens who are detained in other countries to the same treatment. "This is an issue of reciprocity," said State Department spokesperson Victoria Nuland.

President Felipe Calderón's administration, the Mexican Congress, and the governments of Honduras, El Salvador, Brazil, Chile, Uruguay, Britain, and Switzerland issued an appeal to Texas Gov. Rick Perry to halt the execution. Similar appeals came from the Council of Europe Parliamentary Assembly; the Special Rapporteur on extrajudicial, summary or arbitrary executions; and the US Special Rapporteur on Torture.

All the appeals were facing an uphill battle, however, as Texas has a consistent record of applying the death penalty. The Death Penalty Information Center says that more than 470 of the 1,260 executions that have taken place since the death penalty was reinstated in 1976 have occurred in Texas.

The ultimate decision on whether to proceed with the execution fell on the seven-member Texas Board of Pardons and Paroles, which said on July 6 it would not recommend that Gov. Perry halt the killing of Leal García.

"This case was not just about one Mexican national on death row in Texas," said Leal's attorney Sandra Babcock. "The execution of Mr. Leal violates the United States' treaty commitments, threatens the nation's foreign policy interests, and undermines the safety of all Americans abroad. That is why the US Solicitor General, former diplomats, military leaders, and Americans detained overseas were among those who joined together to call for a stay of execution."

### *Mexico urged to defend remaining nationals on death row*

Some members of the Mexican Congress are pushing for the Calderón government to be more proactive in defending Mexican nationals on death row. Legislators from the Partido Revolucionario Institucional (PRI) have asked the Secretaría de Relaciones Exteriores (SRE) to create a fund to defend the 50 Mexicans facing the death penalty in the US. One Mexican national on death row whose case is expected to make headlines soon is César Roberto Fierro Reyna, who has been on death row in Texas for 28 years. Fierro is accused of killing a taxi driver in El Paso in 1979. But his attorneys argue that there is no hard evidence to link him to the murder and that authorities filed the charges based on a coerced confession.

Another Mexican national facing a controversial death sentence in California is former winery employee Ramón Salcido, accused of killing seven people, including his wife and three children, in 1989. Salcido fled to Mexico shortly after the murders but was later detained by Mexican federal police officers and returned to the US. There was a question initially on whether the manner in which he was brought back to California could derail the state's case against Salcido. In 2008, the California Supreme Court ruled that the move to return Salcido to the state without a formal extradition did not did bar state courts from trying him or from sentencing him to death.

There is also the matter of whether the Mexican government would have allowed Salcido's return had they known that he would face the death penalty. "Mexican authorities, apparently believing that Salcido was a US citizen, in part because he said he was, delivered him to the deputies, who came to and returned from Mexico in a private plane," said the Los Angeles-based newspaper.

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