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MEDELLÍN V. TEXAS: WHY IT MATTERS TO YOU

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Why should you care about José Ernesto Medellín's execution in Texas? Because the consequences of this action may affect your security and rights as a U.S. citizen when abroad.

Fourteen years ago, Jennifer Ertman, 14, and her friend Elizabeth Peña, 16, took a shortcut through a Houston park that cost them their lives. They ran into a drunken gang celebrating an initiation, and the two teens were raped and strangled. Medellín, then an 18-year-old Mexican national, confessed to participating in the gang rape and murder of the girls. He was convicted and sentenced to death.

A few years into his sentence, Medellín's lawyers argued that when arrested, their client was not informed of his right to consular assistance. This right is ensured in Article 36(1) of the 1963 Vienna Convention on Consular Relations (Vienna Convention), of which Mexico, the United States and 164 other countries are signatories. In fact, the United States had been one of the convention's original architects. The United States also signed the Optional Protocol, which gives the International Court of Justice (also known as the World Court) jurisdiction over disputes among signatories arising out of an interpretation or application of the Vienna Convention. The United States was the first country to invoke the protocol before the World Court, successfully suing Iran in 1979 for taking 52 Americans hostage.

Given that 50 other Mexican nationals sentenced to death in the United States were denied the right to consular assistance, the Mexican government filed a lawsuit against the United States with the World Court. On March 31, 2004, the court ruled in favor of Mexico in the Avena Judgment, which called for the United States to review each case to determine whether prejudice resulted from the defendants not knowing about their right to consular access. The court also ordered that no Mexican national named in the Avena Judgment be executed "unless and until that review and reconsideration is completed and it is determined that no prejudice resulted from the violation."ⁱ

The Bush administration openly supported the World Court's decision, although it later withdrew itself from the Optional Protocol. President George W. Bush sent a memorandum to his

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attorney general stating that the United States would fulfill its international obligations under the World Court in the Avena Judgment by having state courts implement the terms of the judgment.

Furthermore, the United States government recognized that “it is responsible under international law for the actions of its political subdivisions,” including “federal, state, and local officials,” and that its own international responsibility would be engaged if, as a result of acts or omissions by any of those political subdivisions, the United States was unable to respect its international obligations under the Avena Judgment. An agent of the United States acknowledged before the World Court that, “The United States would be responsible, clearly, under the principle of state responsibility for the internationally wrongful actions of [state] officials.”ⁱⁱ

This legal saga continued until the case was brought before the United States Supreme Court in *Medellín v. Texas*. Earlier this year, the court ruled that neither the World Court decision nor the Bush memorandum was binding on the Texas courts. On the evening of Aug. 5, 2008, Medellín was executed by lethal injection in Huntsville, Texas.

Medellín was a brutal murderer who committed a gruesome crime. Whether we think the punishment was appropriate or not is not the point of this reflection, nor is the focus on the legal obligation of Texas to review his case. The execution disregarded the World Court decision and, thus, the focus of this reflection is to highlight the potential consequences this case may have on the United States and its citizens abroad.

Had Texas adhered to the World Court’s ruling and allowed Medellín to have a judicial proceeding to determine whether his case was prejudiced by not having consular access, it is highly unlikely that the review would have changed Medellin’s death sentence. Nevertheless, it would have made a significant difference for the United States’ international credibility and reputation. This is of particular significance in a time when anti-American sentiment is high and United States’ global image has significantly deteriorated abroad.

In addition, this action hindered the United States’ ability to protect its citizens through its diplomatic missions abroad. The United States breached an international legal obligation in a

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case that had captured international attention. Being the global leader it is, the country undermined the World Court's rulings by setting an example of noncompliance.

Perhaps most importantly, the obligations of the Vienna Convention embody the idea of reciprocity. Medellín's execution increased the probabilities of denying consular access to U.S. citizens detained abroad. And according to former United States Ambassador to Mexico Jeffrey Davidow, "In some parts of the world, consular assistance is all that stands between foreign prisoners and abuse, torture or even death in custody."ⁱⁱⁱ

ⁱ International Court of Justice, "Request For Interpretation Of The Judgment Of 31 March 2004 In The Case Concerning Avena And Other Mexican Nationals (MEXICO v. UNITED STATES OF AMERICA)," July 16, 2008, General List No. 139, pg. 5.

ⁱⁱ Ibid. pg. 18.

ⁱⁱⁱ Davidow, Jeffrey, "Protecting Them Protects Us," Los Angeles Times, Aug. 4, 2008.