Oklahoma denies clemency to death row inmate from Mexico

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Oklahoma Governor Frank Keating has denied clemency to death row inmate Gerardo Valdez, a Mexican citizen who was not advised of his right to contact his embassy at the time of his arrest. The right of arrested foreign nationals to contact diplomats from their native country is spelled out in Article 36 of the Vienna Convention on Consular Relations, which the United States has ratified.

Mexican President Vicente Fox personally appealed to Governor Keating to commute Valdez's sentence when he became aware of the case last April, only two months before Valdez's scheduled execution. The Mexican government commented on Keating's decision to allow the execution to proceed that it "deeply regrets the decision, which is contrary to international law and the elemental principles of cooperation between nations.... We consider it is an obligation of the government of the United States to assure that states comply with the Vienna Convention."

Keating denied clemency in the case despite the fact that the Oklahoma pardons board had voted to recommend the government commute Valdez's sentence to life in prison. The pardon board's recommendation to grant clemency was only the second time in 30 years that the body had voted for clemency in a capital case. The governor had temporarily stayed the execution, which originally had been scheduled for June 19.

There are currently 97 foreign citizens on death rows across the US. These inmates are from 34 different countries, but more than half of them are from Mexico. California leads the nation in condemned foreign prisoners, with 26; Texas has 24. Since the death penalty was reinstated by the US Supreme Court in 1976, 15 foreign nationals have been executed in the US, 13 of them within the last five years. Mark Warren, a human rights researcher in Canada, says that none of these individuals were advised of their consular rights when they were arrested.

The United States has faced international condemnation for disregarding arrested foreign nationals' consular rights and then proceeding with their executions. On June 27, the International Court of Justice (ICJ) handed down a ruling in favor of the German government, which sued the US in the World Court in relation to the execution of two German citizens, Walter and Karl LaGrand, in Arizona in 1999. In a 14-1 decision, the court held that the US breached its obligation under the Vienna Convention on Consular Relations by denying the LaGrands the right to contact German diplomats upon their arrest. German authorities were not even informed of their arrests and convictions until a decade later.

Another case drawing international attention was the case of Canadian citizen Stanley Faulder, a death row prisoner in Texas who was executed on June 17, 1999. Faulder was also denied his consular rights when he was arrested. Former Secretary of State Madeleine Albright intervened in the case, sending a letter to then Texas Governor George W. Bush urging that Faulder be granted clemency. Texas authorities, however, proceeded with the execution, claiming that the Vienna Convention had no application in Texas because the state was not a signatory to the treaty.

In the latest case in Oklahoma, the Bush administration's State Department did not recommend clemency, but instead advised Governor Keating "to give careful consideration to the representations of the government of Mexico in the clemency process" and "to consider whether the failure of consular notification prejudiced the conviction or sentence." While the US strenuously demands that foreign governments abide by

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the Vienna Convention in their dealings with American citizens abroad, the federal government does not insist US state authorities abide by the same standards. In Valdez's case, the State Department does not consider it a violation of law that he was denied the right to contact Mexican authorities.

While Keating did not deny that Gerardo Valdez's consular rights were violated, he said that this violation "does not in and of itself establish clearly discernible prejudice or that a different conclusion would have been reached at trial or on appeal of Mr. Valdez's conviction or sentence." Attorneys representing the Mexican government in the case disagree. They contend that in addition to being denied the right to consular assistance as protected by the international treaty, Valdez was represented at trial by a lawyer who had never tried a case in which a death sentence was possible. They also say that their client suffers from severe brain damage.

The Mexican government and Valdez's new legal team do not dispute the facts in his case. Valdez was convicted in 1989 of the murder of a man who had made homosexual advances to him a bar. At his trial the jury heard testimony of how he lured his victim, Juan Barron, to his home and shot him twice, slit his throat and then burned his body. But Valdez's attorneys argue that incidents in his background should have been taken into account as mitigating factors in his case.

Investigators hired by Mexican authorities who traveled to Valdez's boyhood home learned that as a child he had fallen from a tree, suffering damage to his head. He had also been in two or three car accidents. Valdez's lawyers contend that he suffered physical and mental damage as a result of these accidents.

A neuropsychologist also examined Valdez for two days, concluding that he suffered from severe brain damage. But none of this was known by Valdez's defense at trial, so it was not presented to the jury. If the jury had been presented with this information during the sentencing phase he might have avoided the death penalty.

Governor Keating rejected these arguments on Valdez's behalf in denying clemency and state authorities are now free to reschedule an execution date in his case. Oklahoma has carried out 14 of the 42 executions nationwide so far this year, more than any other state. Last year the state sent 11 inmates to their deaths.

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