US Supreme Court denies stay of execution

Texas sends Mexican national to death in violation of international law

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The US Supreme Court refused to block the execution Thursday of Humberto Leal Garcia Jr., a Mexican national who was denied consular access to which he was entitled under international law. Leal received a lethal injection just after 6 p.m. local time at the prison in Huntsville, Texas, and died shortly thereafter.

Republican Texas Governor Rick Perry authorized the execution to proceed, defying a request from the U.N. High Commissioner for Human Rights asking that Perry commute Leal Garcia's sentence to life in prison. A request for a reprieve by the Mexican ambassador to the United States, Arturo Sarukhan, was dismissed by both the US high court and the state of Texas.

The Obama administration had also intervened. In a friend of the court brief filed with the Supreme Court, Solicitor General Donald Verrilli Jr. said the execution threatened US relations with Mexico. The US State Department also urged Governor Perry to postpone the execution.

The Mexican government released a statement condemning Leal Garcia's execution "in the most energetic terms," according to the Mexican daily *La Jornada*. Mexico's Foreign Ministry sent a formal note of protest to the US State Department.

In an unsigned 5-4 ruling, the Supreme Court rejected Leal Garcia's request for a 180-day stay. Chief Justice John Roberts and Justices Samuel Alito, Clarence Thomas, Antonin Scalia and Anthony Kennedy dismissed the White House's request to delay the execution until Congress passes legislation that would require US states to honor the 1963 Vienna Convention that protects consular rights for foreign nationals arrested in another country.

This right-wing bloc on the high court has repeatedly rejected appeals from death row inmates whose constitutional and legal rights have been violated. When in dissent—for instance, on rulings outlawing the execution of juvenile defenders and the mentally impaired—they have disregarded basic standards of human decency.

Justice Stephen Breyer was joined in the dissent by Justices Ruth Bader Ginsburg, Sonia Sotomayor and Elena Kagan. They objected—not on the grounds that executing foreign nationals denied their consular rights should be condemned, or that capital punishment itself is inherently barbaric—but that the execution could cause "irreparable harm" to US "foreign policy interests of the highest order" and endanger Americans overseas.

The dissenting justices proposed only "a brief stay until the end of September," and emphasized that the high court "has long recognized the president's special constitutionally based authority in matters of foreign relations."

Humberto Leal Garcia, 38 at the time of his execution, was convicted and sentenced to death for the 1994 rape and murder of 16-year-old Adria Sauceda in San Antonio. Leal Garcia, who had lived in the US since the age of two, was a native of Monterrey, Mexico.

When Leal Garcia was arrested, Texas police failed to notify him of his right to seek assistance, including help with legal counsel, from the Mexican consulate. This was a clear violation of the Vienna Convention on Consular Relations, to which the United States is a signatory.

Evidence introduced at Leal Garcia's trial included incriminating statements he made to police. Texas authorities claimed that, because these statements were made during "noncustodial interviews," Vienna Convention obligations did not apply.

Leal Garcia's lead defense attorney, Sandra Babcock, commented: "The violation of the Vienna Convention was no mere technicality. The Mexican consulate would have provided an experienced and highly qualified attorney who would have challenged the prosecution's reliance on junk science to obtain a conviction." Leal Garcia had claimed that his victim's death was accidental.

Christof Heyns, UN special rapporteur on extrajudicial, summary or arbitrary executions, had warned, "If the scheduled execution of Mr. Leal Garcia goes ahead, the

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United States government will have implemented a death penalty after a trial that did not comply with due process rights. This will be tantamount to an arbitrary deprivation of life."

However, Texas authorities proceeded in precisely this manner. On Tuesday, the Texas Board of Pardons and Paroles rejected Leal's request for a reprieve. Governor Rick Perry, who had the power under Texas law to grant a 30-day stay of execution, signed Leal's death warrant on Thursday.

Perry, who is eyeing a run for the Republican presidential nomination, clearly capitalized on the situation to boost his conservative, law-and-order credentials. He has now presided over an astonishing 233 executions in his decade as Texas governor. He took over the governorship from George W. Bush, who sent 152 death row inmates to their deaths before assuming the presidency.

In 2004, the International Court of Justice (ICJ) or World Court—the United Nation's judicial arm for resolving disputes among nations—ruled in what is known as the Avena case that the United States failed to fulfill its obligations to 51 Mexicans on death row in the US, when it did not inform them of their right to contact their consular representatives "without delay" after their arrests.

The ICJ ordered that new hearings be held in US courts for the Mexican nationals who claimed their rights had been violated. Texas, among other states, challenged the necessity of holding hearings for the condemned inmates.

Following the ICJ's 2004 ruling, the Bush administration took the extraordinary measure of withdrawing from an optional protocol to the Vienna Convention on Consular Relations, which gave the ICJ jurisdiction over the VCCR. This meant that, while remaining a signer to the convention, the US would no longer submit to international law to enforce it.

In a 2008 case involving another Mexican national, Jose Ernesto Medellin, the US Supreme Court ruled that the decisions of the International Court of Justice were not binding on US domestic law. They ruled that only Congress could mandate the holding of hearings for foreign nationals who claimed that their consular rights had been denied.

Texas executed Jose Medellin on August 5, 2008, despite international protests. A spokesman for Governor Perry commented at the time, "The world court has no standing in Texas, and Texas is not bound by a ruling or edict from a foreign court. It is easy to get caught up in discussions of international law and justice and treaties."

The Obama administration's intervention in the Leal Garcia case was aimed, not at halting the execution of foreign nationals, but at setting up the legal framework whereby hearings can be held to determine whether the denial of consular rights to prisoners on death row has affected the outcome of their trials.

Legislation recently introduced by Senator Patrick Leahy, Democrat of Vermont, would allow federal oversight of state limitations on foreign nationals' filings of habeas corpus petitions. The Consular Notification Compliance Act would require Texas and other states to comply with the 2004 World Court ruling.

The White House had only asked that the Leal Garcia execution be delayed until next January, when the legislation is expected to pass. Obama made no effort to rally public opinion against the execution of foreign nationals, or to oppose the actions of Texas and other states that have openly flouted international law in executing citizens of other countries.

In its brief filed with the Supreme Court, Obama's solicitor general had argued that a temporary stay would have avoided an escalation of international tensions brought on by an execution in violation of international law. He cautioned that such a breach would "have serious repercussions for United States foreign relations, law-enforcement and other cooperation with Mexico, and the ability of American citizens traveling abroad to have the benefits of consular assistance in the event of detention."

Thursday evening's execution is the twenty-sixth carried out in the US this year and the seventh in the state of Texas. The US stands virtually alone among nations in the industrialized world in carrying out state executions. Sending foreign nationals to their deaths in violation of international law is a further exposure of the barbaric practice.

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