

June 7, 2011

Governor Rick Perry
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Texas Board of Pardons and Paroles
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Dear Governor Perry and Members of the Texas Board of Pardons and Paroles:

As former U.S. diplomats and State Department officials, we write to urge you to grant a reprieve in the case of Humberto Leal García pending congressional action that we believe is vitally important to meeting the United States' foreign policy objectives and to protecting the interests of its citizens abroad. Mr. Leal's case is one that will be directly impacted by legislation that would secure compliance with the United States' binding treaty obligations by providing a review mechanism for the cases of foreign nationals who - without the benefit of timely consular notification and access - were convicted and received death sentences.

Each year, thousands of Americans are detained abroad. Prompt knowledge of and access to our fellow-citizens held in foreign jails ensures that U.S. consular officers can help them obtain legal assistance, monitor their treatment, and connect them to family and friends back home. This crucial lifeline of consular support can only function effectively if the detaining authorities comply with their obligations under Article 36 of the Vienna Convention on Consular Relations, which grants all foreigners in custody the right to consular notification, communication and access "without delay." Insisting on compliance with and protesting violations of Article 36 provisions has thus long been an integral element of the U.S. policy of providing protective consular services to detained Americans overseas.

For instance, when three Americans were detained after accidentally crossing an unmarked border into Iran in 2009, a State Department spokesperson insisted that "Iran has obligations under the Vienna Convention, and we demand consular access at the first opportunity."¹ The Secretary of State later called on the Iranian government "to live up to its obligations under the Vienna Convention by granting consular access and releasing these three young Americans without further delay."² Once consular access was finally granted, the State Department "welcome[d] the fact that Iran is meeting up to its obligations under the Vienna Convention".³

¹ U.S. Department of State, Daily Press Briefing (Aug. 10, 2009), at <http://www.state.gov/r/pa/prs/dpb/2009/aug/127210.htm>.

² U.S. Secretary of State, Missing and Detained Americans in Iran, Aug. 15, 2009, at <http://www.state.gov/secretary/rm/2009a/08/127948.htm>.

³ U.S. Department of State, Daily Press Briefing (Sept. 29, 2009), at <http://www.state.gov/r/pa/prs/dpb/2009/sept/129970.htm>.

Unfortunately, the United States has sometimes violated Article 36 requirements even as we call on foreign governments to comply with its terms. In 2004, the International Court of Justice (ICJ) determined that some fifty Mexican nationals – including Mr. Leal – were entitled to judicial hearings to determine if Article 36 breaches, which were proven to have occurred, affected the fairness of their capital murder convictions and/or sentences. The United States is required by the U.N. Charter to comply with decisions of the ICJ. President George W. Bush attempted to enforce this decision at the state court level, but the U.S. Supreme Court later ruled in *Medellín v. Texas* that only Congress could ensure compliance by adopting legislation providing for the compulsory review and reconsideration mandated by the ICJ. The Supreme Court also observed that the ICJ decision undeniably bound the United States under international law and that “plainly compelling” reasons existed for its domestic implementation. “In this case,” the *Medellín* Court noted, “the President seeks to vindicate United States interests in ensuring the reciprocal observance of the Vienna Convention, protecting relations with foreign governments, and demonstrating commitment to the role of international law.”

Clearly, the safety and well-being of Americans abroad is endangered by the United States maintaining the double standard of protesting denials of consular notification and access to its own citizens while simultaneously failing to comply with its obligation to remedy identical violations. We cannot realistically expect other nations to continue to comply with consular treaty commitments that we refuse to uphold. For that reason alone, it is essential that Congress act swiftly to provide the limited procedural remedy that both our Executive and Judicial Branches have so clearly indicated is in the national interest.

As the Supreme Court pointed out, however, the United States’ interest in implementing these international obligations goes beyond protecting the reciprocal rights and safety of its overseas citizens. Our national security, effective commercial and trade relations relating to our prosperity and almost every matter of national interest, large and small, is covered by reciprocal treaty obligations. Texas citizens whose livelihoods depend on their travel abroad and Texas businesses with operations in other countries face serious safety and financial risks if we cannot rely on these reciprocal treaty obligations. We risk jeopardizing these interests if we practice an indifference to these obligations in this or other arenas. We believe that continued non-compliance will surely alienate this nation from its allies.

The ability of the United States to secure future international agreements vital to our commercial interests and national security depends largely on whether this nation is perceived as honoring its international obligations. It is vitally important for Congress to mandate judicial enforcement of America’s treaty obligations, and we are urging Congress to do so. As former Attorney General Michael Mukasey and former Secretary of State Condoleezza Rice explained in their June 2008 letter to you, while the Federal government continues to work to bring the U.S. into compliance with its treaty obligations, “[w]e respectfully request that Texas take the steps necessary to give effect to,” the Supreme Court decision acknowledging the right to consular notification and access. For Texas to proceed with his execution prior to full compliance with these treaty obligations would endanger the interests of American citizens and the United States around the world. As Congress acts, we urge you to refrain from proceeding with the scheduled execution of Mr. Leal, and to grant a reprieve long enough for Congress to act and for the United States to fulfill its obligations in this case.

Thank you for your attention to this important matter.

Sincerely,

Harry Barnes, Jr.

U.S. Ambassador to Chile, 1985-1988; U.S. Ambassador to India, 1981-1985; Director General of the Foreign Service 1977-1981; U.S. Ambassador to Romania, 1974-1977

John B. Bellinger, III

Partner, Arnold & Porter LLP; Legal Advisor to the Department of State, 2005-2009; Legal Advisor to the National Security Council, 2001-2005

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James R. Jones

U.S. Ambassador to Mexico, 1993-1997; Member of U.S. Congress (D-OK), 1973-1987

Thomas R. Pickering

Undersecretary of State for Political Affairs, 1997-2000; U.S. Ambassador and Representative to the United Nations, 1989-1992

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