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Safeguarding Liberty, Justice & the Rule of Law

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identification purposes only*

June 15, 2011

Governor Rick Perry
Office of the Governor
P.O. Box 12428
Austin, Texas 78711-2428

Texas Board of Pardons and Paroles
Attn: Executive Clemency Section
8610 Shoal Creek Blvd.
Austin, Texas 78757

RE: Humberto Leal Garcia

Dear Governor Perry:

As President of the Constitution Project, I write to urge you to grant a reprieve in the case of Humberto Leal Garcia pending congressional action regarding judicial review of violations of consular access rights of individuals on death row. Mr. Leal has alleged violations of his rights under the Vienna Convention on Consular Relations (VCCR), to which the United States is a party and on which the United States relies to protect American citizens abroad. Recently introduced federal legislation, the Consular Notification Compliance Act (S. 1194), provides for judicial review of VCCR violations occurring in U.S. custody and may directly affect Mr. Leal's case. For this reason, I strongly urge you to grant a reprieve.

The Constitution Project is a nonprofit organization in Washington, D.C., that promotes and defends constitutional safeguards through constructive dialogue across ideological and partisan lines. Its Death Penalty Committee, a list of members of which is attached as Appendix A, is a bipartisan, blue-ribbon Committee that comprises supporters and opponents of the death penalty, Democrats and Republicans, conservatives and liberals. Committee members are united in their profound concern that, in recent years, and around the country, procedural safeguards and other assurances of fundamental fairness in the administration of capital punishment have been revealed to be deeply flawed. Among these flaws is the continued failure of the United States to honor the safeguards of consular notification and access, pursuant to the VCCR.

In 2005, the Death Penalty Committee published *Mandatory Justice: The Death Penalty Revisited*,¹ a consensus report that offered 32 recommendations to assure that all capital defendants are afforded basic constitutional and procedural protections, including competent

¹ Available at <http://www.constitutionproject.org/manage/file/30.pdf>.

counsel, a fair trial, and full judicial review of the conviction and sentence. Among those recommendations is a call for the enforcement of the VCCR and its consular notification obligations. As *Mandatory Justice* makes clear, the policy considerations behind consular notification rights are similar to those behind the right to counsel guaranteed by the U.S. Constitution, in that both are designed to protect an individual's legal rights and prevent mistreatment. Moreover, consular officers can provide critical support, particularly in capital cases, by quickly securing counsel, locating witness who may be critical at the guilt and sentencing stages of the criminal trial, and providing expert and investigation resources.

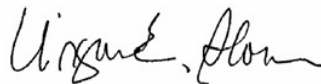
Unfortunately, as *Mandatory Justice* notes, "death rows across the United States house foreign nationals whose consular rights were violated but who may never have received assistance from their consular officers...² Arrested foreign nationals rarely, if ever, invoke their consular rights without notification. As Justice Stevens noted... 'It surely is reasonable to presume that most foreign nationals are unaware of the provisions of the Vienna Convention That is precisely why the Convention places the notice obligation on the governmental authorities.'"³

By allowing for meaningful review of violations of consular rights under the VCCR, S. 1194 will encourage the fair treatment of foreign nationals in law enforcement custody, and help to encourage other countries to honor their consular notification obligations. This is critical in protecting the millions of U.S. citizen who travel, live, work, or serve our military abroad, because a key component to enforcing the VCCR abroad is the U.S.'s commitment to honoring its obligations under the agreement domestically.

Mr. Leal is a foreign national who was denied consular access rights while in U.S. law enforcement custody. The Consular Notification Compliance Act would provide Mr. Leal the opportunity for judicial review as to whether this violation created prejudice in his case. Both justice and the safety of American citizens abroad require that the State of Texas suspend Mr. Leal's execution until all opportunities to address the VCCR violations in his case, including those that may be provided by pending federal legislation, are exhausted.

I hope you find this information helpful, and I urge you to grant a reprieve in Mr. Leal's case. Thank you for your consideration.

Sincerely,



Virginia Sloan
President

² See The International Justice Project, Current Cases and Past Cases, *available at* www.internationaljusticeproject.org.

³ *Torres v. Mullin*, 124 S. Ct. 919 (2003) (opinion of Stevens, J., respecting the denial of the petition for *certiorari*).

APPENDIX A

CONSTITUTION PROJECT DEATH PENALTY COMMITTEE

Co-Chairs

Gerald Kogan

Former Chief Justice, Supreme Court of the State of Florida; former Chief Prosecutor, Homicide and Capital Crimes Division, Dade County, Florida

Mark White

Chairman, Geovox Security, Inc.; Governor of Texas, 1983-1987; Attorney General of Texas, 1979-1983; Secretary of State of Texas, 1973-1977; Partner, Reynolds, White Allen & Cook, 1969-1973; Assistant Attorney General of Texas, 1965-1969

Beth A. Wilkinson

Prosecutor, Oklahoma City bombing case

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Judge, 18th Judicial Circuit of Florida, 1986-2010

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James A. Fry, P.C. 1982-present; Assistant District Attorney, Dallas County, Texas 1980-1982; Former Chairman, Texas State Bar Grievance Committee

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Partner, Sidley Austin LLP; Acting Attorney General, Assistant Attorney General for the Civil Division, Principal Deputy Associate Attorney General, and Acting Associate Attorney General of United States Department of Justice, 2002-2007

Paula M. Kurland

Victim Advocate; Founding Member, Bridges to Life (a victim-offender program in Texas); Mother of Murder Victim

APPENDIX A

Abner J. Mikva

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Sam D. Millsap, Jr.

Former District Attorney, Bexar County, San Antonio, Texas

Dr. LeRoy Riddick

Forensic Pathologist

Chase Riveland

Former Secretary, Department of Corrections, State of Washington

David A. Schwartz

President & CEO, DS Baseball LLC

William S. Sessions

Partner, Holland & Knight, LLP; former Director, Federal Bureau of Investigation; former Chief Judge, United States District Court for the Western District of Texas

G. Elaine Smith

Former President, American Baptist Churches, United States of America

B. Frank Stokes, Jr.

Special Agent, Federal Bureau of Investigation, Retired; Private Investigator

Jennifer Thompson-Cannino

Spokesperson, Center on Wrongful Convictions

Scott Turow

Partner, SNR Denton; Author

John W. Whitehead

President, The Rutherford Institute

Dr. Reginald Wilkinson

President & CEO, Ohio College Access Network

Rabbi Eric H. Yoffie

President, Union for Reform Judaism