

2008

Texas Defies President Bush, International Law by Executing Mexican National

Clay Rehrig

Follow this and additional works at: <http://lawcommons.luc.edu/pilr>

 Part of the [Immigration Law Commons](#), [International Law Commons](#), and the [State and Local Government Law Commons](#)

Recommended Citation

Clay Rehrig, *Texas Defies President Bush, International Law by Executing Mexican National*, 14 Pub. Interest L. Rptr. 83 (2008).
Available at: <http://lawcommons.luc.edu/pilr/vol14/iss1/13>

This Article is brought to you for free and open access by LAW eCommons. It has been accepted for inclusion in Public Interest Law Reporter by an authorized administrator of LAW eCommons. For more information, please contact law-library@luc.edu.

TEXAS DEFIES PRESIDENT BUSH, INTERNATIONAL LAW BY EXECUTING MEXICAN NATIONAL

by CLAY REHRIG

Don't mess with Texas. That was the final word out of Austin last August as Governor Rick Perry defied President Bush and the International Court of Justice (ICJ) by proceeding with the execution of Jose Ernesto Medellin.¹

Medellin and five other teenage boys were convicted of raping and killing two girls in Houston in 1993.² Among those involved in the crimes, three were

sentenced to death, two had their sentences commuted to life in prison, and one is serving a forty-year sentence.³

Medellin, a Mexican citizen arrested in the United States, was sentenced to death in 1994 by a Texas court.⁴ The trial was straightforward. Medellin described the brutal events of the co-defendants in detail and even signed a letter of confession a few days later.⁵ But then complications arose and what seemed straightforward turned into an international legal battle.

The 1963 Vienna Convention on Consular Relations requires detained foreign nationals be notified of their right to speak to consular authorities.⁶ Both the United States and Mexico are signatories to this treaty, but Medellin was never notified of his right to speak to the Mexican Consulate.⁷ After his conviction, Medellin argued on appeal that he never received this right granted under the Convention and that he should be given a new trial. He appealed his conviction through the Texas legal system and into federal court, landing his case on the United States Supreme Court docket.⁸

THE U.S. SUPREME COURT VS. THE INTERNATIONAL COURT OF JUSTICE

Motivated by concerns of the United States executing Mexican nationals, Mexico meanwhile sued the United States over Medellin and 50 Mexican nationals on death row in America, claiming the United States had violated its Consular Relations treaty obligations.⁹ In the *Case Concerning Avena and Other Mexican Nationals*, the ICJ found in favor of Mexico and ruled that America had violated its treaty agreements when it denied Mexican detainees the right to speak to a consul.¹⁰ It ruled the detainees must be allowed to contact their consulate's authorities and their cases be reconsidered in the United States' courts.¹¹

President Bush issued an executive order in line with the ICJ stating, "The United States will discharge its international obligations. . .by having state courts give effect to the [ICJ] decision."¹² This order, however, received a cold reception from the United States Supreme Court.

In a six to three vote, the Court upheld the decision of the lower courts.¹³ It ruled that the Vienna Convention on Consular Relations was not a self-executing treaty.¹⁴ In other words, the Court found the treaty did not come into effect until further legislation enacted its provisions.¹⁵ Considering it unlikely

that Congress would take further measures, the Court rejected Medellín's appeal and left the matter for Texas to resolve.¹⁶ The Court sharply criticized President Bush in overstepping his executive authorities when he unilaterally decided to follow the ICJ's judgment.¹⁷

IMPACT NATIONALLY AND ABROAD

Medellín raised questions of constitutional law, namely, when a treaty is considered self-executing. More interesting, however, is the effect of international judgments on the United States and other countries.

Proponents of the decision hold it as a dim light of hope in an increasingly dark international world. The decision reaffirms the sovereignty of federal law, and more importantly, the supremacy of state law in a federal system.¹⁸ Legislators create United States law, not international judges sitting in The Hague;¹⁹ the Supreme Court has no authority to uphold treaties not enacted by the legislature. Andrew McCarthy, a writer for *Human Events*, a weekly conservative magazine, explained, "at bottom, the case is about the freedom of Texans to govern themselves, to put sadistic murderers to death if that is what they choose democratically to do."²⁰ In a world that is becoming increasingly more global, Texas reaffirmed its position as a sovereign state and rebuked the president for overstepping his executive power and infringing on congressional authority.²¹

The dissenting judges as well as a majority of the international community see it differently. Justice Breyer, in his dissenting opinion, warned "to permit this execution. . . places the United States irremediably in violation of international law and breaks our treaty promises."²² Thomas Haney, professor of International Law at Loyola University Chicago School of Law, calls the Supreme Court's decision an "utter lack of regard" for the international legal community.²³ Haney explains that the United States became bound by its obligations to the ICJ when it signed the voluntary agreement for compulsory jurisdiction.²⁴ Further, the Supreme Court acknowledged in *Paquete Habana* that federal law is formed in part by customary international law and deference should therefore be given to it.²⁵ Haney believes that this should have been taken into account in the judgment.²⁶

So what does this mean for the future of international judgments and their enforceability? The answer is unclear, but the outlook is bleak. Essentially, America has portrayed itself as “judgment-proof” from the ICJ.²⁷ The Supreme Court’s decision indicates that ICJ judgments have no legal effect in America and the international community’s legal standards are irrelevant within the United States. Also, it sends a message encouraging the disregard of international law to the rest of the world who might still look to America as the leader on international policy.²⁸

Haney posits, “In light of America’s actions, the future of international law will possibly be marked by a surge of nationalism in an international existence.”²⁹ To cope, international institutions should be strengthened and their political will must encourage them to submit to international legal jurisdiction.³⁰ Furthermore, other nations should increase pressure on states that fail to comply with international law.³¹ Through diplomatic ties, sanctions, and even military force in extreme circumstances, the international community should send a clear message that non-compliance will not be tolerated.

George Washington, in his farewell address, warned of American involvement in international affairs.³² Today, the Lone Star State remains a shining example of state sovereignty and American independence, much to the begrudging of the international community.

NOTES

1 1 James C. McKinley, *Texas Executes Mexican Despite Objections*, N.Y. TIMES, Aug. 6, 2008, at 19, available at http://www.nytimes.com/2008/08/06/us/06execute.html?_r=1&th&emc=th&oref=slogin.

2 *Id.*

3 *Id.*

4 *The President Sides with a Thug*, THE ECONOMIST, Oct. 1820, 2007, at 1, available at http://www.economist.com/world/unitedstates/PrinterFriendly.cfm?story_id=9997108.

5 *Id.*

6 *Id.*

7 Brief Amicus Curiae of the Government of the United Mexican States in Support of Petitioner Jose Ernesto Medellin, *Medellin v. Texas*, 128 S. Ct. 1346 (2008) (No. 06-984).

8 See *The President Sides with a Thug*, *supra* note 4.

9 *Id.*

10 *The President Sides with a Thug*, *supra* note 4.

11 *Id.*

12 *Id.*

- 13 Medellin v. Texas, 128 S. Ct. 1346, 1350 (2008).
- 14 *Id.*
- 15 *Id.*
- 16 *Id.*
- 17 *Id.*
- 18 *Solid Decision*, THE NATIONAL REVIEW, Mar. 28, 2008, <http://article.nationalreview.com/?q=MDIyMmExZTYzNWQ1OWU5NzQyN2YwZDcwYWVhYjZkNDI=>.
- 19 *Id.*
- 20 Andrew C. McCarthy, *Bush Dead Wrong on Medellin Case*, HUMAN EVENTS, Oct. 22, 2007, http://findarticles.com/p/articles/mi_qa3827/is_20071022/ai_n21112429/pg_3.
- 21 *Id.*
- 22 Medellin v. Texas, 128 S. Ct. 1346, 1350 (2008).
- 23 Interview with Thomas Haney, Professor of International Law, Loyola Univ. Chi., in Chi., Ill. (Oct. 23, 2008).
- 24 *Id.*
- 25 *See generally Paquete Habana*, 175 S.Ct. 677 (1900), *See also* Interview with Thomas Haney, *supra* note 23.
- 26 Interview with Thomas Haney, *supra* note 23.
- 27 *Id.*
- 28 *Id.*
- 29 *Id.*
- 30 *Id.*
- 31 *Id.*
- 32 President George Washington, Farewell Address (Sept. 19, 1796).