

Nos. 08-5573, 08-5574, 08A98 & 08A99

IN THE
Supreme Court of the United States

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JOSÉ ERNESTO MEDELLÍN,
Petitioner,

vs.

THE STATE OF TEXAS,
Respondent.

-----◆-----
In re JOSÉ ERNESTO MEDELLÍN,
Petitioner.

-----◆-----
ON PETITION FOR WRIT OF CERTIORARI TO THE
COURT OF CRIMINAL APPEALS OF TEXAS AND
ON PETITION FOR WRIT OF HABEAS CORPUS
-----◆-----

**SUPPLEMENTAL APPENDIX TO
PETITION FOR WRIT OF CERTIORARI TO THE
COURT OF CRIMINAL APPEALS OF TEXAS OR
FOR A WRIT OF HABEAS CORPUS**

-----◆-----
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TABLE OF CONTENTS

	Page
Letter from John Conyers, Jr., Chairman of U.S. House of Representatives Committee on the Judiciary, Jerrold Nadler, Chairman of Subcommittee on the Constitution, Civil Rights and Liberties, and Robert “Bobby” Scott, Chairman of Subcommittee on Crime, Terrorism, and Homeland Security, to Rick Perry, Governor of Texas (August 1, 2008)	139a
Transcript of Oral Argument, <i>State v. Medellin</i> , No. 675430 (339th Dist. Ct. Harris County, Texas May 5, 2008)	141a
Decision of Texas Board of Pardons and Paroles (August 4, 2008).....	171a

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ONE HUNDRED TENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

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August 1, 2008

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

Dear Governor Perry:

We write today regarding a matter that has implications for the foreign policy of the United States and for the safety and security of our citizens as they travel in other countries. We urge you to work with us to implement procedures to effectuate our treaty obligations, especially in light of two executions scheduled for next week that directly impact this situation.

As you are well aware, the United States Supreme Court recently considered the case of José Medellín, who is currently scheduled for execution in Texas on August 5, 2008. The Supreme Court held that the United States is currently not in compliance with its international treaty obligations in a number of cases in which persons were not afforded their rights to consular notification under the Vienna Convention. Medellin v. Texas, 552 U.S. ____ (March 25, 2008).

There is a relatively simple means of coming into compliance with the ruling of the Supreme Court, but it cannot be completed before the scheduled execution dates next week. The International Court of Justice ("ICJ") has determined that the situation be remedied in a simple and straightforward way -- through a judicial review proceeding to determine whether prejudice has resulted from the failure to provide consular access. Judgment of 31 March 2004 in the Case Concerning Avena and Other Mexican Nationals ("Avena").

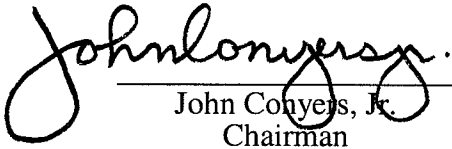
In its recent decision, the Supreme Court determined that Congress has the legislative authority to authorize the judicial review directed, and to ensure compliance with this legal obligation across the United States. Accordingly, the "Avena Case Implementation Act of 2008" (H.R. 6481) was introduced in the House of Representatives on July 14, 2008. The legislation creates a cause of action that is narrowly focused on evaluating the impact of any violation of the Vienna Convention on Consular Relations.

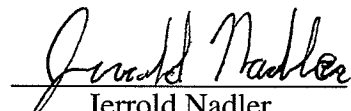
The legislative calendar makes it impossible for us to complete a thorough and careful lawmaking process prior to the scheduled execution of Mr. Medellin on August 5th, or the scheduled execution of Heliberto Chi Acheituno on August 7th. With this in mind, we respectfully request that you exercise your power to stay these execution dates in order to provide Congress with the time needed to consider this situation and to make an appropriate judgment as to the important policy matter in question. As the Supreme Court recognized, compliance with the Vienna Convention is a critical aspect of national security and foreign policy, including the reciprocal treatment of U.S. persons overseas.

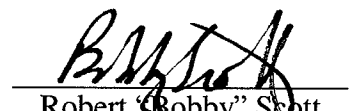
The Honorable Rick Perry
Page Two
August 1, 2008

Thank you for your consideration and accommodation. We appreciate your time and attention to these important matters, and look forward to working with you to address this situation.

Sincerely,


John Conyers, Jr.
Chairman


Jerrold Nadler
Chairman, Subcommittee
on the Constitution, Civil
Rights, and Civil Liberties


Robert "Bobby" Scott
Chairman, Subcommittee
on Crime, Terrorism, and
Homeland Security

cc: The Honorable Lamar Smith
Texas Board of Pardons and Paroles
Secretary of State Condoleezza Rice
Attorney General Michael B. Mukasey

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REPORTER'S RECORD
TRIAL COURT CAUSE NO. 675430
VOLUME 1 OF 1 VOLUMES

THE STATE OF TEXAS)
)
VS.)
)
JOSE ERNESTO MEDELLIN)

339TH JUDICIAL DISTRICT

On the 5th day of May, 2008 the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Caprice Cosper, Judge presiding, held in Houston, Harris County, Texas:

Proceedings reported by certified shorthand reporter.

COPY

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VOLUME 1 OF 1 VOLUMES

HEARING

May 5, 2008

Hearing..... 3 1

(No witnesses this volume.)

Court Reporter's Certificate..... 27 1

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

VOLUME 1 OF 1 VOLUMES

HEARING

ALPHABETICAL WITNESS INDEX

May 5, 2008

(No witnesses this volume.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

VOLUME 1 OF 1 VOLUMES

HEARING

EXHIBIT INDEX

May 5, 2008

(No exhibits this volume.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
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PROCEEDINGS

MAY 5, 2008

THE COURT: All right.

Let the record reflect we're here today in Cause Number 675430, ex parte Jose Ernesto Medellin.

I believe the style will be the State of Texas versus Jose Ernesto Medellin.

Ms. Wilson, the State is here today to request an execution date be set; is that correct?

MS. WILSON: Yes, Your Honor, we're requesting that an execution date be set in Jose Ernesto Medellin's case for August 5, 2008. He has finished his proceedings in Court. At least once in State Court and -- actually twice in State Court and once in the federal system.

THE COURT: All right.

I believe, Ms. Babcock, you wanted to make a request on the record?

MS. BABCOCK: Yes, Your Honor.

Your Honor, before I begin, I'd like to introduce my co-counsel. I'm Sandra Babcock. My co-counsel from Debevoise and Plimpton in New York, Donald Donovan and Catherine Amifar.

Representing the government of Mexico Greg Kuykendall, who comes here from Tucson, Arizona.

1 Ambassador Joel Hernandez Garcia, who came here from
2 Mexico City, who is the legal advisor for the Mexican
3 Foreign Minister. Consul General Carlos Gonzalez
4 Magallon, who is Consul General of Mexico here in
5 Houston. We also brought with us two witnesses,
6 Professor Doug Cassel, who is Professor of Law at
7 Notre Dame Law School and the Director for the Center
8 for Civil and Human Rights. And, Billy Hayes, who
9 came from Los Angeles, California, to testify about
10 his experiences as an American who was incarcerated
11 in Turkey and who relied on the Assistance of the
12 American Consulate to protect him, to provide him
13 with a lawyer, to notify his parents and ultimately
14 to bring him home from Turkey. And his experiences
15 were made into a film called Midnight Express.

16 All these witnesses and lawyers are here
17 today, Your Honor, to ask the Court to deny the
18 District Attorney's request that you set an execution
19 date in this case.

20 We're asking this for several reasons.
21 There are a number of events that are pending that
22 bear directly on whether or not Mr. Medellin should
23 receive a date at this time. We're asking the Court
24 to set a conference -- a status conference in several
25 months so that we can allow Congress and the Texas

1 Legislature an opportunity to pass legislation
2 implementing the judgment of the International Court
3 of Justice in this case. And we're also asking the
4 Court to defer the setting of that execution date
5 because the Inter-American Commission has issued
6 precautionary measures, which is the rough equivalent
7 of temporary restraining order, calling upon the
8 United States not to set an execution date in this
9 case.

10 Now, as I mentioned, there are a number of
11 reasons why it is appropriate to defer the scheduling
12 of an execution date at this time. The first of
13 which is that this is a case where the issues at
14 stake go far beyond the stakes of Mr. Medellin
15 himself. Millions of Americans, tens of thousands of
16 Texans travel abroad every year. We have Peace Corps
17 volunteers, we have missionaries, we have soldiers,
18 we have employees of multi national corporations, we
19 have high school foreign exchange students who are
20 traveling abroad, who live abroad and many of whom
21 live in countries that have repressive regimes where
22 arbitrary detentions and mistreatment of detainees is
23 common place. Those are the Americans who depend
24 upon the protections that are provided by Article 36
25 of the Vienna Convention on Consul Relations which as

1 you know, was violated in Mr. Medellin's case, and
2 which allows a foreign national, including Americans
3 who are incarcerated abroad, to rely on the
4 protections that could be provided by the American
5 Consulate in the event that they find themselves in
6 trouble.

7 The American Government considers these
8 protections so important that it has actually
9 inscribed them in all of our passports. If you look
10 inside your U. S. passport what you will find is that
11 the United States Government has told us that if we
12 are in trouble contact the nearest U. S. Embassy or
13 Consulate. If you are arrested, demand to see the
14 U. S. Consul.

15 And the reason the United States Government
16 can put this in our passports and tell us we have the
17 right to demand to see the U. S. Consul is because of
18 Article 36 of the Vienna Convention on Consular
19 Relations, which is a treaty that we have we signed
20 and ratified and is the law of this land, just as any
21 federal statute is the law of this land under the
22 supremacy clause.

23 The reason I mentioned the millions of
24 Americans who are traveling abroad and who rely on
25 these protections is because it's their welfare and

1 their safety that will be affected by the setting of
2 any execution date in this case, which would amount
3 if Mr. Medellin is executed, to an irreversible
4 breach of the United States' treaty obligations not
5 only under the Vienna Convention, but under the
6 Vienna Convention's optional protocol and under the
7 United Nations Charter and International Court of
8 Justice, all of which the United States has ratified
9 and made promises to its treaty partners that it
10 would uphold its obligations under those
11 conventions.

12 What happens and what Mr. -- Professor
13 Cassel would explain to the Court, if the Court would
14 allow him to testify, is that when one nation
15 breaches its treaty obligations it authorizes under
16 international law its treaty partners to suspend
17 compliance with those self same treaty obligations,
18 which means that if we breach our obligations under
19 these treaties it authorizes the 171 nations that are
20 parties to this same treaty, that again provide these
21 same protections to Americans abroad, to suspend
22 compliance with those obligations, which obviously
23 would have a direct impact on the many Americans who
24 find themselves in trouble, many of whom haven't done
25 anything wrong, like the American missionaries who

1 were arrested in Afganastan by the Talaban who were
2 allegedly trying to persuade people that they should
3 consider converting to Christianity. That was a
4 capital crime under the Talaban.

5 The United States Government felt so
6 strongly about these protections that even though
7 Afganastan wasn't a party to the Vienna Convention,
8 the United States insisted that these missionaries
9 have the right to American Consul and eventually they
10 were able to get them out of the country.

11 There is another reason why it would be
12 appropriate at this moment not to set an execution
13 date. That is, that Congress is currently
14 considering legislative options for implementing the
15 Avena Judgment. As this Court knows, in Medellin
16 versus Texas, the Supreme Court issued an invitation
17 to Congress and to Texas to comply with the United
18 States' obligations to comply with the judgment of
19 the International Court of Justice. And Congress --
20 as you know, this is an election year. Congress has
21 not had time to pass legislation. It takes time to
22 pass legislation. We are informed that the session
23 is winding down. That it's going to be very
24 difficult for Congress to pass prestanding
25 legislation at this point because there is simply not

1 enough time in this session to have the kind of
2 hearings that would be required in the event that a
3 new bill were introduced. Many of the
4 Representatives in Congress are running for
5 re-election. We have a presidential election. Under
6 those conditions it's going to be quite difficult for
7 Congress to pass legislation. But, nevertheless,
8 several members of Congress are currently considering
9 what legislative vehicles might be available in order
10 to implement the judgment of the International Court
11 of Justice that would provide Mr. Medellin with the
12 hearing that we have been requesting on his behalf,
13 which is the only remedy that the ICJ ordered, was
14 for him to have a day in Court so that his case, his
15 conviction and sentence could be reviewed and
16 reconsidered to determine whether he was prejudiced
17 by the Vienna Convention violation.

18 THE COURT: Let me just stop you
19 there.

20 My recollection is that that claim was
21 decided first by a procedural default, but also on
22 the merits by this Court. And that further, the
23 Court of Criminal Appeals essentially rejected that
24 claim also on the merits. And while the -- I think
25 the Avena case was coming down, there was a

1 certificate of appealability pending before the Fifth
2 Circuit which was ultimately denied.

3 MS. BABCOCK: No Court, Your Honor,
4 has ever considered the evidence that is currently
5 pending before the Inter-American Commission on Human
6 Rights and which was presented in a successive
7 application that this Court didn't have the
8 jurisdiction to consider according to the Court of
9 Criminal Appeals, including information that
10 Mr. Medellin's trial lawyer was suspended from the
11 practice of law during a period of time that he was
12 representing Mr. Medellin. And a great deal of
13 mitigating evidence that could have been presented by
14 that counsel if he had adhered to his ethical
15 obligations under --

16 THE COURT: My point is I believe
17 essentially this Court has determined -- this has
18 been mentioned in several opinions as well, that
19 Mr. Medellin gave a confession within three hours of
20 his arrest prior to the consul notification
21 requirement. And that there have been findings of no
22 prejudice.

23 MS. BABCOCK: We're talking about
24 here, Your Honor --

25 MS. WILSON: Your Honor, if I could,

1 he also had Jennifer Ertman's jewelry in his
2 possession when he was arrested. But as far as the
3 writ -- the second writ, it was thoroughly examined
4 by the Court of Criminal Appeals. In fact, they
5 allowed oral arguments from Ms. Babcock, Mr. Donovan
6 and a representative from the Department of Justice
7 as well as myself. So it has been considered, Your
8 Honor.

9 MS. BABCOCK: It was not examined on
10 the merits. That's simply not true.

11 The Court of Criminal Appeals had a legal
12 issue before it, not the merits of the underlying
13 claim.

14 THE COURT: I certainly think I made
15 an alternative finding on the merits. And the
16 Supreme Court mentions there was determinations also
17 made on the merits.

18 MS. BABCOCK: Your Honor, you did not
19 examine the evidence. I can provide you with a
20 successive application. That evidence was never
21 examined. Not by this Court, not by any Court, not
22 by the Court of Criminal Appeals.

23 What I'm talking about is not evidence that
24 goes to whether or not Mr. Medellin is guilty or not
25 of the crime that he was convicted of, but evidence

1 that goes to whether or not the jury was provided
2 with sufficient mitigating evidence that would have
3 made the difference in their deliberations as to
4 whether or not he deserved to live or die.

5 If you recall, he was three months past his
6 18th birthday at the time of this crime. And what we
7 have discovered through an investigation that should
8 have been done by his lawyer, who was suspended from
9 the practice of law during part of the time he was
10 representing Mr. Medellin. In fact, he was trying to
11 get himself out of jail because he violated the terms
12 of his suspension while he was representing
13 Mr. Medellin. He was trying to prevent his own
14 arrest on a Bench Warrant. Because he was not able
15 to do his job. He did not present this mitigating
16 evidence that would have made the difference at the
17 penalty phase between life and death. That is
18 evidence that this Court has never had the
19 opportunity to examine because it was presented in a
20 petition that went to the Court of Criminal Appeals
21 that the Court of Criminal Appeals found was barred.

22 THE COURT: But by successive writ
23 procedural bar.

24 You may continue, but --

25 MS. BABCOCK: If I may.

1 THE COURT: I read your briefs. I'm
2 not inclined -- I think I've expressed that to you,
3 to defer any setting of the execution date and I am
4 not inclined to set it any further than the date
5 which the Court has chosen.

6 MS. BABCOCK: If I may mention to the
7 Court, I believe it has received a letter from
8 Senator Rodney Ellis. Senator Ellis has indicated
9 that he will be introducing legislation at the
10 earliest opportunity that would direct the Texas
11 Courts to provide the remedies mandated by the
12 International Court of Justice in the Avena case. He
13 says Texas must find a way to comply with these
14 obligations. It is now clear that is the right thing
15 to do because our nation has promised to do so
16 because of Texans living and visiting abroad and
17 because of the positive relations we seek to continue
18 with our neighbors and other countries. When I
19 travel abroad I expect no less as an American citizen
20 and as a Texan.

21 So Senator Ellis has indicated that he will
22 be introducing legislation. The Texas Legislature
23 does not reconvene until January, 2009. If
24 Mr. Medellin is given an execution date before that
25 time, the Texas Legislature will have no opportunity

1 to consider and to implement legislation that grants
2 the greatest respect to our promise as a nation to
3 our treaty partners to uphold these treaty
4 obligations. This is a case -- whose effects will be
5 felt far beyond this courtroom.

6 We are going to damage our relations with
7 our neighbors, with our allies and with our treaty
8 partners.

9 We have brought with us today a declaration
10 from Ambassador Jeffrey Davidow that I'll tender to
11 the Court. Ambassador Davidow is the Ambassador to
12 Mexico. He was not able to be with us today. But he
13 does give us a declaration in which he describes the
14 damage that would be caused by continued non
15 compliance with the judgment of the International
16 Court of Justice. And Ambassador Davidow doesn't
17 take a position on the death penalty. In fact, he
18 says I don't have a position. I tend to favor the
19 death penalty. But in this case the issues at stake
20 are too important. And we need to insure that we
21 comply with the promises that we made to our treaty
22 partners.

23 In addition, we have a case pending before
24 the Inter-American Commission on Human Rights. The
25 Inter-American Commission on Human Rights is a

1 commission that was established under the
2 organization of American States, which the United
3 States is a member of.

4 If Professor Cassel were allowed to testify
5 -- and I understand the Court has indicated it will
6 not hear testimony from our witnesses today. But if
7 Professor Cassel were permitted to testify he would
8 discuss the importance of the Inter-American
9 Commission as a monitor of human rights throughout
10 the western hemisphere. This is a commission that
11 the United States fully supports. In fact, it
12 provides about 60 percent of the Commission's
13 budget. The United States has participated in
14 proceedings in Mr. Medellin's own case before the
15 Inter-American Commission. A petition was filed on
16 Mr. Medellin's behalf in November 2006 in a timely
17 fashion because you have to exhaust your domestic
18 remedies before it can go to the Commission. We
19 filed the earliest possible opportunity. In fact, we
20 filed earlier according to the United States than we
21 should have. And that petition has actually been
22 heard by the Commission. There was a hearing that
23 was held on March 7th. The Commission is currently
24 considering whether to provide -- what
25 recommendations it will provide. It is considering

1 not only the evidence that I just mentioned that no
2 Court in Texas has had the opportunity to consider
3 because it was barred under 11.071 and it will be
4 making recommendations regarding that mitigating
5 evidence that we argue should have been presented in
6 this case and would have been presented if
7 Mr. Medellin had been granted his rights under
8 Article 36 of the Vienna Convention.

9 The recommendations of the Inter-American
10 Commission and the precautionary measures that have
11 been issued calling upon the United States to not set
12 an execution date in this case should be deferred to
13 by this Court out of comity, out of respect for this
14 international body that, again, the United States has
15 fully supported, was part of -- the United States
16 helped to create this body. It is the only human
17 rights body in the Americas that monitors the human
18 rights situation in the member states of the
19 organization of American States. And it's
20 recommendations will be particularly important to the
21 clemency board which is going to be hearing
22 Mr. Medellin's request for connotation and reprieve
23 in this matter. We anticipate that the Commission
24 may issue a report this fall. It is not likely to be
25 issued before the fall. And, therefore, if the Court

1 sets an August 5th execution date, again, it will cut
2 short Mr. Medellin's ability to receive the
3 recommendations and it will prevent the Board of
4 Pardons and Paroles from actually considering the
5 recommendations of the Inter-American Commission.

6 I'd like to allow Mr. Donovan, my
7 co-counsel, to make a few -- just a few brief
8 arguments about the implications of the Medellin
9 judgment for our relations throughout the
10 international community and to talk about the
11 obligations of Texas as a representative of this
12 country as a part of this country with regards to our
13 international obligations.

14 THE COURT: Mr. Donovan, I don't wish
15 to show you any disrespect. I do not intend to hear
16 any more argument. I have again read what you have
17 submitted to me in the last several days. I mean no
18 disrespect to any international treaty obligations
19 that the United States may have, but I intend to set
20 an execution date.

21 Nonetheless, with respect to this case I
22 believe that the case was tried, it has been
23 appealed. This issue has been raised. It has been
24 litigated and it is now time for this Court to set an
25 execution date. Whatever other remedies you wish to

1 pursue you may do so in the next 90 days.

2 MR. DONOVAN: Could I indulge the
3 Court to make just one simple point? I assure the
4 Court I will keep it brief.

5 THE COURT: Yes, sir, please.

6 MR. DONOVAN: Your Honor, this Court
7 is in a unique position. The way this case has come
8 to the Court is, of course, unusual. We're talking
9 about a judgment of the International Court of
10 Justice, talking about a recent judgment by the
11 United States Supreme Court. But a court -- this is
12 a very simple Court. The United States Supreme Court
13 has confirmed that everybody involved in the case
14 understands and agrees that the United States has an
15 international obligation to give Mr. Medellin review
16 and reconsideration. Quite apart from anything that
17 has come before.

18 Texas has twice stood before the United
19 States Supreme Court and said, yes, we have an
20 international or -- legal obligation to give these 51
21 Mexican Nationals review and reconsideration. As
22 Texas put it -- I couldn't have said it better
23 myself. It is beyond cavil that America should keep
24 her word.

25 Why did Texas say that? Because we are in

1 the position we are. That is with an obligation to
2 provide review and reconsideration because the United
3 States freely and voluntarily chose through its
4 elected representatives to adhere to the Vienna
5 Convention in the first place, the actual protocol in
6 the second place, and the ICJ Statute in the third
7 place.

8 So we have an obligation that we have taken
9 on ourselves. Through the lawyers from the
10 Department of State, from the Department of Justice.
11 Went to the Hague. Litigated with Mexico. They won
12 some. They lost some. And we got a judgment. This
13 country is committed to the rule of law. And now
14 every actor involved in the case, including Texas,
15 says, of course, we have a legal obligation, we
16 should comply with it. The proceedings until now
17 have only been about how we should comply with it.
18 The President of the United States, the office in
19 charge by the Constitution with protecting our
20 international relations, determined that it was in
21 the paramount interest of the United States to
22 comply. Why? Because of some of the issues --
23 considerations Ms. Babcock has outlined.
24 Fundamentally, protecting Americans abroad and making
25 sure that the rest of the world knows that when the

1 United States gives its word it keeps its word.

2 We are now in a situation where nobody has
3 said we should breach that obligation. Not the
4 Supreme Court, not the Congress, not the President,
5 not Texas. And yet Texas has come here and asked
6 this Court -- has asked this Court to be party to a
7 strategy by which it would place the United States in
8 breach of an international obligation that everybody
9 concedes we have.

10 With the far more respectful to the Court,
11 respectful to the Texas Legislature, respectful to
12 Congress, respectful to the President, respectful to
13 the American people would be to defer setting any
14 execution date until the political processes that the
15 United State Supreme Court said needs to go forward
16 have the opportunity to go forward.

17 With the greatest respect, Your Honor, you
18 are in a unique position here to keep faith with the
19 promises that have been made by the American people
20 to our treaty partners. And it is critically
21 important that the world know that with the United
22 States a deal is a deal. And if we go someplace and
23 say we will abide by the results, we will abide by
24 it. Nobody here, not the President, not Congress,
25 not the Supreme Court, not Texas is urging this Court

1 to breach this obligation.

2 And we respectfully respect that the Court
3 exercise its equitable power in order to assure that
4 we don't breach that obligation.

5 MS. WILSON: Could I say two things?

6 First of all, since we are introducing
7 witnesses, I would like to point out that Elizabeth
8 and Adolph Pena are here. They're the parents of the
9 16 year old girl that Jose Medellin raped and
10 killed. Also Randy Ertman and his wife are also
11 present. They're the parents of the 14 year old
12 girl, Jennifer, who was raped and killed in the same
13 offense.

14 Also, Mr. Medellin has had review and
15 consideration from every possible Court that any
16 United States citizen would have. We've given him
17 review.

18 MS. BABCOCK: Your Honor, the
19 government of Mexico through Ambassador Hernandez
20 Garcia, would like to make just a brief statement
21 explaining the position of the government of Mexico
22 with regards to this case.

23 THE COURT: Ms. Babcock, I indicated
24 that I would deny that.

25 I'm ready to proceed.

1 If you would please stand, Mr. Medellin.

2 MS. BABCOCK: If I may just make a
3 record, Your Honor, about the legal basis for asking
4 for the --

5 THE COURT: You may.

6 MS. BABCOCK: Under Article Six of the
7 Bilateral Convention between Mexico and the United
8 States provides the consular officials may within the
9 respective consular district address the authorities
10 National, State, Provincial or Municipal for the
11 purpose of protecting the nationals of the State by
12 which they were appointed in the enjoyment of rights
13 accruing by treaty or otherwise. Complaint may be
14 made for infraction of those rights. Failure to --
15 upon the part of the proper authorities to grant
16 redress or to a Court protection may justify
17 interposition through diplomatic channel. In the
18 absence of a diplomatic representative a Consul
19 General or the Consular Officer stationed at the
20 capitol may apply directly to the government of the
21 country. This is a treaty that does grant to Mexican
22 officials the right to address the authorities.

23 And as it states, complaint may be made for
24 infractions. So we're just asking -- he has a very
25 brief statement that he would like to make since this

1 is a case that could affect bilateral relations
2 between Mexico and the United States.

3 THE COURT: And, Ms. Babcock, again, I
4 did not intend to hold any type of hearing. I did
5 not need to hear any kind of argument. You all had
6 an opportunity to file whatever respective arguments
7 or briefs you wanted to before today. I simply
8 granted that accommodation.

9 MS. BABCOCK: I believe there is a
10 written statement.

11 MS. WILSON: Your Honor, I would
12 object to any statement by the governor -- by the
13 Government of Mexico. They're not a party to this
14 offense.

15 THE COURT: If you will please have a
16 seat, sir. I'm denying the request. You may tender
17 whatever and I will read it briefly, but I am
18 intending to set an execution date at this point.

19 MR. KUYKENDALL: May I simply make my
20 presence known on the record, Your Honor?

21 My name is Greg Kuykendall. I represent
22 the Government of Mexico. And just so the Court can
23 see from there this literally is all we had prepared
24 for Ambassador Hernandez who came from Mexico City
25 today to read. It really wouldn't take long.

1 THE COURT: I appreciate that. But,
2 once again, I have a jury about to begin on an
3 aggravated sexual assault of a young child case. I
4 did not intend to hold a lengthy hearing. I intend
5 to set an execution date.

6 Thank you.

7 You may stand, Mr. Medellin.

8 Again, this is Cause Number 675430, State
9 of Texas versus Jose Ernesto Medellin.

10 You, Jose Ernesto Medellin, were indicted
11 by the Grand Jury of Harris County, Texas charging
12 you with the offense of capital murder in Cause
13 Number 675430.

14 On September 16, 1994, a jury in this Court
15 returned a verdict finding you guilty of the offense
16 of capital murder.

17 On September 20, 1994, the same jury in
18 this Court returned answers to the special issues
19 submitted to the jury at punishment pursuant to
20 Article 37.071 of the Texas Code of Criminal
21 Procedure. And this Court in accordance with the
22 jury's findings at punishment assessed your
23 punishment at death.

24 The judgment of this Court was reviewed by
25 the Texas Court of Criminal Appeals. And the Court

1 of Criminal Appeals affirmed the judgment of this
2 Court in all things.

3 Subsequently, the Court of Criminal Appeals
4 denied your initial application for Writ of Habeas
5 Corpus in Cause Number 675430-A. This Court now
6 proceeds with the judgment and sentence in your case
7 and now enters the following Order:

8 It is hereby Ordered by this Court that
9 you, Jose Ernest Medellin, having been adjudged
10 guilty of capital murder and having been assessed
11 punishment at death in accordance with the findings
12 of the jury and the judgment of this Court, shall at
13 some time after the hour of 6:00 o'clock PM on the
14 5th day of August, 2008, be put to death by an
15 executioner designated by the Director of the
16 Institutional Division of the Texas Department of
17 Criminal Justice who shall cause a substance or
18 substances in a lethal quantity to be intravenously
19 injected into your body sufficient to cause your
20 death and until your death. Such execution procedure
21 to be determined and supervised by the Director of
22 the Institutional Division of the Texas Department of
23 Criminal Justice.

24 It is Ordered that the clerk of this Court
25 shall issue a death warrant in accordance with this

1 sentence to the Director of the Institutional
2 Division of the Texas Department of Criminal Justice
3 and shall deliver such warrant to the Sheriff of
4 Harris County, Texas to be delivered by him to the
5 Director of the Institutional Division of the Texas
6 Department of Criminal Justice together with the
7 defendant, Jose Ernesto Medellin.

8 The defendant, Jose Ernesto Medellin, is
9 hereby remanded to the custody of the Sheriff of
10 Harris County to await transfer to Huntsville, Texas
11 and the execution of this sentence of death.

12 Signed Caprice Cospers, Judge, 339th
13 District Court.

14 This hearing is concluded.

15 (Court adjourned.)
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25

1 THE STATE OF TEXAS) (

2 COUNTY OF HARRIS) (

3 I, WONG C. LEE, Deputy Court Reporter in and
4 for the 339th District Court of Harris County, State
5 of Texas, do hereby certify that the above and
6 foregoing contains a true and correct transcription
7 of all portions of evidence and other proceedings
8 requested in writing by counsel for parties to be
9 included in this volume of the Reporter's Record, in
10 the above-styled and numbered cause, all of which
11 occurred in open Court or in chambers and were
12 reported by me.

13 I further certify that this Reporter's Record
14 of the proceedings truly and correctly reflects the
15 exhibits, if any, admitted by the respective parties.

16 I further certify that the total cost for the
17 preparation of this Reporter's Record is \$165.00 and
18 was paid/will be paid by defendant.

19 WITNESS MY HAND THIS THE 26th day of May,
20 2008. Wong C. Lee

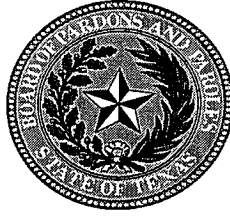
21 WONG C. LEE, CSR #925

22 Expires: 12/31/2008

23 Certified Shorthand Reporter

24 17702 Ridge Top Drive

25 Houston, Texas 77090



State of Texas
BOARD OF PARDONS AND PAROLES

Bettie L. Wells
General Counsel

August 4, 2008

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**Re: Application to Board of Pardons and Paroles for Clemency
Medellin, Jose Ernesto #999134**

Ms. Babcock:

The Members of the Texas Board of Pardons and Paroles have completed their consideration of the above offender's application requesting Commutation of Death Sentence to a Lesser Penalty and a 240-day Reprieve.

After a full and careful review of the application and any other information filed with the application, a majority of the Board has decided not to recommend Commutation of Death Sentence to a Lesser Penalty and a 240-day Reprieve.

Enclosed please find a summary reflecting each Member's decision.

Sincerely,

A handwritten signature in cursive script, appearing to read "MR".

Maria Ramirez
Legal Support Director

Encl: voting summary

MR/lr

CC 25



State of Texas
BOARD OF PARDONS AND PAROLES

Bettie L. Wells
 General Counsel

BOARD VOTING: MEDELLIN, JOSE ERNESTO #999134

Board Member	Not Recommend Reprieve	Not Recommend Commutation
Jose Aliseda	08/04/2008	08/04/2008
Charles Aycock	08/04/2008	08/04/2008
Conrith Davis	08/04/2008	08/04/2008
Jackie DeNoyelles	08/04/2008	08/04/2008
Barbara Lorraine	08/04/2008	08/04/2008
Juanita Gonzalez	08/04/2008	08/04/2008
Rissie Owens	08/04/2008	08/04/2008
TOTAL VOTES	7	7