

REAR ADMIRAL DON GUTER, USN (RET.)
REAR ADMIRAL JOHN D. HUTSON, USN (RET.)
BRIGADIER GENERAL JAMES P. CULLEN, USA (RET.)
BRIGADIER GENERAL DAVID R. IRVINE, USA (RET.)
BRIGADIER GENERAL MURRAY G. SAGSVEEN, USA (RET.)
COLONEL LAWRENCE B. WILKERSON, USA (RET.)]

June 7, 2011

Governor Rick Perry
Office of the Governor
P.O. Box 12428
Austin, Texas 78711-2428
Fax: (512) 463-1849

Texas Board of Pardons and Paroles
Attn: Executive Clemency Section
8610 Shoal Creek Blvd.
Austin, Texas 78757
Fax (512) 467-0945

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

We are writing to request that you grant a temporary reprieve in the case of Humberto Leal García, whose clemency petition is currently before you. We take no position on the merits of Mr. Leal's petition; however, we strongly believe that a reprieve is necessary to permit Congress to enact legislation that would give domestic legal effect to U.S. obligations under the Vienna Convention on Consular Relations (Vienna Convention) to provide for judicial review of certain claims that this obligation has not been satisfied. International consular notification and access obligations are essential to ensuring humane, non-discriminatory treatment for both non-citizens in U.S. custody and U.S. citizens in the custody of foreign governments. As retired military leaders, we understand that the preservation of consular access protections is especially important for U.S. military personnel, who when serving our country overseas are at greater risk of being arrested by a foreign government.

U.S. military personnel are at risk for being taken into foreign custody after accidental incursions into foreign territories, while on leave or furlough, or while stationed abroad pursuant to, or in absence of a Status of Forces Agreement (SOFA).¹ When American military personnel or their family members find themselves in foreign custody, consular access is indispensable in allowing the U.S. government to fulfill its duty to ensure fair and humane treatment for such individuals.

For example, in 2001 when a U.S. Navy surveillance plane made an emergency landing in Chinese territory after colliding with a Chinese jet, the State Department cited the Vienna Convention and other consular treaties in demanding immediate access to the plane's crew. Chinese authorities responded by granting consular visits to the crew members, who were detained in China for 11 days.² Moreover, military regulations implementing SOFA requirements anticipate that consular officers will assist the designated commanding officer in key areas such as protesting inhumane treatment and ensuring that the individual has access to an adequate defense.³

The strength of consular access protections for U.S. military personnel abroad is dependent on the United States' reciprocal commitment to fulfill its obligations at home.⁴ But given the Supreme Court's 2008 decision in *Medellin v. Texas*, the executive branch is unable, without further action by Congress, to

¹ R. Chuck Mason, *Status of Forces Agreement (SOFA): What Is It, and How Has It Been Utilized?* Congressional Research Service, June 18, 2009.

² China declines U.S. search offer, April 3, 2001, <http://edition.cnn.com/2001/WORLD/asiapcf/east/04/02/china.aircollision.08/>.

³ See generally Army Regulation 27-50, Status of Forces Policies, Procedures, and Information (15 December 1989), available at www.army.mil/usapa/epubs/pdf/r27_50.pdf.

⁴ See John Bellinger, Lawlessness North of the Border, *New York Times*, July 18, 2009.

enforce certain consular protections under the Vienna Convention with regards to U.S. state law enforcement personnel.⁵ In light of the *Medellin* decision, additional legislation is needed to ensure the integrity of the consular notification and access rights upon which U.S. service members rely.

Legislation to ensure review and appropriate relief if needed when a foreign national faces or is sentenced to death, while relatively limited in scope, would improve foreign governments' confidence in the United States' ability to uphold its consular access obligations, making it more likely that such governments will grant this access to Americans in their custody.

Improving U.S. enforcement of its consular notification and access legal obligations will help protect American citizens detained abroad, including U.S. military personnel and their families stationed overseas. We urge you to support those who are serving our country overseas by granting a reprieve in this case while Congress acts to meet our international responsibilities.

Sincerely,

Rear Admiral Don Guter, USN (Ret.)

Rear Admiral John D. Hutson, USN (Ret.)

Brigadier General James P. Cullen, USA (Ret.)

Brigadier General David R. Irvine, USA (Ret.)

Brigadier General Murray G. Sagsveen, USA (Ret.)

Colonel Lawrence B. Wilkerson, USA (Ret.)

⁵ President George W. Bush, Memorandum for the Attorney General (Feb. 28, 2005).