

I. APPLICATION INSTITUTING PROCEEDINGS

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To: Mr. Philippe Couvreur,  
Registrar,  
International Court of Justice,  
Peace Palace,  
The Hague,  
The Netherlands,

Sir:

On behalf of the United Mexican States and in accordance with Article 40, paragraph 1, of the Statute of the Court and Article 38 of the Rules of Court, I respectfully submit this Application instituting proceedings in the name of the Government of the United Mexican States against the Government of the United States of America for violations of the Vienna Convention on Consular Relations (done on 24 April 1963) (the “Vienna Convention”). The Court has jurisdiction pursuant to Article I of the Vienna Convention’s Optional Protocol concerning the Compulsory Settlement of Disputes.

## I. PRELIMINARY STATEMENT

1. Competent authorities of the United States — namely, officials of the States of California, Texas, Illinois, Arizona, Arkansas, Florida, Nevada, Ohio, Oklahoma, and Oregon — have arrested, detained, tried, convicted, and sentenced to death no fewer than 54 Mexican nationals, who are currently under sentence of death in those states, following proceedings in which competent authorities failed to comply with their obligations under Article 36 (1) (b) of the Vienna Convention.

2. These violations prevented Mexico from exercising its rights and performing its consular functions pursuant to Articles 5 and 36, respectively, of the Vienna Convention. Mexico thereby has suffered injuries in its own right and in the form of injuries to its nationals.

3. The aggrieved Mexican nationals on death row are in the process of challenging their convictions under United States municipal law in an effort to vindicate their Vienna Convention rights. In numerous cases, Mexico has intervened in municipal judicial proceedings on behalf of its wronged nationals, initiated original actions in United States courts, and repeatedly lodged diplomatic protests with the United States Government in an effort to vindicate its rights and those of its nationals.

4. Notwithstanding these efforts, competent authorities of the United States Government at both the state and federal levels consistently have refused to provide relief adequate to redress the violations enumerated in this Application or to ensure Mexico that the pattern and practice of Convention violations by competent authorities of the United States will cease.

5. The unwillingness of the United States to take steps sufficient “to enable full effect to be given to the purposes for which the rights accorded under [Article 36 (1)] are intended” (Vienna Convention, Article 36 (2)), compels Mexico to bring this Application. Mexico invokes this Court’s jurisdiction to establish definitively its rights and those of its nationals under Article 36 of the Vienna Convention, as authoritatively interpreted by this Court in *LaGrand (Germany v. United States of America)*, *Merits, Judgment of 27 June 2001*. It has become apparent that the United States and Mexico hold irreconcilable views regarding the interpretation and the application

of Article 36. Mexico and the United States disagree both on the scope and the nature of the rights conferred by Article 36, including the meaning of the phrase, “without delay”.

Furthermore, Mexico and the United States disagree on the remedy that should be provided in the event that a Mexican national’s rights are violated under the Convention, and he is nonetheless sentenced to death.

6. Consistent with the well-established principle of public international law on remedies, Mexico respectfully requests that the Court order *restitutio in integrum*, “reestablish[ment] of the situation which would, in all probability, have existed if [the violations] had not been committed” (*Factory at Chorzów (Claim for Indemnity), Merits, Judgment of 13 September 1928, P.C.I.J., Series A, No. 17*, p. 47). Mexico further requests that the Court order prospective relief necessary and sufficient to ensure that the pattern and practice of violations of Article 36 of the Vienna Convention by political subdivisions of the United States ceases.

## II. THE JURISDICTION OF THE COURT

7. Under Article 36, paragraph 1, of the Statute of the Court, “[t]he jurisdiction of the Court comprises . . . all matters specially provided for . . . in treaties and conventions in force”.

8. As Members of the United Nations, the United Mexican States and the United States are parties to the Statute. They are also parties to the Vienna Convention and its Optional Protocol concerning the Compulsory Settlement of Disputes. Article I of the Optional Protocol provides:

“Disputes arising out of the interpretation or application of the Convention shall lie within the compulsory jurisdiction of the International Court of Justice and may accordingly be brought before the Court by an application made by any party to the dispute being a Party to the present Protocol.”

9. Upon the filing of the present application, the matters in dispute between Mexico and the United States concerning the Vienna Convention therefore lie within the compulsory jurisdiction of the Court.

## III. FACTS

### A. Article 36 of the Vienna Convention on Consular Relations

10. The States that negotiated and adopted the Vienna Convention clearly intended to “promot[e] friendly relations among nations” (Vienna Convention, preamble). They “believ[ed] that an international convention on consular relations, privileges and immunities would . . . contribute to the development of friendly relations among nations, irrespective of their differing constitutional and social systems” (*ibid.*).

11. Article 36 of the Convention “establishes an interrelated régime designed to facilitate the implementation of the system of consular protection” (*LaGrand, Judgment of 27 June 2001*, para. 74).

12. Article 36 (1) (b) “spells out the modalities of consular notification” established by the Vienna Convention to enable the effective exercise of the rights it confers (*LaGrand, Judgment of*

27 June 2001, para. 74). It mandates that authorities of the receiving State inform any foreign national of the sending State “in prison, custody or detention” (Vienna Convention, Art. 36 (1) (c)), “without delay of his rights” to contact his consulate (*ibid.*, Art. 36 (1) (b)). Then,

“[i]f the [detained national] so requests, the competent authorities of the receiving State, shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner” (*ibid.*)

The competent authorities are also obliged to forward any communications from the detained national to the consular post “without delay” (*ibid.*).

13. In the *LaGrand* case, the Court confirmed that the Vienna Convention “creates individual rights” for nationals of the sending State party within the jurisdiction of another State party. Those rights “may be invoked in this Court by the national State of [a] detained [citizen of that State]” (*Judgment of 27 June 2001*, para. 77).

14. If the receiving State fails to comply with its obligations under Article 36 (1) (b), a detained foreign national seldom will be aware of or in a position to exercise his right to contact his consular officer. The receiving State’s failure also makes it difficult, if not impossible, for the sending State’s consulate to learn “without delay” of the detention of one of its nationals. Ignorance of the detention, in turn, prevents the sending State’s consular officers from exercising their rights and performing their consular functions pursuant to Article 36, subparagraphs (1) (a) and 1 (c), of the Convention, namely, to visit, communicate with, arrange legal representation for, and otherwise assist the detained national (*LaGrand, Judgment of 27 June 2001*, para. 74).

15. Precisely for this reason, in the case concerning *United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran)*, the United States emphasized that

“communication is so essential to the exercise of consular functions that its preclusion would render meaningless the entire establishment of consular relations . . . Article 36 establishes rights not only for the consular officer but, perhaps more importantly, for the nationals of the sending State who are assured access to consular officers and through them to others. [A] principal function of the consular officer is to provide varying kinds of assistance to nationals of the sending State, and for this reason the channel of communication between consular officers and nationals must at all times remain open.” (*I.C.J. Pleadings 1980*, p. 174.)

16. Because prompt communication between the sending State’s consulate and its nationals is essential to the object and purpose of the Vienna Convention, this Court held in the *LaGrand* case that if the receiving State fails to inform a detained foreign national of his rights under the Vienna Convention “[i]t is immaterial . . . whether [that national] would have sought consular assistance from [the sending State], whether [the sending State] would have rendered such assistance, or whether a different verdict would have been rendered” (*LaGrand, Judgment of 27 June 2001*, para. 74). To establish a violation, it suffices that the sending State party or its nationals “were in effect prevented” from exercising their rights “had they so chosen” (*ibid.*).

17. In the *LaGrand* case, the Court further affirmed the express command in the Vienna Convention that while the rights created by Article 36 “shall be exercised in conformity with the laws and regulations of the receiving State”, those laws “must enable full effect to be given to the purposes for which the rights accorded under [Article 36 (1)] are intended” (*LaGrand, Judgment of*

27 June 2001, paras. 90-91). A receiving State violates the Convention when it gives effect to a law or regulation that

“does not allow [a detained foreign national of the sending State] to challenge a conviction and sentence by claiming, in reliance on Article 36, paragraph 1, of the Convention, that the competent national authorities failed to comply with their obligation to provide the requisite consular information ‘without delay’, thus preventing the person from seeking and obtaining consular assistance from the sending State . . .” (*ibid.*, para. 90).

Equally, a receiving State violates the Convention when it gives effect to a law or regulation that prevents the municipal courts of that State “from attaching any significance to the fact [of] the violation” (*ibid.*, para. 91). The Court therefore must, and does, have the authority to hold, “[i]f necessary, that a domestic law has been the cause of th[e] violation” (*ibid.*, para. 125).

18. The rights conferred by Article 36 of the Vienna Convention are not rights without remedies. Article 36 rights must be enforced or, failing that, vindicated by law. If the receiving State fails to comply with Article 36, and the sending State’s national has been subjected to “prolonged detention or convicted and sentenced to severe penalties”, “an apology [does] not suffice”; the receiving State must “allow the review and reconsideration of the conviction and sentence by taking account of the violation of the rights set forth in the Convention” (*ibid.*, para. 125).

19. The *LaGrand* case established the Article 36 rights of the sending State and its nationals in the context of two German nationals sentenced to death by competent authorities of the United States who failed to comply with their Vienna Convention obligations. The President of this Court emphasized, however, that “there can be no question of applying an *a contrario* interpretation” to “the position of nationals of other countries” (*LaGrand (Germany v. United States of America), Merits, Judgment of 27 June 2001*, declaration of President Guillaume).

#### *B. Mexico’s Efforts to Provide Consular Assistance to Its Nationals*

20. In 1942, more than 20 years before the Vienna Convention entered into force, Mexico and the United States concluded the Consular Convention between the United Mexican States and the United States of America (done on 12 August 1942), a bilateral treaty that formally established consular relations between the two States. They did so because of their geographic proximity and the frequent interstate travel of their respective citizens.

21. Since then, Mexico has established 45 Mexican consulates throughout the United States, primarily in those areas with substantial Mexican populations. In 2002, Mexico enacted the new Governing Law of the Mexican Foreign Service and corresponding regulations. These establish a comprehensive legal framework pursuant to which Mexican consular officials must intervene directly to protect the rights of Mexican nationals. Specifically:

- Article 2 (II) of the Governing Law obliges Mexican foreign service officers to protect the dignity and fundamental rights of Mexicans abroad in accordance with international law.
- Article 44 (I) mandates that consular mission chiefs protect the interests of Mexico and the rights of its nationals. It also imposes an obligation on each consulate to notify the Foreign Ministry of Mexico of the plight of Mexican nationals abroad.

- Article 65 of the regulations promulgated under the Governing Law establishes the “primary obligation” of Mexican foreign service officers to protect the rights of Mexican nationals abroad.
- Article 65 of the regulations also requires Mexican consular officials to assist Mexican nationals in their relations with local authorities, to advise them of their rights and obligations in the foreign State, to visit detainees, and to provide representation for those unable to defend their interests personally.

These laws and regulations demonstrate the vital importance that Mexico attaches to protecting its nationals abroad.

22. In 1981, in an effort to fortify its system of consular protection, Mexico’s Foreign Ministry created a special category of consular officers devoted exclusively to the protection of the rights of Mexican nationals abroad. In 1986, the Ministry established the Program of Legal Consultation and Defense for Mexicans Abroad. This Program trains a select cadre of consular officers in American law for the express purpose of assisting attorneys representing Mexican nationals in United States legal proceedings.

23. Consular assistance takes a variety of forms. It includes providing advice to Mexican nationals about the right not to give any statement without an attorney being present, as well as the legal differences between Mexico and the United States: for example, about the advisability of accepting or rejecting a plea agreement in light of those differences. Mexican consular officers may also, among other functions, provide interpreters; secure legal counsel for defendants unable to afford representation; communicate with family members, friends, and others who may be able to offer assistance or information vital to a national’s defence; supply records, documents, and other evidence for the national’s defence; identify and transport family members and other witnesses to the United States, enabling them to offer frequently crucial testimony; attend arraignments, trials, and other legal proceedings; and collect and present mitigating evidence at the sentencing phase of criminal trials— a consular function that literally can make the difference between life and death for Mexican nationals prosecuted for capital crimes.

24. Over the last several decades, Mexico’s consular officers consistently have devoted time and resources to protecting Mexican nationals by these and other means. Particularly in capital cases, given the gravity of the penalty at stake and the crucial need for competent defence counsel, Mexico instructs its consular officers to monitor and support counsel’s efforts, to communicate regularly with the defendant and his relatives, and to attend judicial proceedings. Often, Mexican consular officers provide funds and logistical support to assist defence counsel in capital cases by helping to gather evidence, thoroughly investigating the facts, and obtaining expert testimony. If necessary, Mexico attempts to secure more qualified defence counsel for its nationals. Mexico’s established policy, in a word, is to provide extensive, meaningful assistance to its nationals prosecuted for capital offences.

25. Then, in September 2000, Mexico formed the Mexican Capital Legal Assistance Program, which at present remains the sole capital legal assistance programme established by a foreign Government in the United States. The Program strives to enhance the quality of legal representation available to Mexican capital defendants, to improve the ability of Mexican consular officers to assist them, and to increase awareness of and compliance with Article 36 of the Vienna Convention.

26. Since its inception, the Program's attorneys have assisted with approximately 110 cases. They have played a decisive role in preventing the imposition of the death penalty in 27 cases; 80 others remain pending. Through the Program, Mexico has filed *amicus curiae* briefs in 13 cases and offered important legal assistance to defence counsel in 49 other cases. Often, Program attorneys have raised claims and emphasized issues of international law that would otherwise have been overlooked by defence counsel inexperienced in representing foreign nationals.

27. In Mexico's experience, however, its assistance often comes too late because local authorities of the constituent states of the United States have neglected to inform Mexican nationals of their consular rights. If and when Mexican consulates learn of a detention and prosecution, many forms of assistance that could have been rendered at an earlier stage have been foreclosed by the operation of United States municipal law. By contrast, the prompt notification mandated by Article 36 (1) (b) of the Vienna Convention would enable consular officers to assist capital defendants far more effectively, and often, to prevent their executions.

### *C. Previous Efforts to Obtain Relief*

28. Prior to filing this Application, because Mexico appreciates the importance the United States attaches to respect for its municipal law and federal governmental framework, Mexico sought repeatedly to establish its rights and to secure appropriate relief for its nationals in other fora, including United States courts and executive branches. It also sought relief before the Inter-American Court of Human Rights. None of these efforts has been availing.

#### *1. Efforts by Mexico and its nationals before judicial authorities of the United States*

29. Mexican nationals informed "without delay" of their Vienna Convention rights by competent state authorities can, and in Mexico's experience, do, assert them. But far more frequently, state and local authorities neglect to inform Mexican nationals of their rights before action prejudicial to those nationals takes place. Several doctrines of United States municipal law then prevent Mexican nationals from obtaining meaningful relief based on violations of the Convention.

30. Furthermore, Mexico has been deprived of its right to exercise diplomatic protection on behalf of its nationals as shown below. The rule of procedural default, the need to show prejudice and the interpretation of the Eleventh Amendment of the United States Constitution followed by the United States tribunals have rendered all actions before United States federal courts ineffective. As international law requires, the exercise of diplomatic protection by a State must be preceded by the exhaustion of local remedies. Mexican nationals sentenced to death must exhaust every single local remedy available under United States law. However, the time allotted between the final ruling of the United States Supreme Court on a given case and the execution is so minimal, sometimes only hours, that, at the end, the Government of Mexico is prevented from exercising its diplomatic protection.

#### *(a) Actions by Mexican nationals in state courts*

31. Mexican nationals have been unsuccessful in vindicating their Vienna Convention rights in state court proceedings.

32. *First*, the doctrine of "procedural default", with which the Court is familiar from the *LaGrand* case, generally applies in both state and federal proceedings. It precludes a defendant

from raising claims not raised in earlier proceedings, typically at trial. To defeat this bar, a defendant must establish cause for not raising the claim in a timely fashion. But state courts generally refuse to accept the failure of competent authorities of the United States to inform foreign nationals of their Vienna Convention rights as valid cause. (See, e.g., *State v. Reyes-Camarena*, 7 P. 3d 522, 524-526 (Or. 2000) (*en banc*) (denying Vienna Convention claim made by the capital defendant, a Mexican national, on direct appeal because, *inter alia*, he failed to raise that claim in the trial court).)

33. *Second*, even if a Mexican national raises his Vienna Convention claim in state court, thereby preserving it for appeal (and, potentially, a collateral challenge), state courts generally decline to provide a remedy for Convention violations on the ground that the Convention does not create “fundamental” rights on a par with constitutional rights (e.g., the right to counsel) that would justify judicial relief. For example, state courts have refused to extend to violations of Article 36 the constitutional rule of United States municipal law that excludes evidence obtained in violation of a defendant’s rights under *Miranda v. Arizona*, 384 U.S. 436 (1966). (See, e.g., *State v. Chavez*, 19 P. 2d 923, 925 (Or. 2001) (holding that the exclusionary rule does not apply to Vienna Convention violations); *Zavala v. State*, 739 N.E. 2d 135, 138-143 (Ind. 2001) (same).)

34. Because state courts have declined to equate Article 36 rights with “fundamental rights”, Mexican nationals generally cannot obtain any meaningful judicial relief by asserting violations of the Vienna Convention — even assuming that the state courts do not find their claims procedurally barred. And despite this Court’s decision in the *LaGrand* case, state courts have continued to apply the doctrine of procedural default to preclude judicial consideration of Vienna Convention claims on the merits. (See, e.g., *Valdez v. State*, 46 P. 3d 703, 707-710 (Okla. Crim. App. 2002) (refusing to grant relief based on Vienna Convention violations despite determining that trial and appellate counsel had been constitutionally deficient in failing to present certain mitigating evidence, which the efforts of Mexican consular officials had uncovered).)

35. Hence, in direct contravention of the teaching of the *LaGrand* case, state courts in the United States have penalized the Mexican national for the failure of United States authorities to timely advise the national of his or her rights under the Vienna Convention.

(b) *Actions by Mexican nationals in federal courts*

36. Federal courts continue, notwithstanding the *LaGrand* case, to apply the doctrine of procedural default to preclude consideration of Vienna Convention claims. They also decline to recognize that Article 36 confers individual rights on foreign nationals. Hence, Mexican nationals have been unable to vindicate their Article 36 rights in federal courts in the United States.

37. Because state authorities have consistently refused to afford relief to Mexican nationals based on Vienna Convention violations, many of those nationals have sought to vindicate their rights by a *habeas corpus* proceeding in United States federal courts. *Habeas corpus* jurisdiction gives the federal courts authority to consider, employing a highly circumscribed standard of review deferential to state court findings of fact, whether a person has been deprived of liberty in violation of the Constitution or laws of the United States, including treaties, which the United States Constitution makes the “supreme Law of the Land” (US Const., Art. 6, cl. 2).

38. The United States Supreme Court has held that the doctrine of procedural default applies to federal *habeas corpus* proceedings, foreclosing review of the merits of a petitioner’s claim unless he can show both “cause” for failure to raise his claim earlier and “prejudice” resulting from



that failure. (See *Coleman v. Thompson*, 501 U.S. 722, 731-732 (1991); *Wainwright v. Sykes*, 433 U.S. 72, 87 (1977).) A foreign national held to have procedurally defaulted his Vienna Convention claim under state law cannot raise that claim collaterally by a *habeas corpus* proceeding in federal court. (See, e.g., *Breard v. Pruett*, 134 F. 3d 615 (4th Cir.), *cert. denied*, 523 U.S. 371 (1998).)

39. An attorney's failure to raise the Vienna Convention in state court generally does not constitute valid cause because, as one federal court explained, "a reasonably diligent search" by defence counsel for a foreign national would "reveal[] the existence and applicability (if any) of the Vienna Convention. Treaties are one of the first sources that [sh]ould be consulted by a reasonably diligent counsel representing a foreign national." (*Murphy v. Netherland*, 116 F. 3d 97, 100 (4th Cir. 1997).)

40. Hence, in direct contravention to the teaching of the *LaGrand* case, the federal courts, like their state counterparts, have penalized the Mexican national for the failure of United States authorities to timely advise the national of his or her rights under the Vienna Convention. (See *LaGrand, Judgment of 27 June 2001*, para. 60; see also *ibid.*, para. 91.)

41. In addition, in non-capital prosecutions, generally involving federal narcotics or immigration laws, the federal courts of appeal consistently have held either that the Vienna Convention does not confer individual rights on foreign nationals in the first place (see, e.g., *United States v. Jimenez-Nava*, 243 F. 3d 192 (5th Cir. 2001)), or that even if it does, the appropriate remedy for a violation of those rights is not judicial, for example, the exclusion of evidence or the dismissal of an indictment. (See *Jimenez-Nava*, 243 F. 3d at 198-200; *United States v. Minjares-Alvarez*, 264 F. 3d 980 (10th Cir. 2001); *United States v. Lombera-Camorlinga*, 206 F. 3d 882 (9th Cir. 2000) (*en banc*); *United States v. Santos*, 235 F. 3d 1105 (8th Cir. 2000); *United States v. Chapparro-Alcantara*, 226 F. 3d 616 (7th Cir. 2000).)

42. Many of these courts, deferring to the position of the United States Department of State, have opined that the sole remedies for Vienna Convention violations consist of diplomatic and political measures, i.e., "investigating reports of violations and apologizing to foreign governments and working with domestic law enforcement to prevent future violations when necessary" (*Lombera-Camorlinga*, 206 F. 3d at 887). Indeed, as one commentator has observed, the federal "Courts of Appeals have continued to rely on pre-*LaGrand* interpretations by the Department of State that the 'Vienna Convention does not create individual rights'" (Joan Fitzpatrick, "The Unreality of International Law in the United States and the *LaGrand* Case", 27 *Yale J. Int'l L.* 427, 429 (2002)). Of eight decisions rendered by United States federal courts of appeal after the *LaGrand* case and before March 2002, all involving "clear and uncontested violations of Article 36 (1) (b) of the Vienna Convention", not one provided any remedy to the defendant foreign national (*ibid.* at 428). Hence, in these cases too, foreign nationals have been unable to vindicate their Vienna Convention rights.

(c) *Actions by Mexico in United States federal courts*

43. The United States Constitution makes federal law, including treaties, the supreme law of the land. (See US Const., Art. 6, cl. 2.) In the United States, the federal courts ensure the ultimate vindication of federal law. Hence, to prevent the execution of a Mexican national as a result of proceedings that violated the Vienna Convention, Mexico also sought relief from the competent federal courts. (*United Mexican States v. Woods*, 126 F. 3d 1220 (9th Cir. 1997).) The federal courts rejected Mexico's request for relief.

44. In *Woods*, acting in its own right, Mexico filed suit in the competent federal trial court for an injunction to prevent the imminent execution of Ramon Martinez-Villareal, who, the United States had conceded, had been convicted and sentenced to death in Arizona criminal proceedings that did not comport with the Vienna Convention. Mexico relied on the doctrine of *Ex Parte Young*. (See 209 U.S. 123 (1908).) Generally, the Eleventh Amendment of the United States Constitution bars federal courts from awarding retrospective relief against state officials for violations of federal law. (See *Woods*, 126 F. 3d at 1222; see also *Monaco v. Mississippi*, 292 U.S. 313, 330 (1934).) Under the doctrine of *Ex Parte Young*, however, the federal courts are authorized to provide prospective relief for such violations, as well as relief from the continuing consequences of past violations. (See *Milliken v. Bradley*, 433 U.S. 267 (1977).)

45. The United States District Court for the District of Arizona dismissed Mexico's suit, and the United States Court of Appeals for the Ninth Circuit affirmed. The court held that a suit to prevent an execution that had not yet occurred was actually a suit for retrospective relief and, in addition, did not qualify as a suit to prevent a "continuing violation of federal or international law" (*Woods*, 126 F. 3d at 1223; accord *Paraguay v. Allen*, 134 F. 3d 622 (4th Cir.) (affirming the district court's dismissal of action by Paraguay alleging violations of its Vienna Convention rights on the ground that a suit to prevent an imminent execution did not constitute a suit to prevent a "continuing" or "ongoing" violation sufficient to defeat Eleventh Amendment sovereign immunity), *cert. denied sub nom Breard v. Greene*, 523 U.S. 371 (1998); see also *Consulate General of Mexico v. Phillips*, 17 F. Supp. 2d 1318 (S.D. Fl. 1998)). Hence, the federal courts have so far held that a foreign State acting as plaintiff in its own right cannot vindicate its rights by seeking to enjoin an execution of one of its nationals who was convicted and sentenced in violation of the United States obligations under the Vienna Convention.

46. In *Breard v. Greene* (523 U.S. 371 (1998)), which raised substantially similar claims brought by the Government of Paraguay, the Supreme Court declined to exercise its discretion to review the court of appeals holding that a foreign State cannot seek to enjoin an imminent execution of one of its nationals. But the Court said in *dicta* that a state's violation of Article 36 of the Vienna Convention would not constitute a "continuing violation" sufficient to defeat Eleventh Amendment immunity. (*Ibid.*, at 377; see also *Federal Republic of Germany v. United States*, 526 U.S. 111, 112 (1999) (declining to exercise original jurisdiction over Germany's claim against Arizona based on Vienna Convention violations because, *inter alia*, it would be "in probable contravention of Eleventh Amendment principles").) The Supreme Court also declined to exercise its discretion to review the appellate court's decision in *Woods*. (See 523 U.S. 1075 (1998).)

47. The Vienna Convention mandates that the laws of each State party enable "full effect to be given to the purposes for which" the rights set forth in Article 36 of the Vienna Convention "are intended". (Vienna Convention, Art. 36 (2).) Neither Mexico nor its consular officers, however, can gain access to a federal judicial forum in which to seek to vindicate their rights and those of their nationals because of a constitutional municipal-law doctrine.

## 2. *Diplomatic overtures to the United States Executive Branch and pleas for clemency to state executives*

48. As noted, many United States federal courts have held that remedies for Vienna Convention violations must be pursued by foreign States through diplomatic and political, not judicial, channels. (See, e.g., *Lombera Camorlinga*, 206 F. 3d at 887.) Mexico has pursued those channels, engaging in numerous diplomatic efforts in an effort to enlist the assistance of the Executive Branch to remedy violations of the Vienna Convention and to ensure their non-repetition.

49. Over the last six years, Mexico has filed diplomatic notes in at least 20 capital cases involving Mexican nationals. In each note, Mexico reiterated the vital nature of the rights to consular notification and access, expressed its view that violations of Article 36 are incompatible with international law, and requested that those views be conveyed to local authorities.

50. One of the earliest capital cases that resulted in an execution despite Mexico's protests was that of Irineo Tristan Montoya, who was executed by the State of Texas on 18 June 1997. Before Mr. Montoya's execution, Mexico filed four diplomatic protests with the United States Department of State, beginning 15 months before the execution. Those protests emphasized that competent authorities of Texas had failed to comply with Article 36 (1) (b). Mexico also formally requested that the Texas Board of Pardons and Paroles commute Mr. Montoya's sentence and sought, at a minimum, a 30-day reprieve from the Governor of Texas in order to allow time for a full investigation of the circumstances of the consular rights violation. The United States failed to respond to the notes prior to Mr. Montoya's execution.

51. Notwithstanding Mexico's efforts, neither the Executive Branch of the federal government nor the competent authorities of the State of Texas took any steps to ensure meaningful review and reconsideration of Mr. Montoya's case. Nor would they stay his execution temporarily. Texas state authorities expressed the view that it was not their responsibility to determine whether there had been a violation of the Vienna Convention, since Texas had not signed the treaty.

52. The day following Mr. Montoya's execution, Mexico filed a fifth diplomatic note, protesting the execution and the failure of the United States to respond to its previous notes. In that note, Mexico specifically observed that the United States had failed to provide information to the United States courts regarding the violations of Article 36. Finally, Mexico requested that the United States adopt necessary measures to prevent "new irreparable events such as the one which occurred yesterday".

53. On 9 July 1997, the United States apologized for the execution of Mr. Montoya. Mexico filed a sixth diplomatic note in response. In this final note, Mexico thanked the United States for its apology, but reiterated its view that the United States needed to do more— particularly in capital cases— to vindicate the rights contained in Article 36. Mexico observed that, as of 5 August 1997, there were 36 cases of Mexican nationals sentenced to death in the United States, and that in all of those cases the competent authorities had failed to comply with Article 36. Mexico noted that its concern over the violations was mounting, given the increased number of Mexican nationals who had been sentenced to death without being promptly advised of their rights to consular notification and access. Mexico also advised the United States of its view that the violations of Article 36 undermined its nationals' due process rights. Mexico requested that the United States make its position clear before state authorities and the United States courts, with regard to the violations of Article 36. Finally, Mexico requested a guarantee that in future cases, Mexico be duly notified by state authorities whenever one of its nationals was detained and charged with a capital crime.

54. Less than three months later, on 18 September 1997, the State of Virginia executed Mexican national Mario Benjamin Murphy. Mexico had filed a diplomatic protest with the Department of State regarding Mr. Murphy's case in June 1997. In that protest, Mexico informed the State Department that not only did Virginia state authorities fail to inform Mr. Murphy of his right of consular access upon his arrest, but state prison officials subsequently refused his request to contact the consulate. Again, Mexico formally requested commutation of the sentence.

55. In conversations with the Ambassador of Mexico to the United States, the United States opined that the outcome of Mr. Murphy's case was not affected by the violation. In response to this opinion, the Ambassador sent a letter to the United States expressing Mexico's views in the following terms:

“In any given case whether a foreign national's case would be affected by denial of his Article 36 rights will always be a matter of conjecture . . . From our perspective, as a foreign Government, the question whether the United States has complied with its international legal obligations under the Vienna Convention is even more important. That treaty gives foreign nationals Article 36 rights in every instance and the very denial of these rights should be protected irrespective of whether in any case their exercise would 'have affected the outcome' of any given matter.”

Mexico thus urged the United States to jointly request, with Mexico, that Mr. Murphy's death sentence be commuted.

56. State and federal authorities of the United States took no action in response to this protest. After Virginia executed Mr. Murphy, the Department of State apologized to Mexico. One week after the execution, Mexico filed another diplomatic note, observing that an apology was an insufficient remedy for a violation of Article 36 in a capital case. Mexico conveyed to the United States its strong opinion that the United States must take “specific actions” to guarantee compliance with Article 36. Furthermore, Mexico noted that the United States should take a more active role in enforcing the Vienna Convention in the United States courts, since it was responsible for ensuring compliance with the provisions of the Convention. Mexico reiterated that there were still 35 Mexican nationals remaining on death row, all of whom had been deprived of their rights to consular notification.

57. Three years later, on 9 November 2000, the State of Texas executed Mexican national Miguel Angel Flores. Texas officials conceded that they had violated Mr. Flores's rights under Article 36 (1) (b). Again, Mexico protested formally to the Department of State and made diplomatic overtures to Texas state authorities. Mexico sought a commutation of Mr. Flores's sentence or a reprieve of his execution. Mexico also sent diplomatic representatives to meet with the Chairman of the Texas Board of Pardons and Paroles. Mexico also supported Mr. Flores's petition to the Inter-American Commission on Human Rights, which issued precautionary measures. Finally, Mexico sought aid from other foreign States, and the Governments of Argentina, Chile, Honduras, Panama, Poland, Spain, Switzerland and Uruguay, as well as the European Union, intervened diplomatically on its behalf.

58. Federal and state authorities again took no meaningful action to ensure review of the proceedings by which Mr. Flores was convicted and sentenced or to stay the execution. After Texas executed Mr. Flores, the Department of State, by a note dated 9 November 2000, apologized to Mexico for the “failure” of Texas authorities to comply with Article 36 of the Vienna Convention in the case of Mr. Flores.

59. The State of Texas executed Mexican national Javier Suárez Medina on 14 August 2002. Again, Mexico had sent diplomatic notes, both in 1997 and in 2002, protesting the violations of Mr. Suárez's Vienna Convention rights. Mexico's Foreign Minister communicated Mexico's concerns directly to the United States Secretary of State, and the President of Mexico personally communicated with the Governor of Texas to request a reprieve. Mexico also sent diplomatic representatives to meet with the Secretary of State of Texas and with the Chairman of the Texas Board of Pardons and Paroles. Additionally, Mexico supported Mr. Suárez's petition to the

Inter-American Commission on Human Rights, which resulted in the issuance of precautionary measures by the Commission. At Mexico's behest, Argentina, Brazil, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Panama, Paraguay, Poland, Slovenia, Spain, Switzerland, Uruguay, Venezuela, the Holy See, and the European Union supported Mr. Suárez's efforts before judicial and administrative authorities to obtain meaningful review and reconsideration of the admitted violation of his rights under Article 36 (1) (b).

60. The United States did not provide such review. Nor did it stay the proceedings. As a result of the execution of Mr. Suárez, the President of Mexico cancelled his announced official visit to Texas to formally protest the violation of international law. In a press release issued on the day of the execution by the Office of the President, the position of Mexico on Article 36 was reiterated. The Department of State has not yet formally apologized to the Government of Mexico for the violations committed in this case.

61. Even in the only case where a death sentence has been vacated, the court's ruling was based on grounds completely different from Article 36 violations. That case involves Mexican national Gerardo Valdez who was arrested, detained, tried, convicted, and sentenced to death by the State of Oklahoma without receiving notification of his Article 36 rights. Mexico first learned of Valdez's arrest in April 2001, when one of Valdez's relatives contacted the Mexican consulate. Mexico filed a diplomatic note protesting the violation and consular officials immediately assisted Valdez in the only way possible at that stage: intervention before the Oklahoma Board of Pardons and Paroles. By conducting a brief but thorough investigation of Valdez's history, Mexico discovered that he had suffered brain damage and other trauma that should have been presented to the Oklahoma jury as mitigating evidence relevant to its decision whether to sentence Valdez to death. Based on the new evidence uncovered by Mexico, Oklahoma's Board of Pardons and Paroles, after holding a public hearing with the presence of Mexican diplomatic representatives, recommended that Valdez's sentence be commuted to life imprisonment. Shortly after the Board's decision, a delegation headed by the Foreign Ministry's Legal Adviser met with Oklahoma's governor, Frank Keating, to explain Mexico's views on the case. Despite these efforts, Governor Keating inexplicably decided that the Vienna Convention violation had not prejudiced Valdez's defence, and on that basis, declined to commute his sentence (See *Valdez v. State*, 46 P. 3d 703, 705-706 (Okla. Crim. App. 2002).)

62. Governor Keating's decision may well have been a response to a letter from the United States Department of State following *LaGrand*. The State Department, in a perfunctory gesture similar to that made to the Governor of Virginia in the *Breard* case, "requested" that Governor Keating consider whether the Vienna Convention violation "had any prejudicial effect on either Mr. Valdez's conviction or his sentence" (Letter from William H. Taft IV, Legal Adviser for the US Department of State to Frank Keating, Governor of Oklahoma, 11 July 2001, reprinted in *American Journal of International Law*, Vol. 96, p. 461 (2002)).

63. In his letter to the President of Mexico explaining his reasons for denying clemency, Governor Keating stated:

"Taking the decision in *LaGrand* into account, I have conducted this review and reconsideration of Mr. Valdez's conviction and sentence by taking account of the admitted violation of Article 36 of the Vienna Convention regarding consular notification . . . While it is true that Mr. Valdez was not notified of his right to contact the Mexican Consulate in clear violation of Article 36 of the Vienna Convention on Consular Relations, that violation, while regretful and inexcusable, does not, in and of itself, establish clearly discernible prejudice or that a different conclusion would have

been reached at trial or on appeal of Mr. Valdez's conviction or sentence." (Letter from Governor Keating to the Hon. Vicente Fox Quesada, President of Mexico, 20 July 2001, reprinted on the website of the Governor of Oklahoma at: <http://www.governor.state.ok.us/nowaldez.htm>.)

64. Oklahoma's court of last resort, moreover, refused to respect the ruling in *LaGrand* that the municipal law doctrine of procedural default must not be applied in a manner that bars consideration of the Vienna Convention violations. (See *Valdez*, 46 P. 3d at 707-710.) While that court subsequently determined that Valdez's trial and appellate counsel had been constitutionally ineffective for failing to discover and present the mitigating evidence uncovered by Mexico's efforts — and, on this basis, ordered the Oklahoma trial court to resentence Valdez — the state court's decision suggests strongly that the state judiciary in the United States, like its federal counterpart, will continue to apply municipal law in a manner that precludes the courts from attaching significance to Vienna Convention violations, in manifest disregard of *LaGrand*.

### 3. Action in the Inter-American Court of Human Rights

65. Faced with this continuing pattern and practice of Vienna Convention violations by United States authorities, Mexico sought a declaration of its rights in the Inter-American Court of Human Rights. In an advisory opinion, that Court held that failure to respect the right to consular assistance established by Article 36 (1) (b) of the Vienna Convention would prejudice the due process rights of foreign nationals such that the imposition of capital punishment under such circumstances would violate the human right not to be deprived of life arbitrarily. (*The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law*, Advisory Opinion OC-16/99 of 1 October 1999. Series A No. 16.)

66. The Inter-American Court's decision has had no apparent effect on United States policy and practice.

#### *D. Mexican Nationals under Sentence of Death Following Criminal Proceedings Conducted in Violation of Article 36 of the Vienna Convention*

67. While violations of Article 36 involving Mexican nationals occur regularly in the United States in cases ranging from minor criminal offences to those involving more serious allegations, Mexico's diplomatic protests have focused primarily on those cases in which individuals are facing the ultimate penalty. This is due, in part, to Mexico's strong interest in protecting the lives of its nationals and its belief that those countries that apply the death penalty must rigorously adhere to due process. In addition, as noted above, it is Mexico's experience that the involvement of consular officers can make the difference between life and death for a Mexican national facing capital charges. For instance, the assistance rendered by Mexican consular officers can often ameliorate the problems arising from incompetent legal representation, lack of communication between Mexican nationals and their defence counsel and cultural barriers.

68. The following 54 cases illustrate the systemic nature of the United States violation of Article 36 in capital cases. In at least 49 of these cases, Mexico has found no evidence that the competent authorities attempted to comply with Article 36 before its nationals were tried, convicted, and sentenced to death. In four cases, some attempt apparently was made to comply with Article 36, but the authorities still failed to provide the required notification "without delay". In one case, the detained national was informed of his rights to consular notification and access in

connection with immigration proceedings, but not in connection with pending capital charges. Each case, catalogued by state, is briefly described below.

### *California*

69. As of 10 December 2002, 28 confirmed Mexican nationals were under sentence of death in the State of California. California's death row population totals more than 600 inmates. Of the 28 Mexican nationals, 26 did not receive any notification of their consular rights, let alone the timely notification required by Article 36 of the Vienna Convention.

#### *1. Avena Guillen, Carlos*

70. On 15 September 1980, law enforcement authorities of Los Angeles County, California, arrested Mr. Avena and charged him with murder. At the time of his alleged offence, Mr. Avena was 19 years old. On 9 December 1981, Mr. Avena was convicted of murder. On 12 February 1982, the trial court sentenced Mr. Avena to death. Mr. Avena's automatic appeals of the conviction and sentence were denied, as was his post-judgment petition to the California courts seeking collateral relief from unlawful detention.

71. During his initial interrogation by the police, Mr. Avena stated that he was born in Mexico. Despite this clear indication of possible foreign nationality and the fact that Mr. Avena was registered with the Immigration and Naturalization Service ("INS") as a temporary resident, the competent authorities failed to inform him of his rights to consular assistance under Article 36, subparagraph 1 (b), of the Vienna Convention. Not having been apprised of these rights, Mr. Avena could not and did not exercise them before his trial and sentencing.

72. Mexican consular officials did not learn of Mr. Avena's case until 14 February 1992, more than 11 years after his detention. Having been unaware until that time that Mr. Avena was imprisoned in the United States, Mexico was prevented from exercising its right to provide consular assistance at the trial and direct appeal levels. Upon learning of his situation, Mexican consular authorities began rendering assistance, both legal and otherwise, to Mr. Avena.

73. Mr. Avena's counsel failed to raise any Convention-based arguments in direct appeal and state post-judgment proceedings. Mr. Avena has now taken the last step available to him to challenge his conviction and death sentence, by filing a federal petition for writ of *habeas corpus* in which he has raised the violation of Article 36.

#### *2. Ayala, Hector Juan*

74. On 5 June 1985, law enforcement authorities of San Diego County, California, arrested Mr. Ayala, aged 32, on suspicion of murder. On 1 August 1989, Mr. Ayala was convicted of murder. On 30 November 1989, the trial court sentenced Mr. Ayala to death. Mr. Ayala's direct appeals of the conviction and sentence were denied.

75. The competent authorities did not inform Mr. Ayala of rights to consular assistance until after his arrival on death row — more than four years after his arrest. Not having been apprised of these rights, Mr. Ayala could not and did not exercise them before his trial and sentencing.

76. Mexican consular officials did not learn of Mr. Ayala's case until 19 February 1992, by which time the case was already under automatic appeal. Having been unaware until that time that Mr. Ayala was imprisoned in the United States, Mexico was prevented from exercising its right to provide consular assistance at the trial level. However, upon learning of his situation, Mexican consular authorities began rendering assistance, both legal and otherwise, to Mr. Ayala.

77. On 9 August 1999, with the vigorous support of Mexican consular officers, Mr. Ayala challenged his conviction and sentence by filing a post-judgment petition to the California state court for a writ of *habeas corpus*. For the first time, Mr. Ayala claimed violations of Article 36 of the Vienna Convention. Although his petition was supported by extensive submissions, including Advisory Opinion OC-16 by the Inter-American Court of Human Rights, in a one-paragraph order dismissing the claim, the California Supreme Court rejected his petition, holding that "petitioner fails to allege facts showing that he falls within the protection of the Vienna Convention" and "fails to show prejudice".

78. Mr. Ayala has now taken the last step available to him to challenge his conviction and death sentence, by filing a petition for writ of *habeas corpus* in federal court on 26 August 2002. The California Attorney General moved to dismiss the petition for failure to exhaust state remedies. The court has not yet ruled on the petition.

### 3. *Benavides Figueroa, Vicente*

79. On 18 November 1991, law enforcement authorities of Kern County, California, arrested Mr. Benavides, aged 42, and charged him with sexual assault and murder. On 20 April 1993, Mr. Benavides was convicted. On 11 June 1993, the trial court sentenced Mr. Benavides to death. Mr. Benavides's case is currently pending in automatic appeal and in post-judgment state *habeas* proceedings.

80. Although he was carrying an INS immigration card at the time of his arrest, the competent authorities at no time informed Mr. Benavides of his right to contact his consulate.

81. Mexico first learned of the case 11 months after his arrest, after Mr. Benavides himself sent a letter to the Mexican consulate requesting consular assistance and providing the names of his appointed attorneys. Upon learning of his situation, Mexico, through its consulate, began to render assistance, both legal and otherwise, to Mr. Benavides.

82. Trial counsel first raised the violation of Mr. Benavides's consular rights in a motion for a new trial following the conviction and sentencing. The trial court denied the motion on the ground that it had been raised too late in the proceedings. Mr. Benavides has recently presented a petition for writ of *habeas corpus* in state court, in which he has raised the violation of Article 36.

### 4. *Carrera Montenegro, Constantino*

83. On 12 April 1982, law enforcement authorities of Kern County, California, arrested Mr. Carrera and charged him with robbery and murder. At the time of his alleged offence, Mr. Carrera was 20 years old. On 27 July 1983, Mr. Carrera was convicted of murder. A week later, on 5 August, the trial court sentenced Mr. Carrera to death. Mr. Carrera's automatic appeal and post-judgment challenge were both denied.



84. Although he was registered with the INS as a permanent resident at the time of his arrest, the competent authorities at no time informed Mr. Carrera of his consular rights. Not having been apprised of these rights, Mr. Carrera could not and did not exercise them before his trial and sentencing.

85. On 14 February 1992, more than nine years after Mr. Carrera's arrest, Mexico finally learned that he was imprisoned in the United States and awaiting execution when prison officials sent a letter to the Mexican consulate, apprising Mexico of Mr. Carrera's nationality. Upon learning of Mr. Carrera's situation, Mexico, through its consulate, began rendering assistance, both legal and otherwise, to Mr. Carrera. In particular, in addition to visiting Mr. Carrera and confirming his nationality, Mexican consular authorities sent a formal letter to the Attorney General of California to raise their concerns.

86. On 6 November 1998, Mr. Carrera filed a petition to the federal court of first instance for a writ of *habeas corpus*. The court has not yet ruled on the petition.

##### *5. Contreras Lopez, Jorge*

87. On 12 August 1995, law enforcement authorities of Tulare County, California, arrested Mr. Contreras and charged him with robbery and murder. At the time of the alleged offence, he was 20 years old. On 26 September 1996, Mr. Contreras was convicted of murder. On 11 December 1996, the trial court sentenced Mr. Contreras to death. His case is currently pending in automatic appeal and post-judgment proceedings.

88. Although Mr. Contreras has been registered with the INS since 1989 as a permanent resident, the competent authorities at no time informed Mr. Contreras of his rights to consular assistance. Not having been apprised of these rights, Mr. Contreras could not and did not exercise them before or during his trial.

89. Mexican consular officials did not learn of the case until February 2000, nearly five years after Mr. Contreras's arrest and four years after the imposition of the death sentence. Consular officials were apprised of the case through the Mexican Commission of Human Rights, which had received a letter from Mr. Contreras's mother, seeking the Commission's assistance in her son's case. Upon learning of his situation, Mexico, through its consulate, began to render assistance, both legal and otherwise, to Mr. Contreras.

##### *6. Covarrubias Sanchez, Daniel*

90. On 28 July 1995, Mr. Covarrubias, aged 27, was kidnapped by bounty hunters in Mexico and forcibly returned to the United States, where he was later charged by law enforcement authorities of Monterey, California, with robbery, burglary, and multiple murder. On 8 September 1998, Mr. Covarrubias was convicted of murder. On 27 October 1998, the trial court sentenced Mr. Covarrubias to death. No counsel have yet been appointed to represent him on automatic appeal or in post-judgment proceedings.

91. Mr. Covarrubias and the bounty hunters who seized him were detained at the United States border by agents of the Federal Bureau of Investigation ("FBI"). Although aware of his Mexican nationality at the outset and despite federal regulations requiring prompt advisement of

consular rights to foreign detainees by the FBI, the FBI agents at no time informed Mr. Covarrubias of his rights to consular assistance.

92. Mexican consular officials did not learn of Mr. Covarrubias's case until some three weeks after the abduction, and only when they received a letter from a family member requesting their assistance. Not having been apprised of Mr. Covarrubias's detention without delay, Mexico was unable to provide assistance during the initial interrogation and custody. Upon learning of his situation, Mexico, through its consulate, began rendering assistance to Mr. Covarrubias, including the facilitation of defence testimony and other legal assistance throughout the protracted pre-trial and trial proceedings.

#### *7. Esquivel Barrera, Marcos*

93. On 28 February 1998, law enforcement authorities of Los Angeles, California, arrested Mr. Esquivel, aged 34, on charges of murder. On 17 July 2001, Mr. Esquivel was convicted of murder, and on 13 December 2001, the trial court sentenced him to death. No counsel have yet been appointed to represent Mr. Esquivel on automatic appeal or in post-judgment proceedings.

94. During arraignment proceedings on 4 March 1998, the prosecution announced that Mr. Esquivel had the right to "contact and assistance of the Mexican Consul General". Upon learning of his situation, Mexico, through its consulate, began providing legal and other assistance to Mr. Esquivel. In particular, Mexican consular officials assisted with the production of penalty phase witnesses and expressed their concerns about the case in letters to the trial judge and to the prosecutor.

#### *8. Gomez Perez, Ruben*

95. On 1 July 1997, law enforcement authorities of Los Angeles County, California, arrested Mr. Gomez, aged 27, on charges of multiple murder, robbery, and kidnapping. On 15 February 2000, Mr. Gomez was convicted. On 31 March 2000, the trial court sentenced Mr. Gomez to death. No counsel have yet been appointed to represent him on automatic appeal or in post-judgment proceedings.

96. During his initial interrogation by the police, Mr. Gomez stated that he was born in Mexico. Despite this clear indication of possible foreign nationality, the competent authorities failed to inform him of his right to consular assistance. Without having been notified of his consular rights and in the absence of consular assistance, during the initial interrogation, Mr. Gomez provided the police with a statement that was used against him at trial.

97. Mexico first learned of the case in October 2002, through investigation by the California Appellate Project and research by the Mexican Capital Legal Assistance Program.

#### *9. Hoyos, Jaime Armando*

98. On 27 May 1992, law enforcement authorities of San Diego County, California, arrested Mr. Hoyos, aged 34, on suspicion of murder and robbery. On 7 March 1994, Mr. Hoyos was convicted of murder and robbery. On 11 July 1994, the trial court sentenced Mr. Hoyos to death. The case is currently pending in automatic appeal and post-judgment proceedings.

99. Although aware that he was a Mexican national, the competent authorities at no time informed Mr. Hoyos of his rights to consular assistance. Nor did the authorities ever advise Mexican consular officers of Mr. Hoyos's detention. Without having been notified of his rights and in the absence of consular assistance, Mr. Hoyos provided a statement to authorities which was later used against him at trial.

100. Mexico learned that Mr. Hoyos was imprisoned in the United States only after Mr. Hoyos himself wrote to the consulate in September 1993 requesting assistance. Upon learning of his detention, Mexico, through its consulate, began rendering assistance, both legal and otherwise, to Mr. Hoyos. In particular, consular representatives met with trial counsel to discuss the plea bargain strategy and subsequently sent a letter to the district attorney in an effort to avoid a death sentence.

#### *10. Juarez Suarez, Arturo*

101. On 15 July 1998, law enforcement authorities of Placer County, California, arrested Mr. Juarez, aged 30, on multiple murder charges. On 18 April 2001, Mr. Juarez was convicted of murder. On 8 March 2002, the trial court sentenced Mr. Juarez to death. No counsel have yet been appointed to represent him on automatic appeal or in post-judgment proceedings.

102. At the time of his arrest, the competent authorities did not inform Mr. Juarez of his right to contact his consulate. Mr. Juarez was only informed of his consular rights during his arraignment on 17 July, by which time — without having been informed of his rights and in the absence of consular assistance — he had already given an incriminating statement to the police.

103. Trial counsel moved to have the statement suppressed on the grounds that police had violated both the Vienna Convention and the requirements of *Miranda*. However, the trial judge ruled that suppression was not an available remedy for an Article 36 violation. During the hearing on the motion, the District Attorney stated that he had been unaware of the obligation to provide foreign arrestees with notification of consular rights until 45 minutes before the defendant's arraignment.

104. Upon learning of Mr. Juarez's case, Mexican consular officials began rendering assistance, both legal and otherwise, to Mr. Juarez. In particular, Mexico has assisted the defence by obtaining visas for witnesses and submitting an affidavit in support of the defence motion to suppress the statement made under interrogation.

#### *11. Lopez, Juan Manuel*

105. On 12 April 1996, law enforcement authorities of Los Angeles County, California, arrested Mr. Lopez, aged 23, on suspicion of murder. On 6 July 1998, Mr. Lopez was convicted of murder. On 18 September 1998, the trial court sentenced Mr. Lopez to death. Automatic appeal and state post-judgment *habeas* proceedings are pending.

106. Despite existing police records indicating Mr. Lopez's birthplace as Mexico, the competent authorities at no time informed Mr. Lopez of his rights to consular assistance. Not having been apprised of these rights, Mr. Lopez could not and did not exercise them before his trial.

*12. Lupercio Casares, Jose*

107. On 9 April 1989, law enforcement authorities of Tulare County, California, arrested Mr. Lupercio, aged 32, on suspicion of murder. On 6 November 1991, Mr. Lupercio was convicted of murder. On 13 March 1992, the trial court sentenced Mr. Lupercio to death. The case is currently pending in automatic appeal and post-judgment proceedings.

108. Although Mr. Lupercio was registered as a permanent resident with the INS at the time of his arrest, the competent authorities at no time informed Mr. Lupercio of his consular rights. Not having been apprised of these rights, Mr. Lupercio could not and did not exercise them before his trial and sentencing.

109. Mexican consular officials did not learn of the case until July 1992, more than three years after Mr. Lupercio's arrest, when authorities at the San Quentin Prison informed the Mexican consulate that Mr. Lupercio was a Mexican national who had arrived on death row. After finally being apprised of the case, consular officials have provided ongoing legal and humanitarian assistance, including consular visits and correspondence with Mr. Lupercio, authentication of records, documentation of family history, and translation assistance.

*13. Maciel Hernandez, Luis Alberto*

110. On 14 December 1995, law enforcement authorities of Los Angeles County, California, arrested Mr. Maciel for murder. At the time of the alleged offence, he was 39 years old. On 11 February 1998, Mr. Maciel was convicted of murder and the jury recommended a death sentence. On 8 May 1998, the trial court sentenced Mr. Maciel to death. No counsel have yet been appointed to represent him on automatic appeal or in post-judgment proceedings.

111. Despite the fact that Mr. Maciel was registered with the INS as a permanent resident at the time of his arrest, the competent authorities at no time informed Mr. Maciel of his rights to consular assistance. Not having been apprised of these rights, Mr. Maciel could not and did not exercise them before his trial.

112. Mexican consular officials did not learn of Mr. Maciel's case until 28 April 1998, when Mr. Maciel's father came to the consulate to seek assistance. By that time, Mr. Maciel had already been convicted of murder and the jury had recommended that he be sentenced to death. Upon learning of his situation, Mexican consular officials began rendering assistance, both legal and otherwise, to Mr. Maciel, and attended his sentencing hearing.

*14. Manriquez Jaquez, Abelino*

113. On 22 February 1990, law enforcement authorities of Los Angeles County, California, arrested and charged Mr. Manriquez with multiple murder. At the time of the alleged offences, he was 32 years old. On 10 September 1993, Mr. Manriquez was convicted of murder. On 16 November 1993, the trial court sentenced Mr. Manriquez to death. The case is currently pending in automatic appeal and post-judgment proceedings.

114. There is no evidence that the authorities ever informed Mr. Manriquez of his consular rights. Mexican consular officials did not become aware of the case until June 1991, when they were contacted by defence counsel for Mr. Manriquez. Not having been apprised of

Mr. Manriquez's detention without delay, Mexico was unable to provide assistance during his initial pre-trial detention. Upon finally learning of his situation, Mexico began rendering assistance, both legal and otherwise, to Mr. Manriquez, including assisting defence counsel in the gathering of evidence.

*15. Martinez Fuentes, Omar (a.k.a. Avilez de la Cruz, Luis)*

115. On 5 November 1988, law enforcement authorities of Riverside, California, arrested Mr. Martinez, aged 29, on the suspicion of murder. On 3 December 1992, Mr. Martinez was convicted of murder, and on 14 January 1992, a jury recommended a death sentence. On 3 May 1993, the trial court sentenced Mr. Martinez to death.

116. Although aware of his Mexican nationality due to a prior conviction in Texas for which Mr. Martinez was returned to Mexico to serve his sentence, the competent authorities at no time informed Mr. Martinez of his consular rights. Indeed, Mr. Martinez requested an adjournment during trial in order to allow him to contact the Mexican consulate, but his request was denied by the trial court.

117. Mexican consular officials did not learn of Mr. Martinez's case until 3 November 1992, when Mr. Martinez's wife went to the consulate to seek assistance. As a result, consular officials were unable to assist Mr. Martinez during the three years of his pre-trial detention. Upon learning of his situation, Mexican consular officials began rendering assistance to Mr. Martinez and have been actively assisting in his appeals and providing ongoing humanitarian support through regular consular visits.

118. On 13 December 2002, with the assistance of Mexican consular officials, Mr. Martinez claimed violations of the Vienna Convention in his post-judgment petition for a writ of *habeas corpus*. His automatic appeal is fully briefed and awaiting judgment.

*16. Martinez Sanchez, Miguel Angel*

119. On 3 December 1997, law enforcement authorities of Los Angeles arrested Mr. Martinez and charged him with murder and robbery. At the time of the alleged offence, he was 24 years old. On 8 October 1998, Mr. Martinez was convicted of murder, and on 11 December 1998, the trial court sentenced him to death. No counsel have yet been appointed to represent him on automatic appeal or in post-judgment proceedings.

120. Although police records clearly indicate Mr. Martinez's place of birth as Mexico, the competent authorities at no time informed Mr. Martinez of his rights to consular assistance. Not having been apprised of these rights, Mr. Martinez could not and did not exercise them before his trial.

121. Consular officials only learned of Mr. Martinez's case on 11 July 2001, from attorneys at the California Appellate Project, three and a half years after his trial and sentencing. Not having been apprised of Mr. Martinez's detention without delay, Mexico was unable to provide assistance at the crucial trial level. Upon learning of his situation, Mexico began rendering consular assistance, both legal and otherwise, to Mr. Martinez.

*17. Mendoza Garcia, Martin*

122. On 25 January 1996, law enforcement authorities of San Bernardino County, California, arrested Mr. Mendoza, aged 32, on multiple murder charges. On 28 August 1997, Mr. Mendoza was convicted of murder. On 23 December 1997, the trial court sentenced him to death. The case is pending on automatic appeal and in post-judgment proceedings.

123. Although Mr. Mendoza was registered with the INS as a permanent resident, the competent authorities failed to inform him of his right to contact his consulate. Not having been notified of his consular rights and in the absence of consular assistance, Mr. Mendoza provided a statement to authorities which was later used against him at trial, despite a motion to suppress based on the Vienna Convention violation.

124. Mexican consular officials did not learn of Mr. Mendoza's case until more than a year after his arrest, when Mr. Mendoza's sister contacted the Mexican Commission on Human Rights seeking help for her brother. Consular officials contacted local authorities in Riverside, who then informed the consulate that Mr. Mendoza was facing capital proceedings. Upon learning of Mr. Mendoza's situation, consular officials immediately began rendering assistance, including facilitating the processing of visas for defence witnesses, aiding in the presentation of the Vienna Convention violation at the trial level and writing to the court on behalf of Mr. Mendoza at sentencing.

*18. Ochoa Tamayo, Sergio*

125. On 21 January 1990, law enforcement authorities of Los Angeles County, California, arrested Mr. Ochoa, aged 21, and charged him with attempted robbery and multiple murder. On 31 August 1992, Mr. Ochoa was convicted of murder. On 10 December 1992, the trial court sentenced Mr. Ochoa to death. His automatic appeal and concurrent post-judgment state *habeas* appeal were denied.

126. There was no evidence that the authorities ever informed Mr. Ochoa of his consular rights. Mexico did not learn of Mr. Ochoa's case until 8 October 1992, when contacted by defence counsel. By that time, the jury had already recommended a death sentence. Upon learning of his detention, Mexican consular officials began rendering assistance, both legal and otherwise, to Mr. Ochoa.

127. Federal *habeas* counsel, with the assistance of Mexican consular officials, is preparing to file a petition for writ of *habeas corpus* raising the Vienna Convention violation. This claim has not been raised previously in Mr. Ochoa's automatic appeal or state post-judgment proceedings.

*19. Parra Dueñas, Enrique*

128. On 30 October 1997, law enforcement authorities of Los Angeles County, California, arrested Mr. Parra, aged 23, for murder. On 2 December 1998, Mr. Parra was convicted of murder. On 22 January 1999, the trial court sentenced Mr. Parra to death. No counsel have yet been appointed to represent him on automatic appeal or in state post-judgment proceedings.

129. During his initial interrogation by the authorities, Mr. Parra evidenced limited familiarity with English, and an interpreter was subsequently used throughout the court

proceedings. However, despite this indication of possible foreign nationality, the competent authorities at no time informed Mr. Parra of his rights to consular assistance. Not having been apprised of these rights, Mr. Parra could not and did not exercise them before his trial.

130. Mexico, without the benefit of information from the authorities of California or the United States, finally learned that Mr. Parra was imprisoned in the United States on 26 January 1999, when Mr. Parra's sister contacted consular officials. Upon learning of his situation, Mexico, through its consulate, began rendering assistance, both legal and otherwise, to Mr. Parra. In particular, in November 1999, Mexican consular representatives met with the Los Angeles District Attorney to convey their deep concern over the case and the ongoing non-compliance by local authorities with Article 36 obligations.

#### *20. Ramirez Villa, Juan de Dios*

131. On 19 July 1998, law enforcement authorities of Kern County, California, arrested Mr. Ramirez on a charge of carjacking and murder. At the time of the alleged offence, he was 21 years old. On 12 March 2001, Mr. Ramirez was convicted of murder. On 20 July 2001, the trial court sentenced Mr. Ramirez to death. No counsel have yet been appointed to represent him on automatic appeal or in state post-judgment *habeas* proceedings.

132. Mr. Ramirez was arrested in El Paso, Texas, by United States border authorities after he presented his INS identification to them. Despite this clear indication of foreign nationality, the competent authorities failed to inform Mr. Ramirez of his right to contact his consulate. Not having been apprised of his consular rights and in the absence of consular assistance, Mr. Ramirez provided a statement to authorities which was later used against him at trial.

133. Mexican consular officers were unaware of Mr. Ramirez's case until several months after his arrest. Upon learning of his case, consular officials began rendering assistance, both legal and otherwise, to Mr. Ramirez. In particular, consular officials communicated with defence counsel, attended court hearings, and subsequently sent a detailed letter in support of a reduced sentence, based on the Vienna Convention violation. The Government of Mexico also intervened directly, writing to the Superior Court in support of the defendant's petition for review and stay of the trial court proceedings based on a motion for a change of venue.

#### *21. Salazar, Magdalena*

134. On 7 November 1995, law enforcement authorities of Los Angeles County, California, arrested Mr. Salazar on a charge of murder. At the time of the alleged offence, he was 19 years old. On 4 February 1999, Mr. Salazar was convicted of murder. Just three weeks later, on 12 March, the trial court sentenced Mr. Salazar to death. No counsel have yet been appointed to represent him on automatic appeal or in state post-judgment *habeas* proceedings.

135. There is no evidence that competent authorities ever advised Mr. Salazar of his consular rights. Mexico first learned about the case in October 2002, through initial case investigation by the California Appellate Project and research by the Mexican Capital Legal Assistance Program.

22. *Salcido Bojorquez, Ramon*

136. On 19 April 1989, Mr. Salcido, aged 28, was arrested in Mexico and forcibly removed to Sonoma County, California, without recourse to extradition proceedings. On 30 October 1990, Mr. Salcido was convicted of murder. On 17 December 1990, the trial court sentenced Mr. Salcido to death. Automatic appeal and state post-judgment *habeas* proceedings are pending.

137. Although aware of his Mexican nationality from the earliest stages of the case, the competent authorities at no time informed Mr. Salcido of his right to contact his consulate. Not having been apprised of his consular rights and in the absence of consular assistance, Mr. Salcido provided a statement to authorities which was later used against him at his trial.

138. Counsel for Mr. Salcido did not raise the violation of Article 36 in direct appeal or in state post-conviction proceedings.

23. *Sanchez Ramirez, Juan Ramon*

139. On 4 August 1997, law enforcement authorities of Tulare County, California, arrested Mr. Sanchez, aged 32, on suspicion of murder. On 4 November 1999, Mr. Sanchez was convicted of murder and a death sentence was formally imposed on 31 March 2000. No counsel have yet been appointed to represent him on automatic appeal or in state post-judgment *habeas* proceedings.

140. Shortly after his arrest, Mr. Sanchez underwent three separate interrogations, during which the competent authorities did not inform Mr. Sanchez of his right to contact his consulate. Not having been apprised of his rights and in the absence of consular assistance, Mr. Sanchez provided a statement to authorities which was later used against him at trial.

141. Mexican consular officials first learned of the case 15 days after Mr. Sanchez's arrest, when contacted by defence counsel for Mr. Sanchez. Upon learning of his situation, Mexican consular authorities immediately began assisting trial counsel to raise the Vienna Convention violation as a pre-trial motion.

24. *Tafoya Arriola, Ignacio*

142. On 26 July 1993, law enforcement authorities of Orange County, California, arrested Mr. Tafoya, aged 33, and charged him with robbery and two murders. On 8 February 1995, Mr. Tafoya was convicted of murder. On 6 June 1995, the trial court sentenced Mr. Tafoya to death. Automatic appeal and state post-judgment *habeas* proceedings are pending.

143. Although aware of his Mexican nationality, the competent authorities at no time informed Mr. Tafoya of his right to contact his consulate. Not having been apprised of his consular rights and in the absence of consular assistance, Mr. Tafoya provided a statement to authorities that was later used against him at trial.

144. Mexican consular officials did not learn of Mr. Tafoya's case until February 2001, when contacted by attorneys representing Mr. Tafoya in post-judgment proceedings. Having been unaware of the case until that time, Mexico was prevented from exercising its right to provide consular assistance at the crucial trial level. Upon learning of Mr. Tafoya's situation, however, Mexican consular authorities began rendering both legal and humanitarian assistance.



25. *Valdez Reyes, Alfredo*

145. On 1 May 1989, law enforcement authorities of Los Angeles County, California, arrested Mr. Valdez, aged 26, and subsequently charged him with capital murder. On 20 March 1992, Mr. Valdez was convicted of murder. On 22 May 1992, the trial court sentenced Mr. Valdez to death. His automatic appeal and state post-judgment *habeas* proceedings are pending.

146. Although aware of his Mexican place of birth, the competent authorities at no time informed Mr. Valdez of his rights to consular assistance. Not having been apprised of his consular rights and in the absence of consular assistance, Mr. Valdez made a statement to authorities which was later used against him at trial.

147. Mexican consular officials did not learn about the case until November 1992, when contacted by attorneys with the California Appellate Project. By this time, the jury had already recommended a death sentence for Mr. Valdez. Upon learning of his case, Mexico, through its consulate, began rendering assistance, legal and otherwise, to Mr. Valdez.

148. On 13 June 2002, with the assistance of Mexican consular officers, Mr. Valdez challenged his conviction and sentence by filing an amended post-judgment *habeas* petition with the California Supreme Court, raising violations of Article 36 of the Vienna Convention.

26. *Vargas, Eduardo David*

149. On 4 April 1999, law enforcement authorities of Orange County, California, arrested Mr. Vargas, aged 22, on suspicion of murder. On 9 February 2001, Mr. Vargas was convicted of murder. On 4 October 2001, the trial court sentenced Mr. Vargas to death. No counsel have yet been appointed to represent him on automatic appeal or in state post-judgment *habeas* proceedings.

150. Although immigration officials notified Mr. Vargas of his consular rights in connection with immigration proceedings, upon his detention on suspicion of murder, despite knowledge of his Mexican nationality, competent criminal justice authorities at no time informed Mr. Vargas of his consular rights. Not having been apprised of these rights, Mr. Vargas could not and did not exercise them in connection with capital murder proceedings.

151. Mexican consular officials did not learn about the case until 28 February 2001, when they received a phone call from Mr. Vargas's mother. By this time, Mr. Vargas had already been convicted, and a jury had recommended that he be sentenced to death. Upon learning of Mr. Vargas's situation, Mexican authorities immediately intervened by submitting legal arguments to the trial judge based on the Vienna Convention violation.

27. *Verano Cruz, Tomas*

152. On 26 October 1991, law enforcement authorities of Shasta County, California, arrested Mr. Verano, aged 23, and charged him with murder. On 11 August 1994, Mr. Verano was convicted of murder. On 9 September 1994, the trial court sentenced Mr. Verano to death. Automatic appeal and state post-judgment *habeas* proceedings are pending.

153. Although aware of his Mexican nationality, the competent authorities at no time informed Mr. Verano of his right to contact his consulate. Not having been apprised of these rights, Mr. Verano could not and did not exercise them at any point during his pre-trial detention and interrogation, during which he provided a statement to authorities which was later used against him at trial.

154. Mexican consular officials only learned of the case in February 1993, through a letter sent by Mr. Verano's mother to the President of Mexico. Upon learning of his situation, Mexico, through its consulate, began rendering assistance, both legal and otherwise, to Mr. Verano. In particular, Mexican consular officials facilitated the travel of Mr. Verano's family members from Mexico to testify during the penalty phase of the trial.

*28. Zamudio Jimenez, Samuel*

155. On 11 February 1996, law enforcement authorities of Los Angeles County, California, arrested Mr. Zamudio, aged 31, on charges of robbery and murder. On 15 November 1997, Mr. Zamudio was convicted of murder. On 5 October 1998, the trial court sentenced Mr. Zamudio to death. Automatic appeal and state post-judgment *habeas* proceedings are pending.

156. Although available police records indicated his place of birth as Mexico, the competent authorities at no time informed Mr. Zamudio of his rights to consular assistance. Not having been apprised of these rights and in the absence of consular assistance, Mr. Zamudio provided the police with a statement that was used against him at trial.

157. Mexican consular officials learned of Mr. Zamudio's detention in July 1996, when they spoke to his public defender. Upon learning of his detention, consular officials began providing humanitarian and legal assistance.

*Texas*

158. As of 2 December 2002, 16 Mexican nationals were under sentence of death in the State of Texas, out of a total death row population of more than 450 inmates. None received timely notification of the right to consular assistance, as required by Article 36 of the Vienna Convention.

*29. Alvarez, Juan Carlos*

159. On 20 June 1998, law enforcement authorities of Harris County, Texas, arrested Mr. Alvarez, aged 21, on suspicion of murder. On 22 September 1999, Mr. Alvarez was convicted of murder. On 7 October 1999, the trial court sentenced Mr. Alvarez to death. Mr. Alvarez's direct appeal of his conviction and sentence was denied.

160. The competent authorities at no time informed Mr. Alvarez of his rights to consular assistance. Not having been apprised of these rights and in the absence of consular assistance, Mr. Alvarez provided an incriminating statement to authorities, which was later used as the primary evidence against him at trial.

161. On 1 February 2000, Mexican consular officials discovered through their own investigation that Mr. Alvarez was on death row. Since learning of his situation, consular officials

have been rendering both legal and humanitarian assistance. In particular, Mexican consular officials retained counsel to assist Mr. Alvarez in his post-conviction proceedings.

162. During trial, Mr. Alvarez moved to suppress his statement to police on the grounds of the Vienna Convention violation. The trial court denied the motion. On direct appeal, Mr. Alvarez again claimed violations of the Vienna Convention as a basis for suppressing his statement to the authorities. The Texas Court of Criminal Appeals held that Mr. Alvarez was not entitled to have the statement excluded because Texas law does not recognize violations of international treaties as proper grounds for the exclusion of confessions.

163. On 10 September 2001, with the assistance of Mexican consular officials, Mr. Alvarez filed an application for a writ of *habeas corpus* in the state court of first instance, raising the Vienna Convention violation.

### 30. *Fierro Reyna, César Roberto*

164. On 1 August 1979, law enforcement authorities in the State of Texas arrested César Roberto Fierro Reyna, aged 22, on suspicion of murder. On 14 February 1980, Mr. Fierro was convicted of murder, and on 15 February 1980, the trial court sentenced him to death. Mr. Fierro's direct appeal of the conviction and sentence was denied, as was his state petition for post-conviction relief.

165. Although aware of his Mexican nationality, the competent authorities at no time informed Mr. Fierro of his rights to consular assistance. Not having been apprised of these rights, Mr. Fierro could not and did not exercise them during his interrogation by police officers. In the absence of consular assistance and upon being told that the El Paso police had arrested his innocent parents, Mr. Fierro gave a confession to authorities, which was the principal evidence against him at trial.

166. Mexico eventually learned of Mr. Fierro's detention from Mr. Fierro's mother. Upon learning of his situation, Mexico, through its consulate, began rendering assistance, both legal and otherwise, to Mr. Fierro.

167. In 1994, Mr. Fierro filed a petition for state post-conviction relief, asking the Texas courts to reconsider his conviction and death sentence in light of the authorities' violation of his Article 36 rights. The court never considered the issue. Mr. Fierro filed a petition to the federal court of first instance for a writ of *habeas corpus*, but the federal court denied relief. The intermediate federal appellate court affirmed. Mr. Fierro has filed a petition for review with the United States Supreme Court.

168. As Mr. Fierro has exhausted his primary appeals, the State of Texas may schedule his execution in the near future.

### 31. *García Torres, Hector*

169. On 5 September 1989, law enforcement authorities in the State of Texas arrested Hector García Torres, aged 28, on suspicion of murder. On 24 August 1990, Mr. García was

convicted of murder, and the very next day, the trial court sentenced him to death. Mr. García's direct appeal of his conviction and sentence was denied.

170. The competent authorities at no time informed Mr. García of his rights to consular assistance. Not having been apprised of these rights, Mr. García could not and did not exercise them before his trial.

171. On 3 July 1991, after requesting information from the death row warden regarding all Mexican nationals who were awaiting execution, Mexican consular officials finally learned that Mr. García was on death row. Upon learning of his situation, Mexico, through its consulate, began rendering assistance, both legal and otherwise, to Mr. García.

172. On 28 August 1997, Mr. García's defence counsel presented a state petition for post-conviction relief in the Texas court of first instance, requesting that the court review and reconsider his conviction and death sentence in light of the authorities' violation of Article 36 of the Vienna Convention. The court has not yet considered this request.

### 32. *Gómez, Ignacio*

173. On 25 November 1996, law enforcement authorities in the State of Texas arrested Ignacio Gómez, aged 26, a mentally ill Mexican national, on suspicion of murder. On 11 June 1988 Mr. Gómez was convicted of capital murder. On 16 June 1988, the trial court sentenced him to death. Mr. Gómez's direct appeal of the conviction and sentence was denied, as was his state petition for post-conviction relief.

174. Although aware of his Mexican nationality, the competent authorities at no time informed Mr. Gómez of his rights to consular assistance under Article 36, subparagraph 1 (b), of the Vienna Convention. Not having been apprised of these rights, and in the absence of consular assistance, Mr. Gómez made incriminating statements that were used against him at trial.

175. Mexican consular authorities eventually learned of Mr. Gómez's detention through his mother, by which time Mr. Gómez had already given incriminating statements to the police. Upon learning of his situation, Mexico, through its consulate, began rendering assistance, both legal and otherwise, to Mr. Gómez.

176. Mr. Gómez's lawyers raised the violation of Article 36 of the Vienna Convention on his direct appeal, and while the court found a violation, the court held that Mr. Gómez was not entitled to a remedy under Texas law. Mr. Gómez is now preparing to take the final step available to him for challenging his conviction and sentence by filing a petition to the federal court of first instance for a writ of *habeas corpus*. Mr. Gómez will be asking the federal courts to review and reconsider his conviction and death sentence in light of the authorities' violation of Article 36 of the Vienna Convention on Consular Relations.

### 33. *Hernández Llanas, Ramiro*

177. On 15 October 1997, law enforcement authorities in the State of Texas arrested Ramiro Hernández Llanas, aged 28, a mentally retarded Mexican national, on suspicion of murder. On 8 February 2000, Mr. Hernández was convicted of murder, and on 10 February 2000, the trial

court sentenced him to death. Mr. Hernández's appeal of his conviction and sentence are pending before the Texas Court of Criminal Appeals.

178. Although aware of his Mexican nationality, the competent authorities failed to inform Mr. Hernández of his rights to consular assistance under Article 36, subparagraph 1 (b), of the Vienna Convention. Not having been apprised of these rights and in the absence of consular assistance, Mr. Hernández made incriminating statements that were used against him at trial.

179. Mexican consular officials learned of Mr. Hernández's detention on 17 October 1997, without the assistance of the authorities from Texas or the United States. Upon learning of his situation, Mexico, through its consulate, began rendering assistance, both legal and otherwise, to Mr. Hernández.

180. Mr. Hernández moved to suppress his incriminating statements, due to the fact that he had not been advised of his rights under Article 36 of the Vienna Convention. The trial court denied the motion on the basis that Article 36 did not give rise to individual rights enforceable by foreign nationals such as Mr. Hernández. The Texas Court of Criminal Appeals denied his direct appeal on 18 December 2002, on the grounds that Texas law did not provide the remedy he sought for the violation of Article 36. Mr. Hernández's state post-conviction application is still pending.

#### 34. *Ibarra, Ramiro Rubi*

181. On 5 March 1987, law enforcement authorities of McLennan County, Texas, arrested Mr. Ibarra, aged 32, on suspicion of murder. Charges were subsequently dismissed on 29 July 1988, when the trial court suppressed evidence that had been wrongfully seized by the police. Mr. Ibarra was re-arrested and charged with capital murder in September 1996, after a grand jury indicted him for a second time in connection with the same crime. On 17 September 1997, Mr. Ibarra was convicted of murder, and on 22 September 1997, the trial court sentenced him to death. Mr. Ibarra's direct appeal and state application for writ of *habeas corpus* were both denied by the Texas courts.

182. At the time of Mr. Ibarra's arrest in 1987, police officers admitted they were aware of his Mexican nationality. Nevertheless, the police failed to inform Mr. Ibarra of his rights to consular notification and access during his initial arrest and detention in 1987-1988, and during his subsequent arrest and pre-trial detention in 1996-1997. Not having been apprised of these rights, Mr. Ibarra could not and did not exercise them before his trial.

183. On 24 September 1997, Mr. Ibarra's defence counsel contacted Mexican consular officials and informed them that Mr. Ibarra had been sentenced to death. Until this time, Mexican consular officials had been completely unaware of Mr. Ibarra's detention and were unable to provide consular assistance during his pre-trial detention and capital murder trial. Upon learning of his detention, consular officials began rendering legal and humanitarian assistance to Mr. Ibarra.

184. Mr. Ibarra's trial counsel raised the issue of consular notification in a motion for a new trial filed after Mr. Ibarra was sentenced to death. The trial court denied the motion without comment. The Texas Court of Criminal Appeals, in a 1999 decision, refused to reach the merits of the Vienna Convention violation, holding that Mr. Ibarra had failed to timely raise the issue at the trial court level and had thereby failed to preserve the issue for appeal.

185. On 4 April 2002, with the assistance of Mexican consular officers, Mr. Ibarra filed a federal *habeas corpus* petition raising the Vienna Convention violation in the United States District Court for the Western District of Texas.

*35. Leal García, Humberto*

186. On 21 May 1994, law enforcement authorities in the State of Texas arrested Humberto Leal García, aged 21, on suspicion of murder. On 10 July 1995, he was convicted of capital murder, and the very next day the trial court sentenced Mr. Leal García to death. Mr. Leal García's direct appeal of the conviction and sentence was denied, as was his state petition for post-conviction relief.

187. Although aware of his nationality, the competent authorities at no time informed Mr. Leal García of his rights to consular assistance under Article 36, subparagraph 1 (b), of the Vienna Convention. Not having been apprised of these rights, Mr. Leal García could not and did not exercise them before his trial.

188. In 1997, Mexico learned that Mr. Leal García had been sentenced to death and was awaiting execution. Upon learning of his situation, Mexico, through its consulate, began rendering assistance, both legal and otherwise, to Mr. Leal García.

189. On 15 September 1997, Mr. García's defence counsel presented a state petition for post-conviction relief in the Texas court of first instance, arguing that his statements should have been suppressed in light of the authorities' violation of Article 36 of the Vienna Convention. The state court rejected the claim because it concluded that Mr. Leal García "was not in custody or detained" when the police took the statements from him. In addition, the trial court found that the San Antonio police did not have actual or constructive knowledge that Leal was a Mexican citizen. The trial court further found that the claim was procedurally defaulted, and that even if it had not been defaulted, no prejudice was shown. These findings were upheld by the Texas Court of Criminal Appeals. Mr. Leal García has now taken the final step available to him for challenging his conviction and sentence by filing a petition to the federal court of first instance for a writ of *habeas corpus*. In this proceeding, he has not asked the federal court to review the state court fact-findings, due to the procedural limitations imposed by the Anti-Terrorism and Effective Death Penalty Act.

*36. Maldonado, Virgilio*

190. On 11 April 1996 law enforcement authorities of Harris County, Texas, arrested Mr. Maldonado, aged 30, on suspicion of murder. On 1 October 1997, Mr. Maldonado was convicted of murder, and on 6 October 1997, the trial court sentenced him to death. Mr. Maldonado's direct appeal and application for post-conviction writ of *habeas corpus* were both denied by the Texas courts.

191. Although Mr. Maldonado was interrogated in Spanish and told the interrogating officer that he went to school in Mexico, the competent authorities at no time informed Mr. Maldonado of his rights to consular assistance. Not having been apprised of these rights, Mr. Maldonado could not and did not exercise them during his pre-trial detention. A statement Mr. Maldonado had provided to the authorities absent such notification was later used as the primary evidence against him at trial.

192. Mexican consular officials learned of Mr. Maldonado's detention from his defence counsel in August 1997, nearly one year after his arrest. As a result, they were prevented from providing assistance during a critical phase of the proceedings. Upon learning of his detention, consular officials immediately began providing humanitarian and legal assistance, providing funds for investigation and providing information about the Vienna Convention to defence counsel.

193. At trial, Mr. Maldonado's lawyers raised the Vienna Convention violation and asked the court to instruct the jury that it should disregard Mr. Maldonado's statement if the jurors found that it was taken in violation of his consular assistance rights. The trial judge rejected the defence's request, stating that she was not familiar with the Vienna Convention and was not "an international law expert". The Texas Court of Criminal Appeals affirmed, holding that because trial evidence did not show that Mr. Maldonado was a Mexican citizen, there was no Vienna Convention violation.

*37. Maturino Resendiz, Angel*

194. On 13 July 1999, Mr. Maturino, aged 38, surrendered himself to law enforcement authorities of Harris County, Texas. On 18 May 2000, Mr. Maturino was convicted of multiple murders and on 22 May 2000, the trial court sentenced him to death. Mr. Maturino's direct appeals of conviction and sentence are currently pending.

195. While aware of his Mexican nationality, the competent authorities failed to notify Mr. Maturino, upon his arrest, of his rights to consular notification and access. Mr. Maturino was notified of his Article 36 rights at a court hearing on 15 July 1999. His lawyers failed to raise Article 36 claims on direct appeal.

*38. Medellin Rojas, Jose Ernesto*

196. On approximately 28 June 1993, law enforcement authorities in the State of Texas arrested Jose Ernesto Medellin Rojas, aged 18, on suspicion of murder. On 16 September 1994, he was convicted of capital murder, and on 11 October 1994, the trial court sentenced him to death. Mr. Medellin's direct appeal of the conviction and sentence was denied, as was his state petition for post-conviction relief.

197. Although aware of his Mexican nationality, the competent authorities at no time informed Mr. Medellin of his rights to consular assistance under Article 36, subparagraph 1 (b), of the Vienna Convention. Not having been apprised of these rights, Mr. Medellin could not and did not exercise them before making incriminating statements that were used against him at his capital murder trial.

198. On 29 April 1997, Mexican consular authorities learned of Mr. Medellin's detention when he wrote to them from death row. Upon learning of his situation, Mexico, through its consulate, began rendering assistance, both legal and otherwise, to Mr. Medellin.

199. Mr. Medellin presented a petition for writ of *habeas corpus* in the state court of first instance, requesting that the court review and reconsider his conviction and death sentence in light of the authorities' violation of Article 36 of the Vienna Convention. That court rejected the assertion of this and other claims based on the municipal law doctrine of "procedural default". Applying this doctrine, the court decided that, because Mr. Medellin had not asserted his rights

under the Vienna Convention in his previous legal proceedings, he could not assert them in the state *habeas* proceeding. This municipal law doctrine was held to bar such relief even though, first, Mr. Medellin was unaware of his rights under the Convention at the time of the earlier legal proceedings, and, second, he was unaware of his rights precisely because the local authorities failed to comply with their obligations under the Convention promptly to inform him of those rights. In addition, the state court found that Mr. Medellin was not “harmed” by the violation of the Vienna Convention.

200. On 28 November 2001, Mr. Medellin filed a petition for a writ of *habeas corpus* in the federal court of first instance, arguing that the court must review and reconsider his conviction and death sentence in light of the authorities’ violation of Article 36 of the Vienna Convention. The Texas authorities have argued that the court should not review the merits of his claims, invoking the doctrine of procedural default. The court has not yet issued a decision.

*39. Moreno Ramos, Roberto*

201. On 30 March 1992, law enforcement authorities in the State of Texas arrested Mr. Moreno Ramos, aged 37, on suspicion of murder. On 18 March 1993, Mr. Moreno Ramos was convicted of murder and on 23 March 1993, the trial court sentenced him to death.

202. Although prosecutors made reference to Mr. Moreno Ramos’s Mexican nationality during his capital murder trial, the competent authorities at no time informed him of his rights to consular assistance. Not having been apprised of these rights, Mr. Moreno Ramos could not and did not exercise them before his trial.

203. Mexican consular officials learned of Mr. Moreno Ramos’s detention through the media in February 1993, approximately 11 months after his arrest, by which time the trial was already underway. Having been unaware until that time of Mr. Moreno Ramos’s detention, consular officials were unable to assist him during his pre-trial detention, a critical phase of any capital murder trial. Upon learning of his situation, Mexican consular authorities began rendering assistance, both legal and otherwise, to Mr. Moreno Ramos.

204. Mr. Moreno Ramos was denied relief by the Texas Court of Criminal Appeals, a federal district court, a United States court of appeals, and the United States Supreme Court. The violation of his Vienna Convention rights was never raised during his direct or collateral appeals. On 4 November 2002, Mr. Moreno Ramos filed a petition alleging violations of his human rights, and a request for precautionary measures, before the Inter-American Commission on Human Rights. In this petition, Mr. Moreno Ramos alleges that the State of Texas violated his right to consular notification, among other violations of his human rights. The Commission issued Precautionary Measures on 8 November 2002.

205. As Mr. Moreno Ramos has exhausted his primary appeals in the United States, the State of Texas may schedule his execution at any time.

*40. Plata Estrada, Daniel Angel*

206. On 7 May 1995, law enforcement authorities in the State of Texas arrested Daniel Angel Plata Estrada, aged 19, on suspicion of murder. On 14 October 1996, he was convicted of capital murder, and just four days later, on 18 October 1996, the trial court sentenced



him to death. Mr. Plata's direct appeal of the conviction and sentence was denied, as was his state petition for post-conviction relief.

207. The competent authorities at no time informed Mr. Plata of his rights to consular assistance under Article 36, subparagraph 1 (b), of the Vienna Convention. Not having been apprised of these rights, Mr. Plata could not and did not exercise them during his capital murder trial.

208. On 25 February 1997, Mexican consular authorities learned of Mr. Plata's detention, without the assistance of the authorities from Texas or the United States. Upon learning of his situation, Mexico, through its consulate, began rendering assistance, both legal and otherwise, to Mr. Plata.

209. Mr. Plata presented a petition for writ of *habeas corpus* in the state court of first instance, requesting that the court review and reconsider his conviction and death sentence in light of the authorities' violation of Article 36 of the Vienna Convention. That court rejected the assertion of this and other claims based on the municipal law doctrine of "procedural default". Applying this doctrine, the court decided that, because Mr. Plata had not asserted his rights under the Vienna Convention in his previous legal proceedings, he could not assert them in the state *habeas* proceeding. This municipal law doctrine was held to bar such relief even though, first, Mr. Plata was unaware of his rights under the Convention at the time of the earlier legal proceedings, and second, he was unaware of his rights precisely because the local authorities failed to comply with their obligations under the Convention promptly to inform him of those rights. In addition, the state court found that Mr. Plata was not "harmed" by the violation of the Vienna Convention.

210. On 2 August 2001, Mr. Plata filed a petition for a writ of *habeas corpus* in the federal court of first instance, arguing that the court must review and reconsider his conviction and death sentence in light of the authorities' violation of Article 36 of the Vienna Convention. The federal court found the argument was procedurally barred. In the alternative, the court found that Mr. Plata had failed to demonstrate that he was harmed by the violation of Article 36. Mr. Plata is now appealing that decision to the United States Court of Appeals for the Fifth Circuit.

#### 41. *Ramírez Cardenas, Rubén*

211. On 23 February 1997, law enforcement authorities in the State of Texas arrested Rubén Ramírez Cardenas, aged 26, on suspicion of murder. On 17 February 1998 he was convicted of capital murder, and on 18 February 1998, he was sentenced to death. Mr. Ramírez's direct appeal of the conviction and sentence was denied, as was his state petition for post-conviction relief.

212. The competent authorities at no time informed Mr. Ramírez of his rights to consular assistance under Article 36, subparagraph 1 (b), of the Vienna Convention. Not having been apprised of these rights, Mr. Ramírez could not and did not exercise them before making incriminating statements that were used against him at his capital murder trial.

213. In July 1997, Mexican consular authorities learned of Mr. Ramírez's detention, through media reports. Upon learning of his situation, Mexican consular officials began rendering assistance to Mr. Ramírez.

214. Mr. Ramírez presented a petition for writ of *habeas corpus* in the state court of first instance, requesting that the court review and reconsider his conviction and death sentence in light of the authorities' violation of Article 36 of the Vienna Convention. Rather than raising a free-standing claim under Article 36, counsel for Mr. Ramírez argued that trial counsel rendered ineffective assistance by failing to raise the issue of the violation in the trial court. The state court rejected this argument. On 15 May 2002, Mr. Ramírez filed a petition for a writ of *habeas corpus* in the federal court of first instance. In this proceeding, he has not asked the federal court to review the state court fact-findings, because of the procedural limitations imposed by the Anti-Terrorism and Effective Death Penalty Act.

*42. Rocha Diaz, Felix*

215. On 4 April 1996, law enforcement authorities in the State of Texas arrested Félix Rocha Díaz for armed robbery. On 15 April 1996, while Mr. Rocha was in the hospital recovering from gunshot wounds he had received during his arrest, police interrogated him in connection with a 1994 murder, allegedly committed when Mr. Rocha was 22 years old. On 12 November 1998, he was convicted of capital murder, and on 19 November 1998, he was sentenced to death. Mr. Rocha's direct appeal of the conviction and sentence was denied, as was his state petition for post-conviction relief.

216. Although Mr. Rocha informed the interrogating officer that he was a Mexican national, the competent authorities at no time informed Mr. Rocha of his rights to consular assistance under Article 36, subparagraph 1 (b), of the Vienna Convention. Not having been apprised of these rights, Mr. Rocha could not and did not exercise them before making incriminating statements that were used against him at his capital murder trial.

217. In August 1997, Mexican consular authorities of Mr. Rocha's detention, but by then he had already given incriminating statements to the police. Upon learning of his situation, Mexico, through its consulate, began rendering assistance, both legal and otherwise, to Mr. Rocha.

218. On appeal, Mr. Rocha argued that his confession and other evidence should have been suppressed based on the authorities' violation of Article 36 of the Vienna Convention. The Texas Court of Criminal Appeals acknowledged that Mr. Rocha was a Mexican national, and that he was not informed of his Article 36 rights. Nevertheless, the court held that Texas law does not authorize the relief sought by Mr. Rocha as a remedy for the Article 36 violation. The court affirmed his conviction and death sentence. Mr. Rocha is preparing to file a petition in the federal court of first instance for a writ of *habeas corpus*, and will ask the court to review and reconsider his conviction and death sentence in light of the authorities' violation of Article 36 of the Vienna Convention.

*43. Regalado Soriano, Oswaldo*

219. On 18 November 1992, law enforcement authorities in the State of Texas arrested Oswaldo Regalado Soriano, a Mexican national, on suspicion of murder. At the time of the alleged offence, Mr. Soriano was 17 years old. On 29 April 1994, Mr. Soriano was convicted of murder, and on 4 May 1994, the trial court sentenced him to death. Mr. Soriano's conviction and sentence were affirmed by the Texas Court of Criminal Appeals.

220. Although prosecutors had in their files Mr. Soriano's resident alien card and birth certificate indicating he was born in the State of Chihuahua, Mexico, the competent authorities

failed to inform Mr. Soriano of his rights to consular assistance under Article 36, subparagraph 1 (b), of the Vienna Convention. Not having been apprised of these rights, Mr. Soriano could not and did not exercise them before and during his capital murder trial.

221. Mexican consular officials eventually learned of Mr. Soriano's detention on 27 June 1995, when Mr. Soriano wrote to them from death row. Upon learning of his situation, Mexican consular officials began rendering assistance, both legal and otherwise, to Mr. Soriano.

222. Mr. Soriano has filed a petition for a writ of *habeas corpus* in the state court of first instance. In that court, he has requested that the court review and reconsider his conviction and death sentence in light of the authorities' violation of his rights to consular notification and access under Article 36 of the Vienna Convention. The court has not yet issued a decision.

#### *44. Tamayo, Edgar Arias*

223. On 31 January 1994, law enforcement authorities in the State of Texas arrested Edgar Arias Tamayo, a Mexican national, on suspicion of murder. At the time of the alleged offence, he was 26 years old. On 27 October 1994, Mr. Tamayo was convicted of murder, and on 1 November 1994, the trial court sentenced him to death. Mr. Tamayo's appeal of his conviction and sentence were affirmed by the Texas Court of Criminal Appeals.

224. Although aware of his nationality, the competent authorities failed to inform Mr. Tamayo of his rights to consular assistance under Article 36, subparagraph 1 (b), of the Vienna Convention without delay. Not having been apprised of these rights, Mr. Tamayo could not and did not exercise them before making incriminating statements that were used against him at his capital murder trial.

225. Mexican consular officials eventually learned of Mr. Tamayo's detention when Mr. Tamayo himself wrote to the consulate on 20 September 1994. Upon learning of his situation, Mexico, through its consulate, began rendering assistance, both legal and otherwise, to Mr. Tamayo.

226. Mr. Tamayo has filed a petition for writ of *habeas corpus* in the state court of first instance. In that court, he has requested that the court review and reconsider his conviction and death sentence in light of the authorities' violation of his rights to consular notification and access under Article 36 of the Vienna Convention. The court has not yet issued a decision.

### *Illinois*

#### *45. Caballero Hernández, Juan*

227. On 3 March 1979, law enforcement authorities in the State of Illinois arrested Juan Caballero Hernández on suspicion of murder, for a crime allegedly committed when he was 18 years old. On 21 March 1980, Mr. Caballero was convicted of capital murder, and on 24 March 1980, the trial court sentenced him to death. Mr. Caballero's direct appeal of the conviction and sentence was denied.

228. The competent authorities at no time informed Mr. Caballero of his rights to consular assistance under Article 36, subparagraph 1 (b), of the Vienna Convention. Not having been apprised of these rights, Mr. Caballero could not and did not exercise them before his trial.

229. In January 1983, Mexico, without benefit of information from the authorities of Illinois or the United States, finally learned that Mr. Caballero was imprisoned in the United States and awaiting execution. Upon learning of his situation, Mexico, through its consulate, began rendering assistance, both legal and otherwise, to Mr. Caballero.

230. On 2 October 1998, with the assistance of Mexican consular officers, Mr. Caballero presented a supplemental petition for writ of *habeas corpus* in the Circuit Court of Cook County, Illinois, requesting that the court review and reconsider his conviction and death sentence in light of the authorities' violation of Article 36 of the Vienna Convention. The circuit court has not yet issued a decision. The Illinois Supreme Court will likely be reviewing the case within the next year.

*46. Flores Urbán, Mario*

231. On 10 November 1984, law enforcement authorities in the State of Illinois arrested Mario Flores Urbán, aged 19, on suspicion of murder. On 14 August 1985, Mr. Flores was convicted of murder, and two days later on 16 August 1985, the trial court sentenced him to death. Mr. Flores's direct appeal of the conviction and sentence was denied, as was his state petition for post-conviction relief.

232. The competent authorities at no time informed Mr. Flores of his rights to consular assistance under Article 36, subparagraph 1 (b), of the Vienna Convention. Not having been apprised of these rights, Mr. Flores could not and did not exercise them before his trial.

233. In August 1985, Mexico learned that Mr. Flores had been sentenced to death, but by then it was too late to change the outcome of his trial. Upon learning of his situation, Mexico, through its consulate, began rendering assistance, both legal and otherwise, to Mr. Flores.

234. Mr. Flores has taken the final step available to him for challenging his conviction and sentence by filing a petition to the federal court of first instance for a writ of *habeas corpus*. Although Mr. Flores's defence counsel has never presented this issue to the courts for review, the Government of Mexico presented the federal district court with an *amicus curiae* brief on 22 May 1995, requesting that the court review and reconsider his conviction and death sentence in light of the authorities' violation of Article 36 of the Vienna Convention. The court has not yet considered the issue.

*47. Solache Romero, Gabriel*

235. On 6 April 1998, law enforcement authorities in the State of Illinois arrested Gabriel Solache Romero, aged 27, on suspicion of murder. On 20 June 2000, Mr. Solache was convicted of murder, and on 17 January 2001, the trial court sentenced him to death. Mr. Solache's appeal of his conviction and sentence are pending before the Illinois Supreme Court.

236. Although aware of his Mexican nationality, the competent authorities failed to inform Mr. Solache of his rights to consular assistance under Article 36, subparagraph 1 (b), of the Vienna Convention. Nor did the authorities advise Mexican consular officers of Mr. Solache's detention. Not having been apprised of these rights, Mr. Solache could not and did not exercise them before making incriminating statements that were used against him at his capital murder trial.

237. Mexican consular officials learned of Mr. Solache's detention through media reports after his arrest. Upon learning of his situation, Mexico, through its consulate, began rendering assistance, both legal and otherwise, to Mr. Solache.

238. Mr. Solache moved to suppress his incriminating statements, because he had not been advised of his rights under Article 36 of the Vienna Convention. The trial court denied the motion. An appeal has been filed with the Illinois Supreme Court.

#### *Arizona*

##### *48. Fong Soto, Martin Raul*

239. On 9 September 1992, law enforcement authorities in the State of Arizona arrested Martin Raul Fong Soto, aged 17, on suspicion of murder for a crime allegedly committed when he was 17 years old. On 27 October 1992, Mr. Fong was convicted of murder, and shortly thereafter was sentenced to death. No mitigating evidence was presented at his trial. Mr. Fong's direct appeal of the conviction and sentence was denied, as was his state petition for post-conviction relief.

240. Although aware of his Mexican nationality, the competent authorities at no time during his pre-trial detention and subsequent capital murder trial informed Mr. Fong of his rights to consular assistance under Article 36, subparagraph 1 (b), of the Vienna Convention. Nor did the authorities advise Mexican consular officers of Mr. Fong's detention prior to his capital murder trial. Not having been apprised of these rights, Mr. Fong could not and did not exercise them before his trial.

241. On 21 March 1997, Mexico finally learned that Mr. Fong was imprisoned in the United States and awaiting execution. Upon learning of his situation, Mexican consular officials began rendering assistance, both legal and otherwise, to Mr. Fong. Until contacted by the Mexican consular representatives at that time, Mr. Fong had been entirely unaware of his rights under the Vienna Convention.

242. On 20 August 1999, with the assistance of Mexican consular officers, Mr. Fong presented a petition for a writ of *habeas corpus* in the state court of first instance, requesting that the court review and reconsider his conviction and death sentence in light of the authorities' violation of Article 36 of the Vienna Convention. That court rejected the assertion of this and other claims based on the municipal law doctrine of "procedural default". Applying this doctrine, the court decided that, because Mr. Fong had not asserted his rights under the Vienna Convention in his previous legal proceedings, he could not assert them in the state *habeas* proceeding. This municipal law doctrine was held to bar such relief even though, first, Mr. Fong was unaware of his rights under the Convention at the time of the earlier legal proceedings, and, second, he was unaware of his rights precisely because the local authorities failed to comply with their obligations

under the Convention promptly to inform him of those rights. The state court refused to even consider an *amicus curiae* brief filed by the Government of Mexico on the issue.

#### *Arkansas*

##### *49. Camargo Ojeda, Rafael*

243. On 2 November 1994, law enforcement authorities in the State of Arkansas arrested Rafael Camargo Ojeda, aged 29, a mentally retarded Mexican national, on suspicion of murder. On 12 December 1995, the trial court sentenced him to death. Mr. Camargo's direct appeal of the conviction and sentence was denied, as was his state petition for post-conviction relief.

244. Although aware of his Mexican nationality, the competent authorities at no time informed Mr. Camargo of his rights to consular assistance under Article 36, subparagraph 1 (*b*), of the Vienna Convention. Nor did the authorities ever advise Mexican consular officers of Mr. Camargo's detention prior to his capital murder trial. Not having been apprised of these rights, Mr. Camargo could not and did not exercise them before making incriminating statements that were used against him at his capital murder trial.

245. Mexican consular authorities eventually learned of Mr. Camargo's detention through defence counsel, but by then Mr. Camargo had already given incriminating statements to the police. Upon learning of his situation, Mexico, through its consulate, began rendering assistance, both legal and otherwise, to Mr. Camargo.

246. Mr. Camargo's court-appointed lawyers failed to challenge his conviction and death sentence based on the violation of Article 36 at trial, on appeal, and in state post-conviction proceedings. Mr. Camargo is preparing to take the final step available to him for challenging his conviction and sentence by filing a petition to the federal court of first instance for a writ of *habeas corpus*. Mr. Camargo will be asking the federal courts to review and reconsider his conviction and death sentence in light of the authorities' violation of Article 36 of the Vienna Convention.

#### *Florida*

##### *50. Hernández Alberto, Pedro*

247. On 4 January 1999, law enforcement authorities in the State of Florida arrested Pedro Hernández Alberto, aged 32, a mentally ill Mexican national, on suspicion of murder. On 4 November 2001, Mr. Hernández was convicted of capital murder, and on 28 May 2002, the trial court sentenced him to death. Mr. Hernández was permitted to represent himself at trial, despite evidence that he suffered from a severe mental illness at the time. He is preparing to appeal his case.

248. Although aware of his Mexican nationality, the competent authorities at no time informed Mr. Hernández of his rights to consular assistance under Article 36, subparagraph 1 (*b*), of the Vienna Convention. Nor did the authorities ever advise Mexican consular officers of Mr. Hernández's detention prior to his capital murder trial. Not having been apprised of these rights, Mr. Hernández could not and did not exercise them before making incriminating statements that were used against him at his capital murder trial.

249. On 17 February 1999, without the assistance of the authorities from Florida or the United States, Mexican consular authorities learned of Mr. Hernández's detention, but by then Mr. Hernández had already given incriminating statements to the police. Upon learning of his situation, Mexico, through its consulate, began rendering assistance, both legal and otherwise, to Mr. Hernández. Until contacted by the Mexican consular representatives, Mr. Hernández had been entirely unaware of his rights under the Vienna Convention.

250. Mr. Hernández moved to suppress his incriminating statements, due to the fact that he had not been advised of his rights under Article 36 of the Vienna Convention. The trial court denied the motion.

#### *Nevada*

##### *51. Pérez Gutiérrez, Carlos René*

251. On 17 June 1994, law enforcement authorities in the State of Nevada arrested Carlos René Pérez Gutiérrez, aged 26, on suspicion of murder. On 21 April 1995, Mr. Pérez was convicted after he entered a plea of guilty, and on 10 August 1995, he was sentenced to death by a three-judge panel. Mr. Pérez's direct appeal of the conviction and sentence was denied, as was his state petition for post-conviction relief.

252. Although prosecutors obtained his immigration records listing his nationality prior to trial, the competent authorities at no time informed Mr. Pérez of his rights to consular assistance under Article 36, subparagraph 1 (b), of the Vienna Convention. Nor did the authorities ever advise Mexican consular officers of Mr. Pérez's detention. Not having been apprised of these rights, Mr. Pérez could not and did not exercise them before his trial.

253. In March 1996, Mexico learned that Mr. Pérez had been sentenced to death and was awaiting execution. Upon learning of his situation, Mexico, through its consulate, began rendering assistance, both legal and otherwise, to Mr. Pérez.

254. On 29 October 2002, with the assistance of Mexican consular officials, Mr. Pérez filed a petition for a writ of *habeas corpus* in the federal court of first instance, arguing that the court must review and reconsider his conviction and death sentence in light of the authorities' violation of Article 36 of the Vienna Convention. The court has not yet issued a decision.

#### *Ohio*

##### *52. Loza, José Trinidad*

255. On 16 January 1991, law enforcement authorities in the State of Ohio arrested José Trinidad Loza Ventura, aged 18, on suspicion of murder. On 6 November 1991, the trial court sentenced Mr. Loza to death. Mr. Loza's direct appeal of the conviction and sentence was denied, as was his state petition for post-conviction relief.

256. Although aware of his nationality, the competent authorities at no time informed Mr. Loza of his rights to consular assistance under Article 36, subparagraph 1 (b), of the Vienna

Convention. Nor did the authorities ever advise Mexican consular officers of Mr. Loza's detention. Not having apprised Mr. Loza of his rights and in the absence of consular assistance, police procured an incriminating statement from Mr. Loza. Mr. Loza's trial counsel were unaware of the Vienna Convention, and had never previously represented a Mexican national.

257. In November 1995, Mexico learned from Mr. Loza's appellate counsel that Mr. Loza had been sentenced to death. Upon learning of his situation, Mexico, through its consulate, began rendering assistance, both legal and otherwise, to Mr. Loza.

258. Mr. Loza has exhausted every remedy that the State of Ohio extends to individuals sentenced to death. Initially, a state court found that the Convention did not apply in Ohio. The Ohio Court of Appeals then recognized that Mr. Loza's rights were violated, but stated there was nothing the state court could do to correct the error. Mr. Loza has now taken the final step available to him for challenging his conviction and sentence by filing a petition to the federal court of first instance for a writ of *habeas corpus*, arguing that the court must review and reconsider his conviction and death sentence in light of the *LaGrand* case.

### *Oklahoma*

#### *53. Torres Aguilera, Osbaldo Netzahualcōyotl*

259. On 12 July 1993, law enforcement authorities in the State of Oklahoma arrested Osbaldo Netzahualcōyotl Torres Aguilera on suspicion of murder. At the time of the alleged offence, he was 18 years old. On 7 March 1996, Mr. Torres was convicted of capital murder, and on 21 March 1996, the trial court sentenced him to death. Mr. Torres's direct appeal of the conviction and sentence were denied, as was his state petition for post-conviction relief.

260. At no time did the competent authorities inform Mr. Torres of his rights to consular assistance under Article 36, subparagraph 1 (b), of the Vienna Convention. Nor have the authorities ever advised Mexican consular officers of Mr. Torres's detention. Not having been apprised of these rights, Mr. Torres could not and did not exercise them before or during his capital murder trial.

261. In March 1996, Mexican consular officials learned for the first time that Mr. Torres had been sentenced to death, after they were contacted by Mr. Torres's relatives. Immediately upon learning of his situation, Mexico, through its consulate, began rendering assistance, both legal and otherwise, to Mr. Torres. Until contacted by the Mexican consular representatives at that time, Mr. Torres had been entirely unaware of his rights under the Vienna Convention.

262. On 1 July 1999, Mr. Torres filed a petition for a writ of *habeas corpus* in the federal court of first instance, arguing that the court must review and reconsider his conviction and death sentence in light of the authorities' violation of his Article 36 rights. The district court rejected the assertion of this and other claims based on the municipal law doctrine of "procedural default". Applying this doctrine, the court decided that, because Mr. Torres had not asserted his rights under the Vienna Convention in his previous legal proceedings, he could not assert them in the federal *habeas* proceeding. This municipal law doctrine was held to bar such relief even though, first, Mr. Torres was unaware of his rights under the Convention at the time of the earlier legal proceedings, and, second, he was unaware of his rights precisely because the local authorities failed to comply with their obligations under the Convention promptly to inform him of those rights. The



court also found — without any analysis — that Mr. Torres had failed to show he was prejudiced by the violation.

263. Mr. Torres sought to appeal the district court's decision, but the United States Court of Appeals for the Tenth Circuit refused to review the facts pertaining to the Vienna Convention violation. If the federal appellate court denies relief, Mr. Torres will have no other option but to petition the United States Supreme Court. He is in danger of imminent execution.

### *Oregon*

#### *54. Reyes Camarena, Horacio Alberto*

264. On 18 September 1995, law enforcement authorities in the State of Oregon arrested Horacio Alberto Reyes Camarena, aged 40, on suspicion of murder. In December 1996, he was convicted of murder, and in January 1997, the trial court sentenced him to death. Mr. Reyes's direct appeal of the conviction and sentence was denied.

265. Although aware of his Mexican nationality, the competent authorities at no time informed Mr. Reyes of his rights to consular assistance under Article 36, subparagraph 1 (b), of the Vienna Convention. Nor did the authorities ever advise Mexican consular officers of Mr. Reyes's detention prior to his capital murder trial. Not having been apprised of these rights, Mr. Reyes could not and did not exercise them before making incriminating statements that were used against him at his capital murder trial.

266. In February 1996, Mexican consular authorities learned of Mr. Reyes's detention, but by then Mr. Reyes had already given incriminating statements to the police. Upon learning of his situation, Mexico, through its consulate, began rendering assistance, both legal and otherwise, to Mr. Reyes.

267. Mr. Reyes's appealed his conviction and death sentence on the grounds that authorities failed to notify him of his rights to consular notification and access. The Oregon Supreme Court rejected the assertion of this and other claims based on the municipal law doctrine of "procedural default". Applying this doctrine, the court decided that, because Mr. Reyes had not asserted his rights under the Vienna Convention in his previous legal proceedings, he could not assert them in his direct appeal. This municipal law doctrine was held to bar such relief even though, first, Mr. Reyes was unaware of his rights under the Convention at the time of the earlier legal proceedings, and, second, he was unaware of his rights precisely because the local authorities failed to comply with their obligations under the Convention promptly to inform him of those rights. Mr. Reyes is now preparing to file a petition to the state court of first instance for a writ of *habeas corpus*. Mr. Reyes will be asking the state court to review and reconsider his conviction and death sentence in light of the authorities' violation of Article 36 of the Vienna Convention and the *LaGrand* case.

## IV. THE PATTERN AND PRACTICE OF VIOLATIONS BY THE UNITED STATES

268. The Vienna Convention requires that authorities of the receiving State inform any foreign national of the sending State "in prison, custody or detention" (Vienna Convention, Art. 36 (1) (c)), "without delay of his rights" to contact his consulate (*ibid.*, Art. 36 (1) (b)). Then, if the detained foreign national so requests, the Vienna Convention requires the competent authorities of the receiving State to inform the national's consulate without delay (*ibid.*). By repeatedly arresting, detaining, trying, convicting, and sentencing to death Mexican nationals

without advising them of their Article 36 rights, the United States has repeatedly violated its obligations under the Vienna Convention.

269. The Vienna Convention mandates that the laws of each State party enable “full effect to be given to the purposes for which” the rights set forth in Article 36 of the Vienna Convention “are intended” (Vienna Convention, Art. 36 (2)). By failing to “enable full effect to be given” to Mexico’s rights and those of its nationals under Article 36 of the Vienna Convention and by refusing to provide a meaningful mechanism for review and reconsideration as well as a meaningful remedy at law of the convictions and sentences imposed on Mexican nationals in proceedings that failed to respect those rights, the United States has violated, and continues to violate, its obligations under the Vienna Convention.

270. The Vienna Convention on the Law of Treaties (done on 23 May 1963), which codifies the customary international law of treaties, sets forth two axiomatic principles: First, “[e]very treaty in force is binding upon the parties to it and must be performed by them in good faith” (*ibid.*, Art. 26). Second, “[a] party may not invoke the provisions of its internal law as justification for its failure to perform a treaty” (*ibid.*, Art. 27). The United States, by failing to perform its obligations under Article 36 of the Vienna Convention, and by invoking the provisions of its internal law to defeat rights granted to Mexico and its nationals by the Vienna Convention, has violated, and continues to violate, both of these principles.

271. Further, violation of the rights established by Article 36 of the Vienna Convention constitutes a violation of the human rights of Mexican nationals, especially in cases which may result in the imposition of a death sentence. The Inter-American Court on Human Rights has held that failure to notify a detained foreign national of his rights to consular assistance, as required by Article 36 (1) (b) of the Vienna Convention

“is prejudicial to the guarantees of the due process of law; in such circumstances, imposition of the death penalty is a violation of the right not to be ‘arbitrarily’ deprived of one’s life . . . with the juridical consequences inherent in a violation of this nature, i.e., those pertaining to the international responsibility of the State and the duty to make reparations” (*The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law*, Advisory Opinion OC-16/99 of 1 October 1999. Series A, No. 16; paras. 134-137).

272. In each of the 54 cases enumerated above, competent authorities of the United States failed timely to notify Mexican nationals of their right to consular assistance under the Vienna Convention. These failures deprived Mexican nationals of their rights and precluded Mexico from exercising its rights and performing its consular functions pursuant to Articles 5 and 36, respectively, of the Convention. As emphasized, in Mexico’s experience, consular assistance almost invariably affects the result of criminal proceedings brought against its nationals, particularly in cases in which United States prosecutors seek to impose a sentence of death. By violating Article 36 of the Vienna Convention, the United States prevented Mexico from rendering consular assistance that could have prevented the convictions and death sentences.

273. Notwithstanding Mexico’s ongoing efforts, violations of the Vienna Convention by competent authorities of the United States in capital prosecutions of Mexican nationals continue. Through the work of its consular officers and of the Mexican Capital Legal Assistance Program, Mexico has identified more than one dozen cases within the past two years alone of Mexican

nationals who have been arrested, interrogated, and charged with capital murder without being informed of their Vienna Convention rights. For example:

- United States authorities arrested Haron Ontiveros, a Mexican national, in San Diego on 7 June 2001. The authorities clearly knew Mr. Ontiveros's nationality. The Immigration and Naturalization Service detained him initially for violating the immigration laws. While the Service notified Mr. Ontiveros of his rights to consular notification and access, and he requested that his consulate be notified, authorities never acted on his request. Police officers interrogated Mr. Ontiveros repeatedly without allowing him to contact the Mexican consulate. In April 2002, those officers admitted that they had never heard of the Vienna Convention — even though California has enacted legislation incorporating Article 36 into its penal code. Mexican consular officials first learned of Mr. Ontiveros's detention several months after his arrest, when defence counsel contacted them.
- United States authorities arrested Martin Sanchez Meza and eight other Mexican nationals in Modesto, California, on 19 April 2002, and charged all of them with capital murder in connection with the same alleged crime. Only some two months earlier, on 7 February 2002, Mexican consular officers stationed in Sacramento, California, had written to local authorities of California to inform them of their Vienna Convention obligations and to provide them with the consulate's address and telephone number. The authorities nonetheless failed to notify the detainees of their rights to consular notification and access. Without advice from their consulate, many of these defendants made incriminating statements. Mexican consular officials first learned of their detentions on 2 May 2002, when defence counsel contacted them.

274. In the *LaGrand* case, the United States told the Court “that it is carrying out a vast and detailed programme in order to ensure compliance by its competent authorities at the federal as well as at the state and local levels with its obligation under Article 36 of the Vienna Convention” (*LaGrand, Judgment of 27 June 2001*, para. 123; see also *ibid.*, para. 121). Mexico recognizes that the United States and some of its constituent states recently have fortified their efforts to ensure compliance with the Convention.

275. Mexico submits, however, that it is clear that these measures alone fail to give full effect to the rights established by the Vienna Convention. The United States, “self-described practice of ‘investigating reports of violations and apologizing to foreign governments, and working with domestic law enforcement to prevent further violations’”, remains, in the words of one United States federal judge, “equivalent to securing enforcement by a toothless, clawless lion” (*Lombera-Camorlinga*, 206 F.#3d at 888 (Boochever, J., dissenting)). Fifty-four Mexican nationals convicted and sentenced in violation of their Vienna Convention rights remain on death row despite such measures.

276. Because of the prolonged detentions and severe sentences imposed on Mexican nationals by competent authorities of the United States, Mexico submits that here, as in the *LaGrand* case, “an apology is not sufficient” (*LaGrand, Judgment of 27 June 2001*, para. 123).

277. Mexico therefore seeks *restitutio in integrum*, “reestablish[ment] of the situation which would, in all probability, have existed if [the violations] had not been committed” (*Factory at Chorzów (Claim for Indemnity), Merits, Judgment of 13 September 1928, P.C.I.J., Series A, No. 17*, p. 47). Mexico should be granted *restitutio in integrum* in each case in which competent authorities of the United States sentenced a Mexican national to death following proceedings in which those authorities failed to respect Article 36 of the Vienna Convention.

278. *Restitutio in integrum* requires the United States to immediately re-establish the situation which existed before the violations to Article 36 of the Vienna Convention were committed. Mexico believes that *restitutio in integrum* in these cases is materially possible and does not involve a burden out of all proportion to the United States, taking into account the fundamental importance of human life.

279. Because of the manifest pattern and practice of Vienna Convention violations, Mexico also requests prospective relief that will ensure that competent authorities of the United States comply with Article 36 of the Vienna Convention by modifying municipal law such that it will “enable full effect to be given to the purposes for which the rights accorded under [Article 36] are intended”.

## V. THE CLAIMS OF THE UNITED MEXICAN STATES

280. The Government of the United Mexican States claims that:

(a) Pursuant to Article 36, subparagraph 1 (b), of the Vienna Convention, the United States is under the international legal obligation to Mexico, a State party to the Convention, to inform “without delay” any Mexican national who is “arrested or committed to prison or to custody pending trial or is detained in any other manner” of his rights under that subparagraph (*LaGrand, Judgment of 27 June 2001*, para. 77). These rights include:

- (i) the right, if the national arrested or detained so requests, to have the competent authorities of the receiving State inform the local consular post of the sending State that that State’s national has been so arrested or committed to prison or to custody pending trial or detained in any other manner;
- (ii) the right to have the competent authorities of the receiving State forward any communication “addressed to the consular post from the person arrested, in prison, custody or detention . . . without delay”.

The United States has violated, and continues to violate, these obligations.

(b) Pursuant to Article 36, subparagraph 1 (b), of the Vienna Convention, the United States is under the international legal obligation to an arrested national of Mexico to inform him “without delay” of his rights under that subparagraph (*Ibid*). These rights include:

- (i) the right, if the national arrested or detained so requests, to have the competent authorities of the receiving State inform the local consular post of the sending State that that State’s national has been so arrested or committed to prison or to custody pending trial or detained in any other manner;
- (ii) the right to have the competent authorities of the receiving State forward any communication “addressed to the consular post from the person arrested, in prison, custody or detention . . . without delay”.

The United States has violated, and continues to violate, these obligations with respect to the 54 Mexican nationals currently on death row, as well as the other Mexican nationals who are being or have been arrested and charged with capital murder.

(c) Pursuant to Article 36 of the Vienna Convention, the United States is under an international legal obligation to ensure that Mexico can communicate with and assist an arrested national prior to trial. By failing to notify Mexican nationals of their rights under Article 36, subparagraph 1 (b), of the Vienna Convention, the United States has prevented Mexico from

exercising its right to carry out consular functions pursuant to Articles 5 and 36 of the Convention. The United States therefore has violated, and continues to violate, this obligation.

- (d) Pursuant to Article 36, paragraph 2, of the Vienna Convention and Article 26 of the Vienna Convention on the Law of Treaties (done on 23 May 1969), which codifies customary international law, the United States is under an international legal obligation to ensure that its municipal law and regulations enable “full effect [to be given] to the purposes for which the rights accorded under [Article 36] are intended”. (See also Draft Articles on Responsibility of States for Internationally Wrongful Acts, Art. 4.) For the reasons set forth in this Application, the municipal law of the United States fails to give full effect to the rights afforded by Article 36 of the Vienna Convention and precludes Mexico and its nationals from vindicating those rights by law in any meaningful way. The United States therefore has violated, and continues to violate, this obligation.

## VI. THE JUDGMENT REQUESTED

281. The Government of the United Mexican States therefore asks the Court to adjudge and declare:

- (1) that the United States, in arresting, detaining, trying, convicting, and sentencing the 54 Mexican nationals on death row described in this Application, violated its international legal obligations to Mexico, in its own right and in the exercise of its right of consular protection of its nationals, as provided by Articles 5 and 36, respectively of the Vienna Convention;
- (2) that Mexico is therefore entitled to *restitutio in integrum*;
- (3) that the United States is under an international legal obligation not to apply the doctrine of procedural default, or any other doctrine of its municipal law, to preclude the exercise of the rights afforded by Article 36 of the Vienna Convention;
- (4) that the United States is under an international legal obligation to carry out in conformity with the foregoing international legal obligations any future detention of or criminal proceedings against the 54 Mexican nationals on death row or any other Mexican national in its territory, whether by a constituent, legislative, executive, judicial or other power, whether that power holds a superior or a subordinate position in the organization of the United States, and whether that power’s functions are international or internal in character;
- (5) that the right to consular notification under the Vienna Convention is a human right;

and that, pursuant to the foregoing international legal obligations,

- (1) the United States must restore the *status quo ante*, that is, re-establish the situation that existed before the detention of, proceedings against, and convictions and sentences of, Mexico’s nationals in violation of the United States international legal obligations;
- (2) the United States must take the steps necessary and sufficient to ensure that the provisions of its municipal law enable full effect to be given to the purposes for which the rights afforded by Article 36 are intended;
- (3) the United States must take the steps necessary and sufficient to establish a meaningful remedy at law for violations of the rights afforded to Mexico and its nationals by Article 36 of the Vienna Convention, including by barring the imposition, as a matter of municipal law, of any procedural penalty for the failure timely to raise a claim or defence based on the Vienna

Convention where competent authorities of the United States have breached their obligation to advise the national of his or her rights under the Convention; and

- (4) the United States, in light of the pattern and practice of violations set forth in this Application, must provide Mexico a full guarantee of the non-repetition of the illegal acts.

#### VII. JUDGE *AD HOC*

282. In accordance with the provisions of Article 31 (2), of the Statute and Article 35, paragraph 1, of the Rules, the Government of the United Mexican States declares its intention to exercise its right to choose a judge *ad hoc*.

#### VIII. RESERVATION OF RIGHTS

283. The United Mexican States reserves the right to modify and extend the terms of this Application, as well as the grounds invoked.

#### IX. PROVISIONAL MEASURES

284. The United Mexican States request that the Court indicate interim measures of protection, as set forth in a separate Request filed concurrently with this Application.

#### X. APPOINTMENT OF AGENT

285. The United Mexican States has designated Mr. Juan Manuel Gómez-Robledo, Ambassador, Legal Adviser to the Mexican Ministry of Foreign Affairs and Mr. Santiago Oñate, Ambassador of Mexico to the Kingdom of the Netherlands, as its Agents.

Pursuant to Article 40, paragraph 1, of the Rules of Court, all communications relating to this case should be sent to:

Ambassador Juan Manuel Gómez-Robledo

and

Ambassador Santiago Oñate,  
Embassy of the United Mexican States,  
Burgermeester Patijnlaan 1930,  
2585 EB Den Haag.

Telephone: + 31 (0)70 3602900.

Telecopier: + 31 (0)70 3560543.

with a copy to:

Donald Francis Donovan, Esq.,  
Debevoise & Plimpton,  
919 Third Avenue,  
New York, N.Y. 10022,  
United States of America.

Telephone: + 1-212-909-6000

Telecopier: + 1-212-909-6836

and to:

Sandra Babcock, Esq.,  
2520 Park Avenue South,  
Minneapolis, Minnesota 55404,  
United States of America.

Telephone: + 1-612-871-5080

Telecopier: + 1-612-871-5083

I have the honour to reassure the Court of my highest esteem and consideration.

Tlatelolco, D.F., 9 January 2003.

*(Signed)* Juan Manuel GÓMEZ-ROBLEDO,

Embajador, Consultor Jurídico,  
Secretaría de Relaciones Exteriores,  
México.

The undersigned, pursuant to Article 38, paragraph 3, of the Rules of the Court, certifies that the above signature corresponds to that of the Agent of the United Mexican States, Ambassador Juan Manuel Gómez-Robledo, Legal Adviser to my Office.

Tlatelolco, D.F., 9 January 2003.

*(Signed)* Jorge CASTAÑEDA GUTMAN,

El Secretario de Relaciones Exteriores.

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II. AMBASSADOR, LEGAL ADVISER, MINISTRY OF FOREIGN AFFAIRS OF MEXICO, TO THE  
PRESIDENT OF THE INTERNATIONAL COURT OF JUSTICE

SECRETARÍA DE RELACIONES EXTERIORES

MEXICO

The Hague, 9 January 2003

The Honorable Gilbert Guillaume,  
President,  
International Court of Justice,  
Peace Palace,  
The Hague,  
The Netherlands.

Mr. President:

Mexico has today instituted proceedings before the Court by filing an Application and a Request for Interim Measures of Protection. This case concerns 54 Mexican nationals under sentence of death in the United States as a result of criminal proceedings in which the United States did not comply with its obligations under the Vienna Convention on Consular Relations. Because it arises out of a dispute over the interpretation and application of that convention, the Court has jurisdiction pursuant to Article I of the Optional Protocol concerning the Compulsory Settlement of Disputes to that Convention.

Mexico hereby designates Mr. Juan Manuel Gómez-Robledo, Ambassador, Legal Adviser to the Mexican Ministry of Foreign Affairs, and Mr. Santiago Oñate, Ambassador of Mexico to the Kingdom of the Netherlands, as Agents of the United Mexican States in this case.

Mexico further designates as Advocates-Counselors Mr. Donald Francis Donovan of Debevoise & Plimpton in New York, New York; Ms. Sandra Babcock, Coordinator of the Mexican Capital Legal Assistance Program; Mr. Roberto Rodríguez, Ambassador, Director of Protection and Consular Affairs, Head of the Consular Affairs Division, Ministry of Foreign Affairs of Mexico; Mr. Joel Hernández, Deputy Legal Adviser, Ministry of Foreign Affairs of Mexico; Mr. Victor Uribe, Legal Office, Ministry of Foreign Affairs of Mexico; Ms. Socorro Flores, Legal Office, Ministry of Foreign Affairs of Mexico; and Mr. Erasmo Lara, Legal Office, Ministry of Foreign Affairs of Mexico.

Mexico further designates as Counsel Mr. Alonso Gómez-Robledo, Professor of International Law at the National Autonomous University of Mexico and member of the Inter-American Juridical Committee; Ms. Katherine Birmingham Wilmore of Debevoise & Plimpton, New York, New York; and Mr. Dietmar W. Prager of Debevoise & Plimpton, New York, New York. Mexico further designates as Advisers Mr. Juan José Gómez Camacho, Director General for Human Rights, Ministry of Foreign Affairs of Mexico and Mr. Jorge Cicero, Embassy of Mexico to the Kingdom of Belgium.



In accordance with Article 31 (2) of the Statute and Article 35 (1) of the Rules, Mexico declares its intention to exercise its right to choose a judge *ad hoc*.

Please send all communications relating to this case to:

Ambassador Juan Manuel Gómez-Robledo

and

Ambassador Santiago Oñate,  
Embassy of the United Mexican States,  
Burgermeester Patijnlaan 1930,  
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Sandra Babcock, Esq.,  
2520 Park Avenue South,  
Minneapolis, Minnesota 55404,  
United States of America.

Telephone: + 1-612-871-5080

Telecopier: + 1-612-871-5083

May I take this opportunity to provide you, Mr. President, the assurance of my highest esteem.

(Signed) Juan Manuel GÓMEZ-ROBLEDO,

Embajador, Consultor Jurídico,  
Secretaría de Relaciones Exteriores,  
México.

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