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## Rights of foreigners on death row examined

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**WASHINGTON** - Foreign murder suspects have no rights in U.S. federal courts to challenge their convictions on the grounds they were improperly denied legal help from their consulates, the Supreme Court was told Monday in a case testing the effect of international law in death penalty cases.

Justices heard arguments in the case of Jose Medellin, who says his rights under a U.S. treaty were violated when a Texas court tried and sentenced him to death in 1994 without giving him consular access.

Several of the justices showed little interest in deciding for now the impact of that treaty on domestic cases, particularly after President Bush last month ordered new state court hearings for Medellin and 50 other Mexicans on death row.

"Isn't it true that the Texas proceeding could make this moot?" asked Justice John Paul Stevens. Holding off on the case "could avoid the necessity of deciding a lot of difficult questions" and "useless" decision-making, he said.

R. Ted Cruz, Texas' solicitor general, responded that justices should rule that Medellin has no rights in federal courts - as opposed to state courts - because he failed to raise his claims at trial. "There is no constitutional claim," he said.

The case, which has attracted worldwide attention, is seen as a test of how much weight the Supreme Court will give in domestic death penalty cases to the International Court of Justice, or ICJ, in The Hague, which ruled last year that the 51 convictions violated the 1963 Vienna Convention.

It comes amid a growing divide on the Supreme Court over the role of international opinion to support decisions interpreting the U.S. Constitution. Last month, justices ruled 5-4 to outlaw the death penalty for juvenile criminals, citing in part the weight of international views against the practice.

In 1969, the Senate ratified the Vienna Convention, which requires consular access for Americans detained abroad and foreigners arrested in the United States. The Constitution states that U.S. treaties "shall be the supreme law of the land," but does not make clear who interprets them.

The case also pits the authority of state courts against the Bush administration, which in a surprise move ordered states to comply with the ICJ ruling and hold new hearings. At the same time, the administration said it was withdrawing from a section of the treaty so that the ICJ could no longer hear U.S. disputes.

Texas argues that Medellin is procedurally barred under the Constitution from federal relief because he didn't raise his claims at his state trial. As a result, it says, the state court judgment should stand regardless of the orders from Bush and the ICJ.

"Whether the president has authority to issue such a broad determination is far from clear," Cruz wrote in a recent filing. Any assertion that the presidential order "is somehow sufficiently authoritative to pre-empt long-standing state criminal laws ... is utterly unprecedented," he said.

The administration, arguing that it is a president's decision - and not the judicial branch's - to determine whether the United States should comply with international law, said it decided that new state hearings were appropriate.

"Compliance serves to protect the interest of United States citizens abroad, promotes the effective conduct of foreign relations and underscores the United States' commitment in the international community in the rule of law," acting Solicitor General Paul Clement wrote.

Last year, the New Orleans-based 5th U.S. Circuit Court of Appeals sided with Texas, ruling that federal relief for Medellin was barred because he failed at trial to file objections that Mexico was not told of his arrest. It cited a 1998 Supreme Court case that suggested treaties were subject to each country's procedural rules.

Medellin was one of five gang members sentenced to death for raping and murdering Jennifer Ertman, 14, and Elizabeth Pena, 16, in Houston in 1993.

Justices were told that Medellin's court-appointed lawyer was suspended from practicing law for ethics violations during the case, and he failed to call any witnesses during the guilt phase of the trial. Lawyers for Mexico say the country would have made sure Medellin had a competent lawyer had it known about the 1994 trial.

Medellin is supported in his appeal by dozens of countries, legal groups and human rights organizations, as well as former American diplomats and the European Union.

After Bush ordered new hearings for the Mexicans, Medellin's attorneys asked the Supreme Court this month to put case on hold so they could pursue relief in state court first. But justices did not act on that request, allowing arguments to proceed Monday.

According to Amnesty International, the Mexicans on death row affected by the ICJ ruling are held in nine states, although some have been recently commuted to life sentences. The states are California (27); Texas (15); Illinois (3); and Nevada, Ohio, Oklahoma, Oregon, Arizona and Arkansas (1 each).

In all, 118 foreigners from 32 countries are on death rows in the United States.

The case is Medellin v. Dretke, 04-5928. A ruling is expected by late June.

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Supreme Court: <http://www.supremecourtus.gov/>

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