

**FOR IMMEDIATE RELEASE****March 2, 2005**

**COURT URGED NOT TO ALLOW  
INTERNATIONAL LAW TO TRUMP  
U.S. CRIMINAL LAWS**  
*(Medellin v. Dretke, No. 04-5928)*

The Washington Legal Foundation (WLF) this week urged the U.S. Supreme Court not to permit a criminal defendant, properly convicted of murder and sentenced to death, to invoke international law as a basis for overturning his conviction. In a brief filed in *Medellin v. Dretke*, WLF argued that a Mexican citizen convicted of raping and murdering two teenage girls in 1993 has received more than a fair review of his sentence and that it is time now to bring his appeal rights to a close.

WLF filed its brief on behalf of Randy and Sandy Ertman, the parents of one of the murder victims: 14-year-old Jenny Ertman. Other WLF clients include U.S. Representatives Steve Chabot and Walter B. Jones and the Allied Educational Foundation.

"The defendant is attempting to delay his execution by invoking the ruling of an international court. But U.S. courts are supposed to base their decisions on American law, not international law," said WLF Chief Counsel Richard Samp after filing WLF's brief. "Where, as here, a defendant was convicted of a gruesome murder more than a decade ago and every appellate court has concluded that he received a fair trial, he should not be permitted to continue to delay his sentence by invoking a new, international-law issue that he failed to raise until years after his initial conviction," Samp said.

The case involves Jose Ernesto Medellin, who is a Mexican citizen but has lived virtually all his life in Houston. Prior to his arrest in this case at age 18, he had a lengthy history of violent gang activity. In June 1993, 14-year-old Jenny Ertman and 16-year-old Elizabeth Pena had the misfortune of encountering Medellin's gang while walking home. Although the two girls were total strangers, the gang members brutally raped both girls for more than an hour before strangling them with their shoelaces so that they could not report the attacks. Because Jenny Ertman did not die soon enough to satisfy Medellin, he stepped on her throat to finish the murder. Medellin was arrested for the crimes after boasting about his acts to numerous acquaintances. He was read his *Miranda* rights and then confessed to involvement in the crimes. A jury convicted him of capital murder and sentenced him to death in October 1994. Every court that has reviewed his case since then has determined that he received a fair trial.

Medellin never mentioned at the time of his arrest and at trial that he was not a U.S. citizen. He first mentioned that fact in 1998, when he sought to overturn his conviction based on alleged violation of his rights under the Vienna Convention, which provides that anyone arrested outside of his native country must be informed of his right to communicate with consular officials representing his native country. Because Medellin was not told when arrested that he had a right to communicate with Mexican officials, he claimed that his subsequent conviction could not be allowed to stand. Both the Texas courts and the lower federal courts refused to consider Medellin's claims, ruling that he had waived them by waiting four years to raise them.

In the meantime, Mexico filed suit against the United States before the International Court of Justice (ICJ), claiming that American police had failed to inform arrested Mexicans in 54 capital cases (including Medellin's case) of their rights under the Vienna Convention. Despite claims by the U.S. that the ICJ lacked jurisdiction over the matter and had no power to interfere with the internal workings of American criminal courts, the ICJ ruled in favor of Mexico. It ruled that the federal courts must give each of the Mexicans a full hearing on their claims that they were prejudiced in some way by the failure to let them know of their right to contact Mexican consular officials. Medellin then appealed his case to the U.S. Supreme Court, arguing that the Supreme Court was bound to enforce the ICJ judgment.

In its brief filed in support of Texas, WLF argued that only American law, not international law, is enforceable in U.S. courts. Medellin argued that the Vienna Convention qualifies as "American law" because it was ratified by the U.S. Senate. In response, WLF argued that the Vienna Convention was never intended to be enforceable by individual litigants. Moreover, even if the Convention does qualify as American law, there is no basis for elevating the Convention (or international court decisions purporting to enforce the Convention) to a level above that of other federal laws, WLF argued. WLF argued that because Congress made clear in a law adopted in 1996 (many years *after* adoption of the Vienna Convention) that arguments such as Medellin's are waived unless raised at trial, Medellin should be deemed to have waived any treaty rights he may have had -- particularly because he was represented by competent counsel and has failed to demonstrate how he was prejudiced by not learning of his consular rights.

WLF is a public interest law and policy center with supporters in all 50 states, including Texas. It devotes a significant portion of its resources to protecting the rights of crime victims and ensuring that American courts decide cases based on American law.

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For further information, contact WLF Chief Counsel Richard Samp, (202) 588-0302. A copy of WLF's brief is posted on its web site, [www.wlf.org](http://www.wlf.org).