

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. _____

In re JOSÉ ERNESTO MEDELLÍN,
Petitioner,

APPLICATION FOR A STAY OF EXECUTION

The President of the United States, in his determination of February 28, 2005, and the Supreme Court of the United States, in *Medellin v. Texas*, 128 S. Ct. 1346 (2008), have both confirmed that the United States has a binding legal obligation, arising from treaties ratified by the President with the advice and consent of the Senate, to provide Petitioner José Ernesto Medellín review and reconsideration in accord with the Judgment of the International Court of Justice (“ICJ”) in the *Case Concerning Avena and Other Mexican Nationals (Mex. v. U.S.)*, 2004 I.C.J. 12 (Mar. 31) (“*Avena*”). In *Medellin v. Texas*, the Supreme Court held that neither it nor the President could alone execute that obligation as a matter of domestic U.S. law, because that authority was constitutionally reserved to Congress. In

response, the respective Chairs of the House Committees on the Judiciary and Foreign Affairs have sponsored the “Avena Case Implementation Act of 2008” to achieve compliance with the ICJ Judgment and the U.S.

commitment to respect it, and Texas Senator Rodney Ellis has stated that he will introduce state legislation to achieve the same result as soon as the Texas Legislature reconvenes in January.

Yet Texas moves implacably toward executing Mr. Medellín as scheduled this coming Tuesday, August 5, 2008, without having afforded Mr. Medellín the review and reconsideration that *Avena* requires.¹ Were Texas permitted to do so, it would cause irreparable harm not only to Mr.

¹ Once it became clear that Texas would proceed with the execution notwithstanding diplomatic discussions between Mexico and the United States, the request for assistance from Attorney General Mukasey and Secretary of State Rice, and the introduction of federal legislation, Mr. Medellín applied to the Texas Court of Criminal Appeals for a stay of execution in connection with a second subsequent application for a writ of habeas corpus. That application was denied yesterday. As set forth in the Affidavit of Sandra L. Babcock that accompanies Mr. Medellín’s request for authorization to file a successive habeas petition in the U.S. District Court for the Southern District of Texas, Mr. Medellín deferred filing in this Court until now on the view that it was proper to seek the stay first from the Texas court and in light of the Texas “two-forum rule,” which would have barred him from seeking relief in this Court while his state application was pending. *See Ex parte Soffar*, 143 S.W.3d 804, 806 (Tex. Crim. App. 2004) (per curiam). In light of the imminent execution, Mr. Medellin has today filed in the Supreme Court a petition for a writ of certiorari to review the Court of Criminal Appeals decision, a petition for an original writ of habeas corpus, an application to recall the mandate in *Medellin v. Texas*, 128 S. Ct. 1346 (2008), and an accompanying motion for a stay. Those filings remain pending.

Medellín by virtue of the unlawful deprivation of his life, but also to fundamental interests of the United States in vindicating the constitutional authority of the U.S. Congress and the international credibility of the United States as a whole. *First*, in that event, Mr. Medellín’s right to due process under the Fourteenth Amendment would be violated if he is executed in breach of a binding legal obligation of the United States to afford him process that could affect his conviction and sentence. *Second*, in that event, Congress’s constitutional prerogative, just settled by the Supreme Court, to determine whether and how the United States will comply with its international obligation, would be irreparably defeated. *Finally*, the foreign policy interests identified by the President—protecting the safety of Americans living, working, and traveling abroad and the credibility of the United States in its dealings with other nations, would be irreparably damaged.

If denying Mr. Medellín the review and reconsideration ordered by the ICJ is so important as possibly to justify the serious consequences to American interests identified by the President, the Supreme Court, and many, many others, that judgment should not be made by a Texas prosecutor, or even the Governor of Texas, but by the U.S. Congress. This

Court should stay Mr. Medellín's execution to allow the competent political actors to comply with the Nation's international commitments.

STATEMENT OF FACTS

Mr. Medellín hereby incorporates by reference the statement of facts and prior proceedings set forth in his Motion for Authorization to File a Successive Petition for Habeas Corpus, filed simultaneously herewith.

ARGUMENT

I. The Court Should Exercise its Discretion to Issue a Stay Because Petitioner Has Presented a Substantial case on the Merits and the Balance of Equities Weighs Heavily in His Favor.

A federal court may stay an execution based on a second or successive federal habeas petition only when substantial grounds exist upon which relief may be granted. *Lackey v. Scott*, 52 F.3d 98 (5th Cir. Tex. 1995). In deciding whether to issue a stay of execution, courts in this Circuit are required to consider four factors:

(1) whether the movant has made a showing of likelihood of success on the merits, (2) whether the movant has made a showing of irreparable injury if the stay is not granted, (3) whether the granting of the stay would substantially harm the other parties, and (4) whether the granting of the stay would serve the public interest.

Buxton v. Collins, 925 F.2d 816, 819 (1991), *cert. denied*, 498 U.S. 1128 (1991).² “Although the movant need not always show a probability of success on the merits, he must present a substantial case on the merits when a serious legal question is involved and show that the balance of the equities weighs heavily in the favor of granting the stay.” *Id.* (citations and internal quotations omitted); *Clark v. Collins*, 956 F.2d 68, 71 (5th Cir. Tex. 1992) (citations and internal quotations omitted). The “balance of the equities” comprises the latter three factors of the four-prong test. *Lackey v. Scott*, 885 F. Supp. 958, 964 (W.D. Tex. 1995). The decision to grant a stay of execution is a matter within the court’s discretion. *Id.* (citation omitted); *see also Howard v. Dretke*, 157 Fed. Appx. 667, 671 (5th Cir. Tex. 2005).

B. Mr. Medellín Presents Substantial Grounds For Relief.

The Court’s essential task under the first prong is to determine whether Mr. Medellín’s request for review and reconsideration consistent with the *Avena* Judgment “presents ‘substantial grounds’ for relief.” *Lackey*

² Fifth Circuit Local Rule 8.9, “Stays of Execution Following Decision,” does not apply in this case because Petitioner is not requesting a stay of execution to permit the filing and consideration of a petition for writ of certiorari. Petitioner is requesting a stay of execution in connection with an application for permission to file a successive habeas petition in the district court. See UCSC Ct. App. Loc. R. 8.9; *see also Howard v. Dretke*, 2005 WL 2473590 (5th Cir. 2005).

v. Scott, 885 F. Supp. 958, 964 (W.D. Tex. 1995). “‘Substantial grounds’ exist if an issue is ‘debatable among jurists of reason’ or is otherwise ‘adequate to deserve encouragement to proceed further.’” *Id.* (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983)). That standard is easily met here, where there is consensus among all relevant actors that Mr. Medellín is *entitled* to review and reconsideration of his conviction and sentence consistent with the *Avena* Judgment. No one—not the Supreme Court, not the United States, not Mexico, not Texas—disputes that there is a binding international obligation to comply under a treaty that the United States willingly entered into and that was duly ratified by the President and the Senate. No one disputes that by virtue of the Supremacy Clause of the Constitution, the treaties made “under the Authority of the United States, shall be the supreme Law of the Land.” U.S. Const. art. VI, cl. 2. The Supreme Court simply held that neither the *Avena* Judgment nor the President’s determination, standing alone, is automatically enforceable in state courts so as to override procedural rules that would otherwise bar review of Vienna Convention claims such as Mr. Medellín’s. *Medellin v. Texas*, 128 S. Ct. 1346 (2008). The Supreme Court held that instead further action by the federal political branches is needed to render the *Avena*

decision enforceable in Mr. Medellín's case. *Id.* at 1366 ("Congress is up to the task of implementing non-self-executing treaties."); *see also id.* at 1369, 1371 (noting action by Congress and/or by the President); *id.* at 1374 (Stevens, J., concurring in judgment) ("[T]he fact that the President cannot legislate unilaterally does not absolve the United States from its promise to take action necessary to comply with the ICJ's judgment.").

Leading members of the House of Representatives, including the Chairs of the Committees for Foreign Affairs and Judiciary, have proposed the "Avena Case Implementation Act of 2008," to confer on Mr. Medellín the right to raise in domestic courts the undisputed international legal obligation of review and reconsideration. *See* Exhibit 1, H.R. 6481, 110th Cong. § 2(a) (2d Sess. 2008). Such relief would include "any declaratory or equitable relief necessary to secure the rights," and "any relief required to remedy the harm done by the violation [of his consular rights], including the vitiation of the conviction or sentence where appropriate." *Id.* § 2(b). And as noted in previous filings before this Court, Texas State Senator Rodney Ellis has indicated his intent to propose implementing legislation at the state level at the earliest available opportunity when the Texas legislature reconvenes in January 2009. *See* Exhibit 2, Letter from Rodney Ellis, Texas

State Senator, to Judge Caprice Cospers (May 5, 2008). The fact that additional time is required for the political branches to give the *Avena* Judgment domestic legal effect should not operate to deprive Mr. Medellín of his undisputed rights, particularly where his very life hangs in the balance. Indeed, the United States has explicitly agreed, and the International Court of Justice has confirmed, that Mr. Medellín’s execution cannot lawfully proceed unless and until he has been provided the process to which he is entitled. On this record, there can be no doubt that Mr. Medellín has presented “substantial grounds” for relief. *See, e.g., Lonchar v. Thomas*, 517 U.S. 314, 320-21 (1996) (district court may deny stay of execution only where “it plainly appears...that the petitioner is not entitled to relief in the district court”); *Barefoot v. Estelle*, 463 U.S. at 893 n. 4 (stay of execution appropriate if petitioner demonstrates that “a court *could* resolve the issues [in a different manner]; or that the questions are ‘adequate to deserve encouragement to proceed further.’”). Further, in the unique circumstances of this case, Mr. Medellin also has demonstrated a likelihood of success or, at a minimum, a substantial issue on his right to proceed with his successor petition as a habeas application under 28 U.S.C. §2254.

None of the scope, character, or outcome of the review and reconsideration to which Mr. Medellín is entitled is relevant to the factor of likelihood of success at this stage, and the harm that would be done to Mr. Medellín's due process right to receive review and reconsideration, Congress's authority to determine compliance with *Avena*, and the United States's credibility in its international dealings if the execution goes forward can only be avoided if he receives review and reconsideration in accord with the requirements of *Avena*. But in any event, that remedy would not be an empty exercise. The undisputed violation of his Vienna Convention rights in his case goes to the very heart of the validity of his conviction and sentence. Evidence submitted to the court below but never considered by it nor any other U.S. court on the merits establishes that during the investigation and prosecution of Mr. Medellín's case, his defense attorney was under a six-month suspension from the practice of law, was jailed prior to trial for seven days for violating his suspension, and indeed, less than three weeks before the beginning of Mr. Medellín's trial, was forced to file a writ of habeas corpus *on his own behalf* in order to keep himself out of jail. See Exhibit 26, Second Subsequent Application for Post-Conviction Writ of Habeas Corpus at 40, *In re Medellín*, No. ___ (Tex. Crim. App. July 28,

2008). Billing records indicate that the sole investigator for the defense spent *a total of eight hours* on the case prior to trial, including time spent with Mr. Medellín. *Id.* at 41. Had Mr. Medellín received review and reconsideration, he would have been able to demonstrate that if the Mexican consulate had been notified of his detention *before* he was tried and convicted, the consulate would have rendered material assistance. *Id.* at 38-39, 46-47. Indeed, the Inter-American Commission on Human Rights, the only tribunal to consider Mr. Medellín's claim of prejudice resulting from the Vienna Convention violation on the merits using a standard consistent with the *Avena* Judgment, has determined that he was prejudiced and that due process demanded a new trial. *Id.* at 34-36.

As the United States has acknowledged, Mr. Medellín has yet to receive the requisite review and reconsideration mandated by *Avena*, notwithstanding the alternative prejudice findings by the Texas Court of Criminal Appeals and the federal district court in his first habeas applications. *See* Exhibit 14, Excerpts from Transcript of Oral Argument, Vol. 1, *Ex parte Medellin*, 223 S.W.3d 315 (2006) (No. AP-75,207). (“[The previous holdings] do[] not give full and independent weight to the treaty violation, which is what *Avena* requires and which is what the President has

directed.”).³ Justice Breyer, writing also on behalf of Justices Souter and Ginsburg, noted: “While Texas has already considered [whether the police failure to inform Medellin of his Vienna Convention rights prejudiced Medellin], it did not consider fully, for example, whether appointed counsel’s coterminous 6-month suspension from the practice of the law ‘caused actual prejudice to the defendant’--prejudice that would not have existed had Medellin known he could contact his consul and thereby find a different lawyer.” *Medellin v. Texas*, 128 S. Ct. at 1389-1390 (Breyer, J., dissenting).

To allow an execution to proceed in these circumstances, before a U.S. court can consider his claims, cannot be said to be “based on reason rather than caprice or emotion.” *Gardner v. Florida*, 430 U.S. 349, 357-58 (1977) (opinion of Stevens, J.) (“[D]eath is a different kind of punishment from any other which may be imposed in this country” and it is thus “of vital

³ The Texas trial court considering Mr. Medellin’s first habeas application found, in its consideration of the merits of the Vienna Convention violation, that Mr. Medellin “fail[ed] to show foreign nationality which requires notification of a foreign consulate” and could not show that the violation affected the constitutional validity of his conviction and sentence. *See* Exhibit 26, Second Subsequent Application for Post-Conviction Writ of Habeas Corpus at 6, 33-34, *In re Medellin*, No. __ (Tex. Crim. App. July 28, 2008). That decision was before the ICJ when it issued *Avena*. Not only does it apply the wrong standard, but any finding on nationality or prejudice could not trump the obligation under that judgment to prospectively review and reconsider the conviction and sentence.

importance to the defendant and to the community that any decision to impose the death sentence be, and appear to be, based on reason rather than caprice or emotion.”). Although the nature of the death penalty alone does not justify a stay in every instance, “a death sentence cannot begin to be carried out by the State while substantial legal issues remain outstanding.” *Barefoot v. Estelle*, 463 U.S. at 888.

B. The Balance of Equities Strongly Weighs In Favor of A Stay of Execution.

The balance of equities comprises whether the movant has made a showing of irreparable injury if the stay is not granted, whether the granting of the stay would substantially harm the other parties, and whether the granting of the stay would serve the public interest. In the unique circumstances of this case, the equities, including the fundamental interest of the United States in protecting the authority of the U.S. Congress to determine the United States’s compliance with a U.S. treaty obligation and the critical U.S. foreign policy interests identified by the President and endorsed by the Supreme Court, alone justify the stay of execution sought. There can be no doubt that the paramount interest in human life is at stake here and that that interest would be irreparably harmed if Mr. Medellín were

to be executed without having received the review and reconsideration to which he is entitled. In that event, Mr. Medellín would forever be deprived of the opportunity to vindicate his rights. *See, e.g., Wainwright v. Booker*, 473 U.S. 935, 935 n.1 (1985) (Powell, J., concurring) (“[T]hat irreparable harm will result if a stay is not granted . . . is necessarily present in capital cases.”). But Mr. Medellín’s execution would go far beyond the confines of his individual case; his case raises unique circumstances implicating the public interest that make the grant of a stay imperative not only to maintain the standing of the United States in its international relations, but also to protect the lives of countless Americans living, working and traveling abroad.

First, Mr. Medellín would suffer the gravest possible form of irreparable injury were he to be put to death before having a chance to be afforded the protections to which he is undisputedly entitled by virtue of the treaty obligations of the United States. Members of the House of Representatives have proposed the “Avena Implementation Act of 2008,” which would confer on Mr. Medellín the right to raise in domestic courts what all entities agree is an undisputed international legal obligation. This Court interpreted the scheme of Article 94 of the United Nations Charter to

preserve to the political branches the “option of noncompliance”— specifically, their ability “to determine whether and how to comply with an ICJ judgment.” *Medellin v. Texas*, 128 S. Ct. at 1360. Texas should not be allowed to deprive the Executive and Congress of the opportunity to comply by rushing to execute Mr. Medellín before they have been able to act and thereby placing the United States in irreparable breach. As a result of the irreparable injury not only to Mr. Medellín, but also to the institutional interests of both the Executive and Congress, the equities weigh heavily in favor of a stay.

Second, compared with the irremediable loss of a human life and the paramount federal interests at stake, any prejudice that Texas might suffer due to a delay in Mr. Medellín’s execution would be inconsequential. Mr. Medellín would remain incarcerated on death row, as he has been for over fourteen years. While Texas has a legitimate interest in implementing its criminal laws, a further delay equal to the length of time needed to implement the *Avena* Judgment could hardly constitute a hardship to Texas.

Indeed, far from harming Texas, a stay of execution is apt given Texas’s role in the treaty violation itself. As Justice Stevens stated in *Medellin v. Texas*, “Texas’ duty [to protect the honor and integrity of the

Nation] is all the greater since it was Texas that – by failing to provide consular notice in accordance with the Vienna Convention – ensnared the United States in the current controversy.” *Medellin v. Texas*, 128 S. Ct. at 1374 (Stevens, J., concurring). “Having already put the Nation in breach of one treaty,” Justice Stevens wrote, “it is now up to Texas to prevent the breach of another.” *Id.*

Third, the repercussions of Mr. Medellín’s execution in violation of the *Avena* Judgment would be felt far beyond the borders of Texas, damaging the United States’s relations with its treaty partners, eroding our allies’ confidence in the ability of the United States to live up to its international commitments, and potentially endangering thousands of Americans overseas who require the assistance of U.S. consulates. The public interest in affording Congress the opportunity to effect compliance with *Avena* is thus profound.

The President, who shoulders the primary responsibility for our nation’s foreign relations, *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304, 319 (1936), has set forth the critical U.S. interests at stake in this case. In an amicus brief submitted to the Court, the United States cited two principal foreign policy considerations prompting the President’s 2005

decision to direct state courts to provide review and reconsideration: “the need for the United States to be able to protect Americans abroad” and the need to “resolve a dispute with a foreign government by determining how the United States will comply with a decision reached after the completion of formal dispute-resolution procedures with that foreign government.” Br. for the United States as Amicus Curiae Supporting Respondent at 43, 45, *Medellin v. Dretke*, 544 U.S. 660 (2005) (No. 04-5928). In light of these objectives, the President considered it in the “paramount interest of the United States” to achieve “prompt compliance with the ICJ’s decision with respect to the 51 named individuals” including Mr. Medellín. *Id.* at 41.

All nine Justices of the Supreme Court recognized that the United States has a vital public interest in complying with its obligations under the *Avena* Judgment. Writing for the majority, Chief Justice Roberts noted that

In this case, the President seeks to vindicate United States interests in ensuring the reciprocal observance of the Vienna Convention, protecting relations with foreign governments, and demonstrating commitment to the role of international law. These interests are plainly compelling.

Medellin v. Texas, 128 S. Ct. at 1367. In a concurring opinion, Justice Stevens agreed that “the costs of refusing to respect the ICJ’s judgment are significant.” *Id.* at 1375. And Justice Breyer, joined by Justices Souter and

Ginsburg, observed in his dissenting opinion that noncompliance with the *Avena* Judgment would exact a heavy toll on the United States by “increase[ing] the likelihood of Security Council *Avena* enforcement proceedings, [] worsening relations with our neighbor Mexico, [] precipitating actions by other nations putting at risk American citizens who have the misfortune to be arrested while traveling abroad, or [] diminishing our Nation’s reputation abroad as a result of our failure to follow the ‘rule of law’ principles that we preach.” *Id.* at 1391.

As noted, the rights and obligations set forth in Article 36 of the Vienna Convention are entirely reciprocal in nature. And the risks of noncompliance, well-known to those entrusted with carrying out the nation’s foreign relations, are severe. As Ambassador Jeffrey Davidow, who holds the rank of Career Ambassador (the highest rank available to diplomats) and served as an ambassador for the United States in the administrations of Presidents Ronald Reagan, George H.W. Bush, Bill Clinton, and George W. Bush, observed: “Without our own strong enforcement of treaties, the United States’ efforts in a vast array of contexts—economic, political and commercial—would be significantly undermined. Exhibit 19, Affidavit of Jeffrey Davidow, ¶ 3.

For these reasons, failure to comply with the Avena Judgment “would significantly impair the ability of American diplomats to advance critical U.S. foreign policy.” *Id.* The importance of the United States’s compliance to the United States’s treaty partners is dramatically illustrated here by the submission in 2007 of amicus briefs from sixty countries urging compliance in *Medellin v. Texas*.⁴ There can be no doubt, moreover, that the consular rights afforded by the Vienna Convention are critical to the safety and security of Americans who travel, live and work abroad: missionaries, Peace Corps volunteers, tourists, business travelers, foreign exchange students, members of the military, U.S. diplomats, and countless others. Timely access to consular assistance is crucially important whenever individuals face prosecution under a foreign and often unfamiliar legal system. The United States thus insists that other countries grant Americans the right to prompt consular access.

⁴ *See* Br. of Amici Curiae the European Union and Members of the Int’l Community in Support of Petitioner, *Medellin v. Texas*, 128 S. Ct. 1346 (No. 06-984) (forty seven nations and the European Union); Br. Amicus Curiae of the Government of the United Mexican States in Support of Petitioner José Ernesto Medellín, *Medellin v. Texas*, 128 S. Ct. 1346 (No. 06-984) (Mexico); Br. of Foreign Sovereigns as Amici Curiae in Support of Petitioner José Ernesto Medellín, *Medellin v. Texas*, 128 S. Ct. 1346 (No. 06-984) (twelve nations); see also Exhibit 10, Letters from Brazil, Uruguay, the Council of Europe, Argentina, Bolivia, Ecuador, El Salvador, Guatemala, Honduras, Peru, Paraguay, and Chile to Rick Perry, Governor of Texas, and Rissie Owens, Presiding Officer, Texas Board of Pardons and Paroles.


The business community is similarly concerned about the consequences of noncompliance with the *Avena* Judgment. In a letter to House Speaker Nancy Pelosi urging Congress to pass legislation implementing *Avena*, Peter M. Robinson, President and CEO of the United States Council for International Business observed that “[t]he security of Americans doing business abroad is clearly and directly at risk by U.S. noncompliance with its obligations under the Vienna Convention on Consular Relations.” Exhibit 11, Letter to The Honorable Nancy Pelosi, Speaker of the House of Representatives, from Peter M. Robinson (June 13, 2008). Professor Phillip Alston, who serves as the United Nations Human Rights Council Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, recently singled out the lack of compliance with the *Avena* Judgment as an issue of particular concern: “Why,” he queried, “would foreign corporations, relying in part upon treaty protections, invest in a state such as Alabama or Texas if they risked being told that the treaty bound only the US government but was meaningless at the state level? This is where the *Medellin* standoff leaves things.” Exhibit 12, Press Statement, Professor Phillip Alston, United Nations Human Rights Council Special Rapporteur (June 30, 2008).

Simply put, if Texas places the United States in breach of its treaty obligations, the risk that our treaty partners will suspend compliance with their obligations under those same treaties increases dramatically. Such a response could compromise, among other things, the crucial rights of consular notification and assistance of all American citizens abroad. Allowing Mr. Medellín's execution to proceed in contravention of the United States's obligations under the *Avena* Judgment, when steps to implement that obligation consistent with this Court's guidance are in process, would also send the message that the United States is indifferent not only to the rule of law but to human life itself.

CONCLUSION

For the foregoing reasons, the Court should stay Petitioner's execution pending review and reconsideration of his conviction and sentence consistent with the terms of the *Avena* Judgment of the International Court of Justice.

Respectfully submitted,



SANDRA L. BABCOCK
Clinical Professor of Law

Northwestern University School of
Law
357 E. Chicago Avenue
Chicago, Illinois 60611
Tel. (312) 503-0114

DONALD FRANCIS DONOVAN
CATHERINE M. AMIRFAR
CARL MICARELLI
JILL VAN BERG
WILLIAM C. WEEKS
DEBEVOISE & PLIMPTON LLP
919 Third Avenue
New York, NY 10022
Tel. (212) 909-6000
Fax. (212) 909-6836

Counsel for Petitioner

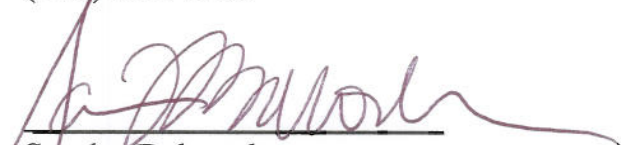
August 1, 2008

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of August 2008, I caused a true and correct copy of the foregoing motion to be served upon opposing counsel by electronic mail and by Federal Express to:

James C. Ho
Solicitor General
Office of the Attorney General
209 West 14th Street
Austin, TX 78701
(512) 936-1700


Tina Miranda
Assistant Attorney General
Office of the Attorney General
300 West 15th Street, 8th Floor
Austin, TX 78701
(512) 936-1400



Sandra Babcock

CERTIFICATE OF CONFERENCE

I hereby certify that movant has attempted to contact all other parties to determine whether an opposition will be filed. Movant has not yet received an indication whether an opposition will be filed.



Sandra Babcock