

See Beard's file

PETITION FOR EXECUTIVE CLEMENCY

of

ANGEL FRANCISCO BREARD

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April 9, 1998

BY HAND

David E. Anderson, Esquire
Legal Counsel
Office of the Governor
State Capitol
Richmond, VA 23219

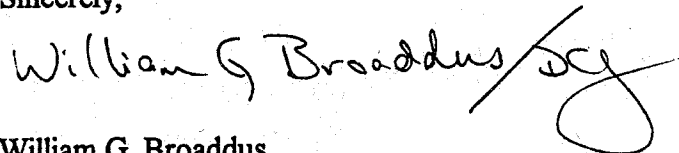
Re: Angel Francisco Breard

Dear Mr. Anderson:

Enclosed are five copies of a Petition for Reprieve on behalf of Angel Breard for the Governor's consideration.

We are looking forward to our meeting this evening.

Sincerely,



William G. Broaddus

WGB/nlk
Enclosures

cc: Michele J. Brace, Esq.

PETITION FOR REPRIEVE

of

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**Counsel for Petitioner
Angel Francisco Breard**

INTRODUCTION

Angel Francisco Breard is a Paraguayan citizen on Virginia's Death Row whose Petition for Executive Clemency is already on file in the office of the Governor of Virginia. He respectfully presents this Petition for Reprieve based upon a significant occurrence of this morning.

On April 3, 1998, as the Governor knows, the Republic of Paraguay filed in the International Court of Justice an Application and a Request for Interim Measures of Protection in a case concerning Angel Francisco Breard: Case Concerning the Vienna Convention on Consular Relations (Paraguay v. United States of America), attached as Ex. 1. The interim measures of protection sought included: (1) that the Government of the United States take the measures necessary to ensure that Breard not be executed pending the disposition of the case in the ICJ, and (2) that the Government of the United States ensure that no action is taken that might prejudice the rights of the Republic of Paraguay with respect to any decision the ICJ may render on the merits of the case. After hearing oral argument on April 7, 1998, the ICJ entered a unanimous order on April 9, 1998, attached as Ex. 2, indicating that:

The United States should take all measures at its disposal to ensure that Angel Francisco Breard is not executed pending the final decision in these proceedings, and should inform the Court of all the measures which it has taken in implementation of this Order.

In a concurring declaration, attached as Ex. 3, the ICJ's President Stephen M. Schwebel, of the United States, stated:

It is of obvious importance to the maintenance and development of a rule of law among states that the obligations imposed by treaties be complied with and that, where they are not, reparation be required. The mutuality of interest of States in the effective observance of the obligations of the Vienna Convention on Consular Relations is the greater in the intermixed global community of today and tomorrow (and the citizens of no State have a higher interest in the observance of those obligations than the peripatetic citizens of the United States). In my view, these considerations outweigh the serious

difficulties which this Order imposes on the authorities of the United States and Virginia.

As Judge Butzner wrote in his concurring opinion in Angel's case in the Court of Appeals:

The protections afforded by the Vienna Convention go far beyond Breard's case. United States citizens are scattered around the world -- as missionaries, Peace Corps volunteers, doctors, teachers and students, as travelers for business and for pleasure. Their freedom and safety are seriously endangered if state officials fail to honor the Vienna Convention and other nations follow their example. Public officials should bear in mind that "international law is founded upon mutuality and reciprocity" Hilton v. Guyot, 159 U.S. 113, 228 (1895).

. . . The importance of the Vienna Convention cannot be overstated. It should be honored by all nations that have signed the treaty and all states of this nation.

Breard v. Pruett, 134 F.3d 615, 622 (4th Cir. 1998). Clemency Petition Exhibit ("Clem. Pet. Ex.")

24.

The authorities of the Commonwealth of Virginia have stipulated that Mr. Breard was not advised of his rights to consular notification and access under Article 36 of the Vienna Convention prior to being tried and sentenced to death in Arlington County, Virginia in 1993. Clem. Pet. Ex. 13. The treaty explicitly required that he be so advised. Notwithstanding the great weight attached by the federal government to the Vienna Convention and to the personal rights guaranteed by its provisions, the individual states have long ignored legal obligations imposed upon them by the Convention. Indeed, the District Court expressly found in Mr. Breard's case that Virginia has engaged in a "persistent refusal to abide by the Vienna Convention." Breard v. Netherland, 949 F. Supp. 1255, 1263 (E.D. Va. 1996). Clem. Pet. Ex. 25.

It is apparent that Virginia continues to violate the Vienna Convention despite the admonitions of the court in two cases decided in 1996 by the United States District Court and more recently affirmed by the Fourth Circuit where the illegality of its Vienna Convention violations was a central issue.¹ In pre-trial proceedings held on March 3, 1998 in the first degree murder case of Commonwealth of Virginia v. Elvia Garcia, Criminal No. 93264, the Circuit Court of Fairfax County found that Virginia had violated Ms. Garcia's Vienna Convention rights, but decided that it was unable to provide her with any remedy for that violation. *See* Clem. Pet. Ex. 31 at 14-19.

Angel Breard was offered a life sentence in exchange for a guilty plea, and he rejected the bargain because of his culturally based belief that the jurors would acquit him once they understood that he had been under a satanic curse that had been lifted when he found Christ. We understand from newspaper articles that the Commonwealth may have taken the position that no plea bargain was offered. In 1995, after Angel had been convicted of capital murder and his appeals rejected, he filed a petition for habeas corpus in the Arlington County Circuit Court. In that petition he alleged that his lawyers in his earlier trial for capital murder had been ineffective and, therefore, he was entitled to a new criminal trial. The Attorney General's office filed a motion to dismiss Angel's habeas corpus case. To support his motion, the Attorney General's office got Angel's trial lawyers in his capital murder trial (Richard McCue and Robert Tomlinson) to swear, in an affidavit, that it had been made clear to them by Arthur Karp, the prosecutor, that if Angel would plead guilty to murdering Ruth Dickie, the Commonwealth would forego the death penalty. Attached to the affidavit was a memorandum written by Messrs. McCue and Tomlinson (before Angel's criminal trial for capital murder) outlining the decisions Angel had made against their advice, including turning down the offer

¹Breard v. Netherland, 949 F. Supp. 1255 (E.D. Va. 1996), *aff'd*, 134 F.3d 615 (4th Cir. 1998), *aff'd sub nom. Breard v. Pruett*, 134 F.3d 615, (4th Cir. 1998), *cert. pending sub nom. Breard v. Greene*, (Mar. 11, 1998)(No. 97-8214); Murphy v. Netherland, CA No. 3:95CV856, slip op. (E.D. Va. July 26, 1996), *aff'd*, 116 F.3d 97 (4th Cir.), *cert. denied*, 118 S. Ct. 26 (1997).

of a life sentence in exchange for a guilty plea. They had had Angel sign this memorandum acknowledging the accuracy of what his lawyers had written. (The Arlington County Circuit Court agreed with the Attorney General's position and dismissed Angel's state petition for habeas corpus.) The affidavit described, and the memorandum attached to it, are set forth as Exhibit 4 to the Clemency Petition. If there was, in fact, no offer of a plea agreement, other interesting questions are raised.

Pursuant to Va. Code §§ 53.1-229 and 53.1-232(C), the Governor has the power to grant Angel a reprieve until such date as the Governor may choose. The Governor should exercise that power, in conformity with the indication of the ICJ.

CONCLUSION

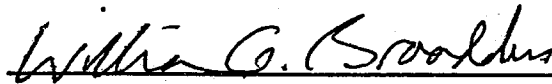
The Commonwealth of Virginia, like other states, has engaged in a long-term pattern of failure to inform foreigners of their rights to consular notification and assistance, thus denying foreign nations and their nationals their rights under the Vienna Convention. As President Schwebel and Judge Butzner have observed, if other nations follow the example of Virginia and other American states, the freedom and safety of Americans traveling abroad will be seriously threatened. The International Court of Justice has indicated that the United States should take all measures at its disposal to ensure that Angel is not executed during the pendency of the proceedings in that Court.

For these reasons, Angel Francisco Breard respectfully requests that he be granted a reprieve until such time as the International Court of Justice shall have had an opportunity to consider the merits of his case.

Respectfully submitted,

ANGEL FRANCISCO BREARD

By Counsel



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