

IN THE SUPREME COURT OF THE STATE OF FLORIDA

PEDRO HERNÁNDEZ-ALBERTO,

Appellant,

v.

SC10-2471

LT No. 99-117CFAWS

STATE OF FLORIDA,

Appellee.

**BRIEF OF *AMICUS CURIAE*, THE UNITED MEXICAN STATES, IN
SUPPORT OF APPELLANT PEDRO HERNÁNDEZ ALBERTO**

On Appeal from the Circuit Court
of the Thirteenth Judicial Circuit,
In and For Hillsborough County, Florida
[Criminal Division].

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IDENTITY AND INTERESTS OF MEXICO IN THIS APPEAL

Appellant Pedro Hernández Alberto is a Mexican national in prison under sentence of death. Mexico has a vital stake in protecting the interests of its nationals abroad; its goal is not to interfere with the local judicial process, but rather to ensure that its nationals receive the protection to which they are entitled under domestic and international law. Consular assistance is the primary means by which Mexico and other nations, including the United States, carry out this responsibility. While Mexican consulates and their appointed legal representatives provide essential services in a wide range of cases and circumstances, nowhere is their assistance more vital than when a criminal defendant is facing the death penalty. Mexico has a long history of providing dynamic, vigorous and meaningful consular assistance to its nationals arrested in the United States on capital charges. *See, e.g., Marquez-Burrola v. State*, 157 P.3d 749, 764, n.13 (Okla. Crim. App. 2007).

Nothing in this brief shall be construed as a waiver of the immunities to which the United Mexican States and Consular agents are entitled under international treaties in force between Mexico and the United States, international law and/or the Foreign Sovereign Immunities Act. This brief shall not imply or confer a submission in any way by Mexico or its consular agents to the jurisdiction of any court in the United States.

SUMMARY OF THE ARGUMENT.

Though the postconviction court originally ordered a controlled, intense and extended period of observation to assess Mr. Hernández' competency, such an evaluation was never conducted; instead, a mental health expert who was not bilingual spent less than twelve minutes with Mr. Hernández and made unfounded and speculative conclusions about his mental competency, ignoring any significant history of Mr. Hernández' life or prior competency evaluations, testing, or findings, and for collateral information relying only on UCI records and the observations of guards but not UCI medical personnel. The trial court's observations are likewise unsupportable. Accordingly, the Mexican Government respectfully requests this Court vacate the competency order and direct new evaluations and a new hearing.

ARGUMENT.

DUE PROCESS AND FLORIDA LAW ARE VIOLATED BY USE OF AN UNRELIABLE EVALUATION AND INSUFFICIENT AND INACCURATE INFORMATION AND OPINION TO DETERMINE COMPETENCY

Q. What was the total amount of time that you spent with Mr. Hernández?

A. He was probably in my presence twelve minutes.

Testimony of Dr. Annis, V46 PCT431, Competency Hearing of June 3, 2010.

Though a “longitudinal evaluation” requiring a controlled, intense and extended period of observation to assess Mr. Hernández’s competency was originally ordered by the postconviction court,¹ DOC objections resulted in the Court’s appointment of DCF, and Dr. Annis was instead assigned by that agency to evaluate Mr. Hernández’s competency in a single session. PCR Vol. 5, 879-81, 859-64; Vol. 43 367-74. Dr. Annis is not bilingual, PCT406, admitted he spent less than twelve minutes with Mr. Hernández, and made speculative and distorted extrapolations from what he briefly observed. He knew very little of Mr. Hernández’s history and had not reviewed prior competency evaluations and testimony in the case. Dr. Annis did not even know the trial court had previously found Mr. Hernández was not sufficiently competent to represent himself in this postconviction proceeding.² His only collateral information consisted of UCI records and his interviews of guards, but not UCI medical staff. No competency testing was conducted. His evaluation and dependent opinion are unreliable, and cannot support the court’s order finding Mr. Hernández competent.

Though he had no prior familiarity with the case or with Mr. Hernández, the trial judge who presided at the competency hearing of June

¹ PCR Vol. 5 R825. For a description of such an evaluation see PCT426.

² *See Indiana v. Edwards*, 554 U.S. 164 (2008).

3, 2010 founded his competency decision in part on his personal observations of Mr. Hernández at that approximately one and a half hour hearing, the report and testimony of Dr. Annis, and Dr. Taylor's opinion it was "probable" Mr. Hernández's refusal to assist the court appointed experts was willful and not the product of a mental illness. PCR V6, R1092-97.

This is the demonstrably deficient information relied on by Dr. Annis for his competency opinion as summarized both from his report, Exhibit 2, PCR Vol.5, R903-12 (referred to herein as Ex. 2), and his testimony at the competency hearing³.

Dr. Annis testified he enlisted a Spanish-speaking psychologist to accompany him and translate, having heard of Mr. Hernández' "language barrier". PCT405. Though the bilingual psychologist was present, Dr. Annis conducted his interview in English. PCT405. He testified that his reliance on the Spanish speaking psychologist's observations and account was not the type of information commonly relied upon by experts in the field, PCT404, and that his opinion was not even based on the bilingual psychologist's separate visits with Mr. Hernández, conducted in Spanish. PCT407⁴.

³ The transcript of the most recent competency hearing is contained in Volume 46, and page numbers are designated "PCT".

⁴ His written report, however, does rely on interviews of Mr. Hernandez by the bilingual mental health specialist. Ex 2, p 4.

Dr. Annis testified he devoted twelve minutes in the presence of Mr. Hernández in arriving at his conclusion, PCT431, and that this interview is the “primary” basis for his opinion. PCT408.

The twelve minute interview consisted of Mr. Hernández entering the room, standing there briefly, and declining to participate. When asked why, Mr. Hernández said he and his attorney were preparing an appeal for the judge and he would only speak to his lawyer. PCT399; 419.⁵

During these twelve minutes, Dr. Annis observed Mr. Hernández being cooperative with the guards. The guards did not say anything to Mr. Hernández, and he said nothing to them. PCT410-11.

During these twelve minutes, Dr. Annis did not observe Mr. Hernández exhibit any signs of mental illness. PCT410. Mr. Hernández appeared to be attentive and self-controlled, and did not show much expression. PCT411. Dr. Annis wrote lengthy observations from the brief meeting (mostly setting forth behaviors *not* exhibited by Mr. Hernández), which are contained in his report, Ex. 2, at pp. 4-5.

Dr. Annis reviewed Mr. Hernández’ disciplinary and mental health records at UCI; though there are thousands of pages of records, and not all

⁵ Dr. Annis’ report also relates Mr. Hernandez said: “I don’t want to talk to you, because if I do, you are going to write a report saying that I talked to you”. Ex. 2, p.5.

were reviewed. PCT421. In those records Dr. Annis discovered handwritten requests he said were from Mr. Hernández which appeared to him logical and coherent. PCT419; 409.⁶ Dr. Annis reviewed only the recent competency reports of Drs. Taylor and Rao. PCT393-95; 413.⁷ Dr. Annis testified he gleaned some history from the reports of Drs. Taylor and Rao, but there was “very little information” regarding Mr. Hernández’ social, work, family, educational history. He summarized what he knew in his report, PCT395, contained at Ex. 2, p. 2, and it definitely contains “very little information”.

His knowledge of the history of the case and Mr. Hernández’ behavior in court was succinctly described by Dr. Annis as: “not much.” PCT413.

Other information the doctor used to form his opinion include his interview of three correctional officers. He testified the correctional officers described Mr. Hernández as calm, self controlled, and polite; as not showing signs of psychosis (such as not speaking gibberish); that he had no extreme moods; he recognized them as officers, spoke and was temperate with other

⁶ See Report, Ex 2, p.2 (described as one letter written in Spanish for tuberculosis screening and one in Spanish to the Governor in 2003).

⁷ The only mention of past mental health evaluations by Dr. Annis is his report reference to the fact others were court-ordered. Ex.2, p. 2. They were not actually reviewed by him, contrary to the trial court’s conclusion.

inmates, and was able to follow prison rules and guidelines. PCT396-98.⁸ Dr. Annis conducted no psychological testing of Mr. Hernández⁹ and reviewed no previous psychological testing in opining that he was competent to proceed. PCT430.

From this almost painful paucity of information, Dr. Annis extrapolated to his opinion that Mr. Hernández attained competency levels on most factors. Based on his brief conversation with Mr. Hernández, Dr. Annis concluded that his reference to his and his attorney's preparation of an appeal for the judge supported his findings that:

Mr. Hernández had an **appreciation of the legal charges**. While Mr. Hernández did not respond to questions, Dr. Annis concluded that because he spoke of working with an attorney and appealing a case he was aware of the charges against him. PCT407.¹⁰

Dr. Annis opined Mr. Hernández understood the **adversarial nature of the proceedings**. This is based on the same simple statement, which to

⁸ This is similar to the information contained in his report. Ex. 2, p. 3-4.

⁹ He testified psychological testing is done when indicated and could have been helpful, but that Mr. Hernandez clearly indicated he did not want to participate in the interview. PCT431.

¹⁰ There was no discussion of the actual charges. Dr. Annis notes “[h]is appreciation of his present charges could not otherwise be assessed”. Ex. 2, p.5

Dr. Annis showed an awareness of the importance of the attorney and judge. PCT408. He reached this conclusion even though he did not know who the attorney was Mr. Hernández was referring to, and never inquired. PCT417.

Dr. Annis did not arrive at an opinion whether Mr. Hernández was **aware of penalties**, PCT408, even though knowing whether a defendant is aware he has been sentenced to death is central to determining the competency of a death row inmate.

The doctor opined Mr. Hernández had an **ability to disclose pertinent facts to his attorney**. While Mr. Hernández wouldn't tell him about his case, letters contained in the UCI records he concluded were written by Mr. Hernández expressed concern about his treatment, and looked logical. PCT408.¹¹ Dr. Annis's report also refers to DOC records showing Mr. Hernández asked a correctional staff member if his attorney was aware he was being evaluated, which he concluded showed he was motivated to work with counsel. Ex. 2, p. 6. Dr. Annis's report also notes Mr. Hernández recalled meeting with two people from CCRC in 2005 and having filed four motions in court, "including one to dismiss his lawyer". Ex. 2, p. 6. Dr.

¹¹ One letters, written in Spanish, seeks tuberculosis screening, the other, also in Spanish, is addressed to the Governor in 2003, seven years before this evaluation. Ex.2, p.2. Elsewhere, Dr. Annis testified he was focusing on the past few years as his reason for not relying on the substance of past competency reports and testimony. PCT417

Annis's report concludes that Mr. Hernández' ability to disclose pertinent facts is hindered by "guardedness and evasion" rather than "intellectual, perceptual, or memory deficits". Ex.2, p.6.¹²

Dr. Annis opined Mr. Hernández had the capacity to maintain **appropriate courtroom behavior**. PCT408. This conclusion is also based on the information the doctor obtained from his brief meeting with Mr. Hernández and security staff. His report explains the conduct described by the security staff showed Mr. Hernández has the capacity for appropriate courtroom behavior. Dr. Annis also relies on the fact Mr. Hernández "remained calm and relaxed" while refusing to participate in an interview, and "calmly indicated that he would talk to the judge when he went to trial".¹³ Ex. 2, p. 6. He said Mr. Hernández' behavior in court was similar to what had been described. PCT413. The doctor conceded Mr. Hernández had previously engaged in "explosive" and "horrible" courtroom behavior, but opined that was by choice. PCT416.

¹² Dr. Annis's reliance on Mr. Hernandez' references to his lawyer for this and other competency factors is particularly mystifying in light of Mr. Hernandez' continued efforts to dismiss postconviction counsel and his contention at hearings they were not his lawyers, discussed more below.

¹³ Mr. Hernandez's statement shows he does not comprehend that he already went to trial, a misunderstanding Dr. Annis does not address.

Dr. Annis opined Mr. Hernández “probably” has a **capacity to testify** because Mr. Hernández can make his needs known to the correctional staff, communicating in a logical and coherent fashion. He further opines it is possible Mr. Hernández will not participate in legal proceedings if not helpful to his situation. His rationale for this conclusion is that Mr. Hernández resisted even after he explained the competency evaluation would help facilitate his return to court and presentation of his case. The doctor suggests Mr. Hernández sabotages situations he views as unhelpful to his. PCT409.¹⁴ Dr. Annis also opines this factor is met because “Mr. Hernández demonstrated his right to avoid self-incrimination” in his refusal to be interviewed once made aware it would be reported to counsel and the judge. Ex. 2, p.6.¹⁵

Except for the postconviction judge’s observations, these findings exclusively support the court’s order finding Mr. Hernández competent to proceed in postconviction proceedings. The doctor’s opinion is based on a

¹⁴ In his report, Dr. Annis further relies on the presumed fact Mr. Hernandez was able to communicate with the bilingual mental health specialist “effectively and in a reality-based manner”; Ex. 2, p. 6. At the competency hearing, Dr. Annis said he did not rely on that information.

¹⁵ There is no “self incrimination” by statements made during a competency evaluation, even one conducted before trial. *See Fla.R.Crim.P.* 3.211(d). It is a significant stretch to infer this was the reason for Mr. Hernandez’ statement.

distorted interpretation of Mr. Hernández's statements, and unsupported speculation and extravagant extrapolation from the doctor's twelve minute meeting with Mr. Hernández. He met with three correctional officers and reviewed UCI records. But Dr. Annis reviewed virtually no life or case history, no previous competency reports and testimony from prior mental health specialists, or even the postconviction court's order revoking self-representation based on limited competency. He spent an entirely insufficient time with Mr. Hernández to accurately determine whether he exhibited behavior showing a mental illness; he neither conducted nor reviewed any testing. The evaluation and opinion are undeniably unreliable.

The observations relied upon by the postconviction court completely contradict the record of what occurred at the competency hearing.¹⁶ Mr. Hernández' conduct there and in prior proceedings likewise significantly

¹⁶ The competency judge had never seen this case before or since, so had no knowledge of the background or history of the case or of Mr. Hernandez. As he observed, "We were playing musical Judges today". PCT386. Part of his competency finding is:

The Court first notes that during the evidentiary hearing Defendant seemed attentive, actually participating during a portion of the hearing, made his points in a logical, concise manner and clearly understood the nature of the proceedings. He also exhibited appropriate courtroom behavior.

undermines Dr. Annis's conclusions about his capacity to disclose facts to an attorney, his understanding of the nature of the proceedings, capacity to testify, and to behave appropriately in the courtroom. Here is what happened at the competency hearing of June 3, 2010:

At the outset of the hearing, after Dr. Annis provided his background, Mr. Hernández had his first outburst, showing a definite disinclination to disclose facts to his attorney or capacity to behave appropriately, and little understanding of the nature of the proceedings. Instead, Mr. Hernández repeated his years-long (delusional) beliefs his hearing was not public, and that he was being prevented from communicating with his family:

THE DEFENDANT: First of all I want to complete clear this I no recognize as my lawyer. Second, I needed to be in publico. Your Honor, um, I want communicate with my family because for long time I am in no communication with my friend and families until now. I no recognize them as my lawyer. Mr. Gruber was fired two years ago in the other courtroom and I remember. It was July 28, 2008, I fire him already more than one time. He is still here because the court permit but I dispute this point.

* * *

THE COURT: Have you understood everything that has been said so far?

THE DEFENDANT: Yes. I disagree because I no have problems. You get the problems, I no have problems. I disagree with, um, the doctor bring in today. I no how agree what he say. My lawyer respect a problem. I tell him very clear, he is not longer my lawyer.

* * *

THE COURT: All right. Cancel the interpreter. We'll continue to proceed. If during the course of the proceedings you have a problem understanding anything at all please let the bailiff know or raise your

hand and let me know so that we can address that and correct that immediately, okay?

THE DEFENDANT: What are you telling me? Your Honor, with respect to this people, this three counselor no, no are my lawyer. I know accepted them as my lawyer or counselor.

PCT390-91.

Mr. Hernández's next "participation" in the hearing occurred after Dr. Annis related Mr. Hernández' comment that he was working with his lawyer on an appeal to the judge. Mr. Hernández again reiterated his delusional belief his hearing was not being held in public, and made it clear it was not his attorney, but God he was sitting with, or alternatively, that God was coming:

Q Okay. Were you able -- was there any further communication between you and Mr. Hernández on that date?

[Dr. Annis] A Well, in the course of the minutes that he was --

THE DEFENDANT: That isn't true. Yes, or no please. Telling the truth. Yes, or no.

THE COURT: Okay.

BY MR. PRUNER:

Q Please continue, Doctor, with -- you were explaining your interaction with this defendant on February 17 of 2010?

A Yes. Um, when asked again if he would, um, talk --

THE DEFENDANT: Excuse me. No words. Any word I tell you, any word you tell me. Someone coming with you. He tell me

something. But I tell him my position. He -- I tell, I explain to him what I explain to the lawyer in 2005. Mr. Gruber, 2005, I explain to him I am ready to go to the appeal court, to the supreme court of the state court of appeal. I'm telling him but he bring him to me here um, sit with god. Not with the high court. He is coming here.

THE COURT: Okay.

THE DEFENDANT: And that's because that case for him to be here. But I tell him, go to the high court.

THE COURT: All right. Well there's certain steps you have to take first, sir. So, I'm going to ask you to please listen closely. Let's let the witness testify. We'll give you an opportunity later, okay?

THE DEFENDANT: Excuse me, Your Honor. Where are you, what are you -- how can I understand what is, um, no publico for me. I come in several times in the past two years in court. You all, as you see, the public no are here in my court process.

THE COURT: Well the doors are open. The public can come in if they'd like.

THE DEFENDANT: No, the door must open because if the door is open the public coming in, sit down --

THE COURT: The doors are wide open, sir. The public can come in any time they'd like to. You're the only case that's scheduled this afternoon. That's why there is nobody else in here other than the attorneys and some people in the audience as well. But the, the doors are open. This is a public courtroom.

THE DEFENDANT: I want to put clear, I am no talking with him. With the doctor over there? I no talking with him. He say interview me. He say lie.

PCT400-403.

In addition to its observations, the Court relied upon the opinion of Dr. Taylor that it was “probable” Mr. Hernández’s failure to cooperate was willful. PCR V.6, R1092-97. Even this conclusion cannot be relied upon. Dr. Taylor made it plain both in his report and testimony he could not reach a conclusion of competency to a reasonable medical certainty. PCT438-39.

Mr. Hernández’s behavior and comments at the recent competency hearing, much like his bizarre conduct and comments in prior proceedings plainly do not show a person competently, brilliantly and strategically sabotaging hearings in order to gain advantage in the litigation of his case. As past mental health experts have concluded, Mr. Hernández suffers from major mental disorders which drive his conduct in this postconviction proceeding. *See IB* at 38-44; 47-53.

Since this is a capital prosecution, exacting standards must be met to ensure it is fairly conducted. *Woodson v. North Carolina*, 428 U.S. 280, 305 (1976); *Caldwell v. Mississippi*, 472 U.S. 320, 329 n.2 (1985); *Eddings v. Oklahoma*, 455 U.S. 104, 118 (1981) (O'Connor, J., concurring)). Indeed, “[t]ime and again the [Supreme] Court has condemned procedures in capital cases that might be completely acceptable in an ordinary case.” *Caspari v. Bolden*, 510 U.S. 383, 393 (1994) (*quoting Strickland v. Washington*, 466 U.S. 668, 704-705 (1984) (Brennan, J., concurring and dissenting in part)).

Even in non-capital cases, the Courts have insisted on a high standard of reliability in the process of the determination of competency. *Cooper v. Oklahoma*, 517 U.S. 348, 364 (1996)(finding clear and convincing standard for showing trial incompetency unconstitutionally high). To ensure due process is provided and fundamental fairness followed, a determination of competency must be based on adequate evaluations. Court-appointed experts must be competent, and perform a competent evaluation. *Ake v. Oklahoma*, 470 U.S. 68, 83 (1985). Only competent evaluations ensure reliability, an eighth amendment and due process requirement this Court has strictly enforced. Dr. Annis's twelve minute evaluation, record review and officer interview does not meet even the most rudimentary standards: **“The adequacy of the factfinding procedures is further called into question by the cursory nature of the underlying psychiatric examination itself”**. *Ford v. Wainwright*, 477 U.S. 399, 415 n.3 (1986)(emphasis supplied). New and competent evaluations, and a new competency hearing, are required. *State v. Sireci*, 502 So.2d 1221, 1224 (Fla. 1987) (new sentencing hearing "mandated in cases which entail [grossly insufficient] psychiatric examinations"); *Mason v. State*, 489 So. 2d 734 (Fla. 1986)(competency hearing required where pretrial mental health expert evaluations deficient).¹⁷

¹⁷ See also *Strickland v. Francis*, 738 F.2d 1542, **23 (11th Cir. 1984)(“ It is

Dr. Annis reached his competency conclusion though virtually ignorant of Mr. Hernández's history and substance of prior competency evaluations and testimony. In *Mason*, this Court observed:

Commentators have pointed out the problems involved in basing psychiatric evaluations exclusively, or almost exclusively, on clinical interviews with the subject involved. One of the earlier interviewing psychiatrists noted in his report that Mason was "extremely hostile, guarded, indifferent and generally gave an extremely poor history in regard to dates, symptoms ... etc." In light of the patient's inability to convey accurate information about his history, and a general tendency to mask rather than reveal symptoms, an interview should be complemented by a review of independent data. See Bonnie, R. and Slobogin, C., *The Role of Mental Health Professionals in the Criminal Process: The Case for Informed Speculation*, 66 Va.L Rev. 427, 508-10 (1980).

Mason, 489 So. 2d at 737.

In addition, the interview was conducted in English, and information from the bilingual psychologist was completely ignored by Dr. Annis. Where a mental health expert's conclusion is drawn from an interview not conducted in a defendant's native language, as here, it is suspect and can be disregarded. See *United States v. Mota*, 598 F.2d 995, 999 (5th Cir.) (expert testimony disregarded when based on single interview through interpreter, in which doctor was unable to verify truth of defendant's statements to him and

well established that a factfinder need not adhere to an expert opinion on incompetency if there is reason to discount it"). Accord, *Wallace v. Kemp*, 757 F.2d 1102, **19 (11th Cir. 1985).

unable to conduct psychological tests), *cert. denied*, 444 U.S. 1084 (1979)(cited in *Strickland v. Francis*, 738 F.2d 1542, **25 (11th Cir. 1984).

The court-appointed mental health expert must possess the training and ability to conduct a linguistically and culturally competent interview, and must also obtain, understand and analyze all documentary and anecdotal information relevant to the defendant's history (usually written in Spanish and provided by Spanish speakers). See AMERICAN PSYCHOLOGICAL ASSOCIATION ("APA"), APA GUIDELINES FOR PROVIDERS OF PSYCHOLOGICAL SERVICES TO ETHNIC, LINGUISTIC, AND CULTURALLY DIVERSE POPULATIONS (Guideline 6. "Psychologists interact in the language requested by the client and, if this is not feasible, make an appropriate referral."), available at <http://www.apa.org/pi/oema/resources/policy/provider-guidelines.aspx> (last visited Aug. 13, 2011).

The National Academy of Neuropsychologists recently published its position paper on the issue,¹⁸ capturing norms and ethics from the American Psychological Association and other organizations of mental health professionals, concluding that while an English-only mental health expert

¹⁸ T. Judd et al., *Professional Considerations for Improving the Neuropsychological Evaluation of Hispanics: A National Academy of Neuropsychology Education Paper*, 24 ARCHIVES OF CLINICAL NEUROPSYCHOLOGY 127-135 (2009).

would not automatically be disqualified from conducting an evaluation of a Hispanic examinee,

[n]europsychologists strive to ensure that clients receive a **linguistically, culturally, and clinically competent evaluation**. The preferred way of ensuring that an appropriate evaluation is performed is for the clinician to possess the necessary competencies to provide the services **(including speaking the client’s primary language)** or to refer to a provider who has the required competencies (2.c, 6.a, *American Psychological Association*, 1993; *Ethical Standard 2.01b*, *American Psychological Association*, 2002). (Emphasis supplied).

Id. at 128.¹⁹ Evaluations conducted in the defendant’s non-native language or through an interpreter have elsewhere been roundly criticized.²⁰

A bilingual mental health expert was required in this serious case presenting unique and complex issues governing the competent and accurate evaluation of Mr. Hernández. The truth here was lost for lack of translation.

¹⁹ The Academy also concludes: “[r]egardless of their own linguistic and cultural background, neuropsychologists are responsible for ensuring that they are trained in cross-cultural and/or cross-language work (2.b, 2.c, *American Psychological Association*, 1993; *Ethical Standard 2.01*, *American Psychological Association*, 2002).” *Id.* at 130.

²⁰ See, e.g., L.A. Artioli i Fortuny & H. Mullaney, *Assessing patients whose language you do not know: Can the absurd be ethical?*, 12 *THE CLINICAL NEUROPSYCHOLOGIST* 113-126 (1998); J. LaCalle, *Forensic psychological evaluations through an interpreter: Legal and ethical issues*, 5 *AMERICAN JOURNAL OF FORENSIC PSYCHOLOGY* 29 (1987); *PRINCIPLES OF NEUROPSYCHOLOGICAL ASSESSMENT WITH HISPANICS: THEORETICAL FOUNDATIONS AND CLINICAL PRACTICE* (A.M. Llorente ed., 1st ed. 2008); see also, *APA ETHICAL PRINCIPLES OF PSYCHOLOGISTS AND CODE OF CONDUCT* (1992), available at <http://www.apa.org/ethics/code/index.aspx> (last visited Aug. 13, 2011), at 9.02, “Use of Assessments.”

When bilingual experts have evaluated Mr. Hernández or obtained collateral information from Spanish speakers, for instance, they have concluded he suffers from a variety of mental disorders. *See IB* pp. 40-44; 47-53. Nothing even remotely similar was done here.

CONCLUSION AND RELIEF REQUESTED.

For the foregoing reasons, the Mexican Government respectfully requests this Court vacate the competency order, as it is based on a distorted and deficient evaluation, and remand for a new competency determination based on scientifically and linguistically valid and reliable competency evaluations.

Respectfully submitted,

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the United Mexican States

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been furnished by United States Mail to Mark Gruber and Maria Perinetti, counsel for appellant, Capital Collateral Regional Counsel, 3801 Corporex Parkway, Suite 210 Tampa, FL 33619-1136, and Katherine Blanco, Assistant Attorney General, Office of the Attorney General, Concourse Center 4, 3507 East Frontage Road, Suite 200, Tampa, FL 33607-7013, this 19 day of August, 2011.

_____/s/_____

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief has been prepared in compliance with the font standards required by *Fla. R. App. P. 9.210*. The font is Times New Roman, 14 point.

_____/s/_____
