

# Research Report

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International Court of Justice

Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning Avena and 51 Other Mexican Nationals (Mexico v. United States of America)

MUNISH



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<b>Forum</b>	International Court of Justice
<b>Issue:</b>	Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning Avena and 51 Other Mexican Nationals (Mexico v. United States of America)
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## Introduction

The case of the request for Interpretation of the Judgment of 31 March 2004 in the Case concerning Avena and Other Mexican Nationals (Mexico v. United States of America) is one which concerns the Vienna Convention on consular relations. Mexico filled a lawsuit as they felt that the United States of America had breached upon Articles 36 of the Vienna Convention states that:

*1. With a view to facilitating the exercise of consular functions relating to nationals of the sending State: (a) Consular officers shall be free to communicate with the nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State;*

*(b) if he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this subparagraph;*

*(c) consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him*



*and to arrange for his legal representation. They shall also have the right to.*  
(Grange, Edward)

*visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgement. Nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action.*

*2. The rights referred to in paragraph 1 of this article shall be exercised in conformity with the laws and regulations of the receiving State, subject to the proviso, however, that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under this article are intended.* (Belling, T)

Mexico claims that the United States of America (USA) failed to notify the Mexican diplomatic mission to the USA with regards to the arrest, trial and conviction of 54 Mexican nationals and, as a result of this, denied Mexico its legal right to assist these people in accordance with Article 36 of the Vienna Convention on consular relations. Even though Mexico called upon 54 breaches, this number was latter adjusted to 52. The court found, by a vote, that 51 cases had breached article 36 of the Vienna Convention on Consular Rights.

One detail which is crucial to this hearing is the definition of “without delay,” which is specified in sub-clause b of section 1. It is interesting to note that two other countries, Germany and Paraguay filed similar suits against the USA for failing to abide by the terms set in the Vienna Convention. Problems have, however, arisen due to the US Supreme Court’s ruling on *Medellin vs Texas* which limits the ICJ’s effect on US Domestic Law.

## **General Overview and background information on the “Avena and Other Mexican Nationals ( Mexico v. United States of America)” case**

It is evident that despite the two countries’ increasing trade ties, it is the US that attracts workers, mostly in the form of illegal border crossers. The 2000 mile long border between them is not always easy to control. The two governments have been in joint efforts in order to curb the flow of illegal immigrants and drugs into the US. Cooperation between



the United States and Mexico along the 2,000-mile common border includes state and local problem-solving mechanisms; transportation planning; and institutions to address resource, environment and health issues. Presidents Obama and Calderon created a high level Executive Steering Committee for 21st Century Border Management in 2010 to spur advancements in creating a modern, secure, and efficient border. The multi-agency U.S.-Mexico Bi-national Group on Bridges and Border Crossings meets twice yearly to improve the efficiency of existing crossings and coordinate planning for new ones. The ten U.S. and Mexican border-states are active participants in these meetings. Chaired by U.S. and Mexican consuls, Border Liaison Mechanisms operate in "sister city" pairs and have proven to be an effective means of dealing with a variety of local issues including border infrastructure, accidental violation of sovereignty by law enforcement officials, charges of mistreatment of foreign nationals, and cooperation in public health matters.

Again it is evident that the case is one directional, i.e. there are no attempts of illegal labor in Mexico by US nationals. In line with economic crises in Mexico, US present an opportunity for labor and increases in illegal border crossing attempts are seen. All these contribute to the presence of a large number of Mexican nationals residing in the US, an undetermined number of them being illegal.

The interpretation requested by Mexico is due to its dissatisfaction with the USA's adoption of measures to prevent future violations of the Vienna Convention on Consular Relations. The paragraph on which they are requesting an interpretation is paragraph 153 in the judgement of the "Avena and Other Mexican Nationals" case. As stated on the ICJ website: "If either of the parties challenges their [the ruling's] scope or meaning, it has the option to request an interpretation." Whilst also dissatisfied with the USA's effort to correct their violation, Mexico challenges the scope of the ruling made and requests further international measures to prevent a violation of the Vienna Convention. In addition to this, Mexico would like a clarification of the ruling made in the initial case so that the USA has no claim of ambiguity and can't subsequently refuse to adopt the measures specified. This matter is complicated by the *Medellin vs Texas* case which claims that the USA does not have to abide by ICJ rulings unless Congress the Constitution ratify the ruling. This further complicates the issue at hand because to what extent can international law, as posed by the Vienna convention on consular relations, cover the rights of illegal immigrants?

Mexico claimed that the US had breached article 36 (1) (b) of the Vienna Convention on Consular Relations by depriving 54 Mexican nationals of their right to consular notification and depriving Mexico of its right to provide consular protection under article 36 (1) (a) and (c) of the same convention in what is termed as a breach of sovereignty.

The US, in their defence in the court case (page 44, article 64), declared that the country is home to millions of aliens and that its citizenship laws were generous. At all cases, the Miranda rule, i.e. reading of a person's rights at the time of the arrest, was read out.

The initial ruling was interesting for multiple reasons as it made clear that the measures specified did not just concern the Mexican national involved but also other cases of "equal rigor" (American Society of Law Report, Chapter 5).

### The definition of "without delay"



Whilst Mexico claims that the USA violated the terms of the Vienna Convention by not informing the Mexican diplomatic mission of the detention of these Mexican nationals, the USA claims that the ambiguous nature of the words “without delay” means that the USA still has the opportunity to inform Mexico as there was no specified time limit. This has caused an international argument as there are various viewpoints with regards to the time limit of ‘without delay.’ Whilst Mexico claims that this would require the Mexican nationals to be informed upon arrest, the USA does not and believes that a larger time frame is acceptable.

## Previous Cases

The USA has gone to court two times before this case with regards to a violation of the Vienna Convention. Both times the court ruled in favour of the plaintiffs, Paraguay and Germany. The Mexican advocate would be wise to use this in their case.

The German case; *LaGrand vs USA* revolved around the brothers LaGrand who were convicted of murder and armed robbery but were not informed of their right to consular assistance as a result of the Vienna Convention on Consular Relations. The ICJ’s request that Walter LaGrand’s execution would not occur until a ruling was ignored by the USA, which executed him a day later. This is similar to the *Medellin* issue, where the USA executed Mr Medellin, one of the Mexican national specified in the *Avena* case despite the ICJ’s request that all measures possible would be taken to prevent this. *Paraguay vs USA* was essentially the same as it revolved around Alejandro Breard who was sentenced to death without being told of his right to consular assistance. Both cases were ruled in favour of the plaintiffs.

*Medellin vs Texas* is a very controversial case as the US Supreme Court ruled that ICJ rulings were not binding in US domestic law unless both Congress and the Constitution ratified the ruling. It further ruled that the President of the USA did not have the power to enforce ICJ rulings without consent of these two institutions either. This ruling is incredibly controversial in the world of international law as it allowed the USA to disregard ICJ rulings through its claim that this was its sovereign right. This is, however, a controversial view to have as this sets a precedent for other signatories of the ICJ statute to disregard unfavourable rulings. As such, rulings made against the USA should also specify the legitimacy of the rulings, as was done in the first ruling on *Avena vs USA*. Despite the ICJ’s Statute and the UN Charter putting an international law obligation upon the USA to comply, *Medellin vs Texas* prevents the President from creating a significant domestic legal effect through an executive order. Mr. Medellin was one of the Mexican nationals specified in the *Avena* case and his



execution was in direct violation of the Court's order that the USA must take "all measures necessary" to prevent any executions until an ICJ ruling was reached. This impunity shown by the USA must be addressed in the interpretation case.

### US Federal Law

Whilst the USA has signed an agreement on the compulsory settlement of disputes under the jurisdiction of the ICJ, the Anti-Terrorism Effective Death Penalty act along with various other US laws means that it is difficult for the USA to abide to certain obligations and that, according to the US Congressional Research Service (the Congress' organization which provides accurate figures and reports to issues being discussed) laws, "may need to be appended to permit further review of Article 36 claims." (CRS Report Page 1) Furthermore, the USA claims that its reading of the Miranda Laws to those arrested was enough to satisfy the obligations of the Vienna Convention. This is of course a controversial issue, as firstly, Mexico claims that the Miranda Laws are not known well to foreigners and secondly that the reading of the Miranda Laws does not express the arrestee's rights to meeting with his or her diplomatic mission.

## Major Parties Involved and Their Views

### United States of America

Mexico's northern border neighbour, the US, is in extensive collaboration with Mexico as it is the US's second largest export market after Canada. Likewise, 80% of Mexico's exports are destined for the US. Daily two-way trade between the two countries exceeds USD 1.25 billion and over 1 million border crossings occur daily. Approximately 10 million Americans visit Mexico every year. As such, this case has very sensitive grounds, as the large levels of Mexico-USA cooperation mean that controversial statements and rulings could have a very severe effect on expatriates. In addition to this, due to the USA's status as a world power and a role model to the plethora of other nations, it must abide by the rulings made by the court to ensure that the ICJ remains credible. As such, this interpretation must further clarify the definition of 'without delay' and reaffirm the binding nature of *all* rulings made, both favourable and unfavourable. As a country which has ratified the UN charter, the USA must follow article 94, which states that: "*each Member of the United Nations undertakes to comply with the decision of the Court in any case to which it is a party.*"



## Mexico

Similar to the US, Mexico benefits from the trade relationship. Since 2000 US companies have invested over USD 145 billion in Mexico. From its side, the Mexican contribution to the relationship lies, apart from its exports, in its growing investments in the US (grown 35% in the last 5 years, making Mexico the 7th fastest growing investor country in the US), and Mexican workers in the US. Mexico yearly receives some USD 23 billion from remittances made by Mexicans working in the US. They believe that the USA violated various sections of international law, most specifically the Vienna Convention, by not informing Mexico of the USA's detention and prosecution of 54 Mexican nationals. The situation is peculiar as a deterioration in diplomatic relations could be catastrophic for US-Mexican relations which are already low due to the influx of illegal immigrants into the US and the first ruling of this case. Mexico requested an interpretation Mexico vs USA because it did not believe that the USA took adequate measures to prevent future violations and that measures in response to the retrials for the Mexican nationals specified in the case were not satisfactory.

## ICJ

The ICJ has a responsibility to the world to ensure that agreements and treaties are kept. Mexico's previous claim that the USA did not follow the rulings does not only lower the ICJ's credibility, but it prevents the ICJ from functioning as rulings are ignored. The ICJ must make a clear, non-ambiguous ruling on this issue to prevent further deterioration of the ICJ's role and its responsibilities.

## Timeline of Events

Date (Day/Month/Year)	Event
1933	US President Roosevelt reveals his Good Neighbour Policy to improve relations with Latin American countries.
1942	US launch the Bracero program that aims at providing temporary work opportunities for Mexicans during WW2. At its end in 1962, some 4.5 million Mexican labourers have been registered.
1954	US Border Police launches Operation Wetback, identifies and deports 50.000 Mexican workers. A total of 1.3 million return voluntarily.
9/1969	US President Nixon declares a war on drugs and 100% inspection of all vehicles entering the US from Mexico is ordered.
1986	US pass the Immigration Reform and Control act to crack down illegal immigration and employment. Amnesty given to 2.7 million Mexican workers that are already in the US.
1/1994	NAFTA is signed by the US, Mexico and Canada
1996	The Anti-Terrorism Effective Death Penalty Act is ratified by Congress
1998	Paraguay vs USA



1999	LaGrand vs USA
2004	US Border act is strengthened with agent numbers doubled and authority increased against illegal immigrants
2008	Medellin vs Texas occurs, US Supreme Court rules that ICJ rulings are not binding without support from Congress or the US constitution.

## UN involvement, Relevant Resolutions, Treaties and Events

As the International Court of Justice bases its decisions on international treaties and previous cases, this is a crucial chapter. As stated previously, both Germany and Paraguay sued the USA as a result of a violation of the terms of the Vienna Convention and both times the court sided with the plaintiff. As this is an interpretation of the 2004 judgment, both advocates could use the concluding remarks of the judges of those trials to help craft their arguments. Whilst all three previous cases were ruled in favour of the plaintiffs, there were various dissident judges for various reasons and if argued well enough, the US agent could cause a different ruling if they can find international treaties and previous court cases which support the arguments made by dissident judges.

The Vienna Convention on Consular Relations is a very relevant treaty in this case as this is the treaty which Mexico claims the USA violated previously in the case upon which this issue is now formed. The wording, specifically the use of the statement “without delay,” is very ambiguous and was debated quite heavily in the original case.

The UN did not get involved, but the US Supreme Court did. It stated in the Medellin vs. Texas case that due to the lack of laws regarding the implementation of the Vienna Convention and the Statute of the International Court of Justice, the President could not order pass an executive order to abide to the ruling made by the ICJ.

To list them for you, relevant treaties and cases to look into are: The Vienna Convention on Consular Relations, Paraguay vs USA, Germany vs USA. Medellin vs Texas and the LaGrand case.



## Evaluation of Previous Attempts to Resolve the Issue

The case was originally ruled in favour of Mexico in 2004. The court judged that the USA's failure to notify Mexico of the detention and prosecution of 51 Mexican Nationals, despite the reading out of the Miranda Laws, still violated the obligations of the Vienna Convention and as such 51 were to be given a retrial. The decision was possibly influenced due to the USA's reputation of violating the Vienna Convention on Consular Relations as has been exemplified by the three rulings against the USA for violating paragraph 2 of Article 36. The court concluded that the USA also had to implement measures to prevent a repeat. Such measures included a retrial for the 51 Mexican nationals whose cases were deemed relevant but the ICJ also stipulated that "the choice of means for review and consideration should be left to the United States." The ambiguous nature of this last statement left Mexico dissatisfied as it believes that the USA did not repair the situation as war ordered by the court.

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