

No. 04-5928

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IN THE  
Supreme Court of the United  
States

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JOSÉ ERNESTO MEDELLÍN,

*Petitioner,*

v.

DOUG DRETKE, DIRECTOR,  
TEXAS DEPARTMENT OF CRIMINAL JUSTICE,  
CORRECTIONAL INSTITUTIONS DIVISION,

*Respondent.*

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ON WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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**MOTION TO STAY**

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## MOTION TO STAY

Pursuant to Rule 21 of the Rules of this Court, Petitioner respectfully moves for an order staying further proceedings in this Court while Petitioner pursues his remedies in Texas court, as contemplated by the President's determination of February 28, 2005, implementing the judgment in *Avena and Other Mexican Nationals (Mex. v. U.S.)*, 2004 I.C.J. 1 (No. 128) (Mar. 31) (the "*Avena Judgment*"), and the position taken by the United States in this Court.

1. On February 28, 2005, the President of the United States stated:

I have determined, pursuant to the authority vested in me as President by the Constitution and laws of the United States of America, that the United States will discharge its international obligations under the decision of the International Court of Justice in [*Avena*], by having state courts give effect to that decision in accordance with general principles of comity in cases filed by the 51 Mexican nationals addressed in that decision.

U.S. Amicus Br., App. 2. As the United States explains in its amicus brief, "the President has determined that the foreign policy interests of the United States justify compliance with the ICJ's decision," which, as the President recognizes, imposes "international obligations" on the United States. *Id.* at 41. Indeed, the President has determined that "prompt compliance" is in "the paramount interest of the United States." *Id.*

The President's determination establishes a "binding federal rule" and hence constitutes the supreme law of the Land. U.S. Amicus Br. at 42. The determination gives Petitioner the right to enforce the *Avena Judgment* in a proceeding filed in the Texas state courts, and requires the state courts to enforce the *Avena Judgment* in any such proceeding. The United States explains:

Under that [Presidential] determination, in order to obtain "review and reconsideration" of their convictions and sentences in light of the decision of the ICJ in *Avena*, the 51 named individuals may file a petition in state court seeking such review and reconsideration, and the state courts are to

recognize the *Avena* decision. In other words, when such an individual applies for relief to a state court with jurisdiction over his case, the *Avena* decision should be given effect by the state court in accordance with the President's determination that the decision should be enforced under general principles of comity.

*Id.* at 42. The United States further explains:

[T]he President's determination is that the *Avena* decision is to be enforced in accordance with principles of comity. Accordingly, a state court would not be free to reexamine whether the ICJ correctly determined the facts or correctly interpreted the Vienna Convention [on Consular Relations, 21 U.S.T. 77, 596 U.N.T.S. 261].

*Id.* at 46. For the same reason:

To the extent that state procedural default rules would prevent giving effect to the President's determination that the *Avena* decision should be enforced in accordance with principles of comity, those rules must give way . . . .

*Id.* at 43. In short, "[t]he President . . . has determined that the United States will comply with the ICJ decision in *Avena*." U.S. Mot. for Divided Arg. and for Leave to Participate in Divided Arg. at 3.

In its brief to this Court, Respondent has acknowledged the President's authority to ensure compliance with the *Avena* Judgment. Specifically, Respondent has stated that one of the "methods of seeking enforcement of *Avena*" would be the issuance of an Executive Order.

Resp't Br. at 46. Respondent also confirms:

The President is under a constitutional duty to "take Care that the Laws be faithfully executed." U.S. Const. art. II, § 3. As a duly ratified treaty, the Vienna Convention is undoubtedly the "supreme Law of the Land." U.S. Const., art. VI, cl. 2. As the executive of the national government, the President enjoys preeminence in conducting the foreign relations of the United States. *See, e.g., Am. Ins. Ass'n v. Garamendi*, 539 U.S. 396 (2003). Accordingly, working with Mexico and within the Executive Branch to implement *Avena* and enhance compliance with Article 36 is well within the duties and responsibilities of the President.

*Id.* at 47. Respondent thereby acknowledges the President’s authority to ensure compliance with the *Avena* Judgment by the determination he has now issued.

2. For the reasons set forth in Petitioner’s opening brief, even in the absence of the President’s determination, the *Avena* Judgment confers rights that are enforceable in the state and federal courts of the United States as a result of the constitutional scheme and the commitments made by the political branches pursuant to that scheme. Pet’r Br. at 19-50. As the Oklahoma Court of Criminal Appeals recognized in *Torres v. Oklahoma*, No. PCD-04-442 (May 13, 2004) (P.A. 142a-163a), courts in the United States – including, without doubt, this Court – plainly have the authority to enforce those rights.

The President’s determination, however, now provides an independent ground under federal law by which Petitioner may enforce those rights. Indeed, the Presidential determination removes both of the two impediments that, in the view of the Court of Appeals, prevented it from complying with *Avena* in this case—that is, that there was an adequate and independent state-law ground barring relief in state court, and that Mr. Medellín has no individual right to seek relief for the violation of the Vienna Convention in his case. *See, e.g., Am. Ins. Ass’n v. Garamendi*, 539 U.S. 396, 401, 413-20 (2003) (Presidential foreign policy preempts contrary state law); *Lee v. Kemna*, 534 U.S. 362, 375 (2002) (state-law procedural default rule applies in federal habeas only if adequate and independent of federal law); *Int’l Longshoremen’s Ass’n v. Davis*, 476 U.S. 380, 388, 398-99 (1986) (state law ground not adequate and independent if preempted by federal law).

The issues in this case are not moot, however. Only if Petitioner actually receives the review and reconsideration to which the President has now confirmed he is entitled will the United States achieve compliance with its international obligations in his case. The *Avena*

Judgment requires that Petitioner receive “effective” judicial review and reconsideration of his conviction and sentence that “guarantee[s] that th[e Vienna Convention] violation and the possible prejudice caused by that violation will be fully examined” so that “full weight is given to the . . . rights set forth in the Vienna Convention.” P.A. 261a-262a (*Avena* judgment, ¶¶ 138-39). In the event that the Texas state courts for any reason fail to give full effect to the *Avena* Judgment, Petitioner would have the right to seek enforcement of the judgment in this Court by virtue of both its direct effect in the United States legal system – the issue raised by the questions on which this Court granted the petition – and the authority of the President’s determination.

3. Out of respect for the President’s authority to implement *Avena*, and in reliance on his commitment that Petitioner shall receive review and reconsideration in accord with *Avena*, Petitioner is prepared to pursue the state-court remedy that the United States identifies.

Petitioner therefore respectfully requests that the Court stay further proceedings in this case while Petitioner pursues that remedy. Like any other court, this Court has inherent authority to stay cases that are before it in the interest of efficient management of its own docket. *See, e.g., Fiore v. White*, 528 U.S. 23, 30 (1999) (further proceedings in this Court held in abeyance pending receipt of answer to certified question from state court); *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936) (“the power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket . . .”).

In the event that the Texas courts do not provide the review and reconsideration required by the *Avena* Judgment and the President’s determination, this case could then be restored to this Court’s calendar for argument on the questions presented and, if appropriate, consolidated with any proceedings here resulting from Petitioner’s pursuit of his remedy in the state courts.

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Petitioner respectfully requests that the Court adjourn without date the time for filing  
Petitioner's reply and the oral argument in this case and otherwise stay all further proceedings  
until further order of the Court.

Dated: New York, New York  
March 8, 2005

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'DFD', followed by a horizontal line extending to the right.

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