

Medellin: A Textual Analysis

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The 1992 presidential campaign popularized the slogan, “It’s the economy, stupid.” In *Medellin v. Texas*, which is scheduled for oral argument before the U.S. Supreme Court on October 10, the Court should adopt the slogan, “It’s the text, stupid.” In the vast majority of cases on the Supreme Court docket, the Court resorts to a variety of extratextual interpretive tools because the relevant legal texts are ambiguous. *Medellin* is one of those rare cases where the key legal texts—the Supremacy Clause and Article 94 of the U.N. Charter—are unambiguous, directly on point, and dispositive of the main issue. Therefore, the Court should rule in favor of the petitioner on the basis of the Supremacy Clause and Article 94.

I. BACKGROUND

Jose Ernesto Medellin is a Mexican national who was sentenced to death in Texas. State officers violated his rights under the Vienna Convention on Consular Relations (VCCR), a multilateral treaty that obligates the United States to notify a detained foreign national that he has a right to communicate with a consular official from his home country.

In 2003, Mexico filed a claim against the United States in the International Court of Justice (ICJ) on behalf of Mr. Medellin and fifty-one other Mexican nationals whose rights under the VCCR had been violated. The ICJ ruled in favor of Mexico and ordered the United States to provide “review and reconsideration” of the cases involving Mr. Medellin and the other named Mexican nationals.¹ The ICJ held explicitly that the U.S. must provide Mr. Medellin and the other named individuals a judicial hearing, not an executive clemency proceeding, to ascertain whether they were prejudiced by the violations of their rights under the VCCR.²

After the ICJ decision in *Avena*, Medellin filed an application for a writ of habeas corpus in Texas state court. Despite the ICJ decision, the Texas Court of Criminal Appeals dismissed Medellin’s habeas petition, holding that the ICJ decision in *Avena* is not binding on the State of Texas.³ Medellin appealed that decision to the U.S. Supreme Court. That case is now set for oral argument on October 10.

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1. Case Concerning *Avena* and Other Mexican Nationals (Mex. v. U.S.), 2004 I.C.J. 128, 62–63 (Mar. 31) [hereinafter *Avena*].

2. *Id.* at 64–66.

3. *Ex parte* Medellin, 223 S.W.3d 315 (Tex. Crim. App. 2006).

II. THE SUPREME COURT SHOULD REVERSE THE TEXAS COURT'S DECISION

In its recent decision in *Ex parte Medellín*, the Texas Court of Criminal Appeals did not address the most compelling argument in favor of Medellín. That argument can be summarized as follows. The Supremacy Clause states that treaties made “under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”⁴ Thus, the Supremacy Clause provides a constitutional conflict of laws rule. In the event of a conflict between a treaty and a state law, state courts have a constitutional duty to apply the treaty.

The United Nations Charter is a treaty within the meaning of the Supremacy Clause. Article 94 of the Charter states: “Each Member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party.”⁵ Thus, under Article 94, the United States has an international obligation to comply with the ICJ decision in *Avena* because the U.S. was a party to the *Avena* case. Specifically, the U.S. has an obligation to provide “review and reconsideration” of Mr. Medellín’s conviction and sentence in the context of a judicial proceeding.⁶ By virtue of the Supremacy Clause and Article 94 of the U.N. Charter, that international obligation is directly binding on Texas state courts because the Constitution states expressly that “the Judges in every State shall be bound thereby. . . .”⁷

Despite the clear mandate of the Supremacy Clause and Article 94, the Texas Court of Criminal Appeals invoked the U.S. Supreme Court decision in *Sanchez-Llamas v. Oregon* in support of its conclusion “that ICJ decisions are not binding on United States courts.”⁸ Unfortunately, the learned judges confused two entirely separate issues. In *Sanchez-Llamas*, the U.S. Supreme Court did state that the ICJ’s *interpretation* of the VCCR is not binding on U.S. courts. However, the Supreme Court did not dispute the fact that ICJ *decisions* are binding under Article 94 of the U.N. Charter. This distinction is crucial. The petitioners in *Sanchez-Llamas* were not included among the fifty-two Mexican nationals who were the subject of the ICJ decision in *Avena*. Thus, the *Avena* decision had no binding force with respect to the *Sanchez-Llamas* petitioners under international or domestic law. In contrast, Mr. Medellín is one of the fifty-two Mexican nationals who were the subject of the *Avena* decision. Consequently, the *Avena* decision is internationally binding in Medellín’s case under the express terms of Article 94. Moreover, Article 94 is directly binding on Texas state courts under the express terms of the Supremacy Clause. Therefore, by virtue of the Supremacy Clause and Article 94, Texas state courts have a constitutional duty to provide Mr. Medellín the “review and reconsideration” required by the *Avena* judgment.

In addition to its misplaced reliance on the Supreme Court decision in *Sanchez-Llamas*, the Texas Court of Criminal Appeals also invoked Article 11.071 of the Texas Code of Criminal Procedure. In the court’s view, the Texas Code barred Medellín’s habeas petition. Regrettably, the court’s reliance on state law in opposition to U.S. treaty obligations directly contravened the clear mandate of the Supremacy Clause. In Medellín’s case, there is a direct conflict between the Texas Code, which precludes a judicial hearing, and Article 94 of the U.N. Charter, which mandates a judicial hearing. Under the express

4. U.S. CONST. art. VI, cl. 2.

5. U.N. Charter art. 94, para. 1.

6. *Avena*, *supra* note 1, at 62–66.

7. U.S. CONST. art. VI, cl. 2.

8. *Medellin*, 223 S.W.3d at 332.

terms of the Supremacy Clause, the Texas courts were required to apply the treaty, “any Thing in the Constitution or Laws of any State to the contrary notwithstanding.”⁹

Below, I briefly address three counterarguments relating to private enforcement of treaties, presidential discretion, and the authority of the ICJ.

III. PRIVATE ENFORCEMENT OF TREATIES

The U.S. government contends that Texas courts are not obligated to apply the U.N. Charter or the *Avena* decision on behalf of Mr. Medellin because neither the U.N. Charter nor the *Avena* decision is “privately enforceable.”¹⁰ The question of whether the U.N. Charter and *Avena* are “privately enforceable” encompasses three distinct issues: (1) whether Mr. Medellin has a private right of action; (2) whether he has the power to invoke the Charter and *Avena* in support of his habeas petition; and (3) whether Article 94 of the U.N. Charter is the type of law that is enforceable in a domestic court.

A law creates a private right of action if it authorizes an individual to initiate a judicial proceeding. Mr. Medellin’s right to initiate a habeas corpus action is not disputed since there is no question that Texas law grants him the right to petition a state court for habeas corpus relief. Thus, his private right of action does not depend on the U.N. Charter or the *Avena* decision.

A petitioner in a habeas corpus action, like a criminal defendant, has the power to invoke any valid law that protects his personal rights. In civil actions, courts use the concept of standing to limit the class of plaintiffs who have the power to invoke a particular law. With respect to criminal defendants, though, the Supreme Court has held that there is no distinct requirement for a defendant to establish that he has standing in order to raise a Fourth Amendment defense, because any defendant whose personal rights have been violated has the power to invoke the Fourth Amendment in support of his defense to criminal charges.¹¹ Similarly, the Supreme Court has never questioned the proposition that a habeas petitioner has the power to invoke any valid law that protects his individual rights. Therefore, in a habeas corpus action, a petitioner whose individual rights are protected by a treaty has the power to invoke that treaty in support of his habeas petition.¹²

A treaty protects the rights of a particular individual if the treaty imposes a duty on a state to do something for that individual, or to refrain from doing something to that individual.¹³ Article 94 of the U.N. Charter, standing alone, does not protect individual rights. However, in Medellin’s case, Article 94 must be read together with *Avena*. Together, Article 94 and *Avena* protect Mr. Medellin’s individual rights because *Avena* requires review and reconsideration of *his personal* conviction and sentence, and Article 94 obligates the United States to comply with *Avena*. Since Article 94 and *Avena* protect Mr. Medellin’s individual rights, he has the power to invoke Article 94 and *Avena* in support of his habeas petition.

9. U.S. CONST. art. VI, cl. 2.

10. See Brief for the United States as Amicus Curiae Supporting Petitioner, *Medellin v. Texas*, petition for cert. filed, No. 06-984 (U.S. Jan. 16, 2007).

11. *Rakas v. Illinois*, 439 U.S. 128 (1978).

12. See, e.g., *Chew Heong v. U.S.*, 112 U.S. 536 (1884) (granting habeas relief to a Chinese laborer on the grounds that his detention violated his individual rights under a treaty with China).

13. See David Sloss, *When Do Treaties Create Individually Enforceable Rights?*, 45 COLUM. J. TRANS’L L. 20, 29–30 (2006).

The final question is whether Article 94 of the U.N. Charter is the type of law that is enforceable in a domestic court. Since Article 94 is the “Law of the Land” under the Supremacy Clause, Article 94 is enforceable insofar as it provides a rule that courts are competent to apply. Recall that Article 94 commands the United States to comply with ICJ decisions. Thus, the question of whether courts are competent to apply Article 94 depends upon the nature of the ICJ decision at issue. For example, in the *Military and Paramilitary Activities in Nicaragua* case, the ICJ ordered the United States to stop placing mines in Nicaraguan territorial waters.¹⁴ Clearly, that is not the type of decision that domestic courts are competent to enforce. In contrast, in the *Avena* case, the ICJ ordered the U.S. to provide judicial review of Mr. Medellin’s conviction and sentence.¹⁵ Not only are the courts competent to apply this decision, courts are the only institutions in the United States that are competent to apply this decision. Indeed, in Mr. Medellin’s case, it is not possible for the United States to comply with Article 94 unless a court provides review and reconsideration of his conviction and sentence. Hence, there is no doubt that, in the specific circumstances of Mr. Medellin’s case, Article 94 of the U.N. Charter is enforceable in domestic courts.

IV. PRESIDENTIAL DISCRETION

The government contends that private enforcement of *Avena* would interfere with the President’s “authority to decide whether the United States will comply with [the] ICJ decision, and if so, what measures should be taken to comply.”¹⁶ This argument is based on a mistaken premise. Although Congress has the constitutional authority to decide not to comply with *Avena*, the President has no such authority. Under Article II of the Constitution, the President has a duty to “take Care that the Laws be faithfully executed.”¹⁷ Since Article 94 of the U.N. Charter is the supreme “Law of the Land,” it is one of the laws that the President has a duty to execute. Article 94 obligates the President to “comply with the decision of the International Court of Justice in any case to which” the United States is a party.¹⁸ Thus, the combination of the Take Care Clause and Article 94 means that the President has a constitutional duty to comply with *Avena*.

Of course, the President does have some discretion in choosing how best to implement the U.S. obligations under *Avena* and the U.N. Charter. But his discretion is constrained because the ICJ ordered judicial review of Mr. Medellin’s case, and the President does not have the constitutional authority to refuse to comply with the ICJ decision (absent legislation granting him such authority). Thus, any legitimate option available to the President necessarily entails judicial review of Mr. Medellin’s case. Since Mr. Medellin’s habeas petition is intended to secure the judicial review required by *Avena*, and since the President has not proposed any other mechanism to secure that judicial review, it is evident that Mr. Medellin’s effort to enforce his individual rights does not interfere with the President’s discretionary authority to decide how best to implement U.S. obligations under Article 94 and *Avena*.

14. *Military and Paramilitary Activities in Nicaragua (Nicar. v. U.S.)*, 1986 I.C.J. 14 (June 27).

15. *See Avena*, *supra* note 1, at 62–66.

16. *See* Brief for the United States as Amicus Curiae Supporting Petitioner, *supra* note 10.

17. U.S. CONST. art. II, § 3.

18. U.N. Charter, art. 94, para. 1.

V. THE AUTHORITY OF THE ICJ

Some scholars have argued that the *Avena* judgment is not valid because the ICJ lacks the power to overturn a final judgment of a state court. Since the ICJ acted ultra vires by purporting to overrule a final domestic court judgment, and since the U.S. is not obligated to comply with an ICJ decision if the ICJ acted beyond the scope of its delegated authority, the U.S. has no obligation to comply with the *Avena* decision.

Assuming, for the sake of argument, that the U.S. is not obligated to comply with an ultra vires decision by the ICJ, there are two distinct flaws in this argument. First, *Avena* does not require state courts to overturn final judgments. *Avena* merely requires Texas courts to conduct an evidentiary hearing to determine whether Mr. Medellin was prejudiced by the violation of his rights under Article 36 of the VCCR.¹⁹ In other words, a U.S. court must provide Mr. Medellin a full and fair opportunity to demonstrate that the violation of his treaty rights affected either the conviction or sentencing outcome of his criminal trial. If the court determines that Mr. Medellin was not prejudiced by the violation of his VCCR rights, then the U.S. will have complied with its obligation under *Avena*, and there will be no reason to overturn Medellin's conviction or sentence. On the other hand, if the court determines that Mr. Medellin was prejudiced by the violation of his VCCR rights, certain consequences would follow. Under ordinary principles of domestic remedial law, the appropriate remedy might well be to vacate his conviction or sentence, depending upon the nature of the prejudice. In any case, it is not true that *Avena* requires Texas courts to overturn a final judgment.

Second, there are numerous cases in which U.S. courts have overturned a final judgment on the grounds that the procedure utilized to obtain that judgment was inconsistent with U.S. treaty obligations. For example, in *Ward v. Ludwig*,²⁰ a state appellate court vacated a final judgment in a divorce case because the husband failed to comply with the requirements of a multilateral treaty when he served process on his wife, a German citizen residing in Germany. Although the husband served his wife by registered mail, and the wife conceded that she received actual notice, the court held that the husband's failure to comply with the Hague Service Convention²¹ was sufficient reason to vacate the prior divorce decree. Like the Texas state prosecutor in *Medellin*, the husband in this Ohio divorce case initiated judicial proceedings in a manner that was inconsistent with U.S. treaty obligations. Since U.S. courts hold private citizens accountable for treaty violations by vacating final judgments in civil suits tainted by those violations, there is no apparent reason why courts should not also hold state officers accountable for treaty violations by vacating final judgments in criminal trials tainted by those violations.

19. See *Avena*, *supra* note 1, at 65.

20. 149 Ohio App.3d 687 (Ohio Ct. App. 2002).

21. Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, Nov. 15, 1965, 20 U.S.T. 361, T.I.A.S. 6638.