A Father Waits: Medellin v. Texas and the Application of World Court Decisions on U.S. Domestic Law

Emily Culp

Follow this and additional works at: https://scholarship.law.unc.edu/ncilj

Recommended Citation

Available at: https://scholarship.law.unc.edu/ncilj/vol35/iss1/6
A Father Waits: Medellin v. Texas and the Application of World Court Decisions on U.S. Domestic Law

Cover Page Footnote
International Law; Commercial Law; Law

This note is available in North Carolina Journal of International Law: https://scholarship.law.unc.edu/ncilj/vol35/iss1/
I. Introduction

It is 12:03 a.m. on June 25, 1993, and Randy Ertman waits anxiously for his daughter to arrive home. She is late for her curfew and perhaps her father believes she has lost track of time while attending a pool party at a friend’s house. As the minutes tick by turning into hours and then days, Randy Ertman’s anxiety evolves into panic over the disappearance of his daughter. It would be another four days before her body is found, followed by an excruciating fifteen years until her father finally receives the closure he had awaited ever since the night she disappeared.

On the evening of June 24, 1993, Jose Ernesto Medellin, a
A Mexican national who had lived in the United States since the age of three, was participating in a gang initiation when two young teenage girls came upon him and the five other participating men. As the girls tried to pass, they were abducted, raped, and eventually killed. After being turned in by a brother of one of the participating men, Medellin was tried, convicted of capital murder, and sentenced to death. Throughout his appellate process, Medellin argued that the Vienna Convention on Consular Relations, to which the United States is a signatory, required local authorities to inform him, as a foreign national prisoner being held on criminal charges, of his right to speak with a diplomat from his country. Since he was denied this right, Mexico sued the United States in the World Court (formerly the International Court of Justice) and obtained a judgment directing the United States to reopen and reassess the case against Medellin. President Bush intervened with a Presidential memo instructing the Texas courts to reconsider Medellin’s conviction. Finding that World Court decisions were not binding on domestic courts, the Texas Court of Criminal Appeals refused the President’s request. In October 2007, the case came before the United States Supreme Court, which sided with the Texas Court of Criminal Appeals, finding that the Texas judicial system was not directly bound by foreign law.

3 Id.
4 Id.
7 Id.
Given the weight and magnitude of this decision, several policy arguments have arisen over what this outcome might mean for the U.S. legal system, both at home and abroad. Specifically, these arguments have claimed that the United States is in breach of an international legal obligation that could affect Americans in foreign custody, forcing them to face proceedings without the protection of the Vienna Convention and the consular rights it guarantees. However, there are opposing arguments in favor of this decision, arguing that it strengthened state criminal laws by diminishing the influence of foreign affairs on criminal proceedings. Part II of this Note will explore the facts and rationale for the Supreme Court's holding in Medellin v. Texas. Part III will examine the background law foreshadowing this case and Part IV will provide an analysis of the Supreme Court's opinion and its implications for international law, specifically, as it applies to the Vienna Convention. Finally, this Note will conclude in Part V that, although the Supreme Court decision may have larger unacknowledged ramifications for U.S. prisoners worldwide, it was intended to protect and insulate state criminal laws from the influence of foreign affairs and policy concerns.

II. Statement of the Case

A. The Facts

On June 24, 1993, fourteen year old Jennifer Ertman and sixteen year old Elizabeth Pena attended a pool party at a friend's house, and left when they realized it was getting close to their curfew. As they walked home together at 11:30 p.m., they decided to take a shortcut through a park and stumbled across a group of six gang members who were drinking beers, having just

12 Id.
14 Sam Howe Verhovek, Houston Knows Murder, But This..., N.Y. TIMES, July 9, 1993, at A8.
completed a gang initiation for one of the younger men.\textsuperscript{16} As the girls attempted to pass, Medellin grabbed Pena and forced her down a hill. Ertman was able to run away but returned upon hearing the cries of Pena.\textsuperscript{17} At that time, the remaining gang members grabbed Ertman and “for the next hour proceeded to rape, sodomize and beat the girls before strangling them” to death.\textsuperscript{18} Evidence at trial revealed that Medellin participated in the sexual assault and strangulation of both females.\textsuperscript{19} It was noted during trial that Medellin helped to strangle Pena with one of his shoe strings\textsuperscript{20} and strangled Ertman with a “red nylon belt that was pulled so tight around her throat it snapped in two.”\textsuperscript{21} Additionally, testimony revealed that “the final act of brutality came when the girl’s bodies were stomped on to make sure they were dead.”\textsuperscript{22}

After police received a tip from the brother of one of the participating gang members, Medellin was arrested and questioned about the attacks.\textsuperscript{23} As he described what happened that evening, he appeared hyper, giggling as he bragged about “deflowering” one of the victims, and only showed remorse toward the fact that he did not have a gun, which would have allowed him to kill Pena and Ertman more quickly.\textsuperscript{24} On September 23, 1993, a Texas jury found Medellin guilty of capital murder and, in a separate punishment hearing, the jury opted to impose the death penalty.\textsuperscript{25} It is important to note that throughout his arrest, trial, and conviction, Medellin was never informed that he had the right under the Vienna Convention of Consular Rights to communicate with the Mexican consulate, nor informed of his right to seek legal advice.\textsuperscript{26} Additionally, Mexico was not informed of his case until

\textsuperscript{16} Underwood, \textit{supra} note 2, ¶ 15; \textit{see also} Medellin v. Cockrell, 2003 U.S. Dist. LEXIS at *2.
\textsuperscript{17} Underwood, \textit{supra} note 2, ¶ 15.
\textsuperscript{18} \textit{Id.}
\textsuperscript{19} Medellin v. Cockrell, 2003 U.S. Dist. LEXIS at *2.
\textsuperscript{20} \textit{Id.}
\textsuperscript{21} Underwood, \textit{supra} note 2, ¶ 22.
\textsuperscript{22} \textit{Id.}
\textsuperscript{23} \textit{Id.}
\textsuperscript{24} Medellin v. Cockrell, 2003 U.S. Dist. LEXIS at *2.
\textsuperscript{25} \textit{Id.} at *2-*3.
\textsuperscript{26} Medellin v. Dretke, 371 F.3d 270, 279 (5th Cir. 2004).
B. *The State Approach to the Vienna Convention Violation*

Article 36 of the Vienna Convention on Consular Rights "requires an arresting government to notify a foreign national of his right to contact his consul." Specifically, the Act states:

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 nationals of the sending State and to have access to them . . . ;
   (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 also be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this sub-paragraph;
   (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 . . .

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.

Following multiple failed appeals and several denied
applications for writs of habeas corpus, Medellin argued that Texas violated his right to access the Mexican consulate for legal advice as guaranteed by the Vienna Convention to which both Mexico and the United States are signatories. While Texas conceded that Medellin was not notified of his right to contact the Mexican consulate, the U.S. District Court for the Southern District of Texas found that Medellin was not entitled to relief for several reasons. First, the court acknowledged the state habeas court’s reasoning that Medellin, as an individual, “lacks standing to enforce the provisions of the Vienna Convention,” looking to the preamble of the Vienna Convention to support this decision. The preamble states that the act was “not to benefit individuals but to ensure the efficient performance of functions by consular posts on behalf of their respective States. . . .” The court decided that if it were to recognize that the Vienna Convention created an individual right, it would create a new rule of law in violation of the non-retroactivity principle. Second, even if the court were to overlook the previous argument, Medellin “would [still] have to show concrete, non-speculative harm for the denial of his consular rights.” While Medellin argued that the Mexican Consulate would have taken immediate action to secure representation and would have warned him against confession, the state habeas court found that Medellin failed to show that he was in fact harmed by the denial of his Vienna Convention rights, despite his lack of Mexican Consular assistance, having received effective legal representation and the constitutional protections afforded all criminal defendants in the State of Texas. Third, Medellin failed to demonstrate that a new trial would be the appropriate remedy

---

31 See Medellin v. Cockrell, 2003 U.S. Dist. LEXIS at *4 (discussing denial of habeas corpus); Medellin v. Dretke, 371 F. 3d at 274.
32 See Vienna Convention, supra note 29, art. 74.
34 Id. (citing State Habeas Record at 216, p. 15).
35 Vienna Convention, supra note 29, preamble.
36 See Teague v. Lane, 489 U.S. 288, 315 (1989). The U.S. Supreme Court has determined retroactivity to be a threshold question, which is to be applied in consideration of the effect of retroactivity on the case at hand as well as to those similarly situated. Id. at 300-02.
38 Id. at *39-*40 (citing State Habeas Record at 217, P 16).
under the Vienna Convention because the act itself failed to articulate a specific remedy for its violation.\textsuperscript{39}

Following his case against Cockrell, Medellin appealed to the United States Court of Appeals for the Fifth Circuit and again claimed that the state violated the rights guaranteed to him as a foreign national under the Vienna Convention.\textsuperscript{40} The court found that this claim failed for two reasons.\textsuperscript{41} First, the claim had procedurally defaulted because Medellin failed to bring it at the trial stage.\textsuperscript{42} Medellin argued that the application of the procedural default rule, itself, violated the Vienna Convention, but the Court, in examining precedents,\textsuperscript{43} found that "procedural default rules can bar Vienna Convention claims."\textsuperscript{44} Second, as stated in Medellin v. Cockrell, the Vienna Convention, as historically interpreted, does not confer an individually enforceable right because there is no private enforcement provision.\textsuperscript{45}

\textbf{C. The International Approach to the Vienna Convention Violation}

While Medellin struggled in the U.S. courts, the United States dealt with the same issues on an international level. On January 9, 2003, Mexico brought suit on behalf of fifty-two Mexican nationals in the International Court of Justice against the United States for violating Article 36 of the Vienna Convention on Consular Rights.\textsuperscript{46} More specifically, Mexico alleged that although the U.S. authorities who arrested the fifty-two Mexican nationals involved in the case had enough information at their disposal to grant them awareness of the foreign nationality of these

\textsuperscript{39} \textit{Id.} at *40 n. 17.
\textsuperscript{40} Medellin v. Dretke, 371 F.3d at 274.
\textsuperscript{41} \textit{Id.}
\textsuperscript{42} \textit{Id.} at 279-80.
\textsuperscript{43} See, e.g., Breard v. Greene, 523 U.S. 371, 375-76 (1998) (holding that inmate's failure to bring Vienna Convention claim during the trial stage of his criminal proceedings prevented him from bringing such claim in a subsequent habeas corpus proceeding).
\textsuperscript{44} Medellin v. Dretke, 371 F.3d at 280.
\textsuperscript{45} Medellin v. Cockrell, 2003 U.S. Dist. LEXIS at *37.
individuals, they failed to inform them of their rights under Article 36, and additionally failed to provide them of this information "without delay" as demanded by the provision.\textsuperscript{47} Mexico indicated that consular authorities learned of such arrests and detentions pertaining to several of the cases involved only after the death sentence had been imposed through means other than those provided by the Act.\textsuperscript{48} In at least five of the cases, Mexico learned of the violation \textit{after} the consulate would have any opportunity to affect the trials.\textsuperscript{49}

At the close of the hearing, the I.C.J. held that the United States breached its obligations under the Vienna Convention (1) "by not informing, without delay upon their detention," the Mexican nationals of their rights under Article 36;\textsuperscript{50} (2) "by not notifying the appropriate Mexican consular post without delay of the detention" thereby depriving Mexico of the right "to render assistance to the individuals concerned";\textsuperscript{51} (3) by depriving Mexico the right to communicate with and have access to those detained nationals;\textsuperscript{52} and (4) by depriving Mexico the right to arrange for legal representation of those nationals.\textsuperscript{53} In closing, the court ruled that the appropriate remedy was for the United States to review and reconsider the convictions and sentences of all Mexican nationals named in the case.\textsuperscript{54}

\textbf{D. The First Appearance before the Supreme Court}

Hoping that the \textit{Avena} decision would force U.S. courts to finally reach a different judgment, Medellin continued to pursue appellate avenues and reached the U.S. Supreme Court for the first time in May 2005.\textsuperscript{55} While the previous U.S. District Court decision briefly mentioned the \textit{Avena} case,\textsuperscript{56} it failed to answer the

\textsuperscript{47} Id. at 13.
\textsuperscript{48} Id.
\textsuperscript{49} Id. at 26-27.
\textsuperscript{50} Id. at 71.
\textsuperscript{51} Avena, supra note 46, at 71.
\textsuperscript{52} Id.
\textsuperscript{53} Id. at 72.
\textsuperscript{54} Id.
\textsuperscript{56} Medellin v. Dretke, 371 F.3d at 279-80.
question of whether a federal court was bound by the I.C.J.’s Avena decision and thus was required to review and reconsider Medellin’s claim under the Vienna Convention without regard to procedural default rules. While the U.S. Supreme Court acknowledged that this international question had yet to be answered, it dismissed the case, finding that Medellin had other avenues for relief.

While he had originally described Mexico’s suit as “an unjustified, unwise, and an ultimately unacceptable intrusion in the United States criminal justice system,” President Bush issued a memorandum announcing that the White House would abide by the I.C.J.’s decision and would instruct states “to reconsider the convictions and sentences of the Mexican nationals on death row.” Because the memo in conjunction with the Avena judgment provided him with areas of relief that were not available at the time of his first state habeas motion, Medellin filed a successive state habeas motion four days prior to oral arguments at the Supreme Court. Finding that this successive state proceeding could provide Medellin with the review and reconsideration required by the I.C.J. decision, the Supreme Court dismissed the case.

The Court of Criminal Appeals of Texas heard Medellin’s case and issued an opinion dismissing his application for habeas review on November 15, 2006. While the court acknowledged that it should give I.C.J. decisions “respectful consideration,” it found, based on precedential authority, that such decisions were not

57 Medellin v. Dretke, 544 U.S. at 666.
58 Id. at 666-67. In deciding to dismiss the writ, the Court found that there was a possibility that the Texas courts would provide Medellin with review and relief under the Avena judgment and Presidential memorandum. Id. The opinion also acknowledged that if Medellin failed to receive the relief he desired, there would likely be an additional opportunity to come before the Supreme Court. Id.
59 Greenhouse, supra note 6 (quoting the Bush Administration).
60 Memorandum, supra note 8.
61 Greenhouse, supra note 6.
62 Ex Parte Medellin, 206 S.W.3d 584 (2005).
64 Id. at 666-67. For further explanation into the Supreme Court’s reasoning, see supra note 58.
binding on state governments. Specifically quoting the Supreme Court's decision in *Sanchez-Llamas v. Oregon*, the court acknowledged that "nothing in the structure or purpose of the I.C.J. suggests that its interpretations were intended to be conclusive on our courts." Additionally, the court recognized that the President exceeded his constitutional authority by intruding in the separate powers independently reserved to the judiciary. Again looking to the decision of *Sanchez-Llamas*, the court reiterated the Supreme Court's finding that one of the powers reserved to the courts is that of defining "the meaning of a treaty as a matter of federal law." Since this power is separately reserved to the judiciary, "the President cannot dictate to the judiciary what law to apply or how to interpret the applicable law."

### E. The Second Appearance before the Supreme Court

Following the Texas Court decision, the U.S. Supreme Court again granted *certiorari* to hear Medellin's case. Oral arguments were presented on October 10, 2007, and a decision affirming the Texas court opinion was handed down on March 25, 2008, holding that the *Avena* judgment was not directly enforceable as domestic law in state courts and that the President's memorandum did not independently require states to provide review and reconsideration of those Mexican nationals named in the *Avena* decision.

The first issue considered by the court was "whether the *Avena* judgment ha[d] automatic domestic legal effect such that the judgment of its own force applie[d] in state and federal courts." In determining the appropriate response to this issue, the Court

---

66 Id. at 332.
68 Ex Parte Medellin, 223 S.W.3d at 331 (quoting Sanchez-Llamas v. Oregon, 548 U.S. 331, 354 (2006)).
69 Id. at 335.
70 Id. (quoting Sanchez-Llamas, 548 U.S. at 354 (quoting Marbury v. Madison, 5 U.S. 137, 177 (1803))).
71 Id.
73 Id. at 1372.
74 Id. at 1356.
first acknowledged a distinction\textsuperscript{75} among treaties, dividing them between those that are self-executing and capable of operating on their own without the aid of any legislative provision, and those that are not and require additional legislation to carry them into effect.\textsuperscript{76} The Court summarized by stating “while treaties may comprise international commitments . . . they are not domestic law unless Congress had either enacted implementing statutes or the treaty itself conveys an intention that it be ‘self-executing’ and is ratified on these terms.”\textsuperscript{77} Having found that the Vienna Convention on Consular Rights was a non-self-executing treaty and that Congress had yet to advance any specific legislation implementing its provisions, the Supreme Court found that the \textit{Avena} decision was not automatically binding domestic law.\textsuperscript{78}

This decision is further supported by Article 94 of the United Nations Charter. The provision provides that “[e]ach Member of the United Nations undertakes to comply with the decisions of the [I.C.J.] in any case to which it is a party.”\textsuperscript{79} It does not suggest that the United States is required to comply with an I.C.J. decision, nor does it indicate that the Senate intended such decisions to have immediate legal effect on domestic courts.\textsuperscript{80} Instead, it “reads like a compact between independent nations that depends for the enforcement of its provisions on the interest and the honor of the governments which are parties to it.”\textsuperscript{81} The enforcement provision of Article 94 adds strength to this argument by providing that the sole remedy for noncompliance is a referral to the U.N. Security Council by the aggrieved state, a non-judicial remedy.\textsuperscript{82} Furthermore, the Court acknowledged that in subscribing to the

\textsuperscript{75} This distinction was first acknowledged by Chief Justice Marshall. \textit{See} Foster v. Neilson, 27 U.S. 253 (1829) (assessing the rights of an individual to land ceded from Spain to France via treaty).

\textsuperscript{76} \textit{Medellin v. Texas}, 128 S. Ct. at 1356 (citing Whitney v. Robertson, 124 U.S. 190 (1888)).

\textsuperscript{77} \textit{Id.} (citing Ingartua-De La Rosa v. United States, 417 F. 3d 145, 150, 2005 U.S. App. LEXIS 15944, **11-**12 (2005)).

\textsuperscript{78} \textit{Id.} at 1357.

\textsuperscript{79} \textit{Id.} at 1354 (quoting U.N. CHARTER Art. 94(1)) (emphasis added).

\textsuperscript{80} \textit{Id.} at 1358.

\textsuperscript{81} \textit{Id.} at 1358-59 (citing Edye v. Robertson (\textit{Head Money Cases}), 112 U.S. 580, 598 (1884)).

\textsuperscript{82} \textit{Medellin v. Texas}, 128 S.Ct. at 1359-60.
U.N. Charter, the United States "retained the unqualified right to exercise its veto of any Security Council resolution." The Court reasoned that if the I.C.J. judgments were automatically enforceable as domestic law, "they would be immediately and directly binding on state and federal courts" and Mexico would not need to proceed to the Security Council to enforce a judgment.

Also in support of finding that the Avena decision was not binding on domestic law, the Court noted that the I.C.J. did not entitle individuals to bring claims against nations, which was also addressed in the lower court opinions. The Court looked to the I.C.J. Statute and stated that "the I.C.J. can hear disputes only between nations, not individuals" and as a result, Medellin cannot be considered a party to the Avena decision.

The Court continued to build support for its findings by pointing to the "postratification understanding" of signatory countries. Under this argument, the Court acknowledged that while there are numerous nations that are parties to the Vienna Convention, Medellin was unable to identify "a single nation that treats I.C.J. judgments as binding in domestic courts." "[T]he lack of any basis for supposing that any other country would treat I.C.J. judgments as directly enforceable as a matter of their domestic law strongly suggests that the treaty should not be so viewed in our courts."

Finally, the Court looked to general principles of interpretation to conclude that the I.C.J. decision was not binding as domestic law. The Court reasoned that since the forum State’s procedural rules will govern a treaty’s implementation unless a clear statement expresses otherwise, "one would expect the ratifying parties to the relevant treaties to have clearly stated their intent to give those judgments domestic effect, if they had so intended."

83 Id.
84 Id. at 136.
85 Id. at 1359 (citing Medellin v. Dretke, 371 F.3d 270, 281 (2004)).
86 Id. at 1360.
87 Id. at 1363.
88 Medellin v. Texas, 128 S.Ct. at 1363.
89 Id.
90 Id.
91 Id. at 1363-64.
In the instant case, the Court found no such statement suggesting that the I.C.J. judgments should displace State procedural rules.\(^92\)

The second issue addressed by the Supreme Court was whether the President’s memorandum altered the previous conclusion that the *Avena* judgment was not a rule of domestic law binding in state and federal courts.\(^93\) The Court began its analysis of this issue by discussing Justice Jackson’s tripartite scheme for evaluating executive action\(^94\) and acknowledging that “[t]he President’s authority to act, as with the exercise of any governmental power, must stem either from an act of Congress or from the Constitution itself.”\(^95\) While the United States argued that the President’s memorandum was authorized by the U.N. Charter, the Court recognized that “[t]he responsibility for transforming an international obligation arising from a non-self-executing treaty into domestic law falls to Congress,”\(^96\) not the Executive. “The power to make the necessary laws is in Congress; the power to execute in the President.”\(^97\) Additionally, the United States argued that the presidential memorandum should have been given the effect of domestic law because the case involved “a valid presidential action in the context of Congressional acquiescence.”\(^98\) However, the court failed to find such Congressional acquiescence in the instant case.\(^99\) Instead, the Court found that while Congress authorized the President to represent the United States before the U.N., the I.C.J., and the Security Council, it did not impart upon the President any unilateral authority to create domestic law.\(^100\)

Finally, the United States claimed that “the Memorandum is a valid exercise of the President’s foreign affairs authority to resolve

---

\(^{92}\) *Id.* at 1364.

\(^{93}\) *Id.* at 1367.

\(^{94}\) See *Youngstown Sheet & Tube Co. v. Sawyer* (*Youngstown*), 343 U.S. 579, 635-38 (1952) (Jackson, J., concurring).

\(^{95}\) *Medellin v. Texas*, 128 S. Ct. at 1368 (citing *Youngstown*, 343 U.S. at 585) (internal quotations omitted).

\(^{96}\) *Id.*

\(^{97}\) *Id.* at 1369 (citing *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006)).

\(^{98}\) *Id.* at 1370.

\(^{99}\) *Id.*

\(^{100}\) *Id.* at 1371.
claims disputes with foreign nations.” The Court noted that these cases generally entail a narrow set of circumstances which are “based on the view that a systematic, unbroken, executive practice, long pursued to the knowledge of the Congress and never before questioned can raise a presumption that the action had been taken in pursuance of its consent.” The Court found that the President’s memorandum was not supported by a longstanding practice of congressional acquiescence and that the United States failed to identify a single instance in which the President had attempted “a Presidential directive issued to state courts, much less one that reaches deep into the heart of the State’s police powers and compels state courts to re-open final criminal judgments and set aside neutrally applicable state laws.” The Court concluded that presidential authority allowing him to settle international disputes through executive agreements such as the memorandum at issue in this case did not stretch so far.

Following this decision, Medellin sought a stay of execution which was denied by the Supreme Court on August 5, 2008. Three hours after this decision was handed down, Medellin was put to death.

III. Background Law

The precedential holdings leading up to the Medellin decision provide a diverse approach to the treatment of international treaties as they relate to domestic law as well as an interesting perspective on how the Vienna Convention on Consular Rights has been treated by U.S. courts in the past. The first relevant historical case is Murray v. Schooner Charming Betsy, 6 U.S. 64 (1804). In Murray, a United States frigate captured the schooner Charming Betsy on the open seas under a presidential order...
pursuant to the Federal Non-Intercourse Act, which prohibited trade between France and any person within the United States or under its protection. The owner of the schooner was born in the United States but had since become a Danish citizen. The Danish consul questioned the legality of the seizure, reasoning that it violated long-standing principles of international law. The U.S. Supreme Court agreed that the seizure was unlawful. Specifically, Chief Justice Marshall argued that if a United States law may conflict with an international obligation, the national law should be interpreted to avoid such a conflict. His opinion reflected a contemporary respect for international law and amicable relations among the United States and other countries.

A. The Vienna Convention and the Procedural Default Rule

A more recent case frequently cited among the Medellin and Avena decisions is that of Breard v. Greene. Under the facts of this case, the Commonwealth of Virginia was scheduled to execute Angel Francisco Breard, a Paraguayan national, after he was found guilty of the rape and capital murder of Ruth Dickie. At the time of his arrest, Breard was not informed of his right to consular notification and access for legal guidance even though arresting officers recognized that he was a foreign national. Evidence at trial overwhelmingly pointed to Breard’s guilt, including semen and hair found on Dickie’s body, matching that of Breard, and his testimonial confession to the crime. Prior to execution, the


109 Id.

110 Id.

111 Id.

112 Id.

113 Id.


115 Breard v. Greene, 523 U.S. at 372-73; see also Susan L. Karamanian, *Briefly Resuscitating the Great Writ: The International Court of Justice and the U.S. Death Penalty*, 69 Alb. L. Rev. 745, 751 (2006) (discussing the facts of the Breard case and analyzing it as one of three occasions in which the I.C.J. has been involved with the U.S. execution system).


117 Breard v. Greene, 523 U.S. at 373.
Republic of Paraguay initiated a proceeding against the United States in the I.C.J., alleging that the United States failed to comply with Article 36 of the Vienna Convention.\textsuperscript{118} After the case was filed, the I.C.J. ordered the United States to take all measures to ensure that Breard would not be executed until the court had an opportunity to decide the case.\textsuperscript{119} Less than one hour before Breard's scheduled execution,\textsuperscript{120} the U.S. Supreme Court denied Breard's request for a writ of habeas corpus and a stay of execution, finding that, like Medellin, Breard's claim was also barred as a result of having procedurally defaulted his alleged claim by not raising it in the state trial court.\textsuperscript{121} The Court explained, "[t]he procedural default rule prevents a federal court from reviewing a claim raised in habeas corpus that was not presented in the state courts in accordance with a state procedural rule."\textsuperscript{122} Despite Breard's argument that the Vienna Convention overshadowed the procedural default rule, the Court held that while the I.C.J.'s interpretation of the Vienna Convention deserved "respectful consideration,"\textsuperscript{123} it was subject to the procedural rules of the forum state.\textsuperscript{124} "Absent a clear and express statement to the contrary, the procedural rules of the forum [S]tate govern the implementation of the treaty in that [S]tate."\textsuperscript{125} Notably, the Court observed that since the procedural default rule barred claims under the U.S. Constitution, it should additionally bar claims arising under a treaty.\textsuperscript{126} The Court went on to say that

\textsuperscript{118} Id. at 374.
\textsuperscript{121} Breard v. Greene, 523 U.S. at 378-79; see also Breard v. Pruett, 134 F.3d at 620.
\textsuperscript{122} Karamanian, supra note 115, at 751-52 (citing Randy Hertz & James S. Liebman, Federal Habeas Corpus Practice and Procedure § 26.1 (4th ed. 2001)).
\textsuperscript{123} Breard v. Greene, 523 U.S. at 375.
\textsuperscript{124} Karamanaian, supra note 115, at 752.
\textsuperscript{126} Id. at 376.
even if Breard’s claim had been properly raised, it was unlikely that the violation would have overturned his conviction without a showing that the violation prejudiced his trial.127 The Court concluded by noting that the Secretary of State had sent a letter to the Governor of Virginia, requesting that he stay Breard’s execution and that such power was within the Governor’s discretion, if he chose to await the decision of the I.C.J.128

The United States again faced allegations of acting in violation of Article 36 of the Vienna Convention on Consular Rights in 1999 when Germany initiated I.C.J. proceedings on behalf of two brothers who had been convicted and sentenced to death on the charges of first degree murder, attempted murder, attempted armed-robbery, and kidnapping stemming from a failed bank robbery.129 The brothers first raised their Vienna Convention claim in federal court through the post-conviction process; the Ninth Circuit held that the claim was procedurally defaulted.130 Similar to the procedure used in Breard, the I.C.J. entered an order requesting that LaGrand be granted a stay of execution until the court had adequate time to reach a decision.131 Despite these efforts, the LaGrand brothers were put to death prior to a decision being reached. Unlike the Breard case, however, Germany decided to pursue an I.C.J. decision. The United States conceded that it had denied the brothers the rights required under Article 36 of the Convention and had failed to advise the German consulate of their arrest.132 Upon reaching a decision, “the I.C.J. held that the United States had violated Article 36(1) by not informing the LaGrand brothers of their rights under Article 36(1) and thus preventing Germany from providing consular assistance.”133 The Court specifically found that the express language of Article 36,

127 Id. at 377 (citing Arizona v. Fulminate, 499 U.S. 279, 303 (1991) (discussing the “harmless error” manner of analysis for coerced confessions)). 
128 Id. at 378.
130 Id. at 1261.
providing that “[t]he authorities shall inform the [foreign national] without delay of his rights,” thereby “requires countries to notify arrested foreign nationals about the possibility of receiving assistance from their consulates.” Additionally, the I.C.J. found that while the United States’ procedural default rule did not necessarily violate Article 36, it barred foreign nationals from invoking their rights under the Vienna Convention when challenging convictions and sentences. As a result, the I.C.J. denounced the procedural default rule where it would preclude the future enforcement of Article 36. The I.C.J. concluded its opinion by outlining a remedy for the U.S. breach, suggesting that the United States implement a process of its own design to “review and reconsider” cases affected by the denial of Vienna Convention Article 36 rights.

B. “Respectful Consideration”

This issue came before the U.S. Supreme Court again in 2006 and, again, the Supreme Court upheld the convictions and sentences of two foreign nationals despite their claims that the United States had violated Article 36 of the Vienna Convention. In Sanchez-Llamas v. Oregon, Moises Sanchez-Llamas, a Mexican national, was involved in a shootout with police, during which one officer sustained a gunshot wound to the leg. Sanchez-Llamas was later arrested and given a Miranda warning in both English and Spanish but was never informed that he had the right to notify the Mexican consulate of his detention or to seek legal guidance for his case. Following his arrest, Sanchez-Llamas agreed to an interrogation by the police and an interpreter, during which he “made several incriminating statements.”

139 See Sanchez-Llamas, 548 U.S. at 360 (combining both cases).
140 Id. at 339.
141 Id. at 339-40.
142 Id. at 340.
Sanchez-Llamas moved to suppress these statements on the grounds that law enforcement authorities had failed to comply with Article 36 of the Vienna Convention.143 His motion was denied at trial and he was subsequently convicted and sentenced to over twenty years in prison.144 In response to his argument, the U.S. Supreme Court clarified that evidence excluded in cases cited by Sanchez-Llamas had "[arisen] out of statutory violations that indicated important Fourth and Fifth Amendment interests" (including unconstitutional searches and seizures, arrests in violation of the Fourth Amendment, and involuntary confessions.).145 The Court further explained that the failure to inform a defendant of consular rights is unlikely to produce an unreliable or coerced confession and is unlikely to give a police officer any advantage over the accused.146 Ultimately, the two most frequent and critical concerns—coerced and unreliable confessions—that arise in the context of evidence exclusion are negated in so far as they allegedly violate the Vienna Convention.147 The Court reminded the defendant that, while he may not have been protected by the Vienna Convention, he was guaranteed the constitutional protections afforded all criminal defendants under the Due Process Clause of the Fourteenth Amendment, to which Article 36 added very little.148

In the second combined case, Mario Bustillo, a Honduran national, was arrested and charged with murder, having been identified at the scene of the crime without being notified of his Vienna Convention Article 36 rights.149 At the close of his trial, Bustillo was convicted and sentenced to thirty years in prison.150 In a petition for writ of habeas corpus filed in state court, Bustillo first raised the Article 36 violation; the court dismissed the claim, holding that it was procedurally barred given that he had failed to
raise the issue at trial.\textsuperscript{151} In his argument before the Supreme Court, Bustillo claimed that the I.C.J. held in both the \textit{Avena} and \textit{LaGrande} decisions that the Vienna Convention precludes the application of the procedural default rule to Article 36 claims, and thus the Supreme Court decision in \textit{Breard} should be revisited.\textsuperscript{152} Citing \textit{Breard}, the Court noted that while the I.C.J. decisions deserved "respectful consideration,"\textsuperscript{153} they "did not compel [the Supreme Court] to reconsider their decision under \textit{Breard}."\textsuperscript{154} The Court continued by noting that "nothing in the structure or purpose of the I.C.J. suggests that its interpretations were intended to be conclusive on our courts."\textsuperscript{155} Additionally, Article 36 made it clear that the rights provided should be "exercised in conformity with the laws"\textsuperscript{156} of the forum state – including the procedural default rule.\textsuperscript{157} Finally, the Court also recognized that the decision of the I.C.J. to disregard the procedural default rule would frustrate the adversarial process imbued in the U.S. courts and criminal justice system constructions.\textsuperscript{158} As the Court stated, "procedural default rules are designed to encourage parties to raise their claims promptly and to vindicate the law’s important interest in the finality of judgments."\textsuperscript{159} Finding that "respectful consideration" should be given to I.C.J. decisions and that \textit{Breard} should be upheld based upon the plain language of Article 36, the U.S. Supreme Court affirmed Bustillo’s conviction and sentence.

\textbf{IV. Significance of the Case}

As Jose Medellin sat on death row for fifteen years awaiting a decision, it likely seemed to him that his case was about the violation of Article 36 of the Vienna Convention on Consular Rights, which granted him, as a foreign national, the right to

\begin{footnotes}
\item[151] \textit{Sanchez-Llamas}, 548 U.S. at 341-42.
\item[152] \textit{Id.} at 352-53.
\item[153] \textit{Breard v. Greene}, 523 U.S. at 375.
\item[154] \textit{Sanchez-Llamas}, 548 U.S. at 353.
\item[155] \textit{Id.} at 354.
\item[156] \textit{Id.} at 356 (quoting Vienna Convention, \textit{supra} note 29, art. 36(1)(b) internal quotations omitted)).
\item[157] \textit{Id.}
\item[158] \textit{Id.} at 357.
\item[159] \textit{Id.} at 356 (quoting \textit{Massaro v. United States}, 538 U.S. 500, 504, (2003)) (internal quotations omitted).
\end{footnotes}
contact his consulate upon his arrest and detention in pursuit of legal assistance. Since his execution, however, this case has not come to be merely about the Vienna Convention, but instead about the United States' view on how to apply and enforce international law, especially when it stands in opposition to domestic procedure.

Throughout its opinions addressing Article 36 of the Vienna Convention, the U.S. Supreme Court has affirmed lower court decisions, finding that such claims arising under the Convention are deserving of "respectful consideration," but that they are either procedurally barred under the procedural default rule, are in contention with the actual language of Article 36, which requires them to be practiced in conformity with the laws of the receiving state, or are insignificant in protection compared to the guarantees of the U.S. Constitution. Despite its reasoning throughout these cases, the Supreme Court found the same result in each case—international law does not have a binding effect on domestic law.

A. Reinforcing the Separation of Powers Doctrine

It is important to note that the U.S. Supreme Court attempts to use these decisions to identify, clarify, and reinforce the separation of powers doctrine. While all of these cases discuss the doctrine, Medellin, perhaps, provides the best example. In response to whether the Avena decision had domestic legal effect, the Supreme Court began its analysis by stating that while treaties constitute an international law commitment, they do not independently "function as binding federal law." The Court acknowledged that treaties would not be given the weight of domestic law unless Congress had enacted statutes that incorporated the treaty or the treaty independently conveyed an intention to be self-executing. The Court found that since the treaty failed to create "binding federal law in the absence of implementing legislation, and

160 Breard v. Greene, 523 U.S. at 375.
161 See Sanchez-Llamas, 548 U.S. at 536; Breard v. Greene, 523 U.S. at 375-76.
162 See Medellin v. Texas, 128 S. Ct. at 1364-67; Sanchez-Llamas, 548 U.S. at 356.
163 See Sanchez-Llamas, 548 U.S. at 350.
164 Medellin v. Texas, 128 S. Ct. at 1356.
165 Id. (citing Igartua-De La Rosa v. United States, 417 F.3d 145, 150 (1st Cir. 2005) (en banc)).
because it is uncontested that no such legislation exists, we conclude that the *Avena* judgment is not automatically binding domestic law.66 Throughout this line of reasoning, the Court made a distinct separation between the duties of Congress and those of the judiciary. The Court reasoned that if a treaty was not self-executing, it was at the discretion of Congress to enforce it through statutory implementation.67 Since this power belonged to Congress alone, and, in the absence of Congress, either expressly or impliedly suggesting that the Vienna Convention be given legal effect, the judiciary explained that it was incapable of acting to bind the *Avena* decision on domestic courts.68

In the *Sanchez-Llamas* case, the U.S. courts similarly reinforced the separation between Congress and the Supreme Court when attempting to determine the most appropriate remedy for the case. "Where a treaty does not provide a particular remedy, either expressly or implicitly, it is not for the federal courts to impose one on the States through lawmaking of their own."69 As in *Medellin*, the Supreme Court attempted to define the boundaries of the two branches, asserting that Congress’ duty was to make laws whereas the Court’s duty instead was to interpret them.

While the Court in *Medellin* recognized that its strict duty was to interpret laws, it was cautious of this authority, especially in the face of the dissent’s argument to allow the United States to enter into treaties that were sporadically enforceable. The Court found that such an undefined treaty would “be the equivalent of writing a blank check to the judiciary.”70 This would have left senators unsure of what they were embodying in a statute through their votes and would have given judges the authority to determine the meaning at a later date,71 essentially giving them both the simultaneous power to create and interpret the law.72 The Court exercised judicial restraint in acknowledging that such a limitation

166 Id. at 1357.
167 Id. at 1356.
168 Id. at 1360.
169 *Sanchez-Llamas*, 548 U.S. at 347.
171 Id. at 1362-63.
172 Id. at 1363.
would inhibit the United States' ability to negotiate, sign and implement international agreements.\textsuperscript{173} Instead, the Court maintained that the ability of the United States to perform effectively on an international scale requires a divided and balanced structure.\textsuperscript{174}

The \textit{Medellin} Court further defined presidential duties and limitations in the second half of the opinion as it concentrated on the effect and influence of the presidential memorandum. The Court began this section of the opinion by recognizing that the President held the primary role in foreign policy as Article II of the Constitution gave him the "vast share of responsibility for the conduct of our foreign relations."\textsuperscript{175} However, this authority did not permit the Court to set aside established governing principles that insist that the President's authority stem from either an act of Congress or the Constitution directly.\textsuperscript{176}

The Court continued by reiterating the tripartite scheme of Presidential power that Justice Jackson originally voiced in \textit{Youngstown Sheet & Tube Co. v. Sawyer}.\textsuperscript{177} In \textit{Youngstown}, the President issued an executive order directing the Secretary of Commerce to seize and operate a majority of the nation's steel mills in an effort to avoid a nationwide strike of steel mill workers.\textsuperscript{178} While the mill owners and workers argued that the President's order amounted to lawmaking, a function reserved to Congress, the President maintained he was acting under authority given to him by the Constitution which made him the Nation's Chief Executive and Commander in Chief of the Armed Forces.\textsuperscript{179} The Court eventually held that the President's authority did not extend so far as expounded by Justice Jackson's three-part scheme developed in his concurring opinion.\textsuperscript{180} First, the President's authority is at its maximum when acting under the express or implied authorization of Congress because this authority to act

\textsuperscript{173} Id.
\textsuperscript{174} Id. at 1362-63.
\textsuperscript{175} Id. at 1367 (citing \textit{Youngstown}, 343 U.S. at 610-11).
\textsuperscript{176} Medellin v. Texas, 128 S. Ct. at 1368 (citing \textit{Youngstown}, 343 U.S. at 585).
\textsuperscript{177} Id.
\textsuperscript{178} \textit{Youngstown}, 343 U.S. at 582.
\textsuperscript{179} Id.
\textsuperscript{180} Id. at 635-38 (Jackson, J., concurring).
would include not only the power which was inherent in the President but also that which can be delegated by Congress.\textsuperscript{181} Actions executed under such authorization would be supported by a strong presumption of validity and afforded wide latitude in judicial interpretation.\textsuperscript{182} Second, Jackson noted that "when the President acts in the absence of either a congressional grant or denial of authority, he can only rely upon his own independent powers but there is a zone of twilight in which he and Congress may have concurrent authority."\textsuperscript{183} In such a situation, congressional indifference may invite independent Presidential authority.\textsuperscript{184} Jackson acknowledged that, in testing the bounds of Presidential authority in this circumstance, the outcome will depend on "imperatives of events" and "contemporary imponderables" instead of abstract theories of law.\textsuperscript{185} Finally, the President may act in a way that is incompatible with the express or implied intention of Congress.\textsuperscript{186} It is here that the President's power is at its weakest and will be upheld only if a Court chooses to disable Congress from acting on the subject at hand.\textsuperscript{187} The Court warned that the "[p]residential claim to power at once so conclusive and preclusive must be scrutinized with caution, for what is at stake is the equilibrium of the constitutional system."\textsuperscript{188}

With this frame of reference, the Court began its analysis of presidential power by distinguishing presidential power from congressional power. The Court found that while the President did have means available to him to enforce international agreements, he did not have the power to convert a non-self-executing treaty into a self-executing treaty.\textsuperscript{189} Instead, the only governing body that had this discretion was Congress.\textsuperscript{190}

The Court based its reasoning in the Constitution, noting that

\begin{flushleft}
\textsuperscript{181} Id. at 635.
\textsuperscript{182} Id.
\textsuperscript{183} Id. at 637.
\textsuperscript{184} Youngstown, 343 U.S. at 637.
\textsuperscript{185} Id.
\textsuperscript{186} Id.
\textsuperscript{187} Id. at 637- 38.
\textsuperscript{188} Id. at 638.
\textsuperscript{189} Medellin v. Texas, 128 S. Ct at 1368.
\textsuperscript{190} Id.
\end{flushleft}
the President had the authority to make a treaty and if it was intended to be self-executing, Congress had to approve it by a two-thirds vote.\textsuperscript{191} A non-self-executing treaty, however, could become domestic law only once it had passed through legislation, having been approved by both Houses of Congress and having received a presidential signature or a congressional override of the presidential veto.\textsuperscript{192} Given this explanation, the Court demonstrated that the presidential power resided in the execution of the laws and not in their creation. Due to a lack of evidence of expressly granting presidential power or congressional acquiescence, under the Jackson scheme, the presidential memorandum fell under the third category of presidential actions,\textsuperscript{193} leaving the Court with a presumption that required the justices to be critical of the President’s actions. As a result, the Supreme Court found that the “Constitution does not contemplate vesting such power in the Executive alone.”\textsuperscript{194} This statement suggests a specific intent behind a structure that requires the separation and balance of powers. It implies that the United States’ intention to operate internationally and effectively with other countries is best served when the government’s powers to control the United States’ international presence are clearly divided, allowing the President to make a treaty,\textsuperscript{195} the Senate to approve and implement the treaty,\textsuperscript{196} and the Supreme Court to interpret the treaty.\textsuperscript{197} With this balance of power structure, the power of the United States remains in the United States and unaffected by force of outside temptations on any one branch.

\textbf{B. The Presiding Policy Reason}

The fact that the Supreme Court uses this structure to adjudicate its decisions reinforces the one overwhelming policy argument that determined the prevalence of domestic law in \textit{Medellin}. That policy argument centers around the idea that the

\begin{itemize}
\item \textsuperscript{191} \textit{Id.} at 1369.
\item \textsuperscript{192} \textit{Id.}
\item \textsuperscript{193} \textit{Id.}
\item \textsuperscript{194} \textit{Id.}
\item \textsuperscript{195} U.S. \textit{CONST.}, art. II, § 2.
\item \textsuperscript{196} \textit{Id.} art. I.
\item \textsuperscript{197} \textit{Id.} art. III, § 2.
\end{itemize}
United States is not willing to permit an international court to declare binding decisions on domestic courts without domestic oversight and review. While the United States feels a strong need to participate in the international setting, there exists a stronger desire to protect domestic criminal justice process and procedures from the imposition of international priorities, such as that of Mexico's opposition to the death penalty found in Medellin. According to Julian Ku, an international-law specialist at Hofstra University in New York, "it would be a dangerous precedent to allow an international court to tell a state how to manage its criminal law and procedures without first getting the approval of federal lawmakers." The Court specifically pointed to these concerns in its response to Medellin, acknowledging that if Medellin's arguments were accepted, neither the Texas courts nor the U.S. Supreme Court would have been permitted to look behind a judgment to question its reasoning or result. "Medellin's interpretation would allow I.C.J. judgments to override otherwise binding state law; there is nothing in his logic that would exempt contrary federal law from the same fate." Furthermore, in its analysis of the presidential memorandum, the Court cited the government's inability to identify any instance in which the President attempted a presidential directive issued to state courts, "much less one that reaches deep into the heart of the State's police powers and compels state courts to reopen final criminal judgments and set aside neutrally applicable state laws." The strength of the language used in this statement infers that state and federal discretion over criminal adjudication is so central to the foundation of the United States that the Supreme Court is not willing to jeopardize those values through the universal imposition of an international court holding.

This value seems to be such a priority that it overshadows the additional policy concerns raised by critics of this opinion. Several individuals spoke out with fear about what this decision might mean for Americans arrested and detained while traveling

198 Jones, supra note 11.
199 Medellin v. Texas, 128 S. Ct. at 1364.
200 Id.
201 Id. at 1372.
An additional concern was that of possible strained relations between the United States and foreign countries that are signatories of the Vienna Convention, most specifically Mexico. Also, concerns were expressed regarding the ongoing credibility of the I.C.J. if the United States consistently rejected their decisions in protection of its own domestic law and procedures. Despite the weight and significance of each of these concerns, the U.S. Supreme Court has concluded that the value most in need of protection is that of domestic law. As a result, all remaining concerns should be either sacrificed or approached through a different avenue of foreign policy.

V. Conclusion

By focusing on the separation of powers doctrine and the Constitutional rights guaranteed to all criminal defendants tried in both federal and state courts, the Supreme Court overruled the International Court of Justice, finding that Texas state law would preside over the Avena decision and Medellin’s conviction and death sentence would stand. While there will likely be an ongoing discussion of the meaning of this case on an international platform, this decision established the significance of protecting the U.S. adversarial process and ensuring that decisions in U.S. courts are governed by U.S. process and policy, not those of our international neighbors.

Despite the Supreme Court’s reasoning for upholding the Texas state decision, there has been a movement in the U.S. legislature to give more force to the Vienna Convention on Consular Rights. On July 14, 2008, Representative Berman of California introduced a bill to the House of Representatives that

202 See Carpenter, supra note 120; see also Medellin v. Texas, 128 S. Ct. at 1375 (Stevens, J., concurring) (recognizing that such a breach of an international agreement would jeopardize the United States’ interest in ensuring the reciprocal observance of rights guaranteed under the Vienna Convention); Jones, supra note 11 (citing the administration’s need to ensure that the Vienna Convention’s safeguards would continue to apply to U.S. citizens traveling abroad); Texas Executes Mexican-Born Killer, USA TODAY, Aug. 6, 2008, http://www.usatoday.com/news/nation/2008-08-05-medellin_n.htm (acknowledging that this case extends beyond a Mexican national on death row to Americans who count on consulate protection when they travel abroad) (last visited Oct. 25, 2009).


204 See Jones, supra note 11.
would, if enforced, provide judicial remedies to carry out the U.S. treaty obligations under the Vienna Convention. 205 Entitled "Avena Case Implementation Act of 2008," section 2 of the legislation reads as follows:

(a) Civil Action- Any person whose rights are infringed by a violation by any nonforeign governmental authority of article 36 of the Vienna Convention on Consular Relations may in a civil action obtain appropriate relief.

(b) Nature of Relief- Appropriate relief for the purposes of this section means—

(1) any declaratory or equitable relief necessary to secure the rights; and

(2) in any case where the plaintiff is convicted of a criminal offense where the violation occurs during and in relation to the investigation or prosecution of that offense, any relief required to remedy the harm done by the violation, including the vitiation of the conviction or sentence where appropriate.

(c) Application- This Act applies with respect to violations occurring before, on, or after the date of the enactment of this Act. 206

While the Act currently awaits review in the House Judiciary Committee, if implemented it will change the future of how cases similar to that of Jose Medellin are addressed as it gives courts the authority to provide relief for Vienna Convention violations. Had the Act been passed prior to Medellin’s execution, his conviction may have been invalidated under a finding that such action would be the only way to remedy the harm done.

If passed, this legislation would suggest that the Vienna Convention on Consular Rights is such a critical treaty that the rights promised within it can no longer be denied to foreign nationals who are arrested and detained within the United States. More importantly, while it acknowledges the importance of an international legal responsibility owed by the United States to the other signatories of the treaty, it places the final decision of remedy in the hands of United States justices—not foreign courts—leaving the policy of ensuring that U.S. decisions are governed by U.S. process and policy insulated from the domination and control


206 Id.
of foreign policy priorities.

While Randy Ertman waited all night for his daughter to arrive home, days for her body to be found, and years for her case to finally reach resolution, his waiting and his patience were not suffered in vain. As a result of his daughter’s brutal rape and murder by a Mexican national who had lived in the United States for most of his life, Randy Ertman became part of a Supreme Court decision that will have lasting effects on the landscape of the United States’ approach to international law. Ertman waited long enough for his resolution. As a result of the Supreme Court decision in *Medellin v. Texas* and until definitive legislation is passed, the waiting now belongs to the families of the foreign nationals who have been arrested and detained without being informed of the consular rights guaranteed to them under the Vienna Convention.

EMILY CULP