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Don't Mess with Texas: Garcia v. Texas and the Supreme Court's Inversion of the Supremacy Clause

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I. Introduction

As W. H. Auden famously observed, “Murder is unique in that it abolishes the party it injures, so that society has to take the place of the victim and on his behalf demand atonement or forgiveness; it is the one crime in which society has a direct interest.”1 So when Humberto Leal Garcia was found guilty for the brutal rape and murder of 16-year-old Adria Sauceda, it was no surprise that the State of Texas demanded atonement.

Garcia, a Mexican national that had lived in the United States since the age of two, was arrested and subsequently convicted of capital murder in July 1995.2 Following his arrest, however, law enforcement officials at no time informed him of his right under international law to contact the Mexican consulate for assistance with his defense.3 On February 4, 1998, the Texas Court of Criminal Ap-
peals affirmed Garcia’s conviction and sentence.4 Meanwhile, the International Court of Justice ("ICJ") issued an order calling on the United States to review Garcia’s case with a view to ascertaining if denial of his rights under international law prejudiced the administration of justice.5 The ICJ found that the United States violated the Vienna Convention on Consular Relations ("Vienna Convention") when law enforcement officers in Texas failed to notify Garcia, along with fifty-one other Mexican nationals, of their right to access their consulate after arrest.6

While in prison awaiting execution, Garcia learned of his right to notify the Mexican Consulate of any legal proceedings against him with an eye towards securing legal counsel.7 In fact, Garcia learned of his rights not from any law enforcement officer or attorney, but from another death row inmate – and a full two years after his capital sentence was handed down.8 After being made aware of the situation, the Obama administration filed an amicus brief in Garcia’s case and requested the U.S. Supreme Court to stay Garcia’s execution.9 Despite this high-level intervention, the State of Texas put Humberto Leal Garcia to death by lethal injection on the evening of July 7, 2011.10 In allowing Garcia’s execution to proceed, the Supreme Court ruled that the ICJ order was unenforceable as domestic law and therefore not binding on the State of Texas.11

Part II of this Note discusses the relevant international agreements as well as the International Court of Justice, forming the backdrop against which Garcia v. Texas was decided. That Part also includes a discussion of Medellin v. Texas, the seminal case that shaped the jurisprudence surrounding the Garcia case. Part III contains an in-depth analysis of the Supreme Court’s holding in Garcia, including a discussion of the dissenting opinion issued by Justice Stephen Breyer. Part IV situates the Garcia decision in the larger debate regarding treaty interpretation, executive powers, and legislative implementation of the rights at issue in this case. Finally, Part V looks at the potential negative impact that Garcia could have on the future of U.S.-Mexico relations and the steadily diminishing power of the president in this area of foreign relations.

5 Case Concerning Avena and Other Mexican Nationals (Mex. v. U.S.), 2004 ICJ 12, ¶ 14 (Mar. 31).
6 Id.
7 Garcia v. Texas, 131 S.Ct. at 2867.
9 Brief for the United States as Amicus Curiae in Support of Applications for a Stay at 1, Garcia, 131 S.Ct. 2866 (2011).
II. Background

A. The Vienna Convention on Consular Relations

The United States ratified the Vienna Convention on Consular Relations and the Optional Protocol Concerning the Compulsory Settlement of Disputes in 1969. Under Article 36 of the Vienna Convention, the United States has an obligation to timely notify detained foreign nationals of their right to notify their consulate and to facilitate such communication. The language embodying these obligations appears in the following provisions:

(1)(a) Consular officers shall be free to communicate with 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;

(1)(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.

Unfortunately, the United States has a history of non-compliance with the latter provision of the section because law enforcement officers at all levels often fail to provide notice “without delay” to foreign nationals of their right to communicate with their consulates. As a result, consulates are often unaware when citizens and nationals from their countries have been detained in the United States. This has the potential to be particularly problematic because many of the remaining rights provided to detained foreign nationals under Article 36 are

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14 Id. art. 36(1)(a)-(b).

15 The United States’ failure to give notice and lack of consular access under Article 36 of the Vienna Convention was at issue in two additional cases filed in the ICJ against the United States: Paraguay v. U.S., 1998 I.C.J. 248 (Apr. 9); LaGrand Case (Ger. v. U.S.) 2001 I.C.J. 466 (June 27).

16 See e.g. LaGrand Case (Ger. v. U.S.), 2001 I.C.J. 466 (June 27). In the LaGrand Case, brothers and German nationals Karl and Walter Bernhard LaGrand orchestrated an armed bank robbery in Marana, Arizona, killing a man and severely injuring a woman in the process. Id. at ¶ 14. They were convicted and sentenced to death unbeknownst to their home country of Germany, who was made aware of the legal proceedings only after the Arizona Supreme Court rejected their challenges, effectively upholding the convictions and sentences. Id. at ¶ 19.
contingent upon their knowledge of access to their consulate, or conversely, the consulate's knowledge of their arrest.\(^\text{17}\)

Consequently, because the United States is a party to the Vienna Convention and because it at one time acceded to the Optional Protocol ("Protocol"), aggrieved nations have been able to file suit in the ICJ when apparent violations have occurred.\(^\text{18}\) The Optional Protocol states that "[d]isputes arising out of the interpretation or application of the Convention shall lie within the compulsory jurisdiction of the [ICJ]," and that any state party to the Protocol can bring suit against any other party to the Protocol.\(^\text{19}\) While the United States is still party to the Vienna Convention, it withdrew from the Optional Protocol in March 2005.\(^\text{20}\) Tellingly, perhaps, one reason articulated for the United States' withdrawal from the treaty was that other state parties often sued the United States for failure to give foreign nationals the requisite consular notification.\(^\text{21}\)

B. The ICJ's *Avena* Decision

In 2003, while Garcia's first petition for federal *habeas corpus* relief was pending before a district court in Texas, the government of Mexico initiated a cause of action against the United States in the ICJ, alleging violations of the Vienna Convention.\(^\text{22}\) Mexico filed its complaint on behalf of Garcia and fifty-three other Mexican nationals (including the named plaintiff, Avena), each of whom had been sentenced to death in state criminal proceedings.\(^\text{23}\) Mexico sought relief both on its own behalf and, in the exercise of its right of diplomatic protection, on behalf of its nationals, specifically including Garcia by name.\(^\text{24}\) The ICJ heard the case in December 2003 and issued a final judgment in March of 2004.\(^\text{25}\) In the resulting *Avena* judgment, the ICJ expressly adjudicated Garcia's own rights, as well as those of the other nationals on whose behalf Mexico sought relief.\(^\text{26}\)

As a general matter, the ICJ found that authorities in Texas violated Garcia's Vienna Convention rights.\(^\text{27}\) In particular, the ICJ held that the United States, acting through various state and local officials, had breached its obligations under

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\(^{17}\) Vienna Convention, *supra* note 13, art. 36(1) (c). For example, consular officers would be unable to visit their detained national citizen for the purpose of arranging legal representation without knowledge of the detention.

\(^{18}\) See Optional Protocol, *supra* note 12, art. 1; *see also* Vienna Convention, *supra* note 13, art. 36. The United States is no longer a party to the Optional Protocol, having withdrawn in March of 2005.

\(^{19}\) *Id.*


\(^{21}\) *Id.* at 266.

\(^{22}\) *Case Concerning Avena and Other Mexican Nationals (Mex. v. U.S.),* 2004 ICJ 12, ¶ 12 (Mar. 31).

\(^{23}\) *Id.*

\(^{24}\) *Id.* ¶ 16.

\(^{25}\) *Id.*

\(^{26}\) *Id.* ¶¶ 40, 106.

\(^{27}\) *Id.* at ¶ 106.
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Article 36(1)(b) of the Vienna Convention to “inform detained Mexican nationals of their rights.” In forty-nine of those cases, again including Garcia, the ICJ also found that the United States breached its international obligations when officials failed “to notify the Mexican consular post of their detention.” In the cases of Garcia and forty-eight other Mexican nationals, the ICJ further held that the United States had breached its obligation under Article 36(1)(a) “to enable Mexican consular officers to communicate with and have access to their nationals, as well as its obligation under paragraph 1(c) of that Article regarding the right of consular officers to visit their detained nationals.” Furthermore, in the case of Garcia and thirty-three additional Mexican nationals, the ICJ added that the United States had failed to “enable Mexican consular officers to arrange for legal representation of their nationals.”

The ICJ then turned to the remedies that would be available for breaches of the Vienna Convention. It held that the United States must provide “review and reconsideration” of the convictions and sentences imposed on Garcia and the other Mexican nationals in whose cases it found violations. The ICJ specified the nature of the review and reconsideration that the United States would need to provide Garcia. First, the Avena judgment required that review and reconsideration must take place “within the overall judicial proceedings relating to the individual defendant concerned.” Second, procedural default doctrines could not bar the required review and reconsideration where authorities of the detaining State had themselves failed in their obligation to notify. Third, the review and reconsideration must take account of the Article 36 violation on its own terms and not require that it qualify also as a violation of some other procedural or constitutional right under state law. Finally, the forum in which the review and reconsideration occurs must be capable of “examining the facts, and in particular the prejudice and its causes, taking account of the violation of the rights set forth in the Convention.”

C. The Medellin v. Texas Cases

On March 25, 2008, while Garcia’s appeal was pending before the Fifth Circuit Court of Appeals, the U.S. Supreme Court decided Medellin v. Texas (“Medellin I”). In Medellin I, the Supreme Court held that neither the Avena
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judgment nor President George W. Bush’s commitment to comply with the ICJ’s 
*Avena* judgment constituted directly enforceable law in the United States.39 The Court, for its part, acknowledged that the United States is obligated as a matter of 
international law to comply with the *Avena* judgment, noting, “No one disputes that the *Avena* decision – a decision that flows from the treaties through which 
the United States submitted to ICJ jurisdiction with respect to the Vienna Con-

vention disputes – constitutes an international law obligation on the part of the 
United States.”40 To be sure, the Court was unanimous on this point.41 In re-

sponse, the *Medellin I* Court clarified the means available to the United States to 
come into compliance with its obligations under *Avena*, including legislative im-
plementation by Congress.42 Justice John Paul Stevens, concurring in the judg-
ment but not the opinion, urged the State of Texas to effect statewide compliance 
with *Avena*, noting that the “United States’ obligation to ‘undertake to comply’ 
with the ICJ’s decision falls on each of the States as well as the Federal Govern-
ment.”43 As Justice Stevens pointed out, “the fact that the President cannot legis-
late unilaterally does not absolve the United States from its promise to take 
action necessary to comply with the ICJ’s judgment.”44

All nine justices of the Supreme Court also recognized that the United States 
has a vital public interest in complying with its obligations under *Avena*.45 Writ-
ing for the majority, Chief Justice John Roberts noted, “[In] this case, the Presi-
dent seeks to vindicate United States interests in ensuring the reciprocal 
observance of the Vienna Convention, protecting relations with foreign govern-
ments, and demonstrating commitment to the role of international law,” interests 
he found “plainly compelling.”46 Justice Stevens agreed that “the costs of refusing to respect the ICJ’s judgment are significant.”47 Justice Breyer, joined by 
Justices David Souter and Ruth Bader Ginsburg, observed in his dissenting opin-
ion that noncompliance with the *Avena* judgment would exact a heavy toll on the 
credibility of the United States in the international community.48

Despite this abstract recognition of the importance of complying with an ICJ 
decision, the Court in its holding came to the opposite conclusion.49 In the end,

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39 Id.
40 Id. at 504 (construing the U.N. Charter art. 94, para. 1).
41 Id. at 504, 531, 538-39.
42 Id. at 520.
43 Id. at 536 (Stevens, J., concurring).
44 Id.
45 Id. at 524, 537, 560.
46 Id. at 524.
47 Id. at 537.
48 Id. at 566. Justice Breyer expressed his concern over “increasing the likelihood of Security Council 
*Avena* enforcement proceedings, worsening relations with our neighbor Mexico, precipitating actions by 
other nations putting at risk American citizens who have the misfortune of being arrested while traveling 
abroad, or diminishing our Nation’s reputation abroad as a result of our failure to follow the ‘rule of law’ 
principles that we preach.” Id.
49 Id. at 532.
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the Court voted not to stay Jose Medellin's execution. It concluded that ICJ judgments in general are non-binding as domestic law, treating them instead as non-self-executing international obligations requiring affirmative action by Congress to become binding as domestic law.

Quoting a decision of the First Circuit, the majority found that, "while treaties may comprise international commitment...they are not domestic law unless Congress has either enacted implementing statutes or the treaty itself conveys an intention that it be self-executing and is ratified on those terms." Chief Justice Roberts asserted that "because none of the treaty sources creates binding federal law in the absence of implementing legislation, and because it is uncontested that no such legislation exists, we conclude that the Avena decision is not automatically binding domestic law." Ultimately, the majority equated the Optional Protocol to a "bare grant of jurisdiction," similar to "compulsory non-binding arbitration." Thus, the ICJ's decisions are not binding as domestic law and must instead be implemented specifically through federal statute to have any effect.

Furthermore, the Court construed the language of Article 94(1) of the UN Charter, in which "each member of the UN undertakes to comply with the decision of the ICJ in any case to which it is a party," to create only a commitment by each UN member to take future action to achieve compliance through its respective political branches. It held that the Supreme Court has no authority to enforce or implement ICJ decisions on its own. Additionally, it noted that no other signatory nation treats ICJ judgments as automatically binding. Consequently, the Court found that it was in no position to enforce ICJ judgments as binding domestic law in the absence of clear implementing statutes passed by Congress or action on behalf of the Executive.

As a result of this decision, Congress considered the Avena Case Implementation Act of 2008, which would have granted foreign nationals the right to judicial review of their convictions and sentences to the extent that there existed Vienna Convention violations. However, in the follow-up case, Medellin II, the Supreme Court again denied a stay of execution for Medellin based on the mere proposal of this legislation in the House of Representatives. The Court rea-

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50 Id.
51 Id. at 510-11.
52 Id. at 505, n. 2 (citing Igartua-De La Rosa v. U.S., 417 F.3d 145, 150 (1st Cir. 2005)).
53 Id. at 505-06.
54 Id. at 507.
55 Id.
56 Id. at 492.
57 Id. at 508-09.
58 Id. at 510.
59 Id. at 510-11.
60 Id.
61 Medellin v. Texas (Medellin II), 554 U.S. 759, 759-60 (2008) (per curiam) (highlighting the remote possibility of the Avena Bill passing). The Court stressed, "Neither the President nor the Governor
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soned that neither the president nor the Department of Justice seemed to support the proposed legislation, and thus the enactment of the Avena Bill was too remote a possibility to set aside Medellin’s verdict. The Court further emphasized, and notably extended the scope of its holding in Medellin I, that Medellin was not prejudiced by his lack of consular access.

D. Further Proceedings before the ICJ (2008-09)

Mere months after Medellin v. Texas had been decided, Mexico again turned to the ICJ. On June 5, 2008, Mexico filed a Request for Interpretation of the Avena judgment, asking the ICJ to declare that the United States has an obligation to use any and all means necessary to provide judicial review and reconsideration mandated by the Avena judgment before any execution is carried out. In conjunction with its Request for Interpretation, Mexico also asked the ICJ to indicate provisional measures with respect to Garcia and four other Mexican nationals named in the Avena judgment, each of whom faced imminent execution in Texas.

The ICJ held oral proceedings as to Mexico’s request for provisional measures on June 19 and 20, 2008. At oral argument, the Legal Advisor to the Secretary of State confirmed, “[t]he United States takes its international law obligation to comply with the Avena judgment seriously” and agreed that Avena requires U.S. courts to provide review and reconsideration prior to carrying out a death sentence.

Upon issuing its judgment, the ICJ refrained from issuing a reinterpretation of Avena. However, it did hold that the United States had violated its international legal obligations by executing Jose Medellin. The ICJ declared that the United States’ commitments under Avena “must be met within a reasonable amount of time” and noted that the United States “has insisted that it fully ac-

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62 Id. The dissenting justices believed the Court should grant the stay of execution in order to seek the views of the Solicitor General. Id. at 761-65 (Stevens, J., dissenting).
63 Id. at 760.
64 See Request for Interpretation of 31 March 2004 in the Case Concerning Avena and Other Mexican Nationals (Mex. v. U.S.), 2009 I.C.J. 139, ¶ 6, available at http://www.icj-cij.org/docket/index.php?p1=3&p2=1&code=&case=139&k=11 (last visited March 8, 2012) (the application, incidental proceedings, the parties’ written and oral pleadings and judgment, orders and press releases of the ICJ in respect to the Request for Interpretation can be accessed by clicking on the applicable link) [hereinafter “Request for Interpretation”].
65 Id.
68 Id. ¶ 61(2).
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cepts” this obligation. Meanwhile, it emphasized “the obligation upon the United States not to execute Humberto Leal Garcia [and other Mexican nationals] pending review and reconsideration being afforded is fully intact.”

III. Discussion

A. Procedural Disposition Leading up to Garcia v. Texas

In July 1995, Garcia was convicted of capital murder and, upon the jury’s recommendation, the trial court sentenced him to death. On February 4, 1998, the Texas Court of Criminal Appeals affirmed Garcia’s conviction and sentence in an unpublished opinion. The Texas Supreme Court denied his habeas petition on October 20, 1999, and, after he sought federal relief, the U.S. Supreme Court denied Garcia’s petition for a writ of habeas corpus on October 20, 2004. On October 13, 2005, the Fifth Circuit Court of Appeals denied his request for a Certificate of Appealability. On April 17, 2006, the U.S. Supreme Court denied certiorari.

Based on a memorandum issued by President George W. Bush calling for the United States to implement all obligations enumerated by the Avena decision, Garcia filed a subsequent application in the Texas state courts seeking enforcement of the rights he was denied. On March 7, 2007, the Texas Court of Criminal Appeals held that state rules of criminal procedure barred reconsideration of a subsequent post-conviction application, even though it was filed pursuant to Avena and the president’s determination. Again unsuccessful, the Texas Court of Criminal Appeals dismissed Garcia’s application, citing to its decision and the incorporated reasoning in Medellin. On March 31, 2008, the U.S. Supreme Court denied certiorari.

Along with his petition in state court, Garcia immediately filed a petition to the U.S. Supreme Court seeking relief based on the Avena judgment and President Bush’s Memorandum. On December 17, 2007, the Supreme Court barred

69 Id. ¶ 27-28.
70 Id. ¶ 54.
74 Leal v. Dretke, 428 F.3d. 543 (5th Cir. 2005).
76 Second Subsequent Application For Post-Conviction Writ Of Habeas Corpus Or, In The Alternative, Suggestion to Reopen Previous Proceeding on Court’s Own Motion, Ex Parte Humberto Leal, Cause No. 96-cr-4696, 2007 WL 678628, at *1 (Tex. Crim. App. 2007).
77 Id. (citing Texas Criminal Procedure Code Article 11.071, § 5). The Texas Court of Criminal Appeals also relied on its incorporated reasoning in Ex parte Medellin, 223 S.W.3d 315 (Tex. Crim. App. 2006).
78 Id. (citing Medellin I, 552 U.S. 491, 491 (2008)).
80 Petition to Supreme Court for Habeas Relief, Garcia v. Texas, 131 S.Ct. 2866 (2011).
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Garcia’s petition as a successive petition, and, absent any response or briefing from Respondent, the Court alternatively adjudicated the merits of Garcia’s claim. The Supreme Court granted a Certificate of Appealability, and Garcia subsequently filed a timely notice of appeal.

B. Majority Opinion

In a per curium opinion, the majority on the Supreme Court denied both Garcia’s application to stay his execution and his petition for writ of habeas corpus. Addressing both applications together, the Court found Garcia’s arguments unpersuasive. Garcia’s asserted basis for relief pointed to the legislation simultaneously under consideration in Congress to implement the holding of the ICJ’s order in Avena. He contended that the Due Process Clause prohibits Texas from carrying out his death sentence while such legislation is under consideration.

An amicus brief filed by the Solicitor General on behalf of the Executive presented an alternative basis for relief. The Obama administration requested the Supreme Court to stay the execution until January 2012 in support of the Court’s “future jurisdiction to review the judgment in a proceeding” under legislation introduced in the Senate. Introduced by Senator Patrick Leahy, this bill had the Executive Branch’s endorsement and support.

The Court, however, rejected these arguments. The majority found it unpersuasive and inappropriate to stay a lower court judgment on account of proposed legislation, asserting that its “task is to rule on what the law is, not what it might eventually be.” Incorporating its decisions in Medellin I and Medellin II, the Court further refused to grant Garcia’s application for stay because “there is no fair prospect that a majority of the Court will conclude that the decision below was erroneous.” Accordingly, without guiding precedent or hope for success, the majority denied Garcia’s application to stay the execution.

Expounding upon its determination, the majority drew a comparison to the case of Jose Medellin. As discussed above, Jose Medellin appealed to the Court to stay his execution on the ground that Congress might enact implementing leg-

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82 Id. at *7.
83 Garcia, 131 S.Ct. at 2867.
84 Id. at 2867-68.
85 Id. at 2867.
86 Id.
87 U.S. Brief as Amicus Curiae, supra note 9, at 2-3, n.1.
88 Id.
89 Id.
91 Id.
92 Id. (quoting O’Brien v. O’Laughlin, 130 S.Ct. 5, 6 (2009) (discussing the traditional multi-factored analysis the Court has adopted when considering an application to stay a prisoner’s execution)).
93 Id.
The Court denied Medellin’s application, explaining that “Congress has not progressed beyond the bare introduction of a bill in the four years since the ICJ ruling and the four months since [the Court’s] ruling in Medellin v. Texas (Medellin I).” Taking a similar tone to that adopted in the Medellin opinion, the Garcia Court reasoned that, “[i]f a statute implementing Avena had genuinely been a priority for the political branches, it would have been enacted by now.”

Moreover, the majority dismissed the potential for “grave international consequences” that may flow from Garcia’s execution. The Court put significant stock in Congress’s refusal to promptly enact legislation implementing the Avena judgment, finding this to be an indication that Congress did not view these consequences sufficiently grave to spur it to action. Without action from Congress, the Court found no authority to stay an execution merely in light of an appeal by President Bush of what it considered “free-ranging assertions of foreign policy consequences” unaccompanied by any “persuasive legal claim.”

Finally, the majority reiterated its reasoning from Medellin II, namely that “[t]he beginning premise for any stay . . . must be that petitioner’s confession was obtained unlawfully,” and “the United States has not wavered in its position that petitioner was not prejudiced by his lack of consular access.” According to the Court, the circumstances of Garcia’s appeal are inapposite because the United States had refused to argue that Garcia was prejudiced by the Vienna Convention violations, contending instead that the Court should stay the execution simply in light of “the possibility that [Garcia] might be able to bring a Vienna Convention claim in federal court, regardless of whether his conviction will be found invalid.” The majority explicitly declined to take this position, finding no merit in the suggestion of granting a stay in view of “hypothetical legislation,” especially when the United States had not argued that Garcia’s attempt to overturn his conviction had any prospect of success.

C. Dissenting Opinion

The dissent in this case was penned by Justice Stephen Breyer and is largely reminiscent of his similar dissent in Medellin I. Justice Breyer began by pointing out that the United States is bound by the Vienna Convention to timely notify foreign nationals arrested in the United States of their right to request assistance

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95 Id.
97 Id.
98 Id.
99 Id.
100 Id. (quoting Medellin II, 554 U.S. 759, 760 (2009)).
101 Id.
102 Id.

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from their home country’s consulate.104 Furthermore, Justice Breyer found that the United States is bound by its obligation to abide by ICJ judgments regarding disputes arising out of the Vienna Convention through its signing of the Optional Protocol.105 This obligation precluded withdrawal from the Optional Protocol because, according to Breyer, “withdrawal does not alter the binding status of its prewithdrawal obligations.”106 Accordingly, Justice Breyer found it troubling that, at the time Garcia’s case was before the Supreme Court, no judicial authority had yet implemented what the ICJ had called for in its Avena judgment – a hearing to determine whether the violation amounted to harmless error.107 Addressing the majority, the dissent found the ICJ’s focus on procedural requirements to trump a domestic court’s “guesses as to the results of that procedure,” rendering them largely irrelevant for purposes of implementing U.S. treaty obligations.108 Essentially, therefore, Justice Breyer agreed with the position taken by the United States, that a successful application to stay Garcia’s execution in view of Vienna Convention violations can be decided aside and apart from a determination as to whether review of his conviction would find the violation to be harmless error.109

Next, the dissent went to great lengths to differentiate the applications of Jose Medellin with the present case. In Medellin I, the Court was faced with an application to stay Jose Medellin’s execution where Congress had not taken any steps to embody U.S. international legal obligations in domestic law.110 The Court later refused to grant a stay of execution in a similar case because “the President has not represented to [the Court] that there is any likelihood of congressional . . . action.”111

However, the dissent found Garcia’s application to be free of the legal defects leading to the demise of Jose Medellin’s applications. In contrast, Garcia’s application was made in light of a bill introduced in the Senate “after extensive consultation with the Department of State and the Department of Justice.”112 The Solicitor General further urged the Court to grant Garcia’s application for stay such that Congress would have adequate time to carry out “the legal responsibility that this Court has held belongs to the Legislative Branch.”113 On this basis,

105 Id.
106 Id. at 2869 (citing Letter from Condoleezza Rice, Secretary of State, to Kofi Annan, Secretary General of the United Nations (Mar. 7, 2005)).
107 Id.
108 Id.
109 Id. at 2869.
110 Id. (citing Medellin I, 552 U.S. 491, 525-26 (2008)).
111 Id. (citing Medellin II, 554 U.S. 759, 759-60 (2009)).
112 Id. (citing U.S. Brief as Amicus Curiae, supra note 9 (describing the Consular Notification Compliance Act of 2011)).
113 Id. at 2869.
Justice Breyer found that congressional action is a reasonable possibility, requiring the Court to grant a stay under the reasoning in Medellin II.\textsuperscript{114} Additionally, Justice Breyer also placed greater emphasis on the potentially damaging effect that denying Garcia's stay may have on foreign relations with Mexico.\textsuperscript{115} Again pointing to the amicus brief filed by the Executive Branch, Justice Breyer found persuasive the argument that failing to halt Garcia's execution would place the United States in irremediable breach of its international law obligations.\textsuperscript{116} He foresaw the possibility of "serious repercussions for United States foreign relations, law-enforcement and other cooperation with Mexico, and the ability of American citizens traveling abroad to have the benefits of consular assistance in the event of detention."\textsuperscript{117} These statements are buttressed by the amicus brief filed by the Government of Mexico, stating that declining to stay Garcia's imminent execution "would seriously jeopardize the ability of the Government of Mexico to continue working collaboratively with the United States on a number of joint ventures including extraditions, mutual judicial assistance, and our efforts to strengthen our common border."\textsuperscript{118} Justice Breyer reminded the Court that such concerns are "plainly compelling."\textsuperscript{119} Moreover, the Court has long recognized the special constitutionally-based authority of the President in matters of foreign relations,\textsuperscript{120} affording significant deference to such authority.\textsuperscript{121} It is Justice Breyer's contention that the majority should have respected this deference in Garcia's case.\textsuperscript{122}

The dissent concluded by stating that the Court had adequate legal authority to grant Garcia's stay.\textsuperscript{123} Justice Breyer pointed out that under the All Writs Act the Supreme Court may take appropriate action to preserve its "potential jurisdiction."\textsuperscript{124} With this in mind, Justice Breyer expressed his opinion that, should the implementing bill become law by the end of September, the Supreme Court would almost certainly grant Garcia's petition for a writ of certiorari, vacate the judgment below, and remand the case for further proceedings.\textsuperscript{125} Moreover, in the event the bill had not yet passed, but that the Solicitor General had indicated that it was about to become law, the Court would likely have held the petition until the bill is enacted, and then vacate and remand the case for further consider-

\textsuperscript{114} Id.
\textsuperscript{115} Id. at 2870.
\textsuperscript{116} Id. at 2870.
\textsuperscript{117} Id. (citing U.S. Brief as Amicus Curiae, supra note 9, at 12).
\textsuperscript{118} Id.
\textsuperscript{119} See id. (citing Medellin I, 552 U.S. 491, 524 (2008) (Stevens, J., concurring in judgment)); see also id. at 566 (Breyer, J., dissenting) (observing harms that would flow from non-compliance).
\textsuperscript{120} Id. (citing U.S. v. Curtiss-Wright Export Corp., 299 U.S. 304, 320 (1936)).
\textsuperscript{121} Id. (citing Jama v. Immigration and Customs Enforcement, 543 U.S. 335, 348 (2005) (noting the Court's "customary policy deference to the President in matters of foreign affairs").
\textsuperscript{122} Id.
\textsuperscript{123} Id.
\textsuperscript{124} Id. (citing FTC v. Dean Foods Co., 384 U.S. 597, 603 (1966)).
\textsuperscript{125} Id.
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ation in light of such legislation. In either case, he reasoned, the Court has the appropriate authority to grant a stay with a view towards preserving its potential jurisdiction. Accordingly, Justice Breyer argued for the dissent that such action is appropriate and necessary in the case of Garcia. For Breyer, "it is difficult to see how the State’s interest in the immediate execution of an individual convicted of capital murder 16 years ago can outweigh the considerations that support additional delay, perhaps only until the end of the summer."

IV. Analysis

The majority opinion in Garcia v. Texas marks a notably consistent but nevertheless incomplete approach to the obligations and rights afforded to foreign nationals detained in the United States. In an increasingly globalized world, cooperative interactions among nations depend in large part on reciprocal recognition and enforcement of international obligations. The decision in Garcia v. Texas, however, takes the diametrically opposite position, one in which the laws of a single state predominate over those of the national government. In essence, the Supreme Court has allowed the State of Texas to invert the Supremacy Clause.

A. Treaty Interpretation and the Scope of International Law

The Supremacy Clause of the United States Constitution provides that “all treaties... which shall be 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 hereby.” Whenever a treaty operates of itself without the aid of any implementing legislation, the clause has been interpreted to mean that courts should view treaties as equivalent to an act of Congress. The outcome in Garcia’s case turned on the question of whether the ICJ’s judgment in Avena is enforceable as a matter of domestic law, that is, whether it “operates of itself without the aid” of any further legislation.

As discussed above, the answer to this question requires the interpretation of three closely intertwined treaties and one ICJ judgment. The critical inquiry,
therefore, is whether the Supremacy Clause requires Texas to enforce the ICJ's
_Avena_ judgment based on these underlying treaties. In contrast to the Supreme
Court's majority opinion in _Garcia v. Texas_, a more pragmatic interpretation
would seem to favor granting Garcia's application to stay his execution and peti-
tion for writ of _habeas corpus_.

In his dissent to _Medellin v. Texas_, Justice Breyer argued that President Bush
correctly determined that Congress need not enact additional legislation in order
for the ICJ judgment to create a binding obligation to provide review and recon-
sideration of a conviction such as Garcia's. He argued that the majority places
too much weight on the treaty language, a perfunctory approach that overlooks
the intricacies and subtleties of treaty negotiation. In Justice Breyer's view, a
treaty has never incorporated the "unobtainable language" that will unequivoc-
cally create a self-executing obligation on each individual state. When
presented with such a question, the Court should instead consider the language
for purposes of applying the Supremacy Clause. To further his line of reason-
ing, Justice Breyer points out that the Supreme Court has found self-executing
multilateral treaty language that is far less direct or forceful than the language in
the treaties underlying the ICJ and the Vienna Convention. Indeed, in light of
this factor, a proper interpretation requires that ICJ judgments have the effect of a
self-executing treaty, binding on the individual states notwithstanding additional
implementing legislation passed by Congress. Accordingly, in the cases of
both Medellin and Garcia, the appropriate remedy would have been to review
their respective convictions by the Texas Court of Criminal Appeals to determine
whether the failure to notify each defendant of their Vienna Convention rights
was harmless error. Unfortunately for Garcia, the Supreme Court adopted a
markedly different approach in _Medellin v. Texas_, one more narrowly focused on
the explicit language of the treaty.

### B. Executive Power to Implement the _Avena_ Judgment

Moreover, just as Justice Breyer commented in his dissent in _Medellin I_, the
_Garcia_ Court should have afforded greater deference to the views of the Execu-
tive. Decades earlier, Justice Jackson articulated the pertinent spectrum of exec-
utive authority in his concurring opinion to _Youngstown Sheet & Tube Co. v. Saw-
yer_. The president's power "is at its maximum" when he is acting "pursuant
to an express or implied authorization by Congress." Unilateral conduct
too may fall within a second group of executive powers where Congress is silent,
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but where it has either expressly or impliedly acquiesced to a known and consistent practice of the president.142 Finally, at the other end of the spectrum of presidential powers are those that the president asserts which conflict with the express or implied will of Congress.143

On February 28, 2005, President Bush signed a written determination that state courts must provide review and reconsideration to the fifty-one Mexican nationals named in the Avena judgment, including Garcia, pursuant to the criteria set forth by the ICJ.144 While it is true that the power of the president to make an enforceable order of this nature at the time was tenuous, it is at least clear that the Executive Branch attempted to comply with the ICJ’s order.145 Moreover, after Avena, the United States took further measures to comply when it sent letters to the relevant state courts and had diplomatic discussions to find alternatives for “review and reconsideration.”146 These actions show that the United States recognized the importance of compliance with the judgment to “smooth out U.S. relations with Mexico,” to help repair its international integrity with respect to Article 36, and to encourage compliance with respect to U.S. citizens abroad.147

According to the Medellin Court, the pertinent constitutional question was, “does the President’s Memorandum independently require the States to provide review and reconsideration . . . without regard to state procedural default rules?”148 To answer this question, the Court examined two arguments that the Executive Branch put forth as a basis for its power to issue and enforce the memorandum. First, the president has the power to carry out the Avena judgment because of the underlying treaties.149 Second, the president may have the power to undertake “independent international dispute-resolution,” allowing the president to implement the Avena judgment.150

The Court found that the underlying international treaties did not give the president authority to enforce the ICJ’s order because the president was acting

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142 Id.
143 Id.
144 Presidential Memorandum to the Attorney General (Feb. 28, 2005), available at http://brownwelsh.com/Archive/2005-03-10_Avena_compliance.pdf. In his memorandum to the Attorney General, President Bush declared:

I have determined, pursuant to the authority vested in me as the President by the Constitution and laws of the United States, that the United States will discharge its international obligations under the decision of the International Court of Justice in the Case Concerning Avena and Other Mexican Nationals (Mexico v. United States of America, 2004 I.C.J. 128 (Mar 31), by having State courts give effect to the decision in accordance with general principles of comity in cases by the 51 Mexican nationals addressed in that decision. Id.

147 Kirgis, supra note 145, at 224.
149 Id. at 524.
150 Id.
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without congressional consent. The president’s attempt to enforce the order fell under the third category of Justice Jackson’s Youngstown framework, the Court found, because it was against the “implicit understanding of the ratifying senate.” Further, the Court found that the president’s memorandum was against the wishes of the ratifying Senate because it would give the Vienna Convention provisions binding effect domestically, something that a non-self-executing treaty would not do. Under the third category of Youngstown, presidential power is at its “lowest ebb,” and the Court therefore rejected the president’s first argument.

The Medellin Court further found unpersuasive the argument that the president has “independent international dispute resolution power” that allowed him to independently give effect to the ICJ order. The Court recognized presidential unilateral authority to settle international disputes in some cases. However, it found these cases to be limited to those that had a long history of congressional consent to executive power to resolve specific types of international disputes. Such “longstanding practice of congressional acquiescence” was not present with the power the president was attempting to exercise in Medellin. Instead, the Court found the president’s act to be an infringement of the federal Executive Branch on traditional state police power and control of criminal procedure. In light of these constitutional considerations, the Court found there to be a legal limitation on giving full effect to the ICJ’s order – namely, state limitations on habeas petitions barred by procedural-default rules. The procedural-default rule is the principle that claims in a habeas corpus petition that were not raised at the appropriate time at any level of state court proceedings cannot later be reviewed on the merits in federal court. While the ICJ asked that its Avena order be given effect despite procedural-default rules, the U.S. Supreme Court found that the order did not have the force to trump state procedural rules:

In sum, while the ICJ’s judgment in Avena creates an international law obligation on the part of the United States, it does not of its own force constitute binding federal law that pre-empts state restrictions on the filing of successive habeas petitions. As we noted in Sanchez-Llamas, a

\*151 Id. at 527 (citing Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 635-38 (1952) (Jackson, J., concurring)).
\*152 Id.
\*153 Id.
\*154 See id. at 530; see also Youngstown, 343 U.S. at 637-38.
\*155 Id. at 531-32.
\*156 Id. 531.
\*157 See id. at 531-32; see also Dames & Moore v. Regan, 453 U.S. 654, 679 (1981).
\*158 Id. (quoting American Ins. Assn. v. Garamendi, 539 U.S. 396, 415 (2003)).
\*159 Id.
\*160 Id. at 523-26.
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contrary conclusion would be extraordinary, given the basic rights guaranteed by our own Constitution do not have the effect of displacing state procedural rules.\footnote{Medellin v. Texas (Medellin I), 552 U.S. 491, 522-23 (2008).}

The Court found that, without the requisite self-executing treaty or legislation by Congress, the president’s memorandum was insufficient to invoke the Supremacy Clause such that the ICJ’s order could be given legal effect.\footnote{Id. at 532.}

However, an alternative approach was offered in Justice Breyer’s dissent. In the case of Medellin, President Bush sought to implement a treaty in which the United States agrees that the ICJ judgment is binding with respect to the Avena parties.\footnote{Id. at 565 (2008) (Breyer, J., dissenting).} Therefore, his actions drew upon the president’s constitutional authority in the arena of foreign affairs.\footnote{Id.} In this sense, his memorandum falls within the middle range of presidential authority where Congress has neither specifically authorized nor specifically forbidden the presidential action.\footnote{Id. (citing Youngstown, 343 U.S. at 637 (1952)).}

In Garcia’s case, the president was arguably acting with even greater authority because the Solicitor General’s amicus brief was written and submitted against a background of imminent legislation implementing the requirements of the Avena judgment. No longer was Congress silent on the subject, but they had provided an affirmative indication of passing legislation to implement the Avena judgment as domestic law. This points to a tangential problem created by the Garcia holding, one that stems from the Court’s repeated diminishing of the president’s authority over foreign relations. In two instances, the Court was presented with consistent requests by the president to grant a motion to stay execution such that the United States may come into compliance with its international obligations.\footnote{Id. at 501 (2008); Garcia v. Texas, 131 S.Ct. 2866, 2868 (2011).} By giving minimal deference to these requests from the Executive, the Court has whittled away at the constitutional authority of the president and contributed to the substantial ambiguity surrounding the balance of power existing between these branches in the area of international relations.\footnote{Joshua Newcomer, Messing With Texas? Why President Bush’s Memorandum Order Trumps State Criminal Procedure, 79 TEMP. L. REV. 1029, 1074 (2006).}

C. Legislative Efforts to Implement Avena

Following the Supreme Court opinion on July 14, 2008, members of the House of Representatives introduced legislation to give the Avena judgment domestic legal effect.\footnote{See Avena Case Implementation Act of 2008, H.R. 6481, 110th Cong., 2d Sess. (2008) (referred to committee, July 14, 2008).} The Avena Case Implementation Act of 2008 would have granted foreign nationals such as Garcia a right to judicial review of their convictions and sentences to the extent that there existed Vienna Convention viola-
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tions. However, introduced late in the congressional term and during a presidential election year, the bill failed to pass. On July 29, 2010, the Senate Appropriations Committee included legislative language to implement the Avena judgment as part of the Department of State Foreign Operations and Related Programs Appropriation Act for Fiscal Year 2011. This bill would have provided federal courts with jurisdiction to review the merits of Garcia's Vienna Convention claim. Upon a finding of actual prejudice from the violation of Garcia's consular rights, the bill would have required the court to fashion "appropriate relief, including ordering a new trial or sentence proceeding." Again, the bill failed to pass.

Most recently, on June 14, 2011, Senator Patrick Leahy introduced the Consular Notification Compliance Act, which would grant Garcia access to the judicial process required by Avena. The new legislation has the full support of the U.S. Departments of Justice and State — a fact that distinguishes this legislation from previous congressional efforts. Significantly, the legislation provides that a petition alleging a violation of Article 36 shall not "be considered a second or successive habeas application or subjected to any bars to relief based on pre-enactment proceedings other than specified in paragraph (2) of this subsection." The legislation has drawn broad support from a bipartisan array of former diplomats, business leaders, retired military leaders, and organizations representing the millions of Americans who live, work, and travel abroad.

True, as of the time that Garcia's case was decided, this landmark legislation had not passed — nor has it yet. However, the fact that it was pending at the time the Solicitor General filed his brief lends further credence to the views enunciated on behalf of the Executive. No longer was the Executive Branch acting against a background of congressional silence. Now, Congress has effectively expressed its support for legislation that would have called for reconsideration of
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Garcia’s case. The majority in *Garcia* gave short shrif to this point, prematurely giving ultimate deference to its previous holding in *Medellin I* without consideration for the change in circumstances by the time Garcia’s application was being considered.

Viewed in a vacuum, the cases of Jose Medellin and Humberto Garcia are identical in fact, disposition, and outcome. Both defendants met their demise at the hands of a Texas warden despite never being appraised of their right to contact the Mexican consulate. In both cases, the Supreme Court adhered to a strict interpretation of U.S. international obligations under the Vienna Convention and the treaties underlying the ICJ. In both cases, the Supreme Court’s interpretation departed from prior notions of interpretation, instead favoring a narrow interpretation. And in both cases, the Supreme Court gave Texas state criminal law a higher priority than the nation’s obligations to the international community. At least for the time being, the laws of a single state have become the law of the land.

V. Impact

The holding in *Garcia v. Texas* represents a departure from both the international treaty obligations of the United States as well as a weakening of the president’s authority over matters affecting foreign affairs. In the former area of law, the Supreme Court’s holding detracts from the United States’ status in the international community and reinforces the unreasonably high bar set for implementing international treaty obligations as U.S. law established in *Medellin I*. In the latter area, the holding and ultimate execution of Garcia may have yet-to-be realized detrimental effects on the diplomatic relations between the United States and Mexico.

A. Uncertainty Over Who Governs Foreign Affairs

By virtue of the high standard for creating domestic treaty obligations, the Supreme Court has created a seemingly insurmountable hurdle for federal compliance, especially where compliance requires cooperation between federal and state governments. The bar was raised further in the *Garcia* case because of the Court’s consistent disregard of efforts by the Executive Branch to implement and comply with the Vienna Convention’s reciprocal obligations. On the one hand, the Court has recognized the power of the president to unilaterally take action that may conflict with traditional areas of state deference with the goal of producing uniformity in dealings with foreign governments.\(^{181}\) For example, in *American Insurance Association v. Garamendi*, the Supreme Court held that valid executive agreements can preempt state law, even in areas of “traditional competence,” where state action impedes the exercise of the president’s authority over foreign affairs.\(^{182}\) On the other hand, however, the *Garcia* majority again ne-


\(^{182}\) *Id.* at 413-14.
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glected executive action demanding compliance with the Avena judgment, a unilat-

eral presidential act deriving legitimacy from the Constitution.

Arguably, President Bush’s Memorandum demanding the States “discharge [U.S.] international obligations under [the Avena Case]” still applied to Garcia’s case by the time it reached the Supreme Court, yet the Court similarly neglected it. Though congressional silence would have been sufficient to indicate its tacit approval of the Executive’s view, Congress had expressed an unambiguous indication of the importance of U.S. compliance with both the Vienna Convention and the Avena judgment. Executive action in this case seems particularly important as it pertains to these obligations because the failure of only one state to comply would leave the union of all the states in breach of a federal obligation to the international community.

The most consistent barrier to compliance is the Supreme Court’s ongoing refusal to find that federal action may trump state criminal procedural default rules. In Sanchez-Llamas v. Oregon, the Court affirmed that state procedural default rules essentially bar reconsideration of a fully exhausted criminal verdict, even where violations of the Vienna Convention are involved. However, both Congress and the Executive have tentatively expressed that this doctrine does not apply to the named foreign nationals of the Avena judgment, an expression consistently ignored by the Supreme Court. For the time being, therefore, the Garcia case creates an uncertain precedent, as it does not conform with basic principles that date back to Justice Jackson’s concurrence in the Steel Seizure Cases, nor can it be reconciled with a modern understanding of the president’s role in foreign affairs.

B. Damage to Mexico-U.S. Relations

Article 36 of the Vienna Convention recognizes the crucial role a consulate may play in the defense of its citizens abroad. The United States has consistently emphasized the importance of allowing detained or arrested foreign nationals access to their consulates. Consular officers may provide legal assistance

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183 See Consular Notification and Compliance Act, supra note 176; see also Congressional Record, supra note 177.
184 See Case Concerning Avena and Other Mexican Nationals (Mex. v. U.S.), 2004 ICJ 12, ¶ 120-22 (Mar. 31) (noting that each foreign national – detained, convicted, and sentenced across many states – were entitled to reconsideration).
187 Newcomer, supra note 168, at 1057.
188 Vienna Convention, supra note 13, art. 36(1) (a)-(c).
in addition to minimizing the challenges raised by differences in culture, language, and the varying legal systems.190

To be sure, some countries pour a great deal of resources and effort into the defense of their nationals in the United States. For example, Mexico makes extensive assistance available to Mexican nationals detained in the United States.191 In capital cases like that of Humberto Garcia, the government of Mexico funds the Mexican Capital Legal Assistance Program which provides assistance to defense counsel for Mexican nationals by providing sample briefs and references to experts.192 Additionally, Mexico has greater access to information about their nationals and can assist a defendant by researching mitigating circumstances more thoroughly than domestic defense counsel.193

In addition to upholding domestic principles of justice, the United States has a strong international interest in complying with its Article 36 obligations in order to maintain international integrity and to protect its citizens abroad. As a general matter, a treaty “depends for enforcement of its provisions on the interest and honor of the governments which are parties to it.”194 There are 173 parties to the Vienna Convention, all with the expectation that Article 36 creates a reciprocal relationship.195 The United States has an interest in protecting its citizens to the fullest extent possible in the face of a law that it deems unacceptable.

Most Americans would be justifiably appalled if a U.S. citizen in a foreign country were charged, convicted, and executed for a capital crime without being advised of a right to contact the U.S. embassy for help. Such was the case of Billy Hayes, who openly protested Garcia’s execution.196 His terrifying experience in a Turkish prison gave rise to the book and subsequent film “Midnight Express.”197 In a letter to the Texas Board of Pardons and Paroles, he highlighted the vulnerability of Americans detained overseas and asked the Board to grant a stay of the execution so that Congress can address “this vitally important concern.”198 In both the account of his days in a Turkish prison and his letter, he

191 U.S. Brief as Amicus Curiae, supra note 9, at 23 (2008).
195 Multilateral Treaties Deposited with the Secretary-General, U.N. TREATY COLLECTION, http://treaties.un.org/Pages/ParticipationStatus.aspx (last visited Mar. 15, 2012) (click on ch. 3, and § 8 to see a full list of signing countries); Vienna Convention, supra note 13, art. 36.
198 Amended Petition for Writ of Habeas Corpus, supra note 196, at 19.
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repeatedly reinforced how U.S. consular assistance was critical to his ability to obtain legal counsel.199

An indication of Mexico’s apprehension with respect to the U.S. implementation of the Vienna Convention’s reciprocal obligations has been clearly voiced.200 With respect to Garcia’s defense, the Mexican government made explicit a longstanding tradition of extending consular services to its nationals, particularly where that national faces capital punishment.201 The United States’ neighbor to the south further forecasted that Garcia’s execution “would seriously jeopardize the ability of the government of Mexico to continue working collaboratively with the United States on a number of joint ventures including extraditions, mutual judicial assistance, and our efforts to strengthen our common border.”202 If it was an articulation of the potential damage to foreign relations that may result from Garcia’s demise, the Garcia majority needed to look no further than this statement. Considering the recent nature of this decision, the fallout for the United States is yet to be realized in many ways.

One thing remains clear: availability of a judicial remedy is essential to the American legal system – however, such a judicial remedy is not readily available to a foreign national whose rights have been violated under the Vienna Convention.203

VI. Conclusion

The principles of treaty interpretation gleaned from the Medellín cases and affirmed in Garcia v. Texas are a temporary resolution of debates that will last well beyond the term of the current Supreme Court. However, the holding of Garcia v. Texas puts the United States in violation of its international obligations under the Vienna Convention and represents a clear disregard for the obligations created by the ICJ decision in Avena. Moreover, the Court has further diminished the President’s constitutional authority over foreign relations and may have irreparably harmed U.S. relations with Mexico. Flowing from this case is the notion that each individual state – like Texas – has the ultimate responsibility for bringing the United States into compliance with the Vienna Convention.204

199 Id.
200 U.S. Brief as Amicus Curiae, supra note 9, at 23.
201 Id.
202 Id.
203 Lyons, supra note 146, at 77.
204 In fact, certain States have recognized the importance of complying with the Avena judgment. For example, the Oklahoma Court of Criminal Appeals stayed execution of a named Mexican national and ordered an evidentiary hearing on whether actual prejudice had resulted from the lack of consular notification. Torres v. Oklahoma, 2004 WL 3711623 (Okla. Crim. App. 2004). On the same day, the Governor of Oklahoma reduced Torres’ death sentence to life without the possibility of parole. See Oklahoma Governor Grants Clemency to Mexican Foreign National, DEATH PENALTY INFO CTR, http://www.deathpenaltyinfo.org/node/492 (last visited Mar, 15, 2012). Additionally, Oregon has taken steps to ensure that Oregon police are aware of their duties under the Vienna Convention and have passed legislation requiring state police officers to be aware of and understand the Vienna Convention rights. Alexander, supra note 193, at 842.