

Case Concerning Avena and Other Mexican Nationals

(United Mexican States v. United States of America)

**REQUEST FOR THE INDICATION OF  
PROVISIONAL MEASURES OF PROTECTION  
SUBMITTED BY THE GOVERNMENT OF  
THE UNITED MEXICAN STATES**

The Hague, 5 June 2008

1. I have the honor to refer to the Request for Interpretation submitted to the Court this day in the name of the United Mexican States. Mexico has invoked the Court's jurisdiction under Article 60 of the Statute of the Court to seek clarification of the nature of the remedial obligations incumbent upon the United States under paragraph 153(9) of the Judgment on the merits in the *Case Concerning Avena and Other Mexican Nationals (United Mexican States v. United States of America)* ("Avena").
2. In accordance with Article 41 of the Statute of the Court and Articles 73, 74, and 75 of the Rules of Court, I hereby respectfully submit an urgent request that the Court indicate provisional measures to preserve the rights of Mexico pending the outcome of these proceedings.

**STATEMENT OF FACTS**

3. As more fully set forth in the accompanying Request for Interpretation, which is incorporated in its entirety herein, Mexico today invoked this Court's jurisdiction to interpret the operative language of the *Avena* Judgment to provide guidance as to the scope and meaning of the remedial obligations incumbent upon the United States. Specifically, Mexico asks that this Court clarify that the obligation set forth at paragraph 153(9) of the *Avena* Judgment is an obligation of result and that no Mexican national may be executed without having received review and reconsideration consistent with the terms of the Judgment.
4. In order to preserve the rights of Mexico and its nationals pending the outcome of these proceedings, Mexico hereby requests the indication of provisional measures prohibiting the execution of five Mexican nationals in danger of imminent execution.
5. On 5 August 2008, one Mexican national, José Ernesto Medellín Rojas, will face execution by lethal injection unless the Court indicates provisional measures. Another national, César Roberto Fierro Reyna, could receive, under applicable provisions of domestic law, an execution date on as little as thirty days notice. Three additional Mexican nationals—Rubén Ramírez Cárdenas,

Humberto Leal García, and Roberto Moreno Ramos—could receive execution dates on ninety days notice. All of these men are incarcerated under sentence of death in the State of Texas, which has executed more persons than any other state of the United States.<sup>1</sup>

#### THE AUTHORITY OF THE COURT

6. This Court has the undoubted authority to issue provisional measures to ensure the *status quo* pending resolution of the dispute before it. Article 41(1) of the Statute of the Court vests the Court with “power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party.” Orders of provisional measures pursuant to Article 41 establish binding obligations. *LaGrand (Germany v. United States of America), Merits, Judgment of 27 June 2001, I.C.J. Reports 2001*, p. 506, para. 109.
7. Three times before, including in this case, the Court has indicated provisional measures to prevent executions in cases involving claims by States whose nationals were subject to execution in the United States as a result of domestic criminal proceedings conducted in violation of the Vienna Convention on Consular Relations. In the *Case Concerning the Vienna Convention on Consular Relations (Paraguay v. United States of America)*, the Court indicated provisional measures to prevent the execution of Paraguayan national Angel Francisco Breard pending the final judgment on the merits, and in *LaGrand*, the Court afforded the same relief to prevent the execution of the German national Walter LaGrand. In both instances, this Court directed the United States to take “all measures at its disposal” to prevent the executions. *Case Concerning the Vienna Convention, Provisional Measures, Order of 9 April 1998, I.C.J. Reports 1998*, p. 258, para. 41; *LaGrand, Provisional Measures, Order of 3 March 1999, I.C.J. Reports 1999*, p. 16, para. 29.

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<sup>1</sup> Consistent with the Court’s Order on Mexico’s prior Request for the Indication of Provisional Measures in this case, Mexico is only seeking the indication of provisional measures respecting those of its nationals who have exhausted all opportunities for appellate review and are in immediate danger of being scheduled for execution. *Avena, Provisional Measures, Order of 5 February 2003, I.C.J. Reports 2003*, p. 91, para. 56. Also consistent with that Order, Mexico reserves its right to seek the indication of provisional measures in respect of other of its nationals in the event that they are placed in imminent danger of execution. *Id.*

8. In earlier proceedings in this case, the Court went further to direct that the United States take “all measures necessary” to prevent the execution of the Mexican nationals concerned, including two of the individuals named in this Request. *Avena, Provisional Measures, Order of 5 February 2003*, p. 91-92, para. 59.<sup>2</sup> At the time, Messrs. Fierro and Moreno Ramos were already at risk of having execution dates set for thirty and ninety days, respectively, and the Court determined that “their execution would cause irreparable prejudice to any rights that may subsequently be adjudged by the Court to belong to Mexico.” *Avena, Provisional Measures, Order of 5 February 2003*, p. 91, para. 55; *see also Case Concerning the Vienna Convention, Provisional Measures, Order of 9 April 1998*, p. 257, para. 37; *LaGrand, Provisional Measures, Order of 3 March 1999*, p. 15, para. 24; *Merits, Judgment of 27 June 2001*, p. 487, para. 57.
9. Just as this Court acted pursuant to Article 41 to preserve the rights of Mexico in light of the dispute in *Avena* over the interpretation and application of the Vienna Convention, it should act here in light of the dispute over the obligations imposed by its own Judgment. “The context in which Article 41 has to be seen within the Statute is to prevent the Court from being hampered in the exercise of its functions because the respective rights of the parties to a dispute before the Court are not preserved.” *LaGrand, Merits, Judgment of 27 June 2001, I.C.J. Reports 2001*, p. 502-03, para. 102.<sup>3</sup>

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<sup>2</sup> The third Mexican national protected by the Court’s previous order of provision measures, Osvaldo Torres Aguilera, is no longer in danger of execution because the Governor of the State of Oklahoma commuted his sentence to life imprisonment without the possibility of parole. *Torres v. Oklahoma*, 120 P.3d 1184 (Okla. Crim. App. 2005).

<sup>3</sup> In addition to the specific grant of authority in Article 41, this Court has inherent jurisdiction to issue provisional measures. *See, e.g., Northern Cameroons (Cameroon v. United Kingdom), Preliminary Objections, Judgment of 2 December 1963, (separate opinion of Judge Fitzmaurice), I.C.J. Reports 1963*, p. 103 (“But also, there is the Court’s *preliminary* or incidental jurisdiction (e.g. to decree interim measures of protection...) which it can exercise even in advance of any determination of its basic jurisdiction as to its ultimate merits....Although much (though not all) of this incidental jurisdiction is specifically provided for in the Court’s Statute, or in Rules of Court which the statute empowers the Court to make, it is really an inherent jurisdiction, the power to exercise which is a necessary condition of the Court—or of any court of law—being able to function at all.”); *see also Legality of Use of Force, Provisional Measures, Judgment of 2 June 1999* (dissenting opinion of Judge Weeramantry), p. 197-98 (“When Article 41 of the Statute gave the Court power to indicate provisional measures it did not do so to the exclusion of universal principles relating to powers which are inherent in judicial proceedings.”).

10. There can be no doubt, and by its provisional measures orders in this case, *LaGrand*, and the *Case Concerning the Vienna Convention* the Court has confirmed, that the paramount interest in human life is at stake here and that that interest would be irreparably harmed if any of the Mexican nationals whose right to review and reconsideration was determined in the *Avena* Judgment were executed without having received that review and reconsideration. Unless the Court indicates provisional measures pending this Court's disposition of Mexico's Request for Interpretation, Mr. Medellín certainly will be executed, and Messrs. Fierro, Leal García, Moreno Ramos, and Ramírez Cárdenas will be at substantial risk of execution, before the Court has had the opportunity to consider the dispute before it. In that event, Mexico would forever be deprived of the opportunity to vindicate its rights and those of the nationals concerned.
11. Compared with the irremediable loss of a human life, any prejudice that the United States might suffer by a delay in an execution would be inconsequential. At most, the United States would need to forbear from executing Mexican nationals during the pendency of these proceedings. All of the nationals would remain incarcerated and subject to execution once their right to review and reconsideration has been vindicated. Indeed, Mr. Medellín has already been on death row for over fourteen years. A further delay equal to the length of the proceedings before this Court could hardly constitute a hardship to the United States.
12. There also can be no question about the urgency of the need for provisional measures. In all previous instances in which this Court has indicated provisional measures, the nationals in question were subject to imminent execution, some on dates already established. In those cases, the Court acted with the utmost dispatch to prevent that result.<sup>4</sup> Cognizant of this Court's direction in the *LaGrand* and *Avena* cases that "the sound administration of justice requires that a request for the indication of provisional measures founded on Article 73 of the Rules of Court be submitted in good time," *LaGrand, Provisional Measures, Order of 3 March 1999*, p. 16, para. 19; *Avena, Provisional Measures, Order of 5 February 2003*, p. 90-91, para. 54, Mexico has sought to submit this Request at such time as would allow the Court to give it full and unhurried consideration.
13. In short, provisional measures are clearly justified in order both to protect Mexico's paramount interest in the life of its nationals and to ensure the Court's ability to order the relief Mexico seeks.

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<sup>4</sup> On Paraguay's request in the *Case Concerning the Vienna Convention*, the Court indicated provisional measures within six days. On Germany's request in the *LaGrand* case, the Court indicated provisional measures within twenty-four hours and in *Avena*, in twenty-six days.

14. Because in each of the cases that are the subject of this Request, the death penalty has been imposed as a result of criminal proceedings conducted by one of the constituent states of the United States, compliance by the United States with any order by this Court will require action by state authorities, federal authorities, or both. As a result, Mexico considers it critical that the Court indicate provisional measures at a time that will give the United States ample opportunity to implement the Court's order before Mr. Medellín's scheduled execution on 5 August 2008.

#### **THE ORDER REQUESTED**

15. On behalf of the Government of Mexico, acting on its own behalf and in the exercise of the diplomatic protection of its nationals, I therefore respectfully request that, pending resolution of Mexico's Request for Interpretation, the Court indicate:
- a. That the Government of the United States take all measures necessary to ensure that José Ernesto Medellín, César Roberto Fierro Reyna, Rubén Ramírez Cárdenas, Humberto Leal García, and Roberto Moreno Ramos are not executed pending the conclusion of the proceedings instituted this day;
  - b. That the Government of the United States inform the Court of all measures taken in implementation of subparagraph (a); and
  - c. That the Government of the United States ensure that no action is taken that might prejudice the rights of Mexico or its nationals with respect to any interpretation this Court may render with respect to paragraph 153(9) of its *Avena* Judgment.
16. In view of the extreme gravity and immediacy of the threat that authorities in the United States will execute a Mexican national in violation of obligations the United States owes to Mexico, Mexico respectfully asks the Court to treat this Request as a matter of the greatest urgency and set a hearing on this Request before the end of June 2008.
17. The Government of Mexico has authorized the undersigned to appear before the Court in any proceedings or hearings relating to this request that the Court or its President may convene in accordance with the terms of Article 74, paragraph 3, of the Rules of Court.

5 June 2008

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Ambassador Jorge LOMÓNACO TONDA  
Ambassador of Mexico to the Kingdom of the Netherlands  
The Hague, Netherlands