

THE LEGAL ADVISER
DEPARTMENT OF STATE
WASHINGTON

August 1, 2008

Your Excellency:

In accordance with paragraph 80(II)(b) the Court's Order of July 16, 2008 on the Request for the Indication of Provisional Measures ("2008 Provisional Measures Order") the United States hereby informs the Court of the measures the United States has taken and continues to take to implement that Order. We understand paragraph 80(II)(a) of the 2008 Provisional Measures Order to be a reiteration of U.S. obligations under paragraph 153(9) of the March 31, 2004 Judgment in the *Case Concerning Avena and Other Mexican Nationals* ("2004 Judgment") with respect to the five Mexican nationals named in that Order. Thus the actions described below are directed toward implementing both the 2004 Judgment and the 2008 Provisional Measures Order.

I outlined in the oral proceeding before the Court in June the United States' measures to implement the 2004 Judgment. Upon issuance of the Court's 2008 Provisional Measures Order, the Department of State confirmed that the State of Texas was in possession of the text of that Order. Subsequent to the June 17, 2008 letter from Secretary of State Condoleezza Rice and United States Attorney General Michael Mukasey to Texas Governor Rick Perry seeking the assistance of the State of Texas in giving effect to the 2004 Judgment, representatives of the Department of State traveled to Texas to meet with senior officials in the Governor's office as well as representatives of the Texas Board of Pardons and Paroles. We held wide-ranging discussions regarding mechanisms to provide review and

His Excellency
Mr. Philippe Couvreur,
Registrar,
International Court of Justice,
The Hague

reconsideration of the convictions and sentences of the Mexican nationals in Texas who are covered by the 2004 Judgment. These nationals, of course, include the five individuals who are the subject of the Court's 2008 Provisional Measures Order.

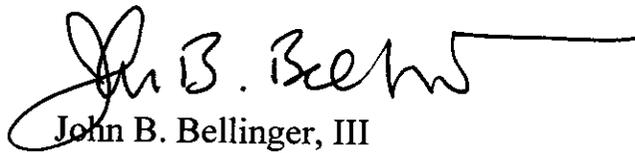
On July 18, 2008, Governor Perry replied to the letter from Secretary Rice and Attorney General Mukasey. Governor Perry indicated that when an individual subject to the 2004 Judgment who has not previously received a judicial determination of prejudice seeks a prejudice review in federal habeas proceedings, "the State of Texas will ask the reviewing court to address the claim of prejudice on the merits." Governor Perry also noted that consideration of facts showing actual prejudice as discussed in the 2004 Judgment may be urged before the Texas Board of Pardons and Paroles in its consideration of any clemency request that comes before it. A copy of Governor Perry's letter is attached.

The Department of State continues to meet with representatives of the Government of Mexico to discuss implementation issues. The Government of Mexico has informed us that Mexican Secretary of Foreign Affairs Patricia Espinosa has written to Governor Perry noting the "undisputed obligation" acknowledged by the U.S. Government to comply with the 2004 Judgment and requesting that the Governor suspend the execution of José Ernesto Medellín until his conviction and sentence are reviewed and reconsidered in accordance with the Court's 2008 Provisional Measures Order.

We understand that Mr. Medellín has filed a petition for recommendation of executive clemency or, in the alternative, for reprieve from execution with the Texas Board of Pardons and Paroles. I have written to the Board asking that it carefully consider whether the Vienna Convention violations resulted in actual prejudice to Mr. Medellín's conviction and sentence. We understand that the Board will consider these matters in making its decision. I have further requested that in view of the importance of this case, the Board take the unusual step of making a written finding whether the Vienna Convention violations resulted in actual prejudice to Mr. Medellín's conviction and sentence.

We would also like to inform the Court that on July 14, 2008, two members of the U.S. Congress introduced a legislative proposal in the U.S. House of Representatives that would create a civil action to provide judicial remedies for a violation of Article 36 of the Vienna Convention. The bill was referred to the Committee on the Judiciary, and we understand no further action has been taken.

Accept, Your Excellency, the assurance of my highest consideration.

A handwritten signature in black ink, appearing to read "John B. Bellinger, III". The signature is fluid and cursive, with a long horizontal line extending to the right from the end of the name.

John B. Bellinger, III
Agent of the United States of America

Attachment: July 18 letter from Governor Perry to Secretary of State Rice
and Attorney General Mukasey



OFFICE OF THE GOVERNOR

RICK PERRY
GOVERNOR

July 18, 2008

The Honorable Condoleezza Rice, Ph.D.
U.S. Secretary of State
The White House
1600 Pennsylvania Avenue, NW
Washington, D.C. 20500

The Honorable Michael B. Mukasey
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530-0001

Dear Secretary Rice and General Mukasey:

Thank you for your letter of June 17 requesting that the State of Texas comply with an International Court of Justice order concerning the Vienna Convention on Consular Notification. ~~The State of Texas, as an individual state, is not directly bound by the International Court of Justice's decision in the *Avena* case, as determined by the United States Supreme Court and the Texas Court of Criminal Appeals. Nonetheless, I understand your concerns from a federal standpoint about the importance of international law. That said, I too believe, as also stated in your letter, that this issue is an international obligation and that it is a matter best dealt with by our federal executive branch and Congress.~~

The State of Texas has recognized that ensuring that individuals receive consular notification is highly important. Texas has previously implemented a process for law enforcement officials and magistrates to achieve that goal. We will continue our efforts to ensure that individuals tried for capital crimes in Texas are afforded all of the rights and protections under our laws.

Currently, in federal habeas proceedings in which consular notification is raised, the State of Texas submits briefing on whether actual prejudice or harm may have resulted. This provides the court with a fully presented argument on that issue should the court decide to consider it. I am further advised that if any individual under Texas custody and subject to *Avena* has not previously received a judicial determination of his claim of prejudice under the Vienna Convention and seeks such review in a future federal habeas proceeding, the State of Texas will ask the reviewing court to address the claim of prejudice on the merits.

The Honorable Condoleezza Rice, Ph.D.
The Honorable Michael B. Mukasey
July 18, 2008
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The consideration of facts showing actual prejudice as discussed in *Avena* also may be urged by an offender before the Texas Board of Pardons and Paroles in its consideration of any clemency request that comes before it.

It is vital in each and every criminal case, especially those where the death penalty is a potential punishment, that justice be applied in a fair and impartial manner no matter what the citizenship of the individual may be. I will continue to support efforts that protect any individual from harm in our criminal justice system that is attributable to their race, economic status, or nationality.

Sincerely,

A handwritten signature in black ink that reads "Rick Perry". The signature is written in a cursive, slightly slanted style with a large initial "R".

Rick Perry
Governor