



**Office of the Attorney General
Washington, D. C. 20530**

April 5, 2005

The Honorable Greg Abbott
Attorney General
Capitol Station
P.O. Box 12548
Austin, Texas 78711

Dear Attorney General Abbott:

The State of Texas has since 2003 been aware of the *Case Concerning Avena and Other Mexican Nationals (Mexico v. United States of America) (Avena)*, brought by Mexico against the United States in the International Court of Justice (ICJ), and provided critical assistance to the U.S. Department of State in preparation of the response of the United States in that proceeding. Of the 51 Mexican nationals subject to the ICJ's decision in the case, 2004 I.C.J. 128 (Mar. 31), fifteen were convicted and sentenced by the State of Texas.

In *Avena*, the ICJ concluded that the United States violated Article 36 of the Vienna Convention on Consular Relations (VCCR) by, among other things, not informing these 51 Mexicans that they were entitled to have Mexican consular officials notified of their arrest and detention. The ICJ found that the appropriate remedy "consists in the obligation of the United States of America to provide, by means of its own choosing, review and reconsideration of the convictions and sentences of the [affected] Mexican nationals." The ICJ made clear that it did not prescribe a particular outcome for the review and reconsideration, but instead specified that it was for the United States to determine in each case whether the violation of the VCCR "caused actual prejudice to the defendant in the process of administration of criminal justice."

Pursuant to the authority vested in him as President of the United States by the Constitution and the laws of the United States, the President has determined that "the United States will discharge its international obligations under the decision of the ICJ, by having State courts give effect to the decision in accordance with general principles of comity in cases filed by the 51 Mexican nationals addressed in that decision." This determination was communicated to me in a Memorandum dated February 28, 2005, a copy of which is enclosed. This Memorandum was submitted to the United States Supreme Court as part of the amicus brief filed by the United States in *Medellin v. Dretke* (No. 04-5928). A copy of that brief, which explains the implications of the President's determination for the 51 cases addressed by the *Avena* ICJ judgment, is also enclosed.

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The ICJ had jurisdiction to decide the *Avena* case because, at the time the suit was filed, both Mexico and the United States were parties to the VCCR's Optional Protocol Concerning the Compulsory Settlement of Disputes. By letter dated March 7, 2005, the Secretary of State notified the United Nations of the United States' withdrawal from the Optional Protocol. As a consequence, the United States will no longer recognize the jurisdiction of the ICJ to resolve disputes concerning the interpretation and application of the VCCR.

This withdrawal action has no implications for the international legal obligation of the United States to comply with the *Avena* judgment or the President's determination. Nor does it have any implications for the obligations of the United States under the VCCR itself. The United States remains a party to the VCCR and must continue to provide consular notification and access as required in Article 36 of that treaty.

Sincerely,



Alberto R. Gonzales
Attorney General

Enclosures