

## CASE NOTE

## Medellín v Texas

**The Non-Self-Executing Treaty Doctrine and the Domestic Status of ICJ Judgments***552 US 491 (2008)**Sofia R. Marquez<sup>1</sup>*

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**Abstract**

In *Medellín v Texas* 552 US 491 (2008), the Supreme Court of the United States held, by a 6–3 majority, that the judgment of the International Court of Justice in *Case Concerning Avena and Other Mexican Nationals (Mexico v United States)* [2004] ICJ Rep 12 was not directly enforceable as domestic federal law in the absence of implementing legislation, and that a memorandum issued by President George W Bush directing state courts to give effect to *Avena* did not constitute valid federal law capable of pre-empting state procedural rules. Chief Justice Roberts’s opinion for the Court dramatically reaffirmed the non-self-executing character of certain treaties and sharply limited the domestic legal force of ICJ decisions under the United Nations Charter and the Optional Protocol Concerning the Compulsory Settlement of Disputes to the Vienna Convention on Consular Relations. This case note examines the majority’s textualist treaty-analysis framework, the distinction between self-executing and non-self-executing treaties, and the Court’s refusal to accord automatic domestic effect to ICJ judgments notwithstanding Article 94(1) of the UN Charter. It analyses the dissenting opinions of Justices Stevens, Souter (joined by Ginsburg and Breyer JJ), and Breyer, which emphasised international comity, the Supremacy Clause, and the United States’ treaty obligations. The note critically evaluates the decision’s implications for separation of powers, federalism, the political question doctrine, and the credibility of the United States in international law, particularly in light of subsequent ICJ proceedings and the eventual withdrawal from the Optional Protocol in 2005.

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## **Introduction**

On 25 March 2008, the Supreme Court delivered its decision in *Medellín v Texas*, rejecting the claim that the United States was constitutionally obliged to enforce the International Court of Justice’s judgment in *Avena* without congressional action.<sup>1</sup> Chief Justice Roberts’s majority opinion marked a watershed in the Court’s treaty jurisprudence, reinforcing the distinction between self-executing and non-self-executing treaties and denying that ICJ judgments possess automatic domestic legal force. The ruling not only sealed the fate of José Ernesto Medellín and dozens of other Mexican nationals on death row but also signalled a significant retreat from earlier assumptions about the domestic status of decisions rendered under Article 36 of the Vienna Convention on Consular Relations (VCCR) and the Optional Protocol thereto.

*Medellín* merits sustained scholarly attention for four principal reasons. First, it represents the fullest modern exposition of the non-self-executing treaty doctrine since *Foster v Neilson*.<sup>2</sup> Secondly, it clarifies (and arguably narrows) the scope of presidential power to implement treaty obligations unilaterally. Thirdly, it highlights the tension between international legal commitments and domestic federalism, particularly in the context of criminal procedure. Finally, its reasoning has had lasting repercussions for the credibility of the United States before the World Court and contributed directly to the Bush Administration’s withdrawal from the Optional Protocol in 2005. This case note analyses the Court’s reasoning, evaluates the majority and dissenting opinions, and assesses the decision’s broader implications for treaty law, separation of powers, and the United States’ role in the international legal order.

## **Facts of the Case**

José Ernesto Medellín, a Mexican national, was arrested in Houston in 1993 for capital murder. Texas authorities failed to inform him of his right under Article 36(1)(b) of the VCCR to contact the Mexican consulate. Medellín was convicted and sentenced to death. After exhausting state remedies, Mexico instituted proceedings against the United States at the ICJ in January 2003 on behalf of Medellín and fifty-three other nationals (the *Avena* case). On 31 March 2004 the ICJ held that the United States had breached its VCCR obligations in all fifty-four cases and was obliged to provide “review and reconsideration” of the convictions and sentences by judicial means, irrespective of state procedural default rules.

While Medellín’s federal habeas petition was pending, President Bush issued a memorandum on 28 February 2005 determining that the United States would “discharge its international obligations” under *Avena* by having state courts give effect to the judgment. The Texas Court

of Criminal Appeals subsequently dismissed Medellín’s claim, holding that neither Avena nor the presidential memorandum pre-empted Texas procedural rules.

### **Procedural History**

Medellín filed a second state habeas application relying on Avena and the presidential memorandum. The Texas Court of Criminal Appeals rejected the claim (*Ex parte Medellín* 223 SW 3d 315 (Tex Crim App 2006)). The Supreme Court granted certiorari, initially dismissed it as improvidently granted (*Medellín v Texas* 550 US 1073 (2007)), then re-granted certiorari after the Texas decision.

### **Issues Before the Court**

1. Is the ICJ’s Avena judgment directly enforceable as federal law in United States courts?
2. Are the relevant treaty provisions (UN Charter Art 94(1), Optional Protocol, VCCR) self-executing?
3. Did President Bush’s memorandum constitute valid federal law capable of pre-empting Texas procedural default rules?

### **Arguments of the Parties**

Medellín contended that the VCCR, Optional Protocol, and UN Charter formed a chain of treaty obligations that were judicially enforceable without further legislation, and that Article 94(1) of the Charter (“Each Member ... undertakes to comply”) rendered ICJ judgments binding domestic law under the Supremacy Clause. He further argued that the President’s memorandum independently pre-empted state law.

Texas maintained that none of the treaties was self-executing, that the political branches had historically treated ICJ judgments as non-self-executing, and that the President lacked unilateral authority to convert a non-self-executing treaty obligation into domestic law.

### **Judgment and Reasoning**

#### **Majority Opinion (Roberts CJ, joined by Stevens, Scalia, Kennedy, Thomas, and Alito JJ)**

Chief Justice Roberts applied a clear-intent textualist framework derived from *Foster* and the *Head Money Cases*. The Court held:

1. The Optional Protocol and VCCR merely granted jurisdiction and rights of invocation; they did not purport to create domestically enforceable rights absent implementing legislation.
2. Article 94(1) of the UN Charter is phrased as a “commitment” rather than a mandate for automatic judicial enforcement, in contrast to the explicitly self-executing language of other treaties.
3. Historical practice and Senate declarations confirmed that the treaties were non-self-executing.

4. The President’s memorandum was an attempt to transform a non-self-executing obligation into domestic law—an act exceeding executive power under *Youngstown Sheet & Tube Co v Sawyer*.

The Court distinguished earlier dicta in *Breard* and *Sanchez-Llamas*, emphasizing that treaty obligations and their domestic consequences are distinct.

### **Concurring Opinion**

Justice Stevens concurred separately to stress that Texas could still comply with *Avena* through legislative or clemency mechanisms, but agreed that federal courts could not compel compliance absent congressional action.

### **Dissenting Opinions**

Justice Breyer (joined by Souter and Ginsburg JJ) argued that the entire treaty package contemplated judicial enforcement, that non-self-execution analysis should be functional rather than formalistic, and that international comity demanded deference to the ICJ. Justice Souter wrote separately to emphasize the damage to American foreign policy credibility.

### **Critical Analysis**

Medellín is best understood as a triumph of textualist treaty interpretation over functionalist or comity-based approaches. The majority’s insistence on “clear statement” evidence of intent to create domestic judicial remedies marks a significant hardening of the non-self-executing doctrine. Critics have rightly observed that the Court’s approach risks rendering Article 94(1) of the Charter a dead letter in the United States. Yet the majority’s reading is defensible on originalist and separation-of-powers grounds: treaties are contracts between nations, and the Constitution assigns the law-making power to Congress.

The decision’s treatment of presidential power is equally consequential. By rejecting the President’s memorandum under *Youngstown* Category Three, the Court reaffirmed that the Executive cannot unilaterally legislate where Congress has not acted. This holding has implications far beyond consular rights, potentially limiting future attempts to implement treaties via executive order.

From an international perspective, Medellín exposed the fragility of relying on domestic courts to enforce ICJ judgments against federal states. The subsequent U.S. withdrawal from the Optional Protocol in 2005 was a direct consequence, signalling a retreat from compulsory ICJ jurisdiction in consular cases.

### **Implications of the Decision**

Medellín effectively insulated state criminal procedures from direct ICJ oversight and entrenched the requirement of congressional implementation for many multilateral treaties. It

has been cited in subsequent cases involving the domestic status of human-rights treaties and has influenced academic and diplomatic debates about treaty compliance in federal systems. The ruling also contributed to a perception of American exceptionalism in international law, prompting other states to exercise greater caution in accepting compulsory ICJ jurisdiction.

### **Conclusion**

Medellín v Texas represents a high-water mark for textualist treaty interpretation and a significant limitation on the domestic legal force of ICJ judgments. While the majority's reasoning is rigorous and faithful to separation-of-powers principles, it comes at the cost of diminished U.S. credibility in the international legal order. The decision underscores the perennial tension between constitutional structure and treaty obligations, reminding scholars and policymakers that the Supremacy Clause, powerful as it is, does not automatically transform every international undertaking into enforceable domestic law.

### **Endnotes**

<sup>1</sup> Medellín v Texas 552 US 491 (2008).

<sup>2</sup> Foster v Neilson 27 US (2 Pet) 253 (1829).