



Avena and Other Mexican Nationals (Mexico v. The United States of America)

ARGUED: 24 November 2019

DECIDED: 25 November 2019

1 The Dissenting Opinion was signed and agreed to by Justice Tragesser of Chile, Justice Johnson of Sri Lanka,
2 and Justice McClellan of Algeria.

3 The Court was asked to deliver a ruling on whether or not the United States violated the Vienna Convention
4 on Consular Relations in their conviction and sentencing of 54 Mexican Nationals, and whether or not the Court has
5 the power to make such a ruling.

6 We are of the opinion that the Court does not have jurisdiction to hear this case on its current merits and
7 is therefore unable to create a binding ruling.

8 The nature of the United States conceptualization of federalism is incompatible with the application of
9 International law. Under this system, states within the United States are given the right to apply their own law
10 codes in manners that they see fit. While the Vienna Convention on Consular Relations should directly shape the
11 procedures of the federal government of the United States, it is unclear whether such standards should also apply
12 to the individual states. The Vienna Convention on Consular Relations was signed by the United States federal
13 government, not their individual states governments. Additionally, the treaty is not self-executing which must be
14 the case for the supremacy clause within the U.S. Constitution to take effect. In fact, when a treaty is not self-
15 executing it is deferred to the political not judicial branch and the legislature must execute the contract. The
16 contract was never executed by all 50 states and only certain ones. In this case, Mexico claims that the United States
17 violated the Vienna Convention on Consular Relations by depriving 54 Mexican nationals of their right to access the
18 Mexican consulate. However, not all of these cases were convicted and sentenced through the United States federal
19 law system. Therefore, seeing an unclear ability for the Vienna Convention to apply to individual states, we believe
20 that the Court is unable to create a ruling of the nature of the Majority Opinion.

21 The Court bases its decision on the inability to evaluate this agreement in a clear manner due to the
22 ambiguity present within the agreement. In Article 36 section (b) it makes it clear it is the nationals role to request
23 consular assistance; however, in Article 37 section (b) it states the receiving state must inform the consular post of
24 the imprisonment of the sending states national. These two clauses seemingly contradict one another because it is not
25 clear if this is an either or responsibility or a dual responsibility. Furthermore, the Vienna Convention directly refers
26 to these consular provisions as applying to nationals of the sending state, yet the agreement does not specify what
27 the term national is defined as. This is especially relevant in this case as certain individuals hold dual citizenship
28 and the court is unsure of how to weigh this fact in light of this treaty applying to the term national. If member
29 states entered into this agreement without any agreed upon definition of the term national this significantly curtails
30 the ability of the ICJ to arbitrarily fill in this ambiguity to the detriment of the sovereignty of respective signed on
31 states.

32 Furthermore, the Court calls into question the factual nexus asserted by the advocates of Mexico. The Court
33 is being asked to review 54 individual cases, each of which contain different circumstances. The need for individual
34 consideration of each case is vital. Based on the evidence presented, the claim of nationality is not uniform in
35 each of these cases, nor is there a uniform definition for identifying ones nationality. While the Mexican advocates
36 presented evidence that there were instances where Mexican nationals were not given their rights as expressed under
37 the Vienna Convention, it is unclear whether the manner in which this right was withheld is uniform. For example,
38 seven individuals were told of their right; this fact was not disputed by the Mexican advocates. Therefore, we believe
39 that it would be impossible for the Court to provide a blanket redress for each of these cases. This dissenting opinion

40 implores signatories to this international treaty to clarify those ambiguous sections which were identified which will
41 clear up any future cases brought to this Court.

Signed By

Justice Noah Johnson

Justice Michael McClellan

Justice Chase Tragger