

IN THE INTERNATIONAL COURT OF JUSTICE

THE UNITED MEXICAN STATES

APPLICANT

V.

THE UNITED STATES OF AMERICA

RESPONDENT

MEMORIAL OF THE UNITED MEXICAN STATES

COMES NOW the United Mexican States and for their Memorial to the Court states the following:

STATEMENT OF LAW:

1. The Vienna Convention on Consular Relations was adopted by the Council on Consular Relations on 24 April 1964 and brought into force 19 March 1967. Both the United Mexican States (hereafter: Mexico) and the United States of America (hereafter: U.S.) signed this document, and must abide by these obligations.
 - a. In Article 5, section (i) of this document, it states that consular functions include being “subject to the practices and procedures obtaining in the receiving State, representing or arranging appropriate representation for nationals of the sending State before the tribunals and other authorities of the receiving State.”
 - b. In Article 36, Section (b) of this document states “the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner.”
2. Optional Protocol to the Vienna Convention on Consular Relations concerning the Compulsory Settlement of Disputes was signed on 19 March 1967 and brought into force 8 June 1967. This optional protocol was signed into action both by Mexico and by the U.S.

STATEMENT OF FACT

The U.S. has violated the regulations set forth by the Vienna Convention on Consular Relations addressing the rights of foreign nationals. The U.S. has been systematically disenfranchising Mexican foreign nationals by refusing them their given rights to contact Mexican consulates when under criminal investigation in the U.S. At minimum, fifty-four Mexican nationals have been arrested, tried, and sentenced to death in the U.S. without timely and proper notification to Mexico. Thus, Mexico was deprived of the opportunity to adequately confer with and represent its citizens.

The rights given by Article 36 of the Vienna Convention on Consular Relations have been indisputably violated in at least forty-nine of these fifty-four cases. The U.S. did not alert Mexico in a timely manner about the criminal status of these Mexican nationals, leaving these Mexicans to navigate the U.S. justice system with no guidance of their own government. When these fifty-four Mexican nationals were arrested, the American police departments were aware of their nationality, yet did not contact Mexican consulates until they had already been interrogated or faced trial. The results of this unlawful practice by the U.S. government are demonstrated in the cases of Cesar Roberto Fierro Reyna, Roberto Moreno Ramos, and Osbaldo Torres, who are sentenced to be executed within the next six months.

Beyond these three cases, in the case of Arturo Juarez Suarez, Mexican consulates were not made aware of his status until he had already made incriminating statements to detectives. In fact, in thirty of these cases, Mexico was not informed of the pending cases until the Mexican citizens had already been sentenced to death in the U.S. As Mexico has a very strong policy against capital punishment, these actions by the U.S. are of particular concern.

In these three cases of urgent relevancy with an imminent execution date, along with no less than fifty-one others, Mexico was denied its rights of contacting and assisting Mexican nationals being detained and tried abroad. These are essential rights guaranteed under Article 36 of the Vienna Convention on Consular Relations.

STATEMENT OF JURISDICTION

1. The application is brought under Article 36, Paragraph 1 of the Statute of the Court: “The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force”.
2. Article 1 of the Optional Protocol to the Vienna Convention on Consular Relations states “disputes arising out of the interpretation or application of the Convention shall lie within the compulsory jurisdiction of the International Court of Justice,” thus, this case falls under the compulsory jurisdiction of the Court.

ARGUMENTS

1. The nationals on death row are in desperate need of aid, and urgent action must be taken. The U.S. has made a grave mistake, and if response is not immediate, it could result in the deaths of these nationals.
 - a. Article 36, Section (b) states that the consulate must be notified “without delay,” and that did not follow in this situation.
 - b. Had the Mexican consulate been notified immediately, Mexico could have provided legal assistance and capital punishment may not have resulted.

- c. In 30 of the cases, the U.S. had knowledge of the national's citizenship and waited until incriminating statements were made or the Mexican nationals were sentenced to death to inform the consulate.
2. The Mexican government denounces the use of capital punishment in most cases, reflected in the fact that it has only been used 11 times since 1908. There is a stark difference in the usage of capital punishment between Mexico and the U.S., and these nationals should not be placed under the whim of the U.S. sentencing system.

SUMMARY AND REQUESTS

Mexico first asks that the Court immediately issue an interim order for a stay of execution for Cesar Roberto Fierro Reyna, Roberto Moreno Ramos, and Osbaldo Torres, who are sentenced to be executed within six months. Mexico requests that the Court act with urgency to cease this severe and irreversible human rights violation. Respectfully, Mexico understands that the judgement on this case may not come quickly, but we find it imperative that the Court speaks on the issue of these nationals' impending executions without delay. Secondly, Mexico asks that the Court evaluate the breach of the Vienna Convention regulations on the part of the U.S. when trying Mexican nationals. Mexico calls on the Court to legally recognize the U.S.'s failure to properly notify Mexican consulates in these cases.

Procedurally, Mexico requests that this court exercise its jurisdiction to intervene. This is a matter of human rights and consular diplomacy. The U.S. is bound to the regulations of the Vienna Convention and any violations must be swiftly addressed and reprimanded by the Court.

Substantively, Mexico requests that the Court take appropriate measures to ensure that the U.S. does not execute any of these fifty-four Mexican nationals or any in the future without contact with Mexican consulates.. While the Court may be inclined to allow for the U.S. to exercise its sovereignty, Mexico believes the Court must formally assert that no Mexican national should be executed until the U.S. rectifies their violation of the regulations of the Vienna Convention on Consular Relations.