

## **IN THE INTERNATIONAL COURT OF JUSTICE**

**MEXICO,**

**APPLICANT**

**V.**

**THE UNITED STATES OF AMERICA,**

**RESPONDENT**

### **MEMORIAL OF THE UNITED STATES OF AMERICA**

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

#### **STATEMENT OF LAW:**

1. In Article Five of the Vienna Convention on Consular Relations, 1963 it finds that, “provisional measures for the preservation of the rights and interests of these nationals, where, because of absence or any other reason, such nationals are unable at the proper time to assume the defense of their rights and interests”, but this does not apply to sending State if the nationals are dual citizen of both the sending and receiving.
2. In Article Thirty-Six subsection B of the Vienna Convention on Consular Relations it states, “if he so requests, 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.”

#### **STATEMENT OF FACT:**

On 24 April 1993, the United States government along with Mexico agreed to the Vienna Convention on Consular Relations. The Vienna Convention outlines the procedures in which governments must handle the cases of foreign nationals as well consular functions. Prior to the Vienna Convention the United States of America and Mexico had agreed to Consular Convention, signed at Mexico City, August 12, 1942. The United States has historically relied on individual states to implement International Laws, Treaties, and communications of the consular nature.

Leading up to Mexico’s application to the International Court of Justice the United States government had arrested fifty-four Mexican Nationals that were sentenced to life as well as death sentences. On numerous occasions, the United States and Mexico have been negotiating on United States criminal proceedings. Mexico argues to the International Court of Justice that the United States has violated the Vienna Convention.

However, the Mexican government neglects those who do not fall under the Vienna Convention. On 28 November 2003, Mexico later had to withdraw requests for relief of two Mexican nationals, Mr. Enrique Zambrano Garibi and Mr. Pedro Hernandez Alberto, on the basis that one is dual citizen and the other was notified of consular rights.

The United States maintains that it has adhered to all articles of the Vienna Convention.

## **STATEMENT OF JURISDICTION:**

As both Mexico and the United States have signed the Optional Protocol Agreement of the Vienna Convention, both entities agreed to Article 1 that finds a disputing party may bring the question of jurisdiction to Court. On the question of jurisdiction regarding the ICJ, the ICJ statute states that “all decisions are final without appeal”, it however, does not address ICJ legal proceedings. The Charter of the United Nations in Article 94 provides that “Each Member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party” and “If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment”. The charter makes no mention of jurisdiction or decisions regarding the decisions of domestic judiciaries, or individual state governments opposed to national. Although the decisions of the court in *LaGrand* found that domestic law should not hinder rights, the precedent is not binding. Each of these nationals were convicted by domestic judiciaries and the domestic government were responsible for the notification of consular rights. The 11<sup>th</sup> amendment prohibits litigation against a person of the United States by any foreign actor or government.

## **ARGUMENTS:**

1. In order to reach a decision, the Court must evaluate the citizenship of the Mexican Nationals for the case to be considered valid under the Vienna Convention.
2. The phrase, “without delay”, in Article 36 must be defined to establish if the United States did in fact violate the Vienna Convention. The United States of America argues that “without delay” should indicate without intentional delay or inaction and not the absence of immediate action.
3. Under Article 36 it states that the national must receive consular support “if he so requests” and so the Court must evaluate the requests of the Mexican Nationals.
4. The United States of America also contends that the ICJ has the discretion to question jurisdiction as it directly violates domestic law, or the 11<sup>th</sup> amendment. It provides no language to create legal ICJ decisions binding from *LaGrand* or otherwise.
5. As the United States delegates the notification of consular duties for foreign nationals, the United States argues that Court should consider the individual cases as each state will handle their Mexican Nationals differently. Due to the language of the Vienna Convention, the states then interpret the Vienna Convention differently. International Treaties are sovereign across the country, but the United States argues the Court must analyze the cases of Mexican Nationals individually and not as a whole.

## **SUMMARY AND REQUESTS:**

In summary, the United States reiterates that we adhered to all the articles in the Vienna Convention. The United States upheld all agreements with the Mexican Government. Of the fifty-four Mexican Nationals, the United States questions the validity of the case due to merits of the Mexican nationals' claims. The Mexican government argues that we have violated the Vienna Convention, but the nationals that were notified about their consular rights and the United States Claims that some of the nationals are dual citizens. The United States requests that this Court takes into the signing domestic law and enforcement. Based upon this the United States requests that the Court considers dismissal based upon a lack of jurisdiction from the ICJ. Previous ICJ cases are not legal binding.