

04-5928 MEDELLIN V. DRETKE

DECISION BELOW: 371 F3d 270

LOWER COURT CASE NUMBER: 03-20687

QUESTION PRESENTED:

The United States and Mexico are party to the Vienna Convention on Consular Relations and its Optional Protocol Concerning the Compulsory Settlement of Disputes. Acting on the consent set forth in the Optional Protocol, Mexico initiated proceedings in the International Court of Justice seeking relief for the violation of Petitioner's Vienna Convention rights. On March 31, 2004, the Court rendered a judgment that adjudicated Petitioner's rights. Avena and Other Mexican Nationals (Mex. v. U.S.), 2004 I.C.J. 128 (Mar. 31). The Avena Judgment built on the Court's rulings in LaGrand (F.R.G. v. U.S.), 2001 I.C.J. 104 (June 27), an earlier case also brought under the Optional Protocol. On Petitioner's application for a certificate of appealability of the denial of his petition for habeas corpus, the United States Court of Appeals for the Fifth Circuit held that precedents of this Court and its own barred it from complying with the LaGrand and Avena Judgments.

1. In a case brought by a Mexican national whose rights were adjudicated in the Avena Judgment, must a court in the United States apply as the rule of decision, notwithstanding any inconsistent United States precedent, the Avena holding that the United States courts must review and reconsider the national's conviction and sentence, without resort to procedural default doctrines'?
2. In a case brought by a foreign national of a State party to the Vienna Convention, should a court in the United States give effect to the LaGrand and Avena Judgments as a matter of international judicial comity and in the interest of uniform treaty interpretation?

DISMISSED AS IMPROVIDENTLY GRANTED.

CERT. GRANTED 12/10/2004