

The Honorable Eric Holder
Attorney General
U.S. Department of Justice
Washington, DC 20530

The Honorable Hillary Clinton
Secretary of State
U.S. Department of State
Washington, DC 20520

Dear Attorney General Holder and Secretary Clinton:

We write to express our deep concern over the ongoing failure of the United States to abide by the decision of the International Court of Justice (ICJ) in *Avena and Other Mexican Nationals*, and to urge you to promote congressional passage of legislation implementing that binding judgment. As you know, the ICJ concluded in *Avena* that the United States must provide effective “review and reconsideration” of the convictions and sentences of a group of Mexican nationals who were denied their consular treaty rights, in order to determine in each case if the denial of access to consular assistance was prejudicial. Five years after this binding decision, it is unconscionable that the United States continues to ignore its obligations under *Avena* – particularly after assuring the ICJ more than a year ago that it fully intends to meet those requirements.

When the United States unconditionally ratified the Vienna Convention on Consular Relations (VCCR) forty years ago, it promised to inform all detained foreign nationals of their rights to consular notification and communication “without delay” and to facilitate timely consular access to them. At the same time, the United States voluntarily consented to the ICJ’s jurisdiction to adjudicate any disputes over non-compliance by ratifying the VCCR Optional Protocol concerning the Compulsory Settlement of Disputes. These obligations were applicable at the time of the ICJ’s *Avena* decision; there should be little debate about the unremarkable proposition that the United States must abide by its international commitments if it expects other nations to do so. Adhering to the international rule of law requires, quite simply, abiding by our treaty obligation to give full effect to the compulsory decision of the ICJ in the *Avena* case.

Both at home and abroad, prompt access to consular assistance safeguards the fundamental human and legal rights of foreigners who are arrested and imprisoned. For that reason alone, it is essential that the United States lead by example and provide meaningful remedies for VCCR violations. In addition, any further delay in compliance with *Avena* will once again leave the international community with the perception that the United States ignores its binding legal commitments. This is dangerous on many levels: it erodes our reputation as a reliable treaty partner and undermines the effectiveness of international mechanisms for the peaceful settlement of disputes. It could also have a harmful impact on the millions of U.S. citizens who travel, live or work abroad. As the State Department conceded more than a decade ago in an apology to Paraguay for the U.S.’s failure to comply with the VCCR in a case that resulted in the execution of a Paraguayan national, the United States “must see to it that foreign nationals in the United States receive the same treatment that we expect for our citizens overseas. We cannot have a double standard.”

President George W. Bush commendably attempted to enforce the *Avena* requirement of “review and reconsideration,” recognizing that it was clearly in the national interest to comply with the ICJ’s compulsory decision. However, the Supreme Court subsequently held in *Medellín v. Texas* that the Optional Protocol is not a self-executing treaty that would have binding effect in the domestic courts and that the President did not have the authority to enforce the ICJ decision unilaterally. The Supreme Court further held that the responsibility for transforming an international obligation arising from a non-self-executing treaty into domestic law falls to Congress. We wholeheartedly agree with the *Medellín* Court that the grounds for full U.S. compliance with the requirements of *Avena* are plainly compelling. Because only Congress can give domestic effect to the *Avena* Judgment, we encourage you in the strongest terms to propose legislation to Congress that would accomplish this goal without further delay.

Throughout your careers you have both been leaders in preserving the rule of law and protecting human rights, and we welcome the Administration’s reinvigoration of the United States’ commitment to abide by its international obligations. We firmly believe that one of the most clear – and pressing – ways of demonstrating that commitment is by working with Congress to enact legislation giving full effect to the *Avena* decision.

Thank you for your immediate attention to this crucially important concern, and we look forward to your timely response.

Sincerely,

Advocates for Human Rights

Leadership Conference on Civil Rights

American Civil Liberties Union

National Association of Criminal
Defense Lawyers

Amnesty International USA

National Death Row Assistance Network
of CURE

The Constitution Project

Human Rights Defense Center

Prison Legal News

Human Rights First

Safe Streets Arts Foundation

Human Rights Watch

International Community Corrections
Association

International CURE
(Citizens United for Rehabilitation of
Errants)

Justice Now