Medellin Discussion Board: The Court Defers to Congress

Posted By Jason Harrow On March 25, 2008 @ 5:09 pm In Commentary and Analysis |

The following post is part of a Discussion Board about today's decision in Medellin v. Texas. This entry was written by Ricahrd Samp of the Washington Legal Foundation. He filed an amicus brief in support of Texas, on behalf of the parents of one of the murder victims and also on behalf of the Washington Legal Foundation.

Perhaps the most striking aspect of today's [1] *Medellin* decision was the Court's professed willingness to defer to Congress when it comes to deciding which decisions of foreign tribunals are binding on U.S. courts. The majority stated that it would have been quite willing to be bound by the International Court of Justice's determination of U.S. obligations under the Vienna Convention, if Congress had decreed that U.S. courts should be so bound.

That show of judicial humility is in contrast to comments made by several of the justices at oral arguments. Justices Kennedy and Scalia in particular seemed indignant at the suggestion that they could ever be required to abide by a judgment of the ICJ, especially because that judgment was based on an interpretation of the Vienna Convention that the Court had rejected in *Sanchez-Llamas v. Oregon*. (One of them invoked *Marbury* for the proposition that it is up to the Supreme Court to say what the law is.) But the Chief Justice's opinion is a paean to judicial humility (particularly at pp. 18-20 of the Slip Opinion). Only the three dissenters would have allowed the courts to play a role in picking and choosing when judgments of the ICJ should be enforceable in U.S. courts. The Chief Justice said that the ICJ's *Avena* judgment was not enforceable because Congress had indicated that such judgments are not judicially enforceable but indicated that U.S. courts are required to enforce any judgments that Congress says they are required to enforce regardless whether they disagree with the foreign tribunal's reasoning.

Interestingly, although it appears that this is pretty much the end of the line for Medellin (any subsequent federal habeas petition is doomed to failure after today's decision), the decision keeps very much alive the possibility that other criminal defendants can invoke the Vienna Convention. The majority decision "assumed without deciding" (fn. 4) that the Convention grants foreign nationals an individually enforceable right to consular notification, and the right to be informed of that right. Justice Stevens and the three dissenters all concluded that there are such rights. So, for example, trial counsel in federal criminal proceedings would have a plausible claim that a confession should be suppressed if given without the defendant being told of his right to consular notification. While *Sanchez-Llamas* strictly limited the power of federal courts to grant habeas relief from state criminal convictions based on Vienna Convention violations, there is no indication in either that opinion or today's opinion that they are similarly constrained when federal convictions are at issue.

Finally, it struck me as odd for Justice Stevens to suggest that Texas courts would be doing the right thing were they to agree voluntarily to consider Medellin's Vienna Convention claim. After all, Stevens agreed with the majority that Congress had forbidden U.S. courts from giving binding effect to the *Avena* judgment. If so, then one would expect him to recognize that Texas courts are equally bound to follow the dictates of the Texas legislature, which has adopted legislation that prohibits Texas courts from considering procedurally defaulted claims in state habeas corpus proceedings.
