Supreme Court of Ohio Clerk of Court - Filed November 06, 2015 - Case No. 1993-1245

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	
	:	
Appellee,	:	Case No. 1993-1245
	:	
v.	:	
	:	
JOSE TRINIDAD LOZA	:	**Death Penalty Case**
	:	
Appellant.	:	

AMICUS CURIAE UNITED MEXICAN STATES' NOTICE OF LETTER FROM SECRETARY OF STATE JOHN F. KERRY TO GOVERNOR JOHN KASICH REQUESTING THAT OHIO SUSPEND THE SETTING OF AN EXECUTION DATE FOR MR. LOZA

Amicus Curiae, the Government of the United Mexican States, hereby submits to this Court a letter from Secretary of State John F. Kerry to Governor John Kasich, requesting that Ohio refrain from setting an execution date in this matter until Mr. Loza receives the full review and reconsideration required by the decision of the International Court of Justice in *Avena and Other Mexican Nationals* (*Mex. v. U.S.)*, 2004 I.C.J. 12 (Mar. 31) (*Avena*). The letter is attached as Exhibit A.

As this Court is aware, Ohio authorities failed to advise Mr. Loza of his rights to consular notification and access as required by Article 36 of the Vienna Convention on Consular Relations (VCCR). Mr. Loza was also one of the individuals named in the *Avena* decision, where the International Court of Justice (ICJ) determined that the United States had breached its Article 36 obligations with respect to numerous Mexican nationals, including Mr. Loza. As Secretary Kerry notes:

> As a remedy, the ICJ ordered the United States to provide judicial "review and reconsideration" of their convictions and sentences to determine whether they

> were prejudiced by the VCCR violations. Mr. Loza has not yet received review and reconsideration of his conviction and sentence to determine whether the violation caused actual prejudice, and therefore, his execution would place the United States in irreparable breach of its legal obligations.

Exhibit A, p. 1.[1]

Secretary Kerry's request that Ohio refrain from scheduling Mr. Loza's execution is grounded in the United States' vital interest in maintaining a mutually respectful bilateral relationship with Mexico, the vital importance of protecting U.S. citizens "traveling and working abroad, including the thousands of Ohioans who travel abroad every year and the members of our Armed Forces and their families," and "our nation's reputation as a country that upholds the rule of law." *Id.* Secretary Kerry encourages Ohio to follow the lead of Oklahoma and Nevada,[2] where state courts have granted evidentiary hearings to provide the review and reconsideration mandated by the ICJ's judgment:

> I would like to emphasize this request is not a comment on either the conviction or sentence in Mr. Loza's case . . . Rather, it is simply a request that Ohio take the necessary steps to enable the United States to comply with our binding legal obligations, just as the States of Oklahoma and Nevada have done. Taking these steps, and thus ensuring the United States can comply with our binding legal obligations under Avena, is critical to the national security and foreign policy interests of the United States.

Exhibit A, p. 3. In this regard, the national security and foreign policy interests of both the United States and Mexico can be honored (as Nebraska and Oklahoma did) by ordering an evidentiary hearing to review and reconsider Mr. Loza's conviction and death sentence and determine what prejudice he may have suffered by the undisputed violation of his VCCR rights.

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[1] The letter is dated July 28, 2015, but was only sent to the Embassy of Mexico on September 23, 2015, and was recently released for submission to this Court.

[2] *See Torres v. State*, 120 P.3d 1184 (Okla. Crim. App. 2005); *Gutierrez v. State*, No. 53506, 2012 WL 4355518 (Nev. Sept. 19, 2012).

Conclusion

For the foregoing and previously stated reasons, Amicus Curiae, the Government of the United Mexican States, respectfully submits that the setting of an execution date at this stage is premature, and requests that this Court deny the State of Ohio's Motion to schedule Mr. Loza for execution.

Respectfully submitted,

/s/ Michael J. O'Hara
MICHAEL J. O'HARA
Bar No. 0014966
O'Hara, Ruberg, Taylor, Sloan & Sergent
25 Town Center Boulevard, Ste 201
P.O. Box 17411
Covington, KY 41017
Phone: (859) 331-2000
Fax: (859) 578-3365
COUNSEL FOR AMICUS
GOVERNMENT OF MEXICO

CERTIFICATE OF SERVICE

This is to certify that a fair and accurate copy of the foregoing pleading, Amicus Curiae of United Mexican States Notice of Letter from Secretary of State John F. Kerry to Governor John Kasich Requesting that Ohio Suspend the Setting of an Execution Date for Mr. Loza, was served upon the following by regular U.S. mail this 6th day of November, 2015:

MICHAEL T. GMOSER
LINA A. ALKAMHAWI (#0075462)
Assistant Prosecuting Attorney
Chief, Appellate Division
Government Services Center
315 High Street, 11th Floor
Hamilton, Ohio 45011

LAURENCE E. KOMP (#0060142)
Attorney at Law
P.O. BOX 1785
Manchester, MO 63011

JAMES A. WILSON (#0030704)
Vorys, Sater, Seymour & Pease LLC
52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43216

/s/ Michael J. O'Hara
MICHAEL J. O'HARA
Bar No. 0014966

United States Department of State

Washington, D.C. 20520

September 23, 2015

The Honorable
Alejandro Estivill Castro
Deputy Chief of Mission
Embajada de Mexico
1911 Pennsylvania Avenue, NW
Washington, DC 20006

Dear Mr. Estivill,

I am enclosing a letter that Secretary of State John F. Kerry sent to John Kasich, the Governor of the State of Ohio on July 28, 2015, regarding Jose Trinidad Loza Ventura, a Mexican national whose case was addressed by the International Court of Justice in the *Avena* case. The letter asks that Governor Kasich "take all measures available to ensure Mr. Loza is not executed until he receives review and reconsideration." I would appreciate it if you would share the enclosed letter with the Legal Adviser for Mexico's Ministry of Foreign Affairs, as Max Diener wrote to me in February regarding this case.

Sincerely,

Mary McLeod

Mary McLeod
Principal Deputy Legal Adviser

Enclosure: As stated

THE SECRETARY OF STATE
WASHINGTON

July 28, 2015

The Honorable
John Kasich
Governor of the State of Ohio
Columbus, Ohio 43215

RE: José Trinidad Loza Ventura

Dear Governor Kasich:

I am writing you today regarding an important matter that implicates the welfare of U.S. citizens traveling abroad, including the members of our Armed Forces and their families, our relations with key allies, and our nation's reputation as a country that upholds the rule of law.

As you may know, a Mexican national named José Trinidad Loza Ventura is currently on death row in Ohio. Mr. Loza was named in a decision issued by the International Court of Justice (ICJ) in *Avena and Other Mexican Nationals (Mex. v. U.S.)*, 2004 I.C.J. 12 (Mar. 31) (*Avena*). The *Avena* case involved consideration of Article 36 of the Vienna Convention on Consular Relations (VCCR), which requires parties to the convention to inform detained foreign nationals of their option to have their consulate notified of their detention without delay and permit consular access to those individuals. The ICJ found that the United States breached these obligations with respect to 51 Mexican nationals, including Mr. Loza. As a remedy, the ICJ ordered the United States to provide judicial "review and reconsideration" of their convictions and sentences to determine whether they were prejudiced by the VCCR violations. Mr. Loza has not yet received review and reconsideration of his conviction and sentence to determine whether the violation caused actual prejudice, and therefore, his execution would place the United States in irreparable breach of its legal obligations.

The Federal Executive Branch has worked hard to bring the United States into compliance with its obligations under the *Avena* decision. Former President George W. Bush sought compliance by issuing a Presidential Memorandum directing the state courts to provide the review and reconsideration required by the ICJ. In *Medellín v. Texas*, 552 U.S. 491 (2008), the Supreme Court held that effort to be legally insufficient, but found that *Avena* imposed a binding legal obligation that could be discharged through the adoption of federal legislation. Accordingly, we have been working with Congress to pass compliance legislation. Such legislation was most recently included in the President's Fiscal Year 2016 budget request for the Department of State and Other International Programs. We have also made significant efforts to ensure prospective compliance with our VCCR obligations by, among other things, amending the Federal Rules of Criminal Procedure to require a federal judge to inform a foreign national charged with a federal crime of his or her consular notification option at the initial appearance.

While the Federal Executive Branch remains committed to pursuing *Avena* compliance legislation, I cannot predict when Congress will act. The State of Ohio and the other relevant

states, however, can provide judicial review and reconsideration to the Mexican nationals named in *Avena* without federal legislation. Two states – Oklahoma and Nevada – have, in fact, taken steps to secure review and reconsideration for *Avena* defendants in their states. I am writing to respectfully request that Ohio do likewise by providing judicial review and reconsideration to Mr. Loza. If, for whatever reason, the State of Ohio is unable to provide Mr. Loza with review and reconsideration at this time, I would respectfully ask that you take all measures available to ensure Mr. Loza is not executed until he receives review and reconsideration.

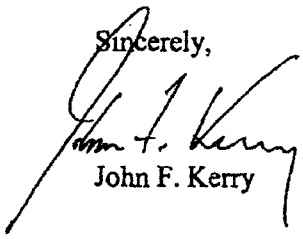
I would like to emphasize this request is not a comment on either the conviction or sentence in Mr. Loza's case, or on whether Mr. Loza would be able to demonstrate actual prejudice resulting from the VCCR violations. Rather, it is simply a request that Ohio take the necessary steps to enable the United States to comply with our binding legal obligations, just as the States of Oklahoma and Nevada have done. Taking these steps, and thus ensuring the United States can comply with our binding legal obligations under *Avena*, is critical to the national security and foreign policy interests of the United States.

Noncompliance would undercut our ability to protect U.S. citizens traveling and working abroad, including the thousands of Ohioans who travel abroad every year and the members of our Armed Forces and their families stationed abroad. The United States is severely hampered in our efforts to compel other countries to respect their obligations under the VCCR when U.S. citizens are detained abroad, if we do not respect our own obligations with respect to detained foreign nationals here. It would thus not only create uncertainty as to whether the United States can follow through on our own commitments, but would also damage U.S. credibility in our insistence that other countries respect their obligations. The protection of U.S. citizens overseas will always be our highest priority, and it is important that we can continue to rely on the protections of VCCR so our consular officers can continue to provide essential consular assistance.

In addition, our failure to comply with our *Avena* obligations has placed great strains on our bilateral relationship with Mexico. Proceeding with Mr. Loza's execution before providing him with review and reconsideration could jeopardize our collaboration with Mexico in many vital areas, including law enforcement, security, and migration. Mexico has written to us about *Avena* compliance on numerous occasions and raises this subject in bilateral and multilateral forums regularly. Most recently, the Mexican Legal Adviser wrote to highlight the urgency of Mr. Loza's case. In addition to Mexico, many other key U.S. partners and allies – including the United Kingdom – have also repeatedly urged the United States to comply with our obligations.

If an execution date is set for Mr. Loza without first fulfilling the legal condition of judicial review and reconsideration, it would unquestionably damage these vital U.S. interests. It is our sincere hope that the State of Ohio will do everything possible to avoid such an outcome.

Sincerely,



John F. Kerry