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3/31/05

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05-CR-A
Addendum

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March 25, 2005

Mr. Peter G. McCabe
Secretary, Committee on Rules of Practice and
Procedure of the Judicial Conference of the United States
1 Columbus Circle Northeast
Washington, D.C. 20544

The Honorable Susan C. Bucklew
1430 Sam M. Gibbons U.S. Courthouse
801 North Florida Avenue
Tampa, FL 33602

Professor David Schlueter
St. Mary's University School of Law
1 Camino Santa Maria
San Antonio, TX 78228

Dear Rules Committee:

As you review the proposed amendment to Rules 4 and 5 of the Federal Rules of Criminal Procedure based on Article 36 of the Vienna Convention, please also consider the attached White House memo for the Attorney General dated February 28, 2005. This memo was attached as an appendix to the Amicus Curiae brief filed by the United States in *Medellin v. Dretke*. The central issues in the case, which is scheduled for oral argument before the Supreme Court on March 28, 2005, are (1) the precedential value of the International Court of Justice (ICJ) decision in *Avena*; and (2) the necessity of judicial review and reconsideration based upon the denial of consular access rights.

In the White House memo for the Attorney General, the Bush Administration asserts that it will comply with the ICJ's decision in *Avena*, which held that judicial review and reconsideration is mandated due to the failure to provide consular notice to fifty-one Mexican nationals convicted in the United States. The memo from the White House directs the state courts to review the Mexican plaintiffs' cases accordingly. In the White House memo for the Attorney General, President Bush declares that "the United States will discharge its international obligation under the decision of the International Court of Justice in the Case Concerning *Avena* and Other Mexican Nationals ... by having State courts give affect to the decision in accordance with the general principles of comity...."

The Executive's position underscores the importance of amending the Federal Rules of Criminal Procedure to require notice of consular access at the necessary stages. Such amendments would bring the rules in line with both the Executive's declared position and the United States' international treaty obligations. The amendments would also help ensure compliance with Article 36 requirements and would eliminate the need for future reviews of court decisions on these grounds.

Thank you for considering the suggested amendments. I look forward to attending your committee meeting on April 4 & 5.

Sincerely,

A handwritten signature in black ink that reads "Linda A. Malone". The signature is written in a cursive, flowing style.

Linda A. Malone

Marshall-Wythe Foundation Professor of Law and
Director of the Human Rights and National Security
Law Program

Attachment

*1aa APPENDIX 2
THE WHITE HOUSE
WASHINGTON
February 28, 2005

MEMORANDUM FOR THE ATTORNEY GENERAL

SUBJECT: Compliance with the Decision of the International Court of Justice in Avena
The United States is a party to the Vienna convention on Consular Relations (the "Convention") and the Convention's Optional Protocol Concerning the Compulsory Settlement of Disputes (Optional Protocol), which gives the International Court of Justice (ICJ) jurisdiction to decide disputes concerning the "interpretation and application" of the Convention.

I have determined, pursuant to the authority vested in me as President by the Constitution and the laws of the United States of America, that the United States will discharge its international obligation under the decision of the International Court of Justice in the Case Concerning Avena and Other Mexican Nationals (Mexico v. United States of America) (Avena), 2004 ICJ 128 (Mar. 31), by having State courts give affect to the decision in accordance with general principles of comity in cases filed by the 51 Mexican nationals addressed in that decision.

U.S.,2005.

Medellin v. Dretke

2005 WL 504490

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