Per Curiam

SUPREME COURT OF THE UNITED STATES

No. 04–5928

JOSE ERNESTO MEDELLIN, PETITIONER *v.* DOUG DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

[May 23, 2005]

PER CURIAM.

We granted certiorari in this case to consider two questions: first, whether a federal court is bound by the International Court of Justice's (ICJ) ruling that United States courts must reconsider petitioner José Medellín's claim for relief under the Vienna Convention on Consular Relations, Apr. 24, 1963, [1970] 21 U. S. T. 77, 100–101, T. I. A. S. No. 6820, without regard to procedural default doctrines; and second, whether a federal court should give effect, as a matter of judicial comity and uniform treaty interpretation, to the ICJ's judgment. 543 U. S. ___ (2004). After we granted certiorari, Medellín filed an application for a writ of habeas corpus in the Texas Court of Criminal Appeals, relying in part upon a memorandum from President George W. Bush that was issued after we granted certiorari. This state-court proceeding may provide Medellín with the very reconsideration of his Vienna Convention claim that he now seeks in the present proceeding. The merits briefing in this case also has revealed a number of

hurdles Medellín must surmount before qualifying for federal habeas relief in this proceeding, based on the resolution of the questions he has presented here. For these reasons we dismiss the writ as improvidently granted. See *Ticor Title Ins. Co.* v. *Brown,* 511 U. S. 117, 121–122 (1994) *(per curiam); The Monrosa* v. *Carbon Black Export, Inc.,* 359 U. S. 180, 183–184 (1959); *Goins* v. *United States*, 306 U. S. 622 (1939).

Medellín, a Mexican national, confessed to participating in the gang rape and murder of two girls in 1993. He was convicted and sentenced to death, and the Texas Court of Criminal Appeals affirmed on direct appeal. Medellín then filed a state habeas corpus action, claiming for the first time that Texas failed to notify him of his right to consular access as required by the Vienna Convention. The state trial court rejected this claim, and the Texas Court of Criminal Appeals summarily affirmed.

Medellín then filed this federal habeas corpus petition, again raising the Vienna Convention claim. The District Court denied the petition. Subsequently, while Medellín's application to the Court of Appeals for the Fifth Circuit for a certificate of appealability was pending, see 28 U. S. C. §2253(c), the ICJ issued its decision in *Case Concerning Avena and other Mexican Nationals (Mex.* v. *U. S.)*, 2004 I. C. J. No. 128 (Judgment of Mar. 31), in which the Republic of Mexico had alleged violations of the Vienna Convention with respect to Medellín and other Mexican nationals facing the death penalty in the United States. The ICJ determined that the Vienna Convention guaranteed individually enforceable rights, that the United States had violated those rights, and that the United States must "provide, by means of its own choosing, review and reconsideration of the convictions and sentences of the [affected] Mexican nationals" to determine whether the violations "caused actual prejudice," without allowing procedural default rules to bar such review. *Id.,* ¶¶ 121–

122, 153.

The Court of Appeals denied Medellín's application for a certificate of appealability. It did so based on Medellín's procedural default, see *Breard* v. *Greene,* 523 U. S. 371, 375 (1998) *(per curiam)*, and its prior holdings that the Vienna Convention did not create an individually enforceable right, see, *e.g.*, *United States* v. *Jimenez-Nava*, 243 F. 3d 192, 195 (CA5 2001). 371 F. 3d 270 (CA5 2004). While acknowledging the existence of the ICJ's *Avena* judgment, the court gave no dispositive effect to that judgment.

More than two months after we granted certiorari, and a month before oral argument in this case, President Bush issued a memorandum that stated the United States would discharge its international obligations under the *Avena* judgment by "having State courts give effect to the [ICJ] decision in accordance with general principles of comity in cases filed by the 51 Mexican nationals addressed in that decision." George W. Bush, Memorandum for the Attorney General (Feb. 28, 2005), App. 2 to Brief for United States as *Amicus Curiae* 9a. Relying on this memorandum and the *Avena* judgment as separate bases for relief that were not available at the time of his first state habeas corpus action, Medellín filed a successive state application for a writ of habeas corpus just four days before oral argument here. That state proceeding may provide Medellín with the review and reconsideration of his Vienna Convention claim that the ICJ required, and that Medellín now seeks in this proceeding. This new development, as well as the factors discussed below, leads us to dismiss the writ of certiorari as improvidently granted.[1]

---

[1] Of course Medellín, or the State of Texas, can seek certiorari in this Court from the Texas courts' disposition of the state habeas corpus application. In that instance, this Court would in all likelihood have an opportunity to review the Texas courts' treatment of the President's memorandum and *Case Concerning Avena and other Mexican Nationals*

There are several threshold issues that could independently preclude federal habeas relief for Medellín, and thus render advisory or academic our consideration of the questions presented. These issues are not free from doubt.

First, even accepting, *arguendo*, the ICJ's construction of the Vienna Convention's consular access provisions, a violation of those provisions may not be cognizable in a federal habeas proceeding. In *Reed* v. *Farley*, 512 U. S. 339 (1994), this Court recognized that a violation of federal statutory rights ranked among the "nonconstitutional lapses we have held not cognizable in a postconviction proceeding" unless they meet the "fundamental defect" test announced in our decision in *Hill* v. *United States,* 368 U. S. 424, 428 (1962). 512 U. S., at 349 (plurality opinion); see also *id*., at 355–356 (SCALIA, J., concurring in part and concurring in judgment). In order for Medellín to obtain federal habeas relief, Medellín must therefore establish that *Reed* does not bar his treaty claim.

Second, with respect to any claim the state court "adjudicated on the merits," habeas relief in federal court is available only if such adjudication "was contrary to, or an unreasonable application of, clearly established Federal law, as determined by the Supreme Court." 28 U. S. C. §2254(d)(1); see *Woodford* v. *Visciotti,* 537 U. S. 19, 22–27 (2002) *(per curiam).* The state habeas court, which disposed of the case before the ICJ rendered its judgment in *Avena*, arguably "adjudicated on the merits" three claims. It found that the Vienna Convention did not create individual, judicially enforceable rights and that state procedural default rules barred Medellín's consular access claim. Finally, and perhaps most importantly, the state trial court found that Medellín "fail[ed] to show that he

---

(*Mex.* v. *U. S.*), 2004 I. C. J. No. 128 (Judgment of Mar. 31), unencumbered by the issues that arise from the procedural posture of this action.

was harmed by any lack of notification to the Mexican consulate concerning his arrest for capital murder; [Medellín] was provided with effective legal representation upon [his] request; and [his] constitutional rights were safeguarded." App. to Pet. for Cert. 56a.[2] Medellín would have to overcome the deferential standard with regard to all of these findings before obtaining federal habeas relief on his Vienna Convention claim.[3]

Third, a habeas corpus petitioner generally cannot enforce a "new rule" of law. *Teague* v. *Lane,* 489 U. S. 288 (1989). Before relief could be granted, then, we would be obliged to decide whether or how the *Avena* judgment bears on our ordinary "new rule" jurisprudence.

Fourth, Medellín requires a certificate of appealability in order to pursue the merits of his claim on appeal. 28 U. S. C. §2253(c)(1). A certificate of appealability may be granted only where there is "a substantial showing of the denial of a *constitutional* right." §2253(c)(2) (emphasis

---

[2] The Federal District Court reviewing that finding observed:

"Medellín's allegations of prejudice are speculative. The police officers informed Medellín of his right to legal representation before he confessed to involvement in the murders. Medellín waived his right to advisement by an attorney. Medellín does not challenge the voluntary nature of his confession. There is no indication that, if informed of his consular rights, Medellín would not have waived those rights as he did his right to counsel. Medellín fails to establish a 'causal connection between the [Vienna Convention] violation and [his] statements.'" App. to Pet. for Cert. 84a–85a (brackets in original).

[3] In *Breard* v. *Greene,* 523 U. S. 371 (1998) *(per curiam),* we addressed the claim that Virginia failed to notify a Paraguayan national of his Vienna Convention right to consular access. In denying various writs, motions, and stay applications, we noted that the Vienna Convention "arguably confers on an individual the right to consular assistance following arrest"; that Virginia's procedural default doctrine applied to the Vienna Convention claim; and that a successful Vienna Convention claimant likely must demonstrate prejudice. *Id.,* at 375–377. At the time of our *Breard* decision, however, we confronted no final ICJ adjudication.

added). To obtain the necessary certificate of appealability to proceed in the Court of Appeals, Medellín must demonstrate that his allegation of a *treaty* violation could satisfy this standard. See *Slack* v. *McDaniel,* 529 U. S. 473, 483 (2000).

Fifth, Medellín can seek federal habeas relief only on claims that have been exhausted in state court. See 28 U. S. C. §§2254(b)(1)(A), (b)(3). To gain relief based on the President's memorandum or ICJ judgments, Medellín would have to show that he exhausted all available state-court remedies.[4]

In light of the possibility that the Texas courts will provide Medellín with the review he seeks pursuant to the *Avena* judgment and the President's memorandum, and the potential for review in this Court once the Texas courts have heard and decided Medellín's pending action, we think it would be unwise to reach and resolve the multiple hindrances to dispositive answers to the questions here presented. Accordingly, we dismiss the writ as improvidently granted.

It is so ordered.

---

[4] On March 8, 2005, Medellín filed a successive state habeas action based on Tex. Code Crim. Proc. Ann., Art. 11.071, §5(a)(1) (Vernon 2005), claiming that both the President's memorandum and the *Avena* judgment independently require the Texas court to grant review and reconsideration of his Vienna Convention claim. See Subsequent Application for Post-Conviction Writ of Habeas Corpus in *Ex Parte Medellín,* Trial Cause Nos. 67,5429 and 67,5430 (Tex. Crim. App.), p. 6 (filed Mar. 24, 2005) (*"First,* the President's determination requires this Court to comply with the *Avena* Judgment and remand Mr. Medellín's case for the mandated review and reconsideration of his Vienna Convention claim. *Second*, the *Avena* Judgment on its own terms provides the rule of decision in Mr. Medellín's case and should be given direct effect by this Court").