Per Curiam

SUPREME COURT OF THE UNITED STATES

Nos. 11–5001 (11A1), 11–5002 (11A2), and 11–5081 (11A21)

HUMBERTO LEAL GARCIA, AKA HUMBERTO LEAL
11–5001 (11A1) *v.*
TEXAS

ON APPLICATION FOR STAY AND ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF TEXAS

IN RE HUMBERTO LEAL GARCIA
11–5002 (11A2)

ON APPLICATION FOR STAY AND ON PETITION FOR WRIT OF HABEAS CORPUS

HUMBERTO LEAL GARCIA
11–5081 (11A21) *v.*
RICK THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION

ON APPLICATION FOR STAY AND ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

[July 7, 2011]

PER CURIAM.

Petitioner Humberto Leal Garcia (Leal) is a Mexican national who has lived in the United States since before the age of two. In 1994, he kidnaped 16-year-old Adria Sauceda, raped her with a large stick, and bludgeoned her to death with a piece of asphalt. He was convicted of murder and sentenced to death by a Texas court. He now seeks a stay of execution on the ground that his conviction was obtained in violation of the Vienna Convention on Consular Relations (Vienna Convention), Apr. 24, 1963, 21 U. S. T. 77, T. I. A. S. No. 6820. He relies on *Case Con-*

cerning Avena and Other Mexican Nationals (Mex. v. *U. S.)*, 2004 I. C. J. 12 (Judgment of Mar. 31), in which the International Court of Justice (ICJ) held that the United States had violated the Vienna Convention by failing to notify him of his right to consular assistance. His argument is foreclosed by *Medellín* v. *Texas*, 552 U. S. 491 (2008) *(Medellín I)*, in which we held that neither the *Avena* decision nor the President's Memorandum purporting to implement that decision constituted directly enforceable federal law. 552 U. S., at 498–499.

Leal and the United States ask us to stay the execution so that Congress may consider whether to enact legislation implementing the *Avena* decision. Leal contends that the Due Process Clause prohibits Texas from executing him while such legislation is under consideration. This argument is meritless. The Due Process Clause does not prohibit a State from carrying out a lawful judgment in light of unenacted legislation that might someday authorize a collateral attack on that judgment.

The United States does not endorse Leal's due process claim. Instead, it asks us to stay the execution until January 2012 in support of our "future jurisdiction to review the judgment in a proceeding" under this yet-to-be-enacted legislation. Brief for United States as *Amicus Curiae* 2–3, n. 1. It relies on the fact that on June 14, 2011, Senator Patrick Leahy introduced implementing legislation in the Senate with the Executive Branch's support. No implementing legislation has been introduced in the House.

We reject this suggestion. First, we are doubtful that it is ever appropriate to stay a lower court judgment in light of unenacted legislation. Our task is to rule on what the law is, not what it might eventually be. In light of *Medellín I*, it is clear that there is no "fair prospect that a majority of the Court will conclude that the decision below was erroneous," *O'Brien* v. *O'Laughlin*, 557 U. S. ___, ___

(2009) (slip op., at 2) (BREYER, J., in chambers), and our task should be at an end. Neither the United States nor JUSTICE BREYER, *post*, at 1–6 (dissenting opinion), cites a single instance in this Court's history in which a stay issued under analogous circumstances.

Even if there were circumstances under which a stay could issue in light of proposed legislation, this case would not present them. Medellín himself sought a stay of execution on the ground that Congress might enact implementing legislation. We denied his stay application, explaining that "Congress has not progressed beyond the bare introduction of a bill in the four years since the ICJ ruling and the four months since our ruling in *[Medellín I]*." *Medellín* v. *Texas*, 554 U. S. 759, 760 (2008) *(per curiam) (Medellín II)*. It has now been seven years since the ICJ ruling and three years since our decision in *Medellín I*, making a stay based on the bare introduction of a bill in a single house of Congress even less justified. If a statute implementing *Avena* had genuinely been a priority for the political branches, it would have been enacted by now.

The United States and JUSTICE BREYER complain of the grave international consequences that will follow from Leal's execution. *Post*, at 4. Congress evidently did not find these consequences sufficiently grave to prompt its enactment of implementing legislation, and we will follow the law as written by Congress. We have no authority to stay an execution in light of an "appeal of the President," *post*, at 6, presenting free-ranging assertions of foreign policy consequences, when those assertions come unaccompanied by a persuasive legal claim.

Finally, we noted in *Medellín II* that "[t]he beginning premise for any stay . . . must be that petitioner's confession was obtained unlawfully," and that "[t]he United States has not wavered in its position that petitioner was not prejudiced by his lack of consular access." 554 U. S.,

at 760. Here, the United States studiously refuses to argue that Leal was prejudiced by the Vienna Convention violation, contending instead that the Court should issue a stay simply in light of the possibility that Leal might be able to bring a Vienna Convention claim in federal court, regardless of whether his conviction will be found to be invalid. We decline to follow the United States' suggestion of granting a stay to allow Leal to bring a claim based on hypothetical legislation when it cannot even bring itself to say that his attempt to overturn his conviction has any prospect of success. We may note that in a portion of its opinion vacated by the Fifth Circuit on procedural grounds, the District Court found that any violation of the Vienna Convention would have been harmless. *Leal* v. *Quarterman*, 2007 WL 4521519, *7 (WD Tex.), vacated in part *sub nom. Leal Garcia* v. *Quarterman*, 573 F. 3d 214, 224–225 (2009).

The applications for stay of execution presented to JUSTICE SCALIA and by him referred to the Court are denied. The petition for a writ of habeas corpus is denied.*

It is so ordered.

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*The United States' motion for leave to file an *amicus* brief is granted.