

Chief justice sends the president a message

by *The San Diego Union-Tribune*

There were many legal cross-currents involved in the U.S. Supreme Court's decision this week to side with Texas against the Bush administration and the International Court of Justice in a case involving a Mexican national on death row. Jose Medellin was not allowed to consult with diplomats from his home country after his arrest in a 1993 murder-rape investigation, in violation of the Vienna Convention - an international treaty dealing with the treatment of foreigners facing serious criminal allegations. The ICJ ruled that Medellin and 50 other Texas prisoners who faced similar circumstances should be given new hearings to determine if the state's failure to notify Mexico violated the prisoners' right to a fair trial.

But Texas courts noted that Medellin had already exhausted his appeal rights and held the international treaty did not have the force of law in their state because its provisions had never been formally enacted by Congress. This prompted President George W. Bush to issue an unprecedented 2005 memo ordering Texas to hold the hearings. The Texas courts held firm, leaving it up to the federal courts to resolve.

Chief Justice John Roberts Jr. confronted this complex case - with its conflicting theories about separation of powers, state vs. federal authority and the scope of international treaties - and fashioned a compelling decision that made two crucial points. The first is that international courts do not have binding power in American legal disputes unless such power is specifically enumerated in federal law. The second is that a president cannot order a state to do anything unless his authority to do so is specifically enumerated in federal law or the Constitution.

We believe the unusual circumstances - and the fact that Americans abroad deserve the protections that were denied the 51 Mexicans in Texas - should have led Texas officials to voluntarily decide to hold hearings. But their decision not to do so is hardly a mistake of such gravity that it should trump the fundamental notion that America is governed by laws, not presidential fiats.

Given all this White House has done to expand executive power, Roberts' decision - especially his observation that there are many actions a president cannot undertake without specific authorization from Congress - often reads like a larger commentary on the Bush administration's baroque legal theories. The chief justice's opinion could be a harbinger of how the high court would rule on the White House's breathtaking claim that the president can use "signing statements" to unilaterally redefine the scope of newly enacted legislation.

If it is a harbinger, that is great news. Many legal experts have asserted Roberts was chosen for the Supreme Court because of what they presumed was his expansive view of presidential powers. The Medellin case, however, shows he understands, appreciates and plans to protect the checks and balances that have served this nation so well for so long.

In other words, the chief justice has given admirers of the Constitution cause to celebrate.

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