

Terrorists in a foreign country kidnapped the United States ambassador to that country. They threatened to kill her unless the President of the United States secured the release of an identified person who was a citizen of the foreign country and was being held in a state prison in the United States pursuant to a valid conviction by that state.

The President responded by entering into an agreement with the foreign country which provided that the foreign country would secure the release of the United States ambassador on a specified date in return for action by the President that would secure the release of the identified person held in the state prison. The President then ordered the governor of the state to release the prisoner in question. The governor refused. No federal statutes are applicable.

Which of the following is the strongest constitutional argument for the authority of the President to take action in these circumstances requiring the state governor to release the prisoner?

- A. The duty of the President to faithfully execute the laws authorizes him to resolve any conflicts between state and federal interests, making the determination of such matters wholly nonjusticiable.
- B. The power of the President to appoint ambassadors authorizes him to take any action that he may think desirable to protect them from injury because those officials become agents of the President upon appointment.
- C. The power of the President to conduct the foreign affairs of the United States includes a plenary authority to take whatever action the President deems wise to protect the safety of our diplomatic agents.
- D. The power of the President to negotiate with foreign nations impliedly authorizes him to make executive agreements with them which prevail over state law.

## Explanation:

### Article II executive powers

#### Domestic powers

- Manage federal executive agencies & officers
- Execute federal laws
- Recommend legislation to Congress
- Sign or veto bills
- Appoint/remove federal officers
- Prosecute & grant pardons for federal crimes

#### Foreign powers

- Serve as commander in chief
- Negotiate/enter treaties (with 2/3 Senate approval) & executive agreements
- Recognize foreign governments
- Appoint/receive foreign diplomats

Article II gives the **President** a wide range of domestic and foreign powers. In **foreign affairs**, the President's **power is at its zenith** because it is imperative that the nation speak with one voice on the international stage. One such power is that the President can **negotiate and enter into** agreements with foreign nations. These agreements can take the form of either:

- **treaties** – formal agreements that take effect once the **Senate gives advice and consents** by a two-thirds vote *or*
- **executive agreements** – less formal agreements that take effect as soon as the **President enters into** them (ie, no Senate advice and consent required).

Here, the President entered into an executive agreement with the foreign country to secure the release of that country's citizen from state prison. And under the **supremacy clause**, **executive agreements**—which carry the force of federal law—**prevail over** conflicting **state laws**. Therefore, this is the strongest constitutional argument for the President's authority to require the governor to release the foreign country's citizen from state prison.

**(Choice A)** The President's duty to faithfully execute federal laws does *not* authorize him/her to resolve conflicts between state and federal interests. Instead, these conflicts are **justiciable** and must be resolved in court.

**(Choices B & C)** Article II grants the President the power to **appoint** ambassadors, who then become agents of the President. But this does not give the President plenary (ie, absolute) authority to take *any* action that he/she deems desirable or wise to protect them because the President must comply with the Constitution, treaties, and federal laws.

## Educational objective:

The President has extensive powers in foreign affairs, including the power to negotiate and enter into executive agreements with foreign countries. And under the supremacy clause, executive agreements prevail over conflicting state laws.

**References**

- Am. Ins. Assoc. v. Garamendi, 539 U.S. 396, 415–17 (2003) (explaining the creation of executive agreements and their supremacy over conflicting state laws).

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