



Judiciary Committee News

United States Senate
Senator Patrick Leahy, Chairman

*From the Committee Office of Chairman Patrick Leahy (D-Vt.),
Senate Judiciary Committee Hearing On:
“Fulfilling Our Treaty Obligations and Protecting Americans Abroad”
July 27, 2011*

Support for the Consular Notification Compliance Act

- Letter of Support from Attorney General Holder and Secretary Clinton
- Letter of Support from Former Diplomats and State Department Officials
- Letter of Support from Retired Military Leaders
- Letter of Support from Prosecutors and Judges
- Letter of Support from Civil and Human Rights Organizations
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FROM THE SENATE JUDICIARY COMMITTEE MAJORITY STAFF

UPHOLDING OUR INTERNATIONAL TREATY OBLIGATIONS: SUPPORT FOR THE CONSULAR NOTIFICATION COMPLIANCE ACT

On June 14, 2011, Senator Patrick Leahy introduced the Consular Notification Compliance Act, a bill to address a long-standing international concern regarding U.S. compliance with the Vienna Convention on Consular Relations, which provides citizens detained abroad with access to their consulates.

Administration Support For The Consular Notification Compliance Act

“We thank you for your extraordinary efforts to enact legislation that would facilitate U.S. compliance with its consular notification and access obligations and to express the Administration's strong support for S. 1194, the Consular Notification Compliance Act of 2011(CNCA)...The CNCA will help us ensure that the United States complies fully with our obligations to provide foreign nationals detained in the United States with the opportunity to have their consulate notified and to receive consular assistance...In sum, the CNCA is a carefully crafted, measured, and essential legislative solution...” – *Attorney General Eric H. Holder, Jr., and Secretary of State Hillary Rodham Clinton, June 28, 2011*

Support From Former Diplomats And State Department Officials

“As former U.S. diplomats and State Department officials, we write to urge your support for the Consular Notification Compliance Act, legislation that we believe is vitally important to meeting the United States’ foreign policy objectives and to protecting the interests of its citizens abroad. We urge you to act promptly to enact this legislation that would secure compliance with the United States’ binding treaty obligations by providing a review mechanism for the cases of foreign nationals who - without the benefit of timely consular notification and access - were convicted and received death sentences.” – *Joint Letter, June 14, 2011*

Support From Retired Military Leaders

“Legislation to ensure review and appropriate relief if needed when a foreign national faces or is sentenced to death, while relatively limited in scope, would improve foreign governments’ confidence in the United States’ ability to uphold its consular access obligations, making it more likely that such governments will grant this access to Americans in their custody. Improving U.S. enforcement of its consular notification and access legal obligations will help protect American citizens detained abroad, including U.S. military personnel and their families stationed overseas. We urge you to support those who are serving our country overseas by ensuring swift passage of the Consular Notification Compliance Act to meet our international responsibilities.” – *Joint Letter, June 14, 2011*

Support From Former Prosecutors And Judges

“We are writing to urge your support for quick passage of the Consular Notification Compliance Act, legislation that would allow foreign nationals who were denied consular access while in law enforcement custody and face the death penalty to receive appropriate review of that failure. As former prosecutors and judges, we are strong supporters of a robust and accurate criminal justice system. We are well aware that international consular notification and access, as required under the Vienna Convention on Consular Relations (Vienna Convention), is essential to such a system, and to ensuring non-discriminatory treatment for both non-citizens in U.S. custody and U.S. citizens in the custody of foreign governments. It is also critical to the efficient, effective, and fair operations of criminal justice systems throughout the United States.” – *Joint Letter, June 14, 2011*

Support From Civil and Human Rights Organizations

“The U.S.’s inaction on implementing the judgment of the [International Court of Justice] endangers our citizens, harms the U.S.’s standing in the international community and clashes with our fundamental civil rights and values as a nation. We trust that this Congress will take this issue under serious advisement, and we urge you to pass [the Consular Notification Compliance Act] promptly in order to implement our obligation as soon as possible. The longer we wait to comply with this important agreement, the more danger we pose for our citizens living and traveling abroad and for the integrity of our own justice system.” – *Joint Letter, June 14, 2011*

Support From Journalists And Media Commentators

“The United States has always been in the forefront of the fight for human rights. People look to us to be a watchdog for human rights violations around the globe. We ask the world to treat our citizens with respect when they are detained in other countries, including honoring their right to consular access. It is a two-way street. The United States must lead by example in honoring consular treaty obligations and in providing a remedy when that right is violated. If Congress does not act swiftly, other countries will be encouraged to violate the consular rights of U.S. citizens traveling abroad. I know firsthand that this is a risk we cannot take.” – *Euna Lee, “Will Congress preserve the Right That Saved Me?,” The Washington Post, June 27, 2011*

“Those who oppose the death penalty or think it's imposed too frequently don't disagree that terrible crimes deserve severe punishment. But this is not about absolving criminals. It's about our nation's core values and how the rest of the world sees us. In this instance, it's also about protecting the rights of Americans overseas. When it comes to capital punishment, can't we find it in ourselves as a nation to let our reason check our passions, even when those passions are entirely understandable?” – *E.J. Dionne Jr., “Costs of a Deadly Obsession,” The Washington Post, July 11, 2011*

Support From Organizations Supporting Americans Overseas

“Our organizations believe that Congress can effectively fulfill the United States’ international obligations by promptly adopting legislation ensuring access to judicial review and reconsideration of Vienna Convention violations in the most serious cases. Any burden on the federal courts would be minimal, and would be greatly outweighed by the benefits of protecting the reciprocal rights of American citizens abroad.” – *Joint Letter, June 13, 2011*

Support From The Constitution Project

“By allowing for meaningful review of violations of consular rights under the VCCR, [the Consular Notification Compliance Act] will encourage the fair treatment of foreign nationals in law enforcement custody, and help to encourage other countries to honor their consular notification obligations. This is critical in protecting the millions of U.S. citizen who travel, live, work, or serve our military abroad, because a key component to enforcing the VCCR abroad is the U.S.’s commitment to honoring its obligations under the agreement domestically.” – *Virginia Sloan, President, Constitution Project, June 14, 2011*

June 28, 2011

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

We thank you for your extraordinary efforts to enact legislation that would facilitate U.S. compliance with its consular notification and access obligations and to express the Administration's strong support for S. 1194, the Consular Notification Compliance Act of 2011 (CNCA).

The millions of U.S. citizens who live and travel overseas, including many of the men and women of our Armed Forces, are accorded critical protections by international treaties that ensure that detained foreign nationals have access to their country's consulate. Consular assistance is one of the most important services that the United States provides its citizens abroad. Through our consulates, the United States searches for citizens overseas who are missing, visits citizens in detention overseas to ensure they receive fair and humane treatment, works to secure the release of those unjustly detained, and provides countless other consular services. Such assistance has proven vital time and again, as recent experiences in Egypt, Libya, Syria and elsewhere have shown. For U.S. citizens arrested abroad, the assistance of their consulate is often essential for them to gain knowledge about the foreign country's legal system and how to access a lawyer, to report concerns about treatment in detention, to send messages to their family, or to obtain needed food or medicine. Prompt access to U.S. consular officers prevents U.S. citizen prisoners from being lost in a foreign legal system.

The United States is best positioned to demand that foreign governments respect consular rights with respect to U.S. citizens abroad when we comply with these same obligations for foreign nationals in the United States. By sending a strong message about how seriously the United States takes its own consular notification and access obligations, the CNCA will prove enormously helpful to the U.S. Government in ensuring that U.S. citizens detained overseas can receive critical consular assistance.

The CNCA will help us ensure that the United States complies fully with our obligations to provide foreign nationals detained in the United States with the opportunity to have their consulate notified and to receive consular assistance. By setting forth the minimal, practical steps that federal, state, and local authorities must take to comply with the Vienna Convention on Consular Relations (VCCR) and similar bilateral international agreements, the CNCA will ensure early consular notification and access for foreign national defendants, avoiding future

violations and potential claims of prejudice for those who are prosecuted and ultimately convicted. In this regard, the legislation is an invaluable complement to the extensive training efforts each of our Departments conducts in this area.

The CNCA appropriately balances the interests in preserving the efficiency of criminal proceedings, protecting the integrity of criminal convictions, and providing remedies for violation of consular notification rights. By allowing defendants facing capital charges to raise timely claims that authorities have failed to provide consular notification and access, and to ensure that notification and access is afforded at that time, the CNCA further minimizes the risk that a violation could later call into question the conviction or sentence. The CNCA provides a limited post-conviction remedy for defendants who were convicted and sentenced to death before the law becomes effective. To obtain relief, such defendants face a high bar: They must establish not only a violation of their consular notification rights but also that the violation resulted in actual prejudice. Going forward, the CNCA permits defendants who claim a violation of their VCCR rights an opportunity for meaningful access to their consulate but does not otherwise create any judicially enforceable rights.

After more than seven years and the efforts of two administrations, the CNCA will also finally satisfy U.S. obligations under the judgment of the International Court of Justice (ICJ) in *Case Concerning Avena and Other Mexican Nationals (Mex. v. U.S.)*, 2004 I.C.J. 12 (Mar. 31). As we expressed in April 2010 letters to the Senate Judiciary Committee, this Administration believes that legislation is an optimal way to give domestic legal effect to the *Avena* judgment and to comply with the U.S. Supreme Court's decision in *Medellin v. Texas*, 552 U.S. 491 (2008). The CNCA will remove a long-standing obstacle in our relationship with Mexico and other important allies, and send a strong message to the international community about the U.S. commitment to honoring our international legal obligations.

The CNCA unmistakably benefits U.S. foreign policy interests. Many of our important allies and regional institutions with which we work closely—including Mexico, the United Kingdom, the European Union, Brazil and numerous other Latin American countries, and the Council of Europe, among others—have repeatedly and forcefully called upon the United States to fulfill obligations arising from *Avena* and prior ICJ cases finding notification and access violations. We understand that the Governments of Mexico and the United Kingdom have already written to Congress to express their strong support for this legislation.

This legislation is particularly important to our bilateral relationship with Mexico. Our law enforcement partnership with Mexico has reached unprecedented levels of cooperation in recent years. Continued noncompliance with *Avena* has become a significant irritant that jeopardizes other bilateral initiatives. Mexico considers the resolution of the *Avena* problem a priority for our bilateral agenda. The CNCA will help ensure that the excellent U.S.-Mexico cooperation in extradition and other judicial proceedings, the fight against drug trafficking and organized crime, and in a host of other areas continues apace.

The Honorable Patrick J. Leahy
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In sum, the CNCA is a carefully crafted, measured, and essential legislative solution to these critical concerns. We thank you again for your work towards finding an appropriate legislative solution to this matter of fundamental importance to our ability to protect Americans overseas and preserve some of our most vital international relationships.

Sincerely,



Eric H. Holder, Jr.
Attorney General



Hillary Rodham Clinton
Secretary of State

June 14, 2011

The Honorable Patrick J. Leahy
Chairman
U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Charles E. Grassley
Ranking Member
U.S. Senate Committee on the Judiciary
152 Dirksen Senate Office Building
Washington, DC 20510

Re: The Consular Notification Compliance Act

Dear Chairman Leahy and Ranking Member Grassley:

As former U.S. diplomats and State Department officials, we write to urge your support for the Consular Notification Compliance Act, legislation that we believe is vitally important to meeting the United States' foreign policy objectives and to protecting the interests of its citizens abroad. We urge you to act promptly to enact this legislation that would secure compliance with the United States' binding treaty obligations by providing a review mechanism for the cases of foreign nationals who - without the benefit of timely consular notification and access - were convicted and received death sentences.

Each year, thousands of Americans are detained abroad. Prompt knowledge of and access to our fellow-citizens held in foreign jails ensures that U.S. consular officers can help them obtain legal assistance, monitor their treatment, and connect them to family and friends back home. This crucial lifeline of consular support can only function effectively if the detaining authorities comply with their obligations under Article 36 of the Vienna Convention on Consular Relations, which grants all foreigners in custody the right to consular notification, communication and access "without delay." Insisting on compliance with and protesting violations of Article 36 provisions has thus long been an integral element of the U.S. policy of providing protective consular services to detained Americans overseas.

For instance, when three Americans were detained after accidentally crossing an unmarked border into Iran in 2009, a State Department spokesperson insisted that "Iran has obligations under the Vienna Convention, and we demand consular access at the first opportunity."¹ The Secretary of State later called on the Iranian government "to live up to its obligations under the Vienna Convention by granting consular access and releasing these three young Americans without further delay."² Once consular access was finally granted, the State Department "welcome[d] the fact that Iran is meeting up to its obligations under the Vienna Convention".³

¹ U.S. Department of State, Daily Press Briefing (Aug. 10, 2009), at <http://www.state.gov/r/pa/prs/dpb/2009/aug/127210.htm>.

² U.S. Secretary of State, Missing and Detained Americans in Iran, Aug. 15, 2009, at <http://www.state.gov/secretary/rm/2009a/08/127948.htm>.

³ U.S. Department of State, Daily Press Briefing (Sept. 29, 2009), at <http://www.state.gov/r/pa/prs/dpb/2009/sept/129970.htm>.

Unfortunately, the United States has sometimes violated Article 36 requirements even as we call on foreign governments to comply with its terms. In 2004, the International Court of Justice (ICJ) determined that some fifty Mexican nationals were entitled to judicial hearings to determine if Article 36 breaches, which were proven to have occurred, affected the fairness of their capital murder convictions and/or sentences. The United States is required by the U.N. Charter to comply with decisions of the ICJ. President George W. Bush attempted to enforce this decision at the state court level, but the U.S. Supreme Court later ruled in *Medellín v. Texas* that only Congress could ensure compliance by adopting legislation providing for the compulsory review and reconsideration mandated by the ICJ. The Supreme Court also observed that the ICJ decision undeniably bound the United States under international law and that “plainly compelling” reasons existed for its domestic implementation. “In this case,” the *Medellín* Court noted, “the President seeks to vindicate United States interests in ensuring the reciprocal observance of the Vienna Convention, protecting relations with foreign governments, and demonstrating commitment to the role of international law.”

Clearly, the safety and well-being of Americans abroad is endangered by the United States maintaining the double standard of protesting denials of consular notification and access to its own citizens while simultaneously failing to comply with its obligation to remedy identical violations. We cannot realistically expect other nations to continue to comply with consular treaty commitments that we refuse to uphold. For that reason alone, it is essential that Congress act swiftly to provide the limited procedural remedy that both our Executive and Judicial Branches have so clearly indicated is in the national interest.

As the Supreme Court pointed out, however, the United States’ interest in implementing these international obligations goes beyond protecting the reciprocal rights and safety of its overseas citizens. Our national security, effective commercial and trade relations relating to our prosperity and almost every matter of national interest, large and small, is covered by reciprocal treaty obligations. We risk jeopardizing these interests if we practice an indifference to these obligations in this or other arenas. We believe that continued non-compliance will surely alienate this nation from its allies. We also believe that any further failure to provide the modest remedy of “review and reconsideration” required in these cases will undermine America’s credibility as a global champion of the rule of law, thereby seriously hindering our foreign policy objectives. It is worth noting the United States agreed to be bound by the ICJ’s decision both before and after the case was heard and has consistently advised multiple international and domestic courts that it is doing everything within its power to comply with this decision. Passing legislation to ensure our nation’s compliance needs to be accomplished in order to make good on this representation.

The ability of the United States to secure future international agreements vital to our commercial interests and national security depends largely on whether this nation is perceived as honoring its international obligations. It is vitally important for Congress to mandate judicial enforcement of America’s treaty obligations. Anything less jeopardizes our global reputation as a dependable treaty partner. We therefore urge you to support the rapid passage of the Consular Notification Compliance Act to accomplish this end, and thank you for your attention to this important matter.

Sincerely,

Harry Barnes, Jr.

U.S. Ambassador to Chile, 1985-1988; U.S. Ambassador to India, 1981-1985; Director General of the Foreign Service 1977-1981; U.S. Ambassador to Romania, 1974-1977

John B. Bellinger, III

Partner, Arnold & Porter LLP; Legal Advisor to the Department of State, 2005-2009; Legal Advisor to the National Security Council, 2001-2005

David E. Birenbaum

Of Counsel, Fried, Frank, Harris, Shriver & Jacobson LLP; Senior Scholar, Woodrow Wilson International Center for Scholars; U.S. Ambassador to the UN for UN Management and Reform, 1994-96

James R. Jones

U.S. Ambassador to Mexico, 1993-1997; Member of U.S. Congress (D-OK), 1973-1987

David Charles Miller, Jr.

Special Assistant to the President, National Security Council, 1989-1990; U.S. Ambassador to Zimbabwe, 1984-1986; U.S. Ambassador to Tanzania, 1981-1984

Thomas R. Pickering

Undersecretary of State for Political Affairs, 1997-2000; U.S. Ambassador and Representative to the United Nations, 1989-1992

William H. Taft, IV

Legal Advisor, U.S. Department of State, 2001-2005; U.S. Ambassador to NATO, 1989-1992

REAR ADMIRAL DON GUTER, USN (RET.)
REAR ADMIRAL JOHN D. HUTSON, USN (RET.)
BRIGADIER GENERAL JAMES P. CULLEN, USA (RET.)
BRIGADIER GENERAL DAVID R. IRVINE, USA (RET.)
BRIGADIER GENERAL MURRAY G. SAGSVEEN, USA (RET.)
COLONEL LAWRENCE B. WILKERSON, USA (RET.)]

June 14, 2011

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Washington, DC 20510

Re: The Consular Notification Compliance Act

Dear Chairman Leahy and Ranking Member Grassley:

We write to urge you to support prompt passage of the Consular Notification Compliance Act, legislation that would give domestic legal effect to U.S. obligations under the Vienna Convention on Consular Relations (Vienna Convention) to provide consular access to foreign nationals in U.S. law enforcement custody by providing for judicial review of certain claims that this obligation has not been satisfied. International consular notification and access obligations are essential to ensuring humane, non-discriminatory treatment for both non-citizens in U.S. custody and U.S. citizens in the custody of foreign governments. As retired military leaders, we understand that the preservation of consular access protections is especially important for U.S. military personnel, who when serving our country overseas are at greater risk of being arrested by a foreign government.

U.S. military personnel are at risk for being taken into foreign custody after accidental incursions into foreign territories, while on leave or furlough, or while stationed abroad pursuant to, or in absence of a Status of Forces Agreement (SOFA).¹ When American military personnel or their family members find themselves in foreign custody, consular access is indispensable in allowing the U.S. government to fulfill its duty to ensure fair and humane treatment for such individuals.

For example, in 2001 when a U.S. Navy surveillance plane made an emergency landing in Chinese territory after colliding with a Chinese jet, the State Department cited the Vienna Convention and other consular treaties in demanding immediate access to the plane's crew. Chinese authorities responded by granting consular visits to the crew members, who were detained in China for 11 days.² Moreover, military regulations implementing SOFA requirements anticipate that consular officers will assist the designated commanding officer in key areas such as protesting inhumane treatment and ensuring that the individual has access to an adequate defense.³

The strength of consular access protections for U.S. military personnel abroad is dependent on the United

¹ R. Chuck Mason, *Status of Forces Agreement (SOFA): What Is It, and How Has It Been Utilized?* Congressional Research Service, June 18, 2009.

² China declines U.S. search offer, April 3, 2001, <http://edition.cnn.com/2001/WORLD/asiapcf/east/04/02/china.aircollision.08/>.

³ See generally Army Regulation 27-50, Status of Forces Policies, Procedures, and Information (15 December 1989), available at www.army.mil/usapa/epubs/pdf/r27_50.pdf.

States' reciprocal commitment to fulfill its obligations at home.⁴ But given the Supreme Court's 2008 decision in *Medellin v. Texas*, the executive branch is unable, without further action by Congress, to enforce certain consular protections under the Vienna Convention with regards to U.S. state law enforcement personnel.⁵ In light of the *Medellin* decision, additional legislation is needed to ensure the integrity of the consular notification and access rights upon which U.S. service members rely.

Legislation to ensure review and appropriate relief if needed when a foreign national faces or is sentenced to death, while relatively limited in scope, would improve foreign governments' confidence in the United States' ability to uphold its consular access obligations, making it more likely that such governments will grant this access to Americans in their custody.

Improving U.S. enforcement of its consular notification and access legal obligations will help protect American citizens detained abroad, including U.S. military personnel and their families stationed overseas. We urge you to support those who are serving our country overseas by ensuring swift passage of the Consular Notification Compliance Act to meet our international responsibilities.

Sincerely,

Rear Admiral Don Guter, USN (Ret.)
Rear Admiral John D. Hutson, USN (Ret.)
Brigadier General James P. Cullen, USA (Ret.)
Brigadier General David R. Irvine, USA (Ret.)
Brigadier General Murray G. Sagsveen, USA (Ret.)
Colonel Lawrence B. Wilkerson, USA (Ret.)

⁴ See John Bellinger, *Lawlessness North of the Border*, *New York Times*, July 18, 2009.

⁵ President George W. Bush, Memorandum for the Attorney General (Feb. 28, 2005).

June 14, 2011

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The Honorable Charles E. Grassley
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Dear Chairman Leahy and Ranking Member Grassley:

We are writing to urge your support for quick passage of the Consular Notification Compliance Act, legislation that would allow foreign nationals who were denied consular access while in law enforcement custody and face the death penalty to receive appropriate review of that failure. As former prosecutors and judges, we are strong supporters of a robust and accurate criminal justice system. We are well aware that international consular notification and access, as required under the Vienna Convention on Consular Relations (Vienna Convention), is essential to such a system, and to ensuring non-discriminatory treatment for both non-citizens in U.S. custody and U.S. citizens in the custody of foreign governments. It is also critical to the efficient, effective, and fair operations of criminal justice systems throughout the United States.

It is appropriate to ensure that our country complies with the laws to which it has obligated itself, and to ensure that those laws apply to our own citizens as well. At all stages of the proceedings, foreign nationals—whether our own citizens in other countries or those from other countries in the United States—face unique disadvantages and challenges when confronted with prosecution and imprisonment under the legal system of another nation. Prompt consular access ensures that they have the means necessary to be advised of their rights and to prepare an adequate defense.

Ensuring prompt consular access to foreigners arrested in the United States also enhances the truth-seeking function that lies at the heart of American justice. Much in the same way as the right to counsel under the Sixth Amendment, consular notification is essential to enabling fair access for those who are unfamiliar with our legal system. As Chief Judge Juan Torruella of the United States Court of Appeals for the First Circuit observed, “Without [consular access], I think that we presume too much to think that an alien can present his defense with even a minimum of effectiveness. The result is injury not only to the individual alien, but also to the equity and efficacy of our criminal justice system.” *U.S. v. Li*, 206 F.3d 56, 78 (1st Cir. 2000) (Torruella, C.J., concurring in part and dissenting in part).

Consular assistance provides a unique and indispensable protection for foreign nationals who are unfamiliar with the U.S. criminal justice system. This is true with regard to our own citizens abroad as well. As many domestic courts have recognized, consulates can provide essential resources that are simply not available through other means, particularly in identifying and explaining the ways in which the U.S. criminal justice system differs from their native systems.

Early consular access can prevent misunderstandings and missteps by a foreign national that might otherwise prejudice their ability to obtain a fair trial. Consulates can assist defense counsel in locating crucial documents, witnesses, and exonerating evidence available only in their native country and can assist in translations that in too many cases have been demonstrated to be erroneous, thus jeopardizing the accuracy of the proceedings. This can mean the difference between conviction and acquittal, or between life and death.

We want to emphasize that demonstrating our nation's commitment to complying with Vienna Convention obligations is also critical to ensuring the safety of *Americans* traveling, living and working abroad. The United States expects countries to grant consular notification and access to Americans in law enforcement custody. In return we pledge to accord the same right to foreign nationals within our borders. In addition, particularly in states bordering Mexico and Canada, cooperation between law enforcement agencies is critical to ensuring the safety of citizens on all sides of the border. These accords are threatened when the United States erects procedural hurdles that prevent foreign nationals from obtaining meaningful judicial review when denied consular notification and access and may well mean that our own citizens' rights will be jeopardized in countries whose citizens' rights have not been respected by the United States.

The Consular Notification Compliance Act will allow U.S. federal courts to review claims of individuals facing death sentences, ensuring that violations of the Vienna Convention have not resulted, or will not result, in actual prejudice to the criminal conviction or sentence. While appropriately limited in scope to Vienna Convention claims, passage of this legislation will demonstrate to foreign governments the United States' good faith in upholding its consular access obligations, increasing the likelihood that foreign governments will grant access to Americans in their custody.

Providing meaningful enforcement of the Vienna Convention's consular notification and access requirements will increase the efficient, effective and fair operations of our criminal justice system and protect U.S. citizens abroad. For these reasons, we urge you to support the Consular Notification Compliance Act and to ensure its prompt progress and passage in Congress.

Respectfully,

Hon. Charles F. Baird, Former Judge, Texas Court of Criminal Appeals; Former Judge, 299th District Court of Travis County, Texas

Hon. William G. Bassler, Former Judge, United States District Court for the District of New Jersey (1991-2006); Former Judge, Superior Court of New Jersey (1988-1991)

A. Bates Butler III, United States Attorney, District of Arizona (1980-81); First Assistant United States Attorney, District of Arizona (1977-80)

Robert J. Del Tufo, Attorney General, State of New Jersey (1990-1993); United States Attorney, District of New Jersey (1977-1980); Former First Assistant State Attorney General and Director of New Jersey's Division of Criminal Justice

W. Thomas Dillard, United States Attorney, Northern District of Florida (1983-1986); United States Attorney, Eastern District of Tennessee (1981)

Hon. Bruce J. Einhorn, Former United States Immigration Judge (1990-2007); Special Prosecutor and Chief of Litigation, United States Department of Justice Office of Special Investigations (1979-1990)

Hon. Shirley M. Hufstедler, United States Secretary of Education (1979-1981); Former Judge, United States Court of Appeals for the Ninth Circuit (1968-1979); Former Associate Justice, California Court of Appeal (1966-1968); Former Judge, Los Angeles County Superior Court (1961-1966)

Hon. John J. Gibbons, Former Judge, United States Court of Appeals for the Third Circuit (1970-1990) (Chief Judge (1987-1990))

Hon. Nathaniel R. Jones, Former Judge, United States Court of Appeals for the Sixth Circuit, (1979-2002); Assistant United States Attorney, Northern District of Ohio (1962-1967)

Hon. Gerald Kogan, Former Chief Justice, Supreme Court of the State of Florida; Former Chief Prosecutor, Homicide and Capital Crimes Division, Dade County, Florida

Kenneth J. Mighell, United States Attorney, Northern District of Texas (1977-1981); Assistant United States Attorney, Northern District of Texas (1961-1977)

Hon. Stephen M. Orlofsky, Former Judge, United States District Court for the District of New Jersey (1995-2003); Magistrate Judge, United States District Court for the District of New Jersey (1976-1980)

Professor Mark Osler, Professor of Law, University of St. Thomas, Minnesota; Former Professor of Law, Baylor University, Texas; Former Assistant United States Attorney, Eastern District of Michigan

H. James Pickerstein, United States Attorney, District of Connecticut (1974); Chief Assistant United States Attorney, District of Connecticut (1974-1986)

Richard J. Pocker, United States Attorney, District of Nevada (1989-1990)

James H. Reynolds, United States Attorney, Northern District of Iowa (1976-1982)

Hon. William S. Sessions, Director of the FBI (1987-1993); Former Judge, United States District Court for the Western District of Texas (1974-1987) (Chief Judge (1980-1987)); United States Attorney, Western District of Texas (1971-1974)

John Van de Kamp, Attorney General of California (1983-1991); District Attorney of Los Angeles County (1975-1983)

Mark White, Governor of Texas (1983-1987); Attorney General, State of Texas (1979-1983); Secretary of State of Texas (1973-1977); Assistant Attorney General, State of Texas (1965-1969)

Hon. Michael Zimmerman, Former Justice, Supreme Court of Utah (1984-2000) (Chief Justice (1994-1998))

June 14, 2011

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The Honorable Charles E. Grassley
Ranking Member
U.S. Senate Committee on the Judiciary
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Dear Chairman Leahy and Ranking Member Grassley:

We, the undersigned, write to urge your strong support for the Consular Notification Compliance Act, S.1194, legislation introduced today by Chairman Leahy that would provide for review in capital cases involving foreign nationals who did not receive consular access while in U.S. law enforcement custody as required by the Vienna Convention on Consular Relations (VCCR). This legislation would ensure the reliable and accurate functioning of our domestic criminal justice system; give assurance and leadership to the international community regarding the commitment of the United States to the rule of law, thus protecting the interests and safety of our own citizens abroad; and bring the United States into compliance with its undisputed legal obligations pursuant to the International Court of Justice's (ICJ) decision in *Avena and Other Mexican Nationals*.

As you are well aware, millions of Americans rely on their right to consular assistance when traveling, serving in the military, working, and studying abroad. When needed, consular access helps guide Americans through foreign and, often times, complicated legal systems, safeguards our fundamental human and civil rights, and ensures overall protection for our citizens. For the U.S. to request compliance with the VCCR agreement from other countries, we must offer the same rights afforded to foreign nationals detained here in the United States.

Both at home and abroad, prompt access to consular assistance safeguards the fundamental human and legal rights of foreigners who are arrested and imprisoned. For that reason alone, it is essential that the United States lead by example and provide meaningful remedies for VCCR violations, especially in the most serious of cases. In addition, any further delay in compliance with *Avena* will leave the international community with the perception that the United States ignores its binding legal commitments. This is dangerous on many levels: it erodes our reputation as a reliable treaty partner; undermines the effectiveness of international mechanisms for the peaceful settlement of disputes; and, as mentioned above, could have a harmful impact on the millions of U.S. citizens who travel, live, or work abroad. As the State Department conceded more than a decade ago in an apology to Paraguay for the U.S.'s failure to comply with the VCCR in a case that resulted in the execution of a Paraguayan national, the United States "must see to it that foreign nationals in the United States receive the same treatment that we expect for our citizens overseas. We cannot have a double standard."

The U.S.'s inaction on implementing the judgment of the ICJ endangers our citizens, harms the U.S.'s standing in the international community and clashes with our fundamental civil rights and

values as a nation. We trust that this Congress will take this issue under serious advisement, and we urge you to pass S.1194 promptly in order to implement our obligation as soon as possible. The longer we wait to comply with this important agreement, the more danger we pose for our citizens living and traveling abroad and for the integrity of our own justice system. We thank you for your time and attention to this important matter, and we look forward to working with you in the near future.

Sincerely,

Amnesty International USA

Human Rights First

The Constitution Project

National Association of Criminal Defense Lawyers

Human Rights Defense Center

Justice Now

The Advocates for Human Rights

Safe Streets Arts Foundation

June 03, 2011

The Honorable Patrick J. Leahy
Chairman
U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Charles E. Grassley
Ranking Member
U.S. Senate Committee on the Judiciary
152 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Grassley:

As you may know, while on assignment for Current TV my colleague, Laura Ling, and I were arrested by North Korean soldiers for crossing the frozen Tumen river, which separates the Republic of China and North Korea. We were held, as prisoners, isolated from one another, for four and a half months. We were repeatedly interrogated, and eventually put on trial and sentenced to twelve years hard labor. It was only through the extraordinary efforts of the Department of State and former President Bill Clinton that we were pardoned and allowed to return home.

The sense of darkness in the first week in North Korean captivity was unbearable. My biggest fear was nobody knowing where I was or what had happened to me. By the middle of the second week, through the hard work of the Swedish Ambassador pointing out to North Korea its responsibilities under the Vienna Convention, I was able to sit down with him. The Swedish Ambassador represented the interests of the United States in North Korea. It was a very short meeting but the significance of the meeting is hard to describe in words. I can only mention the sense of security I had, knowing that someone other than North Korea was monitoring my case. I believe the prompt consular access protected me from any mistreatment by my captors. Later on I was allowed to meet with him three more times. The meetings were my only communication with the US government and to let them know my situation and for me to find out how my family was doing. I know the importance of having consular access, as demanded by the Vienna Convention on Consular Relations.

The United States has always been on the forefront on human rights issues. People look to the US as a watchdog for human rights violations around the globe. We should not allow the Vienna Convention violation in our backyard. We ask the world to treat our citizens with respect when they are detained in other countries and demand that they have consular access regardless if its our Ambassador or one that represents our interest. We also have to live by those standards.

It is hard to imagine the importance of meeting a friendly face in a place of isolation and darkness until you are in that situation. To know that someone is there monitoring your case and helping to keep you and your family informed of the situation is beyond words. Having consular access has nothing to do with the verdict or sentence of a trial but it is a little light of hope that you have a chance at a fair trial.

From this very personal experience and point of view, I am writing to urge your full support for legislation that would provide access to judicial review of consular notification violations.

I believe that swift action by Congress to rectify our nation's own consular treaty violations is absolutely essential to prevent the further erosion of this universal safeguard. I also firmly believe that the potential risks of inaction are simply too serious to ignore. For every endangered American hidden in a foreign prison—and for their fearful families back at home—there can be no more important priority than upholding the reciprocal right to consular protection.

Sincerely,

A handwritten signature in cursive script, appearing to read "Euna Lee", written in black ink.

Euna Lee

June 13, 2011

The Honorable Patrick J. Leahy
Chairman
U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Charles E. Grassley
Ranking Member
U.S. Senate Committee on the Judiciary
152 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Grassley:

More than three years ago, the U.S. Supreme Court unanimously found in *Medellín v. Texas* that there are “plainly compelling” reasons for Congressional implementation of the United States’ consular treaty commitments, by providing access to judicial review in certain cases of foreign nationals who were deprived by the arresting authorities of their right to seek consular assistance. The Court observed that the reasons for meeting these international obligations included “ensuring the reciprocal observance of the Vienna Convention, protecting relations with foreign governments, and demonstrating commitment to the role of international law.” Representing the rights and concerns of the millions of American citizens who live overseas, we wholeheartedly agree with the Supreme Court’s assessment that full compliance would “vindicate United States interests” and help to ensure that our citizens detained abroad continue to receive prompt access to consular protection. We are therefore writing to renew our support for rapid Congressional action to address this very significant issue.

In an *amicus curiae* brief submitted to the Supreme Court in the *Medellín* case, our organizations joined with other concerned Americans in pointing out that a failure by the United States “to give full effect to the rights and protections of the Vienna Convention on Consular Relations” would “weaken the international framework of reciprocal rights and obligations essential to U.S. consular assistance to its citizens, endangering the welfare of Americans abroad.” International events over the past three years have amply confirmed those concerns. Just days ago, for example, an Iranian foreign ministry spokesperson responded to the United States’ request for immediate consular access to two young American hikers on trial in Iran by asserting that Iranian nationals arrested by U.S. authorities “have neither consular access nor contact with their families.”¹ Whether accurate or not, this statement illustrates the urgent need to remove any doubts that the United States will lead by example and remedy prejudicial Vienna Convention violations in cases where very severe sentences were imposed.

Several years have passed without fulfillment of the U.S. commitment to provide review of its Vienna Convention breaches in the cases addressed by the *Avena* decision of the International Court of Justice. At the same time, the State Department continues to instruct U.S. consular officers that their “most important function is to protect and assist private U.S. citizens or nationals traveling or residing abroad” and that “few of our citizens need that assistance more than those who have been arrested in a foreign country or imprisoned in a foreign jail.”² In our view, sustaining the essential consular function of protecting overseas Americans is made more

¹ Agence France Presse, *Iran Refuses to Improve Access to Jailed US Hikers*, May 24, 2011.

² U.S. Department of State, 7 Foreign Affairs Manual §412, *Policy*.

uncertain with each day that passes without rectifying the United States' failure to fully practice at home what it rightly insists upon abroad.

Our organizations believe that Congress can effectively fulfill the United States' international obligations by promptly adopting legislation ensuring access to judicial review and reconsideration of Vienna Convention violations in the most serious cases. Any burden on the federal courts would be minimal, and would be greatly outweighed by the benefits of protecting the reciprocal rights of American citizens abroad.

We are confident that you share our concerns and are working diligently to address them. Please be assured of our continuing support for your efforts, and we look forward to the introduction and passage of this vitally important legislation at the earliest possible opportunity.

Sincerely yours,

John Flint, President
Association of Americans Resident Overseas (AARO)

Lucy Stensland Laederich, U.S. Liaison
FAWCO (Federation of American Women's Clubs Overseas, Inc.)

Marylouise Serrato, Executive Director
American Citizens Abroad (ACA)

Andy Sundberg, Secretary
Overseas American Academy

THE CONSTITUTION PROJECT



Safeguarding Liberty, Justice & the Rule of Law

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The Constitution Project President

*Affiliations listed for
identification purposes only*

June 14, 2011

The Honorable Patrick Leahy
Chair, U.S. Senate Committee on the Judiciary
127 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Charles Grassley
Ranking Member, U.S. Senate Committee on the Judiciary
135 Hart Senate Office Building
Washington, DC 20510

RE: Consular Notification Compliance Act, S.1194

Dear Chairman Leahy and Ranking Member Grassley:

As president of the Constitution Project, I write in support of the Consular Notification Compliance Act (S.1194). This legislation would provide foreign nationals currently on death row the opportunity to seek judicial review of violations of their right to consular notification and access under the Vienna Convention on Consular Relations (VCCR) that occurred while in law enforcement custody. Additionally, the legislation would provide for review and appropriate remedies in future cases in which violations of the right to consular access allegedly occurred, if the foreign national is facing capital charges in a U.S. court.

The Constitution Project is a nonprofit organization in Washington, D.C., that promotes and defends constitutional safeguards through constructive dialogue across ideological and partisan lines. Its Death Penalty Committee, a list of members of which is attached as Appendix A, is a bipartisan, blue-ribbon Committee that comprises supporters and opponents of the death penalty, Democrats and Republicans, conservatives and liberals. Committee members are united in their profound concern that, in recent years, and around the country, procedural safeguards and other assurances of fundamental fairness in the administration of capital punishment have been revealed to be deeply flawed. Among these flaws is the continued failure of the United States to abide by the decision of the International Court of Justice (ICJ) in *Avena and Other Mexican Nationals (Avena)* requiring the U.S. to honor the safeguards of consular notification and access, pursuant to the VCCR.

In 2005, the Death Penalty Committee published *Mandatory Justice: The Death Penalty Revisited*,¹ a consensus report that offered 32 recommendations to assure that all capital defendants are afforded basic constitutional and procedural protections, including competent

¹ Available at <http://www.constitutionproject.org/manage/file/30.pdf>.

June 14, 2011

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counsel, a fair trial, and full judicial review of the conviction and sentence. Among those recommendations is a call for the enforcement of the VCCR and its consular notification obligations. As *Mandatory Justice* makes clear, the policy considerations behind consular notification rights are similar to those behind the right to counsel guaranteed by the U.S. Constitution, in that both are designed to protect an individual's legal rights and prevent mistreatment. Moreover, consular officers can provide critical support, particularly in capital cases, by quickly securing counsel, locating witness who may be critical at the guilt and sentencing stages of the criminal trial, and providing expert and investigation resources.

Unfortunately, as *Mandatory Justice* notes, "the *Avena* case and cases brought by other countries suggest disturbingly that death rows across the United States house foreign nationals whose consular rights were violated but who may never have received assistance from their consular officers...² Arrested foreign nationals rarely, if ever, invoke their consular rights without notification. As Justice Stevens noted... 'It surely is reasonable to presume that most foreign nationals are unaware of the provisions of the Vienna Convention That is precisely why the Convention places the notice obligation on the governmental authorities.'"³

By allowing for meaningful review of violations of consular rights under the VCCR, S.1194 will encourage the fair treatment of foreign nationals in law enforcement custody, and help to encourage other countries to honor their consular notification obligations. This is critical in protecting the millions of U.S. citizen who travel, live, work, or serve our military abroad, because a key component to enforcing the VCCR abroad is the U.S.'s commitment to honoring its obligations under the agreement domestically.

I hope you find this information helpful in your deliberations, and I urge you to support the Consular Notification Compliance Act. Thank you for your consideration.

Sincerely,



Virginia Sloan
President

² See The International Justice Project, Current Cases and Past Cases, *available at* www.internationaljusticeproject.org.

³ *Torres v. Mullin*, 124 S. Ct. 919 (2003) (opinion of Stevens, J., respecting the denial of the petition for *certiorari*).

APPENDIX A

CONSTITUTION PROJECT DEATH PENALTY COMMITTEE

Co-Chairs

Gerald Kogan

Former Chief Justice, Supreme Court of the State of Florida; former Chief Prosecutor, Homicide and Capital Crimes Division, Dade County, Florida

Mark White

Chairman, Geovox Security, Inc.; Governor of Texas, 1983-1987; Attorney General of Texas, 1979-1983; Secretary of State of Texas, 1973-1977; Partner, Reynolds, White Allen & Cook, 1969-1973; Assistant Attorney General of Texas, 1965-1969

Beth A. Wilkinson

Prosecutor, Oklahoma City bombing case

Members

Harry Barnes, Jr.

Former United States Ambassador to Romania, India, and Chile

Bob Barr

Former Georgia Congressman (R-GA)

David I. Bruck

Clinical Professor of Law and Director, Virginia Capital Case Clearinghouse, Washington and Lee University School of Law

O.H. Eaton, Jr.

Judge, 18th Judicial Circuit of Florida, 1986-2010

James A. Fry

James A. Fry, P.C. 1982-present; Assistant District Attorney, Dallas County, Texas 1980-1982; Former Chairman, Texas State Bar Grievance Committee

John J. Gibbons

Director and Founder, John J. Gibbons Fellowship in Public Interest and Constitutional Law, Gibbons PC; Former Chief Judge of the United States Court of Appeals, Third Circuit

Charles A. Gruber

Chief of Police, South Barrington Police Department; Former President, International Association of Chiefs of Police; Former President, Illinois Association of Chiefs of Police

Dr. David P. Gushee

Distinguished University Professor of Christian Ethics and Director, Center for Theology and Public Life, Mercer University

Asa Hutchinson

Senior Partner, Asa Hutchinson Law Group; Undersecretary, Department of Homeland Security, 2003-2005; Administrator, Drug Enforcement Administration, 2001-2003; Member of Congress (R-AR), 1997-2001; United States Attorney, Western District of Arkansas, 1982-1985

Cardinal William H. Keeler

Archbishop of Baltimore

Peter D. Keisler

Partner, Sidley Austin LLP; Acting Attorney General, Assistant Attorney General for the Civil Division, Principal Deputy Associate Attorney General, and Acting Associate Attorney General of United States Department of Justice, 2002-2007

Paula M. Kurland

Victim Advocate; Founding Member, Bridges to Life (a victim-offender program in Texas); Mother of Murder Victim

APPENDIX A

Abner J. Mikva

Schwartz Lecturer and Senior Director, Mandel Legal Aid Clinic, University of Chicago Law School; Former Member of Congress (D-IL), White House Counsel, and Chief Judge, United States Court of Appeals for the DC Circuit

Sam D. Millsap, Jr.

Former District Attorney, Bexar County, San Antonio, Texas

Dr. LeRoy Riddick

Forensic Pathologist

Chase Riveland

Former Secretary, Department of Corrections, State of Washington

David A. Schwartz

President & CEO, DS Baseball LLC

William S. Sessions

Partner, Holland & Knight, LLP; former Director, Federal Bureau of Investigation; former Chief Judge, United States District Court for the Western District of Texas

G. Elaine Smith

Former President, American Baptist Churches, United States of America

B. Frank Stokes, Jr.

Special Agent, Federal Bureau of Investigation, Retired; Private Investigator

Jennifer Thompson-Cannino

Spokesperson, Center on Wrongful Convictions

Scott Turow

Partner, SNR Denton; Author

John W. Whitehead

President, The Rutherford Institute

Dr. Reginald Wilkinson

President & CEO, Ohio College Access Network

Rabbi Eric H. Yoffie

President, Union for Reform Judaism



British Embassy
Washington

Sir Nigel Sheinwald GCMG
Ambassador
3100 Massachusetts Ave, NW
Washington, DC 20008

Tel: +1(202) 588 6511 (Chief of Staff)
+1(202) 588 6512 (Diary Manager)
+1(202) 588 6513 (Enquiries)
Fax: +1(202) 588 7860

Email: nigel.sheinwald@fco.gov.uk
Web: <http://ukinusa.fco.gov.uk>

14 June 2011

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
US Senate
224 Dirksen Senate Office Building
Washington, DC 20510

By e-mail

Dear Mr Chairman

I understand that the Senate Judiciary Committee is considering legislation to bring the United States into compliance with its treaty obligations regarding consular notification. Doing so is of considerable importance to UK/US bilateral relations and the British Government strongly supports the passage of the relevant legislation.

Consular notification is vital to the protection of British and American nationals detained in one another's countries and around the world. Our nationals can find themselves at a disadvantage when detained overseas as a result of their distance from personal and legal assistance, unfamiliarity with local procedures, or simply language barriers.

But consular assistance is only available when local law enforcement authorities comply with our reciprocal treaty obligations to notify and provide access to consular authorities without delay. Unfortunately, British nationals have been detained by US authorities without our notification in the past. In some cases, this has raised a risk of actual prejudice to their trial or sentencing.

The British Government therefore welcomes the Consular Notification Compliance Bill because it would reinforce the obligation upon federal, state and local officials to notify consular authorities and provide a remedy in the event of actual prejudice caused by non-notification in a capital case. I am particularly pleased that the bill would give effect to bilateral consular conventions, including the requirement for mandatory notification contained in the US-UK convention.

The proposed legislation is of broader importance, because the UK-US relationship depends on the fundamental expectation that our obligations to one another will be met, particularly those founded on reciprocal treaty obligations.

I am copying this letter to Senator Charles Grassley, Senator John Kerry, Senator Richard Lugar, US Secretary of State Hillary Clinton and US Attorney General Eric Holder.

With best wishes

Yours sincerely

Nigel Sheinwald

Nigel Sheinwald

UPHOLDING OUR INTERNATIONAL TREATY OBLIGATIONS: SUPPORT FOR THE CONSULAR NOTIFICATION COMPLIANCE ACT

On June 14, 2011, Senator Patrick Leahy introduced the Consular Notification Compliance Act, a bill to address a long-standing international concern regarding U.S. compliance with the Vienna Convention on Consular Relations, which provides citizens detained abroad with access to their consulates. Editorial boards across the country have written about the problem of consular notification, and have urged Congress to act.

Failure To Comply With Treaty Puts Americans At Risk

"This is not about coddling criminals, nor is it a referendum on the death penalty. It is about a country's obligation to honor its treaty commitments. **The United States must comply with the Vienna Convention - and demonstrate good faith in addressing past mistakes - if U.S. citizens abroad are to be afforded the same rights and protections....**To avoid this problem in the future, federal and state governments should be diligent about abiding by the treaty's mandates. The State Department should continue its outreach to state and local governments to impress upon law enforcement officials the importance of the consular notification. Complying with the treaty is not only the right thing to do; it is the smart and self-interested thing to do." – "Honor This Treaty," *The Washington Post*, June 14, 2011

"[W]hether you agree with the death penalty or not, Leal's case cries out for justice. **Americans wouldn't want a fellow citizen accused of a crime in another country to be denied access to U.S. consular officials...**Texas officials should not execute Leal before Congress has had time to act. A new trial might be required, and after so many years, its outcome would be uncertain. But that's the fault of Texas, for having earlier ignored the law." – "Texas Should Obey the Law," *The Philadelphia Inquirer*, July 2, 2011

"Back in 2004, the International Court of Justice said [Humberto] Leal was entitled to a hearing to determine the extent of harm he suffered as a result of the lack of consular access. A U.S. Supreme Court ruling has said the U.S. must comply with the decision by the international court. Texas, citing state law, said no such hearing could take place. Congress now is poised to consider legislation, to be filed in coming weeks, that would establish a procedure for a federal court hearing on the extent of harm caused to Leal because he was not advised of his right to contact Mexican officials.... In a clemency petition filed this week, an impressive list of former U.S. diplomats, retired military leaders and others concerned about international matters urged a stay of execution to grant Congress time to deal with this case. **At stake, they said, are the consular rights of Americans who become entangled in legal problems while out of the country.**" – "Execution Case Important to International Relations," *Austin American-Statesman*, June 11, 2011

Congress Must Seek A Legislative Solution

"Last month, U.S. Sen. Patrick Leahy, D-Vt., introduced the Consular Notification Compliance Act...**[I]f Congress does pass the measure, it would finally help ensure U.S. compliance with the Vienna Convention.** That, in turn, would strengthen the legal protections of Americans citizens who are detained or charged with crimes in other countries." – "Leal Execution Puts U.S. At Risk," *San Antonio Express-News*, July 7, 2011

"Sen. Patrick J. Leahy (D-Vt.) introduced a bill late last month that would require judicial review of Leal's case and others like it. The proposal has the support of the Justice and State departments. The bill is narrow and would apply only to capital punishment cases in which denial of consular notification hurt a defendant's case....Both the court and Congress have an opportunity to do the right thing. **They ought to seize it and ensure that the U.S. meets its international obligation. Doing so will protect American citizens abroad.**" – "The Law, Even on Death Row," *Los Angeles Times*, July 2, 2011

“On Thursday, Humberto Leal Garcia Jr. is scheduled to be executed in Texas at 6 p.m. Mr. Leal, a Mexican citizen, has petitioned the Supreme Court for a stay of execution, while a bill is pending in Congress that would give him the right to a hearing about the violation of his rights under the Vienna Convention on Consular Relations. The justices should grant the stay to allow Congress to pass the law. It would ensure that states are in compliance with the treaty, which requires that foreign nationals be told of their right to have their embassy notified of their arrest... Congress is in the process of fixing the gap in the federal law. **It would be a miscarriage of justice if the Supreme Court allowed Mr. Leal’s execution before Congress could complete that remedy.**” – *“The World Is Watching,”* The New York Times, July 6, 2011

Congress Should Act

“The United States, as one of about 160 countries that signed the treaty, is obligated to notify foreign nationals who are arrested in the United States of their right to speak with their embassies. U.S. citizens have the same rights if they are arrested in a country that is also a signatory, which may be particularly important in countries that do not routinely allow defendants access to lawyers...It has been seven years since the judicial arm of the United Nations found that the United States violated the Vienna Convention by not notifying Mr. Leal and his compatriots of their rights to consular access. **It should not take another seven years before Congress acts to remedy the situation.**” – *“Congress Should Act Before Another Foreign National Is Denied Consular Access,”* The Washington Post, July 13, 2011

“A post-execution statement from five former U.S. diplomatic officials who urged postponement of the execution properly said [] ‘The United States was founded on a commitment to the rule of law, and we believe it still stands for that commitment. But (Thursday’s) execution of a foreign national of our international partner Mexico violates a binding legal obligation and threatens to undermine the strength of our credibility in the eyes of our international partners.’ **We join these ex-officials in urging Congress to move expediently toward consideration and approval of the Leahy measure.**” – *“Case About Protecting Americans,”* Austin American-Statesman, July 11, 2011

“Senator Patrick Leahy of Vermont on Tuesday introduced a bill that makes clear that federal law requires that states tell foreign nationals who have been arrested that they can contact their consulates for help. For those who were convicted and sentenced without being told, the bill would let them ask a federal court to review their case and decide whether the outcome would have been different if they had had diplomatic help...**For the protection of foreigners arrested here, and American citizens arrested abroad, Congress should pass Senator Leahy’s bill.**” – *“The Treaty and the Law,”* The New York Times, June 17, 2011