

THE CONSTITUTION PROJECT



Safeguarding Liberty, Justice & the Rule of Law

New Legislation Aims to Protect Americans Detained Abroad by Protecting Consular Rights of Foreign Nationals Held in U.S.

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WASHINGTON- Today, The Constitution Project (TCP) called on Congress to quickly enact the Consular Notification Compliance Act, which would ensure United States compliance with international obligations pursuant to Article 36 of the Vienna Convention on Consular Relations (VCCR). The legislation, introduced by Senator Patrick Leahy (D-VT), would encourage fair treatment of foreign nationals in U.S. custody and reciprocal treatment for U.S. citizens detained abroad each year, thus protecting the millions of U.S. citizens who travel, live, work, or serve our military abroad.

According to TCP Government Affairs Counsel Christopher Durocher, "States continue to execute foreign nationals despite serious concerns that they were denied consular access, putting the rights of these foreign citizens—as well as the rights of Americans detained abroad—at risk. Senator Leahy's bill provides the long-awaited congressional response to remedy these ongoing violations of international law."

Due to the seriousness of this issue and its broad implications for international relations and the safety of Americans abroad, the legislation has the support of many former diplomats, retired military leaders, former prosecutors and judges, organizations representing the interests of Americans abroad, and civil and human rights groups. According to William H. Taft, former U.S. Ambassador to NATO during the President George H.W. Bush administration and Chief Legal Advisor to the State Department during the President George W. Bush administration, "There is no question that our chronic failure to honor the consular rights of foreign nationals who have been arrested has an effect on U.S. citizens detained in other countries. Senator Leahy's legislation would give teeth to existing international treaties, promoting access to the same level of justice for all, whether U.S. citizens or individuals from other nations. Anything less than this standard is no justice at all."

In jurisdictions throughout the country, state law enforcement personnel have too frequently violated Article 36, whether purposefully or due to lack of training on the Vienna Convention's requirements. In 2008, the Supreme Court unanimously affirmed the existence of the U.S. obligation to provide consular notification and access, including providing review and reconsideration in the cases of certain Mexican nationals with death sentences in the U.S., but held that the federal judiciary could not remedy these violations without implementing legislation from Congress. To remedy this, the Act introduced today gives federal judges the jurisdiction to review cases where foreign nationals on death row seek to demonstrate that violations of their consular rights prevented them from receiving fair trials or sentences, and to order appropriate remedies including new trials or sentencing proceedings if prejudice is demonstrated.

This legislation could affect proceedings for foreign nationals currently on death row in the United States, such as Humberto Leal Garcia, a Mexican national who is scheduled for execution by the State

of Texas on July 7, 2011. Mr. Leal was never told that he had a right to contact the Mexican consulate for legal assistance, and may have suffered significant prejudice in the outcome of his trial and sentencing as a result. If the legislation introduced today is passed, it will give Mr. Leal the opportunity to petition a federal court to determine whether the VCCR violation resulted in prejudice in his case. Unfortunately, it is unlikely that the Act will become law before Mr. Leal's July 7th execution date. As a result, former diplomats, prosecutors, judges, military leaders, as well as civil and human rights organizations have called on Texas Governor Rick Perry to grant Mr. Leal a reprieve pending a vote on the proposed bill.

TCP fully supports the passage of this bill. In 2005, TCP's Death Penalty Committee—a bipartisan, blue-ribbon Committee that comprises supporters and opponents of the death penalty,—published [*Mandatory Justice: The Death Penalty Revisited*](#), in which the Committee concluded that “the policies underlying the [Vienna Convention] are similar to those underlying the right to counsel guaranteed by the United States Constitution.” Thus the Committee concluded that detainees would be denied fair treatment in the course of the investigation, trial and sentencing, if their consular rights are not honored.

Established in 1997, The Constitution Project (TCP) is known for its ability to bring together unlikely allies—experts and practitioners from across the political spectrum—in order to promote and safeguard America's founding charter. TCP is working to reform the nation's broken criminal justice system and to strengthen the rule of law by undertaking scholarship, consensus policy reforms, advocacy and public education. TCP was born out of the belief that we must cast aside the labels that divide us, in order to keep our Constitution and our democracy strong.