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05-CR-A

March 3, 2005

Mr. Peter G. McCabe  
Secretary, Committee on Rules of Practice and  
Procedure of the Judicial Conference of the United States  
1 Columbus Circle Northeast  
Washington, D.C. 20544

Dear Mr. McCabe:

The attached memo suggests amendments to rules 4 and 5 of the Federal Rules of Criminal Procedure. The suggested amendments are required to ensure U.S. compliance with international treaty obligations.

Article 36 of the Vienna Convention provides consular access rights to foreign nationals arrested or detained abroad. These rights were affirmed by *LaGrand* and *Avena*, two recent International Court of Justice cases. The United States is bound by the Supremacy Clause to comply with the Vienna Convention and to comply with these International Court of Justice decisions to which it is a party. Therefore, the United States is obligated by Constitutional requirements and treaty obligations to provide arrested or detained foreign nationals with the requisite consular access rights. Despite the federal government's significant efforts to ensure compliance with this obligation, foreign nationals arrested or detained in the United States are often denied consular access rights.

A recent Supreme Court writ highlights the pressing necessity for this amendment. In December 2004, the Supreme Court granted a writ of certiorari in *Medellin v. Dretke*. In that case, the federal appellate court had denied the appeal of a Mexican national who was sentenced to death in the United States after being denied consular access rights. In *Medellin* the Supreme Court must determine how to implement *Avena*'s holding that failure to provide consular notice mandates judicial review and reconsideration of any conviction and sentence imposed without such notice.

The United States has acknowledged its obligation to comply with Article 36 consular access requirements. These suggested amendments to the Federal Rules of Criminal Procedure are not merely advisable, but mandated by Article 36(2) of the Vienna Convention which requires State-parties to the Convention to see that domestic laws and regulations give "full effect" to the notice requirement.

I hope that this urgent amendment can be placed on the Committee agenda for its next meeting April 4-5. I would be pleased to answer any questions the Committee might have, and plan to attend the meeting to provide whatever assistance I can.

Thank you very much.

Sincerely,

Linda A. Malone  
Marshall-Wythe Foundation Professor of Law and  
Director of the Human Rights and National Security  
Law Program

Attachment



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**TO:** Peter G. McCabe, Secretary, Committee on Rules of Practice and Procedure of the  
Judicial Conference of the United States  
**FROM:** Linda Malone, Marshall-Wythe Foundation Professor of Law, College of William &  
Mary, Marshall-Wythe School of Law  
**RE:** Suggested amendment to Federal Rules of Criminal Procedure

**MEMORANDUM IN SUPPORT OF AN AMENDMENT TO RULES 4 AND 5 OF THE  
FEDERAL RULES OF CRIMINAL PROCEDURE, BASED ON ARTICLE 36 OF THE  
VIENNA CONVENTION ON CONSULAR RELATIONS**

**Introduction**

In 1969, the United States ratified The Vienna Convention on Consular Relations, a multilateral treaty that codified existing international law on consular relations.<sup>1</sup> Article 36 of the Vienna Convention (“Article 36”) provides that foreign nationals arrested or detained abroad have the right to be advised of their rights of consular notification and access “without delay,” and that state-parties to the Convention must ensure that domestic laws give “full effect” to the consular notice requirement.<sup>2</sup> Two recent International Court of Justice (ICJ) decisions have reaffirmed these rights.<sup>3</sup> The Supremacy Clause of the U.S. Constitution obligates the U.S. to comply with both Article 36

<sup>1</sup> Roberto Iraola, *Federal Criminal Prosecutions and the Right to Consular Notification Under Article 36 of the Vienna Convention*, 105 W. Va. L. Rev. 179, 180 (2002).

<sup>2</sup> Vienna Convention on Consular Relations, Apr. 24, 1963, art. 36, 21 U.S.T. 77, 596 U.N.T.S. 262.

<sup>3</sup> *Case Concerning Avena and Other Mexican Nationals (Mexico v. United States of America)*, ICJ Gen. List No. 128, Judgment of 31 March 2004; *LaGrand Case (Germany v. United States of America)*, ICJ Gen. List No. 104, Judgment of 27 June 2001.

requirements,<sup>4</sup> and the UN Charter and the ICJ Statute obligate the U.S. to comply with ICJ decisions to which it is a party.<sup>5</sup>

Recognizing both the importance of consular notification rights and its treaty obligations to fulfill Article 36 requirements, the U.S. has taken some steps to ensure compliance<sup>6</sup> and declared that it will seek and support any available measures necessary to ensure consular notification by law enforcement authorities. The Federal Rules of Criminal Procedure must be amended to require notice of consular access at the necessary stages. The rules must reflect the federal government's obligation to comply with the Article 36 requirements in order to comply with ICJ decisions binding on the United States.

#### **Article 36 Guarantees Consular Access for Foreign Nationals Arrested Within the U.S.**

Article 36 provides three separate, but interrelated, rights to nationals arrested in a foreign country: (1) a detainee's right to contact the consul of the detainee's state, (2) a consul's right to contact the detainee, and (3) a detainee's right to be informed without delay by the detaining authorities of the right to contact a consul for assistance.<sup>7</sup> These provisions seek to protect foreign nationals who may be prejudiced by language barriers, lack of understanding of a foreign legal system, and lack of support. The consulate can assist a defendant by providing language translation, providing advice on the American legal process, finding appropriate legal counsel, and gathering mitigating evidence from the home country.<sup>8</sup> Without such assistance, a detained foreign national is likely to fail to take advantage of the rights afforded under U.S. law and to receive far more severe punishment than would otherwise be imposed.

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<sup>4</sup> U.S. Const. art. VI, § 1, Cl. 2. "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

<sup>5</sup> United Nations Charter Article 94, Cl. 1: "Each Member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party." *Statute of the International Court of Justice*, Article 60.

<sup>6</sup> Anthony N. Bishop, *The Unenforceable Rights to Consular Notification and Access in the United States: What's Changed Since the LaGrand Case?* 25 Hous. J. Int'l L. 1 (2002); Iraola, at 188.

<sup>7</sup> Iraola, at 184.

<sup>8</sup> Bishop, at 6.

The consular notice requirement serves fundamental interests of the United States as well. Consular notice provides U.S. law enforcement authorities with better access to information on foreign detainees critical to effective law enforcement, immigration regulation, and national security concerns. In addition, full compliance with consular notice obligations increases the likelihood that U.S. citizens abroad will themselves be provided with consular protections as a matter of political comity and reciprocity. Finally, any convictions and sentences for foreign detainees obtained without such notice are vulnerable through appeals and habeas petitions. Indeed, the Supreme Court this term is deciding whether such sentences and convictions must be invalidated if consular notice has not been provided. Failure to satisfy this extremely simple notice requirement, therefore, has extensive, serious consequences for U.S. citizens and foreign nationals.<sup>9</sup>

### **Recent ICJ Decisions Affirm that Article 36 Creates Individual Rights to Consular Access and Notification**

Law enforcement authorities in the U.S. have often failed to comply with consular notification and access requirements. Countries such as Paraguay, Germany and Mexico, whose citizens have been denied Article 36 rights in the United States, have become increasingly outraged by the problem and taken their cases to the ICJ.<sup>10</sup> The ICJ has addressed this problem in two recent decisions and, in doing so, has reaffirmed the U.S.'s obligation to provide consular access and notification to foreign citizens arrested within its borders, or have to provide judicial review and reconsideration of judgments and sentences imposed without such notice.

#### **Germany v. United States of America: the *LaGrand* Case**

In 1984, two German nationals, Karl and Walter LaGrand, were sentenced to death for a murder committed during a bank robbery; upon arrest and detention, they had received no notice of

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<sup>9</sup> Linda A. Malone, *From Breard to Atkins to Malvo: Legal Incompetency and Human Rights Norms on the Fringes of the Death Penalty*, \_\_\_ William and Mary Bill of Rights Journal \_\_\_ (2004).

<sup>10</sup> *Vienna Convention on Consular Relations (Paraguay v. United States of America)*; *Case Concerning Avena and Other Mexican Nationals (Mexico v. United States of America)*, ICJ Gen. List No. 128, Judgment of 31 March 2004; *LaGrand Case (Germany v. United States of America)*, ICJ Gen. List No. 104, Judgment of 27 June 2001; all available at <http://www.icj-cij.org/icjwww/idecisions.htm>.

their right to seek consular assistance. In fact, not until ten years later did they learn of this right, when fellow prisoners informed them. At that point, it was too late to challenge the failure of consular notification on appeal. When German authorities learned of this violation, they attempted to halt the executions through both diplomatic and legal channels; however, procedural default rules barred the LaGrands from raising the consular notification issue.

On March 2, 1999, Germany filed ICJ proceedings challenging the failure of the United States to inform the LaGrands of their consular rights. At this point, Arizona had already executed Karl LaGrand, and Walter LaGrand was scheduled to be executed the next day. The ICJ issued a Provisional Measures Order requiring that:

(a) The United States of America should take all measures at its disposal to ensure that Walter LaGrand is not executed pending the final decision in these proceedings, and should inform the Court of all the measures which it has taken in implementation of this Order;

(b) The Government of the United States of America should transmit this Order to the Governor of the State of Arizona.<sup>11</sup>

Despite this order, Walter LaGrand's execution proceeded as scheduled. Germany, however, pressed its case before the ICJ to conclusion. In its June 27, 2001 judgment, the ICJ held that Article 36(1) creates individual rights to consular access and notification;<sup>12</sup> that the procedural default rule had the effect of preventing "full effect [from being] given to the purposes for which the rights accorded under this article are intended," thus violating paragraph 2 of Article 36 as well;<sup>13</sup> and that, in the case of future convictions and sentences without consular notification, "it would be incumbent upon the United States to allow the review and reconsideration of the conviction and sentence by taking account of the violation of the rights set forth in the Convention." According to the ICJ, this obligation could be carried out in various ways, with the choice of means to be left to the United States

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<sup>11</sup> LaGrand Case, 2001 I.C.J. Gen. List No. 104, Provisional Measures Order para. 29.

<sup>12</sup> LaGrand Case, 2001 I.C.J. Gen. List No. 104, Judgment of 27 June 2001, para. 77.

<sup>13</sup> *Id.*, para. 91.

so long as there was review and reconsideration of the failure to comply with Vienna Convention obligations.”<sup>14</sup>

### **Mexico v. United States of America: the *Avena* Case**

In 2003, Mexico brought a case, on behalf of itself and 52 Mexican citizens on death row in the U.S., against the U.S. for breaching Article 36 of the Vienna Convention.<sup>15</sup> As to the requirement notice be provided “without delay,” the ICJ found that “the duty upon the detaining authorities to give the Article 36, paragraph 1 (b), information to the individual arises once it is realized that the person is a foreign national, or once there are grounds to think that the person is probably a foreign national.”<sup>16</sup> Furthermore, the ICJ elaborated on its *LaGrand* judgment, and held that the required “review and reconsideration” of cases involving breaches of Article 36 must occur within the judicial system, and was not satisfied by the possibility of executive clemency hearings:

the clemency process, as currently practised within the United States criminal justice system ... is therefore not sufficient in itself to serve as an appropriate means of “review and reconsideration” as envisaged by the Court in the *LaGrand* case.<sup>17</sup>

At least one state has already applied the ICJ’s *Avena* decision to one of its death row prisoners in reconsidering and preventing execution of a foreign national.<sup>18</sup> Osbaldo Netzahualcóyotl Torres Aguilera, one of the 52 named Mexicans in the *Avena* proceeding, was sentenced to death in Oklahoma for two murders committed during a burglary. Following the issuance of the ICJ’s *Avena* judgment, however, the governor of Oklahoma commuted Torres’ sentence to life imprisonment without the possibility of parole, in part due to the ICJ’s decision. The same day, the Oklahoma Court of Criminal Appeals issued an order staying Torres’ execution and remanding his case for an evidentiary hearing to determine whether Torres had been prejudiced by the Vienna Convention

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<sup>14</sup> *Id.*, para. 125.

<sup>15</sup> *Case Concerning Avena and Other Mexican Nationals (Mexico v. United States of America)*, 2004 I.C.J. Gen. List No. 128, Application Instituting Proceedings, 9 January 2003.

<sup>16</sup> *Case Concerning Avena and Other Mexican Nationals (Mexico v. United States of America)*, 2004 I.C.J. Gen. List No. 128, Judgment of 31 March 2004, para. 63.

<sup>17</sup> *Id.*, para 143.

<sup>18</sup> 98 Am. J. Int’l L. 581 (2004).

violation or by ineffective assistance of counsel. In a concurring opinion, Judge Charles S. Chapel noted that,

the Vienna Convention ... is binding on all jurisdictions within the United States, individual states, districts and territories.... In order to give full effect to *Avena*, we are bound by its holding to review Torres's conviction and sentence in light of the Vienna Convention violation, without recourse to procedural bar.<sup>19</sup>

**The United States Has an Affirmative Duty to Fulfill Article 36 Requirements and To Comply with *LaGrand* and *Avena***

As noted by the ICJ in both the *LaGrand* and *Avena* cases, compliance with Article 36 requirements is obligatory as a matter of treaty law. According to the Supremacy Clause of the U.S. Constitution, U.S. treaties "shall be the supreme law of the land; and the judges in every state shall be bound thereby...."<sup>20</sup> U.S. treaties are superior to state laws, prevail over earlier inconsistent federal legislation, and must be given the same consideration by courts as federal statutes.<sup>21</sup> The Vienna Convention is equivalent to an act of Congress,<sup>22</sup> and by ratifying it in 1969, the United States bound itself as a matter of constitutional law and international law to comply with all Article 36 requirements.

The U.S. is also bound to comply with ICJ decisions in cases to which it is a party as a matter of constitutional law and international law. The ICJ was established by the UN Charter and has jurisdiction to resolve legal disputes between nations.<sup>23</sup> According to Article 94 of the U.N. Charter, the U.S., as a member of the U.N., is bound to "comply with the decisions of the International Court of Justice to which it is a party."<sup>24</sup> Article 94 further states that recourse to the U.N. Security Council is available against a state that fails to comply with an ICJ ruling.<sup>25</sup> Judicial failure to comply with the requirements of the Vienna Convention as interpreted by the ICJ, would, therefore, be violative of the

<sup>19</sup> Quoted in 98 Am. J. Int'l L., at 583.

<sup>20</sup> U.S. Const. art. VI, § 1, Cl. 2.

<sup>21</sup> *Iraola*, at 189-190.

<sup>22</sup> *Id.*

<sup>23</sup> United Nations Charter, Article 92.

<sup>24</sup> United Nations Charter, Article 94. See also Statute of the International Court of Justice, arts. 36 & 59.

<sup>25</sup> United Nations Charter, Article 94.

international treaty obligations of the U.S. under both the Vienna Convention and the U.N. Charter, in contravention of the Supremacy Clause.

### A Pending Supreme Court Case Underscores the Importance of Fulfilling Article 36 Obligations

#### Under Avena

In December 2004, the Supreme Court granted a writ of certiorari in *Medellin v. Dretke*, a case considering both the effect of denial of consular access rights and the precedential effect of *Avena*.<sup>26</sup> Mr. Medellin, a Mexican national, was arrested in 1993 in connection with two murders in Houston, Texas.<sup>27</sup> He was not provided consular access rights at the time of his arrest and was later convicted of murder and sentenced to death.<sup>28</sup>

After *Avena* (the aforementioned ICJ case which held that the U.S. violated its Article 36 obligations with respect to Medellin and other Mexican nationals and that U.S. courts were obligated to review and reconsider decisions tainted by such denial),<sup>29</sup> Mr. Medellin applied to the U.S. Court of Appeals for the Fifth Circuit requesting a certificate of appealability of the denial of his habeas corpus petition.<sup>30</sup> The court denied this request and held that U.S. precedent barred it from complying with *Avena*.<sup>31</sup> The Supreme Court granted certiorari to address the following questions:

- (1) In a case brought by a Mexican national whose rights were adjudicated in the *Avena* Judgment, must a court in the United States apply as the rule of decision, notwithstanding any inconsistent United States precedent, the *Avena* holding that the United States courts must review and reconsider the national's conviction and sentence, without resort to procedural default doctrines?
- (2) In a case brought by a foreign national of a State party to the Vienna Convention, should a court in the United States give effect to the *LaGrand* and *Avena* judgments as a matter of international judicial comity and in the interest of uniform treaty interpretation?<sup>32</sup>

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<sup>26</sup> See *Medellin v. Dretke*, 371 F.3d 270 (5<sup>th</sup> Cir. 2004) cert. granted (U.S. Dec. 10, 2004) (No. 04-5928).

<sup>27</sup> See *Medellin v. Dretke*, 371 F.3d 270 (5<sup>th</sup> Cir. 2004), petition for cert. filed, 2004 WL 2851246 (U.S. Aug. 18, 2004) (No. 04-5928)

<sup>28</sup> See *id.*

<sup>29</sup> See *supra* notes 15-17 and accompanying text.

<sup>30</sup> See *Medellin v. Dretke*, 371 F.3d 270 (5<sup>th</sup> Cir. 2004), petition for cert. filed, 2004 WL 2851246 (U.S. Aug. 18, 2004) (No. 04-5928).

<sup>31</sup> See *id.*

<sup>32</sup> *Medellin v. Dretke*, 371 F.3d 270 (5<sup>th</sup> Cir. 2004) cert. granted (U.S. Dec. 10, 2004) (No. 04-5928).



The Court's decision to grant certiorari speaks to the critical importance of consular notification, and the need for the United States to make every effort to ensure that law enforcement authorities are made aware of the consular notice requirement to avoid jeopardizing convictions and sentencing of foreign nationals.

**Despite Significant Federal Government Efforts to Ensure Compliance, Foreign Nationals are Often Denied Consular Access Rights in the United States**

Based on its recent statements and efforts to ensure compliance with Article 36 requirements, it is obvious that the federal government recognizes its consular notification obligations. According to the State Department, "Article 36 obligations are of the highest order and should not be dealt with lightly."<sup>33</sup> Indeed, in a publication for federal, state and local law enforcement officials, the State Department states clearly that Article 36 obligations "also pertain to American citizens abroad," and adds, "[i]n general, you should treat a foreign national as you would want an American citizen to be treated in a similar situation in a foreign country."<sup>34</sup> In addition to this publication, the State Department has issued bulletins, a handbook, and periodic notices to local governments covering the Vienna Convention requirements.<sup>35</sup>

The Justice Department has regulations<sup>36</sup> that require an officer who arrests a foreign national to advise the arrestee of his consular rights, and to inform the nearest U.S. Attorney of the arrestee's wishes regarding consular notification. The U.S. Attorney then is obligated to notify the appropriate national consul. These regulations help to ensure compliance with Article 36 notification requirements at the federal level.

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<sup>33</sup> Iraola, at 184.

<sup>34</sup> U.S. Department of State, Pub. No. 10518, Consular Notification and Access: Instructions for Federal, State and Local Law Enforcement and Other Officials Regarding Foreign Nationals in the United States and the Rights of Consular Officials to Assist Them (1998), available at <http://travel.state.gov/law/notification1.html>.

<sup>35</sup> Iraola, at 188.

<sup>36</sup> 28 C.F.R. 50.5

Despite the federal government's best efforts to promote compliance, U.S. officials often fail to provide foreign arrestees' their consular access and notification rights; therefore, the U.S. must take this additional step to give full effect to Article 36 rights.

**The Federal Rules of Criminal Procedure Must Be Amended to Give Full Effect to the Rights Accorded Under Article 36**

The Federal Rules of Criminal Procedure must be amended to comply fully with Article 36 consular notification requirements. Failure to do so would itself be a violation of the requirement in Article 36(2) that the State must ensure that domestic laws provide "full effect" to the consular notice requirement. The following suggested amendments to Rules 4 and 5 will help to ensure that foreign nationals arrested in the U.S. will be notified of their right to access to their nation's consul. The suggested amendments read as follows:

**Rule 4. Arrest Warrant or Summons on a Complaint**

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**(c) Execution or Service, and Return.**

**(1) By Whom.** Only a marshal or other authorized officer may execute a warrant. Any person authorized to serve a summons in a federal civil action may serve a summons.

**(2) Location.** A warrant may be executed, or a summons served, within the jurisdiction of the United States or anywhere else a federal statute authorizes an arrest.

**(3) Manner.**

**(A)** A warrant is executed by arresting the defendant. Upon arrest, an officer possessing the warrant must show it to the defendant. If the officer does not possess the warrant, the officer must inform the defendant of the warrant's existence and of the offense charged and, at the defendant's request, must show the warrant to the defendant as soon as possible. If the defendant is a foreign citizen, the officer must inform the defendant of his right to contact the consulate of his country.

**Rule 5. Initial Appearance**

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**(d) Procedure in a Felony Case.**

**(1) Advice.** If the defendant is charged with a felony, the judge must inform the defendant of the following:

**(A)** the complaint against the defendant, and any affidavit filed with it;

**(B)** the defendant's right to retain counsel or to request that counsel be appointed if the defendant cannot obtain counsel;

**(C)** the circumstances, if any, under which the defendant may secure pretrial release;

**(D)** any right to a preliminary hearing, and

**(E)** the defendant's right not to make a statement, and that any statement made may be used against the defendant; and

(F) if the defendant is a foreign citizen, the defendant's right to contact the consulate of his country.

The Federal Rules of Criminal Procedure “govern the procedure in all criminal proceedings in the United States district courts, the United States courts of appeals, and the Supreme Court of the United States.”<sup>37</sup> Moreover, the rules “are to be interpreted to provide for the just determination of every criminal proceeding, to secure simplicity in procedure and fairness in administration, and to eliminate unjustifiable expense and delay.”<sup>38</sup>

The proposed amendments to Rules 4 and 5 will demonstrate our nation's intent to comply fully with the letter and spirit of the Vienna Convention, as required by that agreement. These amendments will also serve as additional notice to the entire U.S. criminal justice system of the rights conferred on foreign detainees by Article 36. As a result, these amendments will help to guarantee that the right to consular notification and assistance will be honored for all foreign nationals arrested in the United States. Moreover, adding and enforcing this requirement to the Rules will help to reduce the unnecessary expense and delay involved in responding to the appeals of foreigners who challenge their convictions based on a violation of this right. The minimal additional step of guaranteeing notice at the appropriate time will substantially reduce and, in time, may eliminate an entire category of court proceedings in the U.S., thereby conserving precious judicial resources.

### **Conclusion**

A foreign detainee advised of the right to consular notification may receive help in a myriad of ways. The detainee may be provided information about the legal system of the receiving country, be encouraged to follow the advice of an attorney, be provided with another attorney; access a translator; be assisted in providing mitigating information from the home country; or obtain the support of the home country to ensure a fair trial.<sup>39</sup> Therefore, when a foreign detainee is not notified of the right to

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<sup>37</sup> F.R. Crim. P. 1.

<sup>38</sup> F.R. Crim. P. 2.

<sup>39</sup> Bishop, at 6.

consular notification, the detainee is effectively denied these forms of assistance, and court proceedings are thereby prejudiced.

When arguing the Tehran Hostages case before the ICJ in 1980, the State Department wrote, "Article 36 establishes rights not only for the consular officer but, perhaps even more importantly, for the nationals of the sending State who are assured access to consular officers and through them to others."<sup>40</sup> In that case, the U.S. State Department reasoned that, by taking U.S. consuls hostage, Iran had deprived other U.S. nationals in Iran of access to the consuls, thereby violating those nationals' rights.<sup>41</sup>

Article 36 of the Vienna Convention guarantees individual rights to consular access to all foreign nationals arrested in the United States of America. As a party to the Vienna Convention, and as a party to several ICJ cases regarding the Vienna Convention, the United States has an affirmative duty to notify foreign consuls of the arrest of one of their citizens, in addition to the duty to notify the arrestees themselves of the right to contact their nation's consul. Regardless of how the Supreme Court, in its consideration of *Medellin v. Dretke* finds that *Avena* mandates judicial review and reconsideration of the convictions and sentencing of foreign nationals in which the defendants were denied consular access rights, the United States is clearly obligated under Article 36(2) to comply with its international treaty obligations by amending the Federal Rules to provide detained or arrested foreign nationals with consular access rights.

While the Departments of State and Justice have made significant efforts to improve compliance with this duty, more can and, therefore, must be done. One clear and effective way to improve compliance is to amend the Federal Rules of Criminal Procedure in such a way as to ensure that the consular notification requirement becomes a standard procedure in all criminal proceedings in

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<sup>40</sup> United States Diplomatic and Consular Staff in Tehran, 1980 I.C.J. Pleadings 174 (Memorial of the Government of the United States of America), *quoted in* John Quigley, *Suppressing the Incriminating Statements of Foreigners*, 4 (2004) (unpublished manuscript).

<sup>41</sup> Quigley, at 4.

the United States district courts, and, therefore, never again reaches the United States courts of appeals nor the Supreme Court of the United States. These amendments are required by international law, constitutional requirements, and the needs of law enforcement, immigration regulation, and national security. First and foremost, however, the amendments are necessary to protect the fundamental treaty right of consular notice for U.S. citizens as well as foreign nationals.