

# THE CONSTITUTION PROJECT



*Safeguarding Liberty, Justice & the Rule of Law*

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*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*,<sup>1</sup> a consensus report that offered 32 recommendations to assure that all capital defendants are afforded basic constitutional and procedural protections, including competent

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

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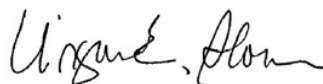
counsel, a fair trial, and full judicial review of the conviction and sentence. Among those recommendations is a call for the enforcement of the VCCR and its consular notification obligations. As *Mandatory Justice* makes clear, the policy considerations behind consular notification rights are similar 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...<sup>2</sup> 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.'"<sup>3</sup>

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

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<sup>2</sup> See The International Justice Project, Current Cases and Past Cases, *available at* [www.internationaljusticeproject.org](http://www.internationaljusticeproject.org).

<sup>3</sup> *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

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Prosecutor, Oklahoma City bombing case

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## APPENDIX A

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**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