CONSULAR NOTIFICATION FOR DUAL NATIONALS

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I. INTRODUCTION

In a case against the United States brought before the International Court of Justice (ICJ),[1] Mexico sought to protect the rights of fifty-four Mexican nationals who had been arrested in the United States for various crimes and put on trial without being informed of their rights under the Vienna Convention on Consular Relations (VCCR).[2] These fifty-four Mexican nationals all faced the death penalty in various states of the United States.[3] Shortly after filing its case in *Avena and Other Mexican Nationals*, however, Mexico dropped from the case one Mexican national who was also a citizen of the United States.[4] The United States had argued that because the man was a national of the United States, it was not required to inform him of his rights as a Mexican national under the VCCR.[5] This Article argues that Mexico's concession was unnecessary. Because the rights of consular notification under the VCCR belong not only to the detained or arrested individual but also to the country and its consular representatives, consular notice can and should be given even to dual nationals who are arrested or detained in a state that is a party to the VCCR.

II. BACKGROUND

Delegates from ninety-five nations gathered in Vienna, Austria in 1963 for the United Nations Conference on Consular Relations.[6] Conference delegates met to consider a text prepared by the International Law Commission, which since 1949 had been considering the subject of consular relations and immunities.[7] The Conference formally adopted the VCCR on April 24, 1963, as well as an Optional Protocol concerning the Acquisition of Nationality and an Optional Protocol concerning the

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1. Avena and Other Mexican Nationals (Mex. v. U.S.), Judgment, 2004 I.C.J. 12 (Mar. 31).
2. Vienna Convention on Consular Relations, Apr. 24, 1963, 21 U.S.T. 77, 596 U.N.T.S. 261 [hereinafter VCCR].
3. *Avena*, 2004 I.C.J. ¶ 12.
4. *See id.* ¶ 14 (referring only to the Mexican nationals).
5. *See id.* ¶ 41.
6. *See* Juan Manuel Gomez Robledo, *The Vienna Convention on Consular Relations*, AUDIOVISUAL LIBR. INT'L L., http://legal.un.org/avl/pdf/ha/vccr/vccr_e.pdf (last visited Jan. 15, 2014).
7. *See id.*

Compulsory Settlement of Disputes.[8] The Convention and its Optional Protocols entered into force on March 19, 1967.[9]

The United States, upon the advice and consent of the Senate required by the U.S. Constitution, ratified the VCCR in 1969.[10] The United States also ratified the Optional Protocol to the VCCR that vested the ICJ with jurisdiction over any disputes that may arise under the VCCR.[11] Indeed, the United States successfully invoked this Optional Protocol as the jurisdictional basis for its suit against the Islamic Republic of Iran, following the seizure of the U.S. embassy personnel in Tehran.[12] The ICJ ruled in favor of the United States in that case.[13] Nonetheless, that earlier victory did not prevent the United States from withdrawing from the Optional Protocol in 2005 after the ICJ ruled in favor of Mexico in *Avena*.[14]

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8. *See id.*
9. *See id.*
10. Dec. 24, 1969, T.I.A.S. No. 6820, 21 U.S.T. 77 (the treaty entered into effect for the United States on December 24, 1969, but was not proclaimed by the U.S. President until more than a month later); *see also International Instruments: The Vienna Convention on Consular Relations*, INT'L JUST. PROJECT, http://www.internationaljusticeproject.org/nationalsinstruments.cfm (last visited Jan. 15, 2014).
11. Optional Protocol to the Vienna Convention on Consular Relations Concerning the Compulsory Settlement of Disputes, Apr. 24, 1963, 21 U.S.T. 325, T.I.A.S. No. 6820 [hereinafter Optional Protocol]. The Optional Protocol provides that "[d]isputes arising out of the interpretation or application of the Convention shall lie within the compulsory jurisdiction of the International Court of Justice . . . ." *Id.* art 1.
12. United States Diplomatic and Consular Staff in Tehran (U.S. v. Iran), Judgment, 1979 I.C.J. 7 (Dec. 15).
13. *Id.*
14. The United States sent notice of its withdrawal from the Optional Protocol on March 7, 2005, and stated that it would "no longer recognize the jurisdiction of the International Court of Justice reflected in [the Optional Protocol to the Vienna Convention on Consular Relations Concerning the Compulsory Settlement of Disputes]." *Optional Protocol to the Vienna Convention on Consular Relations Concerning the Compulsory Settlement of Disputes*, UNITED NATIONS TREATY COLLECTION, n.1 (last visited Jan. 15, 2014) http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=III-8&chapter=3&lang=en. *See also* Sanchez-Llamas v. Oregon, 548 U.S. 331, 339 (2006) (citing Letter from Condoleezza Rice, Secretary of State, to Kofi A. Annan, Secretary-General of the United Nations). The United States had also withdrawn its consent to the court's general compulsory jurisdiction in an attempt to avoid an adverse judgment from the ICJ in a case filed by Nicaragua for mining the harbors of Managua and providing support to the Nicaraguan contras. *See* U.S. Dep't of State Letter and Statement Concerning Termination of Acceptance of I.C.J. Compulsory Jurisdiction (Oct. 7, 1985), *reprinted in* 24 I.L.M. 1742 (1985). The ICJ ruled that the United States could not withdraw from the compulsory jurisdiction of the ICJ unless it gave proper notice six months in advance of the proposed date of withdrawal. On the merits, the ICJ ruled that the United States had mined the harbors and taken other actions against Nicaragua and owed it reparations for those actions. Military and Paramilitary Activities in and Against Nicaragua, Judgment, 1986 I.C.J. 14 (June 27). The United States issued a statement that it "would *not* comply with the ICJ's conclusion that the United States owed reparations to Nicaragua." *See* Medellín v. Texas, 552 U.S. 491, 528 n.14 (2008).

As of January 2014, a total of 176 countries are parties to the VCCR.[15] Four additional countries have signed but not yet ratified the VCCR.[16] Fifty countries—no longer including the United States—are parties to the Optional Protocol concerning the Compulsory Settlement of Disputes under the VCCR.[17] Eighteen additional countries have signed the Optional Protocol on Dispute Resolution but have not yet ratified it.[18] Forty countries (not including the United States) are parties to the Optional Protocol to the Vienna Convention on Consular Relations concerning Acquisition of Nationality.[19]

The adoption of the VCCR fifty years ago has been described as being perhaps "the single most important event in the entire history of the consular institution."[20] The VCCR provided a common framework for rights and duties of consulates and consular officials. The drafters of the VCCR believed that "an international convention on consular relations, privileges[,] and immunities would . . . contribute to the development of friendly relations among nations, irrespective of their differing constitutional and social systems."[21] The VCCR clarified obligations of host countries, with a view toward facilitating the exercise of important consular functions by consular posts.[22] The drafters realized that "the purpose of such privileges and immunities is not to benefit individuals but to ensure the efficient performance" of consular functions by consular posts.[23] The VCCR defines "consular functions" to include "protecting in the receiving State the interests of the sending State and of its nationals . . .

15. *Vienna Convention on Consular Relations*, UNITED NATIONS TREATY COLLECTION, http://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=III-6&chapter=3&lang=en (last visited Jan. 15, 2014) (displaying current status information of the VCCR).
16. The four countries that have signed the VCCR but not yet ratified it are the Central African Republic, Congo, Côte d'Ivoire, and Israel. *See id.*
17. Optional Protocol, *supra* note 11.
18. The eighteen countries that have signed but not yet ratified the VCCR Optional Protocol on Dispute Resolution are Argentina, Benin, Bosnia and Herzegovina, Cameroon, Central African Republic, Chile, Colombia, Congo, Côte d'Ivoire, Democratic Republic of the Congo, Ghana, Ireland, Kuwait, Lebanon, Liberia, Montenegro, Serbia, and Uruguay. *See Optional Protocol to the Vienna Convention on Consular Relations Concerning the Compulsory Settlement of Disputes*, UNITED NATIONS TREATY COLLECTION, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=III-8&chapter=3&lang=en (last visited Jan. 15, 2014).
19. Optional Protocol to the Vienna Convention on Consular Relations Concerning Acquisition of Nationality, Apr. 24, 1963, 596 U.N.T.S. 469. The United States has neither signed nor acceded to the VCCR Optional Protocol on the Acquisition of Nationality. *Id.*
20. Sanchez-Llamas v. Oregon, 548 U.S. 331, 366 (2006) (Breyer, J., dissenting) (quoting LUKE T. LEE, CONSULAR LAW AND PRACTICE 26 (2d ed. 1991)).
21. VCCR, *supra* note 2, pmbl.
22. "Consular post" is defined as "any consulate-general, consulate, vice consulate or consular agency." *Id.* art. 1(1)(a).
23. *Id.* pmbl.

within the limits permitted by international law"[24] and "assisting nationals . . . of the sending State."[25]

The seventy-nine articles of the VCCR address a broad range of rights held by local consulates and consular officials, the respective obligations of sending and receiving nations, and other matters such as legal immunity and freedom of movement of consular officials.[26] Among its more important provisions, Article 36(1)(b) of the VCCR provides that a foreign national who is arrested or detained in a country that is a party to the VCCR must be informed "without delay" of the right to have his or her consulate informed of that arrest or detention.[27] One major purpose of Article 36 of the VCCR "is to assure consular communication and assistance to such nationals, who may not fully understand the host country's legal regime or even speak its language."[28] Specifically, Article 36 provides:

> (1) With a view to facilitating the exercise of consular functions relating to nationals of the sending State:
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> (a) consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State;
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> (b) if he [or she] so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall also be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his [or her] rights under this sub-paragraph.
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> (c) consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him [or her,] and to arrange for his [or her] legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody[,] or detention in their district in pursuance of a judgment. Nevertheless, consular officials shall refrain from taking action

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24. *Id.* art. 5(a).
25. *Id.* art. 5(e).
26. *See, e.g.*, Osagiede v. United States, 543 F.3d 399, 402 (7th Cir. 2008). Any "matters not expressly regulated" by the VCCR were to continue to be governed by customary international law. VCCR, *supra* note 2, pmbl.
27. VCCR, *supra* note 2, art. 36(1).
28. Sanchez-Llamas v. Oregon, 548 U.S. 331, 367 (2006) (Breyer, J., dissenting).

> on behalf of a national who is in prison, custody[,] or detention if he [or she] expressly opposes such action.
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> (2) The rights referred to in paragraph 1 of this Article shall be exercised in conformity with the laws and regulations of the receiving State, subject to the proviso, however, that the said laws and regulations must enable full effect to the purposes for which the rights accorded under this Article are intended.[29]

Under Article 36, "when a national of one country is [arrested or] detained by authorities in another, the authorities must notify the consular officers of the detainee's home country if the detainee so requests."[30] The individual arrested or detained must also be informed "without delay" of the right to consular notification.[31] Article 36 essentially imposes three separate obligations on a detaining authority: "(1) To inform the consulate of a foreign national's arrest or detention without delay; (2) [t]o forward communications from a detained national to the consulate without delay; and (3) [t]o inform a detained foreign national of his or her rights under Article 36 without delay."[32]

If a foreign national arrested or detained in the United States requests that notice be given to the consulate, the U.S. State Department has directed federal, state, and local law enforcement authorities to notify the appropriate consular post "within 24 hours, and certainly within 72 hours."[33] The process of giving notice can be as easy as sending a fax to the appropriate consular post, setting forth the name of the person arrested, the charges against the person, and the address of where the person is being held.

Unless the person objects to consular assistance, the consulate—if it has the economic resources, personnel, and inclination to do so—may visit or communicate with the arrested or detained national for any number of purposes.[34] For example, the consulate may see whether the person is in good health, has access to legal counsel, or needs to communicate with family members back home.[35] There is authorization to provide emergency

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29. VCCR, *supra* note 2, art. 36(1), (2).
30. *Sanchez-Llamas*, 548 U.S. at 338-39.
31. *Id*. at 339.
32. VCCR, *supra* note 2, art. 36(1)(b); Osagiede v. United States, 543 F.3d 399, 402 (7th Cir. 2008).
33. *Sanchez-Llamas*, 548 U.S. at 362 (Ginsburg, J., concurring) (citing Consular Notification and Access guidelines from the U.S. Department of State).
34. *See, e.g.*, 7 U.S. DEP'T OF STATE, FOREIGN AFFAIRS MANUAL § 411 (2013), *available at* http://www.state.gov/documents/organization/86604.pdf. *See also* Cindy Galway Buys, Scott D. Pollock & Iona Navarette Pellicer, *Do Unto Others: The Importance of Better Compliance with Consular Notification Rights*, 21 DUKE J. COMP. & INT'L L. 461, 464 (2011).
35. The right of consular notification under Article 36 requires only that the consulate be notified of the detention or arrest. VCCR, *supra* note 2, art. 36. It does not guarantee that the consulate will

medical attention and dietary supplement assistance on a reimbursable basis for U.S. citizens incarcerated abroad.[36] In exceptional cases, consular officials might also protest the mistreatment of a prisoner or any violations of a treaty or rule of international law in connection with the person's arrest or detention.[37] The importance of these visits cannot be overstated.[38]

Many state and local jurisdictions within the United States, however, have not provided detained foreign nationals with notice of their rights under the VCCR or under an applicable bilateral treaty that might also have required notice to be given. In some cases, state and local police officials did not realize that there was any obligation to provide notice to a foreign consulate. They may simply have been unaware of any obligation under the VCCR to provide consular notification. In other cases, officials may have been aware of consular notice obligations imposed by the VCCR and applicable bilateral treaties, but they may have believed that notice should be given by federal law enforcement agencies or by the U.S. State Department. In still other cases, officials may have known of the treaty requirements, but they may not have known how to contact a particular consulate. And in another handful of cases, the right of consular notification may not have been given because the arrested or detained person denied being a citizen of another country for fear of immigration consequences.

A number of cases were filed over the years to challenge the failure of particular jurisdictions to provide consular notification. Faced by the frequent failure of the United States to provide consular notification to arrested nationals of Mexico, Mexico sought an Advisory Opinion from the Inter-American Court of Human Rights (IACHR) on the legal consequences of failing to give consular notice under the VCCR.[39] The IACHR noted that it had to consider "the real situation of foreign nationals facing criminal proceedings" and said that "[t]heir most precious judicial

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provide assistance, and many countries lack the economic resources or personnel to help every national who might be arrested or detained. "The provision [for consular notification under the VCCR] secures only a right of foreign nationals to have their consulate *informed* of their arrest or detention—not to have their consulate intervene, or to have law enforcement authorities cease their investigation pending any such notice or intervention." *Sanchez-Llamas*, 548 U.S. at 349.

36. 22 U.S.C. § 2670(j) (2012); 7 U.S. DEP'T OF STATE, *supra* note 34, § 413.2.

37. *See, e.g.*, 7 U.S. DEP'T OF STATE, *supra* note 34, § 411.

38. On October 8, 2013, for example, U.S. embassy personnel from Cairo visited James Lunn, an American being held in a prison in the Suez Canal city of Ismalia, Egypt for more than six weeks without any formal charges having been filed against him. *See* Matt Bradley, *Egypt Says American in Custody Killed Self*, WALL ST. J., Oct. 14, 2013, at A7. He was found dead five days later, reportedly having hanged himself in his prison cell. *See id.*; Ben Hubbard & Mayy El Sheikh, *American Held in Egypt Killed Himself, Officials Say*, N.Y. TIMES, Oct. 14, 2013, at A8.

39. The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law, Advisory Opinion OC-16/99, Inter-Am. Ct. H.R. (ser. A) No. 16 (Oct. 1, 1999).

rights, perhaps even their lives, hang in the balance."[40] The IACHR unanimously held that Article 36 of the VCCR conferred "rights upon detained foreign nationals, among them the right to information on consular assistance" and that those rights formed "part of the body of international human rights law."[41] By a vote of six to one, the IACHR further held that a nation's failure to inform detained foreign nationals of their rights under the VCCR was "prejudicial to the due process of law."[42] As such, imposition of the death penalty where consular notification was not given would be an arbitrary deprivation of life with juridical consequences pertaining to the state's international responsibility and the duty to pay reparations.[43]

One direct challenge to the failure to provide consular notice was brought by Paraguay before the U.S. Supreme Court in 1998. In *Breard v. Greene*,[44] the Republic of Paraguay, the Ambassador of Paraguay to the United States, and the Consul General of Paraguay alleged that their separate rights under the VCCR had been violated by the Commonwealth of Virginia because it failed to inform an arrested Paraguay national of rights under the VCCR and because it had failed to inform the Paraguayan Consulate that one of its nationals had been arrested, convicted, and sentenced.[45] Paraguay also instituted proceedings against the United States before the ICJ, which issued an order asking the United States to "take all measures at its disposal to ensure that [the national of Paraguay was] not executed pending the final decision" in the proceedings before the ICJ.[46]

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40. *Id.* ¶ 121. The IACHR deemed it obvious that notification of one's right to contact the consular agent of one's country will considerably enhance one's chances of defending oneself and the proceedings conducted in the respective cases, including the police investigations, are more likely to be carried out in accord with the law and with respect for the dignity of the human person. *Id.*
41. *Id.* ¶ 141(1).
42. *Id.* ¶ 141(7).
43. *Id.* Judge Oliver Jackman filed a dissenting opinion. *Id.*
44. 523 U.S. 371 (1998).
45. *Id.* at 372.
46. Vienna Convention on Consular Relations (Para. v. U.S.), 1998 I.C.J. 248, 258 (Apr. 9), *available at* http://www.icj-cij.org/docket/files/99/7599.pdf. In a separate declaration, the U.S. judge sitting on the International Court of Justice wrote:

> There is an admitted failure by the Commonwealth of Virginia to have afforded Paraguay timely consular access, that is to say, there is an admitted breach of treaty. An apology and Federal provision for avoidance of future such lapses does not assist the accused, who Paraguay alleges was or may have been prejudiced by lack of consular access, a question which is for the merits. It is of obvious importance to the maintenance and development of a rule of law among States that the obligations imposed by treaties be complied with and that, where they are not, reparation be required. The mutuality of interest of States in the effective observance of the obligations of the Vienna Convention on Consular Relations is the greater in the inter-mixed global community of today and tomorrow (and the citizens of no State have a higher interest in the observance of those obligations than the peripatetic citizens of the United States). In my view, these considerations outweigh the serious difficulties which this Order imposes on the authorities of the United States and Virginia.

The U.S. Supreme Court ruled that Angel Francisco Breard "procedurally defaulted his claim, if any, under the Vienna Convention by failing to raise that claim in the state courts."[47] The Supreme Court denied Breard any relief and said that Paraguay was "not authorized to bring suit" under 42 U.S.C. § 1983 because "Paraguay is not a 'person' as that term is used" in the statute and because Paraguay was not "within the jurisdiction" of the United States.[48] Despite the order from the ICJ, the Commonwealth of Virginia proceeded with the execution of Mr. Breard on the same evening the U.S. Supreme Court rejected his claim.[49] Paraguay later removed its challenge from the ICJ docket following the execution of its national.[50]

Germany also challenged the failure of the United States to inform its nationals of their right to consular notification. Germany sought a restraining order against the United States and the State of Arizona, which was about to execute two German nationals who had not been advised of their rights to consular notification under the VCCR.[51] Although Germany had learned only eight days earlier that two of its nationals were about to be executed, the U.S. Supreme Court declined to exercise its original jurisdiction "[g]iven the tardiness of the pleas and the jurisdictional barriers they implicate[d]."[52] The U.S. Supreme Court thus also rejected an order of the ICJ for the United States to implement preliminary measures. After the German nationals were executed, Germany modified the complaint it had filed against the United States before the ICJ, alleging that the United States had violated international law by failing to implement the provisional measures as well as violating rights under the VCCR.[53]

In *LaGrand*, the ICJ rejected the U.S. claim that the "rights of consular notification and access under [Article 36] are rights of States, and not of individuals."[54] The ICJ instead held that if a foreign national was "subjected to prolonged detention or convicted and sentenced to severe penalties," then a diplomatic apology alone would not be a sufficient remedy.[55] The ICJ also held that its provisional measures were legally

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Id. at 259 (separate declaration of President Stephen M. Schwebel).

47. *Breard*, 523 U.S. at 375.
48. *Id.* at 378.
49. *See, e.g.*, Norman Kempster, *Despite Warnings, Virginia Executes Paraguayan Citizen: Prisoner's Death Could Put Americans Abroad and International Rules at Risk, Secretary of State Cautioned*, L.A. Times, Apr. 15, 1998, http://articles.latimes.com/1998/apr/15/news/mn-39525.
50. Vienna Convention on Consular Relations (Para. v. U.S.), 1998 I.C.J. 426, 427 (Nov. 10), *available at* http://www.icj-cij.org/docket/files/99/7615.pdf.
51. Federal Republic of Germany v. United States, 526 U.S. 111 (1999).
52. *Id.* at 112. *See also* Stewart v. LaGrand, 526 U.S. 115 (1999).
53. LaGrand Case (Ger. v. U.S.), Memorial of the Federal Republic of Germany (Sept. 19, 1999), *available at* http://www.icj-cij.org/docket/files/104/8552.pdf.
54. LaGrand Case (Ger. v. U.S.), 2001 I.C.J. 466, ¶ 76 (June 27); Sanchez-Llamas v. Oregon, 548 U.S. 331, 368 (Breyer, J., dissenting).
55. *LaGrand*, 2001 I.C.J. ¶ 125; *Sanchez-Llamas*, 548 U.S. at 368.

binding and that the United States was in violation for failing to implement those measures.[56]

After Paraguay and Germany brought their claims before the ICJ, Mexico brought its claim on behalf of fifty-four Mexican nationals who were facing the death penalty in the United States.[57] Mexico dropped its claim on behalf of one Mexican national who was also a citizen of the United States.[58] The ICJ again issued an order indicating preliminary measures.[59] Because no executions were imminent, and perhaps because the ICJ had stated in the *LaGrand* decision that its preliminary measures were binding, none of the named nationals were executed before the ICJ could rule on the merits.[60] The ICJ ruled that the United States must "provide, by means of its own choosing, review and reconsideration of the convictions and sentences of the [affected] Mexican nationals."[61]

On February 28, 2005, U.S. President George W. Bush issued a memorandum to his Attorney General stating that the United States would "discharge its international obligations" under the *Avena* decision "by having State courts give effect to the decision in accordance with general principles of comity in cases filed by the 51 Mexican nationals addressed in that decision."[62]

In *Sanchez-Llamas v. Oregon*,[63] a case issued after *Avena* but involving individuals not named in the *Avena* judgment, the U.S. Supreme Court ruled that despite the ICJ's ruling in *Avena*, the VCCR did not preclude states from applying their "regular rules of procedural default."[64] Failing to recognize different legal cultures around the world, the U.S. Supreme Court stated that "[t]he failure to inform a defendant of his [or her] Article 36 rights is unlikely, with any frequency, to produce unreliable confessions."[65] The Supreme Court ruled that suppression of a confession was not an appropriate remedy for failing to inform a defendant of the right to consular notification under the VCCR.[66] The Supreme Court also ruled

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56. *LaGrand*, 2001 I.C.J. ¶ 109.
57. Avena and Other Mexican Nationals (Mex. v. U.S.), 2004 I.C.J. 12 (Mar. 31).
58. *Id.* ¶ 14.
59. *Id.* ¶ 153.
60. *Id.* ¶ 21.
61. *Id.* ¶ 153(9); Medellín v. Texas, 552 U.S. 491, 536 (2008).
62. *Medellín*, 552 U.S. at 503.
63. 548 U.S. 331 (2006). The case was argued on March 29, 2006 and decided on June 28, 2006. *Id.*
64. *Id.* at 337; *see also Medellín*, 552 U.S. at 498.
65. *Sanchez-Llamas*, 548 U.S. at 349. In his dissenting opinion, Justice Breyer wrote that he could
> imagine a case . . . involving a foreign national who speaks little English, who comes from a country where confessions made to the police cannot be used in court as evidence, who does not understand that a state-provided lawyer can provide him crucial assistance in an interrogation, and whose native community has great fear of police abuse.

Id. at 393 (Breyer, J., dissenting).
66. *Id.* at 350 (majority opinion).

that despite the ICJ's decision in *Avena*, the state procedural default rules can still prohibit defendants from untimely raising violations of the VCCR.[67] In a statement confusing to many international lawyers, the Supreme Court said that although it gave no remedy for the violations of the VCCR, its holding in *Sanchez-Llamas* "in no way disparage[d] the importance of the Vienna Convention."[68] Justice Breyer, dissenting, said that the *Sanchez-Llamas* decision "interprets an international treaty in a manner that conflicts not only with the treaty's language and history, but also with the ICJ's interpretation of the same treaty provision."[69]

In *Medellín v. Texas*,[70] the U.S. Supreme Court ruled that neither the ICJ's decision in *Avena* nor President Bush's memorandum were "directly enforceable federal law[s] that pre-empt[ed] state limitations on the filing of successive habeas petitions."[71] The Supreme Court recognized that the *Avena* decision "constitutes an *international* law obligation on the part of the United States," but it stated that the *Avena* judgment was "not automatically binding domestic law" enforceable in U.S. courts.[72] Medellín argued that as one of the fifty-one Mexican nationals named in the *Avena* judgment, he should have been able to invoke the remedy called for by the ICJ—to have his case reviewed and reconsidered.[73] Ignoring Article 94 of the U.N. Charter (a treaty to which the United States is a party), the Optional Protocol to the VCCR (a treaty that Mexico had invoked before the United States withdrew from it), and the Supremacy Clause of Article VI of the U.S. Constitution (which makes treaties "the supreme Law of the Land"[74]), the majority decision found that the *Avena* judgment did "not of its own force create binding federal law that pre-empt[ed] state restrictions on the filing of successive habeas petitions."[75] The U.S. Supreme Court also ruled that President Bush's memorandum on enforcing *Avena* was not itself enforceable in the state courts.[76]

Justice Stevens, in a concurring opinion, noted that it would cost Texas little to give the "review and reconsideration" required by the *Avena*

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67. *Id.* at 360.
68. *Id.*
69. *Id.* at 386 (Breyer, J., dissenting).
70. 552 U.S. 491 (2008).
71. *Id.* at 498-99. The case was argued on October 10, 2007 and decided on March 25, 2008. *Id.* at 491.
72. *Id.* at 505-06.
73. *Id.* at 510-11, 520-21.
74. U.S. CONST. art. VI, cl. 2 ("all Treaties . . . 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").
75. *Medellín*, 552 U.S. at 522-23. Justice Stevens issued a concurring opinion. *Id.* at 533 (Stevens, J., concurring). Justice Breyer, joined by Justices Souter and Ginsburg, dissented. *Id.* at 538 (Breyer, J., dissenting).
76. *Id.* at 528-32 (majority opinion).

judgment.[77] Admonishing the State of Texas for having gotten the United States into the mess in the first place, Justice Stevens wrote that

> [w]hen the honor of the Nation is balanced against the modest cost of compliance, Texas would do well to recognize that more is at stake than whether judgments of the ICJ, and the principled admonitions of the President of the United States, trump state procedural rules in the absence of implementing legislation.[78]

Justice Breyer, in a dissenting opinion joined by Justices Ginsburg and Souter, wrote that the judgment in *Avena* should be given effect because: (1) the United States had agreed in the VCCR Optional Protocol to submit the dispute to the ICJ for "compulsory settlement;" (2) the United States ratified the U.N. Charter, which provides that ICJ judgments would have "binding force . . . between the parties and in respect of [a] particular case;"[79] (3) President Bush determined that the domestic courts should enforce the *Avena* judgment by giving appropriate review and reconsideration; and (4) "Congress has done nothing to suggest the contrary."[80] In Justice Breyer's view, the President correctly determined that the *Avena* judgment was enforceable as a matter of domestic law without the need for any additional federal legislation.[81] Justice Breyer recalled a time when treaty provisions were so commonly made part of domestic law that one Justice wrote "that 'it would be a bold proposition' to assert 'that an act of Congress must be first passed' in order to give a treaty effect as 'a supreme law of the land.'"[82]

Justice Breyer offered seven collective reasons why he would find the relevant treaty provisions to be self-executing, as applied to the *Avena* judgment, thus giving that judgment "domestic legal effect."[83] First, he found that the language of the Optional Protocol and U.N. Charter "strongly supports direct judicial enforceability."[84] Second, the Optional Protocol "applies to a dispute about a provision [to advise a detained person about

77. *Id*. at 535-37 (Stevens, J., concurring). Justice Stevens noted that in the case of another Mexican national named in the *Avena* judgment, the Governor of Oklahoma had commuted the man's death sentence to life without the possibility of parole, stressing that (1) the United States was a party to the VCCR, (2) the VCCR was "important in protecting the rights of American citizens abroad," (3) the ICJ had found that the man's rights under the VCCR had been violated, and (4) the U.S. State Department had urged the Governor to "give careful consideration to the United States' treaty obligations." *Id.* at 537 n.4.

78. *Id.* at 537.

79. *Id*. at 538 (Breyer, J., dissenting) (quoting U.N. Charter art. 59).

80. *Id*. at 539.

81. *Id.* at 541.

82. *Id.* at 544-45 (quoting Lessee of Pollard's Heirs v. Kibbe, 14 Pet. 353, 388 (1840) (Baldwin, J., concurring)).

83. *Id*. at 551.

84. *Id.*

the right to consular notification] that is itself self-executing and judicially enforceable."[85] Third, it was only logical that a treaty provision for "final" and "binding" judgments that settle treaty-based disputes "is self-executing insofar as the judgment in question concerns the meaning of an underlying treaty provision that is itself self-executing."[86] Fourth, citing seventy other treaties that contain similar provisions for dispute settlement before the ICJ, Justice Breyer wrote that the "majority's very different approach" to interpreting the VCCR Optional Protocol had "seriously negative practical implications."[87] Fifth, "other factors" made the *Avena* judgment "well suited to direct judicial enforcement."[88] Sixth, finding the treaty obligations to be self-executing as applied would not "threaten constitutional conflict with other branches" nor did it require the Supreme Court "to create a new cause of action."[89] And seventh, neither the President nor Congress expressed concern about enforcement of the *Avena* judgment.[90] "To the contrary, the President favors enforcement of this judgment."[91]

For those reasons, Justice Breyer would find "that the United States' treaty obligation to comply with the ICJ judgment in *Avena* is enforceable in court in this case without further congressional action beyond Senate ratification of the relevant treaties."[92] Justice Breyer stated that if the Supreme Court were "for a moment to shift the direction of its legal gaze, looking instead to the Supremacy Clause and to the extensive case law interpreting that Clause as applied to treaties," he believes that the Supreme Court "would reach a better supported, more felicitous conclusion" that the *Avena* judgment is enforceable "without further legislative action."[93]

The United States did not undertake further action to implement the *Avena* judgment, and Medellín was scheduled to be executed in Texas in 2008. Mexico returned to the ICJ and filed a "request for interpretation" of the *Avena* judgment.[94] The United States told the ICJ that it did not need to

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85. *Id.* at 555. Justice Breyer said that Article 36(1)(b) of the VCCR was about an individual's "right upon being arrested to be informed of his separate right to contact his nation's consul" and that "[t]he provision language is precise." *Id.* He also wrote that "the intersection of an individual right with ordinary rules of criminal procedure" was "the kind of matter with which judges are familiar." *Id.* at 556.

86. *Id.*

87. *Id.* at 559. The specific treaties were collected in various appendices to the dissenting opinion. *Id.* at 568-79.

88. *Id.* at 560-61. For example, the review called for in *Avena* requires "an understanding of how criminal procedure works, including whether, and how, a notification failure may work prejudice." *Id.* at 561.

89. *Id.*

90. *Id.* at 561-62.

91. *Id.*

92. *Id.* at 562.

93. *Id.*

94. Request for Interpretation of the Judgment of 31 March 2004 in Avena and Other Mexican Nationals (Mex. v. U.S.), 2008 I.C.J. No. 139 (July 16).

make any further efforts to implement *Avena* and that it would continue to work to give the *Avena* judgment "full effect, including in the case of Mr. Medellín."[95] Federal legislation had been introduced to implement the *Avena* judgment, but there was no legislative progress beyond introduction of that bill.[96] After the Supreme Court denied a final petition to stay his execution,[97] Medellín was executed. Justice Breyer said that Medellín's execution placed the United States "in violation of international law."[98] In 2011, the Supreme Court again declined to stay the execution of another Mexican national who had not been advised of his right of consular notification under the VCCR.[99]

In addition to the VCCR, there is an extensive network of bilateral treaties that include provisions for consular notification. Many of these bilateral treaties "provide for more extensive or detailed consular notification rights than those included in the VCCR."[100] For example, the Consular Convention between the United States and the People's Republic of China requires that Chinese authorities report the detention of a U.S. citizen no later than four days from the date of arrest or detention.[101] The Consular Convention between the United States and Russia requires notice to be given within one to three days of the time of the arrest or detention, depending on conditions of communication.[102]

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95. *Id.* ¶ 37; Medellín v. Texas, 554 U.S. 759, 762 (2008) (Ginsburg, J., dissenting).

96. Avena Case Implementation Act of 2008, H.R. 6481, 110th Cong., 2d Sess. (2008). *See also Medellín*, 554 U.S. at 760 ("Congress has not progressed beyond the bare introduction of a bill in the four years since the ICJ ruling and the four months since [the Supreme Court's first] ruling in *Medellín* . . . ."). The Supreme Court stated that "[t]his inaction is consistent with the President's decision in 2005 to withdraw the United States' accession to jurisdiction of the ICJ with regard to matters arising under the Convention." *Id.* While appearing to explain Congressional failure to enact federal legislation, the Supreme Court did not mention that the President had sought to implement the *Avena* decision. In a subsequent decision, several justices also noted that even though the United States withdrew from the Optional Protocol, "that withdrawal does not alter the binding status of its prewithdrawal obligations." Garcia v. Texas, 131 S. Ct. 2866, 2869 (2011) (Breyer, J., dissenting) (dissenting opinion joined by Justices Ginsburg, Sotomayor, and Kagan).

97. *Medellín*, 554 U.S. at 759 (majority opinion).

98. *Id.* at 764 (Breyer, J., dissenting). Justices Ginsburg, Souter, and Stevens also dissented from the stay of execution in *Medellín*. *Id.* at 761-62.

99. *Garcia*, 131 S. Ct. at 2868.

100. Buys et al., *supra* note 34, at 464.

101. *Emergency Assistance*, EMBASSY U.S.: BEIJING CHINA, http://beijing.usembassy-china.org.cn/acs_eme.html (last visited Jan. 15, 2014). The Embassy's website states further:

> An Embassy officer will visit American detainees and provide a list of sources of legal advice or assistance. In cases of lengthy incarceration, we visit American prisoners at least every 30 to 60 days to ensure that American citizens receive treatment no worse than that accorded citizens of the PRC.

Id. See also Buys et al., *supra* note 34, at 465.

102. *See* Buys et al., *supra* note 34, at 464 (citing Consular Convention and Protocol, U.S.-U.S.S.R., art. 12, June 1, 1964, 19 U.S.T. 5018).

III. DISCUSSION

The U.S. Department of State recognizes in its *Foreign Affairs Manual* that "[t]he most complex problems regarding provision of protective services to dual nationals arise when the holder of dual nationality experiences difficulties with the law in [his or her] other (non-U.S.) country of nationality."[103] The *Foreign Affairs Manual* states that consular officers will "not usually have a right to consular access to a dual national present in one of his or her countries of nationality," but urges consular officials to still attempt to "seek consular access on a courtesy basis from the host government."[104] In many instances, however, it may not presently be possible to provide consular assistance to a dual national. "For instance, the Government of Turkey will not permit any Turkish-American dual national arrested in Turkey to contact American officials."[105]

Within the United States, litigation for violations of the VCCR and scholarly commentary about the treaty generally focuses on what legal rights, if any, an individual may have under Article 36 of the VCCR and what remedies, if any, may be available when a foreign national is not advised of the consular notification rights under the VCCR. For example, judges and scholars have previously considered whether a violation of the VCCR should result in suppression of a confession, ordering of a new trial, or even awarding money damages for failing to comply with provisions of the VCCR.[106] Many cases have also focused on having defendants show specific prejudice from a violation of the VCCR, often not showing that "some judges do not understand what kinds of help a consulate may be able to provide in these situations and how vital that assistance can be."[107] Additional cases in federal and state courts are likely to be even more rare and violations of the VCCR are even more likely to go without remedy. Because the Supreme Court held that individuals have no rights under the VCCR as a result of it being a non-self-executing treaty,[108] the Court has effectively limited any future judicial consideration within the United States of individual remedies for violations of the VCCR.[109]

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103. 7 U.S. DEP'T OF STATE, *supra* note 34, § 416.3-1(a).

104. *Id.*

105. *Dual Nationality*, EMBASSY U.S.: ANKARA TURK., http://turkey.usembassy.gov/dual_nationality.html (last visited Jan. 15, 2014).

106. *See, e.g.*, Jogi v. Voges, 425 F.3d 367 (7th Cir. 2005); Ann K. Wooster, *Construction and Application of Vienna Convention on Consular Relations (VCCR), Requiring that Foreign Consulate be Notified When One of its Nationals is Arrested*, 175 A.L.R. FED. 243 (2002) (collecting federal and state cases).

107. *See* Buys et al., *supra* note 34, at 466.

108. Medellín v. Texas, 552 U.S. 491, 506 (2008).

109. *See, e.g.*, Garcia v. Quarterman, 573 F.3d 214, 218 (5th Cir. 2009) (stating that "the several states are not bound to conduct the review ordered by the ICJ in the *Avena* decision").

But the rights of consular notification under Article 36 have never been rights intended only for the individual person who is arrested or detained. The rights of consular notification and assistance are also rights of the home country, exercised through its consular officers. As stated by the Inter-American Court of Human Rights in its Advisory Opinion on the VCCR, "the provision recognizing consular communication serves a dual purpose: that of recognizing a State's right to assist its nationals through the consular officer's actions and, correspondingly, that of recognizing the correlative right of the national of the sending State to contact the consular officer to obtain that assistance."[110] Every nation has a legitimate interest in ensuring that its nationals are not mistreated when abroad. This right extends to protecting the rights of nationals who are arrested or detained in other countries.

The framework for understanding the rights of consular notification as both individual rights and rights of each nation that is a party to the VCCR may be best understood in the United States by considering cases of dual national American citizens who have been arrested in other countries. In some cases, these dual national Americans may have been arrested for activities that would either not be crimes in the United States or that may be activities protected under the U.S. Constitution, such as criticism of government corruption. In other cases, dual national Americans may have been tortured into confessions.

Here are some examples of dual nationals who have been arrested around the world:

- Li Shaomin, a U.S. citizen and a professor at the City University of Hong Kong, was arrested in China in 2001 on charges of spying for Taiwan.[111] He was held for five months, convicted, and expelled in July 2001.[112] A U.S. Senate Resolution noted that Dr. Shaomin was "a United States citizen and scholar who ha[d] been detained by the Government of the People's Republic of China for more than 100 days" and that he had been "deprived of his basic human rights by arbitrary arrest and detention, ha[d] not been allowed to contact his

110. The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law, Advisory Opinion OC-16/99, Inter-Am. Ct. H.R. (ser. A) No. 16, ¶ 80 (Oct. 1, 1999).

111. Tyler Marshall, *American Charged as a Spy by China*, L.A. TIMES, May 17, 2001, http://articles.latimes.com/2001/may/17/news/mn-64582.

112. *See* Edward Cody, *Jailed American Spied for Taiwan, China Says*, WASH. POST, July 29, 2004, http://www.washingtonpost.com/wp-dyn/articles/A21067-2004Jul28.html. *See also* Tyler Marshall, *Convicted Scholar Will Keep Hong Kong Job*, L.A. TIMES, Aug. 4, 2001, http://articles.latimes.com/2001/aug/04/news/mn-30483.

wife and child (both United States citizens), and was prevented from seeing his lawyer for an unacceptably long period of time."[113]

- Wu Jianmin was a U.S. citizen and author detained in China.[114] A U.S. Senate Resolution noted that he had been "deprived of his basic human rights by arbitrary arrest and detention, [had] been denied access to lawyers and family members," and had been held without being "formally charged with any crimes."[115]

- Teng Chunyan was a permanent resident of the United States, a Falun Gong practitioner, and researcher.[116] She was "sentenced to three years in prison for spying by the Government of the People's Republic of China, apparently for conducting research which documented violations of the human rights of Falun Gong adherents in China" and was "deprived of her basic human rights by being placed on trial in secret." [117] She was released in 2003,[118] after renouncing her connections to Falun Gong.[119]

- David Wei Dong (also known as Dong Wei), a Chinese-born U.S. citizen living in New York, was arrested in China in 2004 on charges of spying for Taiwan.[120]

- Xie Chunren, a Chinese-born American business executive, was detained in Sichuan Province, China, in 2005 on charges of spying for Taiwan.[121]

- Vincent Wu, a Chinese-American immigrant living in California, was arrested in Huizhou (Guangdong Province, China) in 2012.[122] He was

113. S. Res. 128, 107th Cong. (2001), *available at* http://www.gpo.gov/fdsys/pkg/BILLS-107sres128rs/html/BILLS-107sres128rs.htm.
114. *Id.*
115. *Id.*
116. *Id.*
117. *Id.*
118. *Former Falun Gong Follower Released*, PERMANENT MISSION PEOPLE'S REPUBLIC CHINA TO UNITED NATIONS (Mar. 19, 2003), http://www.china-un.org/eng/zt/flgwt/t29531.htm.
119. *See, e.g.*, John Leicester, *Friends Fear Activist Brainwashed in Prison: Falun Gong Member Renounces Group, Says She Cherishes Time in Chinese Jail*, AKRON BEACON J., Jan. 7, 2002, at A7, *available at* 2002 WLNR 1785693.
120. Edward Cody, *Jailed American Spied for Taiwan, China Says*, WASH. POST, July 29, 2004, http://www.washingtonpost.com/wp-dyn/articles/A21067-2004Jul28.html. The newspaper report stated that "Dong's case is considered notable because he is a U.S. citizen and entitled to consular protection" and stated that U.S. consular officials in Guangzhou were notified at the time of his arrest. *Id.*
121. Chris Buckley, *China Has Arrested American on Suspicion of Spying for Taiwan*, N.Y. TIMES, Aug. 19, 2005, http://www.nytimes.com/2005/08/19/international/asia/19spy.html.
122. Andrew Jacobs, *Chinese-American Faces Trial in China*, N.Y. TIMES, Dec. 22, 2012, http://www.nytimes.com/2012/12/23/world/asia/chinese-american-faces-trial-in-china-over-business-dispute.html?_r=0.

reportedly tortured into signing a confession.[123] He was allegedly beaten while being hung upside down, deprived of food and water for several days, and deprived of sleep.[124] The confession that he signed is the basis of his prosecution. American officials trying to visit him in jail said that "they have been stymied because Mr. Wu did not use his American passport on his most recent visit to China from Hong Kong."[125] Because he had lived in Hong Kong before moving to the United States in 1993, he had a Hong Kong identification card that allowed him "to avoid the hassle of obtaining a Chinese visa for each border crossing."[126] A spokesman for the American Embassy in Beijing said that Chinese authorities "had refused to recognize his dual citizenship."[127]

- Charles Xue (also known as Xue Manzi), a prominent investor and online social commentator, was arrested in China in August 2013 on charges of soliciting prostitution.[128] Mr. Xue, age sixty, was reportedly arrested with a twenty-two-year-old woman.[129] The arrest came "just after the [Chinese] government stepped up a campaign aimed at cracking down on online activism."[130] Mr. Xue has more than twelve million followers on Weibo, a popular microblog platform similar to Twitter.[131] His posts on Weibo provided not only investment tips but also commentary on social issues such as child trafficking and the plight of the underprivileged.[132] The Chinese government, however, "has been cracking down on social media activists who have exposed corruption or stirred up interest in social issues."[133] Mr. Xue grew up in China but is a naturalized American citizen.[134] Posts on microblogs shortly after his arrest speculated that his arrest "was a setup and an attempt to stifle online commentary."[135] Indeed, a relatively minor arrest for soliciting prostitution being broadcast on Chinese state television was seen as being "a crackdown

123. *Id.*
124. *Id.*
125. *Id.*
126. *Id.* The article states, without citation to any authority, that "[u]nder international law, the Chinese can restrict consular access to Mr. Wu based on the identification he used to enter China." *Id.*
127. *Id.*
128. David Barboza, *Chinese-American Commentator and Investor Is Arrested in Beijing*, N.Y. TIMES, Aug. 25, 2013, http://www.nytimes.com/2013/08/26/world/asia/chinese-american-commentator-and-investor-is-arrested-in-beijing.html?_r=0.
129. *Id.*
130. *Id.*
131. *Id.*
132. *Id.*
133. *Id.*
134. *Id.*
135. *Id.*

> and [that] authorities wanted to send a message."[136] The speculation about the fabricated arrest may have been warranted, because that arrest was shortly followed by Mr. Xue's broadcast confession on Chinese state television. His confession was not of the arrest for soliciting prostitution, but rather a renunciation of his web posts and his statement of "how dangerous the Internet would be if left uncontrolled by the government."[137] Mr. Xue confessed that the Internet "gratified [his] vanity greatly" and that he "got used to [his] influence online and the power of [his] personal opinions . . . ."[138]

- Ilan Chaim Grapel, a student at Emory University School of Law in Atlanta, Georgia, was arrested in Egypt in 2011 on charges of being a spy for Israel.[139] He was reportedly "accused of being an agent with Israel's Mossad intelligence agency and of sowing sectarian strife and chaos in Egypt after a popular uprising forced president Hosni Mubarak to step down" a few months earlier.[140] He was released after four months in exchange for the release of twenty-five Egyptians held in Israel.[141]

- Mohamed Soltan, an Egyptian-American dual citizen, was arrested in Cairo in August 2013 for possessing documents said to describe "a plot to 'spread chaos and violence in [Egypt]' by encouraging members of the army and police to defect."[142] In a letter smuggled

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136. Barbara Demick, *Noted Chinese Blogger Arrested on Prostitution Solicitation Charge*, L.A. TIMES, Aug. 25, 2013, http://www.latimes.com/world/worldnow/la-fg-wn-china-blogger-arrest-prostitution-20130825,0,1815378.story ("It appears that Chinese authorities were not angered by Xue's writing so much as his penchant for retweeting postings from lesser-known microbloggers, thereby giving a larger voice to criticism of China.").

137. William Wan, *China Broadcasts Confession of Chinese-American Blogger*, WASH. POST, Sept. 15, 2013, http://articles.washingtonpost.com/2013-09-15/world/42088959_1_posts-online-blogger ("Chinese state television on Sunday broadcast a startling video of a famous blogger in handcuffs, renouncing his Web posts and saying how dangerous the Internet would be if left uncontrolled by the government.").

138. *Id.*

139. Jon Jensen, *Israeli Man Arrested in Egypt for Spying is a Dual American Citizen*, GLOBAL POST, June 13, 2001, http://www.globalpost.com/dispatches/globalpost-blogs/the-casbah/israeli-spy-caught-egypt-dual-american-citizen.

140. *Man Held in Egypt Not a Spy: Israeli Foreign Minister*, TIMES OMAN, June 14, 2011, *available at* 2011 WLNR 11838047.

141. *See, e.g.*, *Six Israéliens Accusés d'Espionnage Convoqués Devant la Justice Egyptienne*, LE MONDE, June 26, 2013, *available* at 2013 WLNR 15599517 ("En juin 2011, l'Egypte avait condamné l'Israélo-Américain Ilan Grapel pour espionnage au profit d'Israël. Quatre mois plus tard, les deux pays avaient conclu un accord d'échange au cours duquel 25 prisonniers égyptiens avaient été libérés des geôles israéliennes contre M. Grapel.").

142. Jared Malsin, *Egyptian Military Crackdown Leads to Arrest of American Citizen*, TIME MAG., Aug. 27, 2013, http://world.time.com/2013/08/27/egyptian-military-crackdown-leads-to-arrest-of-american-citizen/. *See also Mohamed Soltan, American Citizen and Ohio State Grad, Arrested in Egypt*, IBN PERCY (Aug. 25, 2013), http://www.ibnpercy.com/mohamed-soltan-american-citzen-and-ohio-state-grad-arrested-in-egypt/.

from prison, he claimed that "Egyptian security personnel beat him, denied him medical attention and joked about killing detainees."[143]

- Dr. Haleh Esfandiari is an Iranian-American academic and the Director of the Middle East Program at the Woodrow Wilson International Center for Scholars in Washington, D.C., where her areas of expertise include Middle Eastern women's issues, contemporary Iranian politics, and democratic developments in the Middle East.[144] In 2007, she was detained in solitary confinement for more than 105 days at Evin Prison in Tehran, Iran.[145] A Senate Resolution stated that she had been "falsely accused by a news agency in Iran of being a spy for Mossad, of serving as the head of the Iran section of the American Israel Public Affairs Committee, and of encouraging an uprising against the regime in Tehran."[146] The Senate Resolution condemned "the continuing crackdown in Iran on journalists and scholars and the deliberate dissemination of misinformation regarding their activities."[147]

- Saeed Abedini, an Iranian-American who converted from Islam to Christianity, was arrested in Iran in September 2012 and sentenced to eight years in prison "on charges of disturbing national security by creating a network of Christian churches in private homes."[148]

Consular officials were able to visit many—but not all—of the imprisoned or detained U.S. dual nationals in the cases listed here. Some of these cases involved particularly compelling issues for Americans, such as freedom of speech, freedom of religion, and other rights seen as fundamental to American history and culture. Other cases involved the alleged use of torture to obtain confessions. The interest of the United States in ensuring that its citizens are not subjected to torture in foreign prisons is a strong and compelling interest. Press coverage and congressional resolutions in support of detained persons further support the deep-rooted interest in ensuring that nationals are not mistreated by the

143. Jarel Malson, *Egyptian Authorities 'Beat Up' Ohio State Grad in Cairo Prison*, TIME MAG., Oct. 1, 2013, http://world.time.com/2013/10/01/egyptian-authorities-beat-up-ohio-state-grad-in-cairo-prison/.

144. *Wilson Center Experts: Haleh Esfandiari*, WILSON CENTER, http://www.wilsoncenter.org/staff/haleh-esfandiari (last visited Jan. 15, 2014).

145. *Id.*

146. S. Res. 199, 110th Cong. (2007), *available at* http://www.gpo.gov/fdsys/pkg/BILLS-110sres199is/pdf/BILLS-110sres199is.pdf.

147. *Id.*

148. *See Iran Gives Iranian-American Pastor 8-Year Term*, N.Y. TIMES, Jan. 28, 2013, http://www.nytimes.com/2013/01/29/world/middleeast/iranian-american-pastor-given-8-year-term-by-iran.html.

criminal justice systems of other countries, particularly when crimes appear to be manufactured for political reasons.

IV. CONCLUSION

The right of consular notification is not just a benefit to the individuals arrested or detained, but to their home country. Paraguay, Germany, Mexico, and other countries each asserted rights to represent and protect nationals who were arrested, tried, and sentenced to death without the benefit of consular notification. Those were extreme cases involving the death penalty, but the right to be informed of consular assistance is not limited to death penalty cases. Any foreign national from a country that is a party to the VCCR who is arrested or detained has the right to be informed without delay of the right of consular assistance, and the interest of a country in ensuring that its national is not mistreated is a right deserving of protection even when the person is a dual national. The text of the VCCR does not limit the right of consular notification and courts should not read into that treaty an exclusion that is not there. International law should recognize that nations have legitimate interests in their own right as parties to the VCCR. The status of a person being a national of more than one state should not obliterate the interest of that state in the protection of its national.