

**Questions for the Record Submitted to
Under Secretary Patrick Kennedy
Senator Amy Klobuchar (#1 - #2)
Senate Committee on the Judiciary
July 27, 2011**

Question #1

Have there been occasions on which the U.S. has urged other countries to change their consular notification policies or decisions, or address shortcomings, either on a general basis or in response to particular cases?

Answer:

Occasions frequently arise in which U.S. authorities urge other countries to improve their consular notification and access practices. In so doing, U.S. authorities emphasize the United States' commitment to these obligations and point to U.S. State Department guidance relating to consular notification and access as best practices to help guide the behavior of foreign governments. Such efforts to secure timely and consistent consular notification and access for U.S. citizen detainees, and to improve foreign government practices across the board, and in specific cases, are obviously undermined if the United States is perceived as not taking these obligations seriously and honoring them with integrity.

The international law obligation to provide consular notification and access is longstanding and virtually universal in scope. Most countries of the world – approximately 170 – are parties to the Vienna Convention on

Consular Relations (“Vienna Convention”), a treaty concluded in 1963.

Many of these countries, as well as Vienna Convention nonparties such as Ethiopia and Israel, are parties to bilateral agreements with the United States addressing consular notification and access. Some of the bilateral agreements predate the Vienna Convention. For example, agreements with Mexico and the Philippines entered into force in 1943 and 1948, respectively, and the U.S.-UK consular convention, to which the United Kingdom and 31 of its former colonies are parties, entered into force in 1952.

Occasions often arise in which the United States urges other countries either to comply with consular notification and access obligations in particular cases for the benefit of individual U.S. citizens, to improve their consular notification practices in general, or both. The Department of State has a number of diplomatic tools at its disposal to address these issues. For example, when a U.S. Embassy or Consulate learns that a U.S. citizen has been detained by a foreign government, it typically requests an immediate visit, reminding the authorities of their obligation to allow consular access. If local authorities are recalcitrant or unresponsive, the consulate may send a diplomatic note to the country’s Ministry of Foreign Affairs complaining of the failure to provide notification and access, again citing international treaty

obligations in the Vienna Convention or relevant bilateral agreement, and demanding access or an explanation for why access has not yet been granted.

In some serious cases, or where the country has repeatedly failed to comply with the relevant obligations, high-level U.S. officials, such as the ambassador in country, may request a meeting with high-level officials in the foreign government to personally, formally complain and request remedial action. Such a meeting may also occur between State Department principals in Washington and the country's Embassy officials, on occasion at the Ambassador level.

In our dialogues with other countries about consular notification and access compliance, the State Department often shares best practices, while at the same time emphasizing the reciprocal importance of these protections for the country's own nationals. In so doing, the Department cites practices developed over decades in the United States as ways in which the country's authorities can discharge their treaty obligations. The Department has incorporated most of these practices in its Consular Notification and Access Manual, available at www.travel.state.gov/consularnotification, now in its Third Edition. The Department frequently provides foreign governments or their consular staff in the United States with copies of the materials it uses to train law enforcement and other officials in the United States, including the

Manual and pocket cards succinctly setting forth the basic notification and access obligations.¹ (See Tab 1 for a sample card).

The Department also devotes a chapter of the Foreign Affairs Manual, 7 FAM 400, to consular notification and access in U.S. citizen arrest cases, and provides a roadmap for consular officials overseas to use in complaining about adverse treatment of U.S. citizens. Department procedures direct consular officers to seek access to U.S. citizens as soon as they learn of a detention, through notification by foreign authorities or otherwise, and our embassies regularly send demarches or diplomatic notes complaining of failures to notify or denials of access. These communications cite the Vienna Convention or an applicable bilateral agreement, and reaffirm the U.S. commitment to these instruments and the seriousness with which the United States regards notification and access obligations.

The FAM specifically instructs consular officers at U.S. embassies and consulates abroad to use the Consular Notification and Access Manual as a guide for how the treaty obligations may be discharged in actual cases

¹ In order to ensure ongoing compliance with U.S. obligations under the Vienna Convention, the Bureau of Consular Affairs (CA) manages an outreach program that provides materials, training, and guidance to local, state, and federal law enforcement and criminal justice officials. Last year, CA distributed 6,000 manuals and 70,000 pocket cards to law enforcement officials. Countless more individuals access this information via the internet. CA conducted training sessions in seven states, and made presentations at four law enforcement conferences to highlight the importance of consular notification with high-ranking police officials who are often in a position to ensure that these responsibilities are discharged properly.

in the countries where they are posted, and to share the Manual with foreign law enforcement and encourage them to adapt their practices as appropriate. Consular officers also use the advice set forth in the Manual when interacting with foreign authorities who have arrested or detained a U.S. citizen, or with the country's government.

For example, consular officers are expected to inform foreign law enforcement or others in the country's government that the Vienna Convention's "without delay" standard requires notification promptly after law enforcement determines that a detained individual is a U.S. citizen.² They inform foreign law enforcement that simply giving the U.S. citizen detainee access to a telephone, and leaving it up to him or her to call the consulate, is not sufficient to discharge the treaty obligation; instead, the authorities must themselves notify the consulate. Consular officers explain that consular access must be allowed through a face-to-face meeting. Consular officers are also instructed to refer to the Manual for information on specific rules contained in some bilateral agreements—for example, different time limits for notification or, for some countries, rules on when consular officers may meet privately with their national in detention.

² The Manual recommends that U.S. law enforcement routinely ask every person arrested or detained whether they are a foreign national.

Department of State officials regularly stress the importance of notification and access generally during bilateral discussions with foreign governments on consular issues. The Department also frequently engages multilaterally with other governments experiencing the same problems with a particular country. Diplomatic complaints and demarches in particular cases generally result in the relevant foreign law enforcement officials allowing U.S. consular officers access to the detained U.S. citizen. They also sometimes lead to a more general dialogue with the country on how to address shortcomings.

The Department has used many of these tools with one particularly recalcitrant country whose law enforcement and prison officials routinely fail to inform U.S. citizens that they may seek the assistance of the U.S. consulate, and deny or fail to respond to the consulate's requests for access. Engagement with that country's officials at high levels, both in Washington and in the country's capital, has begun to produce positive results. In another highly publicized case, three U.S. citizens allegedly crossed an unmarked border in Iran and were taken into custody, consular notification was not forthcoming, and the Department emphasized publicly that "Iran has obligations under the Vienna Convention" and demanded prompt consular access. When Iran granted access to our Swiss Protecting Power, the

Department welcomed “the fact that Iran is meeting . . . its obligations under the Vienna Convention,” but since that time we have repeatedly protested the lack of regular access.

U.S. citizens travel around the world – taking 60 million trips last year – for business, tourism, and other reasons, including to some potentially inhospitable destinations. Experiences in Iran, North Korea, Burma, Cuba, Pakistan, and elsewhere demonstrate that even unsympathetic governments can find it difficult to resist demands for consular access when presented with clear legal obligations backed up by the moral force of the requestor. For example, following U.S. government demands, Pakistan provided consular access to U.S. Embassy employee Raymond Davis who was detained in Lahore by Pakistani law enforcement officials in connection with the fatal shooting of two Pakistani nationals. In engaging with foreign government regarding such cases, it is essential that the United States be able to point to an impeccable record of providing consular notification and access to foreign nationals.

Question #2

Please describe how the consular notification issue could impact public opinion in other countries and how such foreign public opinion can impact U.S. interests and U.S. citizens abroad.

Answer:

The fact that the United States has not fulfilled its international legal obligations related to consular notification and access has had a negative impact on public opinion in foreign countries, as documented by foreign press reports, and has provoked increasingly numerous and vociferous complaints from foreign governments about U.S. non-compliance with its international law obligations. This reputational harm adversely affects U.S. citizens as well other U.S. interests. It weakens our image as a world leader on the rule of law; makes it more difficult for the United States to credibly demand that other countries follow their international law obligations; diminishes our leverage to persuade other countries to improve consular notification and access compliance for the benefit of U.S. citizens; and interferes with other countries' willingness and ability to cooperate with us on a range of important U.S. interests, including law enforcement, counterterrorism, and border security.

Since 1998, the United States has been sued in the International Court of Justice (ICJ) in three separate cases for its failure to provide consular

notification and access to foreign nationals, first by Paraguay, then by Germany, and finally by Mexico. The ICJ ruled against the United States in each of these cases.³ Thus far, the United States has executed five individuals in the face of contrary ICJ orders and judgments, including at least two individuals in direct violation of that Court's judgments. This occurred despite the fact that the United States had a binding treaty obligation to comply with the rulings of the ICJ as a party to the Vienna Convention's Optional Protocol on the Compulsory Settlement of Disputes⁴

³ Specifically, on April 9, 1998, the ICJ issued provisional measures directing the United States to suspend the execution pending resolution on the merits of the Vienna Convention claim of Angel Francisco Breard, a Paraguayan national who was on death row in Virginia, and again on March 3, 1999, in the case of Karl and Walter LaGrand, two German nationals convicted of armed robbery and murder in Arizona whom Germany complained were deprived of their right to consular notification. Both cases were brought to the Court on the eve of the scheduled executions, and the individuals were executed notwithstanding the unanimous orders issued by the Court. In June 2001, in the *LaGrand Case (Germany v. U.S.)*, the Court held that in cases involving German nationals sentenced to severe penalties without having been advised of their right to consular notification, the United States "by means of its own choosing, shall allow the review and reconsideration of the conviction and sentence by taking account of the violation" of consular notification rights set forth in the Vienna Convention. *LaGrand (Germany v. United States)*, 2001 I.C.J. 466, at 516 (June 27).

In February 2003, the ICJ issued provisional measures with respect to three Mexican nationals in the *Avena* case (*Mexico v. U.S.*), directing the United States to take all necessary measures not to execute them pending resolution of the *Avena* case on the merits. On March 31, 2004, the ICJ issued its ruling in *Avena*, holding that the United States had violated the Vienna Convention and directing the United States to provide judicial review and reconsideration of the convictions and sentences of these and other Mexican nationals sentenced to severe penalties. *Avena (Mexico v. United States)*, 2004 I.C.J. 12 (March 31). Mexico subsequently requested and received provisional measures with respect to Texas's imminent execution of one of the *Avena* defendants, José Ernesto Medellín. Request for Interpretation of the Judgment of 31 March 2004 in the *Case Concerning Avena and Other Mexican Nationals (Mexico v. United States)*, 2008 I.C.J. 311 (July 16). Texas proceeded to execute Medellín in August 2008, and executed another of the 51 named defendants in the *Avena* group, Humberto Leal García, in July 2011.

⁴ In 2005, the United States withdrew from the Optional Protocol. See Letter from Condoleezza Rice, Secretary of State, to Kofi A. Annan, Secretary-General of the United Nations (Mar. 7, 2005), <http://www.state.gov/documents/organization/87288.pdf>.

– a legal obligation which all members of the Supreme Court recognized and found compelling in *Medellín v. Texas*, 552 U.S. 491, 522–24 (2008).

(“[T]he ICJ’s judgment in *Avena* creates an international law obligation on the part of the United States In this case, the President seeks to vindicate United States interests in ensuring the reciprocal observance of the Vienna Convention, protecting relations with foreign governments, and demonstrating commitment to the role of international law. These interests are plainly compelling.”).

The United States’ repeated failure to comply with *Avena* and other judgments of the ICJ under the Vienna Convention has generated a significant amount of negative press and has impacted public opinion against the United States. Relations with Mexico have been particularly affected. The Mexican government has lodged numerous complaints on this issue, which poses a persistent obstacle to constructive U.S.-Mexican relations. (See Tab 4). In the wake of the Merida Initiative, U.S.-Mexican relations are enjoying an unprecedented level of cooperation but there are also sensitivities. As the Mexican Ambassador explained in a June 2011 letter to the Secretary of State, the United States’ “continued non-compliance with the ICJ’s decision has already placed great strain on [the] relationship” between the United States and Mexico. “[A] second execution in violation

of the ICJ's judgment would seriously jeopardize the ability of the Government of Mexico to continue working collaboratively with the United States" on important law-enforcement initiatives, "including extraditions, mutual judicial assistance, and our efforts to strengthen our common border." Letter from Arturo Sarukhan, Ambassador of Mexico, to Hillary Clinton, Secretary of State (Jun. 14, 2011) (See Tab 2). Significantly, Ambassador Sarukhan warned:

another execution of a Mexican national in direct violation of international law will undoubtedly affect public opinion in Mexico. Under these circumstances, in addition to the likely impact on dialogue and cooperation, my government would face significant pressure from Mexico's Congress to revise our cooperation and to re-examine our commitment to other bilateral programs. It serves neither the United States nor the Mexico-US relationship if the U.S. cannot live up to its treaty obligations. *Id.*

As Secretary Clinton and Attorney General Holder have confirmed, "[c]ontinued non-compliance with *Avena* has become a significant irritant that jeopardizes other bilateral initiatives" between the United States and Mexico. Letter from Attorney General Eric H. Holder, Jr., and Secretary of State Hillary Rodham Clinton to Senator Patrick Leahy (June 28, 2011) (See Tab 3).

The foreign and international media has extensively covered the United States' failure to comply with the *Avena* judgment and other consular notification and access obligations – coverage which offers an important

window into foreign public opinion on this issue. For example, when Humberto Leal García was executed in July 2011 without being afforded the review and reconsideration of his conviction and sentence required by the ICJ, Mexican newspapers published over 1,000 articles on the event, most of them strongly critical of the United States' noncompliance.⁵ The story was also carried by international press services such as CNN International,⁶ Al Jazeera,⁷ the BBC,⁸ Agence France-Presse,⁹ and Radio Netherlands

⁵ See, e.g., *Mexican National Executed Despite Protests*, GUADALAJARA REPORTER, July 9, 2011, available at <http://www.guadalajarareporter.com/news-mainmenu-82/national-mainmenu-86/29238-mexican-national-executed-despite-protests.html> (describing the case as a “fruitless” effort “to force Texas to adhere to international law”). The Mexican press also widely reported the statements of the Mexican Ministry of Foreign Affairs regarding the case, see Press Release, Mexican Ministry of Foreign Affairs, Mexico Defends Consular Notification Rights per International Law, July 6, 2011, available at <http://www.mexidata.info/id3069.html>; Press Release, Mexico Condemns Execution of Mr. Humberto Leal García, July 7, 2011, available at <http://embamex.sre.gob.mx/eua/index.php/en/comunicados2011/519>.

⁶ Bill Mears and Nick Valencia, *One Mexican's death row case spills far beyond borders of Texas*, CNN INTERNATIONAL, July 7, 2011, available at <http://edition.cnn.com/2011/CRIME/07/03/texas.death.row/> (discussing Leal's failure to receive consular notification as well as the ICJ judgment and the pending Consular Notification Compliance Act).

⁷ *Defiant Texas executes Mexican man*, ALJAZEERA, July 8, 2011, available at <http://english.aljazeera.net/video/americas/2011/07/20117875513641480.html> (citing reports that Leal Garcia was not informed of his consular rights at the time of his arrest); *Obama Seeks Delay In Execution of Mexican*, ALJAZEERA, July 7, 2011, available at <http://english.aljazeera.net/news/americas/2011/07/201176232251365358.html> (discussing the importance of reciprocal consular protections for U.S. citizens).

⁸ *Texas execution 'violated international law', UN says*, BBC NEWS, July 8, 2011, available at <http://www.bbc.co.uk/news/world-us-canada-14089246> (quoting UN High Commissioner for Human Rights that Texas' execution of Leal without honoring US obligations under the Vienna Convention placed “the US in breach of international law”).

⁹ *Mexico in push to stop execution in US*, AGENCE FRANCE-PRESSE, July 5, 2011, available at <http://www.google.com/hostednews/afp/article/ALeqM5iWujRAYBJgvHTBiT3tLYRmloldTg?docId=CNG.4a21d5c02922f58d59a33b03ef8a2b83.11> (citing Mexican statement that Leal was not given consular access in a violation of the Vienna Convention).

Worldwide;¹⁰ by other regional press in Latin America,¹¹ Europe,¹² and Africa;¹³ and by various national press outlets in the United Kingdom,¹⁴ Russia,¹⁵ Turkey,¹⁶ and Iran,¹⁷ among many other countries. The reporting was consistently critical of the United States' failure to provide Leal with consular notification or comply with the ICJ judgment. For example, the *Latin American Herald Tribune* indicated that the United States had

¹⁰ *Texas executes Mexican despite protests*, RADIO NETHERLANDS WORLDWIDE, July 8, 2011, available at <http://www.rnw.nl/international-justice/bulletin/texas-executes-mexican-despite-protests>.

¹¹ Duncan Tucker, *Texas Executes Mexican National*, LATIN AMERICAN HERALD TRIBUNE, available at <http://www.laht.com/article.asp?ArticleId=405127&CategoryId=12395>.

¹² *US Executes Mexican Murderer*, EURONEWS, July 8, 2011, available at <http://partenaire.euronews.net/2011/07/08/us-executes-mexican-murderer/>.

¹³ *US urges Supreme Court to halt Mexican's execution*, STARAFRICA, July 1, 2011, available at <http://www.starafrica.com/en/news/detail-news/view/un-agency-urges-texas-to-halt-execution-175122.html>.

¹⁴ See, e.g., *U.S. was in Breach of International Law by Executing Mexican Murderer and Rapist, says U.N. Official*, THE DAILY MAIL, July 8, 2011, available at <http://www.dailymail.co.uk/news/article-2011712/Mexican-murderer-rapist-Humberto-Leal-Garcia-death-Texas.html#ixzz1VTj8gRJd> (stating that, "Had Leal been given access to the Mexican consulate it would have been likely to have arranged a lawyer who would have advised the accused man to limit his statements to the police. As it was, the Mexican authorities were never informed of his arrest."); *USA 'Breached International Law' Executing Mexican Convict*, THE TELEGRAPH, July 8, 2011, available at <http://www.telegraph.co.uk/news/worldnews/northamerica/usa/8626663/USA-breached-international-law-executing-Mexican-convict.html>; *Humberto Leal's execution, Rick Perry's ambition*, THE GUARDIAN, July 8, 2011; *Why the Obama administration opposed Mexican man's execution*, THE TELEGRAPH, July 8, 2011, available at <http://www.telegraph.co.uk/news/worldnews/northamerica/usa/8624674/Why-the-Obama-administration-opposed-Mexican-mans-execution.html>.

¹⁵ *The Voice of Russia*, THE VOICE OF RUSSIA, July 9, 2011, available at <http://english.ruvr.ru/2011/07/09/52982713.html> (discussing the Leal execution as a violation of international law).

¹⁶ *Obama Administration Calls for Halt to Texas Execution*, J. TURKISH WEEKLY, July 2, 2011, available at <http://www.turkishweekly.net/news/118039/obama-administration-calls-for-halt-to-texas-execution.html>.

¹⁷ *UN condemns U.S. for Executing Mexican*, PRESS TV IRAN, July 10, 2011, available at <http://www.presstv.ir/detail/188491.html> (reporting UN High Commissioner for Human Rights' comment that Leal was not granted consular access under the Vienna Convention on Consular Relations and that Leal's execution placed U.S. officials in breach of international law).

“stumbled in its commitment to the rule of law,” and noted that the pending Consular Notification Compliance Act bill would establish a judicial process to determine whether lack of consular access affected a foreign national’s capital trial.¹⁸ The Mexican Ministry of Foreign Affairs’ public statement, which was picked up in a number of foreign and international press pieces on Leal’s execution, also emphasized that the case was about “the right of every individual, based on the Vienna Convention, to have the support of their home state when facing criminal prosecution abroad.”¹⁹

The 2008 execution of José Ernesto Medellín likewise was covered in foreign press across Europe, in Australia and in China, among other countries, with extensive focus on the United States’ lack of compliance with its consular notification obligations.²⁰ Asia One Press, for example,

¹⁸ *Texas Executes Mexican National*, LATIN AMERICAN HERALD TRIBUNE, available at <http://www.laht.com/article.asp?ArticleId=405127&CategoryId=12395>.

¹⁹ Press Release, Mexican Ministry of Foreign Affairs, Mexico Defends Consular Notification Rights per International Law, July 6, 2011, available at <http://www.mexidata.info/id3069.html>.

²⁰ See, e.g., *Mexican Jose Medellin Executed in Texas after 11th-Hour Delay*, THE AUSTRALIAN, Aug. 6, 2008, available at <http://www.theaustralian.com.au/news/mexican-executed-after-11th-hour-delay/story-e6frg6tf-1111117122340> (discussing Medellín’s claim that he was denied his consular notification rights); *U.S. Execution Breached International Law: World Court*, REUTERS, Jan. 19, 2009, available at <http://www.fadp.org/news/2009020402/>, (discussing the *Avena* decision and the execution of Medellín as a violation of international law due to Medellín’s lack of consular notification); *Texas Executes Mexican Murderer*, BBC NEWS, Aug. 6, 2008, available at <http://news.bbc.co.uk/2/hi/7542794.stm> (“The ICJ had ordered that [Medellín’s] case and those of 50 other Mexicans on death row be reviewed because they had not been informed of their right to consular assistance at the time of their arrest - a right under the 1963 Vienna Convention.”); *Medellin Execution Highlights Flaw in International Law*, ASIAONE NEWS, Aug. 8, 2008, available at <http://news.asiaone.com/News/AsiaOne%2BNews/World/Story/A1Story20080808-81376.html>.

highlighted “[t]he execution of a Mexican citizen by the United States against the orders of the UN’s highest court.”²¹

In addition to Mexico, U.S. noncompliance has received particular public attention in another close U.S. ally, the United Kingdom. The United Kingdom has at least five nationals on death row in the United States, including Linda Carty, sentenced in Texas state court, Kenneth Gay, Pravin Govin, and Virendra Govin, all sentenced in California state court, and Michael Lane, sentenced in Nevada state court, all of whom have indicated they did not receive consular notification and access in violation of both the Vienna Convention and the U.S.-UK bilateral convention. Much UK media coverage has focused on the failure of the United States to abide by its consular notification and access obligations. For example, on the Carty case, *The Sunday Times* reported:

Martin Longden, a spokesman for the British Embassy in Washington, said the right to consular notification when British citizens were arrested in the U.S. was “a point of principle for us” and “part of an individual’s right to a fair trial.” He emphasised that US citizens arrested in Britain were guaranteed the same rights.²²

²¹ *Id.*

²² Giles Whittell, *Death-row Inmate Linda Carty Launches Last-chance Appeal to US Supreme Court*, THE SUNDAY TIMES, February 27, 2010, available at http://www.timesonline.co.uk/tol/news/world/us_and_americas/article7043309.ece. See also Giles Whittell, *Death-row Inmate Linda Carty Launches Last-chance Appeal to US Supreme Court*, THE SUNDAY TIMES, Feb. 27, 2010, available at http://www.timesonline.co.uk/tol/news/world/us_and_americas/article7043309.ece (noting the British government’s protests over the fact that Texan authorities failed to inform British officials of her arrest in contravention of consular treaty law); *Death Row Briton Linda Carty Pleas to US*

UK officials raise the need for a solution to such consular notification violations frequently with the State and Justice Departments, and at very high levels. (See Tab 4).

The extensive and repeated foreign media coverage of the ICJ rulings, executions, and other events relating to U.S. consular notification and access compliance indicates that members of the public and government officials around the world are continually receiving the message that the United States has failed to comply with its consular notification and access obligations. These concerns in turn are voiced by foreign governments, which have increasingly called upon the United States to fulfill these obligations, including the *Avena* judgment. Foreign governments have raised these issues repeatedly in bilateral communications and in regional and multilateral fora, as documented in Tab 4. For example, since the *Avena* judgment, the European Union has sent persistent overtures to the United States about this issue. And prior to Texas's execution of Leal on July 7, 2011, the European Union, Chile, El Salvador, Honduras, Switzerland, and

Supreme Court, BBC NEWS Feb. 26, 2010, *available at* http://news.bbc.co.uk/2/hi/uk_news/8538790.stm (noting that Carty's and the UK government's legal appeals are "based around claims she was given an inadequate defence lawyer during the original trial and that the UK government was blocked from providing support."). *See also* Bianca Jagger, *A Case for the Supreme Court*, THE HUFFINGTON POST, Apr. 27, 2010, *available at* http://www.huffingtonpost.com/bianca-jagger/a-case-for-the-supreme-co_b_553310.html ("Paul Lynch, the British Consul-General in Houston, has called the Carty conviction 'a terrible failure of the system.' He states that if the British Consulate had been made aware of Linda's situation, the circumstances would have been very different.").

Uruguay all wrote the Governor of Texas to urge him to grant Leal a reprieve to allow time for passage of legislation to address the United States' outstanding obligations under *Avena*. (See letters at Tab 5).

Most importantly, the international perception that the United States does not provide consular notification and access to foreign nationals facing the most serious charges, and does not remedy those violations, makes it much harder for U.S. officials to persuade foreign officials to provide consular notification to U.S. citizens detained abroad and to remedy any failure to do so, thereby directly impeding the ability of the U.S. government to protect this vulnerable population. As the Attorney General and Secretary of State have explained, “[c]onsular assistance is one of the most important services that the United States provides its citizens abroad.” State/Justice Letter (See Tab 3). In each of the past five years, over one thousand U.S. citizens remained in custody abroad, and the State Department regularly calls upon foreign nations to live up to their legal obligations by allowing our consular officials to visit those U.S. citizens, ensure that they are not being mistreated, secure necessary food and medicine, help them communicate with their families, and assist them in finding legal counsel or otherwise navigating an unfamiliar judicial system. In Fiscal Year 2010 alone, U.S. consular officials assisted more than 3,500 U.S. citizens who

were arrested abroad and conducted more than 9,500 prison visits. Consular assistance has proven essential to affording needed assistance in several sensitive recent cases involving U.S. citizens detained in Egypt, Libya, Syria, Iran, and Pakistan, among other countries.

Respecting international rules for consular notification is a matter of paramount importance for U.S. citizens detained overseas, as foreign nationals detained in the United States usually have a constitutional right to counsel, whereas U.S. citizens detained in many foreign countries do not. In these ongoing efforts, the State Department relies on the cooperation of foreign officials, and points to U.S. compliance as an example. Compliance with our consular notification and access obligations is therefore essential for ensuring that U.S. citizens detained overseas can receive critical consular assistance. We simply cannot afford for the foreign officials whom we call upon to respect the law to perceive the United States as lax about its own compliance.

The consequences of foreign public opinion are much broader than our ability to ensure reciprocal protections for U.S. nationals abroad, however. The perception of the United States as a country that does not live up to its international legal obligations influences the actions of foreign governments and negatively impacts U.S. interests in many other areas,

especially in terms of international cooperation on law enforcement and security matters.

The United States relies on close cooperation with foreign officials to disrupt transnational criminal networks, prevent terrorist attacks, intercept shipments of illicit weapons and narcotics, stop human trafficking, and bring dangerous criminals to justice. In this regard, our cooperation with Mexico—the country with the most citizens currently on death row in the United States whose cases involve Vienna Convention violations—has been especially close and important. The issue of continued U.S. noncompliance with consular notification and access obligations is one that Mexican counterparts raise regularly in the bilateral dialogue on cross-border law enforcement cooperation, and as noted, the Mexican government has warned that domestic public pressure on this issue, including from the Mexican Congress, could make it more difficult to maintain the robust levels of cooperation that we currently enjoy. The pervasive perception among foreign officials and citizens that the United States has failed to live up to its international legal obligations negatively impacts our ability to secure foreign governments' cooperation in vital areas. This development could, in turn, make all U.S. citizens less safe—not simply those who travel abroad.

