

Statement of

The Honorable Patrick Leahy

United States Senator
United States Senate
July 27, 2011

**Statement Of Senator Patrick Leahy (D-Vt.),
Chairman, Committee On The Judiciary,
"Fulfilling Our Treaty Obligations And Protecting Americans Abroad"
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Today we will hear testimony about legislation I introduced last month, with the support of the Department of Justice, the Department of State, and the Department of Homeland Security, to help bring the United States into compliance with its obligations under the Vienna Convention on Consular Relations. This is a treaty made under the authority of the United States, a treaty that carries the force of law in this country.

In an important way, we began our opening statements for this hearing a week ago when Senator Grassley raised the issue at an earlier hearing last Wednesday. We agreed on an important principle then - that treaties ratified by the United States are the law of the land and, like any law, must be honored. Senator Grassley made reference to the supremacy clause contained in Article VI of the Constitution of the United States that provides for the Constitution, Federal laws and treaties to be treated as "the supreme Law of the Land." That is the central point of this hearing. If we can remain focused on that shared principle, I am confident that we can find a solution to the problem that continues to plague us following the Bush administration's unsuccessful effort to comply with our legal obligations.

Each year, thousands of Americans - including from every state represented by the Members of this Committee - are arrested overseas while they study, travel, work, and serve in the military. Their well-being often depends on the ability of United States consular officials to meet with them, monitor their treatment, help them obtain legal assistance, and connect them to family back home.

That access is protected by the treaty ratified in 1969 after a bipartisan vote in the Senate. This treaty has been supported by every President, Republican or Democratic, ever since. The treaty is not "foreign law." It is American law and has been for more than 40 years. The United States joined the treaty and made it our law because it protects our citizens.

The value of that treaty has never been questioned. But, as with any treaty, with any law, it is only effective when enforced. And right now, in too many cases, the United States is not being faithful to this law. That failure puts Americans in other countries at risk.

This should not be a partisan issue. President George W. Bush tried to fix the problem through an executive memorandum but the Supreme Court rejected that approach. In a decision by Chief Justice Roberts, the Court agreed that reciprocal observance of the treaty was a "plainly compelling" American interest, but ruled that the solution had to be implemented by Congress and not the President. The legislation I introduced follows the approach taken by President Bush but does it, as Chief Justice Roberts insisted, by way of implementing legislation.

I recognize that solving this problem requires us to deal with cases involving heinous crimes. In

no way do I want to minimize the seriousness of these crimes or the importance of seeing justice done for the victims of these crimes. As a former prosecutor, I feel as strongly as anyone about that. This bill is not about letting dangerous criminal go free. Criminals must be held accountable for their crimes.

What the legislation does is offer a very narrowly crafted solution that will have the least impact possible on those cases and our courts, while maximizing protections for United States citizens. In order to bring the United States into compliance with its legal obligations, the bill merely allows the Federal courts an opportunity to determine if the denial of consular access resulted in an unfair conviction or sentence in a limited number of cases.

Some have suggested that the bill is an attack on the death penalty or an effort to further delay the habeas corpus review process. Neither claim is true. That is not what I intend. The bill provides one-time review for a limited group of cases. It has no effect on habeas review for anyone else. It will not clog our courts, and it will not delay future cases. In fact, moving forward, the bill seeks to eliminate the need for future habeas claims regarding consular notification by ensuring that these claims are dealt with before trial.

Imagine the case of an American sentenced to death in a foreign country without any notification to the United States Government.. Every one of us - Republicans and Democrats - would be outraged. There are currently foreign nationals on death row in the United States, some of whom were never told of their right to contact their consulate, and their consulate was never informed of their arrest, trial, conviction, or sentence. That is not in compliance with our treaty obligation, which is American law.

I have heard from retired members of the U.S. military urging passage of the bill to protect servicemen and women and their families overseas. I have heard from former diplomats of both political parties who know that compliance with the treaty is critical for America's national security and commercial interests.

This bill is about three things only. It is about protecting Americans when they work, travel, and serve in the military in foreign countries. It is about fulfilling our obligations and upholding the rule of law. And it is about removing a significant impediment to full and complete cooperation with our international allies on national security and law enforcement efforts that keep Americans safe. We must bring the United States into compliance with our legal obligations. We cannot continue to ignore the treaty and expect other countries to honor it.

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