

112TH CONGRESS
1ST SESSION

S. 1194

To facilitate compliance with Article 36 of the Vienna Convention on Consular Relations, done at Vienna April 24, 1963, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 14, 2011

Mr. LEAHY introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To facilitate compliance with Article 36 of the Vienna Convention on Consular Relations, done at Vienna April 24, 1963, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Consular Notification
5 Compliance Act of 2011”.

6 **SEC. 2. PURPOSE AND STATEMENT OF AUTHORITY.**

7 (a) PURPOSE.—The purpose of this Act is to facili-
8 tate compliance with Article 36 of the Vienna Convention
9 on Consular Relations, done at Vienna April 24, 1963, and

1 any comparable provision of a bilateral international
2 agreement addressing consular notification and access.

3 (b) STATEMENT OF AUTHORITY.—This Act is en-
4 acted pursuant to authority contained in articles I and VI
5 of the Constitution of the United States.

6 **SEC. 3. CONSULAR NOTIFICATION AND ACCESS.**

7 (a) IN GENERAL.—As required under, and consistent
8 with, Article 36 of the Vienna Convention on Consular Re-
9 lations, done at Vienna April 24, 1963, and any com-
10 parable provision of a bilateral international agreement
11 addressing consular notification and access, if an indi-
12 vidual who is not a national of the United States is de-
13 tained or arrested by an officer or employee of the Federal
14 Government or a State or local government, the arresting
15 or detaining officer or employee, or other appropriate offi-
16 cer or employee of the Federal Government or a State or
17 local government, shall notify that individual without delay
18 that the individual may request that the consulate of the
19 foreign state of which the individual is a national be noti-
20 fied of the detention or arrest.

21 (b) NOTICE.—

22 (1) IN GENERAL.—The consulate of the foreign
23 state of which an individual detained or arrested is
24 a national shall be notified without delay if the indi-
25 vidual requests consular notification under sub-

1 section (a), and an appropriate officer or employee
2 of the Federal Government or a State or local gov-
3 ernment shall provide any other consular notification
4 required by an international agreement.

5 (2) FIRST APPEARANCE.—If an appropriate of-
6 ficer or employee of the Federal Government or a
7 State or local government has not notified the con-
8 sulate described in paragraph (1) regarding an indi-
9 vidual who is detained pending criminal charges and
10 the individual requests notification or notification is
11 mandatory under a bilateral international agree-
12 ment, notification shall occur not later than the first
13 appearance of the individual before the court with
14 jurisdiction over the charge.

15 (c) COMMUNICATION AND ACCESS.—An officer or
16 employee of the Federal Government or a State or local
17 government (including an officer or employee in charge of
18 a facility where an individual who is not a national of the
19 United States is held following detention or arrest) shall
20 reasonably ensure that the individual detained or arrested
21 is able to communicate freely with, and be visited by, offi-
22 cials of the consulate of the foreign state of which the indi-
23 vidual detained or arrested is a national, consistent with
24 the obligations described in section 2(a).

1 (d) NO CAUSE OF ACTION.—Nothing in this section
2 is intended to create any judicially or administratively en-
3 forceable right or benefit, substantive or procedural, by
4 any party against the United States, its departments,
5 agencies, or other entities, its officers or employees, or any
6 other person or entity, including, an officer, employee, or
7 agency of a State or local government.

8 **SEC. 4. PETITION FOR REVIEW.**

9 (a) IN GENERAL.—

10 (1) JURISDICTION.—Notwithstanding any other
11 provision of law, a Federal court shall have jurisdic-
12 tion to review the merits of a petition claiming a vio-
13 lation of Article 36(1) (b) or (c) of the Vienna Con-
14 vention on Consular Relations, done at Vienna April
15 24, 1963, or a comparable provision of a bilateral
16 international agreement addressing consular notifi-
17 cation and access, filed by an individual convicted
18 and sentenced to death by any Federal or State
19 court before the date of enactment of this Act.

20 (2) DATE FOR EXECUTION.—If a date for the
21 execution of an individual described in paragraph (1)
22 has been set, the court shall grant a stay of execu-
23 tion if necessary to allow the court to review a peti-
24 tion filed under paragraph (1).

1 (3) STANDARD.—To obtain relief, an individual
2 described in paragraph (1) shall make a showing of
3 actual prejudice to the criminal conviction or sen-
4 tence as a result of the violation. The court may
5 conduct an evidentiary hearing if necessary to sup-
6 plement the record and, upon a finding of actual
7 prejudice, shall order a new trial or sentencing pro-
8 ceeding.

9 (4) LIMITATIONS.—

10 (A) IN GENERAL.—A petition for review
11 under this section shall be filed within 1 year
12 of the later of—

13 (i) the date of enactment of this Act;

14 (ii) the date on which the Federal or
15 State court judgment against the indi-
16 vidual described in paragraph (1) became
17 final by the conclusion of direct review or
18 the expiration of the time for seeking such
19 review; or

20 (iii) the date on which the impediment
21 to filing a petition created by Federal or
22 State action in violation of the Constitu-
23 tion or laws of the United States is re-
24 moved, if the individual described in para-

1 graph (1) was prevented from filing by
2 such Federal or State action.

3 (B) TOLLING.—The time during which a
4 properly filed application for State post-convic-
5 tion or other collateral review with respect to
6 the pertinent judgment or claim is pending
7 shall not be counted toward the 1-year period of
8 limitation.

9 (5) HABEAS PETITION.—A petition for review
10 under this section shall be part of the first Federal
11 habeas corpus application or motion for Federal col-
12 lateral relief under chapter 153 of title 28, United
13 States Code, filed by an individual, except that if an
14 individual filed a Federal habeas corpus application
15 or motion for Federal collateral relief before the date
16 of enactment of this Act or if such application is re-
17 quired to be filed before the date that is 1 year after
18 the date of enactment of this Act, such petition for
19 review under this section shall be filed not later than
20 1 year after the enactment date or within the period
21 prescribed by paragraph (4)(A)(iii), whichever is
22 later. No petition filed in conformity with the re-
23 quirements of the preceding sentence shall be consid-
24 ered a second or successive habeas corpus applica-
25 tion or subjected to any bars to relief based on pre-

1 enactment proceedings other than as specified in
2 paragraph (3).

3 (6) APPEAL.—

4 (A) IN GENERAL.—A final order on a peti-
5 tion for review under paragraph (1) shall be
6 subject to review on appeal by the court of ap-
7 peals for the circuit in which the proceeding is
8 held.

9 (B) APPEAL BY PETITIONER.—An indi-
10 vidual described in paragraph (1) may appeal a
11 final order on a petition for review under para-
12 graph (1) only if a district or circuit judge
13 issues a certificate of appealability. A district
14 judge or circuit judge may issue a certificate of
15 appealability under this subparagraph if the in-
16 dividual has made a substantial showing of ac-
17 tual prejudice to the criminal conviction or sen-
18 tence of the individual as a result of a violation
19 of Article 36(1) of the Vienna Convention on
20 Consular Relations, done at Vienna April 24,
21 1963, or a comparable provision of a bilateral
22 international agreement addressing consular no-
23 tification and access.

24 (b) VIOLATION.—

1 (1) IN GENERAL.—An individual not covered by
2 subsection (a) who is arrested, detained, or held for
3 trial on a charge that would expose the individual to
4 a capital sentence if convicted may raise a claim of
5 a violation of Article 36(1)(b) or (c) of the Vienna
6 Convention on Consular Relations, done at Vienna
7 April 24, 1963, or of a comparable provision of a bi-
8 lateral international agreement addressing consular
9 notification and access, at a reasonable time after
10 the individual becomes aware of the violation, before
11 the court with jurisdiction over the charge. Upon a
12 finding of such a violation—

13 (A) the consulate of the foreign state of
14 which the individual is a national shall be noti-
15 fied immediately by the detaining authority,
16 and consular access to the individual shall be
17 afforded in accordance with the provisions of
18 the Vienna Convention on Consular Relations,
19 done at Vienna April 24, 1963, or the com-
20 parable provisions of a bilateral international
21 agreement addressing consular notification and
22 access; and

23 (B) the court—

24 (i) shall postpone any proceedings to
25 the extent the court determines necessary

1 to allow for adequate opportunity for con-
2 sular access and assistance; and

3 (ii) may enter necessary orders to fa-
4 cilitate consular access and assistance.

5 (2) EVIDENTIARY HEARINGS.—The court may
6 conduct evidentiary hearings if necessary to resolve
7 factual issues.

8 (3) RULE OF CONSTRUCTION.—Nothing in this
9 subsection shall be construed to create any addi-
10 tional remedy.

11 **SEC. 5. DEFINITIONS.**

12 In this Act—

13 (1) the term “national of the United States”
14 has the meaning given that term in section
15 101(a)(22) of the Immigration and Nationality Act
16 (8 U.S.C. 1101(a)(22)); and

17 (2) the term “State” means any State of the
18 United States, the District of Columbia, the Com-
19 monwealth of Puerto Rico, and any territory or pos-
20 session of the United States.

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