

There are several treaties that mandate relationships between the United States and foreign nations and their nationals. One is of primary concern at the local level, the Vienna Convention on Consular Relations of 1963 (“Vienna Convention”)<sup>1</sup>. Other treaties and acts of legislation are also useful and instructive to this discussion; however, the primary focus of this paper is the Vienna Convention, local responsibility for enforcement, and issues facing foreign nationals in court.

## **VIENNA CONVENTION ON CONSULAR RELATIONS**

### **The Law**

Article 36, paragraph 1, of the Vienna Convention on Consular Relations of 1963<sup>2</sup> provides in pertinent part:

1. With a view to facilitating the exercise of consular functions relating to nationals of the sending State . . .
  - (a) consular officials 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;
  - (b) if he 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** . . . *The said authorities shall inform the person concerned without delay of his rights under this sub-paragraph.*
  - (c) consular officials 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 and **to arrange for his legal representation.** ...<sup>3</sup>

Further,

[t]he 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 be given to the purposes for which the rights accorded under this Article are intended.**<sup>4</sup>

Consular functions include "helping and assisting nationals" and "safeguarding the interests of nationals" as well as:

subject to the practices and procedures obtaining in the receiving State, **representing or arranging appropriate representation** for nationals of the sending State before the tribunals and other authorities of the receiving State, for the purpose of obtaining, in accordance with the laws and regulations of the receiving State, **provisional measures for the preservation of the rights and interests of these nationals, where, because of absence or any other reason, such nationals are unable at the proper time to assume the defence of their rights and interests.**<sup>5</sup>

## **BILATERAL CONSULAR CONVENTION**

Article VI of the Consular Convention between the United States of America and the United Mexican States (the "Bilateral Consular Convention") provides in pertinent part:

1. Consular officers of either High Contracting Party may, ... address the authorities, National, State, Provincial or Municipal, for the **purpose of protecting the nationals** of the State ... in the enjoyment of rights accruing by treaty or otherwise... . **Failure upon the part of the proper authorities to grant redress or to accord protection may justify interposition through the diplomatic channel ...**
2. Consular officers shall ... have the **right**:  

\* \* \*

(d) **to assist the nationals** ... in proceedings before or relations with authorities of the State.
3. Nationals of either High Contracting Party **shall have the right at all times to communicate with the consular officers** of their country.<sup>6</sup>

In other words, foreign nationals have the right, at all times, to communicate with consular officials.<sup>7</sup>

## **IMMIGRATION**

In deportation proceedings the right to consular assistance has been legislated consistent with treaty rights. Specifically, Section 8 C.F.R. §236.1(e) provides in pertinent part:

Privilege of communication. Every detained alien shall be notified that he or she may communicate with the consular or diplomatic officers of the country of his or her nationality in the United States. Existing treaties with the following countries require immediate communication with appropriate consular or diplomatic officers whenever nationals of the following countries are detained in removal proceedings, whether or not requested by the alien and even if the alien requests that no communication be undertaken in his or her behalf. When notifying consular or diplomatic officials, Service officers shall not reveal the fact that any detained alien has applied for asylum or withholding of removal.

The list includes Canada, UK and many European and South American countries, but not Mexico.<sup>8</sup>

The right to communicate with the consulate applies even if the person is in federal custody provided a deportation proceeding is held.<sup>9</sup>

## **THE PUBLIC PURPOSE: U.S. HISTORICAL PERSPECTIVE**

The State Department cites the genesis of the Vienna Convention as follows:

A function of governments has long been to provide services to their citizens/nationals abroad. These "consular" services include certain legal services, such as notarizing documents or assisting with the estate of a citizen who dies abroad. They also include looking for missing citizens, determining whether citizens are safe, assisting in evacuating citizens from countries where their lives are endangered, and other similar "welfare and whereabouts" services. Another important consular function is the provision of assistance to citizens who are detained by a foreign government. Protecting such citizens may include attempting to ensure that they receive a fair and speedy trial with benefit of counsel; visiting them in prison to ensure that they are receiving humane treatment; and facilitating communications with their families.

The performance of such consular functions was originally a subject of customary international law but not uniformly addressed in any treaty. Eventually, however, efforts were made to codify in international treaties the rights of governments to

provide consular services to their citizens. Such treaties might be called treaties, conventions, or agreements, but all would generally have the status of treaties in international law, in that they would be binding on the countries that adhered to them.

When the United States first began to codify its consular relations in international agreements with other countries, the vehicle was often a treaty of Friendship, Commerce, and Navigation ("FCN"). Later, bilateral conventions dealing exclusively with consular matters became more common. They are often simply referred to as "consular conventions." In 1963, however, the multilateral Vienna Convention on Consular Relations ("VCCR"), was completed and countries throughout the world began ratifying it. Today, most countries, including the United States, are parties to the VCCR. The VCCR to a large extent codified customary international law and thus represents the most basic principles pertaining to the performance of consular functions. Since the VCCR entered into force for the United States on December 24, 1969, we have relied increasingly on it as the principal basis for the conduct of our consular activities. Bilateral consular conventions continue to be negotiated from time to time, however.

### **Vienna Convention on Consular Relations ("VCCR")**

Because of its comprehensive nature and near-universal applicability, the VCCR now establishes the "baseline" for most obligations with respect to the treatment of foreign nationals in the United States, and for the treatment of U.S. citizens abroad by foreign governments. As of June 1997, some 165 different countries were party to the VCCR (another 26 or so were not). The VCCR provides rules for the operation of consulates and for the functions of consuls and honorary consuls of a "sending" country (i.e., the country that has sent the consular official abroad) in a "receiving" country (the country to which the foreign consular official has been sent). Much of the VCCR addresses the "privileges and immunities" of consular officers (e.g., the fact that they may not be sued for official acts). Some of the VCCR's articles, however, address what consular officers may actually do for their nationals in the "host country."<sup>10</sup>

The genesis of the Vienna Convention was in part due to the international practice of holding people incommunicado when they had been arrested.<sup>11</sup> The United States Department of State, recognizing the importance of the Vienna Convention in light of concerns for American citizens abroad, noted:

**In the Department's view, Article 36(1)(b) of the Vienna Convention contains obligations of the highest order and should not be dealt with lightly.** Article 36, paragraph 1(b), requires the authorities of the receiving state to notify the consular post of the sending state without delay of the arrest or commitment of a national of the sending state, if that national so requests. While there is no precise definition of

'without delay', **it is the Department's view that such notification should take place as quickly as possible and, in any event, no later than the passage of a few days.** Serious problems in this regard have been experienced by American consular officers in countries of Eastern Europe, where . . . detention of an individual for prolonged 'interrogation' prior to the filing of formal charges is officially sanctioned. During this period of days, weeks, or even months, authorities of the receiving state may decline to observe that State's obligation to make notification to consular officials of the sending State. **Clearly, this type of procedure is not in keeping with either the letter or the spirit of the Vienna Convention.**<sup>12</sup>

The United States Delegation to the United Nations has noted that "no country can disregard its obligation in certain circumstances to inform consuls of the arrest of their nationals."<sup>13</sup> As expressed by the authors of our Constitution

These gentlemen would do well to reflect that a treaty is only another name for a bargain, and it would be impossible to find a nation who would make any bargain with us, which would be binding on them *absolutely*, but on us only so long and so far as we may think proper to be bound by it. They who make the laws may, without doubt, amend or repeal them; and it will not be disputed that they who make treaties may alter or cancel them; but still let us not forget that treaties are made, not by only one of the contracting parties, but by both, and consequently, that as the consent of both was essential to their formation at first, so must it ever afterwards be to alter or cancel them.<sup>14</sup>

It is clear from the history and intent of the VCCR that the golden rule associated with the treatment of foreign nations begins at the local level.

## **CURRENT STATE OF JUDICIAL AUTHORITY**

### **Vienna Convention on Consular Relations Notification**

Texas courts have recognized that the Vienna Convention grants a foreign national who has been arrested or taken into custody a right to contact his consulate and requires the arresting authorities to inform the individual of this right "without delay."<sup>15</sup> The State Department Guidelines recommend that a person be notified under the Vienna Convention at the time of booking.<sup>16</sup>

### **Deportation Proceedings**

In *United States v. Rangel-Gonzalez*,<sup>17</sup> the court reversed a conviction of illegal entry after deportation holding that the underlying indictment should have been dismissed for failure to inform defendant of his right to communicate with Mexican consular officers as required by INS regulations. The court noted that "[t]he right established by the regulation and in this case by treaty is a personal one."<sup>18</sup> The Ninth Circuit further found that the failure to notify the alien of his right to contact his consulate will result in reversal of a deportation order where the foreign national produces evidence that: (1) he did not know of that right; (2) he would have availed himself of the right had he known of it; and (3) there was a likelihood that the contact would have resulted in assistance to him in resisting deportation.<sup>19</sup>

### **Criminal Proceedings**

Criminal cases do not appear to have a similar implication or consequence found in deportation proceedings. The courts have held that no fundamental right is implicated by the failure to give consular notification and refused to dismiss an indictment.<sup>20</sup> Courts have further refused to allow the lack of consular notification to provide the basis of a suppression remedy.<sup>21</sup> Three Texas cases have unsuccessfully raised the issues surrounding the denial of consular access, particularly the inability or difficulty in presenting mitigating evidence during the penalty phase of trial and the challenging the voluntariness of the confession.<sup>22</sup>

### **Exclusionary Rule**

As a general principle, evidence obtained in violation of a provision of the constitution or laws of the State of Texas or the United States shall not be admitted as evidence against the accused in the trial of any criminal case.<sup>23</sup> A treaty is a law of the United States to be given the same force and effect as any other law.<sup>24</sup> Moreover, a treaty is to be treated as a statute in our courts if that treaty determines rights of private citizens.<sup>25</sup> Notwithstanding the foregoing, Texas courts have opined that:

- the exclusionary rule applicable to evidence obtained in violation of any provision of Federal or State Constitutions or laws does not provide remedy for violations of Vienna Convention;<sup>26</sup>
- Treaties do not constitute "laws" for purposes of the exclusionary rule;<sup>27</sup> and
- Suppression of evidence is not an available remedy for violation of the VCCR.<sup>28</sup>

Further, a court did not find ineffective assistance of counsel for legal counsel's failure to utilize the Vienna Convention as a basis for suppressing his confession due to the failure to develop or allege an argument that the outcome of his trial would have been different.<sup>29</sup>

In a civil forfeiture proceeding, a federal court opined that “a violation of a person’s rights under the Vienna Convention does not trigger the exclusionary rule, unless the violation also results in an infringement of the person’s constitutional rights under the Fourth, Fifth, Sixth or Fourteenth Amendments.”<sup>30</sup> In so holding the Court relied on the rationale that:

The exclusionary rule is designed to protect core constitutional values: it should only be employed when those values are implicated. A convention or treaty signed by the United States does not alter or add to our Constitution. Such international agreements are important and are entitled to enforcement as written, but they are not the bedrock and foundation of our essential liberties and accordingly should not be cloaked with the ‘nontextual and unprecedented remedy that protects those liberties.’<sup>31</sup>

### **Overturing Convictions**

The door has been left open that a Vienna Convention claim properly raised and proved could result in overturning a final judgment of conviction provided here is a showing that the violation had an effect on the trial.<sup>32</sup>

### **Antiterrorism and Effective Death Penalty Act (AEDPA): Procedural Bar**

A defendant will not be afforded an evidentiary hearing if he failed to develop the factual basis of his claim, and allege violation of the VCCR, in his state court proceeding.<sup>33</sup>

### **Private Right – Foreign Nation**

In a suit brought by Paraguay, the United States Supreme Court opined that “neither the text nor the history of the Vienna Convention clearly provides a foreign nation a private right of action in the United States courts to set aside a criminal conviction and sentence for violation of the consular notification provisions.”<sup>34</sup>

### **Private Right – Foreign National**

The law of international human rights has evolved to incorporate the right to contact one's consul, as an individual right, much like those afforded under *Miranda*.<sup>35</sup> A foreign national also has standing to assert a treaty violation if the foreign government lodges an objection or protest.<sup>36</sup> A treaty is a contract between the United States and another nation, which, under the United States Constitution, becomes the law of the United States.<sup>37</sup> A "self-executing" treaty, that is to say, one that needs no implementing domestic legislation, creates rights for foreign nationals.<sup>38</sup> Whether a treaty is self-executing turns on the domestic law of the United States.<sup>39</sup>

A treaty "may also contain provisions which confer rights upon the citizens of one of the contracting parties which are capable of enforcement as are any other private rights under the law... .

In general, however, this is not so."<sup>40</sup> Treaties "may create standing if it indicates an intention to >establish direct, affirmative, and judicially enforceable rights",<sup>41</sup> or by implication.<sup>42</sup> The rights

afforded under the Vienna Convention are necessarily, expressly and by implication, individual enforceable rights conferred upon the citizens of the signatory countries.<sup>43</sup>

Article 36 expressly requires that "said authorities shall inform the person concerned without delay *of his rights* under this sub-paragraph."<sup>44</sup> As a general matter, it is only upon the national's request that the consulate may be notified. The purpose of Article 36 is two-fold: to protect the rights of a foreign national subject to foreign proceedings and the concomitant right of the consulate to ensure that the rights of its citizens are protected. Therefore, it is argued that the Vienna Convention expressly, or alternatively, by implication, grants individual enforceable rights to foreign nationals.

### **Vienna Convention rights as analogous to Miranda**

It has been argued, albeit unsuccessfully, that the right to speak to consular authorities is analogous to, and in no way less important than, an individual's Miranda rights.<sup>45</sup> Similar to Miranda warnings, the right to consular assistance is arguably a procedural safeguard to effectively secure the privilege against self-incrimination. Any waiver of the right to counsel and the right to remain silent must be made "voluntarily, knowingly and intelligently."<sup>46</sup> A waiver is voluntary to the extent it is "the product of a free and deliberate choice rather than intimidation, coercion or deception" and "made with a full awareness both of the nature of the right being abandoned and the consequences of the decision to abandon it."<sup>47</sup> The voluntariness of a waiver is dependent upon the absence of police overreaching.<sup>48</sup>

The argument is thus made that a foreign national's constitutional rights, as afforded under international treaty, may be violated if a conviction is based on an involuntary confession.<sup>49</sup> Much like the right to the presence of counsel, the presence of consular officials would ensure that statements made in a foreign-government/foreign-language atmosphere, were not the product of compulsion.<sup>50</sup> Such protections require that the accused be "adequately and effectively" apprised of his rights.<sup>51</sup> Such effective protection cannot be afforded without the presence of consular authorities, or at a minimum, notification of that right. People not only have a right to access to their consular officials, but they must know they have that right so they can exercise that right intelligently. The treaty is not designed to give aliens any more rights; rather to make certain his rights under the United States Constitution are protected. However, in finding a foreign national's rights protected, in spite of a violation of the VCCR, a court opined that the national "got better advice than the treaty specifies – he got American constitutional warnings."<sup>52</sup>

## **LICENSED COURT INTERPRETERS**

### **A. Requirement for an Interpreter**

Interpreter or translation services are required to be provided upon the request of a defendant or witness the court has determined cannot speak or understand English.<sup>53</sup> Specifically, the Code provides:

When a motion for appointment of an interpreter is filed by any party or on motion of the court, in any criminal proceeding, it is determined that a person charged or a witness does not understand and speak the English language, an interpreter must be sworn to interpret for him. Any person may be subpoenaed, attached or recognized in any criminal action or proceeding, to appear before the proper judge or court to act as interpreter therein, under the same rules and penalties as are provided for witnesses. In the event that the only available interpreter is not considered to possess adequate interpreting skills for the particular situation or the interpreter is not familiar with use of slang, the person charged or witness may be permitted by the court to nominate another person to act as intermediary between himself and the appointed interpreter during the proceedings.<sup>54</sup>

The purpose of this statutory provision is to protect the defendant's right to confrontation under the State and Federal Constitutions.<sup>55</sup> When it is known to a court that the defendant does not speak and understand English, an interpreter must be provided to translate the trial proceedings and witness testimony for the accused.<sup>56</sup> However, the mere fact that the accused may be more fluent in speaking Spanish does not, in and of itself, make it incumbent upon the court to appoint an interpreter for an accused who speaks and understands English.<sup>57</sup> Failure to appoint an interpreter when the court recognizes the need to do so constitutes reversible error.<sup>58</sup> A defendant can waive his right to complain about the lack of an interpreter when he does not object or file a motion for an interpreter, unless the court is aware of the defendant's need for an interpreter.<sup>59</sup> Finally, the court must bear the full costs of providing for these interpreters and cannot pass the cost on to the defendant.<sup>60</sup>

The courts discourage the use of a partisan interpreter for witness; however, the appointment of interpreter is left to the court's discretion and will only be disturbed on appeal for abuse of

discretion.<sup>61</sup> In this regard, courts have upheld a Spanish-speaking bailiff being appointed as interpreter.<sup>62</sup>

**B. Requirement for Licensed Court Interpreters**

House Bill 2735, passed by the 77th Legislature in 2001, added a new Chapter 57 to the Texas Government Code and requires a court in a county with a population of 50,000 or more to appoint licensed court interpreters if a motion is made requesting an interpreter and the judge determines that an interpreter is necessary. Chapter 57, sets out the pertinent provisions, as follows:

**Section 57.001. Definitions**

In this subchapter and for purposes of Subchapter B:

(1) "Certified court interpreter" means an individual who is a qualified interpreter as defined in Article 38.31, Code of Criminal Procedure, or Section 21.003, Civil Practice and Remedies Code, or certified under Subchapter B by the Texas Commission for the Deaf and Hard of Hearing to interpret court proceedings for a hearing-impaired individual.

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(4) "Hearing-impaired individual" means an individual who has a hearing impairment, regardless of whether the individual also has a speech impairment, that inhibits the individual's comprehension of proceedings or communication with others.

(5) "Licensed court interpreter" means an individual licensed under Subchapter C by the Texas Commission of Licensing and Regulation to interpret court proceedings for an individual who can hear but who does not comprehend English or communicate in English.

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**Section 57.002. Appointment of Interpreter**

(a) A court shall appoint a certified court interpreter or a licensed court interpreter if a motion for the appointment of an interpreter is filed by a party or requested by a witness in a civil or criminal proceeding in the court.

(b) A court may, on its own motion, appoint a certified court interpreter or a licensed court interpreter.

(c) In a county with a population of less than 50,000, a court may appoint a spoken language interpreter who is not a certified or licensed court interpreter and who:

- (1) is qualified by the court as an expert under the Texas Rules of Evidence;
- (2) is at least 18 years of age; and
- (3) is not a party to the proceeding.

A person may not advertise, represent to be, or act as a certified court interpreter unless the person holds an appropriate certificate as provided by law.<sup>63</sup> A person commits an offense if the person violates Chapter 57, or a rule adopted by the Commission, and is subject to an administrative penalty, and upon conviction, a Class A misdemeanor.<sup>64</sup>

The Texas Department of Licensing and Regulation notes that according to the April 2000 census, the following 54 counties have populations exceeding 50,000:

Anderson, Angelina, Bastrop, Bell, Bexar, Bowie, Brazoria, Brazos, Cameron, Collin, Comal, Coryell, Dallas, Denton, Ector, El Paso, Ellis, Fort Bend, Galveston, Grayson, Gregg, Guadalupe, Harris, Harrison, Hays, Henderson, Hidalgo, Hunt, Jefferson, Johnson, Kaufman, Liberty, Lubbock, McLennan, Midland, Montgomery, Nacogdoches, Nueces, Orange, Parker, Potter, Randall, San Patricio, Smith, Starr, Tarrant, Taylor, Tom Green, Travis, Victoria, Walker, Webb, Wichita and Williamson.

In counties with populations not exceeding 50,000, a court is not required to appoint a licensed court interpreter. However, the court may appoint a spoken language interpreter that is qualified

as an expert under the Texas Rules of Evidence, is at least 18 years of age, and not be a party to the proceeding.<sup>65</sup>

As a practical matter, court proceedings are considered to be civil and criminal trials, depositions, mediations and arbitrations. The current state of authority is as follows:

1. In juvenile proceedings where a parent, whose attendance is mandatory, cannot communicate in English and requires an interpreter. The Attorney General opined that because a court may impose conditions or sanctions against a parent, the parent is treated as a party and may be entitled to a licensed court interpreter.<sup>66</sup>
2. A grand jury proceeding is a “criminal proceeding” requiring the appointment of a properly qualified interpreter for a witness who is either non-English speaking, deaf or hearing impaired.<sup>67</sup>
3. A court clerk who merely converses with a defendant in a language other than English does not “act as a licensed court interpreter”.<sup>68</sup>
4. If the only person licensed to interpret in a particular language resides in distant location, a court meeting the population requirements would be required to appoint that person.<sup>69</sup> However, if there is no such qualified licensed interpreter, the court may appoint an unlicensed person.<sup>70</sup>
5. In *Hernandez v. State*,<sup>71</sup> the appellant contended that the trial court erred by failing to ensure the plea and sentencing procedures were translated by a certified interpreter. In this case, no motion was made for the appointment of an interpreter and trial counsel had offered to translate indicating no need for an interpreter. The Court found that the Defendant failed to show that the trial court abused discretion in not appointing a different individual, other than defense counsel, to act as an interpreter. The Court further found that Article 38.30(a) does not require a license or certification for the interpreter beyond adequate interpreting skills and knowledge of slang.

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<sup>1</sup> Done at Vienna April 24, 1963; entered into force March 19, 1967; entered into force for the United States December 24, 1969; 21 UST 77; TIAS 6820; 596 UNTS 261

<sup>2</sup> One hundred and fifty-four states have ratified the Vienna Convention. Shank, Adele and John Quigley, *Foreigners on Texas's Death Row and the Right of Access to Consul*, 26 St. Mary's L.J. 719, 735 n.96 (1995) (citing United Nations,

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Multilateral Treaties Deposited with the Secretary General: Status as at 31 December 1993, at 6869, U.N. Doc. ST/LEG/SER.E/11 (1994)).

<sup>3</sup> Vienna Convention, Article 36, paragraph 1 (emphasis added).

<sup>4</sup> Article 36, paragraph 2, Vienna Convention (emphasis added).

<sup>5</sup> Vienna Convention, Article 5(e), (g) and (i) (emphasis added).

<sup>6</sup> Bilateral Consular Convention, August 12, 1942, 57 Stat. 800 (emphasis added).

<sup>7</sup> *Id.*

<sup>8</sup> 8 CFR §236.1(e)

<sup>9</sup> *Waldron v. INS*, 17 F.3d 511, 515-16 (2<sup>nd</sup> Cir. 1994).

<sup>10</sup> State Department *Consulate Notification and Access*, Part. 5, Legal Overview

<sup>11</sup> Victor M. Uribe, *Consuls at Work: Universal Instruments of Human Rights and Consular Protection in the Context of Criminal Justice*, 19 HOUS. J. INT'L L. 375 (1997).

<sup>12</sup> Ruíz-Bravo, Hernán, *Suspicious Capital Punishment*, pp. 396-97 (quoting Department of State File L/M/SCA: Department of State Digest, October 24, 1973, p. 161).

<sup>13</sup> Ruíz-Bravo, *Suspicious Capital Punishment*, at p. 402, fn 122 (citing U.N. Doc. A/Conf.25/c.2/sr. 16, 15 Mar. 1963, p. 10; Vienna Off. Rec. 337).

<sup>14</sup> *The Federalist Papers*, No. 64, Jay, p. 394.

<sup>15</sup> *Maldonado v. State*, 998 S.W.2d 239, 246-7 (Tex.Crim.App.1999).

<sup>16</sup> U.S. Department of State, *Consular Notification and Access* (1998).

<sup>17</sup> 617 F.2d 529 (9th Cir. 1980).

<sup>18</sup> 617 F.2d at 532. *See also United States v. Calderon-Medina*, 591 F.2d 529, 531 n.6 (purpose of INS regulation was to comply with treaty obligations under the Vienna Convention).

<sup>19</sup> *Id.* at 533.

<sup>20</sup> *United States v. De La Pava*, 268 F.3<sup>rd</sup> 157, 163-66 (2<sup>nd</sup> Cir. 2001).

<sup>21</sup> *United States v. Jimenz-Naya*, 243 F.3d 192 (5<sup>th</sup> Cir. 2001)(no private right to enforcement of the Convention for suppression purposes and suppression is not a remedy for Article 36 violation); *United States v. Chaparro-Alcantara*, 226 F.3d 616, 622 (7<sup>th</sup> Cir. 2000)(Article 36 violation could not result in suppression; court recognized that “compliance with Article 36 is an important responsibility”); *United States v. Cordoba-Mosquera*, 212 F.3<sup>rd</sup> 1194, 1195-6 (11<sup>th</sup> Cir. 2000), *cert. denied*, 121 S.Ct. 893 (2001); *United States v. Duarte-Acero*, 132 F.Supp 2d

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1036 (S.D. Fla. 2001)(dismissal of indictment not appropriate); *United States v. Miranda*, 65 F. Supp. 2d 1002 (D. Minn. 1999)(two day delay in consular notification does not warrant suppression of evidence).

<sup>22</sup> *Faulder v. State*, 745 S.W.2d 327 (Tex. Crim. App.), *reh'g denied* (1987) (mitigating evidence); *Santana v. State*, 714 S.W.2d 1 (Tex. Crim. App.), *reh'g denied* (1986), 979 F.2d 1534 (5th Cir. 1992), *cert. denied*, 113 S. Ct. 1573, *cert. denied*, 113 S.Ct. 1629, *reh'g denied*, 113 S.Ct. 1630 (1993) (no mitigating evidence presented at trial); *Fierro v. State*, 706 S.W.2d 310, 315 (Tex. Crim. App. 1986), *reh'g denied*, and upon habeas corpus, 879 F.2d 1276 (5th Cir. 1989), *cert. denied*, 494 U.S. 1060, *reh'g denied*, 495 U.S. 941 (1990) (challenging the voluntariness of defendant's confession).

<sup>23</sup> Tex.Code Crim. Pro., 38.23(a).

<sup>24</sup> *Hanson v. Town of Flower Mound*, 679 F.2d 497, 503 (5<sup>th</sup> Cir. 1982).

<sup>25</sup> *Valentine v. United States, ex rel. Neidecker*, 299 U.S. 5, 10 (1936).

<sup>26</sup> *Rocha v. State*, 16 S.W.3d 1, 18-19 (Tex.Crim. App. 2000); *Sifuentes v. State*, 29 S.W.3d 238 (Tex. App. – Amarillo, 2000, no writ); *Villarreal v. State*, 61 S.W.3d 673 (Tex. App. – Corpus Christi 2001) *pet. for discretionary review ref'd* (2002).

<sup>27</sup> *Rocha, supra*.

<sup>28</sup> *Perez v. State*, 25 S.W.3d 278 (Tex. App. – San Antonio 2000, no writ); *Zapata v.State*, 15 S.W.3d 661 (Tex.App.—Beaumont 2000, no writ); *United States v. Kurdyukov*, 75 F.Supp.2d 660, 665 (1999).

<sup>29</sup> *Cardenas v. State*, 30 S.W.3d 384 (Tex.Crim.App. 2000).

<sup>30</sup> *United States v. \$69,530.00 in United States Currency*, 22 F.Supp.2d 593, 595 (W.D.Tex. 1998)

<sup>31</sup> *Id.* (citation omitted).

<sup>32</sup> *Breard v. Greene*, 523 U.S. 371 (1998).

<sup>33</sup> *Breard v. Greene*, 523 U.S. 371 (1998).

<sup>34</sup> *Breard*, 523 U.S. at 377.

<sup>35</sup> *See generally* Ruíz-Bravo, *Suspicious Capital Punishment*, pp. 401-02; *see also Rangel-Gonzalez*, 617 F.2d at 532 (right established by treaty is a personal one).

<sup>36</sup> *Matte-Ballesteros v. Henman*, 896 F.2d 255, 259 (7th Cir.), *cert. denied*, 498 U.S. 878 (1990); *United States v. Martinez*, 755 F. Supp. 1031, 134 (N.D. Ga. 1991).

<sup>37</sup> *Dreyfus v. Von Finck*, 534 F.2d 24, 29 (2nd Cir.), *cert. denied*, 429 U.S. 835 (1976).

<sup>38</sup> *In Re AEG Acquisition Corp.*, 127 B.R. 34, 42 (1991), *aff'd sub nom*, 1993 Bankr. LEXIS 1764 (November 5, 1993) (citing Restatement (Third) of Foreign Relations Law of the United States ' 111). *See also Greenpeace USA v. Stone*, 748 F. Supp. 749, 767 (D. Haw. 1990), *app. disp'd*, 924 F.2d 175 (9th Cir. 1991) (self-executing if expressly or implies a private right of action); *Dreyfus*, 535 F.2d at 30 (must prescribe rules for determining private rights).

<sup>39</sup> *In Re AEG*, 127 B.R. at 42.

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<sup>40</sup> *Dreyfus*, 534 F.2d at 29.

<sup>41</sup> *United States v. Mann*, 829 F.2d 849, 852 (9th Cir. 1987) (citations omitted).

<sup>42</sup> *Columbia Marine Servs. v. Reffet, Ltd.*, 861 F.2d 18, 21 (2nd Cir. 1988).

<sup>43</sup> *See generally Rangel-Gonzalez*, 617 F.2d at 532 (the right established by treaty is a personal one).

<sup>44</sup> Vienna Convention, Article 36, paragraph 1 (emphasis added).

<sup>45</sup> *See generally* Ruíz-Bravo, *Suspicious Capital Punishment*, p. 402.

<sup>46</sup> *Miranda v. Arizona*, 384 U.S. 436, 444 (1966).

<sup>47</sup> *Moran v. Burbine*, 476 U.S. 412, 421 (1986); *United States v. Cooper*, 949 F.2d 737, 742 n.14 (5th Cir. 1991), *cert. denied*, 112 S. Ct. 2945 (1992).

<sup>48</sup> *Colorado v. Connelly*, 479 U.S. 157, 170 (1986).

<sup>49</sup> *Miranda*, 384 U.S. at 464 n.33.

<sup>50</sup> *See generally Miranda*, 384 U.S. at 466.

<sup>51</sup> *Id.* at 467 (emphasis added).

<sup>52</sup> *Kurdyukov*, 75 F.Supp.2d at 665 .

<sup>53</sup> Tex. Code Crim. Pro. art. 38.30(a).

<sup>54</sup> Tex. Code Crim. Pro. Art. 38.30(a)(2003).

<sup>55</sup> *Montoya v. State*, 811 S.W.2d 671 (Tex. App. – Corpus Christi 1991, no writ.).

<sup>56</sup> *Baltierra v. State*, 586 S.W.2d 553 (Tex. Crim. App. 1979).

<sup>57</sup> *Vargas v. State*, 627 S.W.2d 785 (Tex. App.-- San Antonio 1982, rehearing denied).

<sup>58</sup> *Villarreal v. State*, 853 S.W.2d 170 (Tex. App. – Corpus Christi 1993, rehearing overruled).

<sup>59</sup> *Villarreal, supra.*

<sup>60</sup> *See generally* Op. Atty. Gen. DM-245 (1993).

<sup>61</sup> *Minor v. State*, 659 S.W.2d 161 (Tex. App. -- Fort Worth 1983, no writ).

<sup>62</sup> *Montoya, supra; Mendiola v. State*, 924 S.W.2d 157 (Tex. App. – Corpus Christi 1995, rehearing overruled, pet. for discretionary review refused, untimely filed).

<sup>63</sup> Section 57.026, Tex. Gov't Code.

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<sup>64</sup> Section 57.027, Tex.Gov't Code.

<sup>65</sup> Section 57.002(c), Tex. Gov't Code.

<sup>66</sup> Tex.Att'y Gen. Op. JC-0584.

<sup>67</sup> Tex. Att'y Gen. Op. JC-0579 (2002).

<sup>68</sup> Tex. Att'y Gen. Op. JC-0584 (2002).

<sup>69</sup> Tex. Att'y Gen. Op. JC-0584 (2002).

<sup>70</sup> *Id.*

<sup>71</sup> 2003 WL 22017228 (Tex.App. Dallas)