

Consular Access

OAW is seeking the urgent passage of long-delayed legislation that would restore consular protections to Americans who are arrested abroad, and foreigners who are arrested in the U.S.A. Americans were stripped of this protection in 2008, when the United States Supreme Court ruled in *Medellin v. Texas* that international treaties are not binding under domestic law unless Congress has explicitly enacted legislation to implement the treaty. To date, Congress has not passed such enabling legislation with respect to the *Vienna Convention*; as a result, Americans travelling abroad have been denied the consular protections that citizens of nearly every country in the world enjoy.¹

Background

In 1969, the United States Senate ratified the *Vienna Convention on Consular Relations*, a multilateral treaty that created an international legal framework governing the functioning of consular officials of signatory states operating on each other's territory. Much of the treaty was technical in nature, and many of its provisions (such as specifying that a "consular" pouch was subject to the same protections as a "diplomatic" pouch) served only to explicitly affirm long established practices.

For ordinary travellers, one of the key provisions of the Convention was Article 36, which explicitly confirmed the obligation of law enforcement authorities in signatory states to notify "without delay" the consular authorities of a signatory state upon the arrest of one of the member states' citizens.

By the time Texas Solicitor-General (now Senator) Ted Cruz presented arguments to the Supreme Court in *Medellin* that states are not bound by U.S. international treaty obligations – a view that was accepted by the court in a 6-3 decision – Americans had long assumed that the consular protections specified by the Convention were an absolute right.

OAW Objectives

It is important to note the very narrow nature of the *Medellin* decision, which did not state that the Congress had no authority to bind states to the provisions of such treaties, but rather only that it had not done so in that particular case. The obvious solution, therefore, is to urgently enact such legislation and restore a citizen's right of access to consular protections. The Senate Judiciary Committee has previously included such a provision in draft legislation, but no companion bill has been introduced in the House. The current Congress has yet to re-introduce enabling legislation.

OAW is unaware of any legislator that has expressed a desire to see Americans (or foreigners visiting the U.S.A.) continue to be deprived of the protections they formerly enjoyed, and sees no rational reason for not restoring these protections as a matter of highest urgency. We hope both parties will work together to resolve this problem by expediting the enactment of the legislation necessary to address this issue as quickly as possible.

¹ Citizens of Chad, Ethiopia, Uganda, Afghanistan, Gambia, Brunei, Guinea-Bissau, and a few Pacific island nations are the only others not protected by this treaty