SEC. 1044. CONSULAR NOTIFICATION COMPLIANCE.

(a) PETITION FOR REVIEW.—

(1) JURISDICTION.—Notwithstanding any other provision of law, a Federal court shall have jurisdiction to review the merits of a petition claiming violation of Article 36(1)(b) or (c) of the Vienna Convention on Consular Relations, done at Vienna April 24, 1963, or a comparable provision of a bilateral international agreement addressing consular notification and access, filed by an individual convicted and sentenced to death by any Federal or State court before the date of enactment of this Act.

(2) STANDARD.—To obtain relief, an individual described in paragraph (1) must make a showing of actual prejudice to the criminal conviction or sentence as a result of the violation. The court may conduct an evidentiary hearing if necessary to supplement the record and, upon a finding of actual prejudice, shall order a new trial or sentencing proceeding.

(3) LIMITATIONS.—

(A) INITIAL SHOWING.—To qualify for review under this subsection, a petition must make an initial showing that—

(i) a violation of Article 36(1)(b) or (c) of the Vienna Convention on Consular Relations, done at Vienna April 24, 1963, or a comparable provision of a bilateral international agreement addressing consular notification and access, occurred with respect to the individual described in paragraph (1); and

(ii) if such violation had not occurred, the consulate would have provided assistance to the individual.

(B) EFFECT OF PRIOR ADJUDICATION.—A petition for review under this subsection shall not be granted if the claimed violation described in paragraph (1) has previously been adjudicated on the merits by a Federal or State court of competent jurisdiction in a proceeding in which no Federal or State procedural bars were raised with respect to such violation and in which the court provided review equivalent to the review provided in this subsection, unless the adjudication of the claim resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the prior Federal or State court proceeding.

(C) FILING DEADLINE.—A petition for review under this subsection shall be filed within 1 year of the later of—

(i) the date of enactment of this Act;

(ii) the date on which the Federal or State court judgment against the individual described in paragraph (1) became final by the conclusion of direct review or the expiration of the time for seeking such review; or

(iii) the date on which the impediment to filing a petition created by Federal or State action in violation of the Constitution or laws of the United States is removed, if the individual described in paragraph (1) was prevented from filing by such Federal or State action.

(D) TOLLING.—The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward the 1-year period of limitation.

(E) TIME LIMIT FOR REVIEW.—A Federal court shall give priority to a petition for review filed under this subsection over all noncapital matters. With respect to a petition for review filed under this subsection and claiming only a violation described in paragraph (1), a Federal court shall render a final determination and enter a final judgment not later than one year after the date on which the petition is filed.

(4) HABEAS PETITION.—A petition for review under this subsection shall be part of the first Federal habeas corpus application or motion for Federal collateral relief under chapter 153 of title 28, United States Code, filed by an individual, except that if an individual filed a Federal habeas corpus application or motion for Federal collateral relief before the date of enactment of this Act or if such application is required to be filed before the date that is 1 year after the date of enactment of this Act, such petition for review under this subsection shall be filed not later than 1 year after the date of enactment of this Act or within the period prescribed by paragraph (3)(C)(iii), whichever is later. No petition filed in conformity with the requirements of the preceding sentence shall be considered a second or successive habeas corpus application or subjected to any bars to relief based on preenactment proceedings other than as specified in paragraph (2).

(5) REFERRAL TO MAGISTRATE.—A Federal court acting under this subsection may refer the petition for review to a Federal magistrate for proposed findings and recommendations pursuant to 28 U.S.C. 636(b)(1)(B).

(6) APPEAL.—

(A) IN GENERAL.—A final order on a petition for review under paragraph (1) shall be subject to review on appeal by the court of appeals for the circuit in which the proceeding is held.

(B) APPEAL BY PETITIONER.—An individual described in paragraph (1) may appeal a final order on a petition for review under paragraph (1) only if a district or circuit judge issues a certificate of appealability. A district or circuit court judge shall issue or deny a certificate of appealability not later than 30 days after an application for a certificate of appealability is filed. A district judge or circuit judge may issue a certificate of appealability under this subparagraph if the individual has made a substantial showing of actual prejudice to the criminal conviction or sentence of the individual as a result of a violation described in paragraph (1).

(b) VIOLATION.—

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

(A) the consulate of the foreign state of which the individual is a national shall be notified immediately by the detaining authority, and consular access to

the individual shall be afforded in accordance with the provisions of the Vienna Convention on Consular Relations, done at Vienna April 24, 1963, or the comparable provisions of a bilateral international agreement addressing consular notification and access; and

(B) the court—

(i) shall postpone any proceedings to the extent the court determines necessary to allow for adequate opportunity for consular access and assistance; and

(ii) may enter necessary orders to facilitate consular access and assistance.

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

(3) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to create any additional remedy.

(c) DEFINITIONS.—In this section, the term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

Section-by-Section Analysis

This proposal would support our ability to provide consular assistance to U.S. citizens abroad by ensuring our own domestic compliance with international legal obligations relating to consular notification and access, including the International Court of Justice's decision in *Case Concerning Avena and Other Mexican Nationals (Mex. v. U.S.)*, 2004 I.C.J. 12 (Mar. 31).

Subsection (a) would provide foreign nationals on death row at the time of enactment of this proposal, in whose case there was a violation of U.S. consular notification and access obligations under the Vienna Convention on Consular Relations or other applicable bilateral treaties, with an opportunity to seek Federal court review of their convictions or sentences to determine if they were prejudiced by the violation.

Subsection (b) would provide a limited remedy to foreign national defendants facing capital charges who raise a timely consular notification claim, entitling them to have their consulate notified immediately and obtain a postponement of proceedings. In fiscal year 2011 alone, roughly 3,500 U.S. citizens were arrested abroad, and our consular officers conducted more than 8,700 visits with U.S. citizens in detention overseas throughout 2011. Failure to honor U.S. international law obligations related to consular notification and access weakens the ability of the United States to protect U.S. citizens, including members of the U.S. Armed Forces and their families. In 2011, former Secretary of Defense Leon Panetta, along with former Secretary of State Hillary Clinton and Attorney General Eric Holder, submitted letters to Congress in support of consular notification legislation.

Budget Implications: This proposal has no budget implications.

Changes to Existing Law: This proposal would not amend any existing laws.