

**ADOPTED**

**AMERICAN BAR ASSOCIATION**

**SECTION OF LITIGATION**

**SECTION OF CRIMINAL JUSTICE**

**SECTION OF INDIVIDUAL RIGHTS AND**

**RESPONSIBILITIES**

**SECTION OF INTERNATIONAL LAW**

**DEATH PENALTY REPRESENTATION PROJECT**

**COMMISSION ON IMMIGRATION**

**REPORT TO THE HOUSE OF DELEGATES**

**RECOMMENDATION**

1 RESOLVED, That the American Bar Association urges  
2 the United States and upon state and territorial  
3 governments to work to ensure that the fundamental  
4 protections of Article 36 to the Vienna Convention on  
5 Consular Relations (“Article 36”) are extended fully and  
6 without obstacle to foreign nationals within United States  
7 borders; and

8 FURTHER RESOLVED, That the American Bar  
9 Association urges the United States to work to ensure that  
10 the fundamental protections of Article 36 are extended  
11 fully and without obstacle to United States citizens in  
12 foreign countries; and

13 FURTHER RESOLVED That the American Bar  
14 Association urges the President and Congress to renew  
15 the United States’ commitment to the implementation of  
16 the Vienna Convention and to the enforcement of its  
17 obligations under the United Nations Charter and the  
18 Optional Protocol to the Vienna Convention by:

19 (1) Seeking means to fully implement the decision of  
20 the International Court of Justice in *Avena and Other*  
21 *Mexican Nationals* through legislation and other means,  
22 where possible;

23 (2) Recognizing that disputes arising out of the  
24 interpretation of the Vienna Convention and related  
25 questions of international law should be decided by the  
26 International Court of Justice; and

27 (3) According the decisions of the International Court  
28 of Justice with regard to those disputes binding force  
29 within the United States, including honoring and  
30 enforcing any International Court of Justice judgments to  
31 which the United States is a party; and

32 FURTHER RESOLVED That the American Bar  
33 Association urges the President and Congress, as well as  
34 state and territorial executives, officials, and legislatures,  
35 to advance the implementation of and compliance with  
36 Article 36 of the Vienna Convention in the United States  
37 through the following measures:

38 (1) Drafting and adopting appropriate legislation that  
39 would codify the protections of Article 36 of the Vienna  
40 Convention into United States and state law, including but  
41 not limited to the following:

42 (a) Enacting legislation requiring that a person  
43 who is arrested or detained shall be advised without delay  
44 that if the arrestee or detainee is a foreign national, the  
45 foreign national has a right to communicate with an  
46 official from the consulate of the foreign national's  
47 country, and that if the arrestee or detainee chooses to  
48 exercise this right the advising officer notify the pertinent  
49 official in the officer's agency or department of that fact;  
50 and

51 (b) Enacting legislation that renders procedural  
52 default rules inapplicable to an assertion in criminal cases  
53 that the defendant's right under Article 36 has been  
54 violated; and

55 (2) Developing federal, state and territorial policies  
56 and procedures that enhance United States compliance

57 with Article 36 of the Vienna Convention, such as the  
58 following measures:

59 (a) Advising an arrestee or detainee as part of the  
60 booking process that foreign nationals have an Article 36  
61 right to communicate with an official from the consulate  
62 of the foreign national’s consulate;

63 (b) Adopting, as appropriate, policies and  
64 procedures that reflect and abide by the principles set  
65 forth in model guidelines or standards such as those  
66 promulgated by the United States Department of State or  
67 by Commission on Accreditation of Law Enforcement  
68 Agencies, regarding compliance with the Vienna  
69 Convention consular notification requirements;

70 (c) Taking steps to ensure that knowledge of  
71 these polices and procedures and of the right to consular  
72 notification is disseminated to federal, state, and local law  
73 enforcement personnel;

74 (d) Taking steps to ensure that a magistrate or  
75 judge informs a defendant at the first appearance that  
76 foreign nationals have an Article 36 right to communicate  
77 with an official from the consulate of the foreign  
78 national’s consulate;

79 (e) Providing training for prosecutors, defense  
80 counsel, judges, and law enforcement personnel as to the  
81 United States’ obligations under Article 36;

82 (f) Taking steps to ensure that for countries on  
83 the mandatory notification list, that mandatory  
84 notification does occur in all cases; and

85 FURTHER RESOLVED, That the American Bar  
86 Association urges prosecutors and criminal defense  
87 attorneys to become knowledgeable about the Vienna  
88 Convention's consular notification requirements and work  
89 to ensure effective exercise of those rights by foreign  
90 national defendants, including through the following  
91 measures:

92 (1) For prosecutors, assuming a responsibility to  
93 verify that a foreign national criminal defendant has been  
94 informed of the right to consular notification, and  
95 verifying that any request has been honored or that  
96 mandatory notification requirements have been met;

97 (2) For criminal defense attorneys in all cases,  
98 complying fully with ABA Guideline 10.6 "Additional  
99 Obligations of Counsel Representing a Foreign National"  
100 contained in the ABA Guidelines for the Appointment  
101 and Performance of Defense Counsel in Death Penalty  
102 Cases (rev. 2003); and

103 FURTHER RESOLVED, That the American Bar  
104 Association urges state and territorial bar associations, in  
105 matters involving foreign national defendants, to establish  
106 local links with consulates in the United States to assist

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107 the consulates in finding counsel for foreign national  
108 defendants, to provide other appropriate assistance to the  
109 consulates, to seek periodic assessments from consulates  
110 as to compliance with Article 36 by the United States and  
111 state and local governments, and to work with the  
112 consulates to propose and implement any necessary  
113 reforms and improvement.