

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

HECTOR GANDARA, a.k.a. Hector Gandarasegredo,
Plaintiff-Appellant,

v.

SHERIFF WAYNE BENNETT, Glynn County; DOE, unknown
investigator, Glynn County Sheriff's Office; GARY MOORE,
Glynn County District Attorney,
Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA

BRIEF OF THE UNITED STATES AS AMICUS CURIAE
IN SUPPORT OF DEFENDANTS-APPELLEES

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**CERTIFICATE OF INTERESTED PERSONS
AND CORPORATE DISCLOSURE STATEMENT**

I hereby certify that, to the best of my information and belief, the following is a complete list of interested persons pursuant to Eleventh Circuit Rule 26.1. This certificate has been amended since the certificate filed by the defendants-appellees by the addition of new interested persons, who are indicated in bolded text.

1. Alaimo, Anthony A., Hon. - District Judge, United States District Court for the Southern District of Georgia;
2. **Bellinger, John, Department of State;**
3. Bennett, Wayne - Defendant-Appellee;
4. Blackerby, Steven - Attorney for Defendant-Appellees;
5. Brown, Readdick, Bumgartner, Carter, Strickland & Watkins, LLP - Attorneys for Appellees;
6. Fresco, Leon - Attorney for Appellant;
7. Gandara, Hector - Plaintiff-Appellant;
8. Glynn County
9. Graham, James, E., Hon. - Magistrate Judge, United States District Court for the Southern District of Georgia;
10. Kelley, Stephen - District Attorney, Glynn County;

11. **Loeb, Robert, Department of Justice;**
12. **Letter, Douglas, Department of Justice;**
13. Moore, Gary - Defendant-Appellee;
14. Mumford, Aaron, W. - Attorney for Defendants-Appellees;
15. Readdick, Terry, Attorney for Defendants-Appellees;
16. **Swingle, Sharon, Department of Justice.**

/s/ Sharon Swingle
Sharon Swingle
Counsel for the United States

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INTERESTS OF THE UNITED STATES

The United States wishes to emphasize at the outset the importance that our Government places on consistent adherence to the Vienna Convention on Consular Relations, April 24, 1963, 21 U.S.T. 77. The United States Government regularly advises federal, state, and local officials of their obligations in order to ensure compliance with the Convention's consular notification provisions; those provisions also provide significant protection to U.S. nationals abroad.

Nevertheless, the United States supports affirmance in this case because there is no right to sue for money damages for violation of the Convention's consular notification provisions. The United States has a substantial interest in the construction that domestic courts give to treaties to which our government is a party. Permitting the Convention's consular notification provisions to be enforced through private damages actions could have significant ramifications for law enforcement. Accordingly, the United States files this brief pursuant to 28 U.S.C. § 517 and Fed. R. App. Pro. 29(a) to address questions 1 and 2 in the Court's April 25, 2007, order.¹

STATEMENT OF THE ISSUES

1. Whether the Vienna Convention creates judicially enforceable individual rights to consular notification and access.

¹ It is the position of the United States that *Heck v. Humphrey* does not bar this suit. We would be pleased to elaborate on that position at the Court's request.

2. Whether any individual rights created by the consular notification provisions of the Convention are enforceable through a damages action against local officials.

STATEMENT OF THE CASE

1. The Convention governs consular relations between party States, conferring certain privileges and immunities in order “to ensure the efficient performance of functions by consular posts”—but “*not* to benefit individuals.” Preamble. Consular functions recognized by the Convention include “helping and assisting nationals” of a sending State, and “representing or arranging appropriate representation for nationals of the sending State.” Art. 5(a), (e), (i).

Article 36 of the Convention governs communications between consular officials and foreign nationals. The article provides that, “[w]ith a view to facilitating the exercise of consular functions,” consular officials will be free to communicate with and have access to their nationals, and foreign nationals will be free to communicate with and have access to consular officials. ¶ 1(a). Article 36 directs receiving state officials to inform consular officials, at a foreign national’s request, that the national has been arrested or taken into custody, and also to “inform the person concerned without delay of his rights” to have consular officials notified and to have access to those officials. ¶ 1(b). Finally, Article 36 provides consular officials “the right to visit a national of the sending State” who has been detained “to converse and correspond with him and to arrange for his legal representation.” ¶ 1(c).

2. Plaintiff Hector Gandara is a Uruguay national who was arrested in 2004 by local law enforcement officials. Record Excerpts (RE) 1:9, 11. Gandara alleges that officials refused his request to contact a consular representative, and also “failed to inform him” that he had a right to contact his consulate. RE 1:3, 11-12. He seeks money damages from various officials in their individual capacity. RE 1:9-10, 13.

SUMMARY OF ARGUMENT

As this Court has already recognized, the Vienna Convention does not create judicially enforceable individual rights to consular notification and access. Its text, adopted in the face of a presumption against private enforcement, explicitly disclaims any intent to create individual rights. Its structure and drafting history also support this construction, which is consistent with its implementation by other countries. Any ambiguity should be resolved in favor of the Executive’s interpretation of the treaty.

Nor is there any legal basis for a private money damages action for the violation of any rights created by the Convention. The Convention itself does not create such a remedy, nor has Congress done so. The Convention is not encompassed by the “Constitution and laws” that may be vindicated under 42 U.S.C. § 1983, nor does it create any enforceable “rights” within the meaning of that provision.

ARGUMENT

I. ARTICLE 36 OF THE VIENNA CONVENTION DOES NOT CREATE JUDICIALLY ENFORCEABLE INDIVIDUAL RIGHTS.

A. Article 36 of the Convention was negotiated and adopted against the

background principle that treaty violations are the subjects of “international negotiations,” not judicial redress. *Head Money Cases*, 112 U.S. 580, 598, 5 S.Ct. 247, 254 (1884); see *Societe Nat. Indus. Aerospatiale v. U.S. Dist. Ct.*, 482 U.S. 522, 533, 107 S.Ct. 2542, 2550 (1987) (treaty “is in the nature of a contract between nations”). Although it is possible for a treaty to create enforceable private rights, such a treaty must overcome a presumption that the exclusive means of enforcement are political and diplomatic. See *United States v. Emuegbunam*, 268 F.3d 377, 389-390 (6th Cir. 2001); *United States v. Jimenez-Nava*, 243 F.3d 192, 195-196 (5th Cir. 2001); *United States v. De La Pava*, 268 F.3d 157, 164 (2d Cir. 2001).

This principle applies even when a treaty benefits individuals. See Restatement (3d) of Foreign Relations Law § 907 cmt. a (1987). Thus, *Argentine Republic v. Amerada Hess Shipping Corp.* held that treaty provisions specifying that a merchant ship “shall be compensated for any loss or damage” and that a “belligerent shall indemnify the damage caused by its violation” had the effect of establishing “substantive rules of conduct,” but did not create enforceable individual rights to recover compensation. 488 U.S. 428, 442 & n.10, 109 S.Ct. 683, 692 & n.10 (1989).

Similarly—and as this Court has already recognized—the consular notification provisions of Article 36 may benefit a detained foreign national, but they do not authorize the national to sue to enforce their requirements. *United States v. Duarte-Acero*, 296 F.3d 1277, 1281-1282 (11th Cir. 2002); *United States v. Rodriguez*, 162

Fed. Appx. 853, 857 (11th Cir. 2006); *Maharaj v. Secretary for Dep't of Corr.*, 432 F.3d 1292, 1307 (11th Cir. 2005); *see also, e.g., Jimenez-Nava*, 243 F.3d at 195-198; *Emuegbunam*, 268 F.3d at 391-394; *De La Pava*, 268 F.3d at 163-165; *United States v. Li*, 206 F.3d 56, 66-68 (1st Cir. 2000) (Selya, J., and Boudin, J., concurring).

B. The Convention's text, structure, and history give no indication that the consular notification provisions are intended to create enforceable individual rights.

Even for a federal statute, where there is no presumption against individual enforcement, the text "must be phrased in terms of the persons benefited" before it will be found to create enforceable private rights. *Gonzaga Univ. v. Doe*, 536 U.S. 273, 284, 122 S.Ct. 2268, 2275 (2002). Here, the text of the Convention explicitly disclaims any intent to create individual rights. *See* Preamble (Convention's purpose is "*not to benefit individuals*"). Although this specific limitation refers to "privileges and immunities," it reflects the broader point that the entire treaty is intended to enhance States' ability to protect their nationals abroad rather than to create freestanding individual rights.

The plaintiff relies on references to "rights" of consular notification and access in the Convention, and similar statements in drafting and negotiation sessions, as evidence that Article 36 was intended to create enforceable individual rights. But the "right[s]" conferred on consular officials by Article 36 plainly are not intended to create enforceable rights in those officials, and no different conclusion can be drawn

the fact that the article confers parallel “rights” upon detained foreign nationals. *See Maharaj*, 432 F.3d at 1307.

Significantly, the first protection extended under Article 36 is to consular officials, who “shall be free to communicate with nationals of the sending State and to have access to them.” The “rights” of foreign nationals were deliberately placed underneath, see 1 Official Records, United Nations Conf. on Consular Relations, Vienna, 4 Mar. - 22 Apr. (1963), 333 (Chile), signaling what the introductory clause to Article 36 spells out—that the Article’s function is not to create freestanding individual rights, but “to facilitat[e] the exercise of consular functions.” As a practical matter, a foreign national’s rights are necessarily subordinate to his country’s rights. An individual may ask for consular assistance, but it is entirely up to his country whether to provide it. Neither a foreign State nor its consular official can sue under the Convention or 42 U.S.C. § 1983 to remedy an alleged violation. *See Breard v. Greene*, 523 U.S. 371, 378, 118 S.Ct. 1352, 1356 (1998). It follows that an individual alien should not be able to do so either.

Furthermore, there is no indication in the Convention that the “right[s]” referred to in Article 36 are privately enforceable. Although the Optional Protocol establishes a mechanism that States may invoke, the United States is not a party to the Protocol, having noticed its withdrawal in 2005. Under the Protocol, furthermore, only a State may initiate a proceeding and a ruling “has no binding force except between the

parties and in respect to the particular case.” Statute of the ICJ, art. 59, 59 Stat. 1062.² The fact that the only remedy created by the Convention’s drafters is both limited and purely voluntary is inconsistent with an argument that the Convention creates enforceable individual rights. *See City of Rancho Palos Verdes v. Abrams*, 544 U.S. 113, 120-122, 125 S.Ct. 1453, 1458-1459 (2005).³

The drafting history of Article 36 provides further evidence that it was not intended to create privately enforceable rights. In preparing the initial proposed draft, the members of the International Law Commission recognized that it “related to the basic function of the consul to protect his nationals,” and that “to regard the question

² Given this express limitation, the plaintiff errs in suggesting that the Court is bound by ICJ rulings in cases brought by foreign governments to challenge the treatment of other foreign nationals. *Cf. Sanchez-Llamas v. Oregon*, 126 S.Ct. 2669, 2686-2687 (rejecting decisions as unpersuasive). In any event, claims brought by foreign governments fail to support an argument for individual enforcement.

³ Gandara does not rely on the provision of Article 36 that consular access rights “shall be exercised in conformity with [domestic law], subject to the proviso *** that [domestic law] must enable full effect to be given to the purposes for which the rights *** are intended.” Nor does it support his argument. The reference to how rights “shall be *exercised*” speaks to how rights will be implemented in practice, *i.e.*, how detainees will be told of the right to contact consular officials, how consular officers will be contacted, and how consular officers will be given access to a detainee. That is quite different from the available *remedies* for a violation. When a person seeks damages from an official who has violated his First Amendment rights, he is not exercising those rights in bringing the lawsuit; he is suing to remedy a prior interference with the exercise of those rights. Notably, *Sanchez-Llamas* held that the “full effect” provision did not bar the application of procedural default rules. 126 S.Ct. at 2682-2687. The Court also expressed “doubt” that there must be a “judicial remedy” for a violation of the Convention, noting that “diplomatic avenues” were the “primary means” of enforcement. *Id.* at 2680-2682.

as one involving primarily human rights” was to “confuse the issue.” ILC, Summary Records of 535th Mtg., U.N. Doc. A/CN.4/SR.535, at 48-49 (1960) (Sir. Fitzmaurice); *see id.* (Mr. Erim) (article “dealt with the rights and duties of consuls and not with the protection of human rights”). The ILC drafters also observed that the proposed article would be subject to the “normal rule” of enforcement under which a country that “did not carry out a provision” of the Convention would “be estopped from invoking that provision against other participating countries.” *Id.* at 49.

The final ILC draft submitted to the United Nations Conference required law enforcement officials to notify consular representatives whenever a foreign national was detained. *See* ILC, Draft Articles on Consular Relations, 112 (1961), available at http://untreaty.un.org/ilc/texts/9_2.htm. Numerous delegates expressed concern that mandatory notice would pose an enormous burden for countries with large tourist or immigrant populations, *see* 1 Official Records at 36-38, 82-83, 81-86, 336-340, and the Conference ultimately adopted a compromise proposal that required notice to consular representatives at the foreign detainee’s request. *See id.* at 82 (explaining that change would “lessen the burden on the authorities of receiving States”) *Id.* Given the circumstances of and stated purpose for its inclusion, Article 36 cannot reasonably be interpreted to create enforceable private rights.

Finally, the history of the Convention’s ratification by the Senate and implementation by the Executive show that Article 36 was not understood to create new private

rights within our domestic legal system. The plaintiff emphasizes that the Convention was understood to be “self-executing,” *i.e.*, to impose legal obligations without the need for implementing legislation. But the question whether the Convention is self-executing is wholly distinct from whether it creates “private rights, enforceable in domestic courts.” *Li*, 206 F.3d at 67-68; *accord* Restatement (3d) of Foreign Relations Law § 111, cmt. h. At the time of the Convention’s ratification, the State Department and the Senate Foreign Relations Committee agreed that the Convention would not modify existing law. *See* S. Exec. Rep. No. 9, 91st Cong., 1st Sess., at 2, 18 (1969). The State Department explained that disputes under the Convention “would probably be resolved through diplomatic channels” or, failing resolution, through the process set forth in the Optional Protocol. *Id.* at 19. Consistent with this, the State Department’s longstanding practice has been to respond to foreign States’ complaints about violations of Article 36 by conducting an investigation and, where appropriate, making a formal apology and taking steps to prevent a recurrence. *See Li*, 206 F.3d at 65. This evidence precludes any inference that, because the Convention was understood to be self-executing, it was also understood to create enforceable private rights.

C. The position of the Executive Branch is that the Convention’s consular notification provisions are not enforceable in actions brought by private individuals

or foreign governmental officials.⁴ The State Department’s practices relating to the Convention also reflect the understanding that it does not create judicially enforceable individual rights. This longstanding interpretation “is entitled to great weight.” *United States v. Stuart*, 489 U.S. 353, 369, 109 S.Ct. 1183, 1193 (1989).

In matters of foreign affairs, our Constitution vests in the Executive the responsibility for speaking on behalf of the nation. *See Li*, 206 F.3d at 68 (noting the “elaborate regime of practices” by which nations enforce treaty commitments or choose to forego enforcement “for reasons of prudence, * * * convenience, or *** to secure advantage in unrelated matters”). For a U.S. court to inject itself into this delicate process could cause significant harm to our foreign relations.⁵ Given that the Executive’s construction is supported by the Convention’s text, structure, and history, as well as the history of its implementation both in the U.S. and worldwide, this Court should defer to that position and affirm that Article 36 of the Convention does not create judicially enforceable individual rights.

⁴ *See* Brief for United States at 11-30, *Sanchez-Llamas v. Oregon*, 126 S.Ct. 2669 (2006) (Nos. 05-51, 04-10566); Brief for United States at 18-30, *Medellin v. Dretke*, 544 U.S. 660, 125 S.Ct. 2088 (2005) (No. 04-5928); Brief for United States at 18-23, *Republic of Paraguay v. Gilmore*, 523 U.S. 1068, 118 S.Ct. 1407 (1998) (No. 97-1390), and *Breard v. Greene*, 523 U.S. 371, 118 S.Ct. 1352 (1998) (No. 97-8214).

⁵ The plaintiff asserts that the principle of liberal construction of treaties supports interpreting Article 36 to create enforceable individual rights. The question what rights are protected by a treaty is distinct from the question how to vindicate a violation of those rights. There is no principle of treaty construction in favor of private enforcement through civil damages claims—to the contrary, the applicable presumption in this context is *against* private enforcement. *See supra*, pp. 3-4.

II. ARTICLE 36 IS NOT ENFORCEABLE THROUGH A PRIVATE CIVIL ACTION FOR MONEY DAMAGES.

A. The text and history of the Convention do not purport to create a private civil damages remedy for its violation. The fact that the drafters found it necessary to create an optional dispute mechanism suggests strongly that no implied remedy was intended. We are unaware of any country that has permitted enforcement of Article 36 through a private damages suit. *Cf. Sanchez-Llamas*, 126 S.Ct. at 2678 (emphasizing unlikelihood that signatories to Convention would intend to permit remedy that had been rejected in most domestic legal systems). This Court should decline to hold that the Convention created such an unlikely enforcement mechanism *sub silentio*.

B. Congress has not created a private right of action in 42 U.S.C. § 1983 to vindicate rights asserted under Article 36 of the Convention.⁶

1. Only “an unambiguously conferred right [will] support a cause of action brought under § 1983.” *Gonzaga Univ.*, 536 U.S. at 283-284, 122 S.Ct. at 2275-2276 (noting that inquiry whether federal law creates enforceable private rights is guided by analysis for implied rights of action). Because Article 36 does not create any enforceable individual rights, it also may not be enforced under § 1983. *See Abrams*, 544 U.S. at 120-122, 125 S.Ct. at 1458-1459. The Court should be particularly

⁶ The plaintiff’s opening brief also invoked 28 U.S.C. §§ 1331 and § 1350. Those provisions, however, are strictly jurisdictional, and do not create any private rights of action. *See Columbia Marine Servs., Inc. v. Reffet Ltd.*, 861 F.2d 18, 21 (2d Cir. 1988) (§ 1331); *Arce v. Garcia*, 434 F.3d 1254, 1256 n.2 (11th Cir. 2006) (§ 1350).

reluctant to permit enforcement under § 1983 of rights derived from an international treaty, both because of the applicable presumption *against* private enforcement and because international treaties are not the product of bicameral legislation. *See Save Our Valley v. Sound Transit*, 335 F.3d 932, 937-938 (9th Cir. 2003).

2. Article 36 of the Vienna Convention is not within the “Constitution and laws” that can secure rights, the deprivation of which is actionable under 42 U.S.C. § 1983.⁷

Section 1983 derives from § 1 of the Ku Klux Klan Act of 1871, which created and conferred jurisdiction over a private right of action to vindicate the deprivation of rights “secured by the Constitution of the United States.” Act of Apr. 20, 1871, ch. 22, § 1, 17 Stat. 13. In 1874, Congress enacted a statutory codification that divided the original provision into one remedial and two jurisdictional sections. *See Chapman v. Houston Welfare Rights Org.*, 441 U.S. 600, 624, 627-628, 99 S.Ct. 1905, 1919, 1921 (1979) (Powell, J., concurring). The remedial provision now codified at § 1983 created a private right of action for the deprivation of rights “secured by the Constitution and laws.” *Maine v. Thiboutot*, 448 U.S. 1, 6-7, 100 S.Ct. 2502, 2505 (1980). Notwithstanding evidence that the revision was intended to work no substantive changes, the Supreme Court has held that it broadened the right of action created by § 1983 to encompass certain rights created by federal statute. *See id.* at 4-

⁷ This conclusion is based on the specific text, history, and context of § 1983, and does not imply that the Executive Branch generally construes “laws” to exclude treaties. In some contexts, the term is reasonably interpreted to include treaties.

5, 100 S.Ct. at 2504.

There is no indication, however, that in enacting the revised statutes in 1874 Congress intended to create a new remedy for treaty violations. The textual reference to “the Constitution and laws,” as opposed to the “Constitution, the Laws of the United States, and Treaties,” U.S. Const., art. III, § 2, does not manifest any such intent. Nor does the underlying purpose of the statute, which was to “ensur[e] a right of action to enforce the protections of the Fourteenth Amendment and the federal laws enacted pursuant thereto.” *Chapman*, 441 U.S. at 611, 99 S.Ct. at 1913.

Just one year after the 1874 revision, furthermore, Congress gave circuit courts jurisdiction over certain civil actions “arising under the Constitution or laws of the United States, or treaties made.” Act of Mar. 3, 1875, ch. 137, 18 Stat. 470. Congress similarly extended the federal habeas power to all cases in which a person is detained “in violation of the constitution or of any treaty or law of the United States.” Act of Feb. 5, 1867, ch. 28, § 1, 14 Stat. 385.⁸ Despite numerous amendments and recodifications of these statutes, Congress has never changed these differences in

⁸ In contrast, the provision of the 1874 revised statutes codifying the jurisdictional grant in § 1 of the Ku Klux Klan Act referred to rights conferred “by the Constitution [or] *** any law providing for equal rights.” Although the Supreme Court has recognized that this provision is narrower than a plain-language reading of § 1983, *see Thiboutot*, 448 U.S. at 8 & n.6, 100 S.Ct. at 2506 & n.6, it weighs against interpreting the parallel remedial provision in § 1983 to have a much broader scope that does *not* follow from a plain-language reading.

wording, which should be given significance in this Court’s construction of § 1983.⁹

The Supreme Court has not addressed the question whether international treaties are within § 1983’s reference to “laws.” However, the Court has held that the cause of action is to vindicate rights under “the United States Constitution and federal statutes,” but not rights derived from state law. *Baker v. McCollan*, 443 U.S. 137, 144 n.3, 146-147, 99 S.Ct. 2689, 2694 n.3, 2695-2696 (1979).¹⁰ Indeed, even in the context of treaties with Indian tribes, courts have questioned whether claims seeking

⁹ Furthermore, numerous courts have held that only treaties conferring enforceable individual rights may be vindicated under the federal habeas statute. *See Hamdan v. Rumsfeld*, 415 F.3d 33, 40 (D.C. Cir. 2005), *rev’d on other grounds*, 126 S.Ct. 2749 (2006); *Bannerman v. Snyder*, 325 F.3d 722, 724 (6th Cir. 2003); *Wang v. Ashcroft*, 320 F.3d 130, 140 (2d Cir. 2003). There would be no basis for reading § 1983 more broadly, to permit enforcement of treaties *not* intended to create private rights.

¹⁰ In *Baldwin v. Franks*, the Supreme Court held that forcible removal of Chinese nationals from homes and businesses in violation of a treaty did not constitute a crime under federal statutes prohibiting conspiracies to interfere with “the execution of any law of the United States,” and “to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the constitution or laws of the United States.” 120 U.S. 678, 7 S.Ct. 756 (1887). In reaching that conclusion, the Court assumed that the treaty could constitute a “law”—a point not challenged by the petitioner. That assumption, made without an analysis of the text or history of those criminal statutes, does not support interpreting the term “laws” in the civil remedy under § 1983 to encompass international treaties. In the criminal context, prosecutorial discretion can safeguard against harmful applications that could interfere with our foreign relations or the State Department’s implementation of treaty obligations. The civil context has no such safeguard, weighing against a broad construction of § 1983. *Cf. Central Bank v. First Interstate Bank*, 511 U.S. 164, 190-191, 114 S.Ct. 1439, 1455 (1994) (refusing to infer civil accomplice liability based on statutory criminal accomplice liability). In the criminal context, furthermore, the United States can provide an authoritative interpretation of an international treaty, taking into account foreign policy considerations—which the Government might not have the opportunity to do in a private suit under § 1983.

to vindicate rights to self-government and to take fish are cognizable under § 1983. *See Hoopa Valley Tribe v. Nevins*, 881 F.2d 657, 662 (9th Cir. 1989); *cf. Oneida County v. Oneida Indian Nation*, 470 U.S. 226, 234-236, 105 S.Ct. 1245, 1251-1252 (1985) (recognizing Indians’ federal common-law right to enforce aboriginal rights). Unlike foreign states, furthermore, Indian tribes, as dependent sovereigns, have no recourse against the United States under public international law or through diplomatic means. Given the potential consequences for our foreign affairs, a court should be particularly reluctant to construe § 1983 to reach treaty claims that “do not clearly fit within the terms of the statute.” *Chapman*, 441 U.S. at 612, 99 S.Ct. at 1913; *see also Sosa v. Alvarez-Machain*, 542 U.S. 692, 727, 124 S.Ct. 2739, 2763 (2004) (emphasizing need for caution in realm of foreign affairs).

Finally, it seems particularly unlikely that Congress would have intended for international treaties to be enforceable under § 1983, because that would have given foreign nationals greater enforcement rights under treaties with the United States than are possessed by U.S. citizens. This Court should not “impose judicially such a drastic remedy, not imposed by any other signatory to this convention.” *United States v. Chaparro-Alcantara*, 226 F.3d 616, 622 (7th Cir. 2000).

CONCLUSION

This Court should affirm the judgment of the district court.

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CERTIFICATE OF COMPLIANCE

I hereby certified that this brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the typestyle requirements of Fed. R. App. P. 32(a)(6) because it has been prepared with Word Perfect 12 in a proportional typeface with 14 characters per inch in Times New Roman. The brief contains 15 pages, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii), which complies with the page limit set in the Court's August 31, 2007, order.

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CERTIFICATE OF SERVICE

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