AMERICAN EXCEPTIONALISM: SOME THOUGHTS ON *SANCHEZ-LLAMAS V. OREGON*

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I. INTRODUCTION 220
II. REJECTION OF INTERNATIONAL LAW AND THE INTERNATIONAL COURT OF JUSTICE 224
III. NO SPECIAL RIGHTS FOR FOREIGN NATIONALS 229
IV. AFFIRMATION OF DUAL SOVEREIGNTY........ 231
V. CONCLUSION........ 238

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I. INTRODUCTION

From a law enforcement standpoint, *Sanchez-Llamas v. Oregon*[1] is significant.[2] Assuming, without deciding,[3] that the Vienna Convention on Consular Relations[4] confers judicially enforceable individual rights,[5] the Supreme Court held that a

1. 126 S. Ct. 2669 (2006).

2. The Court granted certiorari as to three questions presented in these cases: (1) whether Article 36 of the Vienna Convention grants rights that may be invoked by individuals in a judicial proceeding; (2) whether suppression of evidence is a proper remedy for a violation of Article 36; and (3) whether an Article 36 claim may be deemed forfeited under state procedural rules because a defendant failed to raise the claim at trial. *Id.* at 2677.

3. *Id.* at 2677–78 ("Because we conclude that Sanchez-Llamas and Bustillo are not in any event entitled to relief on their claims, we find it unnecessary to resolve the question whether the Vienna Convention grants individuals enforceable rights. Therefore, for purposes of addressing petitioners' claims, we assume, without deciding, that Article 36 does grant Bustillo and Sanchez-Llamas such rights.").

4. Vienna Convention on Consular Relations, Apr. 24, 1963, 21 U.S.T. 77, 596 U.N.T.S. 261 [hereinafter VCCR]. The Court summarized the workings of the Vienna Convention as follows:

> The Vienna Convention was drafted in 1963 with the purpose, evident in its preamble, of "contribut[ing] to the development of friendly relations among nations, irrespective of their differing constitutional and social systems." The Convention consists of 79 articles regulating various aspects of consular activities. At present, 170 countries are party to the Convention. The United States, upon the advice and consent of the Senate, ratified the Convention in 1969.
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> Article 36 of the Convention concerns consular officers' access to their nationals detained by authorities in a foreign country. The article provides that "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." In other words, when a national of one country is detained by authorities in another, the authorities must notify the consular officers of the detainee's home country if the detainee so requests. Article 36(1)(b) further states that "[t]he said authorities shall inform the person concerned [i.e., the detainee] without delay of his rights under this sub-paragraph." The Convention also provides guidance regarding how these requirements, and the other requirements of Article 36, are to be implemented:
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>> The 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.

Sanchez-Llamas, 126 S. Ct. at 2674–75 (citations and footnotes omitted).

5. Although the Court avoided the issue, there are compelling arguments as to why the Vienna Convention does not create judicially enforceable individual rights. First, "neither the text nor the history of the Vienna Convention clearly provides a foreign

violation of those rights: (1) did not require the suppression of evidence,[6] and (2) did not require a state to ignore its rules of procedural default for habeas corpus proceedings.[7] Consequently, local law enforcement officials, who perform the vast majority of arrests in the United States, need not worry about their failure to identify a suspect as a foreign national and to advise the suspect that he may contact his consulate. From a personal standpoint, the decision is memorable. I argued the case on behalf of the Virginia respondent,[8] and the portion concerning procedural default rules is a significant professional triumph.[9] Yet, the significance of *Sanchez-Llamas* goes far beyond making law enforcement easier or another set of framed quills for my office wall.

Sanchez-Llamas represents a rejection of the "international community" and an embrace of "American Exceptionalism," the idea that the United States is fundamentally different from, if not superior to, the rest of the world. In *Case Concerning Avena and Other Mexican Nationals* (*Mex. v. U.S.*)[10] and *LaGrand Case* (*F.R.G. v. U.S.*),[11] the International Court of Justice concluded that the Vienna Convention on Consular Relations does create

nation a private right of action in United States' courts to set aside a criminal conviction and sentence for violation of consular notification provisions." Breard v. Greene, 523 U.S. 371, 377 (1998) (per curiam); *see also* Federal Republic of Germany v. United States, 526 U.S. 111, 112 (1999) (per curiam) (stating that sovereign immunity of the national government bars suit by foreign nation to enforce Vienna Convention); Principality of Monaco v. Mississippi, 292 U.S. 313, 329–30 (1934) (holding that sovereign immunity bars suit by a foreign nation against a state). Second, even if it does create individual rights, those rights are not judicially enforceable. If the signatory nations to a treaty wish to provide for judicial enforcement, then the treaty will explicitly state that it is to be judicially enforced. *See* Rocca v. Thompson, 223 U.S. 317, 332 (1912) ("[T]reaties are the subject of careful consideration before they are entered into, and are drawn by persons competent to express their meaning and to choose apt words in which to embody the purposes of the high contracting parties. Had it been the intention to commit the administration of estates of citizens of one country, dying in another, exclusively to the consul of the foreign nation, it would have been very easy to have declared that purpose in unmistakable terms."). Treaties have historically depended "on the interest and honor of the governments which are parties to it." Edye v. Robertson, 112 U.S. 580, 598 (1884). "[I]nfraction becomes the subject of international negotiations and reclamations." *Id.* In such matters, "[i]t is obvious that with all this the judicial courts have nothing to do and can give no redress." *Id.*

6. *Sanchez-Llamas,* 126 S. Ct. at 2677–78.

7. *Id.* at 2683–87.

8. The Court consolidated *Sanchez-Llamas* and *Bustillo* for purposes of argument. Bustillo v. Johnson, 126 S. Ct. 621 (2005).

9. This is true not only for me as arguing counsel but for Steve McCullough, my co-counsel in the Supreme Court, who handled the case below.

10. 2004 I.C.J. 12 (Mar. 31).

11. 2001 I.C.J. 466 (June 27).

judicially enforceable individual rights[12] and, more importantly, that vindication of those rights required American courts to ignore state and federal procedural rules.[13] Foreign nations and those who espouse "international norms" demanded that the Court adhere to that interpretation.[14] The Court refused to do so. Confronted with "the delicate question of the application of an international treaty,"[15] the Court decided the case not on international law, but "under the same principles we would apply to an Act of Congress, or to the Constitution itself."[16] By doing so, the Court rejected international law and the International Court of Justice,[17] refused to recognize special rights for foreign nationals, and reaffirmed the constitutional value of dual sovereignty. History may well regard the case as a defining moment in the conflict between those who wish to

12. However, the International Court of Justice's reasoning is simply wrong. As a textual matter, Article 36(2) of the Vienna Convention provides that the rights mentioned in the preceding section must 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." VCCR, *supra* note 4, at art. 36(2) (emphasis added). The plain language of this provision refers to the "exercise" of the rights, not to an after-the-fact judicial redress for any violation of the terms of the Vienna Convention. In other words, a nation may not impose unreasonably restrictive visitation hours; detain foreign nationals in remote, inaccessible locales; or impose other measures that would restrict the "exercise" of the rights. The *travaux preparatoires*—the preparatory work—show this was the concern of the diplomatic delegations. Official Records United Nations Conference on Consular Relations, Vienna, Mar. 4–Apr. 22, 1963, U.N. Doc. A/Conf. 25/16 at 40, 347 (1963).

13. Medellin v. Dretke, 544 U.S. 660, 663 (2005) (citing *Avena*, 2004 I.C.J. at 121–22, 153).

14. *See* Brief for Amici Curiae Republic of Honduras and Other Foreign Sovereigns in Support of Petitioners, Sanchez-Llamas v. Oregon, 126 S. Ct. 2669 (2006) (Nos. 04-10566, 05-51); Brief of the American Bar Association as Amicus Curiae in Support of Petitioner, *id.* (Nos. 04-10566, 05-51); Brief Amicus Curiae of the Government of the United Mexican States in Support of Petitioner Moises Sanchez-Llamas, *id.* (Nos. 04-10566, 05-51); Brief of International Court of Justice Experts as Amici Curiae in Support of Petitioners, *id.* (Nos. 04-10566, 05-51); Brief of Amici Curiae the European Union and Members of the International Community in Support of Petitioners, *id.* (Nos. 04-10566, 05-51).

15. *Sanchez-Llamas,* 126 S. Ct. 2669, 2687 (2006).

16. *Id.* at 2688.

17. Although it is popular to portray America as the sole dissenter from international norm, the reality is that many nations had rejected the International Court of Justice's interpretation of the Vienna Convention. *See, e.g.*, R. v. Partak, [2001] 160 C.C.C. (3d) 553, 570 (Ont.) ("[T]he Vienna Convention appears to deal with obligations between states as opposed to obligations owed to nationals."); R. v. Van Bergen, [2000] 261 A.R. 387, ¶ 15 (Alta.) ("The Vienna Convention creates an obligation between states and is not one owed to [an individual]."); R. v. Abbrederis (1981) 1 N.S.W.L.R. 530, 543 (Austl.) (Vienna Convention deals "with freedom of communication between consuls and their nationals. It says nothing touching upon the ordinary process of an investigation by way of interrogation").

preserve American sovereignty and those who wish to defer to the international community and multilateral organizations.

The purpose of this article is to explore the Court's rejection in *Sanchez-Llamas* of the international community and its embrace of American Exceptionalism.[18] Its purpose is not to provide a comprehensive discussion of the case, an objective that has already been accomplished elsewhere.[19] This exploration is accomplished in three sections. The first section discusses the Court's rejection of international law and the International Court of Justice. The Court found that decisions of the International Court of Justice were neither binding nor entitled to any sort of special deference, that the International Court of Justice misconstrued the Vienna Convention, and that the American legal system was fundamentally different from the rest of the world. The second section details why the Court refused to create special rights for foreign nationals. The final section explains the Court's reaffirmation of the constitutional value of dual sovereignty.

18. In addition to embracing American Exceptionalism, the decision offers some interesting insights into the Chief Justice's willingness to compromise his opinion in order to obtain a broader consensus. The Chief Justice wrote an opinion that established absolute bright line rules and that leaves no room for judicial discretion. This opinion commanded a bare majority. Yet, as Justice Ginsburg's concurrence indicates, the result likely would have been the same even under the flexible balancing approach advocated by Justice Breyer's dissent. *See Sanchez-Llamas*, 126 S. Ct. at 2688–90 (Ginsburg, J., concurring). Thus, the Chief Justice likely could have obtained a 9–0 result simply by adopting an approach similar to Justice Breyer. The fact that he chose not to do so implies that he was more interested in bright line rules that limit judicial discretion than in a pretense of unanimity.

To be sure, some may regard the Chief Justice's refusal to address the issue of whether the VCCR creates judicially enforceable rights as evidence of a "minimalist approach." *See Leading Case*, 120 HARV. L. REV. 125, 308–12 (2006). Yet, if a violation of the VCCR never results in suppression of evidence and never results in a setting aside of procedural default rules for habeas corpus, the existence of judicially enforceable individual rights is largely meaningless. While it is certainly relevant for the issue of whether money damages are available for such a violation, *see* Jogi v. Voges, 425 F.3d 367 (7th Cir. 2005), it is not dispositive of the issue. The mere fact that a statute or regulation confers a benefit on an individual does not mean that the individual can enforce that statute or regulation in federal court. *See* Gonzaga Univ. v. Doe, 536 U.S. 273, 285–89 (2002) (Family Educational Rights and Privacy Act may not be enforced by private parties); Alexander v. Sandoval, 532 U.S. 275, 286–87 (2001) (certain Title VI implementing regulations cannot be enforced by private parties).

19. *See, e.g.*, *Leading Case*, *supra* note 18, at 303–12.

II. REJECTION OF INTERNATIONAL LAW AND THE INTERNATIONAL COURT OF JUSTICE

Although some foreign constitutions mandate that their courts follow international law,[20] no such obligation exists for American courts.[21] The fundamental question in *Sanchez-Llamas* was whether the Court was going to defer to international law in general and the decisions of the International Court of Justice in particular. The Oregon and Virginia petitioners, as well as many amici, urged the Court to *follow* the reasoning of *Avena* and *LaGrand*.[22] The Vienna Convention conferred judicially enforceable individual rights, and vindication of those rights required both the exclusion of evidence (the Oregon case) and the non-application of state procedural default rules (the Virginia case). Some amici went further and asserted that *Avena* and *LaGrand* were *binding* on the Court.[23] Since the United States was a party to the Vienna Convention, it was bound to follow the decisions of the International Court of Justice. In effect, the Supreme Court would be subordinate to the International Court of Justice in matters concerning the Vienna Convention or other treaties.

Acceptance of either position would have represented a watershed event. First, in *Breard* (1998), decided prior to *Avena* (2004) and *LaGrand* (1999), the Court held that the Vienna

20. *See, e.g.*, S. AFR. CONST. 1996. § 39(1)(b) (stating that when interpreting the South African Bill of Rights, courts must consider international law).

21. Breard v. Greene, 523 U.S. 371, 375 (1998) (suggesting that decisions of the International Court of Justice are entitled to only respectful consideration). Moreover, "neither the text nor the history of the Vienna Convention clearly provides a foreign nation a private right of action in United States' courts to set aside a criminal conviction and sentence for violation of consular notification provisions." *Id.* at 377; *see also* Federal Republic of Germany v. United States, 526 U.S. 111, 112 (1999) (per curiam) (Sovereign immunity of the national government bars suit by foreign nation to enforce Vienna Convention); Principality of Monaco v. Mississippi, 292 U.S. 313, 329–30 (1934) (sovereign immunity bars suit by foreign nation against a State).

22. *See* Brief for Amici Curiae Republic of Honduras and Other Foreign Sovereigns in Support of Petitioner, *supra* note 14, at 24–25; Brief for Petitioner Moises Sanchez-Llamas at 26–28, *Sanchez-Llamas*, 126 S. Ct. 2669 (Nos. 04-10566, 05-51); Brief for Petitioner Mario A. Bustillo at 24, *id.* (Nos. 04-10566, 05-51); Brief of the American Bar Association as Amicus Curiae in Support of Petitioner, *supra* note 14, at 17–22; Brief Amicus Curiae of the Government of the United Mexican States in Support of Petitioner Moises Sanchez-Llamas, *supra* note 14, at 8–9; Brief of Amici Curiae the European Union and Members of the International Community in Support of Petitioners, *supra* note 14, at 13–15.

23. *See Sanchez-Llamas,* 126 S. Ct. at 2683 (noting the radical position of the International Court of Justice Experts); *see, e.g.*, Brief of International Court of Justice Experts as Amici Curiae in Support of Petitioners, *supra* note 14, at 11.

Convention did not require a State to ignore its procedural default rules.[24] Thus, a decision to follow *Avena* and *LaGrand* would have required revisiting and overruling *Breard*. Second, while the Court occasionally has relied on decisions from the International Court of Justice as evidence of the norms of international law,[25] it has expressly declined to give substantive meaning to those decisions.[26] A decision to accord great deference to *Avena* and *LaGrand* would have given substantive meaning to an International Court of Justice decision for the first time. Third, because a treaty has the force and effect of a federal statute,[27] the Supreme Court has an "independent responsibility—independent from its coequal branches in the Federal Government, and independent from the separate authority of the several States—to interpret [the treaty]."[28] If the Court were to find that *Avena* and *LaGrand* were binding, it would have ceded a significant portion of its authority to the International Court of Justice. Even a decision to follow *Avena* and *LaGrand*, while expressly disclaiming that the decisions were binding, would have been the first step down a slippery slope.

Apparently aware of the enormous stakes, the Court concluded that *Avena* and *LaGrand* do "not compel us to reconsider our understanding of the Convention in *Breard*."[29] Instead, the Court reemphasized its own role and the limited nature of the International Court of Justice:

> Under our Constitution, "[t]he judicial Power of the United States" is "vested in one supreme Court, and in such inferior

24. *Breard*, 523 U.S. at 375.

25. *See, e.g.*, United States v. Maine, 475 U.S. 89, 99–100 (1986) (comparing Massachusetts' occupation of Nantucket Harbor to similar situations where international courts have held a nation did have clear title to a body of water, the Supreme Court held that Massachusetts never effectively occupied Nantucket Harbor so as to obtain clear original title and fortify that title before the seas were recognized to be free); United States v. Louisiana, 470 U.S. 93, 107 (1985) (holding that the Mississippi Sound is a historic bay, and since the government recognized the Sound as an important internal waterway, the government properly exercised sovereignty over it on that basis).

26. Sosa v. Alvarez-Machain, 542 U.S. 692, 737 n.27 (2004) (stating that the International Court of Justice decision did not establish a rule of law prohibiting arbitrary detentions).

27. Whitney v. Robertson, 124 U.S. 190, 194 (1888).

28. Williams v. Taylor, 529 U.S. 329, 378–79 (2000); *see also* Cooper v. Aaron, 358 U.S. 1, 18 (1958) (stating that the Supreme Court's interpretation of the Fourteenth Amendment in Brown v. Board of Education, 347 U.S. 483 (1954) is the supreme law of the land); Marbury v. Madison, 5 U.S. (1 Cranch.) 137, 177 (1803) (holding that "[i]t is emphatically the province and duty of the judicial department to say what the law is").

29. Sanchez-Llamas v. Oregon, 126 S. Ct. 2669, 2683 (2006).

> Courts as the Congress may from time to time ordain and establish." That "judicial Power . . . extend[s] to . . . Treaties." And, as Chief Justice Marshall famously explained, that judicial power includes the duty "to say what the law is." If treaties are to be given effect as federal law under our legal system, determining their meaning as a matter of federal law "is emphatically the province and duty of the judicial department," headed by the "one supreme Court" established by the Constitution. It is against this background that the United States ratified, and the Senate gave its advice and consent to, the various agreements that govern referral of Vienna Convention disputes to the ICJ.
>
> Nothing in the structure or purpose of the ICJ suggests that its interpretations were intended to be conclusive on our courts. The ICJ's decisions have "*no binding force* except between the parties and in respect of that particular case." Any interpretation of law the ICJ renders in the course of resolving particular disputes is thus not binding precedent *even as to the ICJ itself*; there is accordingly little reason to think that such interpretations were intended to be controlling on our courts. The ICJ's principal purpose is to arbitrate particular disputes between national governments. While each member of the United Nations has agreed to comply with decisions of the ICJ "in any case to which it is a party," the Charter's procedure for noncompliance—referral to the Security Council by the aggrieved state—contemplates quintessentially *international* remedies. [30]

When the United States ratified the Vienna Convention, it was understood by everyone that the Supreme Court, not the International Court of Justice, would decide the meaning of the Treaty.[31] *Avena* and *LaGrand* are not binding authority. Nor are they entitled to any sort of special consideration or deference.

30. *Id.* at 2684–85 (citations and footnotes omitted).

31. "Respect is ordinarily due the reasonable views of the Executive Branch concerning the meaning of an international treaty." El Al Israel Airlines, Ltd. v. Tsui Yuan Tseng, 525 U.S. 155, 168 (1999); *see also* Sumitomo Shoji Am., Inc. v. Avagliano, 457 U.S. 176, 184–85 (1982) ("Although not conclusive, the meaning attributed to treaty provisions by the Government agencies charged with their negotiation and enforcement is entitled to great weight."); Kolovrat v. Oregon, 366 U.S. 187, 194 (1961) ("While courts interpret treaties for themselves, the meaning given them by the departments of government particularly charged with their negotiation and enforcement is given great weight."). The Executive Branch has *never* construed the Vienna Convention as creating a right vested in an individual. To the contrary, the State Department has consistently opined that the "right of an individual to communicate with his consular official is derivative of the sending state's right to extend consular protection to its nationals . . . ." United States v. Li, 206 F.3d 56, 63 (2000) (quoting Department of State Answers to the Questions Posed by the First Circuit in *United States v. Nai Fook Li* at A-2). Similarly, in

To be sure, the Court, relying on *Breard*, emphasized that the decisions of the International Court of Justice are entitled to "respectful consideration."[32] However, "respectful consideration" has no substantive significance beyond mere courtesy. For example, the Court gives "respectful consideration and great weight to the views" of a state's highest court, but is still "bound to decide for ourselves" the ultimate issue.[33] Similarly, although the views of a majority of the courts of appeal are entitled to the "most respectful consideration," the Court ultimately focuses "on the *reasons* given for that interpretation."[34] Many pronouncements, including those made in student-written law review pieces, receive "respectful consideration" from the Court.[35]

Having disclaimed any notion that the decisions of the International Court of Justice were binding or were entitled to some sort of special deference, the Court then proceeded to eviscerate the reasoning of *Avena* and *LaGrand*. As the Court explained:

> [T]he ICJ's interpretation cannot overcome the plain import of Article 36. As we explained in *Breard,* the procedural rules of domestic law generally govern the implementation of an international treaty. In addition, Article 36 makes clear that the rights it provides "shall be exercised in conformity with the laws and regulations of the receiving State" provided that "full effect . . . be given to the purposes for which the rights accorded under this Article are intended." In the United States, this means that the rule of procedural default—which applies even to claimed violations of our Constitution—applies also to Vienna Convention claims. Bustillo points to nothing in

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1970, the Executive Branch advised the States' Governors that it did "not believe that the Vienna Convention will require significant departures from the existing practice within the several states of the United States." *Id.* at 64. In addition, the prospect of judicial repudiation of the Executive Branch's interpretation of treaties would likely deter the United States from entering into other beneficial conventions. *See* Curtis A. Bradley, *Foreign Affairs and Domestic Reform*, 87 VA. L. REV. 1475, 1480–82 (2001) (reviewing MARY L. DUDZIAK, COLD WAR CIVIL RIGHTS: RACE AND THE IMAGE OF AMERICAN DEMOCRACY (2000)).

32. *Sanchez-Llamas*, 126 S. Ct. at 2683, 2685.

33. Ind. *ex rel.* Anderson v. Brand, 303 U.S. 95, 100 (1938).

34. Evans v. United States, 504 U.S. 255, 294 (1992) (Thomas, J., dissenting).

35. This is not meant to disparage student-written law review materials. Such materials can be helpful to both the judiciary and the bar. Indeed, my own law review note has been cited by the highest courts of New Jersey, New York, and North Carolina.

> the drafting history of Article 36 or in the contemporary practice of other signatories that undermines this conclusion.[36]

By the treaty's clear terms, the law of each signatory nation would control its implementation. The International Court of Justice ignored this consideration.[37]

In addition to rejecting deference to the International Court of Justice and exposing the flaws in the reasoning of *Avena* and *LaGrand,* the Court emphasized the unique nature of the American legal system. Unlike systems based on Civil Law, Roman Law, or Islamic Law, the American legal system "is designed around the premise that the parties know what is best for them, and are responsible for advancing the facts and arguments entitling them to relief."[38] This distinction between the American system and the rest of the world is critical. As the Court explained:

> [The International Court of Justice's] reasoning overlooks the importance of procedural default rules in an adversary system, which relies chiefly on the *parties* to raise significant issues and present them to the courts in the appropriate manner at the appropriate time for adjudication. Procedural default rules are designed to encourage parties to raise their claims promptly and to vindicate "the law's important interest in the finality of judgments." The consequence of failing to raise a claim for adjudication at the proper time is generally forfeiture of that claim. As a result, rules such as procedural default routinely

36. *Sanchez-Llamas,* 126 S. Ct. at 2685 (citations omitted).

37. In its decisions, the International Court of Justice has consistently relied on the language of the preambles in interpreting treaties. *See, e.g.*, Sovereignty Over Pulau Ligitan and Pulau Sipadan (Indon. v. Malay.), 2002 I.C.J. 625, 652–53 (Dec. 17) (excluding, in a boundary dispute, an interpretation of one of the provisions in a controlling Convention given the object and purpose stated by the preamble to the Convention); Sovereignty Over Certain Frontier Land (Belg. v. Neth.), 1959 I.C.J. 209, 221–22 (June 20) (relying on preamble of a Boundary Convention as embodying "the common intention of the two states"); Rights of Nationals of the United States of America in Morocco (Fr. v. U.S.), 1952 I.C.J. 176, 196 (Aug. 27) (after examining preamble, Court states it "can not adopt a construction by implication of the provisions of the Madrid Convention which would go beyond the scope of its declared purposes and objects."); Asylum Case (Colom./.Peru), 1950 I.C.J. 266, 282 (Nov. 20) (relying on the preamble to interpret Article 2 of the Havana Convention). However, the clear preamble of the Vienna Convention inexplicably escaped the notice of the International Court of Justice when it examined a case involving inmates sentenced to death in the United States. *See* Case Concerning Avena and Other Mexican Nationals (Mex. v. U.S.), 2004 I.C.J. 12, 39–40 (Mar. 31); LaGrand Case (F.R.G. v. U.S.), 2001 I.C.J. 466, 520 (June 27) (appended separate opinion of Vice President Shi).

38. Castro v. United States, 540 U.S. 375, 386 (2003) (Scalia, J., concurring).

> deny "legal significance"—in the *Avena* and *LaGrand* sense—to otherwise viable legal claims.
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> Procedural default rules generally take on greater importance in an adversary system such as ours than in the sort of magistrate-directed, inquisitorial legal system characteristic of many of the other countries that are signatories to the Vienna Convention. "What makes a system adversarial rather than inquisitorial is . . . the presence of a judge who does not (as an inquisitor does) conduct the factual and legal investigation himself, but instead decides on the basis of facts and arguments pro and con adduced by the parties." In an inquisitorial system, the failure to raise a legal error can in part be attributed to the magistrate, and thus to the state itself. In our system, however, the responsibility for failing to raise an issue generally rests with the parties themselves.
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> The ICJ's interpretation of Article 36 is inconsistent with the basic framework of an adversary system. Under the ICJ's reading of "full effect," Article 36 claims could trump not only procedural default rules, but any number of other rules requiring parties to present their legal claims at the appropriate time for adjudication. If the State's failure to inform the defendant of his Article 36 rights generally excuses the defendant's failure to comply with relevant procedural rules, then presumably rules such as statutes of limitations and prohibitions against filing successive habeas petitions must also yield in the face of Article 36 claims. This sweeps too broadly, for it reads the "full effect" proviso in a way that leaves little room for Article 36's clear instruction that Article 36 rights "shall be exercised in conformity with the laws and regulations of the receiving State."[39]

Because the law of a particular nation governs the implementation of the Vienna Convention, the unique characteristics of the American legal system must be considered when determining how the Treaty is implemented in the United States. More significantly, the American legal system, with its emphasis on the adversary process, is largely incompatible with the legal norms of other countries. America is simply different.

III. NO SPECIAL RIGHTS FOR FOREIGN NATIONALS

Underlying the claims of both the Oregon and Virginia petitioners was the assertion that the Vienna Convention

39. *Sanchez-Llamas,* 126 S. Ct. at 2685–86 (citations omitted).

conferred special rights for foreign nationals.[40] An American citizen in the exact same situation as the Oregon petitioner would have no legal or constitutional basis to suppress evidence.[41] Yet, the Oregon petitioner, a Mexican citizen, contended the violation of the Vienna Convention mandated suppression.[42] Similarly, an American citizen who was imprisoned in Virginia and who failed to raise a claim at trial that could have been raised at trial would be procedurally barred from raising that claim in a state habeas corpus proceeding.[43] Nevertheless, the Virginia petitioner, relying on *Avena* and *LaGrand*, insisted the procedural bar was inapplicable to his claims.[44]

Apparently recognizing the implications of giving rights to foreign nationals that are not available to ordinary American citizens, the Court emphatically rejected both claims. In doing so, it emphasized that both citizens and foreign nationals receive broad constitutional protections:

> Leaving aside the suggestion that it is the role of police generally to advise defendants of their legal options, we think other constitutional and statutory requirements effectively protect the interests served, in Sanchez-Llamas' view, by Article 36. A foreign national detained on suspicion of crime, like anyone else in our country, enjoys under our system the protections of the Due Process Clause. Among other things, he is entitled to an attorney, and is protected against compelled self-incrimination. Article 36 adds little to these "legal options," and we think it unnecessary to apply the exclusionary rule where other constitutional and statutory protections—many of them already enforced by the exclusionary rule—safeguard the same interests Sanchez-Llamas claims are advanced by Article 36.[45]

While it may be necessary for foreign nationals to receive special

40. Under the U.S. Constitution, both citizens and foreign nationals receive the protections of the Fifth and Sixth Amendments. Wong Wing v. United States, 163 U.S. 228, 238 (1896).

41. *Sanchez-Llamas*, 126 S. Ct. at 2675–76 (noting that the Oregon petitioner received *Miranda* warnings in both English and Spanish).

42. *Id.* at 2678.

43. *See* Slayton v. Parrigan, 205 S.E.2d 680, 682 (Va. 1974).

44. *Sanchez-Llamas*, 126 S. Ct. at 2682.

45. *Id.* at 2681–82 (citations omitted).

rights in other nations, it is not necessary in the United States.[46] The general panoply of rights available to all, which is far greater than most other nations provide, will suffice to protect foreign nationals.

Moreover, it is not necessary to apply uniquely American remedies to vindicate rights created by the Vienna Convention.[47] In rejecting the application of the exclusionary rule for treaty violations, the Court observed:

> It would be startling if the Convention were read to require suppression. The exclusionary rule as we know it is an entirely American legal creation. More than 40 years after the drafting of the Convention, the automatic exclusionary rule applied in our courts is still "universally rejected" by other countries. It is implausible that other signatories to the Convention thought it to require a remedy that nearly all refuse to recognize as a matter of domestic law. There is no reason to suppose that Sanchez-Llamas would be afforded the relief he seeks here in any of the other 169 countries party to the Vienna Convention.[48]

Moreover, by requiring suppression for violations of the treaty "without some authority in the Convention, we would in effect be supplementing those terms by enlarging the obligations of the United States under the Convention. This is entirely inconsistent with the judicial function."[49]

IV. AFFIRMATION OF DUAL SOVEREIGNTY

By contending that the Vienna Convention mandated suppression of evidence and precluded the application of state laws of procedural default, the Oregon and Virginia petitioners were making an implicit attack on the constitutional value of dual sovereignty. In order to understand the nature of that implicit attack and its rejection by the Court, it is first necessary to understand the constitutional value of dual sovereignty and its application in the treaty context.

46. Because I travel outside the United States once or twice per year, I am acutely aware of the need for foreign nationals to have greater rights in some countries. However, the fact that such special treatment is necessary in some countries does not mean that it is necessary in all.

47. The exclusionary rule "is unique to American jurisprudence." Bivens v. Six Unknown Fed. Narcotics Agents, 403 U.S. 388, 415 (1971) (Burger, C.J., dissenting).

48. *Sanchez-Llamas,* 126 S. Ct. at 2678 (citations omitted).

49. *Id.* at 2679 (citations omitted).

The Constitution "split the atom of sovereignty" by "establishing two orders of government, each with its own direct relationship, its own privity, its own set of mutual rights and obligations to the people who sustain it and are governed by it."[50] By dividing sovereignty between the national government and the states, the Constitution ensured that "a double security arises to the rights of the people. The different governments will control each other, at the same time that each will be controlled by itself."[51] Thus,

> the preservation of the States, and the maintenance of their governments, are as much within the design and care of the Constitution as the preservation of the Union and the maintenance of the National government. The Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States.[52]

This division of sovereignty, "a defining feature of our Nation's constitutional blueprint,"[53] "protects us from our own best intentions" by preventing the concentration of "power in one location as an expedient solution to the crisis of the day."[54] "Just

50. U.S. Term Limits v. Thornton, 514 U.S. 779, 838 (1995) (Kennedy, J., concurring). As early as 1768, John Dickinson suggested that sovereignty should be divided between the British Parliament and the Colonial Legislatures. *See* 1 ALFRED H. KELLY, WINFRED A. HARBISON, & HERMAN BELZ, THE AMERICAN CONSTITUTION: ITS ORIGINS AND DEVELOPMENT 46–49 (7th ed. 1991).

51. THE FEDERALIST NO. 51, at 321 (James Madison) (Isaac Kramnick ed., 1987); *see also* THE FEDERALIST NO. 28 (Alexander Hamilton), *id.* at 206 ("Power being almost always the rival of power, the general government will at all times stand ready to check the usurpations of the state governments, and these will have the same disposition towards the general government.").

Prior to the adoption of the Constitution, the thirteen States effectively were thirteen sovereign nations. *See* THE DECLARATION OF INDEPENDENCE para. 32 (U.S. 1776) ("[T]hese United Colonies are, and of Right ought to be Free and Independent States."). Each individual State retained the "full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do." *Id.* Indeed, the Articles of Confederation explicitly recognized that each State "retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this Confederation expressly delegated to the United States, in Congress assembled." ARTICLES OF CONFEDERATION, art. II. In sum, before the ratification of the United States Constitution, the States were sovereign entities. *See* Blatchford v. Native Vill. of Noatak, 501 U.S. 775, 779 (1991).

52. Texas v. White, 74 U.S. (7 Wall.) 700, 725 (1868).

53. Fed. Mar. Comm'n v. S.C. State Ports Auth., 535 U.S. 743, 751 (2002). The division of power between *dual sovereigns*, the states and the national government, is reflected throughout the Constitution's text, *see* Printz v. United States, 521 U.S. 898, 919 (1997), as well as its structure, *see* Alden v. Maine, 527 U.S. 706, 714–15 (1999); *see also* U.S. CONST. amend. X (stating that if a sovereign power is not explicitly given to the national government, it is reserved to the states or to the people).

54. New York v. United States, 505 U.S. 144, 187 (1992).

as the separation and independence of the coordinate branches of the Federal Government serve to prevent the accumulation of excessive power in any one branch, a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front."[55] Because "the federal balance is too essential a part of our constitutional structure and plays too vital a role in securing freedom,"[56] the Court has intervened to maintain the sovereign prerogatives of both the national government[57] and the states.[58]

These constitutional principles of dual sovereignty are equally applicable when the President negotiates and the Senate ratifies a treaty.[59] Because the National Government "is one of limited

55. Gregory v. Ashcroft, 501 U.S. 452, 458 (1991). Moreover, the Court has reinforced the division of power among the sovereigns by insisting that "if Congress intends to alter the usual constitutional balance between the States and the Federal Government, it must make its intention to do so unmistakably clear in the language of the statute." Will v. Mich. Dep't of State Police, 491 U.S. 58, 65 (1989) (internal quotation marks omitted); *see also Gregory*, 501 U.S. at 460–61 (clear statement required to dictate qualifications for state officials); Atascadero State Hosp. v. Scanlon, 473 U.S. 234, 242 (1985) (no abrogation of sovereign immunity without clear statement); Pennhurst State Sch. & Hosp. v. Halderman, 451 U.S. 1, 17–18 (1981) (clear statement required to impose conditions on the receipt of federal funds). In other words, the sovereignty of the states is far too important to be undermined by inference or implication. Rather, the sovereignty of the states can only be diminished by a clear expression of congressional intent within the statutory text.

56. United States v. Lopez, 514 U.S. 549, 578 (1995) (Kennedy, J. concurring).

57. In order to preserve the sovereignty of the national government, the Court has prevented the states from imposing term limits on members of Congress, U.S. Term Limits v. Thornton, 514 U.S. 779, 800–01 (1995), and from instructing members of Congress as to how to vote on certain issues, Cook v. Gralike, 531 U.S. 510, 519–22 (2001). Similarly, it has invalidated state laws that infringe on the right to travel, Saenz v. Roe, 526 U.S. 489, 500–05 (1999), that undermine the Nation's foreign policy, Crosby v. Nat'l Foreign Trade Council, 530 U.S. 363, 372–74 (2000), and that exempt a state from generally applicable regulations of interstate commerce, *see* Reno v. Condon, 528 U.S. 141, 150 (2000).

58. Recognizing that "the erosion of state sovereignty is likely to occur a step at a time," South Carolina v. Baker, 485 U.S. 505, 533, (1988) (O'Connor, J., dissenting), the Court has declared that the national government may not compel the states to pass particular legislation, *New York,* 505 U.S. at 161–62, require state officials to enforce federal law, *Printz*, 521 U.S. at 935, dictate the location of the state capitol, Coyle v. Smith, 221 U.S. 559, 579 (1911), or regulate purely local matters, United States v. Morrison, 529 U.S. 598, 617–19 (2000); *see generally Lopez*, 514 U.S. at 561 n.3. *Cf.* Gonzales v. Oregon, 126 S. Ct. 904, 925 (2006) (National Attorney General may not shift "authority from the States to the Federal Government to define general standards of medical practice in every locality."). Similarly, the Court has restricted Congress' power to enforce the Fourteenth Amendment, City of Boerne v. Flores, 521 U.S. 507, 536 (1997), and its ability to abrogate the States' sovereign immunity, Seminole Tribe v. Florida, 517 U.S. 44, 72 (1996). Indeed, in some circumstances the States' sovereignty interest will preclude federal courts from enjoining ongoing violations of federal law. *See* Idaho v. Coeur d'Alene Tribe, 521 U.S. 261, 286–87 (1997).

59. *See* Reid v. Covert, 354 U.S. 1, 17 (1957) ("It would be manifestly contrary to the objectives of those who created the Constitution, as well as those who were responsible

powers" and its authority cannot be "enlarged under the treaty-making power,"[60] "[the National Government] should not be able to use the treaty power (or executive agreement power) to create domestic law that could not be created by Congress."[61] Put another way, the President and the Senate cannot circumvent the limitations on the powers of the national government simply by negotiating and ratifying a treaty.[62] To be sure, *Missouri v. Holland*[63] recognized that the treaty power was quite broad. Yet, *Holland* did not hold that the national government could expand its powers vis-à-vis the states by entering into treaties with foreign nations.[64] Indeed, *Holland* specifically stated, "[w]e do

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for the Bill of Rights—let alone alien to our entire constitutional history and tradition—to construe Article VI as permitting the United States to exercise power under an international agreement without observing constitutional prohibitions."); *see also* Michael D. Ramsey, *Treaty Clause*, *in* THE HERITAGE GUIDE TO THE CONSTITUTION 205, 207 (Edwin Meese III, Matthew Spalding, & David F. Forte, eds., 2005) ("A treaty presumably cannot alter the constitutional structure of government . . . .").

60. City of New Orleans v. United States, 35 U.S. (10 Pet.) 662, 736 (1836).

61. Curtis A. Bradley, *The Treaty Power & American Federalism*, 97 MICH. L. REV. 390, 450 (1997); *see also id.* at 456 ("Under this approach, the treaty power would not confer any additional regulatory powers on the federal government, just the power to bind the United States on the international plane. Thus, for example, it could not be used to resurrect legislation determined by the Supreme Court to be beyond Congress's legislative powers, such as the legislation at issue in the recent *New York*, *Lopez*, *Boerne*, and *Printz* decisions."). *Cf.* Ramsey, *supra* note 59, at 207 ("The revival of interest in federalism limits on Congress in such areas as State sovereign immunity and the Tenth Amendment raises the question whether these limits also apply to the treaty power . . . ." (citation omitted)).

62. *See* Geofroy v. Riggs, 133 U.S. 258, 267 (1890) ("The treaty power, as expressed in the Constitution, is in terms unlimited except by those restraints which are found in that instrument against the action of the government or of its departments, and those arising from the nature of the government itself and of that of the States. It would not be contended that it extends so far as to authorize what the Constitution forbids, or a change in the character of the government or in that of one of the States, or a cession of any portion of the territory of the latter, without its consent."); *see also* Federal Republic of Germany v. United States, 526 U.S. 111, 112 (1999) (per curiam) (expressing doubt that the President can prevent a state from executing a foreign national unless that foreign national is a diplomat). Because the states are immune from intellectual property claims, *see* Fla. Prepaid Postsecondary Educ. Expense Bd. v. Coll. Sav. Bank, 527 U.S. 627, 636 (1999), no treaty could require the states to waive their sovereign immunity for such claims. *See also* Coll. Sav. Bank v. Fla. Prepaid Postsecondary Educ. Expense Bd., 527 U.S. 666, 683 (1999) ("Recognizing a congressional power to exact constructive waivers of sovereign immunity through the exercise of Article I powers would also, as a practical matter, permit Congress to circumvent the antiabrogation holding of *Seminole Tribe*. Forced waiver and abrogation are not even different sides of the same coin—they are the same side of the same coin."). As noted above, no treaty could require the states to move their state capitol, *Coyle*, 221 U.S. at 579, to allow international entities to regulate purely local matters, *Morrison*, 529 U.S. at 617–19; *Lopez*, 514 U.S. at 561 n.3, to use state officials to enforce international law, *Printz*, 521 U.S. at 935, or to force the states to pass specific legislation, *New York,* 505 U.S. at 162.

63. 252 U.S. 416 (1920).

64. *Compare* Commonwealth v. Tasmania, (1983) 158 C.L.R. 1 (Austl.) (national government of Australia can expand its powers vis-à-vis the Australian States by entering

not mean to imply that there are no qualifications to the treaty-making power."[65] Rather, *Holland* simply held that there are some actions that the national government can take pursuant to the Treaty Clause,[66] but under the Commerce Clause,[67] it cannot.[68] In other words, the Treaty Clause "confers a different (and in some cases broader) power than that conferred pursuant to the Commerce Clause."[69] While this interpretation of *Holland* still results in a broad Treaty Clause power for the national government, it also preserves the constitutional principles of dual sovereignty as a substantive limitation on the Treaty Clause.[70]

In our constitutional system of dual sovereignty, the "States possess primary authority for defining and enforcing the criminal law."[71] Respecting "both the States' sovereign power to punish offenders and their good-faith attempts to honor constitutional rights,"[72] the Court has "been careful to limit the scope of federal intrusion into state criminal adjudications and to safeguard the States' interest in the integrity of their criminal and collateral proceedings."[73] "Federal courts hold no supervisory authority over state judicial proceedings and may intervene only to correct wrongs of constitutional dimension."[74]

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into treaties), *with* Canada v. Ontario, [1937] A.C. 326, 354 (P.C.) (appeal taken from Can.) (national government of Canada cannot expand its powers vis-à-vis the Provinces by entering into treaties).

65. *Holland*, 252 U.S. at 433.

66. U.S. CONST. art. II, § 2, cl. 2.

67. *Id.* art. I, § 8, cl. 3.

68. *Holland*, 252 U.S. at 433.

69. Bradley, *supra* note 61, at 426; *see also* C.M. Micou, Comment, *The Treaty Making Power and the Constitution*, 6 CORNELL L.Q. 91, 95 (1921) (offering a similar interpretation of *Holland*).

70. *See* Charles Cooper, *Reserved Powers of the States*, *in* THE HERITAGE GUIDE TO THE CONSTITUTION, *supra* note 59, at 374 ("Even if modern developments permit (or require) expansion of congressional authority well beyond its eighteenth-century limits, such expansion cannot extinguish the 'retained' role of the states as limited but independent sovereigns.").

71. Engle v. Isaac, 456 U.S. 107, 128 (1982).

72. Coleman v. Thompson, 501 U.S. 722, 748 (1991).

73. Williams v. Taylor, 529 U.S. 420, 436 (2000); *see also* McCleskey v. Zant, 499 U.S. 467, 493 (1991) ("[T]he doctrines of procedural default and abuse of the writ are both designed to lessen the injury to a State that results through reexamination of a state conviction on a ground that the State did not have the opportunity to address at a prior, appropriate time; and both doctrines seek to vindicate the State's interest in the finality of its criminal judgments.").

74. Smith v. Phillips, 455 U.S. 209, 221 (1982); *see also* Dickerson v. United States, 530 U.S. 428, 438 (2000) ("It is beyond dispute that we do not hold a supervisory power over the courts of the several States.").

Moreover, the Supreme Court "will not review a question of federal law decided by a state court if the decision of that court rests on a state law ground that is independent of the federal question and adequate to support the judgment."[75] Thus, if a state court concludes that habeas relief is barred by *state* law, then federal courts will not review that judgment.[76] "The rule applies with equal force whether the state-law ground is substantive or procedural,"[77] and applies even where a *constitutional* claim is involved.[78] Indeed, when a state court denies habeas relief based on state law, this Court lacks "jurisdiction to review such independently supported judgments on direct appeal: since the state-law determination is sufficient to sustain the decree, any opinion of this Court on the federal question would be purely advisory."[79]

Sanchez-Llamas involved two distinct efforts to undermine dual sovereignty in two distinct ways. First, in justifying his request to suppress evidence, the Oregon petitioner asked the Court to exercise its "'authority to develop remedies for the enforcement of federal law in state-court criminal proceedings.'"[80] Second, the Virginia petitioner asked the Court to instruct the Virginia courts to ignore Virginia law. That is, the Virginia petitioner wished to have Virginia's rules of procedural default set aside.[81]

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75. *Coleman,* 501 U.S. at 729; *see also* Fox Film Corp. v. Muller*,* 296 U.S. 207, 210 (1935); Klinger v. Missouri*,* 80 U.S. (13 Wall.) 257, 263 (1872).

76. *See* Wainwright v. Sykes*,* 433 U.S. 72, 81, 87 (1977); *see also* Ulster County Court v. Allen*,* 442 U.S. 140, 148 (1979).

77. Lee v. Kemna*,* 534 U.S. 362, 375 (2002).

78. *See* Ylst v. Nunnemaker, 501 U.S. 797, 801 (1991) (claims based on Miranda v. Arizona*,* 384 U.S. 436 (1966)); *Wainwright*, 433 U.S. at 87–88 (voluntariness claims).

79. Lambrix v. Singletary, 520 U.S. 518, 522 (1997); *see also* Sochor v. Florida*,* 504 U.S. 527, 533–34 (1992); Herb v. Pitcairn*,* 324 U.S. 117, 125–26 (1945).

To be sure, when a state prisoner files a habeas petition in a federal district court, there is a different rationale for deferring to state court's interpretation of state law.

> The "independent and adequate state ground" doctrine is not technically jurisdictional when a federal court considers a state prisoner's petition for habeas corpus pursuant to [the federal habeas corpus statute] since the federal court is not formally reviewing a judgment, but is determining whether the prisoner is "in custody in violation of the Constitution or laws or treaties of the United States."

Lambrix, 520 U.S. at 523. In that situation, "[a]pplication of the 'independent and adequate state ground' doctrine to federal habeas review is based upon equitable considerations of federalism and comity. It 'ensures that the States' interest in correcting their own mistakes is respected in all federal habeas cases.'" *Id.* (quoting Coleman v. Thompson, 501 U.S. 722, 732 (1991)).

80. Sanchez-Llamas v. Oregon, 126 S. Ct. 2669, 2679 (2006) (quoting Reply Brief for Petitioner Moises Sanchez-Llamas at 11, *id.* (Nos. 04-10566, 05-51)).

81. *Id.* at 2687.

The Supreme Court rejected both contentions. Recognizing that the principles of dual sovereignty limit its supervisory authority, the Court observed, "our cases suppressing evidence obtained in violation of federal statutes are grounded in our supervisory authority over the federal courts—an authority that does not extend to state-court proceedings."[82] Any "authority to create a judicial remedy applicable in state court must lie, if anywhere, in the treaty itself."[83] To be sure, "the States therefore must recognize the force of [a self-executing] treaty in the course of adjudicating the rights of litigants," and "there is no issue of intruding on the constitutional prerogatives of the States or the other federal branches" where the treaty provides a specific remedy.[84] Nevertheless, "where a treaty does not provide a particular remedy, either expressly or implicitly, it is not for the federal courts to impose one on the States through lawmaking of their own."[85] Similarly, relying primarily on *Breard* and its analysis, detailed above, as to why *Avena* and *LaGrand* were not binding or entitled to special deference,[86] the Court held that the rules of procedural default were applicable to Vienna Convention claims.[87]

By rejecting a supervisory power over state courts and refusing to set aside state-law rules of procedural default, the Court reaffirmed the constitutional value of dual sovereignty.[88] While Congress may require state courts of "adequate and appropriate" jurisdiction,[89] "to enforce federal prescriptions, insofar as those prescriptions relate[] to matters appropriate for

82. *Id.* at 2679.

83. *Id.*

84. *Id.* at 2680.

85. *Id.*

86. *See supra* notes 20–37 and accompanying text.

87. *Sanchez-Llamas*, 126 S. Ct. at 2682–87.

88. Moreover, any interpretation of the Vienna Convention that would require state *officials* to take affirmative steps to implement the Vienna Convention raises grave constitutional questions. In our constitutional system, the national government may not force state officials to enforce federal law. Printz v. United States, 521 U.S. 898, 925–33 (1997). First, requiring state officials to enforce federal law offends the principles of dual sovereignty. *Id.* at 919–22. Second, requiring state officials to enforce federal law violates the principles of separation of powers because it intrudes on the President's prerogatives. *Id.* at 922–25. If state law-enforcement officials cannot be forced to enforce federal statutes, then surely they cannot be forced to enforce federal treaties.

Interestingly, during oral argument, the Chief Justice expressed concern about state judges being forced to advise criminal defendants of the Vienna Convention. *See* Transcript of Oral Argument at 49, *Sanchez-Llamas*, 126 S. Ct. 2669 (2006) (Nos. 04-10566, 05-51).

89. Testa v. Katt, 330 U.S. 386, 394 (1947).

the judicial power,"[90] Congress may not "pursue federal objectives through the state judiciaries."[91] As Justice Kennedy succinctly put it:

> A power to press a State's own courts into federal service to coerce the other branches of the State, furthermore, is the power first to turn the State against itself and ultimately to commandeer the entire political machinery of the State against its will and at the behest of individuals.[92]

V. CONCLUSION

Because the Supreme Court of the United States only decides about seventy-five cases per year, any decision has a place in history. *Sanchez-Llamas* took on increased significance, though, by definitively holding that violations of the Vienna Convention never result in the suppression of evidence and never justify an exemption from state rules of procedural default. Law enforcement and state judges now have clear, bright line rules. Yet the greater significance of the decision is what it said about the International Court of Justice, about special rights for foreign nationals, and about the constitutional value of dual sovereignty.

90. *Printz,* 521 U.S. at 907.

91. Alden v. Maine*,* 527 U.S. 706, 753 (1999).

92. *Id.* at 749. Thus, the Constitution

> recognizes and preserves the autonomy and independence of the States—independence in their legislative and independence in their judicial departments. Supervision over either the legislative or the judicial action of the states is in no case permissible except as to matters by the Constitution specifically authorized or delegated to the United States. Any interference with either, except as thus permitted, is an invasion of the authority of the State and, to that extent, a denial of its independence.

Erie R.R. Co. v. Tompkins*,* 304 U.S. 64, 78–79 (1938) (quoting Baltimore and Ohio R.R. v. Baugh, 149 U.S. 368, 401 (1893) (Field, J. dissenting)).