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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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SANCHEZ-LLAMAS *v.* OREGON

CERTIORARI TO THE SUPREME COURT OF OREGON

No. 04–10566. Argued March 29, 2006—Decided June 28, 2006*

Article 36(1)(b) of the Vienna Convention on Consular Relations provides that if a person detained by a foreign country "so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State" of such detention, and "inform the [detainee] of his rights under this sub-paragraph." Article 36(2) specifies: "The rights referred to in paragraph 1 . . . shall be exercised in conformity with the laws and regulations of the receiving State, subject to the proviso . . . that the said laws . . . must enable full effect to be given to the purposes for which the rights accorded under this Article are intended." Along with the Convention, the United States ratified the Optional Protocol Concerning the Compulsory Settlement of Disputes, which provides: "Disputes arising out of the . . . Convention shall lie within the compulsory jurisdiction of the International Court of Justice [(ICJ)]." The United States withdrew from the Protocol on March 7, 2005.

Petitioner in No. 04–10566, Moises Sanchez-Llamas, is a Mexican national. When he was arrested after an exchange of gunfire with police, officers did not inform him that he could ask to have the Mexican Consulate notified of his detention. During interrogation, he made incriminating statements regarding the shootout. Before his trial for attempted murder and other offenses, Sanchez-Llamas moved to suppress those statements on the ground, *inter alia,* that the authorities had failed to comply with Article 36. The state court denied that motion and Sanchez-Llamas was convicted and sentenced to prison, and the Oregon Court of Appeals affirmed. The State Su-

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*Together with No. 05–51, *Bustillo* v. *Johnson, Director, Virginia Department of Corrections,* on certiorari to the Supreme Court of Virginia.

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preme Court also affirmed, concluding that Article 36 does not create rights to consular access or notification that a detained individual can enforce in a judicial proceeding.

Petitioner in No. 05–51, Mario Bustillo, a Honduran national, was arrested and charged with murder, but police never informed him that he could request that the Honduran Consulate be notified of his detention. He was convicted and sentenced to prison, and his conviction and sentence were affirmed on appeal. He then filed a habeas petition in state court arguing, for the first time, that authorities had violated his right to consular notification under Article 36. The court dismissed that claim as procedurally barred because he had failed to raise it at trial or on appeal. The Virginia Supreme Court found no reversible error.

Held: Even assuming without deciding that the Convention creates judicially enforceable rights, suppression is not an appropriate remedy for a violation, and a State may apply its regular procedural default rules to Convention claims. Pp. 7–25.

(a) Because petitioners are not in any event entitled to relief, the Court need not resolve whether the Convention grants individuals enforceable rights, but assumes, without deciding, that Article 36 does so. Pp. 7–8.

(b) Neither the Convention itself nor this Court's precedents applying the exclusionary rule support suppression of a defendant's statements to police as a remedy for an Article 36 violation.

The Convention does not mandate suppression or any other specific remedy, but expressly leaves Article 36's implementation to domestic law: Article 36 rights must "be exercised in conformity with the laws . . . of the receiving State." Art. 36(2). Sanchez-Llamas' argument that suppression is appropriate under United States law and should be required under the Court's authority to develop remedies for the enforcement of federal law in state-court criminal proceedings is rejected. "It is beyond dispute that [this Court does] not hold a supervisory power over the [state] courts." *Dickerson* v. *United States,* 530 U. S. 428, 438. The exclusionary rule cases on which Sanchez-Llamas principally relies are inapplicable because they rest on the Court's supervisory authority over federal courts.

The Court's authority to create a judicial remedy applicable in state court must therefore lie, if anywhere, in the treaty itself. Where a treaty provides for a particular judicial remedy, courts must apply it as a requirement of federal law. Cf., *e.g., United States* v. *Giordano,* 416 U. S. 505, 524–525. But 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. Even if the "full effect" language of Article 36(2) implicitly

requires a judicial remedy, as Sanchez-Llamas claims, that Article equally requires that Article 36(1) rights be exercised in conformity with domestic law. Under domestic law, the exclusionary rule is not a remedy this Court applies lightly. It has been used primarily to deter certain Fourth and Fifth Amendment violations, including, *e.g.,* unconstitutional searches and seizures, *Mapp* v. *Ohio,* 367 U. S. 643, 655–657, and confessions exacted in violation of the right against compelled self-incrimination or due process, *Dickerson, supra,* at 435. In contrast, Article 36 has nothing to do with searches or interrogations and, indeed, does not guarantee defendants *any* assistance at all. It secures for foreign nationals only the right to have their consulate *informed* of their arrest or detention—not to have their consulate intervene, or to have police cease their investigation pending any such notice or intervention. Moreover, the failure to inform a defendant of his Article 36 rights is unlikely, with any frequency, to produce unreliable confessions, see *Watkins* v. *Sowders,* 449 U. S. 341, 347, or to give the police any practical advantage in obtaining incriminating evidence, see *Elkins* v. *United States,* 364 U. S. 206, 217. Suppression would also be a vastly disproportionate remedy for an Article 36 violation. The interests Sanchez-Llamas claims Article 36 advances are effectively protected by other constitutional and statutory requirements, including the right to an attorney and to protection against compelled self-incrimination. Finally, suppression is not the only means of vindicating Article 36 rights. For example, diplomatic avenues—the primary means of enforcing the Vienna Convention—remain open. Pp. 8–15.

(c) States may subject Article 36 claims to the same procedural default rules that apply generally to other federal-law claims.

This question is controlled by the Court's holding in *Breard* v. *Greene,* 523 U. S. 371, 375, that the petitioner's failure to raise an Article 36 claim in state court prevented him from having the claim heard in a subsequent federal habeas proceeding. Bustillo's two reasons why *Breard* does not control are rejected.

First, he argues that *Breard*'s procedural default holding was unnecessary to the result because the petitioner there could not demonstrate prejudice from the default and because, in any event, the later enacted Antiterrorism and Effective Death Penalty Act of 1996 superseded any right the petitioner had under the Vienna Convention to have his claim heard on collateral review. Resolution of the procedural default question, however, was the principal reason for denying the *Breard* petitioner's claim, and the discussion of the issue occupied the bulk of the Court's reasoning. See 523 U. S., at 375–377. It is no answer to argue that the procedural default holding was unnecessary simply because the petitioner had several other ways to lose.

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Second, Bustillo asserts that since *Breard*, the ICJ's *LaGrand* and *Avena* decisions have interpreted the Convention to preclude the application of procedural default rules to Article 36 claims. Although the ICJ's interpretation deserves "respectful consideration," *Breard, supra,* at 375, it does not compel the Court to reconsider *Breard*'s understanding of the Convention. "The judicial Power of the United States" is "vested in one supreme Court . . . and . . . inferior courts." U. S. Const., Art. III, §1. That "power . . . extend[s] to . . . treaties," Art. III, §2, and includes the duty "to say what the law is," *Marbury* v. *Madison,* 1 Cranch 137, 177. If treaties are to be given effect as federal law, 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." *Ibid.* Nothing in the ICJ's structure or purpose suggests that its interpretations were intended to be binding on U. S. courts. Even according "respectful consideration," the ICJ's interpretation cannot overcome the plain import of Article 36(2), which states that the rights it implements "shall be exercised in conformity with the laws . . . of the receiving State." In the United States, this means that the rule of procedural default—which applies even to claimed violations of our own Constitution, see *Engle* v. *Isaac,* 456 U. S. 107, 129—applies also to Vienna Convention claims. Bustillo points to nothing in the drafting history of Article 36 or in the contemporary practice of other Convention signatories that undermines this conclusion. *LaGrand*'s conclusion that applying the procedural default rule denies "full effect" to the purposes of Article 36, by preventing courts from attaching legal significance to an Article 36 violation, is inconsistent with the basic framework of an adversary system. Such a system 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. See *Castro* v. *United States,* 540 U. S. 375, 386. Procedural default rules generally take on greater importance in an adversary system than in the sort of magistrate-directed, inquisitorial legal system characteristic of many of the other Convention signatories. 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, such as statutes of limitations and prohibitions against filing successive habeas petitions. This sweeps too broadly, for it reads the "full effect" proviso in a way that leaves little room for the clear instruction in Article 36(2) that Article 36 rights "be exercised in conformity with the laws . . . of the receiving State." A comparison with a suspect's rights under *Miranda* v. *Arizona,* 384 U. S. 436, disposes of Bustillo's "full effect" claim. Although the failure to inform defendants of their

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right to consular notification may prevent them from becoming aware of their Article 36 rights and asserting them at trial, precisely the same thing is true of *Miranda* rights. Nevertheless, if a defendant fails to raise his *Miranda* claim at trial, procedural default rules may bar him from raising the claim in a subsequent postconviction proceeding. *Wainwright* v. *Sykes,* 433 U. S. 72, 87. Bustillo's attempt to analogize an Article 36 claim to a claim under *Brady* v. *Maryland,* 373 U. S. 83, that the prosecution failed to disclose exculpatory evidence is inapt. Finally, his argument that Article 36 claims are most appropriately raised post-trial or on collateral review under *Massaro* v. *United States*, 538 U. S. 500, is rejected. See *Dickerson*, *supra*, at 438. Pp. 15–25.

(d) The Court's holding in no way disparages the Convention's importance. It is no slight to the Convention to deny petitioners' claims under the same principles this Court would apply to claims under an Act of Congress or the Constitution itself. P. 25.

No. 04–10566, 338 Ore. 267, 108 P. 3d 573, and No. 05–51, affirmed.

ROBERTS, C. J., delivered the opinion of the Court, in which SCALIA, KENNEDY, THOMAS, and ALITO, JJ., joined. GINSBURG, J., filed an opinion concurring in the judgment. BREYER, J., filed a dissenting opinion, in which STEVENS and SOUTER, JJ., joined, and in which GINSBURG, J., joined as to Part II.