

**Rule 5****RULES OF CRIMINAL PROCEDURE**

(ii) an attorney for the government moves promptly, in the district where the warrant was issued, to dismiss the complaint.

(B) If a defendant is arrested for violating probation or supervised release, Rule 32.1 applies.

(C) If a defendant is arrested for failing to appear in another district, Rule 10 applies.

(3) **Appearance Upon a Summons.** When a defendant appears in response to a summons under Rule 4, a magistrate judge must proceed under Rule 5(d) or (e), as applicable.

(b) **Arrest Without a Warrant.** If a defendant is arrested without a warrant, a complaint meeting Rule 4(a)'s requirement of probable cause must be promptly filed in the district where the offense was allegedly committed.

(c) **Place of Initial Appearance; Transfer to Another District.**

(1) **Arrest in the District Where the Offense Was Allegedly Committed.** If the defendant is arrested in the district where the offense was allegedly committed:

(A) the initial appearance must be in that district; and

(B) if a magistrate judge is not reasonably available, the initial appearance may be before a state or local judicial officer.

(2) **Arrest in a District Other Than Where the Offense Was Allegedly Committed.** If the defendant was arrested in a district other than where the offense was allegedly committed, the initial appearance must be:

(A) in the district of arrest; or

(B) in an adjacent district if:

(i) the appearance can occur more promptly there; or

(ii) the offense was allegedly committed there and the initial appearance will occur on the day of arrest.

(3) **Procedures in a District Other Than Where the Offense Was Allegedly Committed.** If the initial appearance occurs in a district other than where the offense was allegedly committed, the following procedures apply:

(A) the magistrate judge must inform the defendant about the provisions of Rule 20;

(B) if the defendant was arrested without a warrant, the district court where the offense was allegedly committed must first issue a warrant before the magistrate judge transfers the defendant to that district;

(C) the magistrate judge must conduct a preliminary hearing if required by Rule 5.1;

(D) the magistrate judge must transfer the defendant to the district where the offense was allegedly committed if:

(i) the government produces the warrant, a certified copy of the warrant, or a reliable electronic form of either; and

(ii) the judge finds that the defendant is the same person named in the indictment, information, or warrant; and

(E) when a defendant is transferred and discharged, the clerk must promptly transmit the papers and any bail to the clerk in the district where the offense was allegedly committed.

(4) **Procedure for Persons Extradited to the United States.** If the defendant is surrendered to the United States in accordance with a request for the defendant's extradition, the initial appearance must be in the district (or one of the districts) where the offense is charged.

(d) **Procedure in a Felony Case.**

(1) **Advice.** If the defendant is charged with a felony, the judge must inform the defendant of the following:

(A) the complaint against the defendant, and any affidavit filed with it;

(B) the defendant's right to retain counsel or to request that counsel be appointed if the defendant cannot obtain counsel;

(C) the circumstances, if any, under which the defendant may secure pretrial release;

(D) any right to a preliminary hearing;

(E) the defendant's right not to make a statement, and that any statement made may be used against the defendant; and

(F) that a defendant who is not a United States citizen may request that an attorney for the government or a federal law enforcement official notify a consular officer from the defendant's country of nationality that the defendant has been arrested—but that even without the defendant's request, a treaty or other international agreement may require consular notification.

(2) **Consulting with Counsel.** The judge must allow the defendant reasonable opportunity to consult with counsel.

(3) **Detention or Release.** The judge must detain or release the defendant as provided by statute or these rules.

(4) **Plea.** A defendant may be asked to plead only under Rule 10.

(e) **Procedure in a Misdemeanor Case.** If the defendant is charged with a misdemeanor only, the judge must inform the defendant in accordance with Rule 58(b)(2).

(f) **Video Conferencing.** Video conferencing may be used to conduct an appearance under this rule if the defendant consents.

(As amended Feb. 28, 1966, eff. July 1, 1966; Apr. 24, 1972, eff. Oct. 1, 1972; Apr. 23, 1982, eff. Aug. 1, 1982; Oct. 12, 1984, Pub.L. 98-473, Title II, § 209(a), 98 Stat. 1986; Mar. 9,

For Complete Annotation Materials, see United States Code Annotated

## PRELIMINARY PROCEEDINGS

## Rule 5.1

supporting evidence. Rule 5(a)(1)(B) requires the person be taken before a magistrate judge without unnecessary delay. Consistent with this obligation, it is preferable not to delay an extradited person's transportation to hold an initial appearance in the district of arrival, even if the person will be present in that district for some time as a result of connecting flights or logistical difficulties. Interrupting an extradited defendant's transportation at this point can impair his or her ability to obtain and consult with trial counsel and to prepare his or her defense in the district where the charges are pending.

#### Changes Made to Proposed Amendment Released for Public Comment

No changes were made in the amendment as published.

#### 2014 Amendments

**Rule 5(d)(1)(F).** Article 36 of the Vienna Convention on Consular Relations provides that detained foreign nationals shall be advised that they may have the consulate of their home country notified of their arrest and detention, and bilateral agreements with numerous countries require consular notification whether or not the detained foreign national requests it. Article 36 requires consular notification advice to be given "without delay," and arresting officers are primarily responsible for providing this advice.

Providing this advice at the initial appearance is designed, not to relieve law enforcement officers of that responsibility, but to provide additional assurance that U.S. treaty obligations are fulfilled, and to create a judicial record of that action. The Committee concluded that the most effective and efficient method of conveying this information is to provide it to every defendant, without attempting to determine the defendant's citizenship.

At the time of this amendment, many questions remain unresolved by the courts concerning Article 36, including whether it creates individual rights that may be invoked in a judicial proceeding and what, if any, remedy may exist for a violation of Article 36. *Sanchez-Llamas v. Oregon*, 548 U.S. 331 (2006). This amendment does not address those questions. More particularly, it does not create any such rights or remedies.

#### Changes Made After Publication and Comment

In response to public comments the amendment was rephrased to state that the information regarding consular notification should be provided to all defendants who are arraigned. Although it is anticipated that ordinarily only defendants who are held in custody will ask the government to notify a consular official of their arrest, it is appropriate to provide this information to all defendants at their initial appearance. The new phrasing also makes it clear that the advice should be provided to every defendant, without any attempt to determine the defendant's citizenship. A conforming change was made to the Committee Note.

### Rule 5.1. Preliminary Hearing

(a) **In General.** If a defendant is charged with an offense other than a petty offense, a magistrate judge must conduct a preliminary hearing unless:

- (1) the defendant waives the hearing;
- (2) the defendant is indicted;

(3) the government files an information under Rule 7(b) charging the defendant with a felony;

(4) the government files an information charging the defendant with a misdemeanor; or

(5) the defendant is charged with a misdemeanor and consents to trial before a magistrate judge.

(b) **Selecting a District.** A defendant arrested in a district other than where the offense was allegedly committed may elect to have the preliminary hearing conducted in the district where the prosecution is pending.

(c) **Scheduling.** The magistrate judge must hold the preliminary hearing within a reasonable time, but no later than 14 days after the initial appearance if the defendant is in custody and no later than 21 days if not in custody.

(d) **Extending the Time.** With the defendant's consent and upon a showing of good cause—taking into account the public interest in the prompt disposition of criminal cases—a magistrate judge may extend the time limits in Rule 5.1(c) one or more times. If the defendant does not consent, the magistrate judge may extend the time limits only on a showing that extraordinary circumstances exist and justice requires the delay.

(e) **Hearing and Finding.** At the preliminary hearing, the defendant may cross-examine adverse witnesses and may introduce evidence but may not object to evidence on the ground that it was unlawfully acquired. If the magistrate judge finds probable cause to believe an offense has been committed and the defendant committed it, the magistrate judge must promptly require the defendant to appear for further proceedings.

(f) **Discharging the Defendant.** If the magistrate judge finds no probable cause to believe an offense has been committed or the defendant committed it, the magistrate judge must dismiss the complaint and discharge the defendant. A discharge does not preclude the government from later prosecuting the defendant for the same offense.

(g) **Recording the Proceedings.** The preliminary hearing must be recorded by a court reporter or by a suitable recording device. A recording of the proceeding may be made available to any party upon request. A copy of the recording and a transcript may be provided to any party upon request and upon any payment required by applicable Judicial Conference regulations.

(h) **Producing a Statement.**

(1) **In General.** Rule 26.2(a)-(d) and (f) applies at any hearing under this rule, unless the magistrate judge for good cause rules otherwise in a particular case.

(2) **Sanctions for Not Producing a Statement.** If a party disobeys a Rule 26.2 order to deliver a

## Calendar No. 216

115<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 1780

[Report No. 115-152]

Making appropriations for the Department of State, foreign operations, and related programs for the fiscal year ending September 30, 2018, and for other purposes.

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### IN THE SENATE OF THE UNITED STATES

SEPTEMBER 7, 2017

Mr. GRAHAM, from the Committee on Appropriations, reported the following original bill; which was read twice and placed on the calendar

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## A BILL

Making appropriations for the Department of State, foreign operations, and related programs for the fiscal year ending September 30, 2018, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*  
3 That the following sums are appropriated, out of any  
4 money in the Treasury not otherwise appropriated, for the  
5 Department of State, foreign operations, and related pro-  
6 grams for the fiscal year ending September 30, 2018, and  
7 for other purposes, namely:

1 (G) shall conduct regular consultation with  
2 civil society organizations working to advance  
3 gender equality and empower women and girls  
4 internationally.

5 (4) SUPERVISION.—The Office shall be headed  
6 by an Ambassador-at-Large for Global Women's  
7 Issues who—

8 (A) exercises significant authority;

9 (B) reports to the President or to the Sec-  
10 retary of State; and

11 (C) is appointed by the President or by the  
12 Secretary of State, with the advice and consent  
13 of the Senate.

14 (5) REPORT.—Not later than 180 days after  
15 the date of the enactment of this Act, the Secretary  
16 of State shall submit a report to the appropriate  
17 congressional committees describing the steps taken  
18 to fulfill the duties of the Office set forth in para-  
19 graph (3).

20 CONSULAR NOTIFICATION COMPLIANCE

21 SEC. 7088. (a) PETITION FOR REVIEW.—

22 (1) JURISDICTION.—Notwithstanding any other  
23 provision of law, a Federal court shall have jurisdic-  
24 tion to review the merits of a petition claiming viola-  
25 tion of Article 36(1)(b) or (c) of the Vienna Conven-

1 tion on Consular Relations, done at Vienna April 24,  
2 1963, or a comparable provision of a bilateral inter-  
3 national agreement addressing consular notification  
4 and access, filed by an individual convicted and sen-  
5 tenced to death by any Federal or State court before  
6 the date of enactment of this Act.

7 (2) STANDARD.—To obtain relief, an individual  
8 described in paragraph (1) must make a showing of  
9 actual prejudice to the criminal conviction or sen-  
10 tence as a result of the violation. The court may  
11 conduct an evidentiary hearing if necessary to sup-  
12 plement the record and, upon a finding of actual  
13 prejudice, shall order a new trial or sentencing pro-  
14 ceeding.

15 (3) LIMITATIONS.—

16 (A) INITIAL SHOWING.—To qualify for re-  
17 view under this subsection, a petition must  
18 make an initial showing that—

19 (i) a violation of Article 36(1)(b) or  
20 (c) of the Vienna Convention on Consular  
21 Relations, done at Vienna April 24, 1963,  
22 or a comparable provision of a bilateral  
23 international agreement addressing con-  
24 sular notification and access, occurred with

1 respect to the individual described in para-  
2 graph (1); and

3 (ii) if such violation had not occurred,  
4 the consulate would have provided assist-  
5 ance to the individual.

6 (B) EFFECT OF PRIOR ADJUDICATION.—A  
7 petition for review under this subsection shall  
8 not be granted if the claimed violation described  
9 in paragraph (1) has previously been adju-  
10 dicated on the merits by a Federal or State  
11 court of competent jurisdiction in a proceeding  
12 in which no Federal or State procedural bars  
13 were raised with respect to such violation and  
14 in which the court provided review equivalent to  
15 the review provided in this subsection, unless  
16 the adjudication of the claim resulted in a deci-  
17 sion that was based on an unreasonable deter-  
18 mination of the facts in light of the evidence  
19 presented in the prior Federal or State court  
20 proceeding.

21 (C) FILING DEADLINE.—A petition for re-  
22 view under this subsection shall be filed within  
23 1 year of the later of—

24 (i) the date of enactment of this Act;

1 (ii) the date on which the Federal or  
2 State court judgment against the indi-  
3 vidual described in paragraph (1) became  
4 final by the conclusion of direct review or  
5 the expiration of the time for seeking such  
6 review; or

7 (iii) the date on which the impediment  
8 to filing a petition created by Federal or  
9 State action in violation of the Constitu-  
10 tion or laws of the United States is re-  
11 moved, if the individual described in para-  
12 graph (1) was prevented from filing by  
13 such Federal or State action.

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

20 (E) TIME LIMIT FOR REVIEW.—A Federal  
21 court shall give priority to a petition for review  
22 filed under this subsection over all noncapital  
23 matters. With respect to a petition for review  
24 filed under this subsection and claiming only a  
25 violation described in paragraph (1), a Federal

1 court shall render a final determination and  
2 enter a final judgment not later than one year  
3 after the date on which the petition is filed.

4 (4) HABEAS PETITION.—A petition for review  
5 under this subsection shall be part of the first Fed-  
6 eral habeas corpus application or motion for Federal  
7 collateral relief under chapter 153 of title 28, United  
8 States Code, filed by an individual, except that if an  
9 individual filed a Federal habeas corpus application  
10 or motion for Federal collateral relief before the date  
11 of enactment of this Act or if such application is re-  
12 quired to be filed before the date that is 1 year after  
13 the date of enactment of this Act, such petition for  
14 review under this subsection shall be filed not later  
15 than 1 year after the enactment date or within the  
16 period prescribed by paragraph (3)(C)(iii), whichever  
17 is later. No petition filed in conformity with the re-  
18 quirements of the preceding sentence shall be consid-  
19 ered a second or successive habeas corpus applica-  
20 tion or subjected to any bars to relief based on  
21 preenactment proceedings other than as specified in  
22 paragraph (2).

23 (5) REFERRAL TO MAGISTRATE.—A Federal  
24 court acting under this subsection may refer the pe-  
25 tition for review to a Federal magistrate for pro-



1 posed findings and recommendations pursuant to  
2 section 636(b)(1)(B) of title 28, United States Code.

3 (6) APPEAL.—

4 (A) IN GENERAL.—A final order on a peti-  
5 tion for review under paragraph (1) shall be  
6 subject to review on appeal by the court of ap-  
7 peals for the circuit in which the proceeding is  
8 held.

9 (B) APPEAL BY PETITIONER.—An indi-  
10 vidual described in paragraph (1) may appeal a  
11 final order on a petition for review under para-  
12 graph (1) only if a district or circuit judge  
13 issues a certificate of appealability. A district or  
14 circuit court judge shall issue or deny a certifi-  
15 cate of appealability not later than 30 days  
16 after an application for a certificate of  
17 appealability is filed. A district judge or circuit  
18 judge may issue a certificate of appealability  
19 under this subparagraph if the individual has  
20 made a substantial showing of actual prejudice  
21 to the criminal conviction or sentence of the in-  
22 dividual as a result of a violation described in  
23 paragraph (1).

24 (b) VIOLATION.—

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

13 (A) the consulate of the foreign state of  
14 which the individual is a national shall be noti-  
15 fied immediately by the detaining authority,  
16 and consular access to the individual shall be  
17 afforded in accordance with the provisions of  
18 the Vienna Convention on Consular Relations,  
19 done at Vienna April 24, 1963, or the com-  
20 parable provisions of a bilateral international  
21 agreement addressing consular notification and  
22 access; and

23 (B) the court—

24 (i) shall postpone any proceedings to  
25 the extent the court determines necessary

1 to allow for adequate opportunity for con-  
2 sular access and assistance; and

3 (ii) may enter necessary orders to fa-  
4 cilitate consular access and assistance.

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

8 (3) RULE OF CONSTRUCTION.—Nothing in this  
9 subsection shall be construed to create any addi-  
10 tional remedy.

11 (c) DEFINITIONS.—In this section the term “State”  
12 means any State of the United States, the District of Co-  
13 lumbia, the Commonwealth of Puerto Rico, and any terri-  
14 tory or possession of the United States.

15 (d) APPLICABILITY.—The provisions of this section  
16 shall apply during the current fiscal year and hereafter.

17 This Act may be cited as the “Department of State,  
18 Foreign Operations, and Related Programs Appropria-  
19 tions Act, 2018”.

**Calendar No. 216**

115TH CONGRESS }  
1st Session }

SENATE

{ REPORT  
{ 115-152

**DEPARTMENT OF STATE, FOREIGN OPERATIONS, AND  
RELATED PROGRAMS APPROPRIATIONS BILL, 2018**

SEPTEMBER 7, 2017.—Ordered to be printed

Mr. GRAHAM, from the Committee on Appropriations, submitted  
the following

**REPORT**

[To accompany S. 1780]

The Committee on Appropriations reports the bill (S. 1780) making appropriations for the Department of State, foreign operations, and related programs for the fiscal year ending September 30, 2018, and for other purposes, reports favorably thereon and recommends that the bill do pass.

*Amounts in new budget authority*

Total of bill as reported to the Senate .....	\$51,353,900,000
Amount of 2017 appropriations .....	57,523,900,000
Amount of 2018 budget estimate .....	40,680,726,000
Bill as recommended to Senate compared to—	
2017 appropriations .....	– 6,176,000,000
2018 budget estimate .....	10,673,174,000

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strict Internet freedom. The Committee encourages the Secretary of State to review and update such strategies.

**GLOBAL INTERNET FREEDOM**  
(Budget authority in thousands of dollars)

Account	Committee recommendation
Economic Support Fund .....	14,275
of which, Near East Regional Democracy Program .....	9,000
Democracy Fund (Department of State) .....	13,000
Democracy Fund (USAID) .....	3,500
Assistance for Europe, Eurasia and Central Asia .....	4,725
International Broadcasting Operations .....	15,000
of which, programs .....	13,800
of which, Radio Free Asia personnel costs .....	1,200
<b>Total, Global Internet Freedom .....</b>	<b>50,500</b>

Sec. 7079. Impact on Jobs in the United States.

Sec. 7080. Quorum Requirement.

Sec. 7081. Disability Programs.

Sec. 7082. Assistance for United States Citizens and Nationals Unlawfully or Wrongfully Detained Abroad.

Sec. 7083. Reorganization or Redesign of the Department of State and the United States Agency for International Development.

*Notification, Report, and Review.*—Pursuant to subsection (b)(1), any proposal or plan for the reorganization or redesign of any department, agency, or organization funded by the act is subject to prior consultation with, and the regular notification procedures of, the Committee, except a detailed report justifying such proposal and plan shall be submitted concurrently with the notification.

Pursuant to subsection (b)(2), prior to the submission of the notification required in subsection (b)(1), the Comptroller General shall review any reorganization or redesign proposal or plan, which shall be submitted to the Committee.

*Reviews.*—The Department of State and USAID OIGs shall review the process by which any reorganization or redesign plan submitted by Federal departments and agencies to OMB pursuant to the March 31, 2017 Executive Order [EO] 13781 on a Comprehensive Plan for Reorganizing the Executive Branch was formulated, or other reorganizations taken by departments and agencies outside of the EO since January 23, 2017, including the extent to which recommendations in such plans were proposed by career employees of such departments or agencies, contractors, and Federal employees outside such departments or agencies; and compliance with the requirements of the act and any other act.

Sec. 7084. North American Development Bank.

Sec. 7085. Multilateral Development Bank Replenishments.

Sec. 7086. Designation Requirement.

Sec. 7087. Strengthening Diplomacy and Development.

Sec. 7088. Consular Notification Compliance.