UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Docket No. 13-17230

Richard M Fleming

Plaintiff - Appellant

vs.

UNITED STATES OF AMERICA

Defendant - Appellee

From the United States District Court
For the District of Nevada, Reno, 3:13-CV-00154-MMD-VPC

Appellant Opening Brief

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Statement of the Case and Facts

Plaintiff filed for relief under 28 U.S.C. § 2241 pursuant to the *International Covenant on Civil and Political Rights* (ICCPR) treaty on 26 March 2013 and served defendant on that date pursuant to instructions provided by the court and federal website. Included in that service was a Motion for Summary Judgment (MSJ) and Statement of Undisputed Facts (SUFs). The court docketed the case as ripe on that date. On 27 March 2013 the *Court issued orders to the parties* and noted: "Motions are decided in the order in which they are filed…" Having received no response from defendant by 17 April 2013, plaintiff submitted notice to the clerk of court to enter judgment. The clerk informed plaintiff she could not enter judgment without the court directing her to do so. The court docketed the MSJ with SUFs on 20 May 2013. Defendant failed to respond to original service of case for 127 days, well past the statutory time limits for doing so. Finally on 1 August 2013, defendant filed a responsive pleading asking for dismissal of the case stating plaintiff had failed to file for administrative remedy and was not eligible for relief under the Federal Tort Claims Act (FTCA). Defendant did not oppose the MSJ or SUFs and did not receive court permission to extend response time to submit the motion to dismiss.

On 2 August 2013 plaintiff responded to defendant's motion, showing defendant's motion was both non-responsive and in bad-faith. Defendant failed (A) to address the ICCPR treaty, (B) did not oppose the MSJ with SUFs, (C) did not object to plaintiff's actual innocence (defendant has never disputed this), (D) failed to note the administrative efforts taken by plaintiff, but instead (E) provided a list of non-responsive irrelevant items. Under Nevada Local Rules, *defendant consented* to plaintiff's MSJ and SUFs. Defendant then changed his approach and asked for dismissal under the treaty, quoting cases, which were not relevant to the case. Plaintiff filed several motions and memorandum in an effort to draw the courts attention to the details of the ICCPR treaty as well as U.S. government documents and cases, which showed the necessary legislation was and had been in place to provide for domestic effect of law under the ICCPR treaty. Defendant responded, by misrepresenting the Fed. R. Civ. P., the Nevada Local Rules and by reprimanding plaintiff for responding to defendant's filings. Plaintiff responded by showing that defendant was misquoting and misrepresenting the Fed. R. Civ. P. and Nevada Local Rules and that defendant's superiors and the U.S. Government had placed on the record documents supporting rights under the ICCPR treaty. Plaintiff moved for the court to address defendant's bad faith and to grant the MSJ with SUFs. The court failed to respond.

On 29 October 2013, without addressing (1) plaintiff's MSJ with SUFs, (2) the U.S. Government stipulation that the necessary legislation was in place to provide domestic effect of law to the ICCPR treaty at the time of ratification, (3)

the bad faith actions by defendant and defense counsel, and (4) the failure of defendant to file timely, the court dismissed the case pursuant to defendants 1 August 2013 motion, which (5) did not consider the ICCPR treaty. The Court stated that under *Cornejo* and *Sosa*, plaintiff had no ICCPR treaty rights. The Court also stated plaintiff had no rights because the ICCPR treaty was not self-executing under an *express understanding*. Plaintiff immediately filed for appeal on 29 October 2013 including but not limited to the failure by the Court to address (1) the statutory time limits established by Congress, (2) the defendant's consent to the MSJ with SUFs, (3) the defendant's bad faith and (4) failure by the Court to recognize that the ICCPR treaty is self-executing by definition and that *Cornejo* and *Sosa* are irrelevant to the ICCPR treaty.

ISSUES PRESENTED

1. Did the Court err in granting the motion to dismiss when defendant was served on 26 March 2013, received court orders on 27 March 2013 and failed to file a responsive pleading until 1 August 2013, 127 days after knowingly being served, when the Fed. R. Civ. P. limit the time to respond to 60 days and the SCOTUS has ruled that courts do not have the authority to change these statutory time limits?
2. Did the Court err in dismissing the case when defendant's motion to dismiss (document 19), failed to address the actual civil suit filed by plaintiff, in that defendant's motion to dismiss addressed the FTCA, when the case was clearly filed under ICCPR treaty violations for indemnification, which defendants motion to dismiss never addressed?
3. Did the Court err in failing to address defendants bad faith when counsel (a) initially filed to dismiss the case without addressing the actual ICCPR treaty violations case before the court, (b) knowingly misrepresented the Fed. R. Civ. P. and the Nevada Local Rules, (c) responded with *ad hominem* attacks upon plaintiff for responding to defendant's motions, (d) recklessly raised multiple cases, which are *not applicable* to this ICCPR treaty case, when statutory law, Ninth Circuit and SCOTUS cases hold such actions by defendant and defense counsel to be in bad faith?
4. Did the Court err in failing to report defense counsel's bad faith to the appropriate Professional agencies, when failure to report this behavior to the appropriate agencies and courts is in and of itself a violation of the professional code of responsibilities to which the Court itself must abide?
5. Did the Court err in failing to recognize the legal claim for damages under the ICCPR treaty, when the U.S. Government has stipulated that the treaty was not ratified until *all the necessary legislation was in place to give domestic effect of law;* which according to the SCOTUS and the Ninth Circuit, renders the ICCPR treaty *self-executing by definition*?

6. Did the Court err in considering a pre-ratification *declaration* as establishing limitations upon the ICCPR treaty and the courts, when the SCOTUS has held that declarations *do not* (a) change the terms of a treaty, (b) alter the obligations of a treaty or (3) bind the courts?
7. Did the Court err in using *Cornejo* and *Sosa* to rule that plaintiff had no rights under the ICCPR treaty, when the treaty establishes rights for citizens within their own countries and *Cornejo* and *Sosa* are not U.S. citizens making their cases irrelevant in determining if a U.S. citizen has ICCPR treaty rights in U.S. jurisdiction?
8. Did the Court err in failing to find for plaintiff's MSJ with SUFs, when defendant failed to respond to or object to, even one of the nine complaints either within the statutory time limit of 21-days or within the responsive pleading itself (document 19) as stipulated by the Fed. R. Civ. P., when the Nevada Local Rules specify defendant's actions as *consenting* to the MSJ with SUFs and the SCOTUS stipulates the response the district court is to have in such cases?
9. Did the Clerk of Court and the Court err in failing to enter default and default judgments against defendant for amounts sum certain, when the Fed. R. Civ. P. stipulates the Clerk of Court and Court should enter such defaults when there is no dispute as to genuine facts and as a matter of law, when the Nevada Local Rules define defendant's response as *consenting* to the MSJ with SUFs?
10. What are the ramifications for the Court when during her confirmation hearings she stipulated she must follow legal precedent established by the Appellate Court and the SCOTUS and then does not follow that established precedent?
11. Have the Federal Courts now abandoned their responsibility to interpret the Constitutionality of treaty law after establishing that *declarations* neither (a) change treaty law, (b) bind the courts nor (c) determine the intent of the parties involved in the treaty, as already decided by the SCOTUS, the Ninth Circuit, sister jurisdictions and the U.S. Constitution; given the district courts dismissal of this case?

ARGUMENT

Following WWII, Eleanor Roosevelt was instrumental in trying to prevent the recurrence of atrocities that had been committed by the German Government upon German Citizens, by other governments upon their citizens. The result *inter alia* was the development of *the International Covenant on Civil and Political Rights* (ICCPR) *treaty.* At the U.S. pre-ratification meetings on 2 April 1992, the Senate established *declarations*, *reservations*, *understandings* and a *Major Provision* to the treaty. The later three affect the treaty, while *declarations*, like the Declaration of Independence, did not and do not impact the treaty terms, treaty conditions, nor bind U.S. courts. While frequently used to justify inaction by the

courts and the government, the first declaration is misinterpreted, misused and abused. Like the Declaration of Independence, it was simply a statement without legal affect. The courts have held that the very definition of a self-executing treaty, is one which has the necessary legislation in place to provide for domestic effect of law. The U.S. State Department along with multiple Congressional meetings, reports, documents and actions, clearly stipulate that the ICCPR treaty was only ratified once it was determined that this necessary legislation was in place. That having been done, *the ICCPR treaty is self-executing by definition.*

Failure by the courts to examine these documents has resulted in U.S. courts providing no more protection for U.S. citizens, than German courts provided for German citizens during WWII. The defendant and defense counsel have misrepresented statues, federal rules and the Nevada Local rules. Defendant's 1 August 2013 motion to dismiss failed to address the ICCPR treaty suit filed against the defendant, yet the district court dismissed the case based upon this motion. Defense counsel's motion simply provided a list of items, none of which addressed the ICCPR case submitted to the court and served upon defendant on 26 March 2013. The trail court failed to (1) address the failure of defendant to respond timely in accord with statutory time limits, (2) grant the MSJ and SUFs in accord with SCOTUS precedent cases, the Fed. R. Civ. P and Nevada Local Rules. (3) The district court additionally erred by failing to enter default and default judgment for amount certain, again as stipulated by statutory time limits, the SCOTUS, Fed. R. Civ. P. and Nevada Local Rules. (4) The Court further erred in failing to address defendant's bad faith and defense counsel's *ad hominem* attack upon plaintiff.

The plaintiff is a U.S. citizen applying for indemnification under ICCPR treaty violation, within U.S. jurisdiction. This is the very purpose of the ICCPR treaty. The U.S. Government has demonstrated by admissions, as well as actions taken against other countries under the ICCPR treaty, that the ICCPR treaty rights exist for citizens within their own nation States. The response in German courts following the defeat of Nazi Germany was: *What were we to do? The government prevented us from addressing these issues.* The German medical societies committed atrocities, using the same excuse. Today U.S. Courts are allowing the exact same attrocities to happen again (*White*, infra). The U.S. has returned full circle, committing atrocities upon its own citizens (Shades of Mengele), while ostracizing other nations for doing so. U.S. Courts have failed to address these ICCPR treaty violations despite their Constitutional obligation to do so. The ICCPR treaty is Constitutionally valid, has the necessary legislation in place to provide domestic effect of law and provides for substantive, procedural and remedial rights for U.S. citizens within U.S. jurisdiction. The plaintiff calls upon the Ninth Circuit to take the necessary action to provide plaintiff his ICCPR treaty rights with indemnification for the wrongs committed by defendant.

I. The Ninth Circuit is the appropriate subject matter jurisdiction for ICCPR treaty violations under 28 U.S.C. §2241 when the district court wherein plaintiff resides dismisses the case.

The writ of habeas corpus predates American Law, but was founded in this country by the United States Constitution, Article 1, § 9 "The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public safety may require it." Once codified the writ took several forms dependent upon the etiology of the wrong, but did not vary in wording or meaning since its inception. The wrong in this case is a treaty violation and by statute it is properly filed under 28 U.S.C. § 2241. The appropriate jurisdiction is wherein plaintiff resides.

… in custody in violation of the Constitution or laws or treaties …. 28 U.S.C. § 2241(c)(3)

This common sense reading is confirmed by the SCOTUS.

… the district in which the applicant is held. 28 U. S. C. § 2242. *Rumsfeld v. Padilla*, 542 US 426,442 (2004)

There is no dispute that this is the correct jurisdiction under either 28 USC §§ 2241 or 2107, for appeal of the motion to dismiss, failure to grant MSJ with SUFs, default and/or default judgment. Neither defendant nor district Court disputes jurisdiction. The final order of dismissal was filed 29 October 2013. Subsequently appeal of the procedural and substantive violations along with remedial rights under ICCPR treaty violation are directed to the Ninth Circuit Court of Appeals.

II. The Court erred in dismissing the case when (A) defendant failed to file within the statutory time limits, which the SCOTUS has determined cannot be altered by the courts and (B) document 19 failed to address the ICCPR treaty indemnification case before the Court.

Plaintiff filed civil suit against defendant, according to the procedures established by the Federal Government.

"To begin a civil lawsuit …, the plaintiff files a complaint with the court and "serves" … the defendant." (**Error! Hyperlink reference not valid.**) (26 March 2013).

On 26 March 2013 the case was filed in Nevada district court and defendant was served following instructions provided by the Federal website and the U.S. District Court of Nevada pro se guide. The Fed. R. Civ. P. are very specific as to defendant's time limit in which to respond to plaintiff's suit, specifying it must be filed *within 60 days* from date of service (3/26/13) unless altered by the Court. There was no Court alteration.

(3) *United States* …must serve an answer … within 60 days after service …. Fed. R. Civ. P. 12

One hundred twenty-seven (127) days after service, on 1 August 2013, defendant filed a motion to dismiss. The motion was brought pursuant to Rule 12(b)(6).

(6) failure to state a claim upon which relief can be granted Fed. R. Civ. P. 12(b)(6).

The defendant's actual motion (document 19) to dismiss failed to address the cause of action under which the suit was filed against defendant. Defendant stated plaintiff had not sought administrative remedy and that plaintiff filed under the Federal Tort Claims Act (FTCA). Plaintiff had in fact sought administrative relief and responded with proof of such (document 21); said proof also showing no crime having been committed. Defendant replied (day 131) by changing his argument and again requesting dismissal. Defendant NEVER denies (A) being served 26 March 2013, (B) the Court entering the case as ripe on 26 March 2013, (C) receiving Court orders on 28 March 2013, (D) the date the motion to dismiss was filed, or (E) his failure to address plaintiff's actual ICCPR treaty claim (document 19).

The SCOTUS has held that Congressionally established time limits cannot be exceeded and that no Court, *including itself* has the authority to change statutory time limits.

> If rigorous rules…thought to be inequitable, Congress may authorize courts to promulgate rules… statutory time limits.…we lack present authority to make the exception….*Bowles v. Russell*, 551 U.S. 205, 214-15 (2007)

Justice Miranda M. Du stipulated in her confirmation hearing before the Senate Judiciary Committee, that district courts must abide by rulings from superior courts.

> "I believe that district court judges **must follow and apply** binding precedents established by the United States Supreme Court…" (emphasis added)

Defendant having failed to respond to service of the case within the statutory 60-day time limit, failed to file timely**.** Pursuant to the SCOTUS, this time limit may NOT be extended. *The Nevada District Court has also stipulated that failure of a defendant to respond within this time limit will result in a* ***judgment by default*** *against the defendant for the relief demanded by the plaintiff (AO 440).* The district court erred in (1) granting the motion to dismiss, which was not filed timely, (2) granting a motion to dismiss (document 1), which failed to even address the cause of action, (3) failing to issue default and default judgment against the defendant based upon the statutory time limits and the courts own stipulated rules.

III. The Court failed to rule on defendant's bad faith (*mala fides*) when defense counsel knowingly and/or recklessly raised frivolous and deceptive arguments and misquoted both the Fed. R. Civ. P. and the Nevada Local Rules, while deceptively reprimanding plaintiff for properly filing documents, motions and memorandum of law.

The Ninth Circuit Court of Appeals has ruled that a finding of bad faith on behalf of an attorney is warranted when there is *knowing* or *reckless* behavior which is *frivolous* or *harasses* the opponent.

> … finding of bad faith … attorney 'knowingly or recklessly raises a frivolous argument,… purpose of harassing

an opponent.' *Rodriguez v. U.S.*, 542 F.3d 704, 709 (9th Cir. 2008)

The Court also ruled, that when the Government attorney's acted in bad faith, the other party is entitled to compensation.

> … entitled to $917,684.82 … bad faith -specifically, the government's litigation …in bad faith and the government's prelitigation conduct. *Rodriguez v. U.S.*, 542 F.3d 704, 712-13 (9th Cir. 2008)

On 26 March 2013 defense counsel was served and responded one hundred twenty-seven (127) days later with a motion to dismiss. As previously noted this motion failed to address the cause of action against defendant and deceptively attempted to focus the Courts attention elsewhere. Defendant filed the motion on 1 August 2013, stating "*This motion is based on the pleadings and papers filed in this action and the accompanying memorandum of law*" (document 19, page 2, lines 9-10). Clearly, it was not! Nowhere in defendant's motion is there a mention of the ICCPR treaty and nowhere in the plaintiff's documents is the FTCA mentioned. Defendant simply made up the case it wished to address instead of addressing the case before it. Since defendant stipulates that his motion is *knowingly* "based on the [plaintiff's] pleadings and papers" it is *unreasonable* and *reckless* to move for dismissal, when the motion failed to discuss the ICCPR treaty cause of action filed against the defendant.

Defense counsel has *recklessly* stated that plaintiff failed to attempt administrative (document 19, page 1 line 26 and page 2, lines 1-3) relief. Counsel has *recklessly* failed to review the documents related to this case or he certainly would have found them. Plaintiff responded by filing document 21 on 2 August 2013 showing that not only had administrative relief had been sought, but when included with the MSJ and SUFs, *which defendant has never opposed*, proves no crime has been committed. Defendant has never refuted administrative or MSJ with SUFs proof of innocence. Defense counsel has demonstrated an unreasonable, reckless and disrespectful approach to addressing this case.

Defendant has *knowingly* misstated the filing and service date of this case, even though the court docketed the case as ripe on 26 March 2013 and defendant received Court orders on 28 March 2013. It is *unreasonable* to pretend this isn't the case given the Court docket. Defendant *knowingly* does this in an effort to *deceptively* circumvent the statutory time limits, which were established by Congress, which cannot be changed pursuant to SCOTUS rulings (passim). The motion to dismiss was completely devoid of (a) a discussion of the actual suit brought against defendant, (b) the cause of action and (C) it was not filed timely. This behavior is unreasonable and/or reckless at best and at worse, deceptive and disrespectful of the court and plaintiff. The federal codes define reckless as behavior, which is not *reasonable and prudent*.

> (a) No person shall … or in a manner other that what is reasonable and prudent … having regard to the actual and potential hazards existing. 32 C.F.R. § 263.6

Nothing about this motion to dismiss has met the statutory time limits nor discussed the actual ICCPR treaty case filed against the defendant. It is unreasonable, reckless and not prudent on the part of defense counsel to file a motion to dismiss which does not address the actual cause of action in the case submitted to the court. Both the Ninth Circuit Courts and the SCOTUS agree with this statutory definition of recklessness.

> … no valid, rational basis for defense counsel's completely reckless strategy...."*Wildee v. Felker*, CIV S-07-0163 GEB, 2010 WL 4569030 (E.D. Cal. 2010)

Reckless behavior is that which knowingly *disregards the facts* before the person in question.

> if (1) he is reckless as to the fact … he is aware. . . but disregards the … fact … and (2) knowingly …. *U.S. v. Bailey*, 444 U.S. 394, 409 (1980)

Given these federal cases and codes defining *reckless* behavior, the elements include *deviating from reasonable* behavior and being *unjustified* in doing so. Filing a motion to dismiss 127 days after service, the docketing of the case as ripe and having received Court orders, is neither reasonable nor justified, as it has not been timely filed. Filing a motion to dismiss without discussing the actual cause of action while *recklessly* discussing the FTCA instead of discussing the ICCPR treaty after counsel stipulates it is responding to the case filed with the court, is deceptive, careless, unreasonable, reckless and disrespectful of both the Court and plaintiff. Federal courts and the Fed. R. Civ. P. are quite clear; if defense counsel had a question regarding the suit, counsel should have filed for clarification and not a motion to dismiss. Hence, defense counsel has *recklessly* demonstrated another disregard of procedural rules.

> …when a defendant is unclear … meaning of a particular allegation in the complaint, **the proper course is not to move to dismiss but to move for a more definite statement**." (emphasis added) See Fed.R.Civ.P. 12(e); …. *Am. Nurses' Ass'n v. State of Ill.*, 783 F.2d 716, 725 (7th Cir. 1986)

Had the defendant not understood the cause of action or required additional information, a reasonably prudent attorney would have asked for clarification as procedurally defined by the Fed. R. Civ. P.

> (e) Motion for a More Definite Statement. … move for a more definite statement of a pleading to which a responsive pleading is allowed …. **The motion must be made before filing a responsive pleading** (emphasis added) and must point out the defects complained of and the details desired..… Fed. R. Civ. P. 12

The defendant and defense counsel's actions were *reckless and non-responsive* to the civil suit filed against them. Defendant failed to address (1) the statute, (2) the treaty violation, (3) failed to recognize the fact that administrative relief had been sought, (4) intentionally sought to make the court belief plaintiff had not sought administrative relief, when in fact the record shows otherwise and (5) failed to file a response to the suit within statutory time limits.

In an effort to block plaintiff was submitting information to the court in response to defense motions, defendant reprimanded plaintiff on 20 August 2013 (documents 32 and 33), stating "there is no provision in the Court local rules" for

documents 29, 30 and 31 filed by plaintiff and that the documents should be stricken from the record.

> (f) Motion to Strike. …. The court may act:
> (2) on motion made by a party either before responding to the pleading or, if a response is not allowed, within 21 days after being served with the pleading. Fed. R. Civ. P. 12

Motions to strike are time sensitive (21-days) and plaintiff's responses to defendant were controlled by these same time limits; hence, plaintiff filed appropriate time limited responses to defendant's motions, documents and memorandums to avoid consenting to defendants misrepresentation of the facts, statutes and ICCPR treaty.

Nevada Local Rules (LR 7-2 MOTIONS).

> … The failure of an opposing party to file points and authorities in response to any motion **shall constitute a consent to the granting of the motion**. (emphasis added)
>
> … A party opposing the motion must file a response within twenty-one (21) days after the motion is served **or a responsive pleading** (emphasis added)….

Efforts by defendant through a continual *ad hominem* attack to coerce plaintiff to surrender the right to submit clarifying documents was *deceptive* and in *mala fides*. Plaintiff nonetheless filed in response to defendant, to avoid *consenting* to defendant's coercion and motions. Said persistence by plaintiff was necessary to demonstrate to the court, defendant's erroneous representation of facts, ICCPR treaty and statutes. Had the plaintiff acquiesced to defendant's coercion, the plaintiff would have been consenting with defendant's motions. Since plaintiff is a physician, for defense counsel to misrepresent these rules, *knowing* full well that coercing the plaintiff not to respond would have resulted in the court finding for the defendant, goes well beyond knowing and reckless behavior; it is *deceptive*.

Again on 24 September 2013, defendant filed a motion to strike. This time misrepresenting the case by disregarding (A) the date defendant was originally served by plaintiff and Court orders and (B) calling the plaintiff's memorandum on ICCPR and time limits, which included a statement by the defense counsels superior, Mr. Thomas E. Perez (Asst. Atty. General) discussing ICCPR and the ICCPR civil rights, as "not properly filed." (Document 40, page 2, line 22). Again, Local Rule 7-2 does NOT support this statement of improper filing, as established in plaintiff's response (documents 41-44) on 24 September 2013. On 27 September 2013 (documents 45) defendant again attacked plaintiff, calling plaintiff's responses to defendant "duplicative," "unnecessary" and having "nothing" to do with advancing the litigation and "prematurely" filing the motion for summary judgment, which the court itself docketed. Defendant again misrepresented the Fed. R. Civ. P., which limits the last possible moment a MSJ may be filed and further demonstrated disrespect to defense counsels own superiors, by stating that the inclusion of their statements provided "no substantive

respons[ive]" value.

> (b) Time to File a Motion. … a party may file a motion for summary judgment at any time until 30 days after the close of all discovery. Fed. R. Civ. P. 56

In reply, plaintiff filed motions on 27 September 2013 and called the courts attention to his concern regarding defense counsel's *bad faith* actions, asking the Court to respond. Despite this the Court failed to respond and defense counsel again attacked plaintiff on 11 October 2013 (document 49) for responding to defendant's motions. On 15 October 2013 plaintiff again raised the issue of defense counsel's *bad faith* and *duty of candor* (documents 50-52, pages 9-12).

> (b)…not candid or fair for a practitioner knowingly to misstate or misquote…or to mislead…49 C.F.R. § 1103.27

Such behavior is also directly addressed under the ABA rules of Professional Behavior, raising questions regarding the courts responsibility to bring defense counsel before the Nevada Bar Association, the Ninth Circuit Court of Appeals and any other actions, which the Court might deem appropriate.

> (a) A lawyer **shall not knowingly** (emphasis added):
> (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;
> (2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel.
> (Rule 3.3 Candor toward the Tribunal, Ann. Mod. Rules Prof. Cond. s. 3.3)

Any lawyer, including Justices who become aware of the possibility of professional misconduct are, according to the Professional Rules of Conduct, *responsible for making certain it is brought to the attention of the appropriate disciplinary board*. Failure to do so is itself Misconduct (Rule 8.4).

> (a) A lawyer who knows that another lawyer has committed a violation …raises a substantial question … lawyer's honesty, trustworthiness …, shall inform the appropriate professional authority.
> Rule 8.3 Reporting Professional Misconduct, Ann. Mod. Rules Prof. Cond. s. 8.3

On 17 October 2013 (document 53), defense counsel *acknowledges plaintiff's actions were appropriate*.

> "While plaintiff, consistent with this court's Local Rules, certainly may file briefs and other memoranda opposing motions filed by the United States or supporting motions filed by himself…" (page 1, lines 25-27)

Defense counsel *knowingly*, *recklessly*, *misquoted* and *misrepresented* the Fed. R. Civ. P. and the Nevada Local Rules. Defendant has repeatedly stated that Nevada Local Rule 7-2 limits the plaintiff from adding new information for the Court's deliberation, as it comes to the attention of the plaintiff. Local rule 7-2 does NOT state that. Again the rule sets time limits on responses, nothing more and nothing less. Local Rule 7-2 directly addresses defendant's (1) failure to respond to the initial service of this case (supra) in a timely manner and (2) failure to oppose plaintiff's MSJ with SUFs (passim).

LR 7-2 MOTIONS

> **All motions**, (emphasis added) …, points and authorities in response shall be filed and served by an opposing party fourteen (14) days after service of the motion….reply points and authorities shall be filed and served by the moving party seven (7) days after service of the response.
>
> … The failure of an opposing party to file points and authorities in response to any motion shall constitute a **consent** (emphasis added) to the granting of the motion.
>
> The … motion of summary judgment … governed by Federal Rules of Civil Procedure 56(b). A party opposing the motion must file a response within twenty-one (21) days after the motion is served or a responsive pleading is due, whichever is later…..

Nowhere in this local rule so frequently cited by defendant, is there a limitation on filing new information to the court as it becomes available. Plaintiff's memorandums on ICCPR and Time Limits (#39) added new information for the Court regarding procedural, substantive and remedy rights under ICCPR, which are a *matter of fact*, and a *matter of law* including precedent federal and SCOTUS cases. Defense counsel did NOT address, object to, or refute a single point in the memorandum (#39).

As with the erroneous misrepresentation of Nevada Local Rule 7-2 by the defendant, Fed. R. Civ. P. 56(b) does not limit how many MSJ's may be filed. It too is a time limiting rule.

> (b) Time to File a Motion.… a party may file a motion for summary judgment at any time **until 30 days after the close of all discovery** (emphasis added). Fed. R. Civ. P. 56(b)

Not only has the defendant misrepresented the Nevada Local Rule, but additionally the Ninth Circuit has specifically held there is no limit to the number of MSJ's plaintiff may file; in contrast to defense counsel's continued position.

> Federal Rule of Civil Procedure 56 does not limit the number of motions that may be filed." … Joining those circuits, … hold explicitly that district courts have discretion to entertain successive motions for summary judgment….*Hoffman v. Tonnemacher*, 593 F.3d 908, 911 (9th Cir. 2010)

The rule limits only the final date a MSJ may be entered and not the number of Motions, including MSJs, which plaintiff may file. Defense counsel has again misrepresented the Local Rules, the Fed. R. Civ. P. and the holdings of the Ninth Circuit. The Court erred in failing to address these *intentional*, *knowing*, *deceptive* actions by defendant and its counsel, despite the Courts very definition of bad faith.

> The Supreme Court of Nevada adopted the cause of action called "bad faith" in *United States Fidelity & Guar. Co. v. Peterson,* 91 Nev. 617, 540 P.2d 1070 (1975). The duty to deal fairly and in good faith then is implied by common law. …. *Pioneer Chlor Alkali Co., Inc. v. Natl. Union Fire Ins. Co. of Pittsburgh, Pennsylvania*, 863 F. Supp. 1237, 1242 (D. Nev. 1994)
>
> bad faith is " '… absence … reasonable basis ... and the defendant's knowledge or reckless disregard of the lack of a reasonable basis for denying the claim' "*Pioneer Chlor Alkali Co., Inc. v. Natl. Union Fire Ins. Co. of Pittsburgh, Pennsylvania*, 863 F. Supp. 1237, 1242 (D. Nev. 1994)

Nevada statutes specifically address these deceptive and unfair practices.

> A person shall not engage in this state in any practice … an unfair method … or an **unfair or deceptive act** (emphasis added) …. Nev. Rev. Stat. Ann. § 686A.020 (West)

Providing for remedies when this bad faith behavior is present, including government actions.

> …entitled to $917,684.82 …that, together, constituted bad faith-specifically, the government's litigation of the issues of consent, privilege, and contributory negligence in bad faith and the government's prelitigation conduct. *Rodriguez v. U.S.*, 542 F.3d 704, 712-13 (9th Cir. 2008)

The Court erred in not addressing the *mala fides*, knowing, reckless, intentional, non-prudent, and deceptive statements and actions made by the defendant/defense counsel in (1) filing the motion to dismiss this case well past the statutory time limits, (2) not addressing the case actually filed against defendant and then filing the same motion to dismiss for completely different reasons, demonstrating that defendant's only focus was to get the case dismissed at all costs instead of addressing the wrong(s) committed by the defendant under the stated claim, (3) the motions to strike plaintiff's filings, (4) misquoting the Fed. R. Civ. P., Nevada Local rules Ninth Circuit cases and then (5) reprimanding plaintiff for following these very rules, which defense counsel misstated and misrepresented, attempting to coerce plaintiff into consenting to defendant's arguments. These errors were committed despite multiple rulings by the Nevada District Court, the Ninth Circuit Court of Appeals, and the SCOTUS; all of which have held that the knowing, reckless, deceptive, intent on the part of defendant/defense counsel constitutes bad faith for which the plaintiff is entitled to compensation.

IV. The ICCPR treaty is by definition, a self-executing treaty, having the necessary implemented legislation in place at the time the treaty was ratified on 8 June 1992, as stipulated to by the U.S. Government. This legislation provides for domestic effect of law providing for U.S. citizen rights in U.S. jurisdiction. Declarations do NOT affect the treaty, do not change U.S. citizen rights under the treaty, nor do they bind the courts!

The entire basis for the district courts dismissal of the case, is a pre-ratification *declaration*, which has been perseverated absent consideration of the other *declarations*, *reservations*, *understandings*, or *Major Provision* of the ICCPR treaty. Declarations have no legal effect upon a ratified treaty, nor do they change the *understandings*, *intent* or *purpose* of the treaty and they do NOT legal bind U.S. Courts. U.S. Courts have held that treaties, which have the necessary legislation in place to provide for effect under the law, are by definition *self-executing*. By the time of treaty ratification, the necessary legislation required to make the treaty self-executing was in place as stipulated to by the U.S. Government and as confirmed on multiple occasions before Congressional sessions as expressly documented. *A review*

of these applicable documents not previously considered by federal courts, show the necessary legislation required to provide for domestic effect of law, was not only required to be in place prior to ratification, but was in fact in place per U.S. stipulated documentation, before the ICCPR treaty was ratified on 8 June 1992. Such legislation *makes the* ***treaty self-executing by federal court definition***. The ICCPR treaty provides for *Civil and Political Rights* of citizens within their legal country of residence. Cases considering non-U.S. citizens, or U.S. citizens, not within U.S. jurisdiction are not relevant (FRE Rule 401) to this case as the treaty is not applicable in these cases. The ICCPR treaty provides remedies to U.S. citizens for violations in U.S. territory, including violations by the U.S. government.

The focus of declaration 1, as demonstrated by a reading of *the entire record*, was not to limit individual rights under the treaty, but to express concern that the treaty not limit citizen rights already established under the U.S. Constitution or U.S. law. The declaration has been used for the exact opposite purpose, i.e. to limit U.S. citizen rights.

After reviewing all available ICCPR treaty cases and the record of this treaty, *plaintiff brings to the Courts attention for the first time, the parties* ***intent*** *to ratify and the position of the U.S. Government at the time of treaty ratification*. It is unconscionable, given the totality of statements made by the U.S. Government, Congressional statements and U.S. actions taken to date to address other governments violating their citizens rights based upon the ICCPR treaty, that anyone could conclude the ICCPR treaty was anything but self-executing with civil and political rights for U.S. citizens, with remedies enforceable through U.S. Courts when the U.S. government is the source of those violated rights.

The issue as to whether the ICCPR treaty is self-executing or not, is *not* dependent upon a declaration which has no affect upon the treaty document, domestic law, or the federal courts but, whether (1) there was adequate legislative in place to provide domestic effect of law at the time the treaty was ratified (or since) and (2) does the ICCPR treaty provide for individual U.S. citizen rights.

a. Declaration 1 does not change the meaning or effect of the ICCPR treaty! The declaration is NOT law and does not bind the courts. The reservations, understandings and Major Provision clearly demonstrate the ICCPR treaty provides civil and political rights to U.S. citizens since its ratification.

The defendant and district Court base their entire argument for dismissal on a single *declaration* made on 2 April 1992, 138 Cong. Rec. S4781-01 without regard, consideration or referral to multiple other Congressional records, Senate Reports and Common Core Documents filed by the U.S. Department of State. Plaintiff recognizes that this *pre-ratification declaration* was made "that Articles I through 27… are not self-executing." ***Nonetheless, treaty declarations do not alter***

treaties, do not affect treaty execution and are not the same thing as a treaty understanding.

> A non-self-executing treaty, by definition, is one that was ratified with the understanding that it is not to have domestic effect of its own force. *Medellin v. Texas*, 552 U.S. 491, 527 (2008)

However, the treaty, its *reservations*, *understandings*, *Major Provision* and *post-ratification documentation* clearly stipulate that the position of the United States is that the treaty has domestic effect of law and is therefore self-executing by definition. Specifically that the necessary legislation was in place at the time of ratification to give domestic effect of law and as noted infra, the treaty would NOT have been ratified had the U.S. Government not believed that ALL the necessary legislation was in place at the time of ratification to give the treaty domestic effect of law in the courts. Everything in defense counsel's argument and district Courts erroneous dismissal of the case focuses on the misinterpretation of the legal effect of a single declaration and the failure to consider the applicable record. Declarations *cannot* alter the terms or intent of a treaty and they cannot bind the U.S. Courts by declaring a treaty non self-executing.

> … A declaration is not part of a treaty in the sense of modifying ….**The treaty is law. The Senate's declaration is not law**….the **Senate's power under Article II extends only to the making of reservations** that require changes to a treaty before the Senate's consent will be efficacious. ….(emphasis added) *See INS v. Chadha,* 462 U.S. 919, 103 S.Ct. 2764, 77 L.Ed.2d 317 (1983). *Igartua-De La Rosa v. U.S.*, 417 F.3d 145, 190-91 (1st Cir. 2005)

When read in context the U.S. declarations actually reflected a concern that individual rights of U.S. citizens could be *limited*. Consequently, declaration 1 was followed by declaration 2, which is never mentioned by those seeking to obfuscate the record on declaration 1.

> "That it is the view of the United States … refrain from imposing any restrictions or limitations on the exercise of the rights recognized and protected by the Covenant, even when such restrictions and limitations are permissible under the terms of the Covenant." (Declaration 2)

It is contradictory for defendant to attempt to limit U.S. citizen rights, when the focus was not to limit rights under the treaty. Note it is the effect of *restrictions*, which can alter a treaty when clearly stated for other signatory parties to see; not *declarations*. Consequently, these two declarations have no affect upon the treaty, nor upon the domestic effect under U.S. law. These declarations only show concern that U.S. citizen rights should not be limited; yet this is exactly what defense counsel and defendant would have the courts do. Article 50, not included in declaration 1, further stipulates:

> Article 50: The provisions of the present Covenant shall extend to **all parts of federal States without any limitation or exceptions** (emphasis added).

The first obligation in trying to understand the impact, or rather the lack of impact of declaration 1, apart from the SCOTUS in *Igartua* (supra), that "The Senate lacks the constitutional authority to *declare* the non-self-executing character of a treaty with binding effect on U.S. courts." is to understand the meanings of the terms we are using; viz. *declarations*,

reservations and *understandings*. They cannot be used interchangeably as they have different meanings, both legally and otherwise. Clearly, if they meant the same thing, we would only need one term. A declaration, such as declaration 1 does NOT change a treaty and a non-self-execution declaration differs materially from a reservation. *See Restatement,* (supra) at § 314, cmt. d. "*A declaration is not presented to the other international signatories as a request for a modification of the treaty's terms. Hence, the different signatories are operating under the original treaty and not some modification of it.*" Should the U.S. not agree with the terms of the treaty, it is not required to sign the treaty. As a ratified treaty, following Presidential signature (infra), the U.S. and its courts have the obligation to honor the treaty as it is written, seen and approved by other signatory nations. Under the U.S. Constitution, the mechanism for treaty ratification is clearly defined, just as legislative actions from the Congress to the President have been defined. Senate line item treaty veto are no more constitutionally valid than a Presidential line item veto.

As two leading commentators have explained and the SCOTUS has held, the Senate does not have the power to bind a court to such declarations, it only has the power to make *reservations* and it is the Courts responsibility to then apply the treaties to the law of the land under the *Supremacy Clause*.

> … The courts must undertake their own examination of the terms and context of each provision in a treaty … The Senate's declaration is not law. … the **Senate's power** under Article II **extends only** to the making of **reservations**…. (emphasis added) *See INS v. Chadha,* 462 U.S. 919, … *Igartua-De La Rosa v. U.S.*, 417 F.3d 145, 190-91 (1st Cir. 2005)

Clearly members of Congress and defense counsel should and the Courts must, comprehend the significance of differences between *declarations*, *reservations* and *understandings*. The SCOTUS has made it clear the Senate cannot change a treaty by introducing new terms and *declarations* are not law (*Igartua*, supra). Unfortunately, the SCOTUS has itself, introduced err into the ICCPR discussion by calling the declaration an "*expressed understanding*." Neither the defendant, the district court nor apparently anyone else has corrected this, yet both have erroneously referred to it. Two wrongs do not make a right and misquoting incorrect statements, even when made by the SCOTUS does not make them correct. In medicine when attending physicians make mistakes, students and staff are encouraged to correct the mistake. If they do not, everyone will be confused and someone, usually the patient, could be seriously hurt or killed. In a case *not even applicable* to the ICCPR treaty (*Sosa*, infra), given that the ICCPR treaty does NOT apply to Alien citizens and Sosa was filed under the Alien Tort Statute and FTCA, neither of which are applicable to an ICCPR treaty case, the SCOTUS called the self-execution declaration an *express understanding*, instead of a *declaration*, which as already established

(supra) has a completely different legal effect. The SCOTUS erred:

> … the United States ratified the Covenant on the **express understanding** that it was not self-executing and so did not itself create obligations enforceable in the federal courts. See *supra,* at 2763. (emphasis added) *Sosa v. Alvarez-Machain*, 542 U.S. 692, 735 (2004)

Had this truly been a treaty *understanding*, this might have an impact, except that it cannot alter what President Carter signed (Presidential signature, infra) in 1977; nonetheless *as a declaration, it does not*! Both (1) the defendant

> "…*as when its ratification of the International Covenant on Civil and Political Rights declared that the substantive provision of the document were not self-executing*." (document 25, page 3, lines 7-8)

and (2) the District Court,

> The Supreme Court explains that "although the [ICCPR] does bind the United States as a matter of international law, the United States ratified the [ICCPR] on the **express understanding** that it was not self-executing and so did not itself create obligations enforceable in the federal courts." (emphasis added) (document 57, page 4, lines 11-14)

erred in using this incorrect statement to support their position. The *declarations*, *reservations*, *understandings* and *Major Provision* of the ICCPR treaty are noted (passim) and the self-executing comment was a *declaration*; NOT AN UNDERSTANDING! When the SCOTUS differentiates these terms, rules on them (*Sosa)* and then incorrectly uses them, this error by the SCOTUS does not justify the continued erroneous use of terms by defendant, defense counsel, the district court, an Appellate Court or the U.S. Supreme Court.

Had the Senate disagreed with the ICCPR treaty terms and conditions, it would have had to change them by adding a *reservation,* thereby making other nations aware of a changed *intent* on the part of the U.S., however, the Senate did not. Therefore, all other parties to the ICCPR treaty, by virtue of ratification of what *President Carter signed* and the failure to change the treaty intent; have been guaranteed by the U.S. government and its courts, that the U.S. agrees with the terms of the treaty as signed and ratified; with the intent to be legally bound by the ICCPR treaty language.

> … concluded … treaty…self-executing…because **"the language of" the Spanish translation (***brought to the Court's attention for the first time***) indicated the parties' intent to ratify and confirm the landgrant "by force of the instrument itself.** (emphasis added) *Id.,* at 89. *Medellin v. Texas*, 552 U.S. 491, 514 (2008)

The Senate could also have refused to ratify the treaty if it disagreed with the treaty terms and conditions, but it did not. The Founding Fathers purpose for integrating the *Treaty Clause* into the U.S. Constitution was to establish a *different principle* from that used by the British; viz. that once signed and ratified, it would have legal effect. Since declarations are not seen by other countries (Restatement, supra) ratifying the treaty, other countries would not be aware of any changed U.S. intent and as such the SCOTUS has held (supra) that declarations do not change the treaty terms

and are not considered part of the treaty.

> There is something, too, which **shocks the conscience** in the idea that a treaty can be put forth as embodying the terms of an arrangement with a foreign power or an Indian tribe, **a material provision of which is unknown to one of the contracting parties**, and is **kept in the background to be used by the other** only when the exigencies of a particular case may demand it.…In short, … **cannot be considered a part of the treaty**. (emphasis added) *The Diamond Rings*, 183 U.S. 176, 183-84 (1901)

The SCOTUS has also held that terms, which alter a treaty, cannot be added later.

> The Senate **has no right to ratify the treaty and introduce new terms** … it may refuse its ratification, or make such ratification conditional upon the adoption of **amendments** to the treaty. (emphasis added) *The Diamond Rings*, 183 U.S. 176, 183 (1901)

The ICCPR treaty was signed on 5 October 1977 by President Jimmy Carter noting that the ICCPR treaty dealt with citizen rights within their own countries; rights which President Carter stated were a matter of U.S. law.

> …the Covenant was "concerned about the rights of individual human beings and the duties of governments to the people they are created to serve." Parties to the Covenant, the President added, pledge, "**as a matter of law**,….Weissbrodt, United States Ratification of the Human Rights Conventions, 63 U. MInn. L. Rev. 35 (1978).

On 23 February 1978, President Carter submitted the ICCPR treaty to the Senate stating even then, that the ICCPR treaty was entirely consistent with the U.S. Constitution and laws and the DOJ concurred with the State Department.

> "[This Covenant] treats in detail a wide range of civil and political rights…. The great majority of the substantive provisions of [this Covenant] are entirely consistent with the letter and spirit of the [U.S.] Constitution and laws. … The Department of Justice concurs in the judgment of the Department of State …there are no constitutional or other legal obstacles to [U.S.] ratification."

Finally, the SCOTUS has also held that once a treaty has been signed by the President of the United States, the Senate can only ratify the treaty as signed to by the President. *The Senate may not alter the terms or conditions of the treaty as signed by the President of the United States*. It is simply limited to ratifying that which the President has already agreed to or not ratifying it.

> By the Constitution (art. 2, § 2) … the treaty must contain the whole contract between the parties, **and the power of the Senate is limited to a ratification of such terms as have already been agreed upon between the President, acting for the United States, and the commissioners of the other contracting power**. **The Senate has no right to ratify the treaty and introduce new terms into it**, which shall be obligatory upon the other power, although it may refuse its ratification, or make such ratification conditional upon the adoption of amendments to the treaty. (emphasis added) *The Diamond Rings*, 183 U.S. 176, 183-85 (1901)

No amendments were added to change the ICCPR treaty and it should be obvious that *amendments* are not *declarations*. Since Article II of the U.S. Constitution only gives Congress the power to alter treaties under *reservations*, which would be added to the treaty where other ratifying parties may see the changed U.S. intent, it is important to look at the actual reservations made to the ICCPR treaty, which have not been discussed by defendant or the district court.

ICCPR Treaty Reservations

(1) That article 20 does not authorize or require legislation or other action by the United States … protected by the Constitution and laws of the United States.
(2) That the United States reserves the right, subject to its Constitutional constrains, to impose capital punishment on any person … below eighteen years of age.
(3) That the United States considers itself bound by article ….
(4) That because U.S. law generally applies to an offender …the United States does not adhere to the third clause of paragraph 1 of article 15.
(5) … the United States reserves the right, in exceptional circumstances, to treat juveniles as adults… who volunteer for military service prior to age 18.

Not only is there NOTHING in the reservations which alter the obligations of the U.S. to enforce the individual U.S. citizen rights under the ICCPR treaty including articles 1-27, minus *specifically noted* items, which have nothing to do with the present case; but, the very reservations themselves make it crystal clear that the ONLY limitations are (1) not restricting the "right of free speech and association protected by the Constitution and laws of the United States", (2) issues of "capital punishment," (3) specific issues regarding "juveniles in the criminal justice system" being treated as "adults" and (4) "individuals who volunteer for military service prior to age 18." Clearly, there is nothing within the reservations of the ICCPR treaty, which would limit the rights of a U.S. citizen under domestic law except for these very specifically noted *reservations* to the ICCPR treaty, none of which are applicable to this case.

Within this same Congressional report we find the third important component required to Understand the ratified ICCPR treaty; viz. the *understandings* of the United States.

ICCPR Treaty Understandings

II. The Senate's advice and consent is subject to the following understandings, which shall **apply to the obligations of the United States under this Covenant**:
(1) That the Constitution and laws of the United States guarantee …those terms are used in Article 2, paragraph 1 and Article 26-to be permitted … rationally related to a legitimate governmental objective. The United States further understands the prohibition in paragraph 1 of Article 4 upon discrimination …effect upon persons of a particular status.
(2) That the United States understands the **right to compensation** referred to in Articles 9(5) and 14(6) to **require the provision of effective and enforceable mechanisms**… **obtain compensation** from either the responsible individual or the appropriate **governmental entity** … of domestic law.
(3) That the United States understands … paragraph 2(a) of Article 10 to permit …. The United States further understands …paragraph 3 of Article 10 does not diminish … penitentiary system.
(4) That the United States understands that subparagraphs 3(b) and (d) of Article 14 do not require …. The United States further understands …paragraph 3(e) does not prohibit a requirement … to compel is necessary for his defense. The United States understands the prohibition … double jeopardy in paragraph 7 to apply … judgment of acquittal … same governmental unit….
(5) That the United States understands that this Covenant shall be implemented … for the fulfillment of the Covenant. (emphasis added) 138 Cong. Rec. S4781-01, 1992 WL 65154

The understandings of the United States are not the least bit ambiguous. The treaty is enforceable in U.S. courts

for U.S. citizens with compensation for wrongs. There is nothing in either the *reservations* or *understandings* that make the treaty non self-executing! Both the reservations and understandings address specific articles within the first 27 articles, stipulating specific rights under these articles as they apply to U.S. domestic law, including the right to compensation when U.S. citizen rights are violated under the treaty. Thus providing further proof the ICCPR treaty is self-executing and demonstrating the error introduced by confusing the terms *declaration*, *understanding* and *reservation*.

The 2 April 1992 Congressional Record also shows a *Major Provision* of *rights guaranteed* under the ICCPR treaty. This Major Provision appears within the same pre-ratification document defendant and District Court uses in an effort to dismiss this case. [U.S. Senate Executive Report 102-23 (102d Cong., 2d Sess.)]

> "Each Party to the Covenant undertakes "to respect and to ensure" **to all individuals within its territory and under its jurisdiction the rights recognized in the Covenant** … **to adopt legislation or other measures necessary to give effect to these rights; and to provide an effective remedy to those whose rights are violated** (emphasis added)."

It is clear from Congressional Reports (passim), officials at the Department of Justice (infra) and the U.S. Department of State (infra), that between the time of the *pre-ratification* Congressional Report of 2 April 1992 and the *ratification* of the ICCPR treaty on 8 June 1992, the position of the United States of America based upon the reservations, understandings and Major Provision of the Congressional record (passim) was that *the necessary legislation was to be, and in fact was, in place to provide for the rights of individual U.S. citizens at the time the ICCPR treaty was ratified.*

The *Declaration of Independence* was signed by the Continental Congress 4 July 1776, but it did not establish the laws of the land, it did not provide individuals rights or remedies, nor did it provide for courts under which it could have a binding effect. The *Declaration* was a combination of the 1128 *Flemish* (*Plakkaat van Verlatinge*, 1581) deposition of Count Flanders and *British* documents (James 2d) expressing dissatisfaction with James the 2nd; not King George. "'Neither aiming at originality of principle or sentiment, … it was intended to be an expression of the American mind, and to give to that expression the proper tone and spirit called for by the occasion." (1825 letter from Jefferson to Henry Lee). The SCOTUS explicitly held the Declaration was not law. [*Ware v. Hylton*, 3 U.S. 199, 208 (1796)] My GGGGF (a British Justice) as well as *Capt. Fleming,* who crossed the Delaware with Washington on Christmas Eve December 1776, would agree; a Declaration of War does NOT establish Law! The Articles of Confederation, *ratified* by Congress 15 November 1777, followed it establishing law. The Articles were replaced by the U.S. Constitution, adopted on 17 September 1787 and went into effect 4 March 1789. The Constitution established the *understandings* and *reservations* of Congress and defined

the law of the land including treaties, citizen rights and remedies; limitations of government power, duties of the courts and it bound the courts, unlike the *Declaration* of Independence. It is this FINAL document of *understanding* and *reservations*, the U.S. Constitution, which defines the law of the land, citizen rights and remedies, government powers and limitations and the responsibilities and obligations of the courts; not the *Declaration* of Independence!

Declaration 1 discusses potential concerns, which were legally addressed through the treaty *understandings*. As can be seen, these *understandings* are quite specific and anything considered in the *declaration* but not noted in these *understandings*, does not affect the treaty rights. The *declaration* did not change or alter the treaty in any manner. It did not change the *intent* of the treaty. It *did not and does not* bind the courts. *Declarations* do not amount to a Senate line item veto of treaties anymore than the President has the power to line item veto legislation so submitted. The *understandings*, *reservations* and *Major Provision* entered into by the Senate are clear statements that the ICCPR treaty provides substantive, procedural and remedial rights to U.S. citizens in U.S. courts. They do not alter the treaty nor the U.S. obligations under the treaty as signed by President Carter on 5 October 1977. The district court has erred in not providing these rights to plaintiff established by ICCPR treaty. The court erred in not distinguishing between *declarations*, *understandings*, *reservations* and *major provisions* of the ICCPR treaty and their substantially different legal effects.

b. The ICCPR treaty is by definition self-executing. Upon ICCPR treaty ratification, the necessary legislation required to provide domestic effect of law for individual U.S. citizen rights under the treaty was in place.

The SCOTUS and the Ninth Circuit Court of Appeals have held that a treaty, which has the necessary legislation implemented to provide domestic effect of law, *is by definition self-executing*. The pre-ratification documents reveal the Senates interest in refraining from limiting U.S. citizen rights.

> … view of the United States that States Party … should … refrain from imposing any restrictions or limitations on … the rights recognized and protected by the Covenant, … (Declaration 2)

Since declaration 2 like declaration 1 is merely a declaration, we need to look elsewhere for evidence of the necessary legislation, required for the ICCPR treaty to be self-executing. As discussed (supra), the *understandings* of the Senate included the *obligation to implement* the ICCPR treaty.

> (5) That the United States understands that this Covenant shall be implemented by the Federal Government to the extent that it exercises legislative and judicial jurisdiction …. 138 Cong. Rec. S4781-01, 1992 WL 65154

As stipulated (passim), many of the rights in the ICCPR treaty articles were understood to already exist, even at the time of this pre-ratification Congressional Report. This is an important point because as *the defendant has stipulated*

(document 25, page 2, lines 13-14), [*Whitney v. Robertson*, 124 U.S. 190, 194 (1988)], *a non self-executing treaty becomes self-executing once there is legislation to carry it out*. Defendant again misquotes facts and the law (passim), when he states (document 25, page 2, lines 22-23) that the non self-executing issue was an *understanding* of Congress. As has been established, the *understandings* show that U.S. citizen rights exist under the ICCPR treaty. Defendant and the district court are looking at a *declaration*, which as already established lacks any legal binding effect upon the treaty or the courts. An issue made completely moot by President Carter's signature and the Department of State's (passim) Fourth periodic report. Since declarations do NOT affect the treaty and the understandings ratified by the Senate clearly communicate to the world that the U.S. understands and agrees to these specific treaty obligations and since this treaty is a treaty concerning individual citizen rights for people within their own country; it is unconscionable to think that anyone could continue to believe that U.S. citizens do not have individual rights under the ICCPR treaty which can be brought to U.S. federal courts for remedy.

As already noted, distinguishing which terms one is using is vitally important to understanding the legal significance of what is being said. This should be as obvious to the legal profession, as it is to the medical profession, to which much attention is due single words and their meanings. This case is being no exception! The defendant, the district and other federal courts have erroneously switched terms without considering the ramification of doing so. Congress did not make a reservation or an understanding upon the ICCPR articles regarding execution of the treaty, but rather a pre-ratification declaration, which lacks legal affect. It is important to differentiate between understandings and declarations and not to trivialize this distinction. If the terms are important enough to be used in treaties, they are important enough to comprehend and appreciate their significant differences. As a physician, plaintiff has been medically trained to understand the importance behind the proper use of terms and to appreciate the critical differences and potentially devastating outcomes resulting from the erroneous use of terms, procedures and medications. Plaintiff can only presume the significance is just as valid legally.

The Congressional Record makes it clear that the United States *understanding* was that the ICCPR treaty did in fact have substantive, procedural and remedial rights for U.S. citizens, with most if not all of the necessary legislation already in place by 2 April 1992. As the Ninth Circuit has held, the *understanding* of a treaty, is what the parties believe the treaty as a whole means in the their own language. Since declarations are not part of the actual treaty (supra), other parties ratifying the treaty would not be aware of them. The treaty would be read in accord with the meaning presented to

the other signatories of the treaty; viz. according to the *reservations* and *understandings*. The Ninth Circuit has held that it has the responsibility to make certain treaties are carried out accordingly.

> It is our responsibility to see that the terms of the treaty are carried out, … **in accordance with the meaning they were understood to have** (emphasis added) …to protect the …people. *Cree v. Flores*, 157 F.3d 762, 769 (9th Cir. 1998)
>
> … **and in terms of the Treaty as a whole**. (emphasis added) *Cree v. Flores*, 157 F.3d 762, 770 (9th Cir. 1998)
>
> … would naturally have understood the terms of the Treaty **and resolved any doubts and ambiguities in their favor**. (emphasis added) *Cree v. Flores*, 157 F.3d 762, 771 (9th Cir. 1998)

Here the *understandings* of the U.S. are *unmistakable*, as are the statements made by the U.S. Department of State for the United States, which have been filed with the U.N. (immediately infra) and placed on the world record; viz. that the necessary legislation was in place at the time the ICCPR treaty was ratified to provide for domestic effect of law (infra). These documents further state that the U.S. did not ratify the ICCPR treaty *until the U.S. knew* the necessary legislation was already in place to provide for domestic effect in law, at the time the ICCPR treaty was ratified on 8 June 1992; several months after the Congressional meeting and pre-ratification discussion of 2 April 1992, thereby **making the ICCPR treaty self-executing by definition.**

It is clear that at the time President Carter signed the treaty (5 October 1977) and during the Senate's pre-ratification discussion of the ICCPR treaty (2 April 1992), that most if not all of the necessary legislation was considered to be in place to provide domestic effect of law to the ICCPR treaty. This is stipulated by multiple Congressional Reports, officials at the Department of Justice (infra) and the U.S. Department of State. Between the pre-ratified Congressional Report of 2 April 1992 and the ratification of the ICCPR treaty on 8 June 1992, the position of the United States of America, in addition to the *understandings* on the Congressional record (passim) was *that the necessary legislation was in place to provide for the rights of individual U.S. citizens; otherwise the treaty would not have been ratified.*

> 121. Duly ratified treaties are binding on the United States …"supreme Law of the Land" under Article VI, cl. 2 of the U.S. Constitution. …. **In other instances, the United States does not take any new legislative action to accompany its ratification because the substantive obligations set forth in a particular treaty are already reflected in existing domestic law. For example, because the human rights and fundamental freedoms guaranteed by the International Covenant on Civil and Political Rights (other than those to which the United States has taken a reservation) have long been protected as a matter of federal constitutional and statutory law, it was not considered necessary to adopt special implementing legislation to give effect to the Covenant's provisions in domestic law** (emphasis added). Thus, that important human rights treaty was ratified in 1992 shortly after the Senate gave its advice and consent. (Common Core Document of U.S.; Fourth Periodic Report to U.N. Committee on Human Rights concerning ICCPR. December 2011)

The SCOTUS has specifically held that it is the clear treaty language (supra, *"declarations" do NOT change the language of the treaty or its meaning*), which determines if a treaty is self-executing. The language of the ICCPR treaty clearly provides *civil and political rights* to citizens of the nation States who ratify the treaty. The Senate of the U.S. received notification of this in accord with 1 U.S.C. §112b(a) and 22 C.F.R. §181.7 and have not objected or passed legislation to change the effect of the treaty. NO records suggest or imply, that the U.S. did not *understand* the meaning/intent of the ICCPR treaty based upon the terms and language of the treaty. The courts must honor that intent; they have erred in not doing so.

> Our role is limited to giving effect to the intent of the Treaty parties. When the parties to a treaty both agree as to the meaning of a treaty provision, … we must, … defer to that interpretation. *Sumitomo Shoji Am., Inc. v. Avagliano*, 457 U.S. 176, 185 (1982)

Congress was not ambivalent about it's intent, when during Congressional hearings, the Chairman of the Senate Foreign Relations Committee entered the following onto the record.

> …rights guaranteed by the covenant … cornerstones … democratic society…ratifying the covenant now … promote democratic rights and freedoms … rule of law in the former Soviet Republics, Eastern Europe, … democracy is taking hold. 138 Cong. Rec. S4781-01, 1992 WL 65154

Congress was also very clear about what these specific rights were.

> "…, **obtain compensation from … the appropriate governmental entity**." (emphasis added) U.S. Senate **Executive** Report 102-23 (102d Cong., 2d Sess.)

The Restatement of Foreign Relations clearly defines a self-executing treaty as one, which has domestic effect of law.

> 2) When an international agreement to which the United States is a party, manifests an intention that its provisions shall be effective under the domestic law … interpreted by the courts as self-executing under the law of the United States… Restatement (Second) of Foreign Relations Law § 154 (1965)

Specifically,

> (1) A treaty made on behalf of the United States in conformity with the constitutional limitations indicated in § 118, that manifests an intention that it shall become effective as domestic law of the United States at the time it becomes binding on the United States (a) is self-executing in that it is effective as domestic law of the United States Restatement (Second) of Foreign Relations Law § 141 (1965)

The 2 April 1992 pre-ratification hearing included a Major Treaty Provision. Since Major Provisions are not considered a required component of treaties, it is clear that the Senate went out of its way to deliberately establish for the record this Major Provision; specifically providing that the ICCPR treaty would have domestic effect of law providing an effective remedy for U.S. citizens whose ICCPR treaty rights are violated in U.S. jurisdiction.

> … to adopt legislation or other measures necessary to give effect to these rights; and to provide an effective remedy to those whose rights are violated. U.S. Senate Executive Report 102-23 (102d Cong., 2d Sess.).

The Federal Government has established through multiple statements, documents and actions, which have been unmistakably recorded for U.S. citizens, U.S. Courts and the World to see, that the necessary and proper legislation is and was in place to provide for domestic effect of law under the ICCPR treaty, in keeping with the provisions of the treaty and the U.S. Constitution.

> To make all Laws … necessary and proper for carrying into Execution …. U.S. Const. Art. I, § 8, cl. 18

When the *Supremacy Clause* (Article IV, § 2) was intentionally placed into the U.S. Constitution, it was added to address problems associated with British treaties; viz. British treaties required additional legislative action to be active and were therefore of little importance. To remove this problem, the *Supremacy Clause* was formulated to make all treaties judicially enforceable. (*Cf. 2* Max Farrand, The Records of the Federal Convention of 1787 at 393.)

> He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties,….U.S. Const. art. II, § 2, cl. 2

The documentation (passim) and enacting legislation (passim) of the ICCPR treaty is not only in keeping with the intent of the Founding Fathers and the *Supremacy Clause*, but is consistent with the multiple reports presented by plaintiff to the district court, in addition to the treaty proper. Given the Fourth periodic report and other documents (passim), it is clear that the necessary legislation was in effect at the time of ICCPR treaty ratification. Independent of any other position, the Fourth Periodic Report (supra) *supersedes* any earlier statements or actions, including e.g. any non-legally binding declaration.

> (1) A treaty … in conformity with the constitutional limitations indicated in § 118, that manifests an intention that it **shall become effective as domestic law** of the United States at the time it becomes binding on the United States **(a) is self-executing in that it is effective as domestic law of the United States, and (b) supersedes, inconsistent provisions of earlier acts of Congress** … (emphasis added) Restatement (Second) of Foreign Relations Law § 141 (1965)

The complete record *clearly stipulates* that the treaty was ratified *only after* it was determined that there was sufficient constitutional and statutory law to provide substantive rights for U.S. citizens in U.S. jurisdiction under domestic law, qui pro domina justitia sequitur, *that the treaty when ratified was by definition, self-executing*. Post-ratification Congressional Reports, Department of State documents and Department of Justice documents presented to the Law Committee on the Judiciary, all make it clear that the ICCPR treaty, has and had the necessary legislation in place to give effect under domestic law and by definition making it self-executing, effective 8 June 1992.

> …the Court reasoned that it "has traditionally considered as aids to a treaty's interpretation its negotiating and drafting history…and **the post-ratification understanding of the contracting parties**." (emphasis added) 525

> U.S. at 156. Northwest Austin Municipal Utility District Number One v. Holder, 2009 WL 788635 (U.S.), 21 (U.S. 2009)

Despite multiple post-ratification documents, the courts have failed to consider post-ratification or even ratification *understanding of the contracting parties*, when considering ICCPR treaty cases. Nonetheless, Nevada Courts *have held* that the U.S. State Departments view (supra) is to be respected as to international treaties.

> We are also persuaded by **the State Department's interpretation** (emphasis added)…. ("Respect is ordinarily due the reasonable views … the meaning of an international treaty."). *Garcia v. State*, 17 P.3d 994, 997 (Nev. 2001)

This Nevada position has been upheld by the SCOTUS ruling that the State Department view should be given great weight, since it is the responsible agency for executing/enforcing treaties.

> … the meaning attributed to treaty provisions by the Government agencies charged with their negotiation and enforcement is entitled to great weight, *id.* at 184-85., Northwest Austin Municipal Utility District Number One v. Holder, 2009 WL 788635 (U.S.), 20 (U.S.,2009)

Given the mass confusion, misuse and abuse of terminology, one should expect the State Department to clarify, as it did on the record, that ALL the necessary legislation was in place at the time the treaty was ratified to provide for domestic effect of law. Unfortunately, the District Court and defendant continue to erroneously and incorrectly use treaty terms and have erroneously selectively elected not to look beyond a pre-ratification declaration, when considering the impact of the ICCPR treaty upon U.S. citizens. It is the responsibility of the Executive Branch and its State Department to clarify this chaos to make certain the Laws of the Land are faithfully executed.

> He shall … such Measures as he shall judge necessary and expedient; … take Care that the Laws be faithfully executed, …. U.S. Const. art. II, § 3

From these relevant records previously not considered by the courts, it is transparently clear that the Government of the United States of America, *has stated on the record without hesitation* that the ICCPR treaty was NOT ratified until the "substantive laws set forth [in the ICCPR] treaty…already…exist[ed in] domestic law, making the treaty "self-executing" (supra). On 2 April 1992 Congress may not have considered the ICCPR treaty completely self-executing, but by 8 June 1992 the current position of the U.S. Department of State is that the necessary legislation required for domestic effect WAS in place or the treaty would not have been ratified; the declaration from 8 April 1992 notwithstanding. The Senate, the President and all other components of the U.S. government have NEVER disputed this! Since the U.S. Government ratified the treaty with this stipulation, the ICCPR treaty was by definition self-executing upon its ratification. This has not changed!

There is no ambiguity in the U.S. State Department written records, which specifically stipulate the ICCPR treaty was not ratified until the United States had ALL the necessary legislation in place to establish substantive rights under domestic law. Ergo, it is by definition self-executing.

> …the United States does not take any new legislative action to accompany its ratification … the substantive obligations … are already reflected in existing domestic law. (Fourth Periodic Report)

The Ninth Circuit has also held that a treaty is self-executing when it is enforceable in domestic courts without implementing legislation.

> A treaty is self-executing when it is automatically enforceable in domestic courts without implementing legislation. *Serra v. Lappin*, 600 F.3d 1191, 1197 (9th Cir. 2010)

Since no additional legislation was required to give domestic effect of law to the ICCPR treaty, *by the Ninth Circuit's very definition, the ICCPR treaty is self-executing*. Defendant has submitted no evidence that the United States Congress has amended any of the ICCPR treaty. The treaty remains intact and *self-executing by definition as ratified*.

Had the U.S. Senate NOT agreed with the terms of the treaty, it was NOT forced to ratify the treaty! The ICCPR treaty began with Eleanor Roosevelt, was unanimously adopted by the United Nations General Assembly on 16 December 1966 and entered into force on 23 March 1976. On 5 October 1977, President Jimmy Carter signed the treaty. The Senate didn't ratify the treaty until 8 June 1992, after it had been determined that the necessary legislation existed to provide for individual U.S. citizen rights under domestic law (Fourth Periodic Report, passim).

The Congressional *understandings* of the treaty as well as the statements made by Congress proves that the opinion of Congress on 2 April 1992 was that much of the needed legislation was already established for the guarantee of individual rights under the treaty. Upon ratification of the treaty months later, the position of the United States as noted in the Fourth Report (passim) is that the necessary legislation to ensure individual U.S. citizen rights *was in place* and both the Ninth Circuit and SCOTUS have ruled that such is the definition of a self-executing treaty. Under the *Supremacy Clause* of the U.S. Constitution this makes the ICCPR treaty with its individual rights and remedies, the *law of the land*.

In addition to the stipulated admission by the U.S. Government that the ICCPR treaty is self-executing, given the necessary legislation required to provide for domestic effect in law was in place at the time of treaty ratification, we now look to other court decisions to provide further confirmation that the ICCPR treaty is self-executing. Both the Seventh and Ninth Circuits have emphasized the legal significance of looking at *what the treaty was intended to do* in deciding if a treaty is self-executing.

> Whether a treaty is self-executing is an issue for judicial interpretation, Restatement (Second) of Foreign Relations Law of the United States, § 154(1) (1965), and courts consider several factors in discerning **the intent of the parties** to the agreement: (1) the **language and purposes of the agreement as a whole** (emphasis added); …. *Frolova v. Union of Soviet Socialist Republics* , 761 F.2d 370, 373 (7th Cir. 1985)

> The extent to which an international agreement establishes affirmative and judicially enforceable obligations without implementing legislation must be determined in each case by reference to many contextual factors …. *People of Saipan, By and Through Guerrero v. U.S. Dept. of Int.*, 502 F.2d 90, 97 (9th Cir. 1974)

The SCOTUS followed the *Saipan* decision by holding that the *purpose* of the treaty and its *objectives* are key to determining if a treaty is self-executing.

> There are at least four relevant factors … is **self-executing: (1) "the purposes of the treaty and the objectives of its creators**," …**We conclude, however, that it is the first factor that is critical to determine *whether* an executive agreement is self-executing**, (emphasis added) …. *Islamic Republic of Iran v. Boeing Co.*, 771 F.2d 1279, 1283 (9th Cir. 1985)

The Third Circuit concurred with its sister jurisdictions.

> … our role in treaty interpretation is limited to ascertaining and enforcing the **intent of the treaty parties**. (emphasis added) *….MacNamara v. Korean Air Lines*, 863 F.2d 1135, 1143 (3d Cir. 1988)

The SCOTUS further emphasizes the *purpose* of the treaty in making such decisions.

> …adherence to the language of the Treaty would not "overlook the **purpose of the Treaty**." (emphasis added) 638 F.2d, at 556. *Sumitomo Shoji Am., Inc. v. Avagliano*, 457 U.S. 176, 185 (1982)

There is no doubt from a detailed review of the record, that the United States understood that the purpose of the ICCPR treaty was to establish U.S. citizen *civil and political rights* and the United States has confirmed this *intention* by making it clear that the necessary legislation was in place at the time of treaty ratification to provide for domestic effect of law resulting in the ICCPR treaty being self-executing by definition, with remedies enforceable by the U.S. judiciary.

> A proposal by the United States at the Second Session of the Commission regarding the enforcement of the rights created by the ICCPR pursuant to Article 2 also sheds light on the intentions of the United States regarding both the question of **self-execution and the enforcement of these rights by the courts of the United States**. …
> a) … to all persons under its jurisdiction, including citizens ..., the enjoyment of these human rights and fundamental freedoms;
> b) that any person whose rights or freedoms are violated *shall have an effective remedy,* whether the violation has been committed by persons acting in an official capacity;
> c) that such remedies *shall be* ***enforceable by a judiciary*** (emphasis added) whose independence is secured....[53] *Igartua v. U.S.*, 626 F.3d 592, 631-32 (1st Cir. 2010)

The documents surrounding the ICCPR treaty confirm a judicial remedy intent by it's very wording.

> The negotiating history of the ICCPR reinforces the clear language of this treaty establishing individual, enforceable rights on behalf of persons situated as are Appellants, and obligating the United States to provide a judicial remedy in its courts to vindicate their violation. **To conclude otherwise is to ignore the plain words of the treaty as well as our basic constitutional duty to interpret international agreements as the Law of the Land**. (emphasis added) *Igartua v. U.S.*, 626 F.3d 592, 633 (1st Cir. 2010)

Here, there can be no doubt that the *purpose* of the ICCPR treaty is to provide for the *Civil and Political Rights* of individuals in their own country. It is impossible to read the treaty and not understand this purpose. Since treaty ratification is a voluntary action, as demonstrated by the amount of time between Presidential signature and Senate ratification of the treaty and given the Fourth Report (passim) confirmation that all necessary legislation was in place at the time of ratification, it would be incomprehensible, unconscionable and myopic for anyone to conclude that the ICCPR treaty did not have the necessary legislation to provide for domestic effect of law in U.S. courts, for U.S. Citizens in U.S. territory/jurisdiction as of the time of ratification; thereby making the treaty self-executing by definition.

There is NOTHING in the treaty proper, nor the Fourth Periodic report by the United States (passim) that would suggest anything but a self-executing treaty. It is by definition self-executing pursuant to the federal courts (supra). It is also clear that the purpose and the objective of the treaty are to establish civil and political rights for citizens within their own countries under domestic effect of law. The court has erred in failing to recognize ratification and post-ratification documentation, which by definition makes the ICCPR treaty self-executing.

c. The ICCPR treaty provides civil and political rights for U.S. Citizens in U.S. territory. It does not provide legal rights for non-U.S. citizens in U.S. jurisdiction, or for violations against U.S. Citizens in non-U.S. jurisdiction.

The agreement between nation States that ratify the ICCPR treaty is that the treaty establishes Civil and Political Rights for individual citizens within their own nations. It is clear from reading the ICCPR treaty and responses from the U.S. Government, that ICCPR provides rights to U.S. citizens in U.S. jurisdiction. In the **Advance Version** of the **Fourth Periodic Report**, the U.S. made it clear that ICCPR treaty rights for U.S. citizens must be acknowledged and respected. With specific detail given to jurisdictional issues, the U.S. further stipulated:

> 504. Article 2(1) of the Covenant states that "[e]ach State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind."

This same report specified that the United States is *legally obligated under articles 2 and 26* to ensure these individual rights; consistent with the treaty *understandings*, in contrast to *declaration 1* obfuscation.

> 605. In paragraph 25 of its Concluding Observations, …acknowledge its **legal obligation under articles 2 and 26** (emphasis added) to ensure to everyone the rights recognized by the Covenant…

There is no confusion as to (1) the *understanding* of the treaty intent or (2) to what the United States was agreeing to when it ratified the ICCPR treaty as signed by President Carter or (3) that the entirely treaty, including articles 1-27, is expressly self-executing by definition. It would be the ultimate hypocrisy and unconscionable to the plaintiff, for the

U.S. to call for action to be taken upon other countries violating the rights of their citizens under the ICCPR treaty and then for the U.S. to violate these same rights with its own citizens and expect no action to be taken by U.S. courts. The record shows the U.S. has been working diligently to bring to the attention of the world those nation States that are violating the ICCPR treaty. A few examples, which are by no means inclusive, are:

1. Calling for a renewed focus on the Government of the Islamic Republic of **Iran's** violations of internationally-recognized human rights as found in the Universal Declaration of Human Rights. 111th CONGRESS, 2nd Session 02/11/2010 PASSED SENATE: CR S592; CR S571).

2. Whereas the Government of **Syria**, led by President Bashar al-Assad, responded to protests by launching a violent crackdown, committing human rights abuses, and violating its international obligations, including the International Covenant on Civil and Political Rights (ICCPR) and …112th CONGRESS, 1st Session

3. Whereas the Government of the Islamic Republic of **Iran** is a signatory to the United Nations International Covenant on Civil and Political Rights, adopted December 16, 1966 (ICCPR)… the Government of the Islamic Republic of Iran regularly violates its obligations under the ICCPR,… 113th CONGRESS, and 1st Session.

In fact, the U.S. issued a June 2012 report noting the following ICCPR treaty violations.

"Accountability and redress for human rights violations …the USA notes whether there is "access to an independent and impartial court to seek damages for or cessation of an alleged human rights violation." On accountability,…to investigate human rights violations and to bring perpetrators to justice. For example, inter alia, the State Department reported the following":

Afghanistan: "Official impunity and lack of accountability were pervasive"
Belarus: "the government often did not investigate reported abuses or hold perpetrators accountable."
Cuba: "Members of the security forces acted with impunity in committing numerous, serious civil rights and human rights abuses."
Democratic Republic of the Congo: "Impunity remained a severe problem, … despite credible evidence of their direct involvement in serious human rights abuses or failing to hold subordinates accountable for such abuses."
Kyrgyzstan: "The central government's inability to hold human rights violators accountable allowed security forces to act arbitrarily and emboldened law enforcement to prey on vulnerable citizens."
Mauritania: "The government rarely held security officials accountable or prosecuted them for abuses."
Myanmar: "The government generally did not take action to prosecute or punish those responsible for human rights abuses, with a few isolated exceptions."
Pakistan: "Lack of government accountability remained a pervasive problem. Abuses often went unpunished, fostering a culture of impunity".
Turkmenistan: "… complaints of abuse by law enforcement agencies did not conduct any known inquiries that resulted in members of the security forces being held accountable for abuses."
Zimbabwe: "Security forces were rarely held accountable for abuses."

Clearly it is and has been the position of the U.S. that the ICCPR treaty establishes individual citizen rights for people within their own countries, including the United States; *judicially enforceable rights*.

This position is supported and confirmed by the U.S. *verbatim report* to the U.N. by Matthew Waxman, Head of the U.S. Delegation, U.N. Human Rights Committee. Mr. Waxman states the U.S. recognizes the requirement to provide individual U.S. citizen rights in U.S. territory under the treaty.

> It is the long-standing view of my government that applying the basic rules for the interpretation of treaties … establishes that States Parties are required to respect and ensure the rights in the Covenant only to individuals who are BOTH within the territory of a State Party and subject to its jurisdiction … and I quote, "within its territory and subject to its jurisdiction." 2006 WL 2007216

Both Mr. Waxman's statement and the Department of State's Congressional Report are consistent with defense counsel's superiors at the Department of Justice (DOJ). On 16 December 2009, it is clear that the DOJ held the same view, which has not been recanted. In a statement before the Subcommittee on Human Rights and the Law Committee on the Judiciary, U.S. Senate, Mr. Thomas E. Perez, Assistant Attorney General for the DOJ, presented a statement at the hearing entitled "*The Law of the Land: U.S. Implementation of Human Rights Treaties*."

> **"The International Covenant on Civil and Political Rights**, adopted by the U.N. General Assembly in 1966, and ratified by the United States Government in 1992, proclaims that "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, **justice** and peace in the world." This recognition is **at the heart** of the civil rights movement and of the civil rights law enforcement program **headed by the Department of Justice"** (emphasis added).

Mr. Perez also stated:

> "… that within the Department of Justice, the Criminal Division and the National Security Division share the commitment of the Civil Rights **Division to conduct our activities in a manner that is consistent with the human rights treaties discussed above**." (emphasis added)

Said treaties including the ICCPR treaty. These statements made by defense counsels superior, viz. the Assistant Attorney General for the DOJ, contradicts defense counsel's position. Defense counsel provides no evidence that this position has changed and insubordinately and in bad-faith presents to the Court a position contrary to his superior.

Consistent with the ICCPR treaty, the U.S. has long held that the ICCPR treaty provides no rights to non-Americans or to Americans whose treaty rights are violated in non-U.S. territory. Both of the cases discussed by the District Court and all but two of the cases mentioned by the defendant are cases, which are irrelevant (FRE 401) to this case. They are NOT probative to decision making regarding remedies for a U.S. citizen in U.S. territory whose ICCPR rights have been violated. The only cases presented by defense counsel which have any bearing on this case, are the two cases focusing on declaration 1, which as discussed supra, (1) has no legal effect upon domestic law, (2) does not change the treaty obligations to American citizens, (3) does not limit U.S. obligations, given that the necessary legislation was in place at the time of treaty ratification (supra) to provide for domestic effect of law, (4) is not binding on the U.S. Courts, (5) does not change the understandings, reservations or Major Provision of the ICCPR treaty (6) and therefore are irrelevant (FRE Rule 401) to this case, (7) misleading (FRE Rule 403) and obfuscating. The district court only refers to *Cornejo* and

Sosa in its decision to dismiss. Neither of these cases is applicable to the ICCPR treaty as both involved Mexican nationals, not U.S. citizens. These cases are therefore irrelevant (FRE Rule 401) and misleading (FRE Rule 403) in considering the ICCPR treaty. They demonstrate further court error in dismissal of this case and subsequent failure to grant the MSJ with SUFs, default and default judgment (infra). The cases presented by the defendant included:

CASES INVOLVING NON-U.S. CITIZENS. [NOT RELEVANT.]

a. *Cornejo v. County of San Diego,* 504 F.3d 853 (9th Cir. 2007).
Mexican national and the Vienna Convention, which (infra) does not provide individual treaty rights.

b. *Medellin v. Texas*, 552 U.S. 491 (2008).
Mexican national and the Vienna Convention, which (infra) does not provide individual treaty rights.

c. *Sosa v. Alvarez-Machain* , 542 U.S. 692 (2004).
A Mexican national and the Alien Tort Statute and Federal Tort Claims Act.

d. *Padilla-Padilla v. Gonzales*, 463 F.3d 972 (9th Cir. 2006).
Aliens petitioned under Board of Immigration Appeals (BIA).

e. *Martinez-Lopez v. Gonzales*, 454 F.3d 500 (5th Cir. 2006).
Alien petitioned for review from order of the Board of Immigration Appeals

f. *Guaylupo-Moya v. Gonzales*, 423 F.3d 121, 136 (2d Cir. 2005).
Alien denied waiver under the Illegal Immigration Reform and Immigrant Responsibility Act.

g. *Aldana v. Del Monte Fresh Produce, N.A., Inc.*, 416 F.3d 1242 (11th Cir. 2005).
Guatemalan labor unionists sued under Alien Tort Act and Torture Victim Protection Act.

CASES INVOLVING NON-U.S. TERRITORY. [NOT RELEVANT.]

a. *Igartua-De La Rosa v. U.S.*, 417 F.3d 145 (1st Cir. 2005).
Puerto Rico a Commonwealth and not in U.S. jurisdiction.

DIFFERENT ISSUES COMPLETELY UNRELATED TO AMERICAN CITIZENS SEEKING RIGHTS IN AMERICAN JURISDICTION. [NOT RELEVANT.]

a. *Whitney v. Robertson*, 124 U.S. 190 (1888).
This case addresses the effect of statutory changes to a treaty. Not the subject of this case.

b. *Robertson, Collector, etc.*, 112 U.S. 580, 598 (1884).
What defendant refers to as the "Head Money Cases" Like *Whitney v. Robertson*, this case has to do with statutes passed following a treaty, which changes the treaty. Again, not applicable to this case.

c. *Islamic Republic of Iran v. Boeing Co.*, 771 F.2d 1279 (9th Circ. 1985).
This involves Executive Order and the country of Iran and an American aircraft manufacturer; not U.S. citizens.

CASES INVOLVING DECLARATION ONE. [*PRE-RATIFICATION DECLARATION .]*

a. *Rotar v. Placer County Super. Ct.,* CIV S07-0044 DFLEFBP, 2007 WL 1140682 (E.D. Cal. 2007) report and recommendation adopted, CIV-S07-0044DFLEFBPS, 2008 WL 4463787 (E.D. Cal. 2008).

Plaintiff seeks to bring a claim under 42 U.S.C. § 1983 for violations of his constitutional rights. There is a mention of ICCPR and declaration 1 *referring to White* (infra) case.

b. *White v. Paulsen,* 997 F. Supp. 1380 (E.D. Wash. 1998).
Former prisoners sued physician, alleging in part that they were subjected to nonconsensual medical experimentation (radiation) while in custody of State of Washington, in violation of international law's prohibition of crimes against humanity. *Since Rotar is based upon this case, this is the only actual case presented by defendant, which considers an American citizen in U.S. territory*.

This case has been discussed (supra) and emphasizes the actual *intent* of the ratifying nation States.

The Ninth Circuit has expressly stated that its subordinate courts must look to relevant "contextual factors," including: the purposes of the treaty and the objectives of its creators …. Of these … "it is the first factor that is critical to determine whether an executive agreement is self-executing, …" ("if the parties' intent is **clear from the treaty's language courts will not inquire into the remaining factors**.") (emphasis added) *White v. Paulsen*, 997 F. Supp. 1380, 1385-86 (E.D. Wash. 1998)

Defendant cites thirteen (13) cases, with eleven (11) being completely irrelevant (FRE 401) to this case, further demonstrating bad-faith and obfuscatory efforts on the part of defendant and defense counsel. Of the remaining two (2) cases, one simply refers to the other case, leaving a single (1) case (*White*) for discussion. *White* is based upon a pre-ratification declaration, which as already discussed has no legal effect and does not bind the courts.

If it is the *intent* to make a treaty non self-executing, it must be so stated *within the treaty itself*, the *understandings*, or the *reservations*. Declarations (1) are NOT part of the treaty, (2) do NOT change the intent of the treaty, (3) its effect under domestic law, (4) nor bind the courts. It is truly unconscionable to the plaintiff as a physician, research scientist and grant reviewer for HHS-HRSA, that if in fact *White* was medically experimented upon as the facts indicate, that following *Tuskegee* and other atrocities conducted on U.S. citizens under U.S. Government control, that such actions are not seen to violate the ICCPR Civil rights of the involved U.S. citizens occurring on U.S. soil. The imbalance between a declaration, which is NOT binding upon U.S. courts, the law or the treaty itself, and the acts so conducted in *White*, is incredulously reminiscent (Shades of Mengele) of actions taken by the German Government against its citizens from 1939-1945 and the failure of German Courts. This was the very reason for enacting the ICCPR treaty to begin with (supra).

The importance of distinguishing between U.S. citizens and non-citizens cannot be overemphasized. Aliens do not have U.S. Constitutional, Statutory or Treaty rights and U.S. citizens do not have legal rights in other countries. In addition to Waxman's report (supra), another recent case in the District of Columbia in July of 2013 established the difference between cases involving U.S. citizens and non-citizens and the Courts recognition of ICCPR treaty rights. Here Justice Kessler points out that she lacks jurisdiction to act *only because* the plaintiff is an alien citizen.

[N]o court, justice, or judge shall have jurisdiction to hear or consider any other action against the United States

> or its agents relating to any aspect of the **detention,** transfer, **treatment,** trial, or **conditions of confinement** of an **alien** (emphasis added). *Dhiab v. Obama*, CIV.A. 05-1457 GK, 2013 WL 3388650 (D.D.C. 2013)

Justice Kessler also keenly points out that individual rights have been violated in this case, which she would have acted upon under Article 7 of the ICCPR treaty, had the petitioner been a U.S. citizen.

> …the Court feels just as constrained now, as it felt in 2009, to deny this Petitioner's Application for lack of jurisdiction. The Court also feels constrained, however, to note …Petitioner has set out in great detail … force-feeding of prisoners violates Article 7 … International Covenant on Civil and Political Rights *Dhiab v. Obama*, CIV.A. 05-1457 GK, 2013 WL 3388650 (D.D.C. 2013)

Justice Kessler specifically addressed Article 7 of the ICCPR treaty, further supporting the execution of the ICCPR treaty and treaty rights for U.S. citizens in the Federal District of Columbia. The Court went on to reprimand Obama for violating the ICCPR rights of the prisoner, which could not be addressed by the Court due to jurisdictional limitation only; not a failure of the treaty to be executable. Such is NOT the case here! Here, plaintiff IS a U.S. citizen, filing for indemnification in a U.S. Court, within U.S. jurisdiction. There is an *actual duty* of the courts to examine government actions in cases involving U.S. citizens in U.S. territory, consistent with the terms and violations of the ICCPR treaty. *Here a U.S. military tribunal has also recognized ICCPR treaty rights.*

> A trial of Mr. Hicks in either of these forums would likely have met the procedural requirements of U.S. law as stated in the ICCPR … and provides remedies for the accused if the government violates those procedural rights.
>
> … nothing in U.S. law that relieves this commission from the responsibility of providing the procedural safeguards **required by U.S. law as stated in the ICCPR**… an accused's procedural safeguards at trial set forth in these treaties the U.S. has ratified apply to a military commission **just as they do to trials in federal court** (emphasis added) ….
>
> The commission has the power and **duty** (emphasis added) to examine the actions of the government in this case, and formulate a remedy … *Title: U.S. of Am.*, 2004 WL 3088501 (D.O.T.C.A.B. Oct. 23, 2004)

Again, it is the relationship of a citizen to his/her nation State, which are key to ICCPR treaty rights.

> The Court's "first focus interpreting the ICCPR is its plain language." *Duarte-Acero,* 208 F.3d at 1285 (citations omitted). Article 2(1) of the ICCPR defines to which individuals the signatory state must give these rights: Each State Party to the present Covenant undertake to respect and to ensure to all individuals *within its territory and subject to its jurisdiction* the rights recognized in the present Covenant ....
> Moreover, as the Government correctly notes, the Eleventh Circuit's recent interlocutory opinion provides some guidance in interpreting this provision. In *Duarte-Acero,* the Circuit stated that the provisions of the ICCPR "**are to govern the relationship between an individuals and his state**....(emphasis added) In other words, the ICCPR is concerned with conduct that takes places [sic] within a state party. *Duarte-Acero,* 208 F.3d at 1286 (11th Cir. 2000)

The present case involves a U.S. citizen within U.S. territory with legislation implemented to give the ICCPR treaty domestic effect in accord with the U.S. Constitution.

> On September 8, 1992, the United States became party to the ICCPR. As Defendants correctly point out, a properly ratified treaty is the supreme law of the land. U.S. Const. art VI, § 2, cl. 2." … *U.S. v. Benitez*, 28 F. Supp. 2d 1361, 1363 (S.D. Fla. 1998) *aff'd sub nom. U.S. v. Duarte-Acero*, 208 F.3d 1282 (11th Cir. 2000)

and again in *Duarte-Acero*:

> On September 8, 1992, the United States, … became a party to the ICCPR, at which time the treaty became, coexistent with the United States Constitution and federal statutes, the supreme law of the land. *U.S. v. Duarte-Acero*, 208 F.3d 1282, 1284 (11th Cir. 2000)

The Eleventh Circuit further held that *the legislative history and ratification* of the ICCPR treaty clearly shows a guarantee of civil and political rights for individuals within their own countries.

> Moreover, as the Government correctly notes, … In other words, the ICCPR is concerned with conduct that takes places [sic] within a state party." *Duarte-Acero,* 208 F.3d at 1286. …**This construction is reinforced if the legislative history of the ratification of the ICCPR by the Senate is examined**. *See U.S. Sen. Exec. Rep. 102-23,* 31 I.L.M. 645, 648 (102d Cong, 2d Sess, 1992). The Senate Executive Report states that the ICCPR "**guarantees a broad spectrum of civil and political rights, rooted in basic democratic values and freedoms, to all individuals *within the territory or under the jurisdiction of the States Party***." *Id.* (**emphasis added**). *U.S. v. Duarte-Acero*, 132 F. Supp. 2d 1036, 1041 (S.D. Fla. 2001) aff'd, 296 F.3d 1277 (11th Cir. 2002)

These decisions have not been overturned, questioned or considered vague *by any court*.

Of the only two cases presented by the defendant considering an American citizen in U.S. territory, *Rotar* and *White*, neither was mentioned by the District Court as a reason for dismissing the case and neither has appeared before the Ninth Circuit. *Rotar* simply refers to *White*, while *White* simply refers to declaration 1, which is neither law, changes the treaty nor is binding on the courts under domestic law. The *White* opinion as discussed supra emphasizes the intent of the treaty language. The INTENT of the *parties* when ratifying the ICCPR treaty signed by the President of the United States, was and remains CLEAR! Declaration 1 does not and CANNOT change the intent of the treaty, the meaning of the treaty, the understandings, reservations or Major provisions of the ICCPR treaty. The post-ratification documents clearly stipulate domestic effect of law was in place by ratification of the ICCPR treaty, making it self-executing by definition.

As stated passim a declaration has NO binding effect upon a court and the U.S. Government has stated on the record that the treaty was not ratified until the necessary legislation was in place to give the treaty full effect under domestic law; viz. the Civil and Political rights of individuals within their own nation states. The U.S. courts and the Asst. A.G. for the DOJ have added to the position of the U.S. State Department; viz. that the ICCPR treaty provides for U.S. citizen remedial rights when violation of the ICCPR treaty has occurred in U.S. jurisdiction. The court erred in dismissing the case, stating there were no U.S. citizen rights under the ICCPR treaty based upon *Cornejo* and *Sosa*.

d. The ICCPR treaty provides remedies for U.S. Citizens, when their ICCPR Civil and/or Political Rights have been violated in U.S. territory.

The understandings and reservations of the ICCPR treaty do NOT limit the remedies of U.S. citizens, whose

rights under the ICCPR treaty have been violated. One need not be a scholar of Constitutional Law, International Law or Treaty Law to distinguish between the Vienna Convention, (which defendant uses to infer (supra) there are no rights or remedies available to U.S. citizens under the ICCPR treaty) and the ICCPR treaty itself. Clearly, the Vienna Convention does not establish individual rights.

> "Realizing that the purpose of such privileges and immunities is not to benefit individuals but to ensure the efficient performance of the functions of diplomatic missions as representing States," (Vienna Convention on Diplomatic Relations done at Vienna on 18 April 1961)

The defendant's use of such Vienna Convention cases to refute U.S. citizen rights under the ICCPR treaty, shows either an unreasonable, reckless, or deceptive bad-faith approach to reviewing and submitting cases for consideration, consistent with defendants bad-faith already partially discussed supra.

By *contrast* the ICCPR treaty Preamble clearly articulates what the entire treaty is about; viz. *individual citizen rights.* The *intent* of those reading and signing this treaty is unquestionable.

ICCPR PREAMBLE -- The States Parties to the present Covenant

> Considering that, in accordance with …recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice …,
>
> Recognizing that these rights derive from the inherent dignity of the human person,
>
> Recognizing that, … the ideal of free human beings enjoying civil and political freedom and … can only be achieved if … everyone may enjoy his civil and political rights, …,
>
> Considering the obligation … promote …respect … observance of, human rights and freedoms,
>
> Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive … rights recognized in the present Covenant,

The defendant has submitted no evidence that the United States has amended the ICCPR treaty or its *intent*. Hence the ICCPR treaty remains intact as ratified, which according to the Fourth Report submitted from the U.S. Department of State (passim), was ratified only after it was determined that all necessary legislation was in place to provide for domestic effect of law, providing for individual U.S. citizen rights and remedies as provided for by the treaty.

Plaintiff has brought to the Court's attention the necessary documents, statutes, reports, et cetera, which have demonstrated that the *understandings* and *actions* taken by the U.S., affirm that many of the legislative requirements were deemed to already existed by 2 April 1992 and that all necessary legislation existed by 8 June 1992 at the time of treaty ratification, consequently making the ICCPR treaty self-executing by definition. That having been proven, it follows that the *rights* of U.S. citizens follow the plain language (The Congressional *Understanding*) of the treaty and that it is the Courts

Constitutional obligation to guarantee and protect plaintiff's rights.

> … not self-executing. … rests on a shaky foundation. Firstly, in *Medellín,* the Supreme Court was dealing with the Vienna Convention and not the ICCPR, … does not demonstrate that the Supreme Court intended to express a view as to whether the ICCPR, in particular, is or is not self-executing.[26] The Supreme Court,…did not engage in an analysis of either the ICCPR's text or it history, … did not inquire into the post-ratification understanding of the signatory nations as to whether the ICCPR is self-executing. … did not, however, present a comparable analysis with respect to the ICCPR because this was not an issue before the Court. ….It is the courts and not other branches of government that, upon examining a treaty's text (or when its meaning is not apparent from the text, its history), must determine whether the treaty creates individual rights …. *Igartua v. U.S.*, 654 F.3d 99, 108-09 (1st Cir. 2011)

Hence, *Medellin's* interpretation of the ICCPR treaty was flawed, not only because it was not about a U.S. citizen, but also because it addressed a treaty (viz. the Vienna Convention), which did not provide for individual rights. The post-ratification ICCPR documents were never considered. Post-ratification documents have clearly established that the terms and subject of the treaty itself is to provide individual treaty rights. The ICCPR treaty is substantively different from the Vienna Convention. Again, considerable effort has been made to get the court to look at (1) the FTCA or (2) the Vienna Convention or (3) to confuse *declaration* with *reservation*, *understanding* or treaty *intent*.

> 122. ….Whether treaty provisions give rise to individually enforceable rights in U.S. courts depends on a number of factors, including the **terms**, structure, history and **subject of the treaty**. (emphasis added) (Common Core Document of the U.S.A.: Submitted with the Fourth Periodic Report of the USA to the United Nations Committee on Human Rights concerning the International Covenant on Civil and Political Rights. 30 December 2011)

As has been demonstrated, the Vienna Convention does not implement individual rights. In contrast, the Preamble and even the very title of the *International Covenant on Civil and Political Rights* (ICCPR) treaty, clearly and boldly establishes this treaty is about human rights and specifically the individual rights of people living in the nation states that ratify this treaty.

To determine if such rights exist for U.S. citizens, the language of the treaty, ALL the legislative history, reports made to Congress, including those by the DOJ and the record of the United States, as required by its periodic reports concerning the ICCPR, must ALL be taken into account. It is the failure to do this, which has resulted in so much harm, injustice and error to date. These records show that U.S. citizens have substantive, procedural and remedy rights under the ICCPR treaty, consistent with what the Founding Fathers intended when they established the *Supremacy Clause*. The Court erred in that (1) the ICCPR treaty was ratified by the Senate of the United States *only after the Senate had determined that all necessary legislation already existed (supra) to give legal effect with rights defined by the treaty itself*, (2) the treaty was signed by the President of the United States but not ratified until the necessary legislation was in place

to give legal effect to the treaty, (3) making it self-executing by definition and (4) the law of the land under the *Supremacy Clause* of the United States Constitution, to which (5) the court has the obligation to enforce U.S. citizen rights. The Court additionally erred in failing to find for the plaintiff's MSJ with SUFs, default and default judgment against defendant (infra).

The United States of America through its District Court for the Northern District of Nevada has denied plaintiff his ICCPR treaty rights by *procedural actions contrary to law.* Having been found guilty in Federal court and being in Federal custody while having committed no crimes, plaintiff filed suit for indemnification under the ICCPR treaty. The proofs for lack of crimes were sufficiently established in both the MSJ with SUFs and the administrative documents, discussed passim. Defendant has NEVER denied plaintiff's actual innocence nor disputed these documents. Subsequent motions and statutory time limits for doing so have long passed. Specifically rights and remedies under the ICCPR treaty include but are not limited to the following.

> Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (*International Covenant on Civil and Political Rights (Ratified 8 June 1992), Article 2(3)*)
>
> All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. *Id*, Article 14(1)
>
> … the person who has suffered punishment as a result of such conviction **shall be compensated** according to law, …. *Id*, Article 14(6)
>
> No one shall be held guilty of any criminal offense … any act or omission which did not constitute a criminal offense, under national or international law, at the time when it was committed…. *Id*, Article 15(1)

The Courts have specifically noted that legislative history clearly establishes U.S. citizen rights, enforceable in U.S. courts.

> Further, the conclusion that the ICCPR creates individual rights, enforceable in the courts of the United States, is abundantly clear **from the negotiating history of the Treaty**. (emphasis added) *See generally* Bossuyt, *supra* note 34. Illustrative of this is the Report of the Commission on Human Rights, 5th Session (1949), 9th Session (1953) …. *Igartua v. U.S.*, 626 F.3d 592, 630-31 (1st Cir. 2010)

It has been and remains the position of the United States Government that ICCPR treaty remedies in the United States applies only to U.S. citizens within U.S. jurisdiction. In fact, on 22 May 2012, less than two years ago, the United States again emphasized individual U.S. citizen rights under article 2(1).

> Each State Party to the present Covenant undertakes to respect and to ensure to all individuals … its jurisdiction **the rights recognized in the present Covenant** (emphasis added),…. [Human Rights Comm., Fourth Periodic report: United States of America, ¶505, U.N. Doc. CCPR/C/USA/4 (May 22, 2012) available at http://daccess-ddsny.un.org/doc/ UNDOC/GEN/G12/429/66/PDF/ G1242966.pdf?OpenElement

Neither *Benitez* nor *Duarte-Acero* have been overturned or even questioned and neither is considered vague. Furthermore they are both in full agreement with the Fourth Periodic Report (passim) and other federal reports and documents discussed. The Federal Government through multiple statements, documents and actions have clearly established on both the U.S. and World records, that the necessary legislation is and has been in place to establish domestic effect of law for the ICCPR treaty in keeping with the provisions of the treaty and the *Supremacy Clause* of the U.S. Constitution. There is no question the ICCPR treaty legislation satisfied the *necessary and proper* requirements and consequently is self-executing by definition with remedies available to U.S. citizens in U.S. courts within U.S. jurisdiction. This case is not about (A) the FTCA, (B) declarations, which have no affect upon the treaty or the courts, (C) the Vienna Convention or (D) any other obfuscating (FRE 403) issue. It is about a U.S. citizen having ICCPR treaty rights violated in U.S. territory, for which the U.S. Courts are obligated to provide indemnification, independent of the origin of that violation.

V. The Legal Standard for stating a claim has been met!

The District Court erred in stating the legal standard for stating a claim was not meet under *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007), the Fed. R. Civ. P. 8(a)(2) or *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). As stipulated to by the Court, there are two required elements to state a claim pursuant to *Iqbal*. The *first element* focuses on the assumption of truth (*Id*. at 679) of the well-plead factual allegations, of which the court has not specified a deficiency to this element of the case. Since this element has not been ruled deficient by the Court, plaintiff notes the MSJ with SUFs, were included with complaint filed on 26 March 2013 and served on defendant on that date. Plaintiff has therefore satisfied this first element required to state a claim for relief.

> (a) Claim for Relief. A pleading that states a claim for relief must contain:
> **(1)** … unless the court already has jurisdiction and the claim needs no new jurisdictional support;
> **(2)** a short and plain statement of the claim showing that the pleader is entitled to relief; and
> **(3)** a demand for the relief sought, …. Fed. R. Civ. P. 8
>
> "The complaint would have to indicate … ("a short and plain statement of the claim showing **that the pleader is entitled to relief,**" (emphasis added) Rule 8(a)(2))" *Am. Nurses' Ass'n v. State of Ill.*, 783 F.2d 716, 723 (7th Cir. 1986)

The defendant has *consented* to the MSJ with SUFs, which were contained in the complaint, pursuant to the Fed. R. Civ. P. and Nevada Local Rules (infra). Since, defendant has *consented* to these facts pursuant to the Fed. R. Civ. P. time limits, the Nevada Local Rules (infra), and per SCOTUS precedent cases (*Anderson*, et al., infra), said consent by defendant equals a finding that the facts are true and not disputed. Finally, when the motion to dismiss was filed, the court

was REQUIRED to treat ALL the factual allegations by plaintiff as TRUE, including the MSJ with SUFs, which compose the complaint.

> In addition, *when ruling on a defendant's motion to dismiss*, **a judge must accept as true all of the factual allegations contained in the complaint**. (emphasis added) *Bell Atlantic Corp., supra,* at 555 – 556, 127 S.Ct. 1955 … *Erickson v. Pardus* 551 U.S. 89, 93-94 (2007)

The *second element*, requires that these facts must allow the court to reasonably conclude the defendant is liable for the misconduct. Here the court raises *Erickson* regarding *pro se* filings.

> Specific facts are not necessary; **the statement need only " 'give the defendant fair notice of what the ... claim is and the grounds upon which it rests**.' "(emphasis added) *Bell Atlantic Corp. v. Twombly,* 550 U.S. 544, 555, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007) (quoting *Conley v. Gibson,* 355 U.S. 41, 47, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957)). *Erickson v. Pardus*, 551 U.S. 89, 93 (2007)

The defendant has NEVER denied plaintiff's actual innocence; only that plaintiff has no ICCPR treaty rights to hold defendant liable. The entire contention has been based upon a pre-ratification declaration, which has NO legal effect upon the treaty or the courts (supra). As discussed supra, the ICCPR treaty specifically provides for remedies to U.S. citizens, in U.S. jurisdiction for violations of the treaty. The U.S. Government has stipulated, *on the record*, that the necessary legislation was in place at the time the ICCPR treaty was ratified, thereby providing for these rights and redress of such wrongs and liabilities. Plaintiff has therefore met the *second element* under the ICCPR treaty, required to establish the legal standard for stating a claim.

The DISCUSSION by the court in its dismissal of this case is conditional on a single non self-executing *declaration* made pre-ratification and reverberated since then. The Court has also erred in referring to a non self-executing *declaration* as an express *understanding*. IT IS NOT (supra)! There is a MAJOR difference between *understandings* and *declarations* and their effect upon the ICCPR treaty, domestic law and the courts. The important differences between understandings and declarations have already been discussed in detail. Finally, both the District Court and defendant/defense counsel have erred in referring to either *Cornejo* or *Sosa*, in that neither case applies to a U.S. citizen, making them inapplicable to this or any ICCPR treaty case. The Court erred in not recognizing the legal standard in this case has been met by stating a claim for indemnification by plaintiff for violation of plaintiff's ICCPR treaty rights by the defendant. Since the ICCPR treaty had the necessary legislation in place to provide domestic effect of law at the time of treaty ratification and has not been amended, the treaty is to be treated as the law of the land equal to the Constitution under the *Supremacy Clause* and it is the Courts obligation to see that both the plaintiff and treaty are so recognized. The court also erred in failing to grant the MSJ with SUFs, the default and default judgment. The legal standard has been met!

VI. This is the first ICCPR treaty case to be heard by the Ninth Circuit Court of Appeals involving a U.S. citizen, in U.S. territory providing for indemnification under the treaty, looking at post-ratification documents and actions by the U.S. Government and recognizing the difference between declarations, reservations, understandings and a major provision as stipulated to by the U.S. Government and Federal Courts. The District Court erred in referring to non-relevant cases and dismissing this case, while focusing on a declaration which has no binding effect upon the courts or the treaty and failing to review the ratification and post-ratification documentation stipulating the treaty has domestic effect of law, which make it self-executing by definition as defined by the SCOTUS and the Ninth Circuit Court of Appeals.

Between the MSJ, the SUFs and the demonstration and documentation of administrative appeal, plaintiff has unquestionably demonstrated no crime has been committed and his ICCPR treaty rights have been violated. Defendant has not once disputed plaintiff's innocence. The *absence of dispute regarding the genuine issues of facts* satisfies the first element required for the court to grant plaintiff's MSJ.

This case is about a U.S. citizen whose treaty rights were violated by the U.S. Government, in U.S. territory, under the ICCPR treaty as duly ratified by the U.S. Senate and *executed by definition* under legislation required to provide for domestic effect of U.S. law in U.S. Courts. It is the Court's obligation to enforce U.S. citizen rights under the *Supremacy Clause* or find the treaty unconstitutional.

> … duty of the judicial department to say what the law is. … apply the rule to particular cases, must of necessity expound and interpret that rule. *Marbury v. Madison,* 5 U.S. 137, 177 (1803)
>
> If then the courts are to regard the constitution; and the constitution is superior …the constitution, … must govern the case to which they both apply. *Marbury v. Madison*, 5 U.S. 137, 178 (1803)

The failure of Courts to differentiate the significant difference between *understandings*, *reservations* and *declarations* and the failure to differentiate between U.S. citizens and non-U.S. citizens, required in determining the applicability of ICCPR treaty violations, demonstrates further errors committed by the District Court and the defendant. As noted, there has been NO effort by the Courts to obtain ratification or post-ratification documentation to date in considering these cases. The Courts and the District Court in particular have erred in not doing so and therefore cannot possibly interpret the Constitutionality of the ICCPR treaty and its application to U.S. Citizens. As such, this appeal is the first to provide the necessary detail to demonstrate that by definition, the ICCPR treaty was and is self-executing as of the time of ratification as stipulated to by the U.S. Governments own documents provided supra. This opening appeal while limited is longer than the customary length due to the number of egregious errors committed and the *need to place on the record,*

documents which have previously been ignored. ***Ignoratio elenchi ab initio et ignorantia legis neminem excusat!*** It is apparent from the lack of discussion of the above issues, that no Court, has considered the ratification and post-ratification documentation establishing U.S. citizen rights under the ICCPR treaty. The legal right of plaintiff to relief and indemnification under the ICCPR treaty as a *matter of law* (second element for MSJ) is established considering these previously ignored documents and actions taken by the U.S. government. Hence, both elements for MSJ have been met as have the legal standard for stating a claim (supra).

The defendant has submitted no evidence that the U.S. Congress has amended the ICCPR treaty. Hence the treaty remains intact as ratified, which according to the Fourth Report (passim) submitted by the U.S. Department of State and entered onto the written record, was ratified only after it was determined that all necessary legislation was in place to provide for domestic law, providing for individual U.S. citizen rights and indemnification as provided by the ICCPR treaty.

It is the obligation of article III courts to enforce the Constitution and protect ALL the rights of U.S. citizens. If the Courts do not do so, then they abandon the position held since Marbury v. Madison. If the Courts will not enforce the rights provided to U.S. Citizens under the Constitution, then Benjamin Franklin's words become even more portentous.

> McHenry's notes were first published in *The American Historical Review,* vol. 11, 1906, and the anecdote on p. 618 reads: "A lady asked Dr. Franklin Well Doctor what have we got a republic or a monarchy. A republic replied the Doctor if you can keep it." When McHenry's notes were included in *The Records of the Federal Convention of 1787,* ed. Max Farrand, vol. 3, appendix A, p. 85 (1911, reprinted 1934).

A Republic maintains its credibility and respect only as long as it does the right things for the right reasons. When countries refuse to admit errors and correct the record, other nations lose respect for that nation. If U.S. courts fail to recognize errors once brought to their attention, they lose credibility in the eyes of the American people, just as parents lose the respect of their children when parents refuse to correct a mistake they have made. As a parent, I can speak to the importance of this. Plaintiff looks to the Appellate Court to correct these multiple errors made by the District Court. The Court erred in not granting plaintiff his ICCPR treaty rights as established by its ratification on 8 June 1992 after determination and documentation by the U.S. government showed that all the necessary legislation was in place to give domestic effect of law, thereby making the treaty self-executing by definition as legally applied by the courts (supra). It is hypocritical for the defendant to hold other nation States accountable for ICCPR treaty violations of their citizens and then take the position reminiscent of Nazi Germany that anything this nation State does is acceptable--Shades of Mengele. The founding fathers wrote the U.S. Constitution to try to prohibit such atrocities and the courts have always held they

determine the constitutionality of the laws, making them the guardians of the U.S. Constitution and protectors against such atrocities to U.S. citizens. Cometh the hour!

VII. The court erred in not granting the undisputed and unanswered MSJ with SUFs pursuant to the SCOTUS, the Fed. R. Civ. P. and the Nevada Local Rules.

Plaintiff is entitled to the granting of MSJ if (1) there is no genuine issue of dispute of the facts and (2) if plaintiff is entitled to judgment as a matter of law.

> Rule 56(e) provides … the trial judge **shall then grant summary judgment** if there is no genuine issue as to any material fact and if the moving party is entitled to judgment as a matter of law. (emphasis added) *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986)

A MSJ may be filed at any time after a case is opened until 30 days after the close of discovery.

> (b) Time to File a Motion. … a party may file a motion for summary judgment at any time until 30 days after the close of all discovery. Fed. R. Civ. P. 56(b)

This case was filed and defendant served on 26 March 2013 with the MSJ and SUFs subsequently docketed by the court on 20 May 2013 (document 11), more than 20 days after commencement of the action. As held by the SCOTUS, a MSJ halts all other issues until the MSJ is resolved. The court may not enter its own view on the matter but must balance the claims.

> Motion for Summary Judgment **halts any other issues** *and, until answered, limits the case solely to balancing movant's claims against respondent's answer to those claims*. If undisputed: "**movant is entitled to judgment as a matter of law**.… Nor may the court introduce its own view of the matter, **but is limited solely to balance the claims**. (emphasis added) *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242,243,250 (1986).

Pursuant to both the Fed. R. Civ. P. and the Nevada Local Rules, the defendant had 21-days or until responsive pleading to oppose the MSJ with SUFs.

> (c)(B) a party opposing the motion must file a responsive within 21 days after the motion is served or a responsive pleading, whichever is later;… Fed. R. Civ. P. 56(c)(B)
>
> …A party opposing the motion must file a response within twenty-one (21) days after the motion is served or a responsive pleading is due, whichever is later. The movant may file a reply within fourteen (14) days after the response is served. Nev. LR 7-2

Defendant's responsive pleading was not filed until 1 August 2013 (document 19), 127-days after (a) being served, (b) the case docketed and (c) Court orders submitted by the court to the parties; well after the 60-day statutory time limit (supra) for the responsive pleading. Nonetheless, the responsive pleading did not oppose the MSJ or the SUFs. In fact, defendant *has never answered or opposed* even 1 of the 9 *complaints* filed in the *MSJ* and *SUFs*, leaving them completely unanswered and unopposed. *Defendant has never denied plaintiff's actual innocence*. Defense counsel's response was to

say he had filed a "motion to dismiss" (document 26, page 2, line 3), stating: "No other response is required to preclude default proceedings." (*Id*, line 4). Accordingly as defined (infra), this is not a response to the MSJ. The *procedure for filing such an opposition* to the MSJ with its SUFs is clearly laid out in the Fed. R. Civ. P. Rule 56.

> (c) Procedures.
> (1) Supporting Factual Positions. A party asserting that a fact cannot be or is genuinely disputed **must support the assertion** (emphasis added) by:
> (A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or
> (B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.
> Fed. R. Civ. P. 56

The SCOTUS has been very specific about how defendant must reply to a MSJ *and the consequences of a failure to oppose* a MSJ.

> Rule 56(e) provides that, when a properly supported motion for summary judgment is made,[4] the adverse party "must set forth **specific facts** showing that there is a genuine issue for trial."[5] And, as we noted above, Rule 56(c) provides that **the trial judge shall then grant summary judgment if there is no genuine issue as to any material fact** (emphasis added) …*Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986)

It is clear that the District Courts responsibility as held by the SCOTUS, is to determine if there is a genuine disagreement between the two parties as to the SUFs and the MSJ.

> …it is clear enough from our recent cases that at the summary judgment stage **the judge's function is not himself to weigh the evidence** and determine the truth of the matter but to determine whether there is a genuine issue for trial. As … there is **no issue for trial unless there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party** (emphasis added).… (Anderson v. Liberty Lobby, 477 U.S. 242, 249-250. (106 S.Ct. 2505, 91 L.Ed.2d 202)

Should the non-movant (defendant) not dispute the MSJ with SUFs submitted to the court by the movant (plaintiff), as in this case, then pursuant to the Nevada Local Rules, failure of the defendant to object shall *constitute a consent to the granting of the motion*.

> …failure of an opposing party to file points and authorities in response to any motion **shall constitute a consent** (emphasis added) to the granting of the motion. Nevada Local Rule LR 7-2(d)

Accordingly, defendant has *consented to the MSJ and SUFs under Nevada Local Rule 7-2(d)*. Consequently, the court erred in not granting plaintiff's MSJ.

> …court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.… Fed R. Civ. P. 56(a)

Pursuant to the Fed. R. Civ. P. and the Nevada Local Rules, all time limits have substantially passed and defendant has never disputed the SUFs, or the MSJ. As a matter of law; viz. the ICCPR treaty, plaintiff is entitled to

judgment as discussed supra. Therefore, the Court should have granted the MSJ. The Court erred in not granting the MSJ.

Having received no response from the Court prior to the Court dismissing the case, plaintiff filed more than one MSJ without a single response by the Court. Defendant rebuked (supra) plaintiff more than once, while misquoting the Fed. R. Civ. P. and Nevada Local Rule 7-2 (supra) in doing so. Filing more than one MSJ is not a violation of the Nevada Local Rules and the Ninth Circuit has held there are no limits to the number of MSJs, which may be filed.

> Federal Rule of Civil Procedure 56 does not limit the number of motions that may be filed. *Hoffman v. Tonnemacher*, 593 F.3d 908, 911 (9th Cir. 2010)
>
> Joining those circuits, we now hold explicitly that district courts have discretion to entertain successive motions for summary judgment.…*Hoffman v. Tonnemacher*, 593 F.3d 908, 911 (9th Cir. 2010)

The MSJ with SUFs was filed and served upon defendant in accord with the Fed. R. Civ. P, the Nevada Local Rules and Government instructions (supra). Defendant failed to answer even one of the nine complaints in these documents, the MSJ or the SUFs. Having failed to timely respond, the District Court was obligated to compare the plaintiffs MSJ with SUFs against defendant's failure to oppose. The Nevada Local Rules stipulate such inaction by defendant as a *consenting* to the MSJ with SUFs. Plaintiff has met the requirements demonstrating there is no genuine dispute in facts and that as a matter of law, plaintiff is entitled to summary judgment, default and default judgment (infra), pursuant to SCOTUS rulings, the Fed. R. Civ. P and the Nevada Local Rules. The Court erred in not granting plaintiff's MSJ with SUFs.

VIII. The Clerk of Court and the District Court erred in failing to enter the motions for default and default judgment respectively as required by the Fed. R. Civ. P., SCOTUS precedent cases and the Nevada Local Rules.

On 1 August 2013, 127 days after service and court docketing of the case as ripe and following Court issued orders, defendant filed his responsive pleading well past the statutory time limit of 60-days. This responsive pleading did NOT oppose NOR object to even one of the nine complaints, the MSJ or SUFs. Accordingly, defendant *consented* to the granting of the MSJ.

> … The failure of an opposing party to file points and authorities in response to any motion shall constitute a consent to the granting of the motion,… Nevada Local Rule LR 7-2(d)

Plaintiff filed a *motion with affidavit* with the clerk of court once defendant had failed to file within 21-days from date of service, under Fed. R. Civ. P. 55(a) and (b)(1) for entry of default judgment for an amount certain, given defendant's failure to oppose under Nevada Local Rule 7-2(d).

> (a) Entering a default for an amount certain:
> Entering a Default. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is **shown by affidavit** or otherwise, the **clerk must enter the party's**

> **default**. (emphasis added) Fed R. Civ. P., Rule 55(a)
>
> (b) Entering a Default Judgment.
> (1) *By the Clerk.* If the plaintiff's claim is for a sum certain or a sum that can be made certain by computation, the clerk—on the plaintiff's request, **with an affidavit** showing the amount due—**must enter judgment** (emphasis added) …. Fed. R. Civ. P. 55(b)(1)

The clerk of court informed plaintiff that no order could be entered without the Courts instruction to do so, notwithstanding the Fed. R. Civ. P. Plaintiff subsequently filed a writ of mandamus with the Ninth Circuit asking the court to instruct the District Clerk to enter default judgment against defendant for amount certain pursuant to the Fed. R. Civ. P. The Ninth Circuit denied the writ under *Bauman*.

> Bauman may be able to appeal the order directly under 28 U.S.C. s 1292(a)(1). *Bauman v. U.S. Dist. Ct.*, 557 F.2d 650, 661 (9th Cir. 1977)

Given the failure of the Clerk or the Court to enter default or default judgment respectively, pursuant to the unanswered and unopposed MSJ with SUFs, plaintiff filed the motions again.

> Federal Rule of Civil Procedure 56 does not limit the number of motions that may be filed. *Hoffman v. Tonnemacher*, 593 F.3d 908, 911 (9th Cir. 2010)

The motions filed by plaintiff and served upon defendant to obtain relief under the MSJ through default entry by the Clerk and default judgment by the Court, were made on May 13, May 20, Aug 5, Aug 20, Aug 22, and again 24 Sept. 2013. Having received no response, plaintiff filed for a *forthwith* granting of these motions. The SCOTUS defines *forthwith*:

> … it is usually construed, and sometimes defined by rule of court, as **within twenty-four hours**. (emphasis added) *Dickerman v. Northern Trust*, 176 U.S. 181, 193 (1900)

Plaintiff again received no response from the Court and the only response from the Clerk of Court was that the Clerk, could enter no such default order, without the Courts permission. Plaintiff filed twice more in October without response. The court dismissed the case on 29 October 2013 with a final order dismissing the case and the motions despite the applicable statutory time limits, Fed. R. Civ. P., the Nevada Local Rules and SCOTUS holdings. Given this final order by the district court, plaintiff hereby appeals to the Ninth Circuit Court of Appeals pursuant to 28 U.S.C. § 2107.

Plaintiff now submits that defendant has failed to answer or oppose the MSJ with its SUFs, either within the statutory time limits of 21-days or within defendants responsive pleading, made 127 days after being served; thereby *consenting* to the MSJ with SUFs according to statute and Local Rules. The Court erred in not granting the MSJ with SUFs and indemnification according to the Nevada Local Rules, the Fed. R. Civ. P., applicable SCOTUS and Ninth Circuit Court precedent cases. Plaintiff is entitled to a granting of default and default judgment for sum certain.

CONCLUSION

The District Court granted a motion to dismiss this case based upon defense argument that courts which have considered the ICCPR treaty found there to be no individual rights for U.S. citizens in U.S. jurisdictions due to a single declaration made pre-ratification of the treaty and perseveringly used to deny U.S. citizens remedy in U.S. courts for violations of the ICCPR treaty. The declaration that the treaty was not self-executing has no effect upon the treaty, the domestic law and does NOT bind U.S. courts. Furthermore, even if this pre-ratification declaration had the force of law, it would now be irrelevant, since subsequent government actions and statements have stipulated that the necessary legislation required to give legal effect to the treaty was in place at the time the treaty was ratified on 8 June 1992, making the ICCPR treaty self-executing by court definition. The courts and the defendant have erred in misusing terms and have contaminated *ipsissima verba*, resulting in erroneous conclusions and misrepresentation of facts and law.

While obligated by professional standards to present to the court any documents, which could be adverse to their case, defense counsel and the Court have failed to do that which their profession finds incumbent upon them. There are no defense counsel nor District Court discussions of differences between understandings and declarations of the ICCPR treaty, nor evidence, referral to or discussion of (1) any ratification or post-ratification statements, either written or oral, or (2) actions taken after the original pre-ratification declaration, which was submitted by the defendant. Courts have consistently held that the *intent* of ALL of the parties, as well as the *understandings* and *reservations* determine the effect of the treaty; not *declarations*. None of the information presented by plaintiff has been considered or referred to in the District Court's decision. The cases discussed by the District Court are *nihil ad rem* and obscure the ICCPR treaty. The defense counsel's superiors, as well as congressional records, including but not limited to the Fourth Periodic report by the U.S. Government on the ICCPR treaty, make it abundantly clear that the view at the time the treaty was ratified is and remains that the necessary legislation to provide for domestic effect of law was in place at the time of ICCPR treaty ratification, making the treaty self-executing by definition. Any effort by defense counsel and defendant to suggest otherwise is a dishonest attempt to remove applicable documents from the record, which the courts have not previously considered but which speak to the actual ICCPR treaty itself and U.S. citizen rights under the treaty. The records and documents demonstrate plaintiff has a cause of action and state a claim for indemnification as a matter of law, which has been erroneously dismissed by the District Court.

The bad-faith efforts on the part of defendant and defense counsel in this case demonstrate how desperate

defendant and counsel are, to prevent the consideration of these documents from being reviewed by the courts, while at the same time, defendant ostracizes other nation States pressuring compliance with these very articles under their ICCPR treaty violations. Additionally, defense counsel failed to file the motion to dismiss in a timely manner and when he did file, he failed to even address the case before the court or oppose the MSJ with SUFs. Given his statement that defendant and counsel were responding to the documents filed by plaintiff, this demonstrates unashamed *bad faith*. Efforts to present cases, as has been done here by defendant, which have nothing to do with the case at hand; viz. an U.S. citizen in U.S. jurisdiction, demonstrate either a *reckless* disregard for the facts or an *unreasonable* and/or *deceptive* approach to the facts of this case.

Clearly, the common approach taken in prior ICCPR cases on record, have focused on the pre-ratification *declaration* thought to be in effect; but shouldn't be. Notwithstanding this, courts have repeatedly held declarations to have no legal effect upon the treaty or the courts and have reminded the Senate that alterations in treaty law requires *reservations* or *understandings*, not *declarations*. The record is clear, yet the same errors are made time and time again, with the SCOTUS, the District Court and the defendant all misusing the terms and interchanging *understanding* for *declaration*, when the terms have significantly different meanings and legal consequences; thereby contaminating the ICCPR treaty and the record itself. The inability of a physician to correctly identify or communicate a problem can result in harm or death to a patient. The inability to correctly identify a problem before the Court, results in loss of individual freedoms and rights for U.S. Citizens and the loss of credibility of a republic by other nations and its own people. The plaintiff had no difficulty finding the applicable documents and proof. The District Court dismissed this case referring only to the pre-ratification declaration and two completely inapplicable cases, *Cornejo* and *Sosa*, which provide no probative value as they involve Aliens and not U.S. citizens. Furthermore, the motion to dismiss should have been denied as untimely and in bad-faith and the MSJ with SUFs, which were NEVER answered nor objected to by defendant and consequently *consented* to under Nevada Local Rules, should have been granted according to the Fed. R. Civ. P., the Nevada Local Rules and precedent SCOTUS cases as discussed. Finally, in failing to uphold the precedent case law established by the Ninth Circuit and the SCOTUS, the District Court acted contrary to that which she stipulated to in her hearings to become a Federal Court Justice.

The Court has erred in dismissing this case, in not granting the MSJ with SUFs and in not granting default and default judgment for amount certain indemnification as a matter of law, Nevada Local Rules and the Fed. R. Civ. P.

Accordingly, plaintiff asks that the Ninth Circuit Court of Appeals reverse the motion to dismiss and instruct the District Court to grant the MSJ with SUFs and to provide remedies to plaintiff for the amount certain and any other remedies the Court deems appropriate and fitting to address wrongs committed by the District Court and defendant. Alternatively, plaintiff asks for the Ninth Circuit Court of Appeals to so order the MSJ with SUFs, with remedies for amount certain and other remedies, as the Court deems appropriate to address the errors and harm committed. Plaintiff further asks for damages for bad faith on part of defense counsel and defendant and that the appropriate profession association and court systems be notified of this bad faith. Respectfully submitted.

Dated: 31 January 2014

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I certify the above statements are true and that Mr. Greg Addington, Assistant U.S. Attorney, was served by Priority Mail at 100 West Liberty Street, Suite 600, Reno, Nevada 89501.

Dated: 31 January 2014

Richard Max Fleming, M.D. (*Pro se*)

Form 8. Certificate of Compliance Pursuant to 9th Circuit Rules 28-4, 29-2(c)(2) and (3), 32-2 or 32-4[1] for Case Number 13-17230

Note: This form must be signed by the attorney or unrepresented litigant *and attached to the end of the brief.*

I certify that (check appropriate option):

☐ This brief complies with the enlargement of brief size permitted by Ninth Circuit Rule 28-4. The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6). This brief is _____ words, _____ lines of text or _____ pages, excluding the portions exempted by Fed. R. App. P. 32(a)(7)(B)(iii), if applicable.

☐ This brief complies with the enlargement of brief size granted by court order dated _____. The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6). This brief is _____ words, _____ lines of text or _____ pages, excluding the portions exempted by Fed. R. App. P. 32(a)(7)(B)(iii), if applicable.

☒ This brief is accompanied by a motion for leave to file an oversize brief pursuant to Circuit Rule 32-2 and is _____ words, _____ lines of text or 48 pages, excluding the portions exempted by Fed. R. App. P. 32(a)(7)(B)(iii), if applicable.

☐ This brief is accompanied by a motion for leave to file an oversize brief pursuant to Circuit Rule 29-2(c)(2) or (3) and is _____ words, _____ lines of text or _____ pages, excluding the portions exempted by Fed. R. App. P. 32(a)(7)(B)(iii), if applicable.

☐ This brief complies with the length limits set forth at Ninth Circuit Rule 32-4. The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6).

Signature of Attorney or Unrepresented Litigant: "s/" Richard Max Fleming, M.D. (Pro se)

("s/" plus typed name is acceptable for electronically-filed documents)

Date: 31 January 2014

[1] If filing a brief that falls within the length limitations set forth at Fed. R. App. P. 32(a)(7)(B), use Form 6, Federal Rules of Appellate Procedure.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Richard M. Fleming, MD, Plaintiff, v. United States of America, Defendant.	)	Case No. 13-17230 **MOTION TO EXCEED PAGE LIMIT**

Pursuant to FRAP 32-2, *pro se* plaintiff files this motion to exceed the page limit specified in FRAP 32(a)(7) based upon a showing of diligence and substantial need. The Memorandum of Law and a Form 8 certificate as required by Circuit Rule 32-1 accompany the motion.

DECLARATION OF REASONS FOR MOTION

Under FRAP 32-5, *pro se* litigants have an option to submit the Memorandum of Law with a 40-page limit, or to file using 32(a)(7) with a 30-page limit. Under Rule 28-2.7, addendums to briefs including provisions, treaties, statutes, ordinances, regulations or rules need not be included in this page count. However, placing these documents in an appendix to avoid counting these pages would have made it more burdensome for the Court to follow the argument. In reviewing the case law, statutes, treaty and other pertinent material, this Memorandum of Law could have been submitted within the 30-page limit if the only issue had been *The International Covenant on Civil and Political Rights* (ICCPR) *Treaty*. Similarly, a 30-page limit would have been possible had the only issue been the Motion for Summary Judgment, or the bad faith of the defendant. Unfortunately the errors made, present not one, two or even three issues for consideration, but eleven separate issues, some with multiple components.

As presented in the Memorandum of Law, the Fed. R. Civ. P., the Nevada Local Rules, precedent Court cases rulings, and multiple other errors including the use of treaty terminology, have been made by the defendant, the District Court and the Supreme Court of the United States. United States Federal Government documents have been ignored, which show the ICCPR treaty was not ratified until it had the necessary legislation in place to give the treaty domestic effect of law; pre-ratification declaration notwithstanding. Recent federal cases have clarified that these legal rights apply ONLY to U.S. citizens whose rights are violated in U.S. territory. The District Court erroneously applied non-relevant cases in its dismissal. To clearly understand this and the errors made requires a detailed review of materials, which the Courts have previously failed to do. *This is the first ICCPR treaty case to be presented to the Ninth Circuit involving a U.S. citizen in U.S. territory*. Clarity, not brevity, is due the Court. A shorter less thorough Memorandum would NOT allow the Court to receive the necessary information required for the Court to understand what has transpired and the significant federal government documents, statements and actions which define this case. The Court deserves to receive the necessary materials relevant to this case in a format with attention to the necessary detail to allow the Court to rule on the errors made by omission and commission.

Accordingly, plaintiff respectfully submits the Memorandum of Law, Form 8 certificate and the Motion to exceed the page limit to the Ninth Circuit Court of Appeals.

Dated: 31 January 2014

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(775) 770-4328

I certify the above statements are true and that Mr. Greg Addington, Assistant U.S. Attorney, was served by Priority Mail at 100 West Liberty Street, Suite 600, Reno, Nevada 89501.

Dated: 31 January 2014

Richard Max Fleming, M.D. (*Pro se*)