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The statements made and views expressed in this report are solely the responsibility of The Opportunity Agenda and the PHRGE.

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ABOUT

The Opportunity Agenda

The Opportunity Agenda is a social justice communication lab dedicated to the idea that our nation should be one where everyone enjoys full and equal opportunity. We collaborate with social justice leaders to help tell more compelling stories that drive lasting policy and culture change. Through communication expertise and creative engagement, we amplify the inspirational voices of opportunity. To advance the impact of the social justice community, we shape narratives and messages; build the communication capacity of social justice leaders through training and resources; conduct solutions-oriented policy research; and engage with artists, creatives, and culture makers as powerful storytellers to shift the public discourse. We believe in the power of communication and collaboration. We work to move hearts, minds, and policy to expand opportunity for all.

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ABOUT

The Program on Human Rights in the Global Economy

Founded in 2005, the Program on Human Rights in the Global Economy (PHRGE) is a human rights center based at Northeastern University School of Law (NUSL) in Boston, MA. The Program promotes human rights scholarship and activism at NUSL and within the larger community. Four Faculty Co-Directors and a staff Executive Director lead PHRGE, which connects research at NUSL with human rights advocacy efforts through a student fellowship program and via the development of working partnerships with like-minded advocacy organizations. While PHRGE promotes the implementation of all human rights, it gives particular attention to supporting efforts to advance economic, social and cultural rights, and to apply the international human rights framework within the United States.
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Introduction

Human rights are among society’s most powerful ideals. The notion that all people have rights, simply by virtue of their humanity, has sparked new nations, inspired countless freedom movements, and transformed the relationship between people and their governments in places big and small around the globe. The founders of our country declared that we are all created equal and endowed with certain inalienable rights, and that opinions of other nations are entitled to “decent respect.” In the aftermath of the Holocaust and World War II, the United States helped craft the Universal Declaration of Human Rights (UDHR) and the modern international human rights system. Throughout our history, the concept of human rights has been central to our nation’s struggles to achieve equality and justice for all.

Now, more than ever, domestic protection of human rights norms will be crucial as the social justice community braces itself for uncertainty following threats to widely accepted human rights norms. Courts continue to be a venue for human rights advocacy and to secure and protect fundamental rights, equal justice, and human dignity. State courts are of particular importance because they often consider economic, social, and cultural rights, and in interpreting state law they have the independence to recognize a broader range of rights than federal courts. In addition, state courts may be called on to interpret and apply international treaties, including human rights treaties.

Recognizing this important aspect of the implementation of human rights law in the United States, this report updates our 2014 report, which details the ways in which state courts have considered and interpreted human rights. This report is intended for public interest lawyers, state court litigators, and judges, and also for state and municipal policymakers interested in integrating compliance with international human rights law into their domestic policies.

1 See Martha F. Davis et al., The Opportunity Agenda & PHRGE, Human Rights in State Courts 2014.
Litigants have continued to make arguments based on international human rights in state courts since the last version of this report was published in 2014. As we noted in the 2014 report, many of these arguments have been cursorily dismissed, with a few courts and individual judges staking out their opposition to the application of international human rights law. However, some state courts have considered and affirmatively used international human rights law as persuasive authority for the interpretation of state constitutions, statutes, and common law. Further, individual judges regularly draw on human rights norms in concurring or dissenting opinions. This updated publication is a supplement to the 2014 report and focuses on cases that have been decided since that report was decided.³

Highlights of this update include the following:

- In *Caballero v. De*, a circuit court in Florida held that guerilla groups’ kidnapping and murder of a former Colombian ambassador violated the law of nations and the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture (CAT), the International Convention Against the Taking of Hostages, and the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.⁴ The court granted partial summary judgment for the son of Carlos Caballero, a former Columbian ambassador to the United Nations, who sued guerilla groups and a drug cartel for taking his father hostage for six months, torturing him, and killing him.⁵ In order to sue under the Alien Tort Statute, the plaintiff had to demonstrate that he was suing for a tort committed in violation of “the law of nations.”⁶ The court held that the defendants’ activities constituted violations of the “law of nations” because, in part, they violated the aforementioned international treaties.

- State courts continued to consider claims arising under Article 36 of the Vienna Convention on Consular Relations (VCCCR). In general, state courts held that the VCCCR provides a right to consular notification of detention but not to consular intervention, and that a violation of the right to consular notification is not grounds for suppressing incriminating statements.⁷

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³ This update covers the time period from the release of our report in 2014, January 1, 2014 until August 1, 2016.

⁴ *Caballero v. De*, 2014 Fla. Cir. LEXIS 1910 *48 (Fla. 11th Cir. Ct. May 2, 2014), citing *Estate of Ahuva Emergi et al. v. Palestinian Authority*, 611 F.3d 1350 (11th Cir. 2011) (“the existence of a treaty reflecting an overwhelming international consensus on certain norms may be evidence of the specificity an international scope of concern required by the ATS”). Having determined that it had subject matter jurisdiction over the counts related to hostage-taking, torture, extrajudicial killing, and crimes against humanity, the court granted summary judgment on these counts because there were no outstanding matters of material fact. *Id.* at *57–58, *60, *62, *64.

⁵ *Id.*

⁶ *Id.* at *47.
The Hague Convention on the Civil Aspects of International Child Abduction (Hague Abduction Convention) continued to play a significant role in guiding state courts in child custody hearings. State courts applied the Hague Convention to resolve a variety of issues, including the identification and significance of a child’s country of habitual residence, the rights of custodial and non-custodial parents to travel internationally with a child, the right of one parent to have a child returned to a country of habitual residence after the child was wrongfully removed from that country, and the validity of various affirmative defenses against removing a child from one parent for the purposes of returning the child to a second parent.

In *Rayellen Resources, Inc. v. New Mexico Cultural Properties Review Committee (NMCPRC)*, the NMCPRC designated approximately 400,000 acres of land on Mount Taylor as “registered cultural property,” a designation that several Native American tribes sought. The owners of the Cebolleta Land Grant objected, arguing that the common lands within the Cebolleta Land Grant, which were included in the 400,000 acres, were not “state lands” and so could not be taken by the state and registered as “cultural property.” The Supreme Court of New Mexico agreed, noting that its interpretation of state statutes on the meaning of “state land” must be consistent with New Mexico’s obligations under the Treaty of Guadalupe Hidalgo, which recognizes the private property rights of New Mexico landowners from Mexico.

Litigants in state courts continue to invoke regional international norms, such as those articulated in the Inter-American Convention on Letters Rogatory and Additional Protocol. In *Espinoza v. Evergreen Helicopters, Inc.*, for example, the

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13 Id.

14 Id.

Supreme Court of Oregon cited the treaty in analyzing whether it was appropriate to move a set of wrongful death trials from Oregon, the preferred forum of the plaintiffs, to Peru, the preferred forum of the defendant, an Oregon-based helicopter company. The cases flowed from a helicopter accident in Peru in which all of the passengers were killed. After determining that the doctrine of forum non conveniens is available in Oregon, the Court held that the trial court erred in accepting the defendant’s claim that Oregon was an inconvenient forum, noting that the Inter-American Convention on Letters Rogatory and Additional Protocol provides mechanisms for international evidence gathering.

In 2012, Connecticut’s new death penalty law provided that the death penalty would be repealed for all crimes committed on or after April 25, 2012, but retained for capital felonies committed prior to that date. In Santiago v. State, a defendant appealed his death sentence, arguing that it would be constitutionally cruel and unusual to execute individuals who had committed capital crimes before that date. The Connecticut Supreme Court agreed, noting that “following its prospective abolition, this state’s death penalty no longer comports with contemporary standards of decency” and “would violate the state’s constitutional prohibition against cruel and unusual punishment.” In reaching its conclusion, the court considered the laws and practices of other jurisdictions, including international jurisdictions. Two concurring justices, citing United Nations documentation, noted that “there is a demonstrable global consensus that post-repeal executions are impermissible.” The case was remanded with instructions to impose a sentence of life without parole. In other states, however, arguments for the general claim that the death penalty violates international norms and treaties were unsuccessful.

Some state courts rejected claims based on international treaties that the United States has not ratified, generally holding that in the absence of implementing legislation, non-self-executing treaties are not judicially enforceable. In Alvarado-Fernandez v. Mazoff, for example, the court held that compliance with the Inter-American Service Convention on Letters Rogatory and Additional Protocol was

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17 Id. at 108, 108 n.25.
19 Id. at 9.
20 Id. at 9.
21 Id. at 44, 51, 77–78.
22 Id. at 195 (emphasis in original).
23 Id. at 140.
not required because the treaty was not self-executing.\(^\text{25}\)

- In *State v. Houston*, a dissenting justice of the Supreme Court of Utah disagreed with the majority and argued that sentencing a juvenile to life without parole constitutes cruel and unusual punishment under the Utah Constitution, citing the United Nations Convention on the Rights of the Child (CRC).\(^\text{26}\)

- A member of the Wisconsin State Assembly asked the Wisconsin Attorney General to determine whether a statutory limit on land acquisition by non-national individuals or corporations applied to nations that had signed the General Agreement on Trade in Services (GATS),\(^\text{27}\) an international treaty designed to promote trade in services.\(^\text{28}\) The Attorney General concluded that the statutory limit did not apply to such nations, noting that GATS signatory nations, such as the United States, are bound to treat nationals and non-nationals in the same way with respect to most types of service-related land acquisition.\(^\text{29}\) He also noted that the Wisconsin statute exempts non-nationals “whose rights to hold larger quantities of land are secured by treaty.”\(^\text{30}\)

Examples of the breadth and diversity of state court decisions that have drawn upon international human rights law over the years that we have detailed in the 2014 report are listed below:

- California courts cited the UDHR to support their interpretation of the right to practice one’s trade, the right to privacy, the meaning of “physical handicap,” the right to freedom of movement, and the scope of welfare provisions;\(^\text{31}\)

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\(^{25}\) Alvarado-Fernandez v. Mazoff, 151 So. 3d 8, 13, 16 (Fla. Dist. Ct. App. 2014) (“The effect that international legal agreements entered into by the United States have upon domestic law are dependent upon the nature of the agreement; namely, whether the agreement is self-executing or non-self-executing. International treaties are considered “self-executing” if they have the force of law without the need for subsequent legislative action. Treaties that are not considered self-executing are understood to require implementing legislation to provide legal authority to carry out the functions and obligations contemplated by the agreement, or to make them enforceable in court by private parties.”). *See also* State v. Horton, 2016 Ariz. App. Unpub. LEXIS 530, *¶* 28 (Ct. App. 2016) (rejecting appellant’s claims based on the ICCPR on the grounds that “the ICCPR is not binding on courts of the United States” and because it “does not create judicially-enforceable individual rights, is not self-executing, and has not been given effect by congressional legislation.”).

\(^{26}\) State v. Houston, 2015 UT 40, ¶ 275 (2015) (dissenting) (“In the case of juvenile LWOP, the international consensus against the penalty is all but unanimous. The United States is the only country in the world that currently sentences juveniles to a life imprisonment with no chance of release.”).

\(^{27}\) Wis. Stat. § 710.02.

\(^{28}\) 2014 Wis. AG LEXIS 11.

\(^{29}\) *Id.* ¶ 11.

\(^{30}\) *Id.* ¶ 17.

New York courts invoked the UDHR in cases involving the rights to work and to strike, a transnational discovery dispute, and the act of state doctrine;\(^{32}\)

The Oregon Supreme Court looked to the UDHR, ICCPR, and European Convention for the Protection of Human Rights and Fundamental Freedoms to interpret the meaning of the state constitution’s provision on the treatment of prisoners;\(^{33}\)

The West Virginia Supreme Court invoked the UDHR to review the financing scheme for public schools and to define the right to education;\(^{34}\)

The Massachusetts Supreme Judicial Court gave retroactive effect to a ruling that the sentence of a juvenile to life without the possibility of parole is unconstitutional, and emphasized that the U.S. “join a world community that has broadly condemned such punishment for juveniles,” citing to the United Nations Convention of the Rights of Child and to the author of the Massachusetts Constitution, John Adams, who was a proponent of learning from other nations.\(^{35}\)

These decisions used human rights law as persuasive authority in interpreting state constitutions, statutes, and common law.

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Methodology

For this report, we assessed the use of international human rights in state courts by examining many of the same indicators used in the 2014 report. We reviewed, for each particular state, case law and Attorney General Opinions and searched for terms that indicate the consideration of international human rights law.

In Appendix A, there is the list of our search terms. Based on our findings, we compiled a list and analysis of all of the cases and Attorney General Opinions that were found. This update is based on that body of research and covers the time period from the release of our last update, January 1, 2014, until August 1, 2016.

This update covers the time period from the release of our last update, January 1, 2014, until August 1, 2016.

This report uses the following abbreviations:

- American Convention: American Convention on Human Rights
- American Declaration: American Declaration on the Rights and Duties of Man
- CAT: Convention Against Torture
- CERD: International Convention on the Elimination of All Forms of Racial Discrimination
- CRC: International Convention on the Rights of the Child
- ICCPR: International Covenant on Civil and Political Rights
- ICESCR: International Covenant on Economic, Social, and Cultural Rights
- UDHR: Universal Declaration of Human Rights
- UNHRC: United Nations Human Rights Committee
- VCCR: Vienna Convention on Consular Relations
International Human Rights in State Courts

The following discussion examines the role international human rights law has played in state court decisions, breaking down cases by state and grouping them as civil or criminal matters. The discussion does not identify every single decision in which a state court has discussed international human rights law. Rather, it describes major and representative cases concerning challenges to the death penalty, claims under the VCCR on Consular Relations, and cases arising under the Hague Convention on the Civil Aspects of International Child Abduction. State courts most often turn to international human rights law when it is offered as an interpretive guide for the development of rights enumerated in state constitutions or statutes.
FACTUAL SUMMARY:

When the parents of a ten-year-old girl divorced in 2014, the superior court granted sole legal and primary physical custody of the child to the mother, and unrestricted domestic and international visitation to the father. After the father proposed taking the child to Micronesia, the mother moved to limit the father’s international visitation to countries that have ratified the Hague Convention. The superior court judge denied the mother’s motion, noting that “I don’t care if it’s a Hague Convention country or not. [Travel] is a good thing, in my mind.” The mother filed a motion for reconsideration, arguing that the superior court had failed to consider her arguments about the significance of the Hague Convention. The superior court denied the motion. The mother appealed, arguing that the superior court abused its discretion in allowing travel to a country that is not a Hague Convention signatory.

CASE SUMMARY:

The Supreme Court of Alaska held that the superior court did not abuse its discretion in awarding the father unrestricted international visitation. In an extended discussion of the Hague Convention, the court noted that “a bright-line rule restricting international visitation to Hague Convention signatory nations” would be a mistake; that in determining international visitation rights, the Hague Convention is only one of a number of competing and important factors; that “extradition treaties can provide

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37 Id. at 1077.
38 Id. at 1081.
assurances against non-return;”\textsuperscript{39} and that “travel is generally beneficial and in a child’s best interest.”\textsuperscript{40}

\textsuperscript{39} Id. at 1082.
\textsuperscript{40} Id. at 1083.
STATE v. HORTON

FACTUAL SUMMARY:

The defendant was found guilty of two counts of aggravated assault and one count of disorderly conduct. The defendant appealed, arguing that his convictions violated the ICCPR.

CASE SUMMARY:

The Arizona Court of Appeals affirmed, holding that the ICCPR is not self-executing, has not been given effect by any congressional legislation, and is not binding on U.S. courts.

STATE v. PEDROZA-PEREZ

FACTUAL SUMMARY:

On June 25, 2013, Pima County Sheriff’s deputies and U.S. Customs & Border Patrol agents found several backpacks containing marijuana that belonged to the defendant. The defendant was detained and, after being informed of his Miranda rights, he made several admissions. Law enforcement officers then informed the defendant of his

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42 Id. at *14–15.
consular notification rights under the VCCR. The defendant was charged with the importation of marijuana, the transportation of marijuana for sale, and the possession of drug paraphernalia. He moved to suppress his admissions, arguing that he was questioned in violation of his constitutional rights and his rights under the VCCR.43

CASE SUMMARY:

The superior court declined to suppress the defendant’s admissions. In dicta, the court noted that relief under the VCCR is available only if prejudice is shown; that none was alleged in this case; and that even if the court were to find prejudice, the proper remedy would be “accommodations to secure consular assistance, not suppression.”44

44 Id. at *9.
FACTUAL SUMMARY:

While a mother and father were living with two daughters in Germany, the mother relocated to California with the eldest daughter. The father made an *ex parte* demand for custody in a Hague petition that he filed in superior court. The mother offered an affirmative defense of grave risk of harm based on her claim that the father had issued death threats against her and the eldest daughter and that he had engaged in spousal and child abuse. Despite the mother’s request for an evidentiary hearing on these allegations, the court conducted a summary trial and granted the father’s custody demand. The mother appealed.\(^{45}\)

CASE SUMMARY:

The Court of Appeal reversed the judgment, holding that the trial court, in excluding the mother’s evidence of spousal and child abuse, and in failing to address the mother’s death threat allegations, had violated the mother’s due process rights to a fair and adequate hearing. The court noted that the mother’s allegations, if substantiated, might have prevented the return of the daughter to her father under the Hague Convention. The case was remanded for a full evidentiary hearing.

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CARDEÑAS v. ALCANTAR

FACTUAL SUMMARY:

A mother filed a Hague Convention petition for the return of her three-year-old son from California to Mexico. The trial court denied the petition, holding that the mother had failed to show that the father had removed the son from his country of habitual residence. The court also expressly declined to make a determination about the son’s country of habitual residence. On appeal, the mother contended that the trial court abused its discretion in refusing to determine whether Mexico or California was the son’s habitual residence.46

CASE SUMMARY:

The Court of Appeal affirmed, noting that it was the mother’s burden, under the Hague Convention, to establish that Mexico was the child’s country of habitual residence.

BOUNOUAR v. FA’ALOFA
2016 Cal. App. Unpub. LEXIS 230

FACTUAL SUMMARY:

A mother took her son from his habitual residence in France to the United States. The trial court held a hearing and ordered the son returned to France, stating that the case was a “classic example of what the Hague Convention is designed to prevent.”47 In her appeal, the mother invoked the “grave risk of harm” affirmative defense, arguing that under the Hague Convention a child should not be returned to a country of habitual residence if doing so would put the child at risk of serious harm.

CASE SUMMARY:

The Court of Appeal affirmed the lower court’s ruling, holding that the mother did not meet her burden of showing that her son would face a serious risk of harm by returning to his father. The court noted that the “grave risk of harm” defense under the Hague

Convention is “narrowly drawn” and “contemplates an intolerable situation where there is clear and convincing evidence the child would suffer ‘serious abuse’ as a result of being returned.”

CRIMINAL

PEOPLE v. MENDOZA
62 Cal. 4th 856 (2016)

FACTUAL SUMMARY:

The defendant was convicted of three counts of first degree murder and was sentenced to death. Appeal was automatic.

CASE SUMMARY:

The defendant challenged the conviction and the sentence on multiple grounds, four of which implicated international human rights issues. First, the defendant argued that international human rights norms support his claim that there was insufficient evidence of his mental competence to stand trial. The court rejected this argument, noting that the defendant himself acknowledged that U.S. and international standards for evaluating competence are similar, and that to the extent that international standards are higher, the defendant had failed to show why the higher standard was required by federal or state law.

Second, the defendant argued that the imposition of the death penalty on him violated international law because he “was seriously mentally ill at the time of the offenses and at trial.” The court dismissed this argument as undeveloped and flawed by incomplete citations to UN documents that were not on point.

Third, the defendant argued that the imposition of the death penalty violates international law. The court dismissed this argument as one that had been litigated and rejected multiple times in California courts.

Finally, the defendant argued that his rights under the VCCR were violated when the police failed to inform him of his right to notify the Mexican consulate,

48 Id. at *28.
50 Id. at 895.
51 Id. at 908.
52 Id. at 910.
53 Id. at 915–16.
and again when the police failed to notify the consulate on his behalf. The defendant noted that he raised the issue to preserve it for review by way of a writ of habeas corpus. The court agreed that a claim involving an alleged prejudicial effect of a VCCR violation should indeed be raised in a petition for writ of habeas corpus.  

**People v. Chism**

58 Cal. 4th 1266 (2014)

**FACTUAL SUMMARY:**

The defendant was convicted of first degree murder, attempted robbery, and second degree robbery. A jury sentenced the defendant to death.

**CASE SUMMARY:**

On appeal, the defendant argued that “in the absence of a finding that he intended to kill the victim or exhibited reckless indifference to life as a major participant in the robbery,” the imposition of the death penalty violates international law. The Supreme Court of California dismissed this claim, stating that “international law does not prohibit a sentence of death rendered in accordance with state and federal constitutional and statutory requirements” and that the “use of the death penalty does not violate international law.”

**People v. Sattiewhite**

59 Cal. 4th 446 (2014)

**FACTUAL SUMMARY:**

The defendant was convicted of rape, kidnapping, and murder, and sentenced to death.

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54 Id. at 917.
55 People v. Chism, 58 Cal. 4th 1266, 1278 (2014).
56 Id. at 1332.
57 Id. at 1333 (citing People v. Watkins (2012) 55 Cal. 4th 999, 1034, 150 Cal. Rptr. 3d 299, 290 P.3d 364).
58 Id. at 1334 (citing People v. Livingston (2012) 53 Cal. 4th 1145, 1180, 140 Cal. Rptr. 3d 139, 274 P.3d 1132).
CASE SUMMARY:

On appeal, the defendant argued that the imposition of the death penalty violated multiple rights, namely the right to life, the right to be tried before an impartial tribunal, the right to have access to the courts, the right to protection against prosecutorial misconduct, and the right to a fair hearing. He argued that these rights are "protected by international law and treaties to which the United States is a signatory, including the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights." The Supreme Court of California denied the claim that the death penalty itself violates international norms and noted that it has rejected this argument "repeatedly and consistently in other cases."

PEOPLE V. ARTEAGA

FACTUAL SUMMARY:

The defendant was convicted of engaging in sexual intercourse or sodomy with a child ten years or younger, and engaging in oral copulation or sexual penetration of a child ten years old or younger.

CASE SUMMARY:

On appeal, the defendant argued that because he was never informed of his right to consular notification under the VCCR, the self-incriminating statements he made to police during a custodial interrogation should have been suppressed and, as a result, his conviction should have been reversed. The court disagreed, noting that the VCCR provides a right to consular notification, not consular intervention; that suppression is not the appropriate remedy for a violation of the VCCR; that failing to inform a defendant of consular notification rights is unlikely, in general, to produce unreliable confessions; and that in this case, the defendant’s statements to police were voluntary and uncoerced.

60 Id. at *489.
61 Id. at *489 (internal citations omitted).
63 Id. at *36–38.
FACTUAL SUMMARY:

The mother and father shared joint legal custody. The mother requested the inclusion of international travel in the custody agreement, and the father objected, arguing that the mother was likely to take the child to Senegal, which is not a signatory to the Hague Convention.64

CASE SUMMARY:

A Connecticut superior court held that it was not in the best interests of the child to permit the mother to travel internationally with the child. The court noted that it seemed likely that the mother would take the child to Senegal; that there was credible evidence that the mother would refuse to return the child to the United States; and that were the child to be held abroad by the mother, the fact that Senegal had not signed the Hague Convention would burden the father’s efforts to bring the child back to the United States.65

CRIMINAL

STATE v. SANTIAGO

122 A.3d 1 (Conn. 2015)

65 Id. at *10–11.
FACTUAL SUMMARY:

The defendant was convicted of capital felony murder for pecuniary gain and sentenced to death. The defendant appealed.

CASE SUMMARY:

On appeal, the defendant argued that given Connecticut’s new law prohibiting the death penalty for capital crimes committed after April 25, 2012, it would be constitutionally cruel and unusual to execute individuals who had committed capital crimes before that date as well. After surveying state, regional, national, and international law and practices, the Supreme Court of Connecticut agreed, noting that the state’s death penalty “no longer comports with contemporary standards of decency.”

66 State v. Santiago, 122 A.3d 1, 9 (Conn. 2015).
67 Id. at 9.
68 Id. at 9.
FACTUAL SUMMARY:

The defendant was charged with several crimes, including first-degree murder. In his motion to suppress, the defendant argued that the police officer's failure to advise him of his consular notification rights under the VCCR were grounds for the suppression of his statement to the police. The superior court acknowledged that the VCCR establishes a right to consular notification, but held that even though the defendant did not receive a timely notification of this right, suppression was an inappropriate remedy. The court denied the motion and the defendant was ultimately convicted. The court later granted the defendant a new trial, at which he was convicted of second degree murder.

CASE SUMMARY:

On appeal, the defendant argued that the superior court had abused its discretion in failing to suppress his statements to police because the police had not informed him of his right to consular notification under the VCCR. The Supreme Court of Delaware rejected this argument, noting that while the VCCR provides a right to consular notification, it does not provide a right to consular intervention, and that the suppression

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73 Id.
of the defendant’s statement would not be a proportional response to a violation of the VCCR. 74

74 Id.
FACTUAL SUMMARY:

The plaintiff alleged that three Columbian drug trafficking and terrorist organizations kidnapped, tortured, and killed his father while engaged in illegal drug trafficking in Columbia and Florida. The plaintiff sued pursuant to the Alien Tort Statute.

CASE SUMMARY:

The court granted summary judgment in favor of the plaintiff, finding that the defendants violated domestic and international law. In reaching this decision, the court cited the International Convention Against the Taking of Hostages, the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, the UDHR, CAT, and the ICCPR.

FACTUAL SUMMARY:

76 Id. at *3.
The plaintiff filed a lawsuit against the defendant, a Colombian citizen, for injuries that were sustained when the defendant’s vehicle hit the plaintiff’s vehicle. The defendant moved to dismiss, alleging that service of process was insufficient under both the Hague Service Convention and the Inter-American Service Convention on Letters Rogatory and Additional Protocol. The court denied the defendant’s motion.

CASE SUMMARY:

The Court of Appeal of Florida affirmed the lower court’s ruling on the grounds that Columbia was not a signatory to the Hague Service Convention at the time of the accident, and that compliance with the Inter-American Letters Protocol was not required because the treaty is not self-executing.

Sanchez v. Suasti
140 So. 3d 658 (Fla. Dist. Ct. App. 3d Dist. 2014)

FACTUAL SUMMARY:

At the time of a divorce, the parents and children lived in Brazil. The mother had custody of the children subject to a visitation schedule for the father. In 2012, the mother took the children to Miami, where she and the children remained. A Brazilian court granted the father’s petition for the return of the children, noting that under Brazilian law “the mother could not change the children’s country of residence without the father’s consent or a court order.” While the Brazilian court proceedings were under way, the father petitioned a trial court in Miami for the return of his children. The trial court denied the father’s petition on the grounds that under the Hague Convention, the father had a “right of access” to the children but lacked the requisite “right of custody.” The father appealed.

CASE SUMMARY:

78 Id. at 12.
79 Id. at 13, 16.
81 Id. at 661.
The Court of Appeal of Florida reversed and remanded, noting that because the Brazilian court had recognized the father’s “right to prohibit the mother from changing the children’s country of residence without his consent,” the father had a “right to custody” under U.S. law “sufficient to trigger a return under the Hague Convention.”

**Cermesoni v. Maneiro**
144 So. 3d 627 (Fla. Dist. Ct. App. 2014)

**FACTUAL SUMMARY:**

During divorce proceedings, an Argentinian court ordered that the husband’s assets in a Miami bank accounts be frozen, and subsequently issued letters rogatory seeking the assistance of Miami-based courts. A circuit court in Florida gave effect to the letters rogatory by granting the wife’s emergency motion for a temporary injunction freezing the relevant bank accounts. The wife was required to post a modest injunction bond. The husband moved to increase the injunction bond. The court denied the husband’s motion, and he appealed.

**CASE SUMMARY:**

The Court of Appeal of Florida affirmed the lower court’s denial of the motion, noting that while it often approves the enforcement of temporary injunctions issued by foreign courts as a matter of international comity, its role was ancillary and strictly limited. The court declined “to insinuate itself into the case” and noted that the husband could more appropriately seek relief in the Argentinian court with subject matter jurisdiction over the freeze order.

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82 Id. at 661–662.
84 Id. at 630–31.
FACTUAL SUMMARY:

In a final decree of divorce, a Georgia superior court prohibited a father from travelling internationally with his children without the mother’s consent, until the children were sixteen. The father is a native of Pakistan and a citizen of both Pakistan and the United States. The father appealed.

CASE SUMMARY:

The Supreme Court of Georgia affirmed, noting that a “trial court has the discretion to prohibit removal of minor children from the United States” and that because Pakistan is not a signatory to the Hague Convention the mother “would likely have difficulty pursuing recourse” were the father to take the children to Pakistan and remain there.

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85 Id. at 783.
86 Id. at 784.
87 Id. at 786, n.3.
FACTUAL SUMMARY:

While the mother and father lived in Poland with their child, the mother took the child to the United States without the father’s consent and filed a petition for divorce and custody in an Illinois court. The father filed a Hague petition in an Illinois court, requesting that the court determine the child’s country of habitual residence. The Illinois court found that the child’s country of habitual residence was Poland and ordered that the child be returned there. The wife filed a motion to reconsider and vacate the order. Shortly thereafter, she filed a motion for the voluntary dismissal of her petition for dissolution of the marriage. The court denied her motion to reconsider and vacate the order. A few years later, the court held that the mother had the right to dismiss her petition for the dissolution of the marriage, and that the father’s Hague petition survived the dissolution of the underlying complaint (i.e., the mother’s dissolution petition). The court again ordered the wife to return the child to Poland, which she did. The wife appealed the court’s ruling on the husband’s Hague petition.

CASE SUMMARY:

89 Id.
90 Id. ¶ 8.
91 Id. ¶¶ 8, 9.
92 Id. ¶ 10.
93 Id. ¶ 12.
94 Id. ¶1–4.
The wife argued that the trial court erred in allowing the husband’s Hague petition to survive after the dismissal of her divorce petition, and that it was no longer in the best interests of the child to return to Poland because the child’s circumstances had changed, in that the child had acclimated to the United States. The court held that the husband’s Hague petition survived the dismissal of the wife’s divorce petition, noting that if the court had ruled otherwise, the wife would have effectively used the voluntary dismissal of her divorce petition as a mechanism for preventing the Illinois court from reaching the merits of the husband’s Hague Convention petition. The court also rejected the wife’s “changed circumstances” defense, noting that it was not one of the affirmative defenses specified in the Hague Convention and the court was “not persuaded to undertake … as a ‘matter of first impression’ whether defenses outside the Convention are applicable.”

CRIMINAL

PEOPLE v. MIROSLAVA
52 N.E.3d 470 (Ill. App. Ct. 2d Dist. 2016)

FACTUAL SUMMARY:

The court initially granted the government’s petitions for the involuntary administration of psychotropic medications to and the involuntary admission of the respondent, a Bulgarian citizen. The respondent moved to strike the petitions, citing both the VCCR’s provision on consular notification and the Illinois state code. The court denied the motions to strike, noting that a violation of the terms of the VCCR did not provide a basis for striking the petitions and that the state code was inapplicable. The respondent moved to reconsider, arguing that the failure to adequately notify the consulate should have precluded a consideration of the merits of the petitions. The respondent cited a different provision of the Illinois state code, which requires that following an involuntary admission, if the person involuntarily admitted requests that the State notify other individuals of the admission, the State must notify at least two of these individuals. The court granted the motion to reconsider on the grounds that violation of the state code concerning notification warranted a reversal of the involuntary admission order and the medication order. The State appealed the decision.

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95 Id. ¶¶ 20–21, 24.
96 Id. ¶ 29.
CASE SUMMARY:

The appellate court affirmed, holding that under Illinois state code, a foreign national may designate a local consul as one of two “persons” who must be notified of the involuntary admission. The appellate court noted that “[u]nlike a violation of the Vienna Convention, the State’s violation of the Code provides a basis for a respondent’s individual relief.” The appellate court noted that while a violation of the VCCR’s notification requirements did not provide a basis for individual relief, the state had “eroded its goodwill with the court [through] “its decision to ignore clear language in the Vienna Convention.”

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97 Id. ¶56.
98 Id. ¶60.
FACTUAL SUMMARY:

A father appealed the visitation provisions of his divorce decree, challenging a restriction that prohibited visitation in Israel until the child is sixteen years old.\textsuperscript{99} The mother argued that the father had previously stated that he would not return the child to the United States, and that he had disobeyed visitation orders.\textsuperscript{100}

CASE SUMMARY:

The Iowa Court of Appeals held that the district court erred in prohibiting the father from traveling with the child to Israel, noting that Israel is a signatory to the Hague Convention, and that courts are in the practice of allowing international travel to countries that are signatories. The court also noted that there was insufficient evidence for the claim that the father intended to remain with the child in Israel.\textsuperscript{101} The court stated that the child “has a right to build a meaningful relationship with his father and fully experience his dual heritage.”\textsuperscript{102}

\textsuperscript{100} Id. at *5–6.
\textsuperscript{101} Id. at *8–9.
\textsuperscript{102} Id. at *5.
FACTUAL SUMMARY:

The parents met in Guatemala, where their child was born. The father filed a complaint for parental rights and responsibilities in Maine, a state to which the mother and child had never traveled. The district court granted the mother’s motion to dismiss on the grounds that under the Uniform Child Custody Jurisdiction and Enforcement Act, “the initial child custody determination must be made in the ‘home state’ … absent a showing that the home state has declined jurisdiction,” and that the child’s “home state” was Guatemala. The father appealed, citing the Hague Convention.

CASE SUMMARY:

The Supreme Judicial Court of Maine affirmed, holding that the district court lacked jurisdiction because under the Hague Convention, U.S. state courts must treat foreign countries as though they were U.S. states, unless their custody laws violate “fundamental principles of human rights.” The court noted that there was no evidence in the record that Guatemala custody laws violate fundamental principles of human rights or that Guatemala had declined jurisdiction.

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104 Id. ¶ 4.
105 Id. ¶ 3.
106 Id. ¶ 8.
107 Id. ¶10.
FACTUAL SUMMARY:

The defendant, who had been convicted of first degree sexual assault on a child, filed a pro se petition for a writ of habeas corpus, alleging that his consular notification rights under the VCCR were violated. The district court held that the defendant’s action seeking a writ of habeas corpus was frivolous and denied his related motion to proceed. The defendant appealed.\(^\text{108}\)

CASE SUMMARY:

On appeal, the defendant argued that the violation of his consular notification rights under the VCCR deprived the trial court of its jurisdiction, and that he was therefore entitled to a writ of habeas corpus. The Supreme Court of Nebraska, without deciding that the VCCR creates individually enforceable rights, held that a violation of any potential rights was “a mere error or irregularity in the proceedings”—one that did not deprive the trial court of its jurisdiction.\(^\text{109}\) For this and other reasons, the Supreme Court of Nebraska affirmed the district court’s holdings.


\(^{109}\) Id. at *681.
FACTUAL SUMMARY:

The district court denied the father’s request for visitation in Africa, where he resides, noting that the world is a dangerous place and that the proposed countries of visitation, Rwanda and Uganda, had not signed the Hague Convention.110 The father appealed, arguing that the district court abused its discretion in denying his visitation request.111 A panel of the Supreme Court of Nevada affirmed, noting that in evaluating the father’s request for visitation in Africa, the district court had considered “many factors regarding the child’s best interest.”112

CASE SUMMARY:

The Supreme Court granted a petition for en banc rehearing of the panel’s order.113 The court noted, “none of the district court’s oral or written observations explain why the district court ruled as it did,” and that there needs to be evidence of a credible threat that the parent would abduct the child.114 The court reversed the district court’s decision and remanded it for additional factual findings.

111 Id. at *1–2.
112 Id. at *2.
113 Davis v. Ewalefo, 352 P.3d 1139 (Nev. 2015).
114 Id. at 1145.
FACTUAL SUMMARY:

After the New Mexico Cultural Properties Review Committee designated approximately 400,000 acres of land on Mount Taylor as “registered cultural property,” the owners of the Cebolleta Land Grant objected. They argued that the common lands within the Cebolleta Land Grant, which were included in the 400,000 acres, were not “state lands” and so could not be taken by the state and registered as “cultural property.”

CASE SUMMARY:

The Supreme Court of New Mexico agreed, noting that its interpretation of state statutes on the meaning of “state land” must be consistent with New Mexican obligations under the Treaty of Guadalupe Hidalgo, which recognizes the private property rights of New Mexico landowners from Mexico.

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116 Id.
FACTUAL SUMMARY:

A father alleged that the mother of his children had wrongfully retained his children in the United States. He petitioned for the return of the children to Israel under the Hague Convention.\(^\text{117}\)

CASE SUMMARY:

The New York County Family Court ordered the return of the children to Israel. After a lengthy discussion of the Hague Convention, the court held that the mother had wrongfully retained the children in the United States, and that her affirmative defense that the children were well-settled in the United States and preferred to remain here was unsuccessful.\(^\text{118}\) The court noted that it would “effectively eviscerate the purposes of the Hague Convention” to allow a “custodial parent [to] wrongfully remove or retain children in a new environment and allow that to continue indefinitely, seriously impairing the noncustodial parent’s custody rights, because the children like living in an exciting new environment.”\(^\text{119}\)

\(^{117}\) R.B. v. K.G., 993 N.Y.S.2d 869, 872 (Fam. Ct.).

\(^{118}\) Id. at 886.

\(^{119}\) Id. at 886.
FACTUAL SUMMARY:

The defendant was convicted of murder in the second degree and of tampering with physical evidence.\(^{120}\)

CASE SUMMARY:

On appeal, the defendant claimed that his post-arrest statements should have been suppressed due to the failure of police to inform him of his right to consular notification under the VCCR. The appellate court rejected this claim, holding that “[t]o the extent that the treaty does confer any individually enforceable rights, it is unquestionable that no remedy is required in the absence of a showing of prejudice” and that no prejudice had been shown in this case.\(^{121}\)
FACTUAL SUMMARY:

The defendant was sentenced to death after having been found guilty of murdering four women.\(^{122}\)

CASE SUMMARY:

On appeal, the defendant argued that under international law, prohibiting the death penalty is a peremptory norm, and that his execution by lethal injection would violate several international treaties: the American Declaration, ICCPR, CERD, and CAT. The court focused on the international treaties that it had not previously addressed in death penalty cases, the CERD and the CAT, and held that because Ohio’s death penalty procedures were not unconstitutional or racially discriminatory, they were consistent with international law.\(^{123}\)

\(^{122}\) State v. Kirkland, 140 Ohio St. 3d 73, 73-79 (2014).

\(^{123}\) Id. at 90-91. The court suggested that a defendant would have to advance “[a]n argument that these issues, as defined under international law, differ in any significant way from the constitutional arguments already addressed, e.g., that equal protection and arbitrariness would be evaluated differently under international law than they are under the United States or Ohio Constitutions,” for them to be considered separately. Id.
FACTUAL SUMMARY:

A helicopter crashed in a remote part of Peru, which resulted in the deaths of all the passengers. Plaintiffs brought wrongful death actions in Oregon against Evergreen Helicopters, Inc., an Oregon corporation that provided the helicopter and the pilot. Evergreen moved to dismiss, arguing that under the doctrine of *forum non conveniens*, Peru was the proper forum for the plaintiff’s wrongful death lawsuits. The lower court granted Evergreen’s motion to dismiss.

CASE SUMMARY:

The Supreme Court of Oregon held that the trial court erred in accepting the defendant’s claim that Oregon was an inconvenient forum, noting that the American Letters Protocol provides mechanisms for the sometimes-challenging task of international evidence gathering.
FACTUAL SUMMARY:

The defendant pleaded guilty to evading arrest in exchange for four years’ deferred adjudication community supervision—and then filed a verified application for writ of habeas corpus, which was denied.127

CASE SUMMARY:

On appeal, the defendant argued pro se that his writ of habeas corpus was wrongfully denied because he had been prejudiced by the trial counsel’s failure to inform him of his VCCR rights.128 The defendant had filed the writ because, under counsel’s advice, he had accepted a guilty plea without understanding the immigration consequences of doing so.129 The Texas Second Court of Appeals rejected the claim, finding that the defendant had failed to provide any evidence suggesting that consular notification would have affected his decision to accept the plea bargain.130 Citing a Texas case from 2005, the court indicated that Texas courts had previously rejected claims of prejudice under the VCCR when “there was no evidence in the record that [a] consulate … regularly provided any assistance at all to its detained foreign nationals” or when “assertions of prejudice are entirely speculative.”131

128 Id. at *18.
129 Id. at *5–7.
130 Id. at *18.
131 Id. at *19.
MARTINEZ v. STATE
449 S.W.3d 193 (Tex. App. 2014)

FACTUAL SUMMARY:
The trial court convicted the defendant of aggravated sexual assault of his common law wife, sentenced him to seventeen years and 200 days of imprisonment, and ordered him to pay a $2,000 fine.\(^{132}\)

CASE SUMMARY:
The defendant appealed his conviction on the grounds that his right to consular notification under the VCCR had been violated.\(^{133}\) The appellate court dismissed the defendant’s VCCR claim, noting that the treaty provides for a right to consular notification, not consular assistance,\(^{134}\) and that because the trial court recessed to allow the defendant to speak with consular authorities, the defendant’s VCCR rights were not violated.\(^{135}\)

\(^{133}\) Id. at 201, 203.
\(^{134}\) Id. at 202.
\(^{135}\) Id.
STATE v. HOUSTON
353 P.3d 55 (Utah 2015)

FACTUAL SUMMARY:

After a seventeen-year-old defendant pleaded guilty to aggravated murder, a jury sentenced him to life imprisonment without the possibility of parole (LWOP). The defendant appealed, arguing that his sentence was unconstitutional and that his counsel had been ineffective.\(^{136}\)

CASE SUMMARY:

The Utah Supreme Court affirmed, noting that the LWOP sentence was neither cruel nor unusual.\(^{137}\) The lone dissenting judge disagreed on this point, noting that the CRC condemns sentencing juveniles to LWOP.\(^{138}\)


\(^{137}\) Id. ¶¶ 60–63.

\(^{138}\) Id. ¶¶ 276, 274. The dissenting judge noted that only Somalia and the United States have failed to sign the CRC.
FACTUAL SUMMARY:

After his conviction of sexual assault in the second degree, the defendant filed a petition for a writ of habeas corpus, which the Ohio County Circuit Court denied.

CASE SUMMARY:

The Supreme Court of Appeals of West Virginia affirmed the denial based on the court’s rejection of the defendant’s claim that DNA evidence should have been suppressed because the police violated his consular notification rights under the VCCR.\(^{139}\) The court noted that the VCCR provides a right to consular notification, not consular intervention, and that suppression would be a “vastly disproportionate remedy” for a violation of consular notification rights.\(^{140}\)


\(^{140}\) Id. (citing Sanchez-Llamas v. Oregon, 548 U.S. 331, 343–350, 126 S. Ct. 2669, 165 L. Ed. 2D 557 (2006)).
FACTUAL SUMMARY:

The Chairman of the Assembly Committee on Organization asked the Wisconsin Attorney General whether a state statute that limits the amount of Wisconsin land that may be acquired by non-nationals,\(^{141}\) applies to nations bound by the General Agreement on Trade in Services (GATS), an international trade agreement that promotes “international trade in services.”\(^{142}\) As a GATS Member, the United States is bound to treat non-resident service suppliers in the same way it would treat national service providers in a number of specific service areas.\(^{143}\)

CASE SUMMARY:

The Attorney General concluded that that the Wisconsin statute is generally inapplicable to GATS Members and their service suppliers because (1) the Wisconsin statute does not limit land acquisition by non-nationals for most of the specific service areas in which the United States, as a GATS member, must provide national treatment for nonresident aliens and foreign corporations,\(^{144}\) and (2) the Wisconsin statute includes a “treaty exception” under which the statute’s acreage limitations are suspended when an international treaty recognizes the rights of non-nationals to hold larger quantities of land.\(^{145}\)

\(^{141}\) Wis. Stat. § 710.02(1).
\(^{142}\) 2014 Wis. AG LEXIS 11.
\(^{143}\) Id. ¶ 11.
\(^{144}\) Id. ¶ 11.
\(^{145}\) Id. ¶ 17.
State courts and attorneys general have continued to look to human rights principles to help define state constitutional and statutory guarantees and this provides an opening to further develop the law. State court litigants should consider incorporating international human rights standards as interpretive guides for state constitutional and statutory guides whenever strategically possible. This approach has several advantages. It insulates decisions from review by the U.S. Supreme Court and protects them from removal to federal court. Thus, state courts can safely develop their own international human rights jurisprudence without the possibility of intervention and frustration by federal courts. This “indirect incorporation” approach also allows state courts to circumnavigate the self-execution doctrine and reservations to treaties that otherwise may limit treaties’ impact. These limitations are less relevant when state courts are not asked to apply treaties as governing law.

And over time, as international human rights principles become more integrated into state law, courts will define rights more broadly and will hold governments accountable for enforcing those rights, expanding opportunity for all Americans.

\[146\] See, e.g., Paul Hoffman, *The Application of International Human Rights Law in State Courts: A View from California*, 18 Intl. LAWYER 61 (1984) (“Another advantage of using human rights law as an interpretive device rather than arguing that it is binding on the state court as treaty or customary law is that a California decision which adopts a human rights norm to interpret California law cannot be reviewed by the U.S. Supreme Court; it is insulated from Supreme Court review because there is an ‘independent state ground’ for the decision.”).
Appendix A

The following terms and combination of terms were used to search, within each state, case law and Attorney General Opinions that indicate the consideration of international human rights law:

I. “Treat!” within the same paragraph as “international”
II. “International” within the same paragraph as “covenant”
III. “Convention” within the same paragraph as “right!”
IV. “Inter-American”
V. “Univers! Decl!”
VI. “Vienna Convention”

The use of an “!” behind a word indicates a search for all variations of the word that we were searching for. For example, when “treat!” is used in our search terms, we were searching for the words “treaty” and “treatise”