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AMICI CURIAE URGE THE U.S. SUPREME COURT TO CONSIDER INTERNATIONAL HUMAN RIGHTS LAW IN JUVENILE DEATH PENALTY CASE

Connie de la Vega*

INTEREST OF AMICI CURIAE

Human Rights Advocates, Human Rights Watch, Minnesota Advocate for Human Rights, and the Human Rights Committee of the Bar of England and Wales hereby request that this Court consider the present brief pursuant to Rule 37.2(a) in support of Petitioner’s Writ of Certiorari. Consent of Petitioner’s Counsel of Record and the State District Attorney’s Office has been obtained. The interests of Amici are described in detail in the Appendix.

Amici would like to take the opportunity to develop the issues regarding the jus cogens norms, and the application of treaty standards in this case. Amici are specifically concerned that the opinion of the court below raises serious implications as to the ability of federal and state governments to comply with those treaty standards and international law. The importance of defining United States treaty obligations

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1. SUP. CT. R. 37.2(a).

2. Letters from both counsel consenting to the filing of this brief are being sent with this brief to the Clerk of this Court. Counsel for a party did not author this brief in whole or in part. No person or entity, other than the Amici Curiae, their members, or their counsel made a monetary contribution to the preparation and submission of the brief.
and recognizing international law as it relates to the juvenile death penalty is imperative to the future of domestic compliance with human rights norms. Failure to comply with those norms is isolating the United States as the lone violator in the world.

SUMMARY OF THE ARGUMENT

The prohibition against the execution of persons who were under eighteen years of age at the commission of the crime is not only customary international law, it has attained the status of *jus cogens*, a peremptory norm of international law. No other nation has executed juvenile offenders at the rate practiced in the United States. While six other nations executed juvenile offenders during the past ten years, those countries have either changed their laws raising the age to eighteen or have in other ways accepted the norm. This Court must consider this issue before one more execution of a juvenile offender takes place in the United States. Otherwise, the United States will continue to bring itself under increasing international scrutiny, tainting its image as a leader in the protection of human rights.

Because the prohibition against the juvenile death penalty is a *jus cogens* norm, the reservation by the United States to Article 6(5) of the International Covenant on Civil and Political Rights ("ICCPR") is invalid. Because that provision is self-executing and is being used defensively in a criminal case, it should apply to Petitioner's case.

This brief, therefore, is submitted in support of the Petition for Writ of Certiorari. The issues addressed are impor-

3. Democratic Republic of the Congo, Iran, Nigeria, Pakistan, Saudi Arabia and Yemen. See infra note 30 and accompanying text.


5. Beazley was seventeen when he shot a driver while stealing a car. He was convicted in Texas of murder and given a death sentence in 1995. He filed a federal habeas petition in the United States District Court for the Eastern District of Texas, which was denied. See Beazley v. Johnson, 242 F.3d 248, 254-55 (5th Cir. 2001). On appeal, Beazley argued, among other claims, that the Texas Penal Code allowing for capital punishment of juveniles was invalid under Article 6(5) of the ICCPR, which was ratified by the United States in 1992. The United States had reserved the right to impose the death penalty on juveniles when it ratified the treaty. Beazley asserted that the United Nations Human Rights Committee's finding this reservation to be void was "novel" at the time of his trial, and therefore he could not raise the issue at that time. The
tant throughout the United States, not just in Texas. Because of the serious implications of the opinion of the court below, as well as those of state supreme courts, on the ability of federal and state governments to comply with treaty standards and international law, Amici respectfully request that this Court grant the Petition for Writ of Certiorari.

ARGUMENT

I. The Prohibition Against Executing Juvenile Offenders is a Jus cogens Norm

Under Article 53 of the Vienna Convention on the Law of Treaties, a *jus cogens* peremptory norm is "a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character." The Restatement (Third) of the Foreign Relations Law agrees with this standard and provides that the norm is established where there is acceptance and recognition by a "large majority" of states, even if over dissent by "a very small number of states." Hence, a norm must meet four requirements in order to attain the status of a peremptory norm: 1) it is general international law; 2) it is accepted by a large majority of states; 3) it is immune from derogation; and 4) it has not been modified by a new norm of the same status. The prohibition against the execution of offenders who were under eighteen at the time they committed their offense clearly meets those requirements.

A. The Prohibition is General International Law

First, the prohibition against the execution of persons who were under eighteen at the time they committed their

Fifth Circuit affirmed the denial of his appeal on this issue, holding that the United States' reservation was valid, and that these arguments were in fact available to Beazley at trial. *See id.* at 263-67. Therefore, because Beazley did not raise these issues either in his direct appeal or his state habeas petition, they were procedurally barred for failure to exhaust. *See id.* at 264.


crime ("juvenile offenders") is general international law. Numerous treaties, declarations, and pronouncements by international bodies, as well as the laws of the vast majority of nations are evidence of that law. Among the treaties that prohibit the death penalty for juvenile offenders are the ICCPR, the Convention on the Rights of the Child ("CRC"), the Geneva Convention Relative to the Protection of Civilian Persons in Time of War ("Fourth Geneva Convention"), and the American Convention on Human Rights ("American Convention").

A resolution by the United Nations Economic and Social Council also opposed the imposition of the death penalty for juvenile offenders. In 1985, the United Nations General Assembly adopted by consensus the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), which also oppose capital punishment for juveniles. Since 1997, the United Nations Commission on Human Rights has passed resolutions calling on states to abolish the death penalty generally, but has specifically asked countries not to impose it for crimes committed by persons below eighteen years of age. The Commission resolut...

The United Nations Sub-Commission on the Promotion and Protection of Human Rights has passed similar resolutions. In the 1999 resolution, the United States is specifically mentioned as one of the six countries that had executed juvenile offenders since 1990 and that it accounted for ten of the nineteen executions during that time period.\footnote{See The Death Penalty, Particularly in Relation to Juvenile Offenders, U.N. Sub-Commission on the Promotion and Protection of Human Rights, 52d Sess., Res. 1999/4, U.N. Doc. E/CN.4/ Sub.2/RES/1999/4 (1999).} One year later, the Sub-Commission affirmed “that the imposition of the death penalty on those aged under eighteen at the time of the commission of the offence is contrary to customary international law.”\footnote{The Death Penalty in Relation to Juvenile Offenders, U.N. Sub-Commission on the Promotion and Protection of Human Rights, 53d Sess., Res. 2000/17, U.N. Doc. E/CN.4/Sub.2/RES/2000/17 (2000).} Again, the latter resolution was adopted without a vote.

The Inter-American Commission on Human Rights, the body responsible for the protection of fundamental freedoms in the Organization of American States (“OAS”) of which the United States is a member, found that there is a \textit{jus cogens} norm in 1987 proscribing the execution of children among the OAS member states.\footnote{See Case 9647, Inter-Am. C.H.R. 147, OEA/ser. L/V/II.71, doc. 9 rev. 1 (1987).} While at that time it could not decide on what the age limit would be for such a norm, it is now clear that in the OAS system it is eighteen years of age for the following reasons. The American Convention on Human Rights expressly limits the death penalty to persons who were under eighteen years of age at “the time the crime was com-
mitted.” The United States is one of only two member states of the OAS that has not ratified the American Convention. Of the twenty-four member states that have ratified the American Convention, only Barbados made a reservation to Article 4(5) providing that “age is a consideration of the Privy Council, under Barbadian law 16 was the minimum age for execution.” According to the report of the Secretary General for the United Nations, however, Barbados “brought themselves into line” in 1994 with the norm that eighteen is the minimum age. That report also notes that all but fourteen countries party to the CRC had national laws prohibiting the imposition of the death penalty on persons who committed capital offense when under eighteen years of age.

B. The Prohibition is Accepted by All States Except One

The second requirement for a *jus cogens* norm is that the norm is accepted “by ‘a very large majority of States, even if over dissent by ‘a very small number’ of states.” The United States is the only country in the world that has not accepted the international norm against the execution of juvenile offenders. The only other countries known to have executed juvenile offenders in the last ten years have since abolished the practice, have acknowledged that such executions were contrary to their laws, or have denied that they have taken place.

Almost every nation in the world has ratified the CRC. The only States not to ratify are Somalia, which has no gov-

19. See American Convention, *supra* note 11, art. 4(5).

20. The Organization of American States maintains a list of signatories and ratifications to the American Convention that can be accessed through its Web site address at http://www.oas.org.

21. See *id*.


23. See *id*.


ernment, and the United States. Indeed, the CRC has been the catalyst that has prompted many countries in the past ten years to change their laws raising the eligibility age of the death penalty to eighteen. The United Nations reported that along with Barbados discussed above, Yemen and Zimbabwe changed their laws in 1994. China changed its age of eighteen in 1997. Indeed, by the time of that report, only fourteen countries that had ratified the CRC had not changed their laws to adhere to the prohibition. None of those countries filed a reservation to Article 37 of the CRC, however, and only six executed juvenile offenders since 1990: Democratic Republic of the Congo (1 in 2000), Iran (5: 1 in 1990, 3 in 1992, 1 in 1999), Nigeria (1 in 1997), Pakistan (2: 1 in 1992, 1 in 1997); Saudi Arabia (1 in 1992), and Yemen (1 in 1993). In addition, an execution was documented in Iran in 2000, and one was recently reported in 2001. Further, despite the change in law discussed below, Amnesty International reports that there was an execution in Pakistan in November 2001. Even in the United States, there was only one execution of a juvenile offender in 2001.

In the six countries besides the United States where ju-
veniles have been executed since 1990, the laws have been changed or the governments have denied that the executions of juvenile offenders have taken place. The laws have changed in Yemen, as noted above, and Pakistan, where the Juvenile Justice System Ordinance was promulgated in July 2000, banning the death penalty for anyone under eighteen at the time of the crime. In furtherance of the law, Pakistan's President Musharraf, at the end of 2001, commuted the death sentences of 100 young offenders to imprisonment. Nigeria, as noted in the United Nations report above, has national legislation setting the minimum age for executions to eighteen. With respect to the execution in 1997, the Nigerian government insisted last year to the Sub-Commission on the Promotion and Protection of Human Rights that the offender was well over eighteen at the time of the offense and reiterated that any juveniles convicted of capital offenses have their sentences commuted. Saudi Arabia has adamantly insisted at the Commission on Human Rights that the allegations regarding the execution of a juvenile in 1992 are untrue. While there is documented evidence that the executions did in fact take place in Nigeria and Saudi Arabia, they do appear to be isolated incidents, and the denials by the governments indicate that those countries have in fact accepted the norm. While executions of juvenile offenders seem to have taken place with more frequency in Iran, the government recently denied at the Commission on Human Rights meeting that they take place.

36. See id.
40. See AMNESTY INTERNATIONAL, supra note 31.
41. See Press Release, United Nations, Commission on Human Rights Starts Debate on Specific Groups and Individuals (Apr. 11, 2001) (Right of Re-
The Democratic Republic of the Congo, which is in the midst of a civil war, is also reported to have executed a juvenile offender in 2000 despite a moratorium on the death penalty in that country. That execution was carried out by the Military Order Court rather than through the judicial process. This year when four juvenile offenders were sentenced to death by the Military Order Court, the executions were stayed and the sentences were commuted following appeals from the international community. Thus, it appears that even during wartime in that country the military intends to comply with the international norm.

Hence, only the United States has not accepted the norm against the execution of juvenile offenders. Even if the reports were true that executions of juveniles took place not only in the United States but also in Iran and the Democratic Republic of the Congo, the adherence to the norm is similar to those noted in the Restatement (Third) as having had attained peremptory status such as rules prohibiting genocide, slave trade and slavery, apartheid and other gross violations of human rights. And while United States courts have found the prohibition against torture to have attained the status of a jus cogens norm, Amnesty International found that 125 countries violated that norm last year alone. In stark contrast, only three countries violated the norm prohibiting the execution of juvenile offenders the past year.

C. The Norm is Non-Derogable

The prohibition against executing juvenile offenders is non-derogable. The ICCPR expressly provides that there

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42. See KILLING HUMAN DECENCY, supra note 30, at 12.
43. See id.
44. See World Organization Against Torture, Democratic Republic of Congo: Death Sentences of Five Children Commuted to Life Imprisonment, OMCT APPEALS Case COD 270401.1.CC (May 31, 2001).
45. See RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW § 102 reporter's note 6 (1986).
47. See AMNESTY INTERNATIONAL, supra note 35.
48. These countries are the United States, Pakistan and Iran. See supra notes 32-34.
shall be no derogation from Article 6, which prohibits the imposition of the death penalty on juvenile offenders. The express prohibition in the treaty, coupled with the wide acceptance, as evidenced by treaties, resolutions, national laws and practice, support the conclusion that the norm is non-derogable.

D. There is No Emerging Norm Modifying this Norm

As to the fourth and final requirement, there is no emerging norm that contradicts the current norm. The prohibition of the juvenile death penalty has been universally accepted by all but one country. There is thus no question that the prohibition against the execution of persons who were under eighteen at the time they committed their crime has attained the status of a *jus cogens* norm.

II. The *Jus cogens* Norm Is Applicable to Petitioner's Eighth Amendment and Treaty Claims

Petitioner is urging that this Court grant certiorari in this case in order to review the finding that the Eighth Amendment of the United States Constitution does not prohibit the imposition of the death penalty to juveniles who were under the age of eighteen at the time of the commission of their crime. Not only should this Court consider the *jus cogens* norm in determining whether the United States Constitution protects against the imposition in this case, but also whether the Supremacy Clause mandates it. More importantly, the peremptory norm is relevant to concluding whether the reservation to Article 6(5) of the ICCPR is void. If it is void, then the treaty provision applies and can be directly enforced by the courts because it is self-executing as discussed below.

A. *Jus cogens* Norms are Binding in the United States

As this Court has noted, customary international law is "part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction." In this

49. See ICCPR, supra note 4, art. 4(2).
50. See supra Part I.B.
51. Beazley v. Johnson, No. 00-10618 (5th Cir. filed July 13, 2001).
52. See U.S. CONST. art. VI.
53. The Paquete Habana, 175 U.S. 677, 700 (1900). See also Lea Brilmayer,
regard, the Restatement (Third) provides that "international law and international agreements of the United States are the law of the United States and supreme over the law of the several States" and "courts in the United States are bound to give effect to international law and to international agreements of the United States."

A noted commentator has also recognized that "as in the case of treaties, American courts will give effect to the obligations of the United States under customary law; at the behest of affected private parties, courts will prevent violations of international law by the States ...." Indeed, seven years ago, Justice Blackmun noted,

The early architects of our nation were experienced diplomats who appreciated that the law of nations was binding on the United States. John Jay, the first Chief Justice of the United States, observed that the United States "had, by taking a place among the nations of the earth, become amenable to the laws of nations." Although the Constitution, by Art. I, § 8, cl. 10, gives Congress the power to "define and punish ... offenses against the Law of Nations," and by Art. VI, cl. 2, identifies treaties as the supreme Law of the Land," the task of further defining the role of international law in the nation's legal fabric has fallen to the courts ....

As we approach the 100th anniversary of the Paquete Habana, then, it perhaps is appropriate to remind ourselves that now, more than ever, "international law is part of our law" and is entitled to respect of our domestic courts .... I look forward to the day when the Supreme Court, too, will inform its opinions almost all the time with a decent respect to the opinions of mankind.

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55. Louis Henkin, Foreign Affairs and the Constitution 223 (1972).
The principle that customary international law is part of United States law applies with greater force when considering a peremptory norm. As the Ninth Circuit Court of Appeals in Siderman de Blake v. Argentina noted, courts are obligated to enforce *jus cogens* norms. The court observed that "[b]ecause *jus cogens* norms do not depend solely on the consent of states for their binding force, they 'enjoy the highest status within the international law.' For example, a treaty that contravenes *jus cogens* is considered . . . to be void . . . ." Certainly if a treaty is void for violating a *jus cogens* norm, a reservation is void if it does likewise. Not only should this Court consider the *jus cogens* norm in determining the parameters of the evolving standards under the Eighth Amendment as is urged by the Petitioner, but it should also be used to assess the validity of the United States reservation.

There is no question when the reservation is considered in light of the *jus cogens* norm that it is void. If it is void, the Court must then consider whether the treaty can be applied directly in the United States. *Amici* will turn now to that question.

B. Article 6(5) Can Be Enforced by Courts in the United States

If the reservation is void, the question is whether Article 6(5) of the ICCPR can be enforced directly by the courts. This

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59. *Id.* at 715 (citing to the Vienna Convention).

60. While the Court in the *Paquete Habana* noted that customary international law is looked to "where there is no treaty, and no controlling executive or legislative act or judicial decision," *The Paquete Habana*, 175 U.S. 677, 700 (1900), that does not preclude courts from considering customary international law or *jus cogens* norms to determine whether evolving standards of decency under the Eighth Amendment do include, in the words of the First Chief Justice, "the law of nations."

61. In addition, *Amici* agree with Petitioner that the reservation is invalid because it violates the object and purpose of the treaty itself. *See* Beazley v. Johnson, No. 00-10618 (5th Cir. filed July 13, 2001).
requires an analysis of whether the United States is a party to the treaty without the reservation and whether the provision is self-executing. Further, while the Senate declared that the ICCPR was not self-executing, that declaration does not apply in this case where the treaty is being used defensively. 62

1. The United States is Still Party to the ICCPR

If the reservation is not valid, the Court must determine whether the United States is bound by Article 6(5). Under the view of the Human Rights Committee, the United States is bound by the provision if the reservation is void. 63 Furthermore, there is a growing international consensus that an invalid reservation is severed from the document of ratification. 64 Moreover, broad general reservations are not favored, particularly in human rights multilateral treaties. 65

In the Belilos case, 66 the European Court of Human Rights held that if a non-essential reservation is invalid, it is severed and the country submitting the reservation is still a party to the treaty and bound by the provision without the reservation. 67 Whether a reservation is non-essential depends on whether the country’s overriding intention was to accept the obligations under the treaty. 68 There is nothing to indicate that the United States did not have the overriding intention to accept the ICCPR, and since the reservation to Article 6(5) is invalid, it is bound by its requirements and must be applied in the United States as the Supreme Law of the Land.

2. Article 6(5) is Self-Executing and the Non-Self-Executing Declaration Does Not Apply

The Courts have developed the doctrine of “self-executing” treaties to limit the Constitutional rule that

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62. See infra notes 82-87 and accompanying text.
65. See id.
67. Id.
68. See Bourguignon, supra note 64, at 382.
treaties are the law of the land. Under that doctrine, only clauses of treaties that specify duties which directly confer rights may be enforced directly by the courts. Courts have applied various theories when discussing that doctrine. Under one test, a self-executing clause is "equivalent to an act of the legislature whenever it operates by itself without the aid of any legislative provision." Another test looks for the "intent of the parties" reflected in the treaty's words and, when the words are unclear, in circumstances surrounding the treaty's execution.

The intent of the parties may be difficult to ascertain when multilateral treaties such as the ICCPR are involved, and it is questionable that the intent of only one of the parties would determine the effect of a particular clause. Multilateral treaties rarely make clear the process by which parties are to incorporate its provisions into national law. Many countries, such as the United States, incorporate treaties without separate action by the legislature. Indeed, the original purpose of the Supremacy Clause was to alter the British rule that all treaties are "non-self-executing" in order to require the state courts as well as the federal courts to enforce treaties directly.

Some courts have listed factors they considered in ascertaining intent. In Frolova v. USSR, the court fashioned the

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70. The holding in Foster was not in complete conformity with prior decisions upholding the application of treaties. See Stefan A. Riesenfeld & Frederick M. Abbott, The Scope of U.S. Senate Control Over the Conclusion and Operation of Treaties, 67 CHI.-KENT L. REV. 571, 577 (1991). Furthermore, Foster must be read in conjunction with United States v. Percheman, 32 U.S. (7 Pet.) 51 (1833), where the Court admitted error in its first analysis of the treaty in question. Nonetheless, the basic rule remains, that only clauses of treaties that specify duties that directly confer rights may be enforced directly with the courts.
74. See NEWMAN & WEISSBRODT, supra note 56, at 586.
75. See Riesenfeld & Abbott, supra note 70, at 575.
76. See Vázquez, supra note 71, at 698-700.
77. See Frolova v. Union of Soviet Socialist Republics, 761 F.2d 370, 373
following factors: the language and purposes of the agreement as a whole, the circumstances surrounding its execution, the nature of the obligations imposed by the agreement, the availability and feasibility of alternative enforcement mechanisms, the implications of permitting a private cause of action, and the capability of the judiciary to resolve the dispute.\(^{78}\)

Under the *Frolova* factors, Article 6(5) of the ICCPR is self-executing. First, the language and purpose of the treaty are clear—to protect the human rights of individuals. Second, Article 3 of the ICCPR imposes an obligation to State parties to provide for effective remedies. It provides as follows:

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;

(b) To ensure that any person claiming such a remedy shall have his rights thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.\(^{79}\)

Third, because the United States has not ratified the Optional Protocol to the Covenant on Civil and Political Rights,\(^{80}\) which provides for an individual right to petition the Human Rights Committee, there are no other enforcement mechanisms available. Fourth, since the treaty provides rights to individuals, there is no reason to believe that individuals should not have a private cause of action to enforce the provisions. Finally, the judiciary is the most capable institution for addressing whether the treaty has been violated since it has traditionally been the means whereby individuals in the

\(^{77}\) Frolova, 761 F.2d at 373.

\(^{78}\) See Frolova, 761 F.2d at 373.

\(^{79}\) ICCPR, supra note 4, art. 3.

United States enforce their constitutional rights.

Furthermore, the prohibitory language of Article 6(5) is clear: "Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age . . . ." Hence, in considering all the relevant factors, the provisions of that article are self-executing.

Despite the clarity of many of the provisions in the ICCPR, the Senate ratified it with a declaration that it was not self-executing. It is questionable whether the Senate, instead of the courts, can make such a determination. Further, such a declaration should not be given effect because it runs counter to the object and purpose of the treaty, which is to protect the individual rights enumerated therein. This Court, however, need not address those points since the legislative history indicates that the Senate merely intended to prohibit private and independent causes of action. In this case, Petitioner is not using the treaty to assert a private cause of action. He is using it defensively and thus is not invoking a separate cause of action.

The defensive use of a treaty is a judicially accepted means by which litigants have been successful in enforcing treaty provisions without having courts make a determination regarding whether the provisions are self-executing. Hence, this Court need not address the non-self-executing declaration and can apply Article 6(5) to this case.

81. ICCPR, supra note 4, art. 6(5).
84. See Riesenfeld & Abbott, supra note 70, at 608.
87. See, e.g., Kolovrat v. Oregon, 366 U.S. 187 (1961) (allowing defensive use of a treaty to escheat proceeding under Oregon law); Ford v. United States, 273 U.S. 593 (1927) (allowing use of a treaty as a defense to personal jurisdiction); Patsone v. Pennsylvania, 232 U.S. 138 (1914) (recognizing the defensive use of a treaty in a criminal case, but ultimately holding that there was no conflict between the treaty and state law).
C. **At a Minimum, Article 6(5) is Helpful for Interpreting United States Standards**

Because the United States has ratified the ICCPR, its provisions should help courts construe the scope of the Eighth Amendment’s final clause. International human rights standards have often been useful tools for interpreting laws in the United States.\(^8\) Indeed, the United States government told the Human Rights Committee that “the courts could refer to the Covenant and take guidance from it.”\(^9\)

Ratification of treaties is not to be treated lightly, and such action by the President and two-thirds of the Senate evidences the acceptance of the treaty. The document should, therefore, provide meaningful guidance to the Court.

**CONCLUSION**

There is no clearer precept in international law than the prohibition of the death penalty for juvenile offenders. The United States cannot continue to demand compliance with human rights principles and norms abroad while it refuses to apply them in its own country. As a branch of the United States government, this Court has the obligation to consider whether indeed those principles must be applied not only by United States federal courts but also by the courts of the fifty states as well. This Court should grant the Petition for Writ of Certiorari to address the very important issues related to faithful compliance to United States treaty obligations as well as international law. For the foregoing reasons, the Petition for Writ of Certiorari should be granted.

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Respectfully submitted,

CONSTANCE DE LA VEGA  
Counsel of Record  
Amici Curiae  
Human Rights Advocates  
Human Rights Watch  
Minnesota Advocates for Human Rights  
Human Rights Committee, Bar of England and Wales

APPENDIX

Human Rights Advocates, a California nonprofit corporation founded in 1978, with national and international membership, endeavors to advance the cause of human rights to ensure that the most basic protections are afforded to everyone. Human Rights Advocates has a Special Consultative Status in the United Nations. Human Rights Advocates has duly submitted briefs as amicus curiae in cases involving individual and group rights where international standards offer assistance in interpreting both state and federal statutes at issue.\(^90\)

Human Rights Watch is a non-governmental organization established in 1978 to monitor and promote observance of internationally recognized human rights. It also has a Special Consultative Status in the United Nations. It regularly reports on human rights conditions in more than seventy countries around the world, and it actively promotes legislation and policies worldwide that advance protections in the area of domestic and international human rights and humanitarian law.

Minnesota Advocates for Human Rights, founded in 1983, is the largest Midwest-based non-governmental organi-

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The organization engaged in international human rights work. The organization has some 4,000 members. Minnesota Advocates for Human Rights also has a Special Consultative Status in the United Nations. Minnesota Advocates for Human Rights has received international recognition for a broad range of innovative programs to promote human rights and prevent the violation of those rights.

The Bar of England and Wales, through the Human Rights Committee, appears on behalf of persons whose human rights are endangered. The Human Rights Committee is nonpolitical and nonpartisan. Its guiding principle is the belief that no person should be punished for any crime except after a trial and appeals process that accords with the highest standards for fairness and the rule of law. Although member states of the European Community no longer implement capital punishment, the Human Rights Committee's purpose is not to challenge the right of the State of Texas to implement capital punishment in a manner consistent with legal notions of justice and fairness. Instead, the Bar Council seeks only to set out international standards in the hope that international, English, British Commonwealth and European Court of Human Rights sources may be of assistance to this Court. Those international standards are especially relevant because the United States has ratified the ICCPR, thus evincing a sincere concern for the norms of international law. Further, the comity among the common-law nations makes the experience of each persuasive to the other. In particular, the courts of the United States and of England have often looked to each other for guidance. For example, the United States Supreme Court in *Enmund v. Florida* specifically recognized the influence of international opinion and relied upon it to guide its determination. The Court noted that the felony murder doctrine had been abolished in England.

91. In submitting his proposal for the ratification of the ICCPR to the Senate for its advice and consent, President George Bush argued that ratification reflected the role that he envisaged for the United States as a leader amongst nations. In a letter submitted to Senator Clairborne Pell, Chair of the Senate Foreign Relations Committee, President Bush stated that “United States ratification of the Covenant of Civil and Political Rights at this moment of history would underscore our natural commitment to fostering democratic values through international law.” President Bush’s Letter to Chairman Pell, (Aug. 8, 1991), reprinted in 31 I.L.M. 645, 660.
