UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RICHARD MAX FLEMING, M.D., Plaintiff – Appellant, v. UNITED STATES OF AMERICA, Defendant – Appellee.	No. 13-17230 Motion to Stay Mandate/Memorandum & Petition for Immediate Panel Rehearing AND/OR Rehearing En Banc

Appellant has electronically received notification of MEMORANDUM on 28 September 2015. In appellant's judgment as counsel pro se, the Court has erred as specified stated below. Appellant hereby calls for an immediate Stay of Mandate and Memorandum and petitions the Court for an immediate Panel Rehearing AND/OR Rehearing En Banc for the following reasons.

Specifically, appellant brings to the attention of this Court that errors have been made in (1) both fact and law, (2) that appellee has INTENTIONALLY mislead the Courts by using expressed "Understanding" in the place of "Declaration" and the Courts have erred in not detecting and consequently correcting this error, (3) that appellee has not disagreed with the rulings of Federal Courts which has held that "Declarations" have no effect upon a treaty law. This Court has previously held that "Declarations" have no legal effect upon treaty law and yet have now let a "Declaration" effect treaty law in this case. Appellee has not passed legislation or changed the terms of the ICCPR treaty changing the "self-execution" statement from a "Declaration" to an "Understanding." (4) That by erring in recognizing the "self-

execution" statement was a "Declaration" and not an "expressed Understanding" of the treaty as established by appellant's brief, this Court has produced a "conflict" between the ruling of this Court in this case and it's prior decisions. The Court cannot change the terms or meanings of the terms of a treaty. (5) A Rehearing En Banc session is necessary to secure/maintain this Courts uniformity. (6) The error in calling a "Declaration" an "expressed Understanding" introduces a significant factual and legal error, which is a Constitutional issue of "exceptional importance." Nationally and Internationally, this is a grave error. With this Court and the SCOTUS accepting a "Declaration" as an "expressed Understanding," in contrast to what appellee has expressly stated in FOUR World reports, where appellee stipulates that "all the necessary legislation was in place to provide for domestic effect of law," thereby as a matter of law making the treaty "self-executing." (6) Clearly there is a need for National Uniformity and execution of the Civil Rights of U.S. Citizens as signed and ratified into law (ICCPR treaty) pursuant to the U.S. Constitution.

ARGUMENT

On 28 September 2015, this Court held that the International Covenant on Civil and Political Rights (ICCPR) treaty, which was signed by President Carter on 5 October 1977 and ratified by the U.S. Senate on 8 June 1992, was unenforceable in U.S. Federal Courts stating that the ICCPR treaty was "not self-executing" because Congress ratified the ICCPR treaty with the "express Understanding" that it was not "self-executing" and subsequently appellant was not afforded Civil Rights or damages under this treaty. Treaty law is the law of the land as established by the U.S. Constitution (Article VI) and requires both Presidential and Congressional

(Article II, Section 2, § 2) action. To avoid confusion and error, and the problems faced by England, the Founding Fathers established a specific process limiting the power of the Senate to approve or disapprove treaties signed by the President. Subsequently treaties have been given specific terms (viz. "Declarations", "Understandings", "Reservations") with specific meanings to avoid confusion and incorrect application of those terms. The SCOTUS and other Federal Courts, including this Court have held that "Declarations" have NO impact on treaty law.

Both the Appellate Courts and the SCOTUS have, as established in Appellant's Opening and Reply Briefs, erred in referring to a "Declaration" of the treaty as an expressed "Understanding" of the treaty. ***It is NOT!*** Treaty laws and the Federal Courts, which have ruled on U.S.A. treaties, have utilized this very specific terminology and held true to the meanings of these terms to avoid the confusion; until the ICCPR treaty where the appellee has misrepresented the terms of the treaty and the Federal Courts have failed to correct this. The ICCPR treaty specifically stipulates what the U.S. Senate has defined as "Declarations", "Reservations" and "Understandings" of the ICCPR treaty. This cannot be changed by the Courts, nor arbitrarily changed by appellee. The definitions applied by appellee, determines the actual legal consequences of each term ("Declarations" vs. "Understandings") as defined by the Federal Courts.

Specifically, this Court of Appeals and other Federal Courts has held that "Declarations" have no effect upon treaty law. The self-executing statement so often referred to by appellee, is a "Declaration" and not an "expressed Understanding." The INTENTIONAL use of the term "expressed Understanding" by appellee when it

is clearly not an "Understanding" but rather a "Declaration" as defined by the U.S. Senate ratification of the treaty **is an INTENTIONAL act of deception by appellee.** Failure of the Federal Courts, including the SCOTUS to recognize this is disconcerting at best and a denial of Civil Rights as established by the ICCPR treaty is unconscionable. It is even more alarming when these Civil Rights was championed by the United States and Eleanor Roosevelt following WWII, in an effort to prevent a recurrence of the atrocities of Nazi Germany. For Article III Courts to deny these legal treaty obligations of the Federal Government to U.S. Citizens through the intentional misrepresentation of the term "expressed Understanding" by the appellee, violates the U.S. Constitution and prior rulings of Article III Courts.

This Court and other Article III Courts have ruled that "Declarations" have no effect upon treaty law and the obligations of the Nation State (viz. appellee) are not affected by any "Declaration." Furthermore, this Court, other Federal Courts and the SCOTUS has repeatedly allowed the appellee to erroneously misrepresent this "Declaration" as an "expressed Understanding" and have erroneously accepted appellee's statements that the "self-executing" statement is an "expressed Understanding." A reading of the actual "Understandings" of the ICCPR treaty (infra) shows this is clearly not the case.

Furthermore, if the Senate of the United States did not agree with these Federal Court rulings; specifically that "Declarations" have no effect upon treaty law, then it is the Constitutional obligation of U.S. Congress to either amend legislation or their ratification of the treaty, so as to reflect this disagreement and to Constitutionally correct this either by changing the "self-execution" statement to be

an actual "expressed Understanding" or to negate the treaty. Since this has not happened and since the appellee has been made aware of this issue by appellant, failure to act by the Federal Government, along with it's persistent reports to the United Nations, must be interpreted as agreement with the Federal Courts rulings that "Declarations" have no legal effect upon treaty law. Instead the U.S. Federal Government (appellee), including the Department of Justice, has repeatedly stipulated in ALL FOUR of the World reports presented to the United Nations, that no additional legislation was required to be passed, because "all the necessary legislation was in place to provide for domestic effect of law" by the time the ICCPR treaty was ratified in 1992 by the U.S. Congress. The Courts have likewise held that a treaty IS SELF-EXECUTING when "all the necessary legislation was in place to provide for domestic effect of law." Since, the Senate and appellee have continued to stipulate the ICCPR treaty was "only ratified AFTER" it was determined the treaty met the Court criteria of a "self-executing" treaty AND since appellee has continued to hold that position in statements to the World, including input from the DOJ, then it can only be argued that the treaty is, by definition, SELF-EXECUTING!

The treaty is by definition "self-executing" as (1) having "all the necessary legislation was in place to provide for domestic effect of law." (2) Appellee continues to state this throughout ALL FOUR reports without change or alteration since 1994. (3) "Declarations" have no effect upon treaty law as established by the Federal Courts and therefore the "Declarations" are legally moot. (4) Appellee has not acted to change legislation or the language of the treaty or to take *any action* to reflect a desire that "Declarations" have an effect upon treaty law. Neither has the

U.S. Senate taken the necessary legislative action to indicate that it meant for the "self-execution" statement to have been an "expressed Understanding. " It never has been an "expressed Understanding" and currently isn't listed as one - an action required by the Senate if it disagreed with the Federal Courts and finally (4) appellee has INTENTIONALLY mislead the Federal Courts by misrepresenting the term "expressed Understanding" and them repeatedly filling four reports to the United Nations, which are part of the World record, stipulating that the treaty was ratified by the Senate of the United States ONLY AFTER "all the necessary legislation was in place to provide for domestic effect of law" – the very legal definition of a "self-executing" treaty.

I. THE SELF-EXECUTING STATEMENT IS NOT AN "EXPRESSED UNDERSTANDING" OF THE ICCPR TREATY.

The appellee and the Courts have misrepresented a "Declaration" regarding whether the ICCPR treaty is or is not "self-executing" by calling it an "expressed Understanding." This is an error and an INTENTIONAL misrepresentation by the appellee and an error on the part of the Courts, including both the SCOTUS and this Court in not correcting this error and applying the legal limits of "Declarations". Treaty terms may not be altered by the Courts or defendants; viz. the appellee. Nowhere in the "expressed Understandings" of the ICCPR treaty is there a discussion or statement regarding the execution of the treaty. If there were, then the expressed "Understandings" (infra) of the treaty would not be required. I.e. these "expressed Understandings" would be redundant and moot.

The pre-ratification meetings of 2 April 1992 clearly state the Senates "Declarations", "Reservations", "Understandings" and "Major Provision" to the ICCPR treaty as stipulated to by appellee. The U.S. Senate did not modify these terms when it ratified the ICCPR treaty on 8 June 1992 and has so stipulated when it ratified the treaty. The U.S. Senate has not changed these terms since.

ICCPR PREAMBLE -- The States Parties to the present Covenant

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

ICCPR Treaty Understandings

> II. The Senate's advice and consent is subject to the following understandings, which shall **apply to the obligations of the United States under this Covenant**:
>
> (1) That the Constitution and laws of the United States guarantee …those terms are used in Article 2, paragraph 1 and Article 26-to be permitted … rationally related to a legitimate governmental objective. The United States further understands the prohibition in paragraph 1 of Article 4 upon discrimination …effect upon persons of a particular status.
>
> (2) That the United States understands the **right to compensation** referred to in Articles 9(5) and 14(6) to **require the provision of effective and enforceable mechanisms**… **obtain compensation** from either the responsible individual or the appropriate **governmental entity** … of domestic law.
>
> (3) That the United States understands … paragraph 2(a) of Article 10 to permit …. The United States further understands …paragraph 3 of Article 10 does not diminish … penitentiary system.

(4) That the United States understands that subparagraphs 3(b) and (d) of Article 14 do not require …. The United States further understands …paragraph 3(e) does not prohibit a requirement … to compel is necessary for his defense. The United States understands the prohibition … double jeopardy in paragraph 7 to apply … judgment of acquittal … same governmental unit….

(5) That the United States understands that this Covenant shall be implemented … for the fulfillment of the Covenant. (emphasis added) 138 Cong. Rec. S4781-01, 1992 WL 65154

ICCPR Treaty Reservations

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

If either appellee or the Court can show the appellant where in this list of "expressed Understandings" or even within the "Reservations," the U.S. Senate has stipulated that the ICCPR treaty is not "self-executing", then appellant would be both impressed and perplexed. These "expressed Understandings" have NOT changed since the treaty was ratified almost a quarter of a century ago.

The Ninth Circuit has repeatedly held that it has the responsibility to make certain treaties are carried out accordingly to what they are understood by the parties involved to mean. "Declarations" as established in appellant briefs are not presented to the other parties of a treaty because they have no legal meaning as established by our Federal Courts. Therefore, the treaty parties would not include a

"Declaration" in its interpretation of the meaning of the treaty. There is no ambiguity in the ICCPR "Understandings," which show both the "Obligation" of the U.S. Federal Government, including compensation to Citizens, nor the ICCPR Preamble, which states the clear meaning of the treaty. The Courts have held, the terms of the treaty (what the two parties to the treaty see) must be resolved accordingly. Statements not seen as legally binding to a treaty (viz. "Declarations) have no impact on the treaty nor it's meaning to the signatory parties.

> It is our responsibility to see that the terms of the treaty are carried out, … **in accordance with the meaning they were understood to have** (emphasis added) …to protect the …people. *Cree v. Flores*, 157 F.3d 762, 769 (9th Cir. 1998)
>
> … **and in terms of the Treaty as a whole**. (emphasis added) *Cree v. Flores*, 157 F.3d 762, 770 (9th Cir. 1998)
>
> … would naturally have understood the terms of the Treaty **and resolved any doubts and ambiguities in their favor**. (emphasis added) *Cree v. Flores*, 157 F.3d 762, 771 (9th Cir. 1998)
>
> …the Court reasoned that it "has traditionally considered as aids to a treaty's interpretation its negotiating and drafting history…and **the post-ratification understanding of the contracting parties**." (emphasis added) 525 U.S. at 156. Northwest Austin Municipal Utility District Number One v. Holder, 2009 WL 788635 (U.S.), 21 (U.S. 2009)

Appellee has clearly stated on each of the FOUR World reports it has issued to the United Nations regarding implementation of the ICCPR treaty, that it's interpretation of the ICCPR treaty is that it IS "self-executing" by definition ("having all of the necessary legislation in place to provide for domestic effect of law") as of its "ratification," giving rights and protections to U.S. Citizens under domestic law. This includes the 24 August 1994 report, the two reports filed 21 October 2004 and the fourth report filed 30 December 2011.

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

Appellee has stipulated on the record that "a non self-executing treaty becomes self-executing once there is legislation to carry it out. (p. 21 of appellant brief). There is in fact NO AMBIGUITY here. The Ninth Circuit has held that it has the OBLIGATION to enforce treaties as they are signed and ratified and pursuant to the U.S. Constitution, they are the *LAW OF THE LAND*. There is NO "expressed Understanding" limiting the execution, nor U.S. Citizen rights under the ICCPR treaty. Calling a horse a cow because it has four legs doesn't make it a cow. Calling something an "expressed Understanding" when it is NOT an "expressed Understanding" doesn't make it so! The appellee has made it very clear on the World record that it considers the ICCPR treaty duly ratified and having done so only after meeting the legal definition of a "self-executing" treaty (infra), recognizes its responsibilities to U.S. citizens accordingly.

This Court and other Federal Courts, including the SCOTUS, have repeatedly erred is stating that the U.S. has an "expressed Understanding" that the ICCPR treaty is not self-executing. In fact, it is not an "expressed Understanding" and appellee has

stipulated on the World record the "obligation" of the U.S. Federal Government to implement under domestic effect of law, the Civil rights and remedies in the ICCPR treaty minus any "Reservations." The five "Reservations" noted supra, do not limit the "execution" of the ICCPR treaty.

II. **Declarations have no effect upon treaty law.**

As a Matter of Law, the Federal Courts have held that "Declarations" have no effect upon treaty law. As such they are moot to the rights of U.S. Citizens, the interpretation by other signatory parties as to the meaning of the treaty and the obligation of the United States (appellee) as a signatory of the International Treaty as signed by the President of the United States and ratified by the United States Senate.

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

A "Declaration" is NOT law and does NOT change a treaty and a declaration, as held by the Federal Courts, differs legally from a "Reservation" (defined supra). *See Restatement,* (supra) at § 314, cmt. d. "*A declaration is not presented to the other international signatories as a request for a modification of the treaty's terms. Hence, the different signatories are operating under the original treaty and not some modification of it.*" As such, "Declarations" are not part of the treaty as defined (supra) by the Ninth, nor First Appellate Courts of the United States.

Furthermore, the Federal Courts have held that "Declarations" made by the U.S. Senate are NOT law and that the "Constitutional power" of treaty negotiations by the U.S. Senate is limited to making "Reservations" not "Declarations."

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

As a result, "Declarations" have no bearing upon treaty law and as such cannot be used to limit the execution of a treaty. Neither should a "Declaration" be misrepresented as an "expressed Understanding" nor as a "Reservation" as it has been here.

The SCOTUS has also held that the U.S. Senate "cannot" alter the terms or conditions of a treaty once signed by the President. It can only ratify or not ratify a treaty.

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

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

As a matter of law, even if the U.S. Senate wanted to modify the terms and conditions of a treaty, it cannot once signed by the President of the United States. As stated, the treaty was signed by the President on 5 October 1977 and ratified by the

Senate 8 June 1992. Fifteen years is more than adequate time to renegotiate a treaty should the U.S. Senate not agree with the terms and conditions of the treaty. The Senate did not renegotiate the treaty. As held by the Federal Courts, as a matter of law, "Declarations" made by the Senate are not law and do not effect treaty obligations.

III. **By definition, treaties are self-executing if all the necessary legislation is in place to provide for domestic effect of law.**

A treaty, which has all the necessary legislation in place to provide for domestic effect of law, is by definition a "self-executing" treaty. The Restatement of Foreign Relations clearly defines a self-executing treaty as one, which has domestic effect of law. The Federal Courts have not disagreed with this, neither has the Congress/Senate of the United States.

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

At such time as it becomes apparent that the treaty provides for domestic effect of law, the treaty is by definition "self-executing."

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

As so clearly stipulated to FOUR times on the World record, most recently in December of 2011, appellee has made it clear that appellee's INTENT was and is, that the ICCPR treaty is in fact, "self-executing."

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

There is no ambiguity in the appellee's written records, which explicitly specify the ICCPR treaty was ratified ONLY AFTER the United States had ALL the necessary legislation in place to establish substantive rights under domestic law. Ergo, it is by definition self-executing. To "Declare" it is not, but to ratify the treaty only after the necessary legislation is in place to provide for domestic effect of law, making the treaty "self-executing" violates logic and the law. Appellee cannot say one thing to the Courts and another to the World.

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

Similarly the Courts cannot say "Declarations" have no legal effect upon a treaty and then give a "Declaration" legal effect upon this treaty.

This Court has specifically held that a treaty is self-executing when it is enforceable in domestic courts without implementing legislation.

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

Appellee has "expressly" stated in its World Reports of the ICCPR treaty, that all the necessary legislation was in place before the treaty was ratified. Appellee has stated this not once, but four times. The Federal Courts have also held that the U.S. State Departments interpretation provided in these reports, along with the DOJ input in these reports, clearly demonstrates appellee's "intention" of treaty implementation of U.S. Citizen domestic rights and remedies as so clearly stipulated to.

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

THIS COURT has specifically held that a treaty *is self-executing* when it is enforceable in domestic courts without implementing legislation.

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

The documents surrounding the ICCPR treaty confirm not only a self-executing treaty by virtue of the above arguments but also a judicial remedy intent by it's very wording, as established in the First Circuit Court of Appeals.

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

Since it is the position of the U.S. Government (appellee) that the ICCPR treaty was not ratified until all the necessary legislation was in place to provide for

domestic effect of law AND the Courts including THIS COURT, have held that this makes a treaty "self-executing;" the ICCPR treaty is as a matter of fact and law, "self-executing" with obligatory judicial remedies to appellants. The Court has erred in taking appellee's misrepresentation of a "Declaration" as an "expressed Understanding." The Court has erred in not declaring the ICCPR treaty "self-executing" when all the necessary legislation was in place to provide for domestic effect of law at the time of treaty ratification.

IV. **Appellee has taken no action to demonstrate it intended for the "Declaration" to be anything other than a "Declaration." It's only actions have been to affirm the "self-execution" of the ICCPR treaty through it's failure to act legislatively to change or negate the treaty and it's affirmative action taken through FOUR World reports defining the treaty as only being ratified after all the necessary legislation was in place to provide for Domestic Effect of Law; making the treaty legally self-executing.**

The ICCPR treaty was ratified 8 June 1992 following Presidential signature on 5 October 1977. During the 23 years, which have since passed, the U.S. Senate has not once attempted to negotiate changes in the treaty. The treaty has not been revoked. The "Understandings" have not changed.

Despite Federal Court ruling that "Declarations" have no legal effect upon a treaty and that the Senate is limited is it's ratification of a treaty, there has been no effort to act to address these issues. Instead, appellee has repeated reported to the World that "all necessary legislation was in place to provide for domestic effect of law" before the treaty was ratified. The appellee and specifically the U.S. Senate has never debated or challenged this.

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

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

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

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

THIS COURT has held that a treaty IS "SELF-EXECUTING" when the necessary legislation is in place to provide for domestic effect of law. Additionally, it has noted that the most important determinant is the "objective(s) of its creators" which is clearly noted in the PREAMBLE of the ICCPR treaty (supra).

> There are at least four relevant factors … is **self-executing: (1) "the purposes of the treaty and the objectives of its creators**," … (emphasis added) …. *Islamic Republic of Iran v. Boeing Co.*, 771 F.2d 1279, 1283 (9th Cir. 1985)

The Courts have also held *these rights are enforceable*. There has been no legislative action taken by appellee despite Federal Court rulings that there are enforceable rights under the ICCPR treaty.

> A proposal by the United States at the Second Session of the Commission regarding the enforcement of the rights created by the ICCPR pursuant to Article 2 also sheds light on the intentions of the United States regarding both the question of **self-execution and the enforcement of these rights by the courts of the United States**. …

> a) … to all persons under its jurisdiction, including citizens ..., the enjoyment of these human rights and fundamental freedoms;
> b) that any person whose rights or freedoms are violated *shall have an effective remedy,* whether the violation has been committed by persons acting in an official capacity;
> c) that such remedies *shall be* ***enforceable by a judiciary*** (emphasis added) whose independence is secured....[53] *Igartua v. U.S.*, 626 F.3d 592, 631-32 (1st Cir. 2010)
>
> The negotiating history of the ICCPR reinforces the clear language of this treaty establishing individual, enforceable rights on behalf of persons situated as are Appellants, and obligating the United States to provide a judicial remedy in its courts to vindicate their violation. **To conclude otherwise is to ignore the plain words of the treaty as well as our basic constitutional duty to interpret international agreements as the Law of the Land**. (emphasis added) *Igartua v. U.S.*, 626 F.3d 592, 633 (1st Cir. 2010)
>
> Further, the conclusion that the ICCPR creates individual rights, enforceable in the courts of the United States, is abundantly clear **from the negotiating history of the Treaty**. (emphasis added) *See generally* Bossuyt, *supra* note 34. Illustrative of this is the Report of the Commission on Human Rights, 5th Session (1949), 9th Session (1953) …. *Igartua v. U.S.*, 626 F.3d 592, 630-31 (1st Cir. 2010)

Despite multiple Court rulings, appellee issued World Reports, and almost a quarter century of time, appellee has not once modified it's "Declarations", changed its "expressed Understandings" challenged or modified it's World Reports, changed the treaty nor suggested to the remainder of the World or the Federal Courts that the treaty is void or that the United States of America will not follow its treaty obligation. Since "Declarations" are not part of the treaty, nor treaty law since they have no legal binding effect on treaty law and since they are not treated so by the Federal Courts, nor do the other signatory parties to the treaty see "Declarations"; it is clear that appellee does

not dispute that its "Declaration" has no legal effect upon the ICCPR treaty. Appellee has taken NO ACTION to change these facts and/or matters of law.

V. Appellee has INTENTIONALLY misrepresented the ICCPR treaty obligations.

This case was originally introduced through the Federal Court in Nevada in 2013. Appellee has been aware of this pending litigation prior to that time. It has been clearly pointed out to appellee (and this Court) that the "self execution" notation is a "Declaration" not an "expressed Understanding." Appellee has had several years to read the ICCPR treaty with its "expressed Understandings", "Reservations" and "Declarations" as noted supra. Appellee has had that time to address the Federal Court rulings, pass legislation, change or modify its reports made to the United Nations as part of the World public record. It has made no effort to do so. Despite the obvious error, appellee has continued to promulgate this error and the Federal Courts have failed to recognize the error and in fact have continued to promulgate it, despite it being clearly presented in this case. For the reasons presented in the appellant briefs, appellee has demonstrated *mala fides*.

CONCLUSION

As a matter of fact, there is NO EXPRESSED "UNDERSTANDING" limiting the ICCPR treaty obligations and its subsequent "execution". As a matter of fact, the appellee has stipulated that "all the necessary legislation was in place to provide for domestic effect of law" prior to the ratification of the treaty. Appellee has stipulated to this in each of the FOUR reports generated by appellee for the United Nations and

World record. As a matter of fact and law, the U.S. Senate has not altered the terms of the treaty nor enacted legislation to challenge the Courts legal standing that "Declarations" have no legal impact on treaty law. As a matter of fact, the appellee has stipulated that the treaty provides an obligation to U.S. Citizens including remedies in these FOUR reports. As a matter of law, the Courts have held that the terms of a treaty may not be interpreted by the Courts but must be upheld by the Courts as they are stated in the treaty.

If appellee disagreed with the Courts ruling on treaties or the U.S. Constitutional limitations on treaty power, Congress has a Constitutional obligation to act accordingly. It has not! Consequently, as a matter of fact, appellee has not acted and is aware that it has and continues to INTENTIONALLY misrepresenting the facts before the Federal Courts; as appellant has repeatedly brought it to both the appellee and this Courts attention. It is a major error of National importance for this Court to allow appellee to continue to misrepresent a "Declaration" as an "expressed Understanding" and then declare to the world that no legislation is necessary to provide for domestic effect of law of the ICCPR treaty, which by definition is a "self-executing" treaty. The Courts have erred in not addressing this before now and in not addressing it currently. The balance of powers obligates this Court to Constitutionally defend the U.S. Constitution and protect the people when appellee abuses the people and violates the rights of its Citizens. Thus was the purpose of separation of powers.

It saddens appellant that ICCPR treaty law has been heard for decades and that appellee and the Courts have misrepresented and misused treaty terms and

their legal application without correction prior to now. **The error is significant.** At a time when Civil Rights are called for in this country, a treaty obligation of this country to provide its citizens with these Civil Rights which already have the necessary legislation in place to provide for domestic effect of law is being blindly ignored by the misrepresentation of a "Declaration" and a failure to enforce the rulings already made by Article III Courts.

For the above-mentioned matters of fact and law, Appellant calls for an IMMEDIATE MOTION TO STAY THE MANDATE AND FOR PANEL REHEARING OF THIS CASE EITHER BY PANEL REHEARING OR REHEARING EN BANC AS DEEMED MOST LEGALLY APPROPRIATE!

Dated: 30 September 2015

Respectfully submitted

Richard Max Fleming, M.D., J.D.

Richard Max Fleming, M.D., J.D.
4055 Lankershim Blvd, #422
Studio City, CA 91604