

No. 18-\_\_\_\_\_

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**In the**  
**Supreme Court of the United States**

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**BRANDI K STOKES,**

*Petitioner,*

—v—

**COMMISSION FOR LAWYER DISCIPLINE,**  
*Respondent.*

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On Petition for Writ of Certiorari to the  
United States Court of Appeals for the Fifth Circuit

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**PETITION FOR WRIT OF CERTIORARI**

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**QUESTION PRESENTED**

Whether a United States Court of Appeals may rely upon the subject matter characterizations of a lower court to avoid jurisdiction to review a claim for Geneva Conventions protection?

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## **PETITION FOR WRIT OF CERTIORARI**

Brandi K Stokes petitions for a writ of certiorari for review of the opinions, orders, and judgments of the Lower and Trial Courts.



## **OPINIONS BELOW**

The opinion of the United States Court of Appeals for the Fifth Circuit is provided in the Appendix at App. 1a–2a. The opinion of the United States Court of Appeals for the Fifth Circuit may be cited as *Commission for Lawyer Discipline v. Stokes*, No. 18-50965, EFC No. 00514752204 (5<sup>th</sup> Cir. Dec. 7, 2018).

The unpublished order of the Western District of Texas Austin Division is provided in the Appendix at App. 3a–7a. The order of the Western District of Texas Austin Division may be cited as *Commission for Lawyer Discipline v. Stokes*, No. 1:18-CV-323-RP, EFC No.13 (W.D. Tex. Oct. 23, 2018).



## **JURISDICTION**

The opinion of the United States Court of Appeals for the Fifth Circuit was filed on December 7, 2018. App. 1a–2a. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).



**CONSTITUTIONS, TREATIES, AND STATUTES****U.S. Const. art. VI, cl. 2, Supremacy Clause**

...all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land...

**28 U.S.C. § 1291**

The courts of appeals... shall have jurisdiction of appeals from all final decisions of the district courts of the United States...

**28 U.S.C. § 1331**

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

**28 U.S.C. § 1447, Procedure after removal generally**

(a) In any case removed from a State court, the district court may issue all necessary orders and process to bring before it all proper parties whether served by process issued by the State court or otherwise.

(b) It may require the removing party to file with its clerk copies of all records and proceedings in such State court or may cause the same to be brought before it by writ of certiorari issued to such State court.

(c) A motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after the filing of the notice of removal under section 1446(a). If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded. An order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the

removal. A certified copy of the order of remand shall be mailed by the clerk to the clerk of the State court. The State court may thereupon proceed with such case.

(d) An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to the State court from which it was removed pursuant to section 1442 or 1443 of this title shall be reviewable by appeal or otherwise.

(e) If after removal the plaintiff seeks to join additional defendants whose joinder would destroy subject matter jurisdiction, the court may deny joinder, or permit joinder and remand the action to the State court.

**Geneva Convention (III) Relative to the Treatment of Prisoners of War, art. 3, Aug. 12, 1949, 6 U.S.T. 3316 [hereinafter Geneva Convention III, art. 3]**

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed 'hors de combat' by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (b) taking of hostages;
- (c) outrages upon personal dignity, in particular humiliating and degrading treatment;
- (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

(2) The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict. The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

**Geneva Convention (III) Relative to the Treatment of Prisoners of War, art. 129, Aug. 12, 1949, 6 U.S.T. 3316 [hereinafter Geneva Convention III, art. 129]**

The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention defined in the following Article.

Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It

may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a *prima facie* case.

Each High Contracting Party shall take measures necessary for the suppression of all acts contrary to the provisions of the present Convention other than the grave breaches defined in the following Article.

In all circumstances, the accused persons shall benefit by safeguards of proper trial and defence, which shall not be less favourable than those provided by Article 105 and those following of the present Convention.

**Geneva Convention (III) Relative to the Treatment of Prisoners of War, art. 130, Aug. 12, 1949, 6 U.S.T. 3316 [hereinafter Geneva Convention III, art. 130]**

Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, compelling a prisoner of war to serve in the forces of the hostile Power, or wilfully depriving a prisoner of war of the rights of fair and regular trial prescribed in this Convention.



## STATEMENT OF THE CASE

The history of this case is complex and involves a significant amount of criminal misconduct that remains unmediated at the time of the filing of this Petition. While such complexities have the potential to serve as a distraction, the instant appeal concerns one narrow point of error to which the following factual and procedural history are relevant.

### A. Trial Court Proceedings in the Western District of Texas Austin Division

On April 19, 2018, Petitioner filed a "Notice of Removal" in the district court that pled facts sufficient to put the trial court on notice that the claims at issue involve grave breaches of the Geneva Conventions.<sup>1</sup> On

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<sup>1</sup> Notice of Removal for Travis County Cause No. D-1-GN-18-000502, EFC No. 1, at 2 ("This case is integrally related to the following cases filed in this Court, and the pleadings of Brandi K Stokes contained therein are hereby incorporated by reference: [Western District of Texas Case Nos. 1:17-CV-1044-RP, 1:17-CV-0115-RP, and 1:17-CV-0116-RP]... [Plaintiff]...chose to prosecute a frivolous complaint against the Defendant...without even reviewing the evidence. Furthermore, [Plaintiff] has chosen a painful family dispute for her tool of harassment and has further sought to thwart the Defendant's due process rights by aggressively challenging a discovery request that could resolve the dispute objectively and with finality. [Plaintiff] has also successfully thwarted the Defendant's due process rights by circumventing state law and procedural rules to obtain discovery in circumvention of a stay imposed by operation of law."); *see* Defendant's Exhibit 11, EFC No. 10, at 7–8 ("On February 16, 2017, [Ms. Stokes] filed a "Notice of Removal" in the district court that included a "Notice of Entitlement to Geneva Conventions Protection" that expressly requested "Geneva Conventions protection to the fullest extent of the law" and that pled facts sufficient to put the United States on notice that the claims at issue allege grave breaches of the Geneva Conventions. On March

October 23, 2018, the trial court filed an Order characterizing the case a “disciplinary action” and trivializing Petitioner’s claim for Geneva Conventions protection by characterizing the claim as a “federal defense” that failed to confer subject matter jurisdiction.<sup>2</sup> The Order of the trial court expressly dismissed all pending requests for relief and closed the case.<sup>3</sup>

#### **B. Lower Court Proceedings in the Court of Appeals for the Fifth Circuit**

On appeal in the Court of Appeals for the Fifth Circuit, the lower court relied upon the trial court’s characterizations of the claims to dismiss the appeal for lack of jurisdiction pursuant to 28 U.S.C. § 1447(d) without acknowledging that this case is dominated allegations of grave breaches of the Geneva Conventions by a Local Authority.<sup>4</sup> To further evade jurisdiction, the lower court additionally mischaracterized the Order of the trial court as “interlocutory” despite the fact that no requests for

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10, 2017, Ms. Stokes filed [an amended complaint] that provided additional information regarding significant human rights violations initiated by employees of the United States and that pled facts sufficient to put the United States on notice that the claims at issue specifically allege grave breaches of art. 3 of the Geneva Convention Relative to the Treatment of Prisoners of War.”; *see also* Geneva Convention III, art. 130 (“Grave breaches...shall be those involving any of the following acts, if committed against persons or property protected by the Convention... *wilfully depriving a prisoner of war of the rights of fair and regular trial* prescribed in this Convention.”)(emphasis added).

<sup>2</sup> App. at 3a–7a.

<sup>3</sup> App. at 7a.

<sup>4</sup> App. at 1a–2a.

relief remained pending in the trial court and that the case was ordered to be closed.<sup>5</sup>



### REASONS FOR GRANTING THE PETITION

#### THE DECISION OF THE LOWER COURT CREATES A MECHANISM FOR UNITED STATES COURTS TO AVOID AN INTERNATIONAL OBLIGATION.

##### A. The Geneva Conventions is enforceable international law.

The Senate Report accompanying ratification of the Geneva Conventions demonstrates that treaty enforcement was clearly contemplated during the negotiation and ratification process and that the binding nature of the enforcement provisions set forth therein was well understood at the time that the Geneva Conventions were ratified by the United States.<sup>6</sup> For example, the report stated that “[e]ach of the four conventions contains certain general provisions which deal with its application and the mechanics of its enforcement.”<sup>7</sup> To emphasize the binding and enforceable nature of the treaties, the report included information pertaining to provisions that bind the United States 1) to enact legislation necessary to provide effective penal sanctions for persons committing violations of the convention enumerated as grave breaches, 2) to accept an obligation to search for persons alleged to be

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<sup>5</sup> *Id.* see 28 U.S.C. § 1291.

<sup>6</sup> S. Exec. Rep. No. 84-9, at 5-7 (1955).

<sup>7</sup> *Id.* at 5.

responsible for the commission of breaches of the convention, and 3) to accept an obligation to try persons committing violations before United States courts regardless of their nationality.<sup>8</sup> At one point during its analysis of enforceability of a particular provision, the report went so far as to bluntly state that “once the treaty is ratified, *the United States will have assumed an international obligation*...to give effect to its injunctions.”<sup>9</sup>

**B. If properly characterized, the trial court would have jurisdiction.**

Article 129 of the Geneva Convention Relative to the Treatment of Prisoners of War mandates that “[e]ach High Contracting Party *shall* be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, *before its own courts*.”<sup>10</sup> Article 129 further mandates that “[e]ach High Contracting Party *shall* take measures necessary for the suppression of all acts contrary to the provisions of the present Convention other than the grave breaches defined in the following Article.”<sup>11</sup>

The trial court has been designated by the United States as the domestic court having jurisdiction over Petitioner’s claim for Geneva Conventions protection from grave breaches and other acts contrary to the conventions pursuant to 28 U.S.C. § 1331, which provides that the “district courts *shall* have original

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<sup>8</sup> *Id.* at 6–7.

<sup>9</sup> *Id.* at 25 (emphasis added).

<sup>10</sup> Geneva Convention III, art. 129.

<sup>11</sup> *Id.*

jurisdiction of all civil actions arising under the Constitution, laws, or *treaties* of the United States."<sup>12</sup>

**C. The United States may not avoid an international obligation by allowing domestic courts to mischaracterize the nature of a claim.**

The language of both Article 129 of the Geneva Convention Relative to the Treatment of Prisoners of War and 28 U.S.C. § 1331 is mandatory and does not provide any ability for the United States, by or through its domestic courts, to delegate the imposed duties upon the court of a Local Authority, such as a state district court.<sup>13</sup> As such, 28 U.S.C. § 1447(c)–(d) is preempted by international law for claims involving grave breaches of the Geneva Conventions.<sup>14</sup> By relying upon the trial court's characterization of a Geneva Conventions claim for protection from grave breaches as a “federal defense” to a “state law” cause of action instead of as a mandatory international obligation not subject to delegation through remand, the lower court has avoided review of claims involving a mandatory international obligation and has provided the United States, by and through its District Courts, with a mechanism to circumvent enforcement of the

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<sup>12</sup> 28 U.S.C. § 1331 (emphasis added).

<sup>13</sup> Geneva Conventions III, art. 129 (“Each High Contracting Party *shall* be under the obligation... Each High Contracting Party *shall* take measures necessary for the suppression of all acts contrary to the provisions of the present Convention...”)(emphasis added); 28 U.S.C. § 1331 (“...district courts *shall* have original jurisdiction of all civil actions arising under...the treaties of the United States.”)(emphasis added); *see* U.S. Const. art. VI, cl. 2.

<sup>14</sup> *Id.*

Geneva Conventions.<sup>15</sup> This type of avoidance maneuvering simply cannot be tolerated. For if a High Contracting Party can avoid international obligations pursuant to the Geneva Conventions by mischaracterizing claims involving grave breaches, the Geneva Conventions will become *de facto* unenforceable in clear opposition to the intent of the conventions.<sup>16</sup>



## CONCLUSION

For the foregoing reasons, this petition should be GRANTED.

Respectfully submitted,

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<sup>15</sup> See App. at 1a–2a.

<sup>16</sup> *Supra* at 3–4.