

No. 18-_____

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

BRANDI K STOKES,

Petitioner,

-v-

CHRISTOPHER LANCE CORSBIE,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

BRANDI K STOKES
PETITIONER PRO SE
P.O. Box 301916
AUSTIN, TX 78703
(512) 206-0202
BRANDI.STOKES@GMAIL.COM
BRANDIKSTOKES.ORG

QUESTION PRESENTED

Whether 28 U.S.C. § 1447(d) is preempted by international law for claims involving grave breaches of the Geneva Conventions.

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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The unpublished opinion and judgment of the United States Court of Appeals for the Fifth Circuit are provided in the Appendix at App.1a-2a.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 *Stokes v. Corsbie et al.*, No. 18-50094, EFC No. 00514568167 (5th Cir. Jul. 24, 2018).

The unpublished order and judgment of the Western District of Texas Austin Division are provided in the Appendix at App. 3a-8a. The order of the Western District of Texas Austin Division may be cited as *Stokes v. Corsbie et al.*, No. 1:17-CV-116-RP, EFC No. 9 (W.D. Tex. Apr. 3, 2017).



JURISDICTION

The opinion and judgment of the United States Court of Appeals for the Fifth Circuit were filed on July 24, 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 (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title.

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 (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, art. 49, Aug. 12, 1949, 6 U.S.T. 3114 [hereinafter Geneva Convention I, art. 49]

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 Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949.

Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, art. 50, Aug. 12, 1949, 6 U.S.T. 3114 [hereinafter Geneva Convention I, art. 50]

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, and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, art. 50, Aug. 12, 1949, 6 U.S.T. 3217 [hereinafter Geneva Convention II, art. 50]

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 Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949.

Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, art. 51, Aug. 12, 1949, 6 U.S.T. 3217 [hereinafter Geneva Convention II, art. 51]

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, and extensive destruction and

appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

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.

Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, art. 146, Aug. 12, 1949, 6 U.S.T. 3516 [hereinafter Geneva Convention IV, art. 146]

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 Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949.

Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, art. 147, Aug. 12, 1949, 6 U.S.T. 3516 [hereinafter Geneva Convention IV, art. 147]

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 present Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.



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 February 17, 2017, Petitioner 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 trial court on notice that the claims at issue allege grave breaches of the Geneva Conventions.¹ On March 10, 2017, Petitioner further filed a “Plaintiff’s Amended Complaint” that provided additional information regarding significant human rights violations initiated by employees of the United

¹ Notice of Entitlement to Geneva Conventions Protection; Notice of Removal for Travis Cty Cause No. D-1-FM-10-003078; Notice of Removal for Travis Cty Cause No. D-1-FM-16-005347; and Motion to Seal Pursuant to National Security Case Management, EFC No. 2, at 4-5 and 11-17 (“Plaintiff...has been systematically and pervasively harassed with fabricated mental health information and false allegations... Plaintiff...has been systematically and maliciously tortured both physically and psychologically... Plaintiff has been maliciously subjected to cruel treatment, torture, outrages upon dignity, and humiliating and degrading treatment.”); *see also* Geneva Convention I, art. 50; Geneva Convention II, art. 51; Geneva Convention III, art. 130; Geneva Convention IV, art. 147.

States, that pled facts sufficient to put the court 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, and that pled facts sufficient to put the court on notice that the grave breaches at issue had escalated to include non-state actor (“NSA”) participation.²

² Plaintiff’s Amended Complaint, EFC No. 7, at 3-5 (“In January of 2006, Plaintiff was wrongfully diagnosed with a mental health problem and placed under the care of an Egyptian born, Cairo educated psychiatrist over Plaintiff’s objection. Under the care of this psychiatrist and in less than six months, Plaintiff went from being a respected and productive member of society to having her life, childhood, family history, and mental health status trashed out by several VA employees working in concert under the direction of this foreign-born psychiatrist. Plaintiff further suffered physical and psychological torture as a result of the conduct of these employees through unnecessary psychotropic doping and untreated gallbladder disease... In January of 2009, Plaintiff was approached and befriended by Defendant Christopher Lance Corsbie, a US Citizen with significant and material connections to foreign nationals... Plaintiff has been mercilessly harassed, put down, bullied, and psychologically tortured in the aftermath of her relationship with Defendant... Defendant...relied upon a false mental health diagnosis based upon fabricated mental health records to justify his actions. Defendant...also appears to have recruited a significant number of third parties to assist him in his efforts. Plaintiff...has avidly defended herself against the actions of Defendant...and that ordeal is well documented in the record from the state proceedings... At this juncture, Plaintiff has been systematically and maliciously tortured both physically and psychologically to such an extent that it is reasonable to conclude that ongoing efforts to compromise Plaintiff are intentional. While the depth of what appears to be an organized effort to compromise Plaintiff is unclear at this juncture, it does appear that foreign nationals and citizens with significant and material foreign national connections have been substantially involved with dishonest maneuvering that has enabled the torture.”)

Without acknowledging that this case is dominated by claims involving grave breaches of the Geneva Conventions, the trial court filed an Order on April 3, 2017, remanding all claims against Christopher Lance Corshie back to state court citing a “Motion to Sever and Request Remand to Family Law Actions to State Court” filed by Respondent in another case, the “Domestic Relations exception to federal jurisdiction,” and the “*Rooker-Feldman* doctrine.”³

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

On appeal in the Court of Appeals for the Fifth Circuit, Petitioner urged the lower court to acknowledge that Respondent had waived any challenge to procedural defects in the removal by not raising any objections through the filing of a timely motion, that the domestic relations doctrine does not apply to claims involving grave breaches of the Geneva Conventions, and that the Rooker-Feldman doctrine is not applicable to state court judgments obtained through extrinsic fraud.⁴

Without acknowledging that this case is dominated by claims involving grave breaches of the Geneva Conventions, the lower court affirmed the judgment of the trial court with a generic finding that the remand order was not reviewable pursuant to 28 U.S.C. § 1447(d) because the order was reasoned upon a finding that the removal conflicts with orders of the state court and involves domestic relations.⁵

³ App. 4a-5a.

⁴ Brief for Appellant, EFC No. 00514421581, at 16-22.

⁵ App. 1a.



REASONS FOR GRANTING THE PETITION

THE DECISION OF THE LOWER COURT CONFLICTS WITH ENFORCABLE INTERNATIONAL LAW.

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.⁶ 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.”⁷ 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 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.⁸ At one point during its

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

⁷ *Id.* at 5.

⁸ *Id.* at 6-7.

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.*”⁹ As such, the United States ratified the Geneva Conventions with full awareness of the binding nature of the agreements and the enforceability of the injunctions set forth therein.

B. International law for claims involving grave breaches of the Geneva Conventions preempts 28 U.S.C. § 1447(d).

All four of the Geneva Conventions as ratified by the United States expressly provide 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.*”¹⁰ By and through 28 U.S.C. § 1291, the United States has additionally determined that the courts of appeals shall have appellate jurisdiction from all final decisions of the district courts of the United States.¹¹ Having designated the courts of appeals as courts of competent jurisdiction to hear appeals from *all* final decisions of the district courts, the United States may not subsequently carve out an exception to said jurisdiction for decisions involving claims of grave breaches of the

⁹ *Id.* at 25 (emphasis added).

¹⁰ Geneva Convention I, art. 49; Geneva Convention II, art. 50; Geneva Convention III, art. 129; Geneva Convention IV, art. 146.

¹¹ 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...).

Geneva Conventions.¹² As such, 28 U.S.C. § 1447(d) is preempted by international law for claims involving grave breaches of the Geneva Conventions to the extent that it purports to carve out an exception to appellate jurisdiction for claims involving such grave breaches.¹³



CONCLUSION

For the foregoing reasons, this petition should be GRANTED.

Respectfully submitted,

BRANDI K STOKES
PETITIONER PRO SE
PO BOX 301916
AUSTIN, TX 78703
(512) 206-0202
BRANDI.STOKES@GMAIL.COM
BRANDIKSTOKES.ORG

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¹² Geneva Convention I, art. 49; Geneva Convention II, art. 50; Geneva Convention III, art. 129; Geneva Convention IV, art. 146 (“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.*”); U.S. Const. art. VI, cl. 2 (“...all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land...”).

¹³ *Id.*