

IN THE INTERNATIONAL COURT OF JUSTICE

FEDERAL REPUBLIC OF GERMANY

APPLICANT

V.

UNITED STATES OF AMERICA

RESPONDENT

COUNTER-MEMORIAL OF THE UNITED STATES OF AMERICA

La Grand

COMES NOW The United States of America and for their Memorial to the Court states the following:

1. HISTORICAL RELATIONS IN REGARD TO THE UNITED STATES OF AMERICA AND THE LA GRAND / STATEMENT OF FACT

- a. Walter LaGrand was born in Germany on 26 January 1962 and brother Karl LaGrand was born in Germany on 10 October 1963. A United States Citizen Serviceman in an American camp in Germany, Masie LaGrand, married their mother and brought Walter, Karl, their sister, and mother to Arizona in 1967.
- b. Both brothers had a precarious upbringing with their adoptive father abusing them from a young age and their mother negligent. She welcomed government services to take all three children into child-care institutions multiple times. All three children were rehomed multiple times and there are extensive records of this kept by the State of Arizona.
- c. Both brothers spent most, if not all, of their lives in the United States of America, speaking complete English. Both identified, when asked, as United States citizens when detained, but they never actually received their citizenship. Their adoptive father assumed they had already gotten their papers, so he did not file for their citizenship.
- d. On 7 January 1982, Walter and Karl LaGrand attempted an armed bank robbery in Marana, Arizona. In the process, Ken Hartsock, the bank's manager, was brutally murdered and Dawn Lopez, a bank employee, was stabbed repeatedly and almost killed. The President of Germany, President Herzog wrote to President Clinton:
 - i. "In no way do I doubt the legitimacy of the conviction nor the fairness of the procedure before the courts of the state of Arizona and the federal courts"
- e. Through multiple letters between German Officials and the United States, the crime was verified and unexcused.
- f. The brothers went through a series of appellate and other legal proceedings regarding their convictions and sentences, and because capital punishment was

being sought, these court proceedings were particularly rigid and were later approved by the Arizona Supreme Court. Multiple appeals were made, yet the decision was upheld.

- g. The United States has accepted compliance with the requirements of Article 36 of the Vienna Convention that required constant effort and attention by including booklets of *Consular Notification and Access: Instructions for Federal, State and Local Law Enforcement and Other Officials Regarding Foreign Nationals in the United States and the Rights of Consular Officials To Assist Them* to be carried by arresting officers, prosecutors, and judicial authorities.
- h. This edition was also made accessible through libraries and the internet for the public. Additional educational efforts through the states were made, including the state of Arizona to collaborate with Consular Officials.

2. STATEMENT OF LAW

- a. Vienna Convention on Consular Relations 1963
 - i. Article 36: “With a view to facilitating the exercise of consular functions relating to nationals of the sending state:
 - 1. Consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State;
 - 2. If he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this subparagraph;
 - 3. Consular officers shall have the right to visit a national of the sending State who is in prison, custody, or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody, or detention in their district in pursuance of a judgement. Nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action.

4. The rights referred to in paragraph 1 of this article shall be exercised in conformity with the laws and regulations of the receiving State, subject to the proviso, however, that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under this article are intended.”
- b. Optional Protocol Concerning the Compulsory Settlement of Disputes 1961
 - i. Article 1: “Disputes arising out of the interpretation or application of the Convention shall lie within the compulsory jurisdiction of the International Court of Justice and may accordingly be brought before the Court by an application made by any party to the dispute being a Party to be the present Protocol.”
- c. Statute of the International Court of Justice
 - i. Article 41: “The Court shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party.
 1. Pending the final decision, notice of the measures suggested shall forthwith be given to the parties and to the Security Council.”

3. STATEMENT OF JURISDICTION

- a. As of 1985, the United States does not recognize as compulsory ipso facto and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the International Court of Justice.
 - i. The United States of America respectfully acknowledges the jurisdiction of the International Court of Justice in the present proceedings. While the United States maintains that the issues presented involve complex interactions between international obligations that were met by the United States under the Vienna Convention on Consular Relations and domestic criminal procedural law, it recognizes the Court’s competence to adjudicate disputes arising under treaties to which the United States is a party.
 - ii. The United States accepts the temporary jurisdiction of the International Court of Justice pursuant to Article 36, paragraph 1 of the Statute of the court, but affirms that this acceptance does not constitute a waiver of its rights under domestic law.
 - iii. The United States recognizes that the dispute concerns alleged violations of Article 36, specifically regarding the consular access rights, but maintains that its domestic procedural rules, including the doctrines governing state and criminal procedure and federal habeas corpus review are valid.

4. ARGUMENTS

- a. Through Article 36 of the Vienna Convention on Consular Relations, inter-state obligations are created, not direct individually enforceable rights. The United States submits that Article 36 primarily framed in terms of the rights of consular officers with reference to informing the person concerned of his rights does not transform the Convention into an enforcement for individuals. The Convention does not outline that failure:
 - i. Invalidates domestic procedures or laws (as outlined through the Procedural Default Doctrine);
 - ii. Grants access to federal review (through the rights and procedures of habeas corpus review) or;
 - iii. Requires suppression of given legal statements or evidence as regarding the criminal case.
- b. Article 36(2) of the Vienna Convention on Consular Relations explicitly subordinates the exercise of rights to the laws and regulations of the receiving state, given that the laws exercised do not constitute or infringe on the purpose of consular access. Through the United States appellate court, State Supreme Court, and other layers of judicial review, the final verdict of capital punishment was verified; which would imply this intervention through International Court as intruding and diminishing United States domestic criminal justice procedures and court.
- c. Germany argues that the German Consular Officers from Los Angeles would have given rapid and extensive assistance to the LaGrand's defense counsel, however there is little evidence that Consular Officers may have been able to prevent the preponderance of evidence to reveal itself before the court.
 - i. Neither brother held any documentation at the time of arrest, not did they hold documentation at their place of residence. Instead, both Karl and Walter assumed American Citizen identity when asked for nationality before officials. All points of contact for the brothers were located in Arizona.
- d. Provisional measures under Article 41 of the Statute of the International Court of Justice are not legally binding. Germany has argued that the United States was under a binding obligation to comply with measures of accepted jurisdiction towards the International Court of Justice, however under proper interpretation:
 - i. The United States does not need to authorize the Court to indicate measures regarding the final judgement;
 - ii. The text does not create legally binding obligation and;
 - iii. The text must be read in light of the general structure of the Statute, which only grants final judgement and jurisdiction under acceptance.

5. RELIEF AND REMEDIES SOUGHT

- a. With the information above accounted for, the United States of America respectfully seeks out that the Court:
 - i. Uphold and recognize the legal validity of the United States court proceedings and sentences;
 - ii. Allow for individual domestic criminal law to preside in priority to non-binding international agreement and;
 - iii. Order Germany to accept the criminal charges, proceedings, and outcome of the LaGrand brothers when assuming an American identity and culture.

6. SUMMARY

- a. The LaGrand brothers, although born in Germany, were transported to the United States by their guardians, and assumed an American identity with little to no ties to their few years of German life. Due to familial and unfortunate circumstances during their upbringing, they never applied for proper citizenship, however committed brutal and horrendous crimes on American soil, and were subsequently tried in the United States Court of Criminal Law. Both brothers were sentenced, applied for revision of their trials, and through multiple files of judicial review, it was determined that they received fair and righteous trials and were sentenced to execution. In their final years, they sought out assistance through foreign means through which they had little to no contact with through decades, and following their sentencing, the questioning of judicial authority within domestic ground has not ceased. Through the discretion of not our own, this case has been brought before the International Court of Justice.