

IN THE SUPREME COURT OF FLORIDA

CASE NO.: 90,952

JOAQUIN J. MARTINEZ,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

---

APPEAL FROM THE CIRCUIT COURT OF THE  
THIRTEENTH JUDICIAL CIRCUIT OF FLORIDA  
IN AND FOR HILLSBOROUGH COUNTY

---

---

AMICUS CURIAE BRIEF OF  
ILUSTRE COLEGIO DE ABOGADOS DE MADRID  
("MADRID BAR ASSOCIATION") IN SUPPORT OF  
APPELLANT JOAQUIN JOSE MARTINEZ

---

Steven A. Hammond  
Scott Christensen  
Hughes Hubbard & Reed, LLP  
One Battery Park Plaza  
New York, NY 10004-1482

Of Counsel

Sharon L. Kegerreis  
Fla. Bar 852732  
Mayda Prego  
Fla. Bar 0054100  
Hughes Hubbard & Reed, LLP  
201 South Biscayne Boulevard  
Miami Center - Suite 2500  
Miami, FL 33131

## TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CITATIONS .....	iii
CERTIFICATE OF TYPESET .....	i
INTEREST OF THE AMICUS .....	2
STATEMENT OF FACTS .....	4
SUMMARY OF ARGUMENT .....	5
ARGUMENT .....	7
I. MARTINEZ’S DEATH SENTENCE SHOULD BE VACATED BECAUSE HIS DUE PROCESS RIGHTS UNDER INTERNATIONAL LAW HAVE BEEN VIOLATED .....	7
A. Overview of the International Bill Of Human Rights .....	7
B. International Law Requires Heightened Scrutiny In Death Penalty Cases .....	14
II. MARTINEZ DID NOT RECEIVE A FAIR TRIAL UNDER THE INTERNATIONAL LEGAL STANDARDS OF ARTICLE 14, ICCPR .....	17
A. Martinez Did Not Receive Prompt Notice Of The Nature Of The Charge Against Him .....	18
B. Martinez Did Not Have Adequate Time To Prepare A Defense ...	21
C. Martinez Was Denied His Right To Effective Counsel .....	23
D. Martinez Was Deprived Of The Presumption Of Innocence .....	

..... 25

E. Martinez Was Denied The Right To a Fair Trial ..... 26

..... 26

III. THE FLORIDA STATE COURTS ARE LEGALLY BOUND TO GRANT  
MARTINEZ THE PROTECTIONS OF ARTICLE 14 OF THE ICCPR 28

CONCLUSION ..... 34

## TABLE OF CITATIONS

	<u>Page</u>
<b>CASES</b>	
<i>Adams v. Jamaica</i> , Communication No. 607/1994 .....	22
<i>Little v. Jamaica</i> , Communication No. 283/1988, U.N. Doc. CCPR/C/43/D/283/1988 (1991) .....	15, 16, 21
<i>Murray v. The Schooner Charming Betsy</i> , 6 U.S. (2 Cranch) 64 (1804) .....	13
<i>Price v. Jamaica</i> , Communication No. 572/1994, U.N. Doc. CCPR/C/58/D/572/1994 (1996) .....	22
<i>Regina v. Stephen Lorne Astill</i> , No. CA 060477, 1992 NSW LEXIS 6760 (Sup. Ct. Aug. 25, 1992) (New South Wales) .....	31
<i>Skiriotes v. Florida</i> , 313 U.S. 69 (1941) .....	27
<i>The Paquete Habana</i> , 175 U.S. 677 (1900) .....	31
<i>United States v. Noriega</i> , 808 F. Supp. 791 (S.D. Fla. 1992) .....	28, 29, 30, 31
<i>United States v. Romano</i> , 706 F.2d 370 (2d Cir. 1983) .....	30

## STATUTES AND OTHER AUTHORITIES

### Constitutions And Treaties

European Convention for the Protection of Human Rights and Fundamental Freedoms, <i>opened for signature</i> Nov. 4, 1950, 213 U.N.T.S. 221 .....	32
Geneva Convention Relative to the Treatment of Prisoners of War, August 12, 1949, 6 U.S.T. 3316, T.I.A.S. No. 3364, 75 U.N.T.S. 135 .....	30
International Covenant on Civil and Political Rights, <i>opened for signature</i> Dec. 19, 1966, 999 U.N.T.S. 171 .....	10
Rome Statute of the International Criminal Court, <i>opened for signature</i> July 17, 1998, U.N. Doc. A/CONF.183/9 .....	32

Spain Const. art. 15 (December 29, 1978) .....	2
U.S. Const. art. VI, cl. 2 .....	27
Vienna Convention on Consular Relations, <i>opened for signature</i> ..... April 24, 1963, art. 36, 21 U.S.T. 77, 596 U.N.T.S. 2613	

**United Nations Documents**

U.N. Charter .....	8
Universal Declaration of Human Rights, U.N. Doc. A/810 at 71 (1948). ....	9
United Nations Economic and Social Council, <i>Overview</i> .....	14
United Nations High Commissioner for Human Rights, <i>Fact Sheets</i> .....	8, 9
United Nations High Commissioner for Human Rights, <i>Fact Sheet No. 2 (Rev. 1), The International Bill of Human Rights</i> , June 1996 .....	8
United Nations, Human Rights Committee, <i>General Comment 13, Article 14, Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies</i> , U.N. Doc. HRI/GEN/1/REV.1 at 14 (1994) .....	18
United Nations High Commissioner for Human Rights, <i>Proclamation of Teheran, Proclaimed by the International Conference on Human Rights at Teheran</i> , May 13, 1968 .	9

**Other International Legal Materials**

Louis Henkin, <i>International Law as Law in the United States</i> , 82 Mich. L. Rev. 1555 (1984) .....	31
Louis Henkin, <i>Notes from the President</i> , Am. Soc’y Int’l L. Newsl., Jan. 1994. . .	8
Restatement (Third) of Foreign Relations § 102(3) cmt. i (1986) .....	32
Restatement (Third) of Foreign Relations § 111(1) cmt. a (1986) .....	31
Restatement (Third) of Foreign Relations § 111(3) cmts. c and d (1986) .....	27
Restatement (Third) of Foreign Relations § 114 (1986) .....	13

Restatement (Third) of Foreign Relations § 722 cmt. a (1986) . . . . . 29

Sandra Day O'Connor, *Federalism of Free Nations*, 28 N.Y.U. J. Int'l L. & Pol. 35, 42 (1995-1996) . . . . . 27

Senate Committee on Foreign Relations, *Report on the Ratification of International Covenant on Civil and Political Rights*, S. Rep. No. 102-23 (1992) . . . . . 11

## **CERTIFICATE OF TYPESET**

Undersigned counsel certifies that the typeset used in the printing of this brief is 14 point Times New Roman, which is proportionately spaced.

## **INTEREST OF THE AMICUS**

The Ilustre Colegio de Abogados de Madrid (“Madrid Bar Association”), with a present membership of over 41,000 lawyers, was founded by King Felipe II on July 15, 1596. Throughout its 400 year history, tens of thousands of Spanish lawyers proudly have joined in our pursuit of justice and the rule of law. In this century, we have taken a prominent role in advancing respect for internationally recognized human rights, even when our activities were forced underground during the Franco regime.

As the oldest and largest organization of lawyers in Spain, the Madrid Bar Association has consistently advocated the abolition of the death penalty in Spain. With our support, Spain enacted a prohibition against capital punishment contained in Article 15 of our Constitution of December 29, 1978. We also supported internal legislation on extradition passed in 1985, which prohibits the granting of extradition in any case in which the death penalty might be imposed.

We believe that strict adherence to international human rights standards is necessary to protect the rights of a person accused of a crime in a foreign court. Certain outrage is evoked when a nation’s citizen is not accorded fundamental human rights by another nation’s legal system. Just as the United States was justifiably troubled by the 1994 caning of its citizen Michael Fay in Singapore, so too the Madrid Bar Association is troubled by the condemnation to death of a Spanish citizen following

a trial which fell below the minimum level of due process recognized by international law.

We are deeply concerned about the case of Joaquin Jose Martinez (“Martinez”). If Martinez had been convicted in Spain, he could not have been sentenced to death, nor could he be executed if he had been extradited from Spain to face charges in the United States. Since the inception of the criminal proceeding against him, the Spanish consul in Florida monitored and reported to the Spanish government and the Madrid Bar Association on this case. After reviewing the unusual developments and irregularities that arose during the trial, we decided that for the first time in our history we would seek to intervene as *amicus curiae* by submitting this brief to the Florida Supreme Court.

While Martinez subjected himself to the laws of Florida by living in the United States, as a Spanish citizen, he is entitled to the protections of the Vienna Convention on Consular Relations, *opened for signature* April 24, 1963, art. 36, 21 U.S.T. 77, 596 U.N.T.S. 261, which provides for the assistance of his country of citizenship in any criminal proceedings instituted abroad. According to the spirit and intent of this treaty, we have sought to intervene in this matter to bring to the Florida Supreme Court’s attention what we believe were serious deficiencies in the conduct of Martinez’s trial which resulted in violations of established international law principles. While the death

penalty is not consistent with our culture nor our legal system, we challenge the treatment of Joaquin Martinez by the Florida court, not only because of the penalty imposed, but because of the flaws in the process of justice itself.

We urge this Court to review this case under international law principles, as well as those of the United States and the State of Florida. We believe that under international law, as well as United States law, Martinez was denied a fair trial and should not be executed. It is with the greatest respect for the fairness and independence of the Florida Supreme Court, in whose hands Martinez's fate now lies, that we offer this brief as *amicus curiae* to contribute to the defense of Martinez with the hope of sparing him the punishment of death.

### **STATEMENT OF FACTS**

The Madrid Bar Association adopts the Statement of Facts presented in Brief of Appellant at 2 - 36.

## **SUMMARY OF ARGUMENT**

The trial of Joaquin Jose Martinez, a citizen of Spain, fell below international legal standards. The International Covenant on Civil and Political Rights (“ICCPR”) provides that all persons accused of a criminal offense shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. This right is particularly important in a capital case. Specifically, article 14 of the ICCPR details the “minimum guarantees” of a fair trial. The protections under article 14 are enforceable in Florida courts because a treaty to which the United States is a party, such as the ICCPR, becomes the “supreme law of the Land.”

Martinez’s right to due process was violated by the fact that the prosecution never advised the defense prior to trial that it intended to introduce evidence that the murders occurred on a different date from that previously provided by the State pursuant to Court order. As a result, Martinez was deprived of his right to prompt notice of the nature of the charge against him under article 14(3)(a) of the ICCPR. Because the prosecution failed to disclose material evidence, Martinez could not adequately prepare his defense, nor could he cross-examine the witnesses effectively, denying him basic rights under articles 14(3)(b) and 14(3)(e), respectively.

Furthermore, Martinez was deprived of his right to effective counsel under article 14(3)(d), because his defense counsel did not act to protect Martinez’s fundamental

rights. The defense counsel failed to object to multiple discovery violations, the use of an inadmissible transcript and improper prosecutorial argument. Most seriously, in violation of a right guaranteed by article 14(2), Martinez's defense counsel did not request an alibi instruction as was necessary to preserve the presumption of innocence where an alibi defense has been presented.

The combined deprivation of these rights denied Martinez a fair trial under article 14(1). Florida courts are bound to apply the "minimum guarantees" of article 14 of the ICCPR under treaty and customary international law. Under both domestic and international law, the judicial system must ensure that a criminal defendant, particularly in the case of a capital offense, be tried with adequate procedural safeguards to assure a just result. Because the proceedings against Martinez fell below minimum international standards of due process, we respectfully request that the Florida Supreme Court reverse Martinez's conviction and vacate his sentence of death.

## **ARGUMENT**

### **I. MARTINEZ’S DEATH SENTENCE SHOULD BE VACATED BECAUSE HIS DUE PROCESS RIGHTS UNDER INTERNATIONAL LAW HAVE BEEN VIOLATED**

Martinez is the only Spanish citizen currently on death row. To our knowledge, he is the only Spanish citizen ever to be sentenced to death in the United States. We have closely followed the legal proceedings against him in Florida. While we have great respect for the system of justice in the United States, we are deeply troubled by the failure of this system to protect the fundamental rights of a Spanish citizen in this case. Since Martinez is a Spanish citizen, both Martinez and Spain have a justified expectation that Martinez’s prosecution and conviction will be conducted in adherence to international standards, even if those standards are coextensive with United States law.

#### **A. Overview of the International Bill Of Human Rights**

The fundamental rights afforded a criminal defendant in international law are contained in the International Bill of Human Rights.

<sup>1</sup> The Charter of the United Nations commits its member states to “promote . . . human rights and fundamental freedoms for all.” U.N. Charter arts. 55(c), 56. The International Bill of Human Rights represents “an agreed normative ‘floor’” setting a

minimum standard for “national constitutional norms.” Louis Henkin, *Notes from the President*, Am. Soc’y Int’l L. Newsl., Jan. 1994.

The Universal Declaration of Human Rights is the principal instrument of the United Nations delineating those “human rights and freedoms”

<sup>1</sup> Universal Declaration of Human Rights, U.N. Doc. A/810 at 71 (1948). The Universal Declaration of Human Rights provides in article 10 that “[e]veryone is entitled in full equality to a fair, and public, hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him,” and in article 11 that “[e]veryone charged with a penal offense has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.” As a historic document

---

<sup>1</sup>. The Proclamation of Teheran, adopted by the International Conference on Human Rights held in Iran in 1968, “[u]rges all peoples and governments to dedicate themselves to the principles enshrined in the Universal Declaration of Human Rights and to redouble their efforts to provide for all human beings a life consonant with freedom and dignity and conducive to physical, mental, social and spiritual welfare.” United Nations High Commissioner for Human Rights, Proclamation of Teheran, *Proclaimed by the International Conference on Human Rights at Teheran*, May 13, 1968 (visited Mar. 30, 1999) <[http://www.unhchr.ch/html/menu3/b/b\\_tehern.htm](http://www.unhchr.ch/html/menu3/b/b_tehern.htm)>. In the Proclamation of Teheran, the International Conference on Human Rights further stated that “[t]he Universal Declaration of Human Rights states a common understanding of the peoples of the world concerning the inalienable and inviolable [sic] rights of all members of the human family and constitutes an obligation for the members of the international community. . . .” *Id.*

articulating a common definition of human dignity and values, the Universal Declaration of Human Rights “is a yardstick by which to measure the degree of respect for, and compliance with, international human rights standards everywhere on earth.”

*Fact Sheet No. 2, supra* note 1.

The International Covenant on Civil and Political Rights (“ICCPR”), *opened for signature* Dec. 19, 1966, 999 U.N.T.S. 171, was drafted with more specificity.

<sup>2</sup> The ICCPR reiterates the provisions under the Charter of the United Nations and the Universal Declaration of Human Rights to promote the “inherent dignity and . . . equal and inalienable rights of all members of the human family . . . [as] the foundation of freedom, justice and peace in the world,” and “the ideal of free human beings enjoying civil and political freedom.”

<sup>3</sup>

The Senate Committee on Foreign Relations endorsed the rights guaranteed by the ICCPR as consistent with those provided in the United States Constitution and

---

<sup>2</sup>. The United Nations General Assembly adopted and opened for signature the International Covenant on Civil and Political Rights [hereinafter ICCPR] on December 16, 1966, and the ICCPR entered into force on March 23, 1976. The United States signed the ICCPR on October 5, 1977. On June 8, 1992, the United States ratified the ICCPR with certain qualifications. *See infra* note 8.

<sup>3</sup>. Referring to the ICCPR, the Proclamation of Teheran states: “The International Covenant on Civil and Political Rights . . . ha[s] created new standards and obligations to which States should conform . . . .”

recommended ratification of the ICCPR. Senate Committee on Foreign Relations, *Report on the Ratification of International Covenant on Civil and Political Rights*, S. Rep. No. 102-23 (1992) (“*Report on Ratification*”) (visited Apr. 1, 1999) <<http://wiretap.spies.wm/-Gopher/Gov/US-Docs/poliright.rpt>>. As the Senate Committee noted in its report:

The Covenant is part of the international community’s early efforts to give the full force of international law to the principles of human rights embodied in the Universal Declaration of Human Rights and the United Nations Charter. The Civil and Political Rights Covenant is rooted in Western legal and ethical values. The rights guaranteed by the Covenant are similar to those guaranteed by the U.S. Constitution and the Bill of Rights.

*Report on Ratification, supra.* Moreover, the Senate Committee acknowledged that “[t]he International Covenant on Civil and Political Rights is one of the fundamental instruments created by the international community for the global promotion and protection of human rights.” *Report on Ratification, supra.*

As a party to the ICCPR, the United States has agreed, together with Spain and 142 other countries that have ratified the treaty, that in order to provide a criminal defendant with a fair trial, certain fundamental principles must be observed. The ICCPR sets forth these elements in article 14 as follows:

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.
2. Everyone charged with a criminal offense shall have the right to be

presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

The rights implicit in the concept of a fair trial and protected in article 14 are among “the cornerstones of a democratic society.” *Report on Ratification, supra.*

Because of the extensive overlap between the rights guaranteed by the United States Constitution and those guaranteed by the ICCPR, almost all of the individual rights protected by the ICCPR are consistent with the rights provided in the Bill of Rights to the United States Constitution.

<sup>4</sup> Therefore, concurrently with his constitutional rights, Martinez is entitled to all of the protections guaranteed under ICCPR because he is a foreign national.

**B. International Law Requires Heightened Scrutiny In Death Penalty Cases**

There is a growing trend among a large segment of the international community favoring the abolition of the death penalty for all crimes. Nevertheless, there are nations that have retained capital punishment. For those parties to the ICCPR that have not abolished the death penalty, the ICCPR dictates in article 6(2) that the “sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant . . . .”

The United Nations Economic and Social Council by Resolution 1984/50 dated May 25, 1984 recommends certain procedural safeguards guaranteeing protection of the rights of those persons facing the death penalty.

---

<sup>4</sup>. The fact that the right to a fair trial under article 14 overlaps with the rights protected by the United States Constitution does not diminish the conclusion that Martinez’s rights under international law were violated. A United States statute should be construed so as not to conflict with international law or with an international agreement of the United States. *See* Restatement (Third) of Foreign Relations § 114 (1986); *Murray v. The Schooner Charming Betsy*, 6 U.S. (2 Cranch) 64, 118 (1804) (“an act of Congress ought never to be construed to violate the law of nations if any other possible construction remains”) (Marshall, J.).

<sup>2</sup> Significantly, paragraph 5 of Resolution 1984/50, states as follows:

Capital punishment may only be carried out pursuant to a final judgment rendered by a competent court after legal process, **which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political rights**, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed **to adequate legal assistance at all stages of the proceedings.**

Resolution 1984/50, May 25, 1984 (emphasis added) (visited Apr. 2, 1999)  
<[http://www.unhchr.ch/html/menu3/b/h\\_comp41.htm](http://www.unhchr.ch/html/menu3/b/h_comp41.htm)>.

The Human Rights Commission (“HRC”), which is the international body charged with supervising compliance with the ICCPR, has repeatedly recognized the paramount importance of the fair administration of justice in a death penalty case. *See Little v. Jamaica*, Communication No. 283/1988, U.N. Doc. CCPR/C/43/D/283/1988 (1991) (“[T]he courts for every State party should *ex officio* test whether the lower court proceedings observed all the guarantees of a fair trial, *a fortiori* in capital punishment cases.”). In *Little*, the HRC criticized the conduct of a criminal trial in Jamaica under international law stating that “[i]n capital punishment cases, the obligation of States parties to observe rigorously all the guarantees for a fair trial set out in article 14 of the Covenant admits of no exception.” *Little*, No. 283/1988 at ¶ 10. The HRC has unequivocally declared that the death penalty should not be carried out where the sentence has resulted from a proceeding conducted contrary to the provisions of article 14 of the ICCPR. *See id.*

Accordingly, we believe that if the death penalty is a form of punishment in a particular nation, as it is in the United States, then it should be imposed only after a person's rights under the ICCPR requiring a fair trial have been scrupulously met under the requirements of article 6(2) of the ICCPR and the safeguards recommended by the United Nations Economic and Social Council. A death sentence resulting from a trial that fails to uphold the international due process rights under article 14 of the ICCPR constitutes an illegal deprivation of life.

We view the combination of errors that occurred in the Martinez trial to be an affront to basic norms of international criminal procedure. We recognize the leading role of the United States in the international struggle for human rights and urge the Florida Supreme Court to prevent a gross injustice from befalling one of our citizens.

## **II. MARTINEZ DID NOT RECEIVE A FAIR TRIAL UNDER THE INTERNATIONAL LEGAL STANDARDS OF ARTICLE 14, ICCPR**

Because his trial was replete with many violations of the “minimum guarantees” of due process, Martinez did not receive a fair trial as required by article 14 of the ICCPR. A fair trial in any country requires an ethical prosecutor, a competent defense attorney, and an impartial and conscientious judge, all of whom are careful to protect the fundamental rights of the accused. For Martinez, these basic elements of due process were lacking.

**A. Martinez Did Not Receive Prompt Notice Of The Nature Of The Charge Against Him**

As a fundamental premise of international law, a criminal defendant should have access to the evidence against him early enough so that he may raise an effective defense. *See* ICCPR, art. 14(3)(b) & (e). Article 14(3)(a) of the ICCPR guarantees an accused the right “[t]o be informed promptly and in detail . . . of the nature and cause of the charge . . . .” In *General Comment 13*, the HRC explained that “the right to be informed promptly requires that information is given in the manner described as soon as the charge is first made by a competent authority.” United Nations, Human Rights Committee, *General Comment 13, Article 14, Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/REV.1 at 14, ¶ 8 (1994) (“*General Comment 13*”). This right assumes even greater importance where an accused is exposed to the penalty of death.

The critical fact in the Martinez trial was the time of death of the two victims. Because the bodies were decomposed when discovered, the exact time of death could not be determined scientifically. (T.5: 352, 375, 393, 416). The prosecution, however, affirmatively misled the defense as to when the deaths occurred. The prosecution failed to disclose that the trial testimony would establish that the deaths occurred on a date and time different from the time period the State specifically identified in its response

to the Bill of Particulars filed by the defense. (S.R. 2: 4-5).

The indictment charging Martinez with two counts of first degree murder identified the time of the deaths as occurring between October 27 and October 31, 1995. (T.1: 45-7). Later, in its court ordered discovery response to a Bill of Particulars, the State narrowed the time that the crime occurred to between 12:00 a.m. on October 29 and 3:50 a.m. on October 31. (S.R.2: 4-5; T.13: 1388). On the second day of trial, without prior notice to the defense, the State changed its theory and presented testimony that the deaths had likely occurred over 24 hours earlier on the evening of October 27. (T.7:654-5).

The State failed to notify the defense that the testimony of at least four witnesses had changed significantly: (1) the victim's sister, Tina Jones, testified for the first time at trial that she must have been mistaken when she initially told the police she had spoken with her sister on October 28 (T.7: 654-55); (2) witness Eden Dominick testified without notice to the defense that she had seen Martinez upset and in possession of a mysterious briefcase on the night of October 27 (T.8: 771-774); (3) the medical examiner clarified for the first time at trial that his earlier estimate of the time of death had been based upon Tina Jones' "mistaken" recollection (T.5: 418, 422); and (4) Martinez's girlfriend, Laura Babcock, revealed to the defense only two days before trial that Martinez had said that he was going to the victim's house on the evening of

October 27 to collect money and then told her that they had gotten into a fight. (T.8: 791-806). Thus, in the midst of trial, the defense was confronted with undisclosed evidence that the deaths had occurred outside the time frame specifically identified by the State as to when the murders took place.

The time the deaths occurred was no minor detail. Up until the date of trial, the defense believed that the victims had been alive until at least midnight on October 27, and prepared testimony to explain Martinez's whereabouts after that time. (T.9: 864-69). When the State's key witness suggested that the murders had occurred between 4:00 p.m. and 6:30 p.m. on October 27, the defense again attempted to present alibi testimony. (T.8: 651-52). The State then changed its estimate of the time of death once again during its final summation by arguing that the murders had occurred sometime after 7:00 p.m. on October 27. (T.10: 1017-18). By repeatedly changing the time of the deaths, the State made it impossible for Martinez to mount a defense, because the nature of the charge kept changing.

#### **B. Martinez Did Not Have Adequate Time To Prepare A Defense**

We believe that the failure of the State to disclose prior to trial the existence of new witnesses and its revised estimate of the time of the deaths deprived Martinez of his international legal right to have adequate time for the preparation of his defense as guaranteed under article 14(3)(b) of the ICCPR. Under article 14(3)(b), "adequate time

and facilities must include access to documents and other evidence which the accused requires to prepare his case . . . .” *General Comment 13* at ¶ 9. As the HRC stated, “[i]n cases in which a capital sentence may be pronounced, it is axiomatic that sufficient time must be granted to the accused and his counsel to prepare the defense for the trial . . . .” *Little*, No. 283/1988 at ¶ 8.3.

Moreover, because the defense was not aware until trial of the significant change in the alleged time of death and in the testimony of key State witnesses, Martinez’s attorneys had no opportunity to confront and cross-examine these witnesses effectively as required by article 14(3)(e). In a proceeding as serious as a death penalty case, such essential details as the time of the crime and material changes in witness testimony should be revealed to the defense in a timely fashion. Such prosecutorial misconduct deprived Martinez of adequate time to prepare a defense to the State’s evidence.

The prosecutor’s discovery violations were exacerbated by his prejudicial misconduct at trial. We are most troubled by the efforts of the prosecutor to bolster the weaknesses in the State’s case by interjecting inaccurate facts and his own opinion as to Martinez’s guilt. The prosecutor improperly elicited the testimony from the chief detective that he had no doubt that Martinez was guilty. (T.7:612-13). During closing arguments, the prosecutor reiterated that neither the detective nor a fellow Assistant State Attorney had any doubt of Martinez’s guilt. (T.10:1012). Most egregious was

the fact that the prosecutor argued in closing argument that Martinez may have murdered the victims because he needed money after receiving “legal papers” the evening of the murders, knowing that the legal papers consisted of a restraining order which created no financial obligation. (T.10:1018).

### **C. Martinez Was Denied His Right To Effective Counsel**

As a minimum international standard of procedural fairness as set forth in article 14(3)(d) of the ICCPR, a defendant faced with the penalty of death must be afforded counsel. The HRC has interpreted the right to counsel to mean the right to an *effective* counsel who acts to protect the legal rights of the accused. The HRC stated in paragraph 9 of its *General Comment 13* that “[l]awyers should be able to counsel and to represent their clients in accordance with their established professional standards . . . .” In *Price v. Jamaica*, Communication No. 572/1994, U.N. Doc. CCPR/C/58/D/572/1994 at ¶ 6.3 (1996), the HRC noted its opinion in *Kelly v. Jamaica*, where it stated that “measures must be taken to ensure that counsel, once assigned, provides effective representation in the interests of justice.” The HRC further noted that the “Court should ensure that the conduct . . . by the lawyer is not incompatible with the interests of justice.” *Price*, No. 572/1994 at ¶ 6.3. See *Adams v. Jamaica*, Communication No. 607/1994, U.N. Doc. No. CCPR/C/58/D/607/1994 at ¶ 8.4 (1996) (where the Court fails to act, HRC will review counsel’s professional

judgment when “it should have been manifest to the judge that the lawyer’s behaviour was incompatible with the interest of justice.”).

Due to the ineffectiveness of his counsel, Joaquin Martinez was essentially denied his right to counsel under article 14(3)(d) of the ICCPR. Here, the actions and inactions of Martinez’s defense counsel are baffling. During the *voir dire* phase of the trial, one of Martinez’s defense counsel, after asking the jury whether they believed in the death penalty, told them parenthetically that he himself believed in the death penalty. (T.4:235). Indeed, through the course of the trial, defense counsel did little to prevent Martinez from receiving a sentence of death. Despite the multitude of discovery violations, the defense failed to request a hearing to demonstrate how the unannounced changes in testimony had prejudiced Martinez.

The centerpiece of the prosecution’s case was a tape, which the prosecution conceded was mostly inaudible. (T.7:520-1). Indeed, the court reporter at trial, who was required by the Court to transcribe what she was able to hear, could make out no statements that directly incriminated the defendant. (T.7:523-46); *see also* Brief for Appellant at 56-66. To make the tape comprehensible, the prosecution “developed” a transcript from what the lead detective on the case and Martinez’s ex-wife “thought” the inaudible parts of the tape contained. (T.5:321; T.6:520-7). Without a defense request for an instruction from the judge, the jury was allowed to accept the transcript

as actual evidence of what was said. The failure of the defense to create its own transcript or, at a minimum, to request an instruction to inform the jury that only the tape itself was evidence and not the transcript is unfathomable.

#### **D. Martinez Was Deprived Of The Presumption Of Innocence**

Although the evidence at trial plainly suggested that Martinez was elsewhere even given the change in the time of death, Martinez's defense counsel failed to request an alibi instruction, which illustrates yet another instance of the defense counsel's ineffectiveness. As a result, the jury had no guidance on how to weigh the evidence of alibi and was not informed that the defendant did not have to establish his alibi beyond a reasonable doubt. The omission of an alibi instruction improperly shifted the burden of proof from the prosecution to the defense, depriving Martinez of the presumption of innocence as is guaranteed by international law under article 14(2) of the ICCPR.

The presumption of innocence is a fundamental right to which every person accused of a crime is entitled. The fundamental nature of the presumption of innocence is supported by article 14(2) of the ICCPR. *General Comment 13* at ¶ 7. The HRC defined the presumption of innocence as the "burden of proof is on the prosecution and the accused has the benefit of doubt." *Id.* The HRC explained the importance of the presumption of innocence by stating that "[n]o guilt can be presumed until the charge has been proved beyond reasonable doubt. Further, the presumption of innocence

implies a right to be treated in accordance with this principle. It is, therefore, a duty for all public authorities to refrain from prejudging the outcome of a trial.” *Id.*

We are further troubled that Martinez could be deprived of his life based upon the self-interested testimony of a cadre of “jailhouse snitches.” The lead detective testified that it was his practice to interview everyone at the jail who had come into contact with a criminal defendant. Indeed, while it seems to be common for inmates to provide incriminating evidence against other inmates in order to reduce their own sentences, such testimony appears to us inherently unreliable.

#### **E. Martinez Was Denied The Right To a Fair Trial**

In sum, we assert that the death penalty should not be applied to Martinez, because he was not afforded a fair legal proceeding with all the guarantees necessary for his defense as article 14(1) of the ICCPR requires. We believe that Martinez was denied his right under article 14(3)(a) to be informed promptly and in detail of the nature of the charge against him due to the failure of the prosecution to notify him of the time of the alleged murders and the changes in the testimony of key witnesses. As a result, he did not have an adequate opportunity to prepare his defense and to confront the evidence and witnesses against him as is guaranteed by articles 14(3)(b) and (e). Further, he was denied his right to be presumed innocent under article 14(2) by the failure of the trial court to give an alibi instruction. Finally, the inaction of his defense

counsel in response to these fundamental errors deprived him of the right to counsel under article 14(3)(d) and the very essence of a defense under article 11 of the Universal Declaration of Human Rights.

To impose a death sentence procured in an unfair trial which violated article 14 also results in a violation of article 6(2), which provides that a “sentence of death may be imposed only [when] . . . not contrary to the provisions of the present Covenant . . . .” Therefore, we respectfully request this Court to reverse Martinez’s conviction and to vacate the sentence of death that has been imposed.

### **III. THE FLORIDA STATE COURTS ARE LEGALLY BOUND TO GRANT MARTINEZ THE PROTECTIONS OF ARTICLE 14 OF THE ICCPR**

International law is applicable in the Florida state courts. Under the Supremacy Clause of the United States Constitution, treaties and customary international law “shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby . . . .”

3

U.S. Const. art. VI, cl. 2; *see also* Restatement (Third) of Foreign Relations § 111(3) cmts. c and d (1986). Thus, because a treaty ratified by the United States is the law of

the United States, it is also the law of all states of the Union, including Florida. *See Skiriotes v. Florida*, 313 U.S. 69, 73 (1941) (citing *The Paquete Habana*, 175 U.S. 677, 700 (1900)). Therefore, since the United States ratified the ICCPR,

<sup>5</sup> the protections outlined in article 14 of the ICCPR must be enforced in Florida courts for the benefit of an accused foreign national.

---

<sup>5</sup>. The United States ratified the ICCPR with the proviso that articles 1 through 27 of the ICCPR were not self-executing. “A self-executing treaty is one that becomes domestic law . . . without implementing legislation, and provides a private right of action to individuals alleging a breach of its provisions.” *United States v. Noriega*, 808 F. Supp. 791, 798 (S.D. Fla. 1992). A non self-executing treaty, though the “‘law of the land,’” may not provide a private cause of action. *Noriega*, 808 F. Supp. at 798. Nevertheless, the protections under article 14 of the ICCPR are applicable to criminal trials of foreign nationals in Florida state courts. The Senate Committee on Foreign Relations explained why the United States declared the ICCPR not self-executing, and suggested that despite the not self-executing status, the courts were bound to guarantee the rights of the ICCPR to foreign nationals tried for crimes in the United States when it stated that:

For reasons of prudence, we recommend including a declaration that the substantive provisions of the Covenant are not self-executing. The intent is to clarify that the Covenant will not create a private cause of action in U.S. courts. As was the case with the Torture Convention, **existing U.S. law generally complies with the Covenant;** hence, implementing legislation is not contemplated.

*Report on Ratification, supra* (emphasis added).

<sup>6</sup> See Restatement (Third) of Foreign Relations § 722 cmt. a (1986) (“ Aliens in the United States . . . enjoy, notably . . . the safeguards for fair trial in criminal process . . . the due process protections for life, liberty and property. . . . ”).

The district court in *United States v. Noriega* directly addressed the right of a foreign defendant to claim protection under an international treaty. 808 F. Supp. 791, 799 (S.D. Fla. 1992). In *Noriega*, during the sentencing phase of the case, Manuel Noriega argued that whether or not the United States considered him a prisoner of war, he in fact was one under the Geneva Convention. *Id.* at 793; *see also* Geneva Convention Relative to the Treatment of Prisoners of War, August 12, 1949, 6 U.S.T. 3316, T.I.A.S. No. 3364, 75 U.N.T.S. 135. As such, the United States had to afford him the benefit of that status as guaranteed by treaty. *See Noriega*, 808 F. Supp. at

---

<sup>6</sup> The United States stated in Understanding 5 of the ICCPR:

That the United States understands that this Covenant shall be implemented by the Federal Government to the extent that it exercises legislative and judicial jurisdiction over the matters covered therein, **and otherwise by the state and local governments; to the extent that state and local governments exercise jurisdiction over such matters**, the Federal Government shall take measures appropriate to the Federal system to the end that the competent authorities of the state or local governments may take appropriate measures for the fulfillment of the Covenant (emphasis added).

793. Even though the Geneva Convention was not self-executing, the *Noriega* court found that the United States was obligated to honor its international commitment because the Convention was drawn up for the protection of individuals. *Id.* Accordingly, defendant Noriega was entitled to demand treatment during his incarceration in the United States that would fully comport with his status as a prisoner of war under the Geneva Convention. *See id;* *see also United States v. Romano*, 706 F.2d 370, 375 (2d Cir. 1983) (recognizing that the “rights of person charged with a criminal offense” are contained in the ICCPR, and “[i]n international law an alien may assert a denial of justice only upon a demonstration of grave or serious defects, such as a refusal to grant rights reasonably to be expected by an accused in a criminal trial . . . .”).

As the *Noriega* court observed, it is important for the United States to honor its international commitment “[i]n order to set the proper example and avoid diminishing the trust and respect of other nations.” 808 F. Supp. at 803. Indeed, one primary purpose of enforcing the international treaty rights of foreign citizens in the United States is to ensure that foreign nations will reciprocate and protect the rights of United States citizens abroad. *See id.*

Not only are the United States and Florida bound by article 14 of the ICCPR to ensure a fair trial to an accused foreign national, they are also bound to do so under

customary international law.

<sup>7</sup> Customary international law, like treaties, constitutes the “supreme law of the land” in the United States. *See The Paquete Habana*, 175 U.S. at 700; Restatement (Third) of Foreign Relations § 111(1) cmt. a (1986); Louis Henkin, *International Law as Law in the United States*, 82 Mich. L. Rev. 1555, 1566 (1984). Particularly, in the arena of human rights, the international community recognizes that “international law is a legitimate and important influence on the development of common law, especially when international law declares the existence of universal human rights.” *Regina v. Stephen Lorne Astill*, No. CA 060477, 1992 NSW LEXIS 6760, at \*22 (Sup. Ct. Aug. 25, 1992) (New South Wales). As a result, there is sufficient evidence to demonstrate that the right to a fair trial guaranteed by article 14 of the ICCPR is also guaranteed under customary international law. *See* Restatement (Third) of Foreign Relations § 102(3) cmt. i (1986).

For example, the specific principles incorporated in the ICCPR are derived from the general rights under the Universal Declaration of Human Rights, the “yardstick” by which to measure human rights standards. *Fact Sheet No. 2, supra*. Similarly, article 6 of the European Convention for the Protection of Human Rights and Fundamental

---

<sup>7</sup>. “Customary international law results from a general and consistent practice of states followed by them from a sense of legal obligation.” Restatement (Third) of Foreign Relations § 102 (1986).

Freedoms, *opened for signature* Nov. 4, 1950, 213 U.N.T.S. 221, incorporated the same rights as those under article 14 of the ICCPR. *See Astill*, 1992 NSW LEXIS 6760, at \*22 (citing *Unterpertinger v. Austria*, (1/1985/87/134)). The rights under article 14 of the ICCPR were also adopted in the recently negotiated Rome Statute of the International Criminal Court, *opened for signature* July 17, 1998, U.N. Doc. A/CONF.183/9, which now has been signed by 79 countries.

8

Given that the United States is a party to the ICCPR and that prevailing customary international law espouses the same principles as in article 14 of the treaty, Florida courts have an obligation to guarantee Martinez his article 14 rights. *See* Restatement (Third) of Foreign Relations § 111(1), (3) cmts. a, c and d (1986).

### CONCLUSION

From the moment of his arrest, Joaquin Jose Martinez, a Spanish citizen, was entitled to the rights afforded under article 14 of the ICCPR and under United States law. During his trial, however, Martinez did not receive the due process protections guaranteed by international law. Therefore, because Martinez's rights under article 14 of the ICCPR were violated, we respectfully request that the Florida Supreme Court

---

<sup>8</sup>. We are aware that the United States has expressed its opposition to the Rome Statute to which it is not a signatory. The United States has objected, however, to other provisions in the Rome Statute not related to the rights of persons accused of criminal offenses.

reverse his conviction and vacate the sentence of death.

Dated: April 2, 1999 Respectfully submitted,

---

Sharon L. Kegerreis  
Fla. Bar 852732  
Mayda Prego  
Fla. Bar 0054100  
Hughes Hubbard & Reed, LLP  
201 South Biscayne Boulevard  
Miami Center - Suite 2500  
Miami, FL 33131  
Tel: 305-358-1666

## CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of this brief has been delivered via Federal Express this 3rd day of April, 1999, to:

Clerk of the Court Ms. Carol M. Dittmar  
Florida Supreme Court Assistant Attorney General  
Supreme Court Building Office of the Attorney General  
500 South Duval Street 2002 North Lois Avenue, Suite 700  
Tallahassee, Florida Westwood Center  
32399-1925 Tampa, FL 33607

Counsel for Appellee

Peter Raben, Esq. Mr. Joaquin Martinez  
2665 South Bayshore Drive Reg. No. 124396  
Suite 1206c/o Florida State Prison  
Coconut Grove, FL 33133 Highway 16 West  
Starke, Florida  
Counsel for Appellant Joaquin Martinez 32091-0747

---

Sharon L. Kegerreis  
Fla. Bar 852732  
Mayda Prego  
Fla. Bar 0054100  
Hughes Hubbard & Reed, LLP  
201 South Biscayne Boulevard  
Miami Center - Suite 2500  
Miami, FL 33131  
Tel: 305-358-1666

- <sup>1</sup>. The International Bill of Human Rights consists of the following: (1) human rights provision in the Charter of the United Nations, (2) Universal Declaration of Human Rights, (3) International Covenant on Civil and Political Rights, (4)

First and Second Optional Protocols to the Covenant on Civil and Political Rights, and (5) International Covenant on Economic, Social and Cultural Rights. United Nations High Commissioner for Human Rights, *Fact Sheet No. 2 (Rev. 1)*, *The International Bill of Human Rights*, June 1996 [hereinafter *Fact Sheet No. 2*]. The United Nations High Commissioner for Human Rights explained that “[t]he Human Rights Fact Sheet series is published by the United Nations Centre for Human Rights at Geneva, Switzerland. It deals with selected questions of human rights that are under active consideration or are of particular interest. Human Rights Fact Sheets are intended to assist an everwider [sic] audience in better understanding basic human rights, what the United Nations is doing to promote and protect them and the international machinery available to help realize those rights.” United Nations High Commissioner for Human Rights, *Fact Sheets* (visited Mar. 30, 1999) <<http://www.unhchr.ch/html/menub/-2/fact.htm>>.

<sup>2</sup>. In the United Nations' website, the role of the Economic and Social Council is described as follows: “The Economic and Social Council was established by the Charter as the principal organ, under the authority of the General Assembly, to promote: . . . universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.” United Nations Economic and Social Council, *Overview* (visited Mar. 30, 1999), <<http://www.un.org/esa/coordination/ecosoc/overview.htm>>. The Council “serve[s] as the central forum for discussing international economic and social issues, and for formulating policy recommendations addressed to Member States and to the United Nations system . . . .” *Id.* One of the main functions of the Council is “to make or initiate studies and reports and make recommendations on international economic, social, cultural, education, health and related matters; [and] to promote respect for, and observance of, human rights and fundamental freedoms . . . .” *Id.*

<sup>3</sup>. Justice Day O’Connor recently wrote that:

Just as state courts are expected to follow the dictates of the Constitution and federal statutes, I think domestic courts should faithfully recognize the obligations imposed by international law. The Supremacy Clause of the United States Constitution gives legal force to foreign treaties, and our status as a free nation demands faithful compliance with the law of free nations.

Sandra Day O'Connor, *Federalism of Free Nations*, 28 N.Y.U. J. Int'l L. & Pol. 35, 42 (1995-1996).