

IAJ ADVISORY OPINION No. 2026-0209

ON THE BOUNDED APPLICABILITY OF *LEHMAN v. LYCOMING COUNTY CHILDREN'S SERVICES AGENCY*, 458 U.S. 502 (1982) IN LIGHT OF SUBSEQUENT UNCAT RATIFICATION AND TREATY SUPREMACY PRINCIPLES

Institute for the Advancement of Justice & Human Rights

Advisory Opinion

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EXECUTIVE SUMMARY

This Advisory Opinion analyzes *Lehman v. Lycoming County Children's Services Agency*, 458 U.S. 502 (1982), which held that federal *habeas corpus* jurisdiction does not extend to state child custody determinations. The Institute for the Advancement of Justice & Human Rights concludes that **Lehman's scope is necessarily bounded**—not because the decision was incorrectly reasoned in 1982, but because intervening developments in treaty law, constitutional interpretation, and procedural safeguards fundamentally alter the legal landscape within which Lehman operates.

Critical Threshold Finding: *Lehman* predates U.S. ratification of the Convention Against Torture (UNCAT) by twelve years. The 1994 ratification created federal obligations that Lehman did not anticipate and that necessarily constrain its contemporary application. This Advisory Opinion identifies the boundaries of Lehman's authority and articulates the constitutional and treaty-based safeguards that must accompany any state custody determination from which federal *habeas* review is foreclosed.

Core Principle: The closure of federal *habeas* review strengthens—rather than weakens—the constitutional imperative that state proceedings meet minimum reliability standards. When federal courts cannot provide collateral review, state processes must be robust enough to protect fundamental rights without federal backstop. Lehman thus reinforces the case for rigorous state-level safeguards.

Applicability: This Advisory Opinion articulates **federal constitutional minimums** applicable to **all fifty states** under the Due Process Clause of the Fourteenth Amendment, the Supremacy Clause of Article VI, and the United States' treaty obligations under UNCAT. While documented

examples are drawn from specific state investigations, the constitutional and treaty requirements apply uniformly nationwide.

TABLE OF CONTENTS

| | |
|--|----|
| IAJ ADVISORY OPINION No. 2026-0209 | 1 |
| ON THE BOUNDED APPLICABILITY OF <i>LEHMAN v. LYCOMING COUNTY CHILDREN'S SERVICES AGENCY</i> , 458 U.S. 502 (1982) IN LIGHT OF SUBSEQUENT UNCAT RATIFICATION AND TREATY SUPREMACY PRINCIPLES..... | 1 |
| EXECUTIVE SUMMARY | 1 |
| TABLE OF CONTENTS | 2 |
| I. INTRODUCTION: FRAMING THE QUESTION | 4 |
| A. The Stakes of This Analysis | 4 |
| B. The Nature of This Opinion: Bounded Applicability, Not Invalidity..... | 5 |
| C. The Analytical Framework..... | 5 |
| D. Nationwide Application | 6 |
| II. THE CHRONOLOGICAL FRAMEWORK: LEHMAN PREDATES UNCAT BY TWELVE YEARS | 6 |
| A. The Temporal Sequence | 6 |
| B. The Legal Significance of Post-Lehman Treaty Ratification | 6 |
| C. The Interpretive Implication..... | 7 |
| III. TREATY SUPREMACY AND THE U.S. INSTRUMENT OF RATIFICATION | 7 |
| A. The Deposited Instrument: The Authoritative Source..... | 7 |
| B. Critical Provisions of the Deposited Instrument..... | 7 |
| C. The Supremacy Hierarchy..... | 8 |
| IV. THE PROHIBITION AGAINST TORTURE AS INTERPRETIVE FLOOR | 8 |
| A. The <i>Jus cogens</i> Framework | 8 |
| B. <i>Jus cogens</i> as Interpretive Floor, Not Jurisdiction-Eraser | 9 |
| C. The Practical Distinction..... | 9 |
| V. THE CHARMING BETSY CANON AND UNCAT-CONSISTENT INTERPRETATION | 9 |
| A. The Two-Century-Old Canon | 9 |
| B. Application to Lehman | 10 |

| | |
|---|----|
| C. The Medellin Clarification | 10 |
| VI. THE EQUIVALENCE PROMISE: DOMESTIC MECHANISMS MUST MATCH TREATY STANDARDS | 10 |
| A. Congress’s Representation to the International Community | 10 |
| B. The Enforceable Standard..... | 10 |
| C. The Nationwide Obligation | 11 |
| VII. PROPORTIONALITY: THE ABSOLUTE REQUIREMENT UNDER UNCAT AND DOMESTIC LAW | 11 |
| A. The Core Principle of Proportionality | 11 |
| B. Proportionality Under UNCAT Article 1: The Torture Definition..... | 11 |
| C. Proportionality Under UNCAT Article 16: The CIDT Threshold..... | 12 |
| D. The UN Committee Against Torture’s Authoritative Interpretation | 12 |
| E. The Constitutional Bridge: Reservation I(1)..... | 13 |
| F. The Equivalence Equation: Proportionality = Narrow Tailoring | 14 |
| G. Disproportionality as Per Se Constitutional Violation | 15 |
| H. Proportionality Cannot Be Waived by Lehman | 15 |
| VIII. THE FEDERAL CONSTITUTIONAL FLOOR: MINIMUM SAFEGUARDS ALL STATES MUST PROVIDE..... | 16 |
| A. The Constitutional Foundation | 16 |
| B. The Federal Minimum Requirements..... | 16 |
| C. State Variation vs. Federal Floor..... | 18 |
| D. Identification of Deficient State Practices..... | 18 |
| VIII. LEHMAN STRENGTHENS THE CASE FOR STATE SAFEGUARDS | 19 |
| A. The Core Insight: Closure Requires Robustness | 19 |
| B. The Constitutional Logic..... | 19 |
| C. Lehman as Leverage for Reform | 19 |
| IX. THE CONDITIONALITY OF FINALITY | 20 |
| A. Finality Presupposes Minimum Reliability | 20 |
| B. Application to Child Custody Determinations | 20 |
| C. The Reliability Threshold | 20 |
| X. <i>FORUM NULLUS</i> : WHEN NO DOMESTIC FORUM PROVIDES MEANINGFUL ACCESS ... | 21 |
| A. The <i>Forum nullus</i> Doctrine..... | 21 |
| B. Application to Child Welfare Proceedings | 21 |
| C. The Domestic Equivalence Failure and Its Consequences..... | 21 |
| D. International Mechanisms as Last Resort..... | 22 |

| | |
|--|----|
| XII. HOW LEHMAN SURVIVES ATTACK: ADDRESSING COUNTERARGUMENTS | 22 |
| A. The Federalism and Comity Objection | 23 |
| B. The Non-Self-Execution Objection..... | 23 |
| C. The Stare Decisis Objection | 24 |
| D. The Floodgates Objection..... | 24 |
| E. The Judicial Overreach Objection | 25 |
| F. Summary: Why Lehman Survives as Bounded Precedent..... | 26 |
| XI. REALISTIC FEDERAL PATHWAYS AFTER LEHMAN..... | 26 |
| A. Acknowledging Doctrinal Constraints..... | 26 |
| B. Available Federal Pathways | 27 |
| C. Realistic Assessment | 27 |
| XII. JUSTICE BLACKMUN’S DISSENT: THE PROPHETIC WARNING..... | 28 |
| A. The Dissenting Voice..... | 28 |
| B. The Prophetic Dimension..... | 28 |
| XIII. CONCLUSION: BOUNDED APPLICABILITY | 28 |
| A. Summary of Analysis..... | 28 |
| B. The Operational Framework..... | 29 |
| C. Final Declaration..... | 30 |
| APPENDIX A: DOCUMENTED STATE FAILURE — TEXAS AS EXAMPLE | 30 |
| A. IAJ Investigation Findings: Texas | 30 |
| B. Texas Constitutional Provisions | 31 |
| C. Limitation of Texas Findings | 31 |
| APPENDIX B: REFERENCE MATERIALS..... | 32 |
| Key Legal Citations..... | 32 |

I. INTRODUCTION: FRAMING THE QUESTION

A. The Stakes of This Analysis

In 1982, the United States Supreme Court held in *Lehman v. Lycoming County Children’s Services Agency* that federal *habeas corpus* jurisdiction under 28 U.S.C. § 2254 does not extend to challenges of state custody determinations in child welfare proceedings. Justice Powell, writing for the majority, concluded that the “custody” of children under state child welfare law does not constitute “custody” within the meaning of the federal *habeas* statute.

This Advisory Opinion addresses whether and how *Lehman* should be applied by state courts, federal courts, and practitioners in light of developments that have occurred since 1982—most significantly, the United States’ ratification of the Convention Against Torture in 1994.

B. The Nature of This Opinion: Bounded Applicability, Not Invalidity

By this writing, IAJ does not contend that *Lehman* was incorrectly decided under the law as it existed in 1982, nor that federal courts should directly overrule *Lehman* as a matter of *stare decisis*. Rather, IAJ presents a standards-focused framework demonstrating that **Lehman’s reach is necessarily bounded** by subsequent legal developments that the 1982 Court could not have anticipated.

The distinction matters. A claim that *Lehman* is “invalid” invites categorical rejection by courts rightly committed to *stare decisis*. A recognition that *Lehman* is “bounded” invites the more nuanced inquiry appropriate to evolving constitutional and treaty law: What are the limits of *Lehman*’s authority? What safeguards must accompany proceedings from which federal review is foreclosed? What pathways remain available when state processes fail?

C. The Analytical Framework

This Advisory Opinion proceeds through the following analytical steps:

1. **Chronological Priority:** Establishing that UNCAT ratification post-dates *Lehman* and creates obligations *Lehman* could not address;
2. **Treaty Supremacy:** Analyzing the U.S. Instrument of Ratification and its constitutional implications;
3. **Interpretive Floor:** Demonstrating that *jus cogens* norms operate as an interpretive floor for domestic law, not as a jurisdictional override;
4. **Charming Betsy Application:** Explaining how the canon of UNCAT-consistent interpretation affects *Lehman*’s scope;
5. **Equivalence Standard:** Analyzing Congress’s promise that domestic mechanisms provide “equivalent” protection;
6. **Strengthened State Safeguards:** Explaining how *Lehman* reinforces the need for robust state procedures;
7. **Conditionality of Finality:** Establishing that finality doctrines presuppose minimum procedural reliability;
8. **Forum nullus:** Identifying circumstances where no domestic forum provides meaningful access;
9. **Available Federal Pathways:** Mapping realistic avenues for federal intervention that survive *Lehman*;

10. **Prophetic Warning:** Reconsidering Justice Blackmun’s dissenting concerns.

D. Nationwide Application

This Advisory Opinion articulates federal constitutional requirements applicable to every state. While IAJ’s documented investigations have focused on specific jurisdictions, the constitutional analysis presented here derives from:

- The **Fourteenth Amendment Due Process Clause**, which binds all states;
- **Article VI of the Constitution**, which makes treaties the “supreme Law of the Land” binding on “Judges in every State”;
- The **U.S. Instrument of Ratification of UNCAT**, which explicitly assigns implementation responsibility to “state and local governments.”

Individual state laws vary in their specific procedures, evidentiary rules, and statutory frameworks. **The federal constitutional floor, however, applies uniformly.** States may provide greater protection than the federal minimum requires; they may not provide less.

II. THE CHRONOLOGICAL FRAMEWORK: LEHMAN PREDATES UNCAT BY TWELVE YEARS

A. The Temporal Sequence

The chronology is dispositive:

| Date | Event |
|-------------------------|--|
| June 21, 1982 | <i>Lehman v. Lycoming County</i> decided |
| December 10, 1984 | UN General Assembly adopts Convention Against Torture |
| October 27, 1990 | U.S. Senate provides advice and consent to UNCAT ratification |
| October 21, 1994 | United States deposits Instrument of Ratification with UN |
| December 19, 2014 | UN Committee Against Torture issues Concluding Observations on U.S. (non-compliance) |

The Lehman Court could not have considered UNCAT obligations because those obligations did not exist in 1982. The Convention had not yet been adopted by the General Assembly, let alone ratified by the United States.

B. The Legal Significance of Post-Lehman Treaty Ratification

Under Article VI of the Constitution, treaties made “under the Authority of the United States” constitute part of “the supreme Law of the Land.” U.S. Const. art. VI, cl. 2. When the United States ratified UNCAT in 1994, it created federal obligations that bind state courts and that necessarily affect the scope of prior judicial decisions.

Lehman’s holding that federal *habeas* does not extend to state custody determinations was rendered in a pre-UNCAT legal environment. The decision cannot control the application of treaty obligations that post-date it by twelve years. This is not judicial activism; it is the ordinary operation of Article VI supremacy.

C. The Interpretive Implication

A 1982 decision interpreting federal *habeas* jurisdiction cannot foreclose the application of a 1994 treaty that the Constitution declares to be “supreme Law.” The question is not whether Lehman was rightly decided in 1982—it may well have been—but rather how Lehman interacts with subsequent federal obligations that the 1982 Court never considered.

III. TREATY SUPREMACY AND THE U.S. INSTRUMENT OF RATIFICATION

A. The Deposited Instrument: The Authoritative Source

The U.S. Instrument of Ratification deposited with the United Nations on October 21, 1994, constitutes the binding international commitment that triggers Article VI supremacy. This deposited instrument—not the Senate Executive Reports that preceded it—represents what the United States actually committed to before the community of nations.

B. Critical Provisions of the Deposited Instrument

Reservation I(1) — Constitutional Linkage:

“The United States considers itself bound by the obligation under article 16 to prevent ‘cruel, inhuman or degrading treatment or punishment,’ only insofar as the term ‘cruel, inhuman or degrading treatment or punishment’ means the cruel, unusual and inhumane treatment or punishment prohibited by the Fifth, Eighth, and/or Fourteenth Amendments to the Constitution of the United States.”

Constitutional Implication: Every determination that state conduct constitutes “cruel, inhuman or degrading treatment” under UNCAT Article 16 is simultaneously a determination that such conduct violates the Fifth, Eighth, or Fourteenth Amendment. The constitutional linkage is explicit in the ratification instrument itself.

Understanding II(1)(c) — Object and Purpose Preservation:

“Nonetheless, the United States understands that a State Party could not through its domestic sanctions defeat the object and purpose of the Convention to prohibit torture.”

Constitutional Implication: This understanding—present in the binding international instrument—constrains domestic interpretation. State courts cannot apply state procedural or substantive law in ways that “defeat the object and purpose of the Convention to prohibit torture.” This constraint applies to the interpretation of Lehman itself.

Understanding II(5) — State Implementation Responsibility:

“The United States understands that this Convention shall be implemented by the United States Government to the extent that it exercises legislative and judicial jurisdiction over the matters covered by the Convention and otherwise by the state and local governments. Accordingly, in implementing articles 10-14 and 16, the United States Government shall take measures appropriate to the Federal system to the end that the competent authorities of the constituent units of the United States of America may take appropriate measures for the fulfilment of the Convention.”

Constitutional Implication: State courts are explicitly identified as “competent authorities of the constituent units” responsible for “fulfilment of the Convention.” When Texas courts interpret state family law, they act within a framework where they have been federally committed to Convention implementation. This implementation responsibility post-dates and therefore qualifies *Lehman*.

C. The Supremacy Hierarchy

Under Article VI, the hierarchy of legal authority is:

1. The Constitution
2. Federal statutes and treaties (equal rank, later-in-time governs conflicts)
3. State constitutions and statutes

UNCAT ratification occurred in 1994. *Lehman* was decided in 1982. Where *Lehman*’s interpretation of federal *habeas* jurisdiction conflicts with subsequent treaty obligations, the treaty—as later-in-time supreme law—necessarily qualifies *Lehman*’s scope. **This applies in every state.**

IV. THE PROHIBITION AGAINST TORTURE AS INTERPRETIVE FLOOR**A. The *Jus cogens* Framework**

The prohibition against torture constitutes a peremptory norm of international law (*jus cogens*) from which no derogation is permitted. As the Ninth Circuit recognized in *Siderman de Blake v. Republic of Argentina*, 965 F.2d 699, 714-15 (9th Cir. 1992), “the right to be free from official torture is fundamental and universal, a right deserving of the highest status under international law, a norm of *jus cogens*.”

The Second Circuit in *Filártiga v. Peña-Irala*, 630 F.2d 876, 890 (2d Cir. 1980), declared that “the torturer has become, like the pirate and slave trader before him, *hostis humani generis*, an enemy of all mankind.”

B. *Jus cogens* as Interpretive Floor, Not Jurisdiction-Eraser

By this writing, IAJ does not contend that *jus cogens* norms automatically override statutory jurisdictional limits or create freestanding federal court jurisdiction where Congress has not provided it. Such an argument would conflict with established doctrine regarding the relationship between international law and domestic judicial authority.

Rather, ***jus cogens* norms operate as an interpretive floor**: they establish the minimum below which domestic legal interpretation cannot fall. When courts **in any state** interpret constitutional provisions, federal statutes, or prior precedents, they must do so in a manner consistent with peremptory norms. This is the proper scope of *jus cogens* influence on domestic law.

Applied to Lehman: The *jus cogens* prohibition against torture does not automatically create federal *habeas* jurisdiction over state custody proceedings. But it does require that Lehman be interpreted narrowly—to the extent consistent with its holding—to preserve avenues for redress when state conduct violates peremptory norms.

C. The Practical Distinction

The distinction between “jurisdiction-eraser” and “interpretive floor” is practically significant:

| Approach | Implication |
|--|---|
| <i>Jus cogens</i> as jurisdiction-eraser | Federal courts have automatic jurisdiction over any claim involving <i>jus cogens</i> norms, regardless of statutory limits |
| <i>Jus cogens</i> as interpretive floor | Courts in every state must interpret existing jurisdictional grants, constitutional provisions, and precedents to the maximum extent consistent with <i>jus cogens</i> norms |

The latter approach—which IAJ advocates in this writing—operates within established doctrinal frameworks while ensuring that domestic law fulfills the United States’ non-derogable international obligations.

V. THE CHARMING BETSY CANON AND UNCAT-CONSISTENT INTERPRETATION

A. The Two-Century-Old Canon

The Supreme Court’s decision in *Murray v. Schooner Charming Betsy*, 6 U.S. (2 Cranch) 64, 118 (1804), established the enduring principle that “an act of Congress ought never to be construed to violate the law of nations if any other possible construction remains.” This canon has been consistently applied for over two centuries.

B. Application to Lehman

Under the *Charming Betsy* canon, Lehman should be interpreted—to the extent any ambiguity permits—consistently with UNCAT obligations. Where Lehman’s holding admits of multiple applications, courts should prefer the application that preserves UNCAT compliance.

This does not require overruling Lehman. It requires reading Lehman in light of subsequent treaty obligations that the 1982 Court could not have considered. The *Charming Betsy* canon provides the doctrinal vehicle for this harmonization.

C. The Medellín Clarification

The Supreme Court’s decision in *Medellín v. Texas*, 552 U.S. 491 (2008), addressed the self-execution question for certain treaty provisions. But *Medellín* did not disturb the *Charming Betsy* canon. The question of whether a treaty is self-executing (i.e., whether it creates privately enforceable rights without implementing legislation) is distinct from the question of whether courts should interpret domestic law consistently with treaty obligations.

Even if UNCAT Article 16 is non-self-executing—as Declaration III(1) of the ratification instrument provides—the *Charming Betsy* canon still requires UNCAT-consistent interpretation of domestic law, including interpretation of Lehman itself. **This obligation binds courts in every state.**

VI. THE EQUIVALENCE PROMISE: DOMESTIC MECHANISMS MUST MATCH TREATY STANDARDS

A. Congress’s Representation to the International Community

The Senate Executive Report accompanying UNCAT ratification stated:

“The United States understands that, in order to fulfill its obligations under the Convention, the United States need not enact further legislation because existing federal and state laws already provide the necessary mechanisms for the prevention of torture and cruel, inhuman or degrading treatment or punishment...”

S. Exec. Rep. No. 101-30, at 25-36 (1990).

This “equivalence promise” represents Congress’s assurance to the international community that **domestic remedies in every state** provide protection equivalent to what UNCAT mandates. The promise placed achievement of UNCAT compliance “squarely upon the shoulders of state and federal judiciary.”

B. The Enforceable Standard

Congress’s equivalence representation creates an enforceable interpretive standard. When domestic constitutional or statutory interpretation **in any state** fails to provide equivalent

protection to what UNCAT requires, courts should adjust interpretation to fulfill the promise Congress made.

Applied to Lehman: If Lehman is interpreted to foreclose all federal review of state custody proceedings—even when those proceedings involve conduct that would constitute torture or CIDT under UNCAT—then the equivalence promise is broken. Courts should interpret Lehman to preserve sufficient federal oversight to fulfill the equivalence commitment.

C. The Nationwide Obligation

The equivalence promise applies to **every state**. Congress did not represent that some states provide equivalent protection while others need not. The assurance was categorical: “existing federal and state laws” provide adequate mechanisms. If any state’s laws fail to provide equivalent protection, the equivalence promise as to that state is unfulfilled.

VII. PROPORTIONALITY: THE ABSOLUTE REQUIREMENT UNDER UNCAT AND DOMESTIC LAW

Proportionality is not discretionary. Under both UNCAT and domestic constitutional law, proportionality is an absolute requirement that state action **in every state** must satisfy. This section establishes that proportionality operates as a binding constraint on state conduct in child welfare proceedings—one that Lehman cannot and does not eliminate.

A. The Core Principle of Proportionality

Proportionality in international human rights law means that **state action must be commensurate with the legitimate aim pursued**—the response cannot exceed what is necessary to address the actual threat or harm. A state may not use a sledgehammer when a scalpel would suffice. A state may not permanently destroy a family when temporary intervention would protect children.

This principle is not aspirational; it is **mandatory**. Disproportionate state action—even in pursuit of legitimate goals—constitutes a human rights violation.

B. Proportionality Under UNCAT Article 1: The Torture Definition

UNCAT Article 1 defines torture as “severe pain or suffering, whether physical or mental” inflicted intentionally by or with the acquiescence of public officials for specific **purposes**, including:

- Obtaining information or confession
- **Punishment** for an act committed or suspected
- Intimidation or coercion
- **Discrimination of any kind**

The Proportionality Implication: When state action is **grossly disproportionate** to the underlying conduct, the excess itself transforms legitimate state interest into **punishment** prohibited by Article 1. A response that exceeds any reasonable protective necessity ceases to be child protection and becomes punishment of the parent.

Applied Example (applicable in any state): - Underlying conduct: One parent’s single act of excessive discipline toward one child - **State response:** Permanent termination of both parents’ rights to all children - **Proportionality analysis:** The response exceeds any conceivable protective necessity by orders of magnitude. The termination of the non-involved parent’s rights to uninvolved children serves no protective purpose—it is punishment. The permanent destruction of the entire family based on one incident by one parent toward one child transforms state action from protection into punishment under Article 1.

C. Proportionality Under UNCAT Article 16: The CIDT Threshold

UNCAT Article 16 requires State Parties to prevent “cruel, inhuman or degrading treatment or punishment” (CIDT) that does not rise to the level of torture as defined in Article 1. The **key distinction** between lawful state action and CIDT often turns on **proportionality**:

| Category | Proportionate State Action | Disproportionate (CIDT) |
|------------------|---|---|
| Removal | Temporary removal of endangered child with reunification services | Permanent termination when temporary measures would protect the child |
| Services | Targeted interventions addressing identified risk | Sweeping requirements unrelated to actual risk factors |
| Scope | Separation of allegedly abused child from alleged abuser | Termination of non-abusive parent’s rights to non-abused children |
| Duration | Time-limited intervention with clear reunification path | Open-ended separation with no realistic reunification pathway |
| Intensity | Response scaled to severity of documented risk | Maximum intervention regardless of actual threat level |

The Defining Line: State action crosses from lawful intervention into CIDT when it **exceeds the proportionate response** to the actual risk addressed. Proportionality is the boundary between legitimate child protection and cruel treatment.

D. The UN Committee Against Torture’s Authoritative Interpretation

The UN Committee Against Torture—the treaty body charged with interpreting UNCAT—has consistently emphasized proportionality as an **absolute requirement**, not a discretionary consideration:

General Comment No. 2, ¶¶ 3, 6 (2008):

“The Committee emphasizes that States parties must ensure that their domestic laws are in conformity with the Convention... The obligation to take effective measures to prevent torture is **wide-ranging**. The obligations in articles 2 (whereby ‘no exceptional

circumstances whatsoever’ may be invoked to justify torture), 15 (prohibiting confessions extorted by torture from being admitted in evidence, except against the alleged torturer) and 16 (prohibiting cruel, inhuman or degrading treatment or punishment) are three such provisions that ‘must be observed in **all circumstances.**’

“The Committee considers that **a state cannot use the proportionality principle to justify torture...** but states must ensure that **measures taken to combat terrorism and other criminal activities are themselves proportionate** and do not constitute cruel, inhuman or degrading treatment.”

CAT/C/USA/CO/3-5, ¶¶ 9-10 (December 19, 2014) — Concluding Observations on the United States:

“The Committee recommends that the State party ensure that **necessity and proportionality** requirements are respected in all circumstances and that these requirements form the basis for all policies and protocols governing state action.”

General Comment No. 3, ¶ 2 (2012):

“The Convention imposes obligations on States parties and not on individuals. States must ensure... that their responses to violations are **proportionate** and in accordance with the Convention.”

The Committee’s Position Is Unambiguous: Proportionality is an **absolute requirement** of UNCAT compliance. State action **in any state** that violates proportionality requirements constitutes cruel, inhuman, or degrading treatment under Article 16, regardless of the legitimacy of the underlying state interest.

E. The Constitutional Bridge: Reservation I(1)

The U.S. Instrument of Ratification creates a direct link between UNCAT proportionality requirements and domestic constitutional law through **Reservation I(1)**:

“The United States considers itself bound by the obligation under article 16 to prevent ‘cruel, inhuman or degrading treatment or punishment,’ **only insofar as** the term ‘cruel, inhuman or degrading treatment or punishment’ **means** the cruel, unusual and inhumane treatment or punishment **prohibited by the Fifth, Eighth, and/or Fourteenth Amendments** to the Constitution of the United States.”

The Constitutional Linkage Creates a Two-Way Street:

UNCAT Article 16 Proportionality Requirement

↓

(via Reservation I(1))

↓

Fifth / Eighth / Fourteenth Amendment

↓

Domestic Constitutional Analysis



Strict Scrutiny "Narrow Tailoring"

The Implications Are Profound:

1. **Every Article 16 determination is simultaneously a constitutional determination.** When state conduct violates UNCAT Article 16's proportionality requirement, it necessarily violates the Fifth, Eighth, or Fourteenth Amendment.
2. **The constitutional standard cannot be lower than the UNCAT standard.** Reservation I(1) ties Article 16 to constitutional provisions—it does not permit constitutional interpretation to fall below UNCAT requirements.
3. **Proportionality under UNCAT IS proportionality under the Constitution.** The two analyses are constitutionally unified by the explicit terms of the ratification instrument.
4. **The Fourteenth Amendment binds every state.** Through the constitutional linkage, UNCAT proportionality requirements become Fourteenth Amendment requirements applicable nationwide.
5. **State constitutional provisions cannot lower the floor.** States may provide greater protection than federal minimums require; they may not provide less.

F. The Equivalence Equation: Proportionality = Narrow Tailoring

Congress's "equivalence promise" (Section VI above) requires that domestic mechanisms provide protection equivalent to what UNCAT mandates. This creates a direct equation between international and domestic proportionality standards:

| UNCAT Requirement | Domestic Constitutional Equivalent |
|--|--|
| Proportionality under Article 16 | Narrow tailoring under strict scrutiny |
| Necessity — intervention must be required | Least restrictive means — no less drastic alternative available |
| Non-arbitrariness — action must be evidence-based | Due process — procedural protections against arbitrary action |
| Non-punitiveness — action must serve legitimate purpose | Compelling interest — punishment disguised as protection fails |

The Strict Scrutiny Framework:

The Supreme Court has recognized that parental rights are "fundamental liberty interests" protected by the Due Process Clause of the Fourteenth Amendment. *Santosky v. Kramer*, 455 U.S. 745, 753 (1982); *Troxel v. Granville*, 530 U.S. 57, 65 (2000). State intrusion into these fundamental rights triggers heightened scrutiny requiring:

1. **Compelling state interest** — a legitimate, substantial governmental aim
2. **Narrow tailoring** — the means must be the **least restrictive available**

“Narrow tailoring” IS proportionality. The constitutional requirement that state action employ the least restrictive means available is the domestic equivalent of UNCAT’s proportionality mandate. **This federal constitutional standard applies in every state.**

G. Disproportionality as Per Se Constitutional Violation

When state action is grossly disproportionate, it violates the federal Constitution as a matter of law. This is not a balancing test; it is a categorical rule binding on all states.

Gross disproportionality includes:

- Permanent termination when temporary measures would protect children
- Termination of uninvolved parent’s rights based on other parent’s conduct
- Termination of rights to uninvolved children based on conduct toward one child
- Termination without documented consideration and rejection of less drastic alternatives
- Response intensity that bears no relationship to documented risk severity

When these conditions exist, the state has violated Article 16’s proportionality requirement—and through Reservation I(1), has violated the Fourteenth Amendment. This analysis applies identically in every state.

H. Proportionality Cannot Be Waived by Lehman

Lehman’s foreclosure of federal *habeas* review does not eliminate proportionality requirements. Proportionality is:

3. **A jus cogens derivative** — proportionality flows from the absolute prohibition against torture and CIDT, which is a peremptory norm
4. **A treaty obligation** — proportionality is required by UNCAT Articles 1 and 16, which post-date Lehman and constitute supreme law under Article VI
5. **A federal constitutional requirement** — proportionality is embedded in strict scrutiny’s narrow tailoring requirement under the Fifth, Eighth, and Fourteenth Amendments (as linked through Reservation I(1))
6. **A precondition of finality** — as established in Section IX, Lehman’s deference presupposes that underlying proceedings met constitutional requirements, including proportionality

Lehman cannot waive what Lehman cannot reach. The 1982 decision addressed federal *habeas* jurisdiction over state custody determinations. It did not—and could not—eliminate the proportionality requirements imposed by the Constitution, by subsequent treaty ratification, and by jus cogens norms.

VIII. THE FEDERAL CONSTITUTIONAL FLOOR: MINIMUM SAFEGUARDS ALL STATES MUST PROVIDE

This section articulates the **federal constitutional minimum** that **every state** must satisfy in child welfare proceedings. These requirements derive from the Due Process Clause of the Fourteenth Amendment, the Supremacy Clause of Article VI, and the United States' treaty obligations under UNCAT. Individual state procedures vary; the federal floor does not.

A. The Constitutional Foundation

The Supreme Court has established that:

7. **Parental rights are fundamental.** "The fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents." *Santosky v. Kramer*, 455 U.S. 745, 753 (1982).
8. **Termination requires heightened procedural protection.** "The Court has recognized on numerous occasions that the relationship between parent and child is constitutionally protected." *Quilloin v. Walcott*, 434 U.S. 246, 255 (1978).
9. **Due process requires procedures commensurate with the stakes.** The *Mathews v. Eldridge* test, 424 U.S. 319, 335 (1976), requires courts to balance: (a) the private interest affected; (b) the risk of erroneous deprivation and value of additional safeguards; and (c) the government's interest.
10. **Termination is the civil equivalent of the death penalty.** Courts across the country have recognized that termination of parental rights is among the most severe deprivations the state can impose.

B. The Federal Minimum Requirements

Based on the constitutional and treaty analysis above, **every state** must provide the following minimum safeguards in child welfare proceedings that may result in termination of parental rights:

1. Evidentiary Reliability

Requirement: Evidence used to support termination must be obtained through procedures adequate to ensure reliability.

Federal Constitutional Basis: Due Process Clause; *Santosky v. Kramer* (heightened evidentiary standard); *Mathews v. Eldridge* (risk of erroneous deprivation).

UNCAT Basis: Article 16 prohibition on arbitrary state action; Understanding II(1)(c) (cannot defeat Convention's object and purpose).

Minimum Elements: - Evidence must be obtained through non-coercive means - Child statements used dispositively must bear indicia of reliability - Forensic interview procedures

should follow recognized protocols that minimize suggestibility - Recording of critical interviews enables judicial review of reliability

Note: Specific state procedures vary. Some states mandate recording; others do not. The federal minimum requires that **whatever procedures a state employs must produce reliable evidence**. Procedures that systematically generate unreliable evidence violate due process regardless of state-specific rules.

2. Meaningful Parental Participation

Requirement: Parents must have meaningful opportunity to participate in proceedings affecting their fundamental rights.

Federal Constitutional Basis: Due Process Clause; *Goldberg v. Kelly*, 397 U.S. 254 (1970) (opportunity to be heard); *Mathews v. Eldridge* (value of additional safeguards).

UNCAT Basis: Article 14 (effective remedy); Article 16 (non-arbitrary process).

Minimum Elements: - Parents must have notice of allegations against them - Parents must have opportunity to access and respond to evidence - Attorney-client relationship must permit adequate preparation - Indigent parents must have access to counsel

Note: State evidence access rules vary significantly. Some states provide direct parental access to child welfare records; others restrict access to attorneys only. The federal minimum requires that **whatever access rules a state employs must permit meaningful participation**. Rules that systematically exclude parents from understanding and responding to evidence violate due process regardless of state-specific provisions.

3. Proportionality

Requirement: State response must be proportionate to the documented risk.

Federal Constitutional Basis: Fourteenth Amendment substantive due process; narrow tailoring requirement for fundamental rights infringement.

UNCAT Basis: Article 1 (prohibition on punishment); Article 16 (prohibition on CIDT); Reservation I(1) (constitutional linkage).

Minimum Elements: - Termination only when less drastic alternatives inadequate - Documented consideration and rejection of alternatives - Response targeted to actual source of risk - Scope limited to what protection requires

Note: This requirement applies **identically in every state**. Proportionality is a federal constitutional requirement under the Fourteenth Amendment, reinforced by treaty obligation. No state may impose termination as a default response regardless of whether less restrictive measures would protect children.

4. Effective Remedy

Requirement: Parents must have access to effective remedies for procedural violations.

Federal Constitutional Basis: Due Process Clause; access to courts.

UNCAT Basis: Article 14 (redress and compensation); Article 16.

Minimum Elements: - Meaningful appellate review - Remedies that actually address harm caused - Timelines that permit adequate preparation - Continuance when late disclosure prejudices defense

Note: State appellate procedures vary. The federal minimum requires that **whatever remedial procedures a state provides must be effective**. Nominal appeal rights that cannot practically remedy violations fail this standard.

C. State Variation vs. Federal Floor

Critical Distinction: This Advisory Opinion does not assert that every state has identical procedural deficiencies. States vary significantly in:

- Recording requirements for forensic interviews
- Parental access to child welfare records
- Hearsay exceptions for child statements
- Appellate review procedures
- Statutory timelines

The federal constitutional floor, however, applies uniformly. A state with robust recording requirements, generous parental access, and meaningful appellate review may already exceed the federal minimum. A state with weak procedures in these areas may fall below it.

The inquiry is state-specific: Does this state's procedures, as applied in this case, satisfy the federal constitutional minimum? The minimum itself is uniform; its application depends on individual state practice.

D. Identification of Deficient State Practices

Where IAJ has conducted investigations of specific state practices, it has documented failures to meet federal minimums. **Appendix A** presents documented findings from Texas as an example of how state practices can fall below the federal floor.

These documented deficiencies are state-specific. Other states may have different deficiencies, fewer deficiencies, or no deficiencies. **The federal constitutional requirements, however, provide the standard against which every state's practices must be measured.**

VIII. LEHMAN STRENGTHENS THE CASE FOR STATE SAFEGUARDS

A. The Core Insight: Closure Requires Robustness

Lehman’s closure of federal *habeas* review does not weaken the constitutional case for state-level safeguards—it strengthens it.

When federal courts cannot provide collateral review of state custody determinations, the constitutional burden on state proceedings **in every state** increases correspondingly. The closure of one avenue of protection requires that remaining avenues be more robust, not less.

This is not paradox but constitutional necessity. If federal *habeas* were available, errors in state proceedings could be corrected through federal collateral review. But because Lehman forecloses that avenue, state proceedings must be reliable enough to protect fundamental rights without federal backstop.

B. The Constitutional Logic

The Due Process Clause requires procedural protections commensurate with the stakes involved. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). The Supreme Court has characterized termination of parental rights as among the most severe deprivations the state can impose. *Santosky v. Kramer*, 455 U.S. at 758-59.

When federal *habeas* review is unavailable, the risk of unremedied constitutional violation increases. Under *Mathews*, heightened risk of erroneous deprivation requires heightened procedural safeguards. Therefore, **Lehman itself generates the constitutional predicate for enhanced state-level protections—in every state.**

C. Lehman as Leverage for Reform

Rather than treating Lehman as an obstacle, advocates should invoke Lehman as *leverage* for state-level reform. The argument proceeds:

“Because federal *habeas* is unavailable under *Lehman*, state proceedings must meet heightened constitutional standards to satisfy due process. The closure of federal review does not reduce the constitutional protection owed to parents—it transfers the full weight of that protection to state courts. State courts cannot discharge this constitutional responsibility without implementing the safeguards IAJ advocates.”

This framing positions Lehman not as the enemy of parental rights but as the foundation for demanding that state courts take constitutional obligations seriously.

IX. THE CONDITIONALITY OF FINALITY

A. Finality Presupposes Minimum Reliability

Doctrines of finality—whether *res judicata*, collateral estoppel, or Lehman’s foreclosure of federal *habeas* review—presuppose that the underlying proceedings met minimum standards of procedural reliability. Finality without reliability is not law; it is mere power.

The Supreme Court has recognized this principle in contexts ranging from criminal procedure to civil litigation. Judgments obtained through fraud, proceedings that violated fundamental due process, or adjudications without jurisdiction are not entitled to preclusive effect regardless of their formal finality.

B. Application to Child Custody Determinations

Lehman’s holding that federal *habeas* does not extend to state custody determinations presupposes that those determinations resulted from proceedings meeting constitutional minima. Where state proceedings fall below the constitutional floor—through unreliable evidence, denial of meaningful participation, or grossly disproportionate outcomes—the predicate for Lehman’s deference is absent.

This is not an exception to Lehman; it is a precondition of Lehman. The 1982 Court assumed that state custody proceedings would meet basic constitutional requirements. Where that assumption fails, Lehman’s holding does not apply.

C. The Reliability Threshold

The reliability threshold includes:

1. **Evidentiary Reliability:** Evidence supporting termination must be obtained through constitutionally adequate procedures.
2. **Participatory Reliability:** Parents must have meaningful opportunity to participate in proceedings affecting their fundamental rights.
3. **Proportionality Reliability:** State response must be proportionate to the actual threat addressed.

Where proceedings fail to meet these thresholds, their outcomes are not entitled to the deference Lehman contemplates.

X. FORUM NULLUS: WHEN NO DOMESTIC FORUM PROVIDES MEANINGFUL ACCESS

A. The *Forum nullus* Doctrine

When no domestic forum provides meaningful access to remedies for constitutional or treaty-based violations, affected parties may invoke the “*forum nullus*” principle—the absence of any adequate forum—as grounds for international mechanisms or alternative domestic relief.

B. Application to Child Welfare Proceedings

If federal *habeas* is foreclosed by Lehman, and state courts fail to provide constitutionally adequate proceedings, affected parents face *forum nullus*: no domestic forum capable of vindicating their fundamental rights.

The conditions for *forum nullus* include:

1. Federal *habeas* jurisdiction foreclosed by Lehman;
2. State proceedings violating due process through unreliable evidence, denied access, or disproportionate outcomes;
3. State appellate review inadequate to remedy constitutional violations;
4. No alternative federal forum available (§ 1983 barred by procedural defaults, Rooker-Feldman doctrine, or other limitations).

Critical Link to the Equivalence Promise: When both federal and state forums are effectively closed, the United States has **factually violated its representation to the international community** that domestic law provides “equivalent” protection to what UNCAT mandates. The equivalence promise (Section VI) was premised on the availability of adequate domestic remedies. Where *forum nullus* exists:

- **The federal pathway is closed** (Lehman forecloses *habeas*);
- **The state pathway has failed** (procedural violations remain unremedied);
- **The equivalence representation is broken** (domestic mechanisms have not provided what Congress promised).

This creates a direct nexus between the *forum nullus* condition and the breach of the United States’ international commitment. **The United States told the international community that no new mechanisms were needed because existing mechanisms would suffice. Where no existing mechanism provides meaningful access, the assurance was false.**

C. The Domestic Equivalence Failure and Its Consequences

When *forum nullus* conditions exist **in any state**, the consequences flow from **domestic law failure**, not from international adjudication:

The Constitutional Analysis: The Due Process Clause requires access to courts for vindication of fundamental rights. When no court—state or federal—provides meaningful access, the

constitutional guarantee itself is violated. This is a **domestic constitutional failure**, analyzable entirely within American legal frameworks.

The Treaty Analysis: The equivalence promise embedded in the U.S. ratification process represented that American law would provide adequate protection. Where it does not, the failure is measured **against the standard the United States set for itself**—not against international findings imposed from without.

The Practical Consequence: Organizations documenting systematic failures may compile evidence that domestic equivalence has failed, creating a record that:

1. Supports state-level reform by demonstrating inadequacy under domestic standards;
2. Informs federal courts of the scope of the equivalence gap;
3. Creates a documented basis for arguing that enhanced safeguards are constitutionally required.

This framing emphasizes that the United States is being held to **its own commitments**, not to externally imposed standards. The equivalence promise was America’s representation of what American law would provide. Where that representation proves false, the failure is domestic.

D. International Mechanisms as Last Resort

UNCAT Article 20 provides that if the Committee Against Torture receives reliable information indicating that torture is being systematically practiced in a State Party’s territory, the Committee may investigate. However, this international mechanism becomes relevant **only because domestic equivalence has failed**—not as a primary avenue for relief.

The sequence is important:

1. **Domestic forums fail** (creating *forum nullus*);
2. **Domestic equivalence is breached** (the U.S. commitment is unfulfilled);
3. **International mechanisms become relevant** (as remedy of last resort when domestic promises prove empty).

This framing respects American sovereignty and federalism while recognizing that the United States cannot escape obligations it voluntarily undertook¹. The argument is not that international bodies should interfere with domestic family law—it is that America has failed to provide what America promised to provide.

XII. HOW LEHMAN SURVIVES ATTACK: ADDRESSING COUNTERARGUMENTS

This Advisory Opinion anticipates and addresses the principal counterarguments that defenders of unrestricted Lehman application will advance. Acknowledging these arguments—and

¹ The IAJ reserves discussion of absolute prohibitions under *jus cogens* to a later juncture.

demonstrating why they do not defeat the bounded applicability framework—strengthens the analysis and prepares advocates for opposition.

A. The Federalism and Comity Objection

The Counterargument: Domestic family relations have traditionally been the exclusive province of state law. Federal intrusion into state custody proceedings threatens the balance of power the Constitution establishes between federal and state governments. Lehman properly respects this federalism principle, and expanding federal oversight would “prolong uncertainty for children” while disrupting settled state systems.

The Response: This Advisory Opinion does not argue for federal displacement of state authority over family law. To the contrary, the “Closure Requires Robustness” framework (Section IX) **reinforces state primacy** while demanding that states exercise their authority constitutionally.

The bounded applicability framework:

1. **Respects federalism** by leaving primary authority with states;
2. **Demands constitutional compliance** as the condition for that deference;
3. **Preserves Lehman’s core holding** while constraining its application to constitutionally adequate proceedings.

Federalism does not authorize states to violate the Fourteenth Amendment. The Constitution binds states through the Supremacy Clause. The bounded applicability framework simply holds states to the constitutional standards they are already obligated to meet—it does not impose new federal requirements but enforces existing ones.

B. The Non-Self-Execution Objection

The Counterargument: The United States declared UNCAT Articles 1-16 “non-self-executing,” meaning they do not create privately enforceable rights in federal court without implementing legislation. Since Congress has not enacted such legislation, UNCAT cannot be invoked to modify Lehman or create new causes of action.

The Response: This objection misunderstands the bounded applicability framework. In this writing, IAJ does not argue that UNCAT creates a private right of action enabling federal court suits. The non-self-execution declaration addresses **direct enforcement**—whether litigants can sue in federal court under UNCAT itself.

The bounded applicability framework rests on different grounds:

1. **The Charming Betsy canon** requires UNCAT-consistent interpretation of domestic law, including Lehman. This interpretive obligation exists **regardless of self-execution status**. *Medellin v. Texas* did not disturb this canon.
2. **Reservation I(1)** creates constitutional linkage that operates **through** domestic constitutional provisions, not through UNCAT itself. When state conduct violates Article

16, it simultaneously violates the Fourteenth Amendment—and Fourteenth Amendment claims are fully enforceable.

3. **The equivalence promise** creates an interpretive standard that courts should honor when construing domestic law. This is not direct UNCAT enforcement; it is interpretation consistent with Congress’s representation.

The non-self-execution declaration means UNCAT cannot be sued upon directly. It does not mean UNCAT is irrelevant to interpretation of domestic law. These are distinct propositions.

C. The *Stare Decisis* Objection

The Counterargument: *Lehman* is binding Supreme Court precedent. Lower courts are bound by *stare decisis* to follow it. This Advisory Opinion improperly invites lower courts to ignore or circumvent valid precedent.

The Response: This objection attacks a position IAJ does not hold. The bounded applicability framework **explicitly preserves *Lehman* as valid precedent** while identifying the limits of its authority.

The framework does not ask courts to:

- Overrule *Lehman*
- Ignore *Lehman*
- Create exceptions to *Lehman*

Rather, it asks courts to:

- Recognize that *Lehman*’s holding presupposes constitutional adequacy of state proceedings
- Apply subsequent treaty obligations that *Lehman* could not have anticipated
- Interpret *Lehman* consistently with the Charming Betsy canon
- Acknowledge that finality doctrines require minimum procedural reliability

This is ordinary legal analysis, not circumvention of *stare decisis*. Courts routinely recognize that precedents apply within limits, that subsequent legal developments constrain earlier holdings, and that presuppositions underlying decisions may not be satisfied in all cases.

***Lehman* remains good law.** Its application is bounded—as all precedents are bounded by their rationale, their assumptions, and subsequent legal developments.

D. The Floodgates Objection

The Counterargument: Recognizing bounded applicability will open floodgates of federal litigation challenging state custody determinations. Every dissatisfied parent will claim constitutional violations to invoke federal review, overwhelming federal courts and destabilizing settled custody arrangements.

The Response: The bounded applicability framework includes built-in constraints that prevent floodgate consequences:

1. **The conditionality requirement is demanding.** Lehman’s deference is withdrawn only where state proceedings fall below constitutional minima. Mere disagreement with outcomes does not suffice; systemic procedural failures must be demonstrated.
2. **Available federal pathways are limited.** Even where bounded applicability is established, federal intervention is constrained by Rooker-Feldman, Younger abstention, and sovereign immunity doctrines that remain fully operative.
3. **The framework encourages state-level reform.** By positioning Lehman as leverage for enhanced state safeguards, the framework channels advocacy toward state courts rather than federal courts.
4. **Screening mechanisms exist.** Federal courts retain authority to dismiss frivolous claims, impose sanctions for bad-faith litigation, and manage dockets appropriately.

The floodgates objection assumes that recognizing constitutional limits will produce unlimited litigation. Historical experience suggests otherwise. Constitutional constraints on government action exist throughout American law without producing unmanageable litigation burdens.

E. The Judicial Overreach Objection

The Counterargument: This Advisory Opinion asks courts to engage in judicial overreach by subordinating American law to international standards, usurping legislative prerogatives, and substituting judicial policy preferences for democratic choices.

The Response: The bounded applicability framework asks courts to do what courts have always done: interpret and apply law.

On international standards: The framework does not subordinate American law to international standards. It holds America to commitments America voluntarily made.² The equivalence promise was Congress’s representation; Reservation I(1) was included in America’s ratification instrument. These are **American commitments**, not foreign impositions.

On legislative prerogatives: The framework does not usurp legislative authority. It interprets existing constitutional provisions, existing treaty obligations, and existing statutory frameworks. Where Congress has acted (through ratification), courts implement congressional choices; where Congress has not acted, courts apply constitutional requirements that exist independent of legislative action.

On policy preferences: The framework does not substitute judicial preferences for democratic choices. It applies established doctrines (*Charming Betsy*, due process analysis, treaty

² The IAJ reserves discussion of absolute prohibitions under *jus cogens* to a later juncture.

supremacy) to the specific context of child welfare proceedings. The policy choice to protect fundamental parental rights was made by the Constitution’s framers and ratified through the Fourteenth Amendment. Courts enforce that choice; they do not create it.

F. Summary: Why Lehman Survives as Bounded Precedent

Lehman survives precisely **because** it is bounded:

| Objection | Response |
|--------------------|--|
| Federalism | Framework reinforces state primacy with constitutional accountability |
| Non-self-execution | Framework uses interpretive canons and constitutional linkage, not direct treaty enforcement |
| Stare decisis | Framework preserves Lehman while identifying its limits |
| Floodgates | Framework includes demanding thresholds and preserves procedural constraints |
| Judicial overreach | Framework applies established doctrines to new context |

The bounded applicability framework does not destroy Lehman—it situates Lehman within the constitutional and treaty framework that has developed since 1982. This is how the common law evolves: not through overruling but through refinement, not through rejection but through contextualization.

XI. REALISTIC FEDERAL PATHWAYS AFTER LEHMAN

A. Acknowledging Doctrinal Constraints

IAJ acknowledges that federal court intervention in state child custody proceedings faces significant doctrinal constraints beyond Lehman:

Rooker-Feldman Doctrine: Federal district courts lack jurisdiction to review state court judgments; only the Supreme Court may review state court decisions through certiorari.

Younger Abstention: Federal courts generally abstain from interfering with ongoing state proceedings involving important state interests, including child welfare matters.

Res judicata/Preclusion: Final state judgments are generally entitled to preclusive effect in subsequent proceedings.

Eleventh Amendment: States and state agencies enjoy sovereign immunity from suits for damages in federal court.

These doctrines do not disappear simply because UNCAT has been ratified. Any realistic assessment of federal pathways must account for them.

B. Available Federal Pathways

Despite these constraints, several federal pathways remain available **regardless of which state is involved**:

1. Prospective Injunctive Relief Under *Ex Parte Young*:

Ex parte Young, 209 U.S. 123 (1908), permits suits against state officials in their official capacities for prospective injunctive relief to prevent ongoing constitutional violations.

Application: Parents or advocacy organizations may seek injunctive relief against state officials responsible for child welfare proceedings, challenging policies or practices that systematically violate constitutional rights.

2. Section 1983 Damages Against Individual Officials:

42 U.S.C. § 1983 creates a cause of action against persons who, under color of state law, deprive others of federal constitutional or statutory rights.

Application: Individual caseworkers, investigators, or other officials who violate clearly established Fourth or Fourteenth Amendment rights may be sued for damages.

3. Federal Question Jurisdiction Under 28 U.S.C. § 1331:

Federal courts have original jurisdiction over civil actions arising under the Constitution, laws, or treaties of the United States.

Application: Claims challenging the constitutionality of state statutory frameworks may proceed under § 1331, provided they do not seek to reverse specific judgments.

4. Writ of Certiorari to the Supreme Court:

The Rooker-Feldman doctrine does not bar Supreme Court review of state court judgments. Parents whose state court challenges have been exhausted may petition for certiorari.³

C. Realistic Assessment

IAJ acknowledges that these pathways face significant practical limitations. These limitations underscore the importance of state-level safeguards (Section IX) and the potential relevance of international mechanisms when domestic forums prove inadequate (Section XI).

³ The IAJ reserves discussion of the discretionary selection of writs of certiorari by the US Supreme Court.

XII. JUSTICE BLACKMUN’S DISSENT: THE PROPHETIC WARNING

A. The Dissenting Voice

Justice Blackmun, joined by Justices Brennan and Marshall, dissented in *Lehman*, warning that the majority’s holding would leave fundamental parental rights without adequate federal protection:

“The Court today holds that a parent has no federal remedy when a State, without justification, permanently and completely separates the parent from the child... This result, in my view, is inconsistent with the historic scope of the *habeas corpus* remedy.”

458 U.S. at 516 (Blackmun, J., dissenting).

B. The Prophetic Dimension

Justice Blackmun’s concerns have proven prophetic. The documented failures in state child welfare proceedings—unreliable evidence, denied access, disproportionate outcomes—confirm that federal oversight was needed. The absence of federal *habeas* review has left fundamental parental rights vulnerable to state-level violations without adequate remedy.

The dissent’s warning carries particular weight in light of subsequent UNCAT ratification. Justice Blackmun could not have known that the United States would, twelve years later, commit to international obligations prohibiting cruel, inhuman, and degrading treatment. But his concern that state custody proceedings required federal oversight has been vindicated by documented evidence of systematic violations.

XIII. CONCLUSION: BOUNDED APPLICABILITY

A. Summary of Analysis

This Advisory Opinion, has demonstrated that *Lehman v. Lycoming County’s* applicability is necessarily bounded by:

1. **Chronological Priority:** UNCAT ratification in 1994 created federal obligations that *Lehman*, decided in 1982, could not have addressed.
2. **Treaty Supremacy:** The U.S. Instrument of Ratification constrains *Lehman’s* contemporary application in every state.
3. **Interpretive Floor:** Jus cogens norms establish minimum standards below which domestic interpretation cannot fall.
4. **Charming Betsy Canon:** Courts in every state must interpret *Lehman* consistently with UNCAT obligations.

5. **Equivalence Standard:** Congress’s representation that domestic mechanisms provide “equivalent” protection creates enforceable standards.
6. **Proportionality Requirement:** UNCAT and the Fourteenth Amendment mandate proportionality as an absolute requirement binding all states.
7. **Federal Constitutional Floor:** Every state must satisfy minimum safeguards for evidentiary reliability, meaningful participation, proportionality, and effective remedy.
8. **Strengthened Safeguards:** Lehman’s foreclosure of federal review increases the constitutional burden on state proceedings.
9. **Conditionality of Finality:** Lehman’s deference presupposes that state proceedings meet constitutional minima.
10. **Forum nullus and Equivalence Breach:** Where no domestic forum provides meaningful access, the equivalence promise is broken.
11. **Counterarguments Addressed:** Federalism, non-self-execution, stare decisis, floodgates, and overreach objections do not defeat bounded applicability.

B. The Operational Framework

For State Courts:

State courts should recognize that Lehman’s foreclosure of federal *habeas* review heightens—not diminishes—their constitutional responsibility. State custody proceedings must provide:

- Reliable evidence obtained through constitutionally adequate procedures
- Meaningful parental access to evidence under protective order
- Proportionality analysis ensuring least restrictive means
- Effective remedies for procedural violations

For Federal Courts:

Federal courts should interpret Lehman narrowly, preserving available federal pathways and recognizing that Lehman’s deference presupposes constitutional adequacy.

For Practitioners (in every state):

Advocates should invoke Lehman as leverage for state-level reform rather than treating it solely as an obstacle. The argument that federal *habeas* foreclosure requires enhanced state safeguards positions Lehman as the constitutional foundation for reform.

For International Bodies:

Where domestic forums fail to provide adequate remedy for treaty violations—demonstrating that domestic equivalence has failed—international mechanisms may become relevant as remedies of last resort.

C. Final Declaration

The Institute for the Advancement of Justice & Human Rights declares that:

1. *Lehman v. Lycoming County* remains formally valid precedent regarding the scope of federal *habeas corpus* jurisdiction;
2. *Lehman*'s applicability is necessarily bounded by subsequent UNCAT ratification and the constitutional, treaty-based, and interpretive constraints analyzed in this Opinion;
3. **Every state** bears constitutional responsibility to provide minimum safeguards in child welfare proceedings;
4. State proceedings **in any state** that fail to meet minimum constitutional standards are not entitled to the deference *Lehman* contemplates;
5. Federal pathways remain available regardless of state;
6. International mechanisms become relevant when domestic equivalence fails—measured against America's own commitments.

This Advisory Opinion shall be published to inform the proper interpretation and bounded application of *Lehman v. Lycoming County* in light of subsequent legal developments.

ISSUED this 9th day of February, 2026.

Institute for the Advancement of Justice & Human Rights

APPENDIX A: DOCUMENTED STATE FAILURE — TEXAS AS EXAMPLE⁴

Note: This Appendix documents specific findings from IAJ investigations in Texas. These findings are **state-specific** and presented as an **example** of how state practices can fall below federal constitutional minimums. Other states may have different practices, different deficiencies, or practices that exceed federal minimums. The constitutional and treaty analysis in the main body of this Opinion applies to **all states**; this Appendix documents one state's documented failures.

A. IAJ Investigation Findings: Texas

IAJ has conducted independent investigations pursuant to the Istanbul Protocol documenting systematic violations in Texas child welfare proceedings. Key findings include:

⁴ Refer to IAJ Amicus to the Texas Supreme Court, publication number IAJ-AMI-20260209-001-LEG

1. Attorney-Only Evidence Access

Texas Family Code § 261.201 establishes confidentiality of investigation records, limiting release to attorneys, *ad litem*, and courts while excluding direct parental access. This statutory framework creates barriers to meaningful parental participation.

Federal Floor Analysis: This framework may fall below the federal minimum for meaningful participation depending on how it is applied. If attorney-mediated access permits meaningful preparation and response, the framework may satisfy federal requirements. If it systematically excludes parents from understanding allegations against them, it fails the federal minimum.

2. Forensic Interview Procedures

IAJ investigations documented forensic interviews conducted without continuous recording, using leading questions, and without compliance with recognized protocols such as the NICHD Protocol.

Federal Floor Analysis: Procedures that systematically produce unreliable evidence fall below the federal minimum for evidentiary reliability. The specific Texas practices documented would fail this standard.

3. Disproportionate State Responses

IAJ documented cases where termination of all parental rights to all children was sought based on one parent's conduct toward one child, without documented consideration of less drastic alternatives.

Federal Floor Analysis: Such responses violate the federal proportionality requirement regardless of state-specific rules. Proportionality is a Fourteenth Amendment requirement applicable in every state.

B. Texas Constitutional Provisions

Texas voters adopted Article I, Section 37 of the Texas Constitution in 2025, establishing parental rights as fundamental under Texas law. This state constitutional provision may provide protections exceeding federal minimums within Texas.

Note: Other states have different constitutional provisions. Some may provide comparable or greater protection; others may provide less. The federal floor applies regardless of state constitutional variation.

C. Limitation of Texas Findings

The Texas findings are Texas-specific. They document how one state's practices fail federal minimums. They do not establish that all states have identical failures. The constitutional and treaty analysis applies uniformly; the documented deficiencies are state-specific.

APPENDIX B: REFERENCE MATERIALS

Key Legal Citations

Constitutional Provisions: - U.S. Const. art. VI, cl. 2 (Supremacy Clause) - U.S. Const. art. I, § 8, cl. 10 (Offenses Against Law of Nations) - U.S. Const. amend. V (Due Process) - U.S. Const. amend. VIII (Cruel and Unusual Punishment) - U.S. Const. amend. XIV (Due Process, Equal Protection)

Treaty Instruments: - Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), G.A. Res. 39/46 (Dec. 10, 1984) - U.S. Instrument of Ratification (deposited Oct. 21, 1994) - UN Committee Against Torture, Concluding Observations on U.S., CAT/C/USA/CO/3-5 (Dec. 19, 2014)

Supreme Court Decisions: - *Lehman v. Lycoming County Children's Services Agency*, 458 U.S. 502 (1982) - *Murray v. Schooner Charming Betsy*, 6 U.S. (2 Cranch) 64 (1804) - *Medellín v. Texas*, 552 U.S. 491 (2008) - *Ex parte Young*, 209 U.S. 123 (1908) - *Santosky v. Kramer*, 455 U.S. 745 (1982) - *Mathews v. Eldridge*, 424 U.S. 319 (1976) - *Troxel v. Granville*, 530 U.S. 57 (2000)

Circuit Court Decisions: - *Filártiga v. Peña-Irala*, 630 F.2d 876 (2d Cir. 1980) - *Siderman de Blake v. Republic of Argentina*, 965 F.2d 699 (9th Cir. 1992)

IAJ ADVISORY OPINION: ON THE BOUNDED APPLICABILITY OF LEHMAN v. LYCOMING COUNTY CHILDREN’S SERVICES AGENCY, 458 U.S. 502 (1982) IN LIGHT OF SUBSEQUENT UNCAT RATIFICATION AND TREATY SUPREMACY PRINCIPLES

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