

Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 79/05; Petition 396/04
Session: Hundred Twenty-Third Regular Session (11 – 28 October 2005)
Title/Style of Cause: Marlin Gray v. United States
Doc. Type: Decision
Decided by: President: Clare K. Roberts;
First Vice-President: Susana Villaran;
Commissioners: Evelio Fernandez Arevalos, Jose Zalaquett, Florentin Melendez.
Dated: 24 October 2005
Citation: Gray v. United States, Petition 396/04, Inter-Am. C.H.R., Report No. 79/05, OEA/Ser.L/V/II.124, doc. 5 (2005)
Represented by: APPLICANTS: David L. Sloss and Ms. Joanne M. Descher
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I. SUMMARY

1. On April 26, 2004, the Inter-American Commission on Human Rights (hereinafter “Commission” or “IACHR”) received a petition filed by Mr. David L. Sloss, assistant professor of law at Saint Louis University School of Law and Ms. Joanne M. Descher, from Devereux Murphy LLC (hereinafter “the Petitioners”) against the Government of the United States of America (hereinafter the “United States” or “State”). The petition was presented on behalf of Marlin Gray (hereinafter “Mr. Gray” or “Gray”) a citizen of the United States of America who at the time of the petition was incarcerated on death row in the State of Missouri. The petition indicated that Mr. Gray was convicted of first-degree murder and sentenced to death on December 3, 1992. On May 10, 2004, the Commission granted precautionary measures in favor of Mr. Gray requesting that the State preserve Mr. Gray’s life pending the Commission’s investigation of the allegations in his petition. According to the most recent information available, Mr. Gray’s execution is scheduled to take place on October 26, 2005.

2. The Petitioners allege that the State is responsible for violating Mr. Gray’s right to life under Article I of the American Declaration of the Rights and Duties of Man (hereinafter “American Declaration”). In particular, the Petitioners claim that by applying the death penalty to an individual who did not personally kill anybody, was not physically present when the killings occurred, and did not request or instruct others to commit murder, the State has failed to restrict application of the death penalty to crimes of “exceptional gravity”, and that subjecting Mr. Gray to capital punishment would violate the prohibition against arbitrary deprivation of life. The Petitioners also claim that Mr. Gray has exhausted domestic remedies, or has been denied access to the remedies under domestic law or has been prevented from exhausting them, in respect of the allegations raised before the Commission, and therefore that his petition is

admissible. Finally, the Petitioners requested precautionary measures pursuant to Article 25 of the Commission's Rules of Procedure to stay Mr. Gray's execution until his complaint could be studied by the Commission.

3. The State argues that the Commission does not have the authority to request the adoption of precautionary measures by non-States Parties to the American Convention. Additionally, the State claims that U.S. courts have reviewed the issue of the gravity of Mr. Gray's crime extensively, and their findings legally and factually support a sentence of death. Accordingly, the State contends that Mr. Gray's sentence is not arbitrary, but rather that his sentence is a product of a review of the circumstances related to him conducted pursuant to due process of law, and therefore that his petition does not characterize a possible violation of the American Declaration.

4. As set forth in this Report, having examined the contentions of the parties on the question of admissibility, and without prejudging the merits of the matter, the Commission decided to declare the petition admissible with respect to Articles I, XVIII and XXVI of the American Declaration, to continue with the analysis of the merits of the case, to transmit the report to the parties, and to publish the report and include it in its Annual Report to the General Assembly of the Organization of American States.

II. PROCESSING BEFORE THE COMMISSION

5. By note dated May 10, 2004, the Commission transmitted the pertinent parts of the Petitioners' petition to the State with a request for information within two months as provided for in Article 30 of the Commission's Rules of Procedure. In the same communication, the Commission requested precautionary measures from the United States pursuant to Article 25(1) of the Commission's Rules of Procedure to take the measures necessary to preserve Mr. Gray's life pending the Commission's investigation of the allegations in his petition.

6. In notes dated June 29, 2004 and June 30, 2004, the State requested a 30-day extension of time to provide a response to the Commission's request for information and informed the Commission that its request for precautionary measures had been forwarded to the Attorney General of the State of Missouri. By communication dated July 1, 2004, the Commission granted the State's request for an extension of time.

7. On July 26, 2004, the State provided the Commission with its response to the petition. On August 3, 2004, the Commission forwarded the pertinent parts of the State's response to the Petitioners with a reply requested within one month.

8. By letter dated September 2, 2004, the Petitioners provided a reply to the State's response, the pertinent parts of which were forwarded to the State on September 7, 2004 with a one-month time period within which to submit any additional observations.

9. On October 7, 2004, the State provided the Commission with observations on the Petitioners' September 2, 2004 reply, and on October 12, 2004, the Commission forwarded the State's observations to the Petitioners with any further reply requested within one month.

10. In a letter dated November 9, 2004, the Petitioners informed the Commission that they would not provide any additional substantive comments on the government's response as they had already addressed the merits of the State's position in previous communications. The Petitioners also advised the Commission that on October 4, 2004, the United States Supreme Court had denied a further petition for a writ of certiorari lodged on behalf of Mr. Gray.

11. By note dated November 16, 2004, the Commission provided the pertinent parts of the Petitioners' November 9, 2004 response to the State and reiterated the Commission's May 10, 2004 request for precautionary measures.

12. On November 24, 2004, the State advised the Commission that the November 16, 2004 communication from the Commission was submitted to the Governor and Attorney General of the state of Missouri for their consideration. The Commission forwarded the pertinent parts of the State's communication to the Petitioners on December 1, 2004.

13. In a letter dated September 15, 2005 and received by the Commission on September 20, 2005, the Petitioners informed the Commission that in May 2005, a petition had been filed with the Missouri Supreme Court asking the Court to delay Mr. Gray's execution to give the Commission time to consider the merits of the case and that the Missouri Supreme Court had denied that request. Subsequently, the Petitioners advised the Commission that Mr. Gray's execution date had been scheduled for October 26, 2005. Consequently, by note to the State dated October 20, 2005, the Commission reiterated its May 10, 2004 request for precautionary measures in Mr. Gray's case.

14. As of the date of this Report, the Commission had not received any further observations on the petition from the parties.

III. POSITIONS OF THE PARTIES

A. The Petitioners

15. The Petitioners state that Mr. Gray's conviction and sentence arose out of events on April 4, 1991 when sisters Julie and Robin Kerry were robbed, raped, and subsequently murdered by being pushed off the Chain of Rocks Bridge near St. Louis, Missouri. According to the Petitioners, Mr. Gray had visited the bridge earlier in the evening with three other men, Reginald Clemons, Antonio Richardson, and Daniel Winfrey, and was alleged to have participated in raping the sisters, but was not on the bridge at the time the Kerry sisters were pushed to their deaths. Rather, the petition states that it was either Clemons, Richardson or both who pushed the Kerry sisters off of the bridge later that night. The petition therefore argues that although Mr. Marlin did not kill the Kerry sisters, was not even physically present when the killings occurred, and did not instigate the killings, he nevertheless was convicted of first-degree murder and sentenced to death on the theory that he was an accomplice to the murders.

16. With respect to the admissibility of the petition, the Petitioners state that Mr. Gray has exhausted all his domestic remedies. In particular, they indicate that after his initial sentence, Mr. Gray filed a post-trial motion, which the trial court denied on November 29, 1993. According to

the Petitioners, he then appealed his conviction and sentence to the Missouri Supreme Court, which affirmed the decision of the lower court. Mr. Gray subsequently filed a petition for a writ of certiorari with the U.S. Supreme Court, which was denied on March 27, 1995. Mr. Gray then filed a petition for writ of habeas corpus in the U.S. District Court for the Eastern District of Missouri, which was denied on July 14, 2000. The Petitioners state that the U.S. Court of Appeals for the Eighth Circuit denied an appeal from that decision on February 26, 2002, and on January 13, 2003 the U.S. Supreme Court denied a petition for a writ of certiorari in respect of the rejection of his appeal. Further, the Petitioners claim that on October 3, 2003, Mr. Gray filed a petition for writ of habeas corpus with the Missouri Supreme Court and that his attorneys were informed on October 28, 2003 that the Missouri Supreme Court had denied his petition. Finally, the Petitioners state that in May 2005, they filed a petition with the Missouri Supreme Court asking the Court to delay Mr. Gray's execution in order to give the Commission time to consider the merits of the case and that the Missouri Supreme Court denied that request.

17. The Petitioners also indicate that their petition does not essentially duplicate a petition pending or already examined and settled by the Commission or by another international governmental organization of which the State concerned is a member, and that the petition has been filed within six months after the date on which the alleged victim was notified that the Missouri Supreme Court had denied his latest habeas petition.

18. With respect to the merits of the petition, the Petitioners argue that Mr. Gray's execution would violate his right not to be arbitrarily deprived of his life, because his offense does not constitute a crime of "exceptional gravity" and therefore does not satisfy the preconditions under Article I of the American Declaration for the imposition of capital punishment. In support of this argument, the Petitioners rely upon jurisprudence of the Commission, as well as that of other international and domestic tribunals, according to which the death penalty may only be imposed for the "most serious crimes" and must take into account mitigating factors in the circumstances of each individual case.

19. In the case of Mr. Gray, the Petitioners argue that the death penalty should not have been imposed because: he did not personally kill the Kerry sisters; he was not physically present when they were killed; he did not plan the killings; the killers were not his subordinates; he did not ask the killers to commit the murder or suggest that they do so; and prior to this incident he had never been convicted of a felony or previously charged with a crime of violence. The Petitioners therefore assert that Mr. Gray was convicted of murdering the Kerry sisters because he allegedly participated in the crime of rape, which ultimately led to the murders, but argue that his individual culpability for the crime of murder is very low because he did nothing to aid or abet the murders beyond his alleged participation in the rapes.

20. The Petitioners also claim that although the US Supreme Court has traditionally embraced the principle that capital punishment should be reserved for crimes of exceptional gravity, recent jurisprudence from the Court has permitted the application of the death penalty to individuals who neither took life, attempted to take life, nor intended to take life. The Petitioners therefore argue that prevailing US jurisprudence is inconsistent with the requirements under the American Declaration and has prevented Mr. Gray from obtaining a judicial remedy despite several attempts to do so.

B. The State

21. With respect to the precautionary measures granted by the Commission, the State argues that the Commission does not have the authority to request the adoption of precautionary measures by non-state parties to the American Convention. In particular, the State argues that only Article 25 of the Commission's Rules of Procedure authorizes the Commission to grant precautionary measures and that Commission's Rules were not adopted by the Member States of the OAS, but were approved only by the Commission itself. Further, the State asserts that the Statute of the Commission, which was adopted by OAS Member States, refers to precautionary measures only in the context of State Parties to the American Convention on Human Rights, and refers in this respect to Article 19(c) of the Statute which authorizes the Commission to request the Inter-American Court to take such provisional measures as it considers appropriate in serious and urgent cases involving irreparable injury to persons. The State argues that for non-state Parties to the Convention, there is no parallel provision either in the Commission's organic document, the American Convention, or the Commission Statute, which would provide specific authority for the Commission to request precautionary measures.

22. With respect to the admissibility of the petition, the State appears to argue that the facts alleged in the petition do not characterize a possible violation of the American Declaration. In particular, the State contends that the U.S. Courts have reviewed the issue of the gravity of Mr. Gray's crime extensively, and their findings legally and factually support a sentence of death, and that Mr. Gray's sentence is not arbitrary. The State asserts that Mr. Gray's sentence and those of his accomplices are the product of a review of the circumstances related to each defendant, which was conducted pursuant to due process of law.

23. In this respect, the State contends that Mr. Gray was the ringleader of a group of four men who raped and murdered Julie and Robin Kerry. The State also asserts that under Missouri law, first-degree murder is a crime punishable by death, and that a person may commit first-degree murder even if he does not personally kill the victim, where he acts with others with the common purpose of committing murder, or if, with purpose of committing murder, he aids or encouraging others in murdering. According to the State, it is a basic principle of U.S. criminal law that accomplices may be criminally responsible for the conduct of their co-defendants, and that in the present case, there were sufficient circumstances to permit an inference that Mr. Gray aided or agreed to aid or attempted to aid his co-defendants in the planning, committing or attempt to commit the murders, that he knowingly caused the death of the two victims after deliberation on the matter, and therefore that he was properly convicted as an accomplice to first-degree murder and sentenced to death.

24. Accordingly, the Commission understands the State to argue that Mr. Gray's petition should be considered inadmissible under Article 34 of the Commission's Rules.

IV. ANALYSIS OF ADMISSIBILITY

A. Competence of the Commission *ratione personae*, *ratione loci*, *ratione temporis* and *ratione materiae*.

25. Based upon the record before it, the Commission considers that it has the competence *ratione personae* to entertain the claims in the present petition. In accordance with the terms of Article 23 of the Commission's Rules of Procedure, the Petitioners are authorized to file complaints alleging violations of rights protected under the American Declaration of the Rights and Duties of Man. Mr. Gray is a person whose rights are protected under the American Declaration, the provisions of which the State is bound to respect in conformity with the OAS Charter, Article 20 of the Commissions Statute and Article 49 of the Commissions Rules of Procedure. As a Member State of the OAS that deposited its instrument of ratification of the OAS Charter on June 19, 1951, the United States of America has been subject to the jurisdiction of the Commission since the Commission's creation in 1959.[FN1]

[FN1] Article 20 of the Statute of the IACHR provides that, in respect of those OAS member states that are not parties to the American Convention on Human Rights, the Commission may examine communications submitted to it and any other available information, to address the government of such states for information deemed pertinent by the Commission, and to make recommendations to such states, when it finds this appropriate in order to bring about more effective observance of fundamental human rights. See also Charter of the Organization of American States, Arts. 3, 16, 51, 112, 150; Regulations of the Inter-American Commission on Human Rights, Arts. 26, 51-54; I/A. Court H.R., Advisory Opinion OC-10/8 "Interpretation of the Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights," July 14, 1989, Ser. A N° 10 (1989), paras. 35-45; I/A Comm. H. R., James Terry Roach and Jay Pinkerton v. United States, Case 9647, Res. 3/87, 22 September 1987, Annual Report 1986-87 paras. 46-49.

26. Given that the petition alleges violations of rights protected under the American Declaration of the Rights and Duties of Man within the territory of the United States, the Commission concludes that it has the competence *ratione loci* to take cognizance of it.

27. Further, the Commission has the competence *ratione temporis* to examine this matter. The petition is based on facts alleged to have occurred beginning in 1991, at which time the obligations undertaken by the State under the American Declaration were in effect.

28. Finally, inasmuch as the Petitioners have filed complaints alleging violations of Articles I of the American Declaration the Commission is competent *ratione materiae* to examine the substance of the complaints.

B. Duplication of proceedings and *res judicata*

29. The Petitioners have indicated that their petition does not essentially duplicate a petition pending or already examined and settled by the Commission or by another international governmental organization of which the State concerned is a member. The State has not contested the issue of duplication of procedures. The Commission therefore finds no bar to the admissibility of the Petitioner's claims under Article 33 of the Commissions Rules of Procedure.

C. Exhaustion of domestic remedies

30. Article 31(1) of the Commission's Rules of Procedure specifies that in order to decide on the admissibility of a matter, the Commission must verify whether the remedies of the domestic legal system have been pursued and exhausted in accordance with generally recognized principles of international law. Article 31(2) of the Commission's Rules of Procedure, however, specifies that this requirement does not apply if the domestic legislation of the state concerned does not afford due process of law for protection of the right allegedly violated, if the party alleging the violation has been denied access to domestic remedies or prevented from exhausting them, or if there has been an unwarranted delay in reaching a final judgment under the domestic remedies.

31. The jurisprudence of the inter American system also makes clear that the rule which requires the prior exhaustion of domestic remedies is designed for the benefit of the State, because the rule seeks to excuse the State from having to respond to charges before an international body for acts imputed to it before it has had an opportunity to remedy them by internal means. According to the Inter-American Court of Human Rights, the requirement is thus considered a means of defense and, as such, waivable, even tacitly. Further, a waiver, once effected, is irrevocable.[FN2] In the face of such a waiver, the Commission is not obliged to consider any potential bars to the admissibility of a petitioner's claims that might properly be raised by a state relating to the exhaustion of domestic remedies.

[FN2] I/A Court H.R., Loayza Tamayo Case, Preliminary Objections, Judgment of January 31, 1996, Series C No 25, para. 40.

32. In the present case, the Petitioners have argued that Mr. Gray has pursued all domestic remedies available to him in the United States, including direct appeal proceedings before the state courts, and habeas corpus relief before the state and federal courts. The State has not opposed Mr. Gray's petition on the ground of non-exhaustion of domestic remedies. To the contrary, the State has argued that Mr. Gray has received all proper due process in the criminal proceedings against him and has cited the same appeal and post-conviction proceedings referred to by the Petitioners.

33. Accordingly, the Commission finds that Mr. Gray's petition is admissible under Article 31 of the Commission's Rules of Procedure.

D. Time period for submission of the petition

34. Pursuant to Article 32(1) of the Commission's Rules of Procedure, the Commission must refrain from taking up petitions that are lodged after the six month period following the date on which the continuing party has been notified of the final ruling, in cases where the complaining party has been notified of the final ruling, in cases where the remedies under domestic law have been exhausted.

35. In the instant case, the U.S. Supreme Court rendered its decision on Mr. Powell's final petition for a writ of certiorari on October 28, 2003 and the petition was filed with the Commission on April 26, 2004. Consequently, the Commission concludes that the Petitioner's petition was lodged within the time period provided for under Article 32 of the Commission's Rules of Procedure.

E. Characterization of the facts alleged

36. The Petitioners claim that the State has violated Mr. Gray's rights protected under Article I of the Declaration because his offense does not constitute a crime of "exceptional gravity" and therefore does not satisfy the preconditions under international law for the imposition of capital punishment. In this connection, the Commission has previously held that Article I of the Declaration, while not precluding the death penalty altogether, prohibits its application when doing so would result in an arbitrary deprivation of life. The Commission has also held that several deficiencies may render an execution arbitrary contrary to Article I of the Declaration, including a failure on the part of a state to limit the death penalty to crimes of exceptional gravity prescribed by pre-existing law.[FN3]

[FN3] See Case 12,243, Report 52/01, Juan Raul Garza v. United States, Annual Report of the IACHR 2000, paras. 89-91; Case 57/96, Report N° 57/96, William Andrews v. United States, Annual Report of the IACHR 1997, para. 177.

37. In addition, a review of pertinent international human rights jurisprudence indicates that compliance with the condition limiting capital punishment to only the most serious crimes necessitates consideration of the individual circumstances of the offender and his or her offense in order to determine whether the death penalty is a permissible punishment in each individual case.[FN4] Factors pertinent to determining whether the crime is one of exceptional gravity have been held to include the relationship between the offender and the victim, the criminal history of the offender and the victim, motives for the behavior, the extent and intensity of the harm caused, the circumstances under which the crime is committed, and the means employed by the offender.[FN5]

[FN4] See, e.g., Case I/A Court H.R., Hilaire, Constantine and Benjamin et al. Case, Judgment of June 21, 2002, Series C No. 94, para. 102; I/A Court H.R., Raxacacó Reyes case, Judgment of September 15, 2005, Series C No. 133, paras. 79-82; UNHRC, Communication No. 390/1990, Lubuto (Zambia), UN Doc. CCRP/C/55/D/390/1990 (November 17, 1995).

[FN5] See, e.g., Case I/A Court H.R., Hilaire Case, Judgment of June 21, 2002, Series C No. 94, paras. 102-108; I/A Court H.R., Raxacacó Reyes case, Judgment of September 15, 2005, Series C No. 133, para. 81; UNHRC, Communication No. 390/1990, Lubuto (Zambia), UN Doc. CCRP/C/55/D/390/1990 (November 17, 1995), para. 7.2.

38. In the present case, the Petitioners argue that the individual circumstances of Mr. Gray and his crime do not satisfy the requirements of a crime of exceptional gravity essentially due to the insufficient nexus between Mr. Gray and the crimes for which he has been convicted and sentenced, and that he has been unable to obtain a judicial remedy within the United States for his circumstances. The State argues conversely that the U.S. courts properly considered the individual circumstances of Mr. Gray's crime in imposing a sentence of death and therefore that his sentence is not arbitrary and was imposed in accordance with full due process protections. In view of these submissions, the Commission considers that it is only through a consideration of the merits of the Petitioners' petition that a determination can be made as to whether Mr. Gray's death sentence is consistent with applicable international standards in light of his circumstances and those of his crimes.

39. In light of the observations of the parties and applicable international principles, and without prejudging the merits of the matter, the Commission considers that the Petitioners' petition characterizes a possible violation of the right to life under Article I of the American Declaration. Further, although the Petitioners have not specifically referred to other articles of the Declaration, the Commission, by virtue of the established general legal principle of *iura novit curia*,^[FN6] also finds that the petition characterizes possible violations of the right to judicial protection as enshrined in Articles XVIII and XXVI of the American Declaration. The Commission therefore finds that the petition is admissible under Article 34 of the Commission's Rules of Procedure.

[FN6] See, e.g., Case I/A Court H.R., Hilaire, Constantine and Benjamin et al. Case, Judgment of June 21, 2002, Series C No. 94, para. 110.

F. Precautionary Measures

40. According to the information presently available, Mr. Gray's execution is scheduled for October 26, 2005. Although the Commission has granted and reiterated precautionary measures requesting that the State stay Mr. Gray's execution pending its examination of his petition, the State has argued that the Commission lacks the authority to request precautionary measures of states that have not ratified the American Convention essentially because the provision governing such measures is contained in the Commissions' Rules rather than in its Statute.

41. In this connection, the Commission recalls that in its decision in the case of Juan Raul Garza v. United States, the Commission held that in capital cases, the failure of an OAS member state to preserve a condemned prisoner's life pending review by the Commission of his or her complaint undermines the efficacy of the Commission's process, deprives condemned persons of their right to petition in the inter-American human rights system, and results in serious and irreparable harm to those individuals, and accordingly is inconsistent with the state's human rights obligations.^[FN7] The Commission premised these obligations on a finding that OAS member states, by creating the Commission and mandating it through the OAS Charter and the Commission's Statute to promote the observance and protection of human rights of the American peoples, have implicitly undertaken to implement measures of this nature where they are

essential to preserving the Commission's mandate.[FN8] The Commission found support for this determination in its own jurisprudence as well as the findings of other regional and international adjudicative bodies, including the UN Human Rights Committee, the European Court of Human Rights and the International Court of Justice.[FN9] In the Commission's view, this jurisprudence articulates a principle common to the functioning of international adjudicative systems according to which member states must implement interim or precautionary measures where doing so is necessary to preserve the very purposes for which the systems were created and to prevent irreparable harm to the parties whose interests are determined through those processes.

[FN7] Case 12.243, Report 52/01, *Juan Raul Garza v. United States*, Annual Report of the IACHR 2000, para. 117. See similarly ; IACHR, Fifth Report on the Situation of Human Rights in Guatemala, Doc. OEA/Ser.L/V/II.111 doc.21 rev. (6 April 2001), paras. 71, 72.

[FN8] *Id.*

[FN9] *Id.*, citing International Court of Justice, *Case Concerning the Vienna Convention on Consular Relations (Germany v. United States of America)*, Request for the Indication of Provisional Measures, Order of 3 March 1999, I.C.J. General List, N° 104, paras. 22-28; United Nations Human Rights Committee, *Dante Piandiong and others v. The Philippines*, Communication N° 869/1999, U.N. Doc. CCPR/C/70/D/869.1999 (19 October 1999), paras. 5.1-5.4; Eur. Court H.R., *Affaire Mamatkulov et Abdurasulovic c. Turkey*, Reqs. Nos. 46827/99, 46951/99 (6 February 2003), paras. 104-107.

42. Upon considering the State's observations, the Commission finds no grounds for varying its previous findings on this issue. It remains the Commission's view that in circumstances such as the present, the authority of its precautionary measures is derived from the State's fundamental human rights commitments as a State Party to the OAS Charter and therefore that the State is subject to an international legal obligation to preserve Mr. Gray's life pending the examination of his complaint by the Commission.

43. Accordingly, the Commission hereby reiterates its request of May 10, 2004 pursuant to Rule 25 of its Rules of Procedure that the United States take the necessary measures to preserve Mr. Gray's life so as not to impede the processing of his petition before the inter-American human rights system.

V. CONCLUSIONS

44. The Commission concludes that it is competent to take cognizance of the instant case and that the petition is admissible, pursuant to Articles 31 to 34 of the Commission's Rules of Procedure.

45. Based on the factual and legal arguments set forth above, and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS DECIDES:

1. To declare the present case admissible with respect to the alleged violation of the rights recognized in Articles I, XVIII and XXVI of the American Declaration on the Rights and Duties of Man.
2. To notify the parties of this decision.
3. To continue with the analysis of the merits of the case.
4. To request that the United States take the necessary measures to preserve Mr. Gray's life and physical integrity pending the Commission's determination of the merits of his petition.
5. To make this report public, and publish it in its Annual Report to the General Assembly of the Organization of American States.

Done and signed in the city of Washington, D.C., on the 24th day of the month of October, 2005.
(Signed): Clare K. Roberts, President; Susana Villarán, First Vice-President; Evelio Fernández Arévalos, José Zalaquett, and Florentín Meléndez, Commissioners.