I. SUMMARY

1. On November 2, 2004, the Inter-American Commission on Human Rights (the "Inter-American Commission" or the "IACHR") received a petition and request for precautionary measures, dated November 1, 2004, from Sandra Babcock, Jon M. Sands, Dale A. Baich, Michael L. Burke, Jefferson T. Dorsey, Paula K. Harms, Sylvia Lett, Leticia Marquez, Ken Murray and Mark Warren (the "petitioners") against the Government of the United States of America (the "State", the "U.S." or the "United States"). The petition was presented on behalf of nine individuals ("Summerlin et al." or the "alleged victims"), all prisoners convicted and sentenced to death in the United States.

2. The petitioners claim that the alleged victims were all sentenced to death pursuant to a statute requiring that the trial judge acting alone, rather than the convicting jury, determine the imposition of the death penalty, a procedure which they submit the U.S. Supreme Court later found to be unconstitutional.[FN1] However, following proceedings instituted by Mr. Summerlin, the U.S. Supreme Court further held that the prisoners whose cases were already final on direct review –which is the situation of the alleged victims-- would not benefit from a new sentencing hearing, the remedy afforded by the U.S. Supreme Court to other condemned prisoners sentenced under the same circumstances. Therefore, the petitioners submit that the State denied the alleged victims access to a constitutionally valid sentencing hearing exclusively

on the basis of the procedural status of their cases on the date when the Supreme Court issued its corrective judgment. The petitioners consider that this constitutes a violation of Articles I, II, XVIII and XVII of the American Declaration of the Rights and Duties of Man (the "American Declaration").

[FN1] Ring v. Arizona, 536 U.S. 584 (2002) (the "Ring Decision").

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3. On December 21, 2004 and August 4, 2009, the petitioners submitted supplemental filings in which they sought to add a total of 91 individuals to the petition, on the basis that the factual and legal circumstances of their cases were identical to those of the initial petitioners and that all of the IACHR's requirements for admissibility were met as well.

4. The State submits that the petition is inadmissible because domestic remedies have not been exhausted for most of the alleged victims, which leaves the possibility that, for a variety of reasons, the death sentences be commuted. Moreover, the State contends that the Summerlin decision is not arbitrary, since it is based extensively on previous Supreme Court doctrine, and also that it is reasonable and fair. Consequently, the State claims that the petition should be rejected because it does not tend to establish facts that constitute violations of the American Declaration.

5. As set forth in this report, having examined the contentions of the petitioners on the question of admissibility and without prejudging the merits of the matter, the IACHR concludes that the case is admissible, inasmuch as it meets the requirements provided in Articles 31 to 34 of its Rules of Procedure. With respect to one presumed victim, Daniel W. Cook, however, the petition does not meet the requirements of Article 32 of the Rules of Procedure. Based on the foregoing, the IACHR decides to notify the parties of its decision, to continue with its analysis of the merits as regards alleged violation of Articles I, II, XVIII and XXVI of the American Declaration, to publish it, and to include it in its Annual Report to the General Assembly of the Organization of American States (OAS).

II. PROCEEDINGS BEFORE THE INTER-AMERICAN COMMISSION

6. On November 12, 2004, following receipt of the petition and request for precautionary measures, the Inter-American Commission acknowledged receipt and notified the petitioners that it had transmitted the pertinent parts to the State. as well as the request for precautionary measures for three of the alleged victims.[FN2] The IACHR requested the State's observations on the precautionary measures as soon as possible; and its observations on the petition within a two month period.

[FN2] Namely: Waren W. Summerlin, Jeffrey T. Landrigan and Richard M. Rossi.

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7. On December 1, 2004, the State informed the IACHR that letters informing the relevant authorities of the Inter-American Commission's requests were submitted to the relevant authorities for their consideration. On December 2, 2004, the IACHR acknowledged receipt and transmitted the pertinent parts of this communication to the petitioners. The petitioners submitted their observations on December 22, 2004.[FN3]

[FN3] On January 3, 2005, the IACHR acknowledged receipt and transmitted the pertinent parts of this communication to the State.

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8. On December 21, 2004, the IACHR received a supplemental filing to the petition, dated December 17, in which the petitioners seek to add ninety persons as alleged victims. On January 7, 2005, the IACHR notified the petitioners that, on the same date, it had sent the pertinent parts of their supplemental filing to the State with a request for observations within two months. On January 12, 2005, the State submitted its response. The IACHR transmitted the pertinent parts to the petitioners and notified the State thereof on January 13, 2005.[FN4]

[FN4] The petitioners submitted additional observations on February 11, 2005, the IACHR acknowledged receipt on February 15, and notified them that the pertinent parts were forwarded to the State with a request for observations.

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9. On November 13, 2006, the IACHR received an urgent request for precautionary measures, dated November 10, with respect to one of the alleged victims, Ronald T. Williams. On November 22, 2006, the IACHR informed the State and the petitioners that it amplified the precautionary measures adopted to include Mr. Williams. The Inter-American Commission also requested the State to provide its observations on the matter in an urgent response. On December 18, 2006, the State responded that the letter had been forwarded to the relevant authorities.[FN5]

[FN5] The IACHR acknowledged receipt and transmitted this information to the petitioners on March 19, 2008.

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10. On August 14 and 16, 2007, the petitioners informed the IACHR that the state of Arizona had requested that the Arizona Supreme Court issue a warrant of execution for one of the alleged victims, Jeffrey T. Landrigan, and set a date for his execution.[FN6] The petitioners requested the IACHR to renew the precautionary measures for Mr. Landrigan and to schedule a hearing. In light of this information, the IACHR reiterated its request to the State to stay Mr. Landrigan's execution pending its investigation of the allegations in the petition on September 11. The Inter-American Commission notified the petitioners thereof and informed the petitioners and the State that it decided to convene a hearing to address matters related to the petition on October 12, 2007, during its 130th ordinary period of sessions.[FN7]

[FN6] The petitioners indicated that the Arizona Supreme Court would rule on the request on September 25, 2007.

[FN7] On September 27, 2007, the petitioners submitted additional and updated information related to the hearing and announced the members of their delegation. The State did the same on October 11, 2007.

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11. By means of a September 24, 2007 letter, the State acknowledged receipt and informed the IACHR that the September 11 letter had been submitted to the relevant authorities. The IACHR acknowledged receipt and forwarded this information to the petitioners on September 25, 2007, with a request for observations within fifteen days.

12. On October 12, 2007, a hearing was held at the IACHR's headquarters to discuss matters related to the petition.

13. On June 22, 2009, the IACHR requested the petitioners to provide updated information on the status of the alleged victims, which was transmitted on August 4, 2009. The IACHR acknowledged receipt and notified the State thereof on August 13, 2009.

III. POSITIONS OF THE PARTIES

A. Position of the petitioners

14. The petition essentially revolves around the allegation that the alleged victims were sentenced under a procedure subsequently declared unconstitutional by the U.S. Supreme Court and are now denied access to a new constitutionally valid sentencing hearing. [FN8]

[FN8] The first petition mentions nine individuals as alleged victims, namely: Warren W. Summerlin, Richard M. Rossi, Rudi A. Apelt, Kenneth J. Laird, Jeffrey T. Landrigan, Gregory S. Dickens, Theodore Washington, Charles M. Hedlund and Danny Lee Jones.

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15. The petition indicates that the alleged victims were all sentenced to death following a procedure requiring that the trial judge, rather than the convicting jury, determine the imposition of the death penalty. The petitioners submit that in Arizona, since 1973, the guilt phase of a capital trial was conducted before a jury, but upon a unanimous finding of guilt, the penalty phase was then conducted before the trial judge alone. The trial judge was then responsible for determining the existence of the aggravating circumstances necessary for the imposition of the death sentence or the existence of mitigating circumstances sufficiently substantial to call for leniency. [FN9]

[FN9] The petitioners cite Section 13-703 (F) of the Arizona Revised Statutes.

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16. The U.S. Supreme Court upheld the constitutionality of this sentencing procedure on various occasions until 2002, when it overruled its previous decisions, declared this sentencing procedure unconstitutional and, as a remedy, required that the applicant in that particular case and other death-sentenced prisoners have access to new sentencing hearings before juries (the "Ring Decision").[FN10] The petition indicates that the U.S. Supreme Court, however, did not address the question of whether this ruling would apply retroactively. On this point, Mr. Summerlin, one of the alleged victims, allegedly initiated proceedings culminating in a U.S. Supreme Court decision ruling that all prisoners whose cases were already final on direct review at the moment of the Ring Decision would not benefit from its retroactive applicability (the "Summerlin Decision").[FN11]

[FN10] Allegedly, Ring v. Arizona, 536 U.S. 584 (2002).
[FN11] Allegedly, Schriro v. Summerlin, 124 S.Ct. 2519, dated June 24, 2004.

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17. In their supplemental filings, the petitioners sought to add ninety-one additional persons to the petition, on the basis that the factual and legal circumstances of their cases were practically identical to those of Summerlin et al.[FN12] Out of these ninety-one individuals, some were sentenced to death in the State of Arizona,[FN13] and others had their sentence imposed in other states[FN14] under a sentencing procedure functionally identical to that applied in Arizona.[FN15] The petitioners claim that the case of each of these persons became final on direct review prior to the Ring Decision and each of them is likewise deprived of access to a constitutionally valid re-sentencing hearing by virtue of the Summerlin Decision.

[FN12] The petitioners refer to inter-American jurisprudence and indicate that the IACHR allegedly accepted supplemental filings naming new individuals eligible for remedies on the basis of the same claims and facts: IACHR Report No.41/99, Case 11.491, Minors in Detention (Honduras), March 10, 1999, paras. 26-44; and I/A Court H.R,. Matter of James et al., Trinidad and Tobago, Order of the President of the Inter-American Court of Human Rights of May 11, 1999.
[FN13] Namely: Michael Apelt, Frank J. Atwood, Donald E. Beaty, Richard L. Bible, William Bracy, Scott D. Clabourne, Micheal E. Correll, David S. Detrich, Richard K. Djerf, Eugene A. Doerr, Michael Gallegos, Ernest V. Gonzales, Beau John Greene, Richard H. Greenway, David Gulbrandson, Graham S. Henry, Clarence D. Hill, John A. Hinchey, Maxwell Hoffman, Murray Hooper, Richard D. Hurles, Levi J. Jackson, Steven C. James, Barry Lee Jones, George R. Kayer, Thomas A. Kemp Jr., Eric J. King, Joe L. Lambright, Chad A. Lee, Darrel E. Lee, Laurence K. Libberton, George M. Lopez, Samuel Lopez, Ernesto Salgado Martinez, Eric Mann, James E. McKinney, Jasper N. McMurtrey III, Angel M. Medrano, Kevin Miles, Debra Milke, Robert H. Moormann, Robert W. Murray, Roger W. Murray, Viva L. Nash, George Jr. Porter, Robert A. Poyson, David Martinez Ramirez, Charles B. Rienhardt, Fred Robinson, Pete C. Rogovich, Sean B. Runningeagle, Alfonzo R. Salazar, Ronald D. Schackart, Edward H. Schad, Eldon M. Schurz, Roger M. Scott, Robert D. Smith, Todd L. Smith, Martin R. Soto-Fong, Anthony M. Spears, Clinton Spencer, Christopher Spreitz, Milo Stanley, Richard Stokley, James

L. Styers, Robert L. Tankersley, Robert C. Towery, Robert L. Walden Jr., Thomas P. West, Michael R. White, Aryon Williams Jr., Ronald T. Williams, Joseph R. Wood III and Daniel W. Cook (sought to be added on August 6, 2009).
[FN14] In Idaho: David L. Card, Thomas E. Creech, Zane J. Fields, James H. Hairston, Mark H. Lankford, Richard Leavitt, Randy L. McKinney, Gerald R. Pizzuto, George Jr Porter, Paul E. Rhoades, Robin L. Row, Lacey Mark Sivak and Gene F. Stuart; in Nebraska: David L. Dunster and Michael W. Ryan; in Montana: William J. Gollehon and Ronald A. Smith.
[FN15] In this regard, the petitioners submit that the Supreme Court in the Ring Decision declared five States' capital sentencing schemes unconstitutional, namely Arizona, Idaho, Montana, Colorado and Nebraska.
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18. Ultimately, the petitioners claim that for a question of timing, the State denies the alleged victims access to a constitutionally valid sentencing procedure, in violation of their right not to be arbitrarily deprived of life, their right to equality, to a fair trial, to due process and not to receive cruel, infamous or unusual punishment guaranteed, respectively, under Articles I, II, XVIII and XXVI of the American Declaration.

19. With regard to the admissibility of the petition, the petitioners argue that for each of the alleged victims the trial court judgment became final on direct review prior to the Ring Decision, and that the Summerlin Decision exhausted their available domestic remedies to benefit from a retroactive application of the ruling in the Ring Decision.

20. The petitioners stress that the U.S. Supreme Court has decided definitively that the petitioners will not benefit from the retroactive application of the Ring Decision, exhausting domestic remedies. The petitioners argue that although some matters are pending in the cases of some of the alleged victims before internal courts, these matters do not address the underlying issue of the petition, i.e. whether or not the Summerlin Decision in its finality, content and consequences, violates the State's obligations under the American Declaration to ensure the right not to be arbitrarily deprived of one's life, to equality, to fair trial, to due process and not to receive cruel, infamous or unusual punishment.[FN16] The petitioners submit that there is no additional effective domestic remedy available to address their complaint.

[FN16] Hearings held at the IACHR's headquarters on October 12, 2007.
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21. The petitioners further claim that the petition meets the timeliness requirement and that the issues therein are not pending before other international bodies and that they have not been previously considered or settled by the IACHR.

22. The petitioners complain that by depriving the alleged victims of a remedy afforded to other prisoners sentenced in similar circumstances, the conduct of the State constitutes an arbitrary deprivation of life, in breach of Article I of the American Declaration. The petitioners argue that the deprivation of constitutional rights based on a random point in legal time, rather than on principle or on individual merits, is arbitrary.[FN17] In this connection, they submit that

the State's argument of judicial economy is based on the inconvenience that would result from applying the Ring Decision to the alleged victims because of the procedural status of their cases. Finally, the petitioners refer to the IACHR's previous finding that "deprivation by the State of an offender's life should not be made subject to the fortuitous element of where the crime took place"[FN18] and submit that similarly, the deprivation of the alleged victims' lives should not depend on the equally fortuitous element of when their sentences became final.[FN19]

[FN17] IACHR Report No 57/96, Case 11.139, William Andrews (United States) December 6, 1996; the petitioners also refer to IACHR Report No 38/00, Case 11.473, Rudolph Baptiste (Grenada) April 13, 2000, para. 84, where "arbitrary" is defined as "an action or decision that is based on random or convenient selection or chose rather than on reason or nature."
[FN18] IACHR Report No.3/87 Case 9.647, Roach and Pinkerton (United States) September 22, 1987, para.62.
[FN19] The petitioners also give the example of the alleged victim James Van Adams, which according to them illustrates the arbitrariness of the Ring Decision: Mr. Van Adams was sentenced to death nine months after Mr. Ring, on November 21, 1997, but his case became final on direct review on June 18, 1999, nearly three years before the Ring Decision. Because of the speed with which the state processed his appeal, Mr. Van Adams is not eligible to a new sentencing hearing, whereas Mr. Ring is.

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23. The petitioners allege that the Summerlin Decision violates Summerlin et al.'s right to equality before the law under Article II of the American Declaration because it constitutes a ruling radically different from the Ring Decision, despite identical factual circumstances, resulting in the absolute denial to one category of prisoners of a right that is fully granted to another, while no legitimate purpose exists for this distinction. The petitioners submit that this situation fully meets the definition of unequal treatment previously established by the Inter-American Commission.[FN20]

[FN20] The petitioners refer to IACHR Report No 8/98, Case 11.671, Carlos Garcia Saccone (Argentina) March 2, 1998, in which the IACHR refers to I/A Court H.R., Advisory Opinion OC-4/84 of January 19, 1984, para. 57.

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24. The petitioners further complain that the Summerlin Decision is fundamentally unfair and violates the right to due process, set out in Articles XVIII and XXVI of the American Declaration. In particular, they submit that:

a. The deprivation of a constitutionally valid sentencing procedure conflicts with the plain language of Article XVIII;
b. The U.S. Supreme Court did not deny that the alleged victims' due process rights were violated by the application of unconstitutional sentencing procedures, but rather concluded that those violations were "procedural" and not "substantive."[FN21] It is alleged that without an

individual assessment of the effects of the violations on a particular case, an analysis of due process rights is not possible;[FN22]

c. Because the Ring Decision established that trial judges acting alone do not possess the legal competence to determine the existence of factors required for a death sentence, the alleged victims were sentenced by a non-competent court; and

d. The alleged victims were denied their fundamental right to uniformity of treatment, which implies that similar cases are treated alike.[FN23]

[FN21] The petitioners note that the U.S. Supreme Court went on to say that a denial of so-called procedural due process may "raise the possibility that someone convicted with use of the invalidated procedure might have been acquitted otherwise" but a bare majority of the Court was unable to say confidently that "judicial fact-finding seriously diminishes accuracy."

[FN22] The petitioners cite I/A Court H.R., Advisory Opinion OC-16/99 of 1 October 1999. The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law, para. 136.

[FN23] The petitioners refer to The Prosecutor v. Mucić, ICTY, AC, February 20, 2001 at paras. 756-757; The Prosecutor v. Aleksovski, ICTY AC, March 24, 2000 at paras. 104-110; Trial of Ulrich Greifelt and Others, Law Reports of the Trials of War Criminals, United Nations War Crimes Commission, Vol. XIII, p.53; and Summerlin, 124, S.Ct. at 2529 (Breyer, J., dissenting).

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25. Finally, the petitioners argue that the execution of the alleged victims under these circumstances would amount to cruel, infamous and unusual punishment, prohibited by Article XXVI of the American Declaration. They submit that the execution would be:

a. Cruel, because principles of justice require that all of the alleged victims must receive the benefit of a final decision declaring their sentence to be illegal, regardless of the procedural status of their case at the time of the Ring Decision;[FN24]

b. Unusual, because it would be based on a sentencing procedure subsequently found to have been outside the jurisdiction of the trial judge, but nonetheless authorized by the Supreme Court; and

c. Infamous, because the prisoner, the courts and the executioners will be fully aware that the sentence was illegally imposed, depriving the individual prisoner of his rights or dignity, and having an eroding effect on public confidence in the fairness of judicial procedures.

[FN24] The petitioners refer to Balkissoon Roodal v State of Trinidad & Tobago, [2003] UKPC 18; and Charles Matthews v State of Trinidad &Tobago [2004] UKPC 2, two decisions from the Judicial Committee of the Privy Council in which the Privy Council found that the denial of the anticipated remedy would result in a cruel and unfair punishment and where the Privy Council did not restrict its ruling to cases awaiting final disposition on direct appeal holding that "same considerations apply to anyone else sentenced to death and awaiting execution at the date of this judgment."

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26. The petitioners argue that the Summerlin Decision unreasonably deprived the alleged victims of a demonstrable and genuine benefit. They claim that 66% of the persons, who met the requirements set in the Summerlin Decision to benefit from the Ring Decision, were ultimately re-sentenced to a sentence less than death.[FN25] While the petitioners recognize that judicial economy is a factor which may be taken into consideration when the courts rule on the retroactive applicability of new rules, they contend that applying the Ring Decision retroactively would affect only approximately 110 persons;[FN26] thus not seriously disrupting the administration of justice or placing an inordinate burden on the justice system in any way.[FN27]

[FN25] In the hearings held on October 12, 2007 the petitioners explained that more than 100 persons were condemned to death in Arizona, out of which 30 complied with the requirements set in the Summerlin Decision to benefit from the Ring decision. Out of these 30, the Supreme Court of Arizona only affirmed the death penalty in two cases in its initial revision and held that the 28 others should be revised. Out of these 28 cases, 15 eventually had re-sentencing hearings (the petitioners did not detail the 13 others cases), the outcome of which was that in only 5 cases the accused was sentenced to death and in the other 10 cases the accused was sentenced to prison in perpetuity. In other words 66% of those who beneficiated retroactively from the Ring Decision had a sentence other than death. The petitioners also support their claim that the alleged victims are deprived of a genuine benefit by giving the example of members of the jury in the cases of some of the alleged victims who allegedly stated that they believed death penalty was not an appropriate sentence.

[FN26] Summerlin, 124 S. Ct. at 2530 (Breyer, J., dissenting).

[FN27] The petitioners refer to other U.S. Supreme Court decisions regarding the constitutionality of death penalty procedures that have been applied with retroactive effect on as many or more cases than this one, without any perceptible effect on the capacity of state courts, Atkins v. Virginia, 536 U.S. 304 (2002) and Ford v. Wainwright, 477 U.S. 399 (1986), which effects will allegedly continue to reverberate indefinitely throughout the state courts in every executing jurisdiction, whereas a retroactive application of the Ring Decision would only apply to cases such as those of the alleged victims and would have no further retrospective effect.

B. Position of the State

27. With regard to the admissibility of the petition, the State did not submit written arguments. However, during the hearing held on October 12, 2007, the State opposed the admissibility of the petition on two grounds. Firstly, the State argues that, with the exception of few cases, domestic remedies are yet to be exhausted and proceedings are in fact currently pending for most of the alleged victims. It underscores that as a result of these proceedings there are possibilities that the death sentence could be commuted on a variety of grounds. The State indicates that the case of Mr. Summerlin, who will have a new sentencing hearing on the basis of ineffective assistance of counsel, is in fact very illustrative of that reality. Secondly, the State submits that the petition should be declared inadmissible because the allegations contained therein do not tend to establish violations of the American Declaration, in light of the arguments summarized below.

28. By way of background, the State mentions that in the Ring Decision, the U.S. Supreme Court ruled that the determination of the particular aggravated circumstances necessary for the imposition of a death sentence must be made by a jury rather than by a judge. Following this decision, a panel of the U.S. Court of Appeal for the Ninth Circuit vacated Mr. Summerlin's death sentence,[FN28] holding that the rule announced in the Ring Decision applied retroactively to his case.[FN29] However, the U.S. Supreme Court reversed this decision, reasoning that the Ring Decision resulted in a "new procedural rule" that will only apply to criminal cases still pending on direct review. The State points out that a "new procedural rule" applies to a final conviction only if it is one without which the likelihood of an accurate conviction is seriously diminished.[FN30] The purpose of this rule is an issue of judicial resources and of finality of criminal judgments, which the State argues are important considerations, not only for the administration of justice but also for their effect on the victims and their families.

[FN28] The State submits that Mr. Summerlin was found guilty of sexual assault and first degree murder, for which he was sentenced by the trial judge acting alone, respectively to twenty-eight years' imprisonment and a death sentence. Mr. Summerlin's convictions and sentences were reviewed and affirmed by the Supreme Court of Arizona and his direct appeal became final on April 17, 1984. Further, the State submits that Mr. Summerlin filed several petitions for writ of habeas corpus in the federal district court, which denied the motions but issued a certificate of probable cause enabling Summerlin to appeal to the U.S. Court of Appeal for the Ninth Circuit. According to the State, at the same moment, the U.S. Supreme Court granted certiorari in State v. Ring, which involved a potential reexamination of Arizona's death penalty statute in light of the Sixth Amendment, so the Ninth Circuit deferred submission of Mr. Summerlin's case pending the U.S. Supreme Court's resolution of Ring v. Arizona.

[FN29] The State cites Summerlin v. Stewart, 341 F.3d 1082, 1121 (2003) (en banc).

[FN30] The State refers to Teague, 489 U.S. 288, 311 (1989) and Saffle v. Parks, 494 U.S. 484, 495 (1990); the State further submits that the U.S. Supreme Court generally gives retroactive effect only to a small set of "watershed rules of criminal procedure" implicating the fundamental fairness and accuracy of the criminal proceeding; the State also refers to Mackay 401 U.S. 682, 689

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29. The State contends that in the case of Mr. Summerlin, the Supreme Court came to the reasonable and extensively motivated conclusion that there was not a substantial likelihood that the issue of whether the sentence is decided by a judge or by a jury would make any difference in the outcome; in other words, that there was no potential prejudice caused by not applying the Ring Decision retroactively.

30. The State argues that the above demonstrates that due process has been guaranteed, that the alleged victims were not denied a fair trial and that accordingly, the claims of violation of Articles XVIII and XXVI of the American Declaration should be rejected.

31. Concerning the allegation that the Summerlin Decision results in an arbitrary deprivation of life, the State submits that while the integrity of judicial review requires the application of a new rule to all similar cases pending on direct review,[FN31] application of rules not in

existence at the time a conviction became final seriously undermines the principle of finality, essential to the operation of criminal justice systems.[FN32] The State argues that countries frequently change rules of criminal procedure and that there is no requirement in the American Declaration or in international law that all criminal cases previously adjudicated have to be reopened and re-litigated under every new rule of criminal procedure. The State contends that establishing such a requirement would create a chilling effect that would dissuade countries from changing their rules to be more favorable to criminal defendants. Moreover, the State contends that far from being capricious, the Summerlin Decision took into account a variety of legitimate and reasonable factors in the administration of justice and therefore does not constitute an impermissible discrimination.

[FN31] The State cites Teague, 489 U.S. at 304, citing Griffith, 479 U.S. at 323.
[FN32] The State cites Teague at 308.

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32. The State further argues that the petitioners are incorrect when they assert that Summerlin et al. were denied a remedy afforded to other identical cases, as an identical case would be one in which the murder occurred in a state at a time when the state's law allowed a trial judge alone to find aggravating circumstances rendering the defendant eligible for the death penalty; such circumstances were found; death penalty was imposed; and the stage of direct review had been completed in the defendant's case at the moment of the Ring Decision. In such cases, the individual would also not benefit from the Ring Decision. Hence, the State submits that the allegation of a violation of the right to equality should be rejected.

33. The State also rejects the petitioners' argument that the alleged victims were sentenced by a non-competent court. It argues that at the moment the court established the sentence it was composed of a judge acting alone, and it was established in conformity with preexisting law, therefore it fulfilled all the requirements of Article XXVI of the American Declaration.

IV. ANALYSIS OF ADMISSIBILITY

A. Jurisdiction

34. Upon considering the record before it, the Inter-American Commission finds that it is competent ratione personae to analyze the claims in the present petition. Under Article 23 of the IACHR's Rules of Procedure, the petitioners are authorized to file complaints alleging violations of rights protected under the American Declaration. The alleged victims are persons whose rights are protected under the American Declaration. The State is bound to respect the provisions of the American Declaration and the Inter-American Commission is competent to receive petitions alleging violations of that instrument by the State by virtue of its ratification of the OAS Charter on June 19, 1951 and in conformity with Article 20 of the IACHR's Statute and Article 49 of its Rules of Procedure.[FN33]

[FN33] 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 IACHR 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; IACHR's Rules of Procedure, Arts. 49, 50; 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 Nº 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.

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35. Given that the petition alleges violations of rights protected under the American Declaration that have taken place in the territory of the United States, the IACHR concludes that it has the competence ratione loci to take cognizance of it. Moreover, the petition is based on facts that occurred at a time at which the obligations undertaken by the State pursuant to the OAS Charter and the American Declaration were in effect, so the Inter-American Commission has competence ratione temporis to examine this matter.

36. Finally, inasmuch as the petitioners have filed complaints alleging violation of Articles I, II, XVIII and XXVI of the American Declaration, the IACHR is competent ratione materiae to examine the complaint.

37. Therefore, the Inter-American Commission finds that it is competent to address the claims raised in the petition.

B. Admissibility requirements

1. Exhaustion of domestic remedies

38. The Inter-American Commission must verify whether the remedies of the domestic system have been pursued and exhausted in accordance with generally recognized principles of international law, pursuant to with Article 31(1) of its Rules of Procedure.

39. In the present case, as detailed above, the State submits that proceedings are ongoing for most of the alleged victims and that as such, domestic remedies have not been exhausted. The petitioners respond by arguing that the issues at stake in these pending proceedings are not the same as the ones comprised in the present petition and should therefore not bar the admissibility of the petition before the Inter-American Commission.

40. The IACHR considers that the crux of the petitioners' complaint is the State's denial of a new sentencing hearing before a jury, in accordance with the U.S. Supreme Court Decision in the Ring Case. Mr. Summerlin and the other alleged victims in the present petition submit that they should have been permitted this procedural opportunity, notwithstanding that their convictions

had already been subject to a decision on direct review at the time of the Ring Decision. It was this claim that was presented by Mr. Summerlin before the Supreme Court. In response, the Supreme Court determined that persons in those circumstances would not be afforded a resentencing hearing before a jury. The issue placed before the Inter-American Commission was accordingly placed before and decided by the Supreme Court. It is therefore this aspect which should be considered for the purposes of determining the admissibility of the claim as opposed to, for example, habeas corpus or other post-conviction remedies, which may ultimately lead to a variety of outcomes, but which would be based on different grounds and purposes. [FN34]

[FN34] Such as determining whether a defendant is being lawfully detained, determining the effective assistance of trial counsel, or other procedures that do not address the issues raised in the present petition.

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41. According to the information presented, the alleged victims all fit within the group that was denied the procedural opportunity granted to claimants who pursued direct appeals after the Ring decision, and it was the Summerlin decision that constituted a final decision with respect to their claim to a resentencing hearing. This decision exhausted domestic remedies with respect to the claim placed before the Inter-American Commission; therefore it is not necessary to examine in detail other kinds of post-conviction proceedings undertaken by the alleged victims for reasons not related to the question presented in the petition.

42. The Inter-American Commission finds that the alleged victims have exhausted the domestic remedies relevant to the claims raised and, consequently, concludes that the petition is not barred from consideration under Article 31 of its Rules of Procedure.

2. Timeliness of the Petition

43. Pursuant to Article 32.1 of its Rules of Procedure, the Inter-American Commission must refrain from taking up petitions that are lodged after six month following the date on which the complaining party has been notified of the final ruling, in cases where the remedies under domestic law have been exhausted. In the present case, the initial petition was lodged on November 2, 2004, and the first supplemental filing on the following December 21, therefore not beyond six months from the Summerlin Decision, dated June 24, 2004.

44. However, the petitioners sought to include an additional person to the list of alleged victims, Daniel W. Cook, almost five years following the presentation of the original petition, on August 4, 2009. In support of this addition, the petitioners refer to Article 29(1)(d) of the IACHR's Rules of Procedure, as well as cases from the inter-American system. The IACHR will address these arguments respectively. Firstly, although Article 29(1)(d) of the IACHR's Rules of Procedure sets that "if two or more petitions address similar facts, involve the same persons, or reveal the same pattern of conduct, they may be joined and processed together", without specifying any time period, this article refers only to the processing of the petitions and does not allow for inadmissible petitions to be joined to admissible petitions in order to avoid complying with the requirements of admissibility. With regards to the cases referred to by the petitioners,

the IACHR notes that while the first case concerns provisional measures and thus does not relate to admissibility of petitions,[FN35] the other case is distinguishable from the instant one by virtue of the factual circumstances, which involved detention conditions of minors, as well as by the fact that the alleged violation in question was ongoing[FN36] as opposed specific in time, as in the present case.

[FN35] I/A Court H.R., Matter of James et al. regarding Trinidad and Tobago, Order of the President of the Inter-American Court of Human Rights of May 11, 1999.
[FN36] IACHR Report No.41/99, Case 11.491, Minors in Detention (Honduras), March 10, 1999, paras. 26-44.

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45. Accordingly, the IACHR considers that the petition concerning Mr. Cook does not comply with the timeliness requirement established at Article 32 of its Rules of Procedure and declares it inadmissible. The rest of the petition is not barred from consideration under Article 32 of the Rules of Procedure.

3. Duplication of proceedings

46. There is no information on the record indicating that the subject of this petition is pending settlement in another procedure under an international government organization of which the State is a member, or that the case essentially duplicates a petition pending or already examined and settled by the IACHR or another international governmental organization of which the State is a member. The State has not opposed the petition on the ground of duplication. The Inter-American Commission therefore finds no bar to the admissibility of the petitioners' claims under Article 33 of its Rules of Procedure.

4. Colorable claim

47. Article 27 of the IACHR's Rules of Procedure mandates that petitions state facts "regarding alleged violations of the human rights enshrined in the American Convention on Human Rights and other applicable instruments". In addition, Article 34 of its Rules of Procedure requires the Inter-American Commission to declare a petition inadmissible when it does not state facts that tend to establish a violation of the rights referred to in Article 27 of the Rules or where statements of the petitioner or of the State indicate that it is manifestly groundless or out of order.

48. The petition alleges that the State has violated Mr. Summerlin et al's rights under Articles I, II, XVIII and XXVI of the American Declaration. Part III of this report outlines the substantive allegations of the petitioners, the information submitted in support of those allegations, as well as the arguments provided by the State.

49. According to the information on the record, at least thirteen of the alleged victims do not run the risk of being executed anymore. It is alleged that some of them died of natural causes in prison, were released as a result of successful habeas procedures, had their sentence vacated or

had access to new trials for reasons other than the underlying issue herein, in any case not as a result of the Ring Decision.[FN37]

[FN37] The information in possession of the IACHR indicates the following: Rudi A. Apelt had his death sentence vacated as he was found to be a person with mental retardation; Jasper N. McMurtery III had his death sentence vacated and is no longer in custody arising from a successful writ of habeas corpus; Warren W. Summerlin, Michael E. Correll and Joe L. Lambright had their death sentence vacated and cases returned to state court for new hearings because it was determined that they received ineffective assistance of counsel; Mark H. Lankford was granted habeas corpus relief and had his death sentence vacated; Levi J. Jackson, Kenneth J. Laird, and Martin R. Soto-Fong had their death sentences commuted to life imprisonment following the 2005 U.S. Supreme Court decision in Roper v. Simons which declared unconstitutional the execution of juvenile offenders; and William Bracy, John A. Hinchey, Clarence D. Hill and Richard M. Rossi died in prison.

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50. The petitioners claim that regardless of other post-conviction remedies or claims for relief, the procedure under which the alleged victims were sentenced was subsequently found to be a violation of the due process rights of an accused, but that they were not permitted access to the resentencing procedure established as a means of remedying that problem. Accordingly, the alleged victims have been subject to that violation as from the moment of sentencing and for as long as they remained subject to the sentence, even if they are no longer subject to it at present for other reasons. Therefore, the IACHR considers that even if some of the alleged victims are not under threat of execution anymore, the claims related to them are not prohibited from consideration under Article 27 of the Rules of Procedure.

51. The Inter-American Court had to determine a similar question in Boyce v. Barbados,[FN38] where the imposition of mandatory death penalty was alleged to have violated the right to life of four individuals, who, for other reasons, were not on death row anymore at the moment of the Court's Judgment. The Inter-American Court held the following:

Nevertheless, even assuming that none of the four alleged victims will be hanged, the Court considers that the State's arguments regarding the alleged mootness of the issues of mandatory death sentencing and hanging are misplaced. (…) The premise for the State's position seems to be that the mandatory death penalty and death by hanging may only give rise to a possible violation of the American Convention if and when the alleged victims are actually executed; that is, when the sentence is carried out. Without addressing the merits of the issues at this point, the Court considers that the alleged violations with regard to the issue of mandatory death penalty in this case would have occurred at the sentencing stage, when the alleged victims were sentenced to death by hanging pursuant to laws that allegedly contravene the American Convention.[FN39]

[FN38] I/A Court H.R., Boyce v. Barbados Case. Judgment of November 20, 2007. Series C No.169.

[FN39] Case of Boyce v. Barbados, para.21.

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52. Consequently, after carefully reviewing the information and arguments provided by the parties in light of the heightened scrutiny test applied by the IACHR in capital punishment cases,[FN40] and without prejudging the merits of the matter, the Inter-American Commission considers that the petition contains factual allegations that, if proved, may tend to establish violations of Articles I, II, XVIII and XXVI of the American Declaration.

[FN40] According to the IACHR's established jurisprudence, it will review and decide capital punishment cases with a heightened level of scrutiny, to ensure that any deprivation of life that an OAS member state proposes to effect through the death penalty complies strictly with the requirements of the applicable inter-American human rights instruments; see Report No. 33/06 (Philip Workman v. United States) Admissibility, IACHR's Annual Report 2006, para.75; Report Nº 12/05 (James Rexford Powell v. United States), Admissibility, IACHR's Annual Report 2005, paras.51; Report No. 57/96 (Andrews v. United States), Merits, IACHR's Annual Report 1997, paras.170-171; Report No. 38/00 (Baptiste v. Grenada), Merits, IACHR's Annual Report 1999, paras. 64-66; and Report No. 41/00 (McKenzie et al. v. Jamaica), Merits, IACHR's Annual Report 1999, paras.169-171.

V. CONCLUSION

53. 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 TO:

1. Declare the present petition admissible with respect to the alleged violations of Articles I, II, XVIII and XXVI of the American Declaration of the Rights and Duties of Man, for the individuals named in the initial petition and the supplemental filing dated December 17, 2004;
2. Declare the petition inadmissible with respect to Daniel W. Cook;
3. Notify the parties of this decision;
4. Continue with the analysis of the merits of the case; and
5. Publish this report in its Annual Report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 29th day of the month of October, 2009. (Signed): Luz Patricia Mejia, President; Victor E. Abramovich, First Vice-Chairman; Felipe González, Second Vice-Chairman and Paulo Sergio Pinheiro, Commissioner.