

**REPORT No. 81/11**  
CASE 12.776  
MERITS  
JEFFREY TIMOTHY LANDRIGAN  
UNITED STATES \*  
July 21, 2011

**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 filed on November 1, 2004, by Sandra Babcock, Jon M. Sands, Dale A. Baich, Michael L. Burke, Jefferson T. Dorsey, Paula K. Harms, Sylvia Lett, Leticia Márquez, Ken Murray, and Mark Warren (“the petitioners”) against the Government of the United States of America (“the State” or “the United States”). The petition was lodged on behalf of nine convicted prisoners facing the death sentence in the United States, including Jeffrey Timothy Landrigan.<sup>1</sup>

2. The petitioners contend that Jeffrey Landrigan and the other persons named in the complaint were sentenced to death under a statute whereby the judge acting alone, and not the convicting jury, decided on the imposition of the death penalty; they further claim that the Supreme Court of the United States later ruled that procedure unconstitutional.<sup>2</sup> However, following proceedings brought by Warren Summerlin, one of the convicts, the United States Supreme Court further ruled that prisoners whose cases were at the final review stage following appeal—the situation of Jeffrey Landrigan—could not benefit from a new sentencing hearing, a remedy that was extended by the Supreme Court to other individuals convicted in the same circumstances. The petitioners therefore maintain that the State has thus denied Jeffrey Landrigan a constitutionally valid hearing on the basis of the procedural status of his case on the date when the Supreme Court issued its corrective decision. The petitioners hold that those facts constitute violations of Articles I, II, XVIII, XXIV, and XXVI of the American Declaration of the Rights and Duties of Man (“the American Declaration”).

3. The State maintains that there are several possibilities whereby death sentences can be commuted. It also holds that the decision in *Summerlin* is not arbitrary, in that it is broadly based on the doctrine followed by the Supreme Court and is reasonable and fair. The State consequently claims that the alleged facts do not represent any possible violations of the American Declaration.

4. On October 29, 2009, the IACHR ruled petition 1177/04 admissible, notified the parties of that decision, and resolved to continue with its analysis of the merits as regards the alleged violation of Articles I, II, XVIII, and XXVI of the American Declaration. It also resolved to publish the admissibility report and to include it in its Annual Report to the General Assembly of the Organization of American States. The matter was recorded as Case No. 12.729, Warren Summerlin and others, including Jeffrey Timothy Landrigan.

5. In this report, after analyzing the positions of the parties, the Inter-American Commission concludes that the United States is responsible for violating Articles II, XVIII, and XXVI of the American Declaration with respect to Jeffrey Timothy Landrigan. Consequently, should the State carry out the

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\* Commissioner Dinah Shelton, a U.S. national, did not participate in discussing or deciding this case, in accordance with Article 17.2.a of the IACHR’s Rules of Procedure.

<sup>1</sup> The original petition names the following nine persons as the alleged victims: 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.

<sup>2</sup> *Ring v. Arizona*, 536 U.S. 584 (2002) (“the *Ring* decision”).

execution of Mr. Landrigan, it would also be committing a serious and irreparable violation of the basic right to life enshrined in Article I of the American Declaration.

## **II. PROCEEDINGS FOLLOWING THE REPORT ON ADMISSIBILITY**

6. On December 4, 2009, the IACHR forwarded Admissibility Report No. 100/09 in Case 12.729, Warren Wesley Summerlin and others, to the State and to the petitioners. In accordance with the Rules of Procedure then in force, the Inter-American Commission set a deadline of two months for the petitioners to submit additional comments on the merits and, at the same time, it made itself available to the parties with a view to initiating a possible friendly settlement of the matter. No response was received from the petitioners within the stipulated period, nor did the State respond regarding the friendly settlement offer.

7. On September 28, 2010, the petitioners submitted a communication reporting that the Supreme Court of Arizona had issued a warrant authorizing the execution of Jeffrey Timothy Landrigan for October 26, 2010. That communication reads: "In light of this serious development, the petitioners urge the Commission to do everything in its power to remind the United States of its human rights obligations, including complying with the precautionary measures requested on Mr. Landrigan's behalf in this case."

8. In light of Mr. Landrigan's imminent execution, the Inter-American Commission analyzed the case and resolved to reiterate the precautionary measures (MC 1026/04) in place with respect to all the alleged victims in Case 12.729. The IACHR extended those precautionary measures on November 12, 2004, in order to preserve the life and person of Mr. Landrigan and two other alleged victims in Case 12.729. In addition, it decided on the severance of Mr. Landrigan's case in order to examine it separately and as a matter of urgency, assigning it the number 12.776. On October 4, 2010, the IACHR notified the parties of the severance of the case and, pursuant to Article 37.4 of its Rules of Procedure, it asked the State to return its additional comments on the merits within a period of one week following that date. In that same communication, the Inter-American Commission reiterated the precautionary measures in place on Mr. Landrigan's behalf, so that his execution could be stayed until the IACHR was able to rule on the merits of this case. The State did not provide any observations on the merits within the deadline indicated, and has not done so as of the date of this report's adoption.

9. On October 18, 2010, the petitioners sent an additional communication containing further comments on the merits of Case 12.776 and confirming that Jeffrey Landrigan's execution has been set for October 26, 2010. In light of the urgent circumstances of the matter, and in compliance with Article 37.3 of its Rules of Procedure, the Inter-American Commission forwarded that communication to the State on October 19, 2010, asking it to return any comments it deemed relevant prior to October 21, 2010, so they could be considered by the IACHR during its 140th Regular Session.

10. On October 20, 2010 the petitioners submitted a copy of the order issued on that same date by the Supreme Court of Arizona, by which the motion for a stay of execution filed by the representatives of Mr. Landrigan was denied.

11. On October 22, 2010, the State submitted a communication in which it notified the IACHR that on that same date "letters were submitted via facsimile and surface mail to the Governor, Attorney General, and Presiding Officer of the Arizona Board of Executive Clemency for their consideration, informing them of the Commission's request that Mr. Landrigan not be executed pending the review of his petition."

## **III. POSITIONS OF THE PARTIES ON THE MERITS**

### **A. The petitioners**

12. The petitioners claim that Jeffrey Timothy Landrigan was sentenced using a procedure that required the death penalty to be imposed by the trial judge, and not by the convicting jury. That

procedure was later ruled unconstitutional by the United States Supreme Court, in spite of which the courts have denied Mr. Landrigan a new sentencing hearing.

13. The petitioners submit that in Arizona, as from 1973, the guilt phase of a capital trial was conducted before a jury. Upon a unanimous finding of guilt by such a jury, however, 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.<sup>3</sup>

14. The United States Supreme Court upheld the constitutionality of this sentencing procedure on several occasions. However, in a judgment handed down on June 24, 2002, in the case of *Timothy Stuart Ring v. Arizona* ("the *Ring* decision"),<sup>4</sup> the Supreme Court found the procedure in question to be unconstitutional. As redress, the Supreme Court ordered that the appellant be given access to a new sentencing hearing before a jury, and that the same opportunity be extended to other prisoners sentenced to death under the same procedure. The petitioners state that the Supreme Court did not address the question of whether this ruling would apply retroactively. Warren Summerlin, one of the alleged victims before the IACHR in Case 12.729, began proceedings to examine that question, which led to a Supreme Court decision ruling that prisoners whose cases were already final on direct review of appeal at the moment of the *Ring* decision would not benefit from its retroactive application ("the *Summerlin* decision").<sup>5</sup>

15. The petitioners argue that the State is denying the alleged victim in this case access to a constitutionally valid sentencing procedure on the grounds of the date of his conviction, which, in their opinion, represents a violation of his rights to freedom from the arbitrary deprivation of life, to equality, to a fair trial, to due process, and to freedom from cruel, infamous, or unusual punishment, guaranteed, respectively, in Articles I, II, XVIII, and XXVI of the American Declaration.

16. In their claims, the petitioners contend that denying the alleged victim a remedy afforded to other prisoners sentenced in similar circumstances would lead to an arbitrary deprivation of his life, in violation of Article I of the American Declaration. They submit that the denial of constitutional rights based on a random circumstance of legal timing, and not on the basis of principles or individual merits, is arbitrary. They maintain that the State's argument alleging judicial economy is based on the inconvenience that would be caused by applying the *Ring* decision to the alleged victim by reason of the procedural status of his case. Finally, the petitioners contend that the State's execution of a person must not be subject to such random elements as the place where the crime was committed or the date on which final judgment was given.<sup>6</sup>

17. The petitioners claim that the *Summerlin* decision violates Mr. Landrigan's right to equal treatment before the law, established in Article II of the American Declaration, because it represents a radically different conclusion than the one reached in the *Ring* decision, in spite of the factually identical circumstances. They hold that the result is the absolute denial to one category of prisoners of a right granted in full to another group, without any legitimate purpose that would justify such a distinction.

18. In the petitioners' opinion, the *Summerlin* decision, applicable to Jeffrey Landrigan's situation, is fundamentally unfair and violates the right of due process set out in Articles XVIII and XXVI of

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<sup>3</sup> The petitioners cite Section 13-703 (F) of the Arizona Revised Statutes.

<sup>4</sup> *Ring v. Arizona*, 536 U.S. 584 (2002).

<sup>5</sup> *Schriro v. Summerlin*, 124 S.Ct. 2519, June 24, 2004.

<sup>6</sup> The petitioners also refer to the example of James Van Adams, an alleged victim in Case 12.729, which, in their view, illustrates the arbitrary nature of the *Ring* decision: Mr. Van Adams was sentenced to death nine months *after* Mr. Ring, on November 21, 1997, but his case was finally resolved at review following appeal on June 18, 1999, almost three years *before* the *Ring* decision. Due to the speed with which the State processed his appeal, Mr. Van Adams is not eligible for a new sentencing hearing, while Mr. Ring is.

the American Declaration. In particular, they argue that denying a constitutionally valid sentencing procedure is expressly in conflict with the text of Article XVIII. In addition, they claim, the United States Supreme Court did not deny that the alleged victim's rights to due process were being violated by the use of unconstitutional procedures to set the sentence, but that it concluded that those violations were "procedural" and not "substantive."

19. The petitioners also contend that Jeffrey Landrigan was sentenced by an incompetent court, in that the United States Supreme Court has ruled that trial judges acting alone are incompetent to rule on the existence or otherwise of the factors needed for a death sentence to be handed down. They further submit that the alleged victim was not afforded his basic right to equal treatment, in that he was denied the opportunity afforded to another group of appellants to have their capital convictions reviewed, absent any legitimate justification for that denial.

20. The petitioners argue that the alleged victim's execution in these circumstances would constitute the cruel, infamous, or unusual punishment prohibited by Article XXVI of the American Declaration. The execution would be cruel, they maintain, because the principles of justice demand that the alleged victim in this case receive the benefit of a final decision ruling the sentencing illegal, regardless of the procedural stage of the case on the date of the *Ring* decision. It would be unusual, they contend, because it would be based on a procedure before a trial judge that was later ruled unconstitutional by the Supreme Court of the United States itself. According to the petitioners, Mr. Landrigan's execution would also be infamous in that the prisoner, the courts, and the executioners would be fully aware that the sentence was handed down illegally and in denial of the prisoner's rights and dignity, which would be compounded by the erosive effect the situation would have on public confidence in the justice meted out by the courts.

21. Finally, the petitioners claim that the *Summerlin* decision unreasonably deprived the alleged victim of a demonstrable and genuine benefit. On this point, they claim that 66% of the people who met the conditions set in *Summerlin* for application of the *Ring* decision were ultimately resentenced and received punishments that were more lenient than death.<sup>7</sup> Although they acknowledge that judicial economy is a factor to be taken into account by the courts in ruling on the retroactive enforcement of new provisions, they maintain that the *Ring* decision's retroactive enforcement would affect only 110 people,<sup>8</sup> including Mr. Landrigan, which would not seriously disturb the administration of justice or in any way impose an excessive burden on the justice system.

## **B. The State**

22. The State did not present specific additional observations on the merits. However, subsequent to the requests for additional observations, it did communicate that the request for the suspension of the execution of Mr. Landrigan was transmitted officially to the relevant authorities in the state of Arizona.

23. Prior to the adoption of the admissibility report, the State submitted that the petitioners' claims did not tend to establish any violations of the American Declaration. As background, it notes that in the *Ring* decision, the United States Supreme Court held that the determination of the particular aggravating 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,<sup>9</sup> holding that the rule announced in the *Ring* decision applied

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<sup>7</sup> IACHR, Petition 177/04 and Precautionary Measures MC 1026/04, Warren Summerlin and others, United States, Hearing of October 12, 2007, <http://www.cidh.oas.org/prensa/publichearings/Hearings.aspx?Lang=ES&Session=13>.

<sup>8</sup> *Summerlin*, 124 S. Ct., 2530 (Breyer, J., dissenting).

<sup>9</sup> 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 to 28 years' imprisonment and a death sentence, respectively. 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 writs of habeas corpus in the federal district court, which  
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retroactively to his case.<sup>10</sup> However, the U.S. Supreme Court reversed this position, reasoning that the *Ring* decision resulted in a “new procedural rule” that would apply only to all criminal cases still pending on direct review. The State explains 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.<sup>11</sup> The purpose of this rule is an issue of judicial remedies and of the 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.

24. In the State’s view, the Supreme Court came to the reasonable and extensively grounded conclusion, based on *Summerlin*, that there was not a substantial likelihood that the issue of whether the sentence was decided by a judge or by a jury would make any difference in the outcome. In other words, the State maintains that no prejudice was caused by not applying the *Ring* decision retroactively to the individuals affected by the *Summerlin* decision, including Jeffrey Timothy Landrigan. In the State’s opinion, that demonstrates that due process has been guaranteed and that the alleged victim has not been denied a fair trial, and thus the claims of violation of Articles XVIII and XXVI of the American Declaration should be rejected.

25. The State understands that the integrity of judicial review requires the application of a new rule to all similar cases pending on direct review; however, it holds that application of rules not in existence at the time a conviction became final would seriously undermine the principle of finality of judgments, which is essential to the operation of a criminal justice system. On this point, the State argues that countries frequently change their rules of criminal procedure, but that there is no requirement in the American Declaration or in international law that all previously adjudicated criminal cases have to be reopened 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 ones more favorable to criminal defendants. Moreover, the State contends that far from being capricious, the *Summerlin* decision took into account various legitimate and reasonable factors related to the administration of justice and therefore does not constitute impermissible discrimination.

26. The State further argues that the petitioners are incorrect when they assert that the persons affected by the *Summerlin* decision—including Mr. Landrigan—were denied a remedy afforded to other identical cases. It holds that an identical case would be one in which: the murder occurred in a state at a time when its law allowed a trial judge alone to find aggravating circumstances rendering the defendant eligible for the death penalty; such circumstances were found; the 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 not benefit from the *Ring* decision. Hence, the State submits that the allegation of a violation of the right to equality should be rejected.

27. The State also rejects the petitioners’ argument that the alleged victims were sentenced by an incompetent court. It argues that at the moment the court issued the sentence, it was composed solely by the trial judge, and the decision was issued in conformity with preexisting law, thus fulfilling all the requirements of Article XXVI of the American Declaration.

#### IV. ANALYSIS OF THE MERITS

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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 time, 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; consequently, the Ninth Circuit deferred submission of Mr. Summerlin’s case pending the U.S. Supreme Court’s resolution of *Ring v. Arizona*.

<sup>10</sup> The State cites: *Summerlin v. Stewart*, 341 F.3d 1082, 1121 (2003) (en banc).

<sup>11</sup> The State cites *Teague*, 489 U.S. 288, 311 (1989), and *Saffle v. Parks*, 494 U.S. 484, 495 (1990); the State further submits that the United States 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 cites *Mackay*, 401 U.S. 682, 689.

28. In its report on the admissibility of the petition in which Mr. Landrigan's claims were included, the Inter-American Commission found that it had competence *ratione materiae* to examine and rule on the merits of the allegations involving Articles I, II, XVIII, and XXVI of the American Declaration.

29. Before embarking on its analysis of the merits in the case of Jeffrey Timothy Landrigan, the Inter-American Commission believes it should reiterate its previous rulings regarding the heightened scrutiny to be used in cases involving the death penalty. The right to life has received broad recognition as the supreme human right and as a *sine qua non* for the enjoyment of all other rights. That gives rise to the particular importance of the Inter-American Commission's obligation of ensuring that any denial of life that may arise from the enforcement of the death penalty strictly abides by the requirements set forth in the applicable instruments of the inter-American human rights system, including the American Declaration. That heightened scrutiny is consistent with the restrictive approach adopted by other international human rights bodies in cases involving the imposition of the death penalty,<sup>12</sup> and it has been set out and applied by the Inter-American Commission in previous capital cases brought before it.<sup>13</sup>

**A. Right to justice and due process (Articles XVIII and XXVI of the American Declaration)**

30. The American Declaration guarantees the right of all persons to justice and to due process, respectively, in the following terms:

Every person may resort to the courts to ensure respect for his legal rights. There should likewise be available to him a simple, brief procedure whereby the courts will protect him from acts of authority that, to his prejudice, violate any fundamental constitutional rights.

Every accused person is presumed to be innocent until proved guilty.

Every person accused of an offense has the right to be given an impartial and public hearing, and to be tried by courts previously established in accordance with pre-existing laws, and not to receive cruel, infamous or unusual punishment

31. As seen above, the petitioners claim that the State denied Jeffrey Landrigan a remedy afforded to other prisoners who were convicted in similar circumstances. The petitioners argue that it is arbitrary to deny a constitutional right based on a random circumstance of legal timing and not on the basis of principles or individual merits. They contend that the State's judicial economy argument is based on the inconvenience that would be caused by applying the *Ring* decision to the alleged victim by reason of the procedural status of his case. Finally, they refer to the IACHR's earlier conclusion that the State's deprivation of a criminal's life must not depend on the happenstance of where the crime was committed, and they maintain, by analogy, that depriving the alleged victim of his life must not depend on such an equally circumstantial element as *when* the sentence became final. As an example, the petitioners cite the case of James Van Adams, which, in their view, illustrates the arbitrary nature of the *Ring* decision. Mr. Van Adams was sentenced to death on November 21, 1997, nine months later than Mr. Ring, but his

<sup>12</sup> See, for example: I/A Court H. R., Advisory Opinion OC-16/99 (October 1, 1999), *The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law*, para. 136 (finding that "because execution of the death penalty is irreversible, the strictest and most rigorous enforcement of judicial guarantees is required of the State so that those guarantees are not violated and a human life is not arbitrarily taken as a result"); United Nations Human Rights Committee, *Baboheram-Adhin et al. v. Suriname*, Communications Nos. 148-154/1983, adopted on April 4, 1985, para. 14.3 (observing that "the law must strictly control and limit the circumstances in which a person may be deprived of his life by the authorities of a State"); *Report of the United Nations Special Rapporteur on Extrajudicial Executions*, Bacre Waly Ndiaye, submitted pursuant to Commission on Human Rights Resolution 1994/82, Question of the Violation of Human Rights and Fundamental Freedoms in any part of the World, with particular reference to Colonial and Other Dependent Countries and Territories, UN Doc.E/CN.4/1995/61 (December 14, 1994) ("the Ndiaye Report"), para. 378 (emphasizing that in capital cases, it is the application of the standards of fair trial to each and every case that needs to be ensured and, in case of indications to the contrary, verified, in accordance with the obligation under international law to conduct exhaustive and impartial investigations into all allegations of violation of the right to life).

<sup>13</sup> IACHR, Report No. 57/96, Andrews, United States, IACHR Annual Report 1997, para. 170-171; Report No. 38/00 Baptiste, Grenada, IACHR Annual Report 1999, paras. 64-66; Report No. 41/00, McKenzie *et al.*, Jamaica, IACHR Annual Report 1999, paras. 169-171.

case was finally resolved at review following appeal on June 18, 1999, almost three years before the *Ring* decision. Because of the speed with which his appeal was processed, Mr. Van Adams is not entitled to the benefit of a new sentencing hearing, whereas Mr. Ring is.

32. The petitioners argue that irrespective of other remedies or redress actions following the conviction, the procedure whereby Mr. Landrigan was sentenced was later ruled to be in violation of defendant's right to due process. In spite of that, he was denied access to the procedure for setting a new sentence, which would be the ideal mechanism for correcting that situation. Consequently, the alleged victim suffered a violation of his rights at the time of his sentencing, and has continued to suffer it as long as he remains under that sentence.

33. In contrast, the State contends that there are no violations of due process in this case, holding the *Summerlin* decision to be a reasonable and well grounded conclusion. The State further believes that the review sought by the petitioners would not be likely to bring about a significant change in the result of the judicial decision whereby the death sentence was imposed. Finally, the State maintains that the failure to retroactively enforce the *Ring* decision represents no prejudice in the case of Jeffrey Timothy Landrigan or with respect to the other individuals affected by *Summerlin*.

34. The IACHR notes that in the case at hand, the competence of the court that handed down Mr. Landrigan's death sentence has been questioned. Although the State claims that the failure to review the original sentence following the *Ring* decision probably did not affect Jeffrey Timothy Landrigan's rights, the petitioners submit specific evidence to the contrary. Thus, the petitioners provided specific statistical data indicating that 66% of the prisoners affected by the *Ring* decision who were able to have their death sentences reviewed later received other punishments.

35. In their second submission of additional comments on the merits, the petitioners added that Mr. Landrigan was not guaranteed the right of appropriate defense at trial, since the court-appointed attorney he was assigned lacked the capacity and experience for trials of that kind. In particular, they note that this court-appointed attorney did not conduct the slightest investigation to determine whether there were any mitigating circumstances of relevance to the sentencing phase in a capital murder trial. The petitioners point out that in 2006, the Court of Appeals for the Ninth Circuit found that the lower courts had "unreasonably determined" that Mr. Landrigan had asked his court-appointed counsel to refrain from offering evidence of mitigating factors in his favor.<sup>14</sup> However, in its review of that decision, the United States Supreme Court reversed it on the grounds that the prejudice against Mr. Landrigan had not been established.<sup>15</sup>

36. The defense entered by the court-appointed attorney, according to the petitioners' claims, was also inadequate in that at the sentencing phase, numerous mitigating circumstances were not explored, including Jeffrey Landrigan's childhood, which was marked by physical and emotional abuse, abandonment, and serious substance abuse. They contend that Jeffrey Landrigan birth mother drank whisky every day while she was pregnant with him, and that she regularly used amphetamines. They also state that his biological father was an extremely violent man, that he was sent to prison when Mr. Landrigan was only a few months old, and that he was awaiting execution in Arkansas at the same time that Mr. Landrigan received his death sentence.

37. The petitioners claim that the court-appointed counsel also failed to order either interviews with people aware of these aspects of Mr. Landrigan's background or cognitive or neuropsychological testing. They contend that such evidence could have led to a more lenient sentence than death and could have served to establish that Mr. Landrigan did not knowingly waive the right to have favorable evidence presented. Finally, the petitioners submit that the Supreme Court's refusal to

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<sup>14</sup> *Landrigan v. Stewart*, 397 F.3d 1235.

<sup>15</sup> *Schiro v. Landrigan*, 550 U.S. at 465.

grant Mr. Landrigan an evidentiary hearing led to a violation not only of his right to a proper defense, but also of his right to due process and appropriate remedies.

38. At the hearing before the Inter-American Commission on October 12, 2007, the petitioners explained that 30 of the more than 100 people sentenced to death in Arizona met the standard set in *Summerlin* for the benefits offered by the *Ring* decision. The Supreme Court of Arizona upheld the death penalty in only two of those 30 cases on initial review, and it stated that the other 28 must also be reviewed. Of those 28 cases, 15 subsequently obtained new sentencing hearings: in only five cases were the prisoners sentenced to death, while the other ten accused were sentenced to life imprisonment. The petitioners also report that members of the jury in some of the alleged victims' cases had stated that they did not believe the death penalty to be an appropriate sentence. The State has not contested these claims made by the petitioners during the processing of the case.

39. The petitioners further cite decisions of the United States Supreme Court regarding the constitutionality of procedures for imposing the death penalty that have been applied retroactively in as many or more cases as those addressed in the *Summerlin* group --including Landrigan-- and that have had no perceptible effect whatsoever on the capacity of the state court systems.<sup>16</sup> They also note that the effects of those judgments would remain in place indefinitely in the courts of all those states where the death penalty applied, whereas the *Ring* decision would only apply retroactively to cases such as Jeffrey Landrigan's and would have no effect on any others.

40. Regarding the State's arguments about the pernicious effect of extending benefits such as that offered by *Ring* to people subject to a final judgment, the Inter-American Commission holds that, on the contrary, the interest of justice and the guarantees of due process in the determination of rights demand that the benefit be granted – all the more so in cases such as the one at hand, in which the result is the State's deprivation of a person's life, and in which the guarantees must be as broad as possible to overcome the standard of heightened scrutiny referred to at the start of this analysis.

41. Regarding the right of defense, the Inter-American Commission has previously established that "the fundamental due process requirements for capital trials include the obligation to afford a defendant a full and fair opportunity to present mitigating evidence for consideration in determining whether the death penalty is the appropriate punishment in the circumstances of his or her case."<sup>17</sup> Similarly, the IACHR has also ruled that "the due process guarantees under the American Convention and the American Declaration applicable to the sentencing phase of a defendant's capital prosecution guarantee an opportunity to make submissions and present evidence as to whether a death sentence may not be a permissible or appropriate punishment in the circumstances of the defendant's case, in light of such considerations as the offender's character and record, subjective factors that might have motivated his or her conduct, the design and manner of execution of the particular offense, and the possibility of reform and social readaptation of the offender."<sup>18</sup>

42. In earlier cases, the IACHR has spoken about the domestic provisions governing legal practice in the United States, which establish standards of competence for defense attorneys. The American Bar Association has drawn up and adopted guidelines and comments that stress the importance of investigating and submitted mitigating evidence in capital cases.<sup>19</sup> Those guidelines indicate, for example, that the duty of defense counsel in the United States to investigate and present mitigating evidence is currently "well established" and that "because the sentencer in a capital case must

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<sup>16</sup> United States Supreme Court, *Atkins v. Virginia*, 536 U.S. 304 (2002), and *Ford v. Wainwright*, 477 U.S. 399 (1986)

<sup>17</sup> IACHR, Report No. 90/09, Case 12.644, Medellín, Ramírez Cárdenas, and Leal García, United States, August 7, 2009, para. 134.

<sup>18</sup> IACHR, Report No. 90/09, Case 12.644, Medellín, Ramírez Cárdenas, and Leal García, United States, August 7, 2009, para. 134.

<sup>19</sup> American Bar Association, *Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases* (revised edition) (February 2003), Guideline 10.7 – Investigation.



consider in mitigation, ‘anything in the life of the defendant which might militate against the appropriateness of the death penalty for the defendant,’ penalty phase preparation requires extensive and generally unparalleled investigation into personal and family history. In the case of the client, this begins with the moment of conception.”<sup>20</sup>

43. Based on the above considerations, the Inter-American Commission concludes that the lack of access to a review of the mitigating circumstances that could have favored Jeffrey Landrigan and resulted in a more lenient sentence than the death penalty was in violation of his right to justice and of the rigorous due process applicable in such cases. Thus, it can be seen that the final decision of the court of last resort in the U.S. led to the refusal of a hearing to examine the evidence on the severe organic brain damage affecting the alleged victim at the time of his sentencing.

44. The IACHR also concludes that the benefit of a review of the judgment whereby Jeffrey Landrigan received a death sentence is covered by the right to due process and the right of access to justice guaranteed by the American Declaration<sup>21</sup> – in particular, since the United States Supreme Court itself ruled a given procedure unconstitutional, but in practice denied Mr. Landrigan and a specific group of individuals access to a remedy for asserting their legitimate right to the review of their death sentences handed down by means of that unconstitutional procedure. The IACHR also finds that in such circumstances, the execution of Jeffrey Landrigan would also constitute unusual punishment and a violation of his right to be tried by a competent court.

45. In sum, the IACHR concludes that the lack of access to effective defense and the refusal to review Jeffrey Landrigan’s death sentence, imposed by means of a procedure ruled unconstitutional by the United States Supreme Court, constitute violations of the rights to justice and to due process enshrined, respectively, in Articles XVIII and XXVI of the American Declaration.

#### **B. Right to equality before the law (Article II of the American Declaration)**

46. The right to equality before the law and the obligation to refrain from discriminating against any person are the basic foundation of the inter-American human rights system. Thus, the Preamble to the American Declaration states that “all men are born free and equal, in dignity and in rights, and, being endowed by nature with reason and conscience, they should conduct themselves as brothers one to another.” In addition, Article II provides that “all persons are equal before the law and have the rights and duties established in this Declaration, without distinction as to race, sex, language, creed or any other factor.” Article 3 of the OAS Charter includes, among the principles affirmed by the American States, the proclamation of “the fundamental rights of the individual without distinction as to race, nationality, creed, or sex.”

47. In its analysis of the right to equality before the law, the Inter-American Court explained that “the notion of equality springs directly from the oneness of the human family and is linked to the essential dignity of the individual. That principle cannot be reconciled with the notion that a given group has the right to privileged treatment because of its perceived superiority. It is equally irreconcilable with

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<sup>20</sup> American Bar Association, *Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases* (revised edition) (February 2003), Guideline 10.7 – Investigation. The guidelines also stress the need for investigation to be timely and to commence promptly, noting that “the mitigation investigation should begin as quickly as possible, because it may affect the investigation of first phase defenses (e.g., by suggesting additional areas for questioning police officers or other witnesses), decisions about the need for expert evaluations (including competency, mental retardation, or insanity), motion practice, and plea negotiations.”

<sup>21</sup> In this regard, note should be taken of the precedents set in the cases of *Balkissoon Roodal v. Trinidad and Tobago*, [2003] United Kingdom Privy Council 18, and *Charles Matthews v. Trinidad and Tobago* [2004] United Kingdom Privy Council 2. In those decisions, the Judicial Committee of the Privy Council concluded that the refusal of anticipated relief would lead to cruel and unusual punishment and that “the same considerations apply to anyone else sentenced to death and awaiting execution at the date of this judgment.”

that notion to characterize a group as inferior and treat it with hostility or otherwise subject it to discrimination in the enjoyment of rights which are accorded to others not so classified."<sup>22</sup>

48. Article II of the American Declaration establishes:

All persons are equal before the law and have the rights and duties established in this Declaration, without distinction as to race, sex, language, creed or any other factor.

49. In the instant case the petitioners submit that the denial by the courts to review Jeffrey Landrigan's case in accordance with the new legal precedent described above constitutes a violation of the rights of the alleged victim. As mentioned above, the State considers that there is no violation of the right to equality of Mr. Landrigan, since it considers that his case is not identical to the others. It is the opinion of the State that the case would be equal if the murder occurred in a state at a time when its law allowed a trial judge alone to find aggravating circumstances rendering the defendant eligible for the death penalty; such circumstances were found; the 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.

50. The Inter-American Commission observes that this case refers to a situation where the common element is that all persons involved were tried under the same procedure that was later found unconstitutional by the Supreme Court of the United States. However, as a consequence of another decision by the Supreme Court, only one specific group of persons benefitted from the possibility of obtaining judicial review of their sentences. That is, Mr. Landrigan is part of the group of persons that was denied access to the benefit of review of a sentence that resulted from an unconstitutional procedure, on the sole basis of the procedural stage of his case.

51. In an earlier case dealing with the death penalty in the United States, the Inter-American Commission ruled as follows:

The Commission finds that the diversity of state practice in the U.S. (...) results in very different sentences for the commission of the same crime. The deprivation by the State of an offender's life should not be made subject to the fortuitous element of where the crime took place.<sup>23</sup>

52. In the matter under examination, there can be seen to be a difference between the treatment given to Mr. Landrigan by the U.S. courts and that given to other people who were able to secure the review of their sentences. The arguments offered by the State to justify that differentiated treatment are judicial economy, certainty, and legal security. On that point, the IACHR has previously stated that "while questions of the volume of claims and the need to preserve judicial resources for important questions may present a reasonable and justified aim, this must be balanced against the nature of the individual rights at issue – which may involve the protection of life, liberty and physical integrity."<sup>24</sup> Based on the foregoing, and under the strict scrutiny demanded by this case, the Inter-American Commission finds that justifications that might be legitimate in matters of another kind are not allowable when the imposition and application of the death penalty are involved.

53. As has been seen, the distinction used in the case of Jeffrey Landrigan was based on the fact that his case was already on appeal, at the final review stage, on the date of the *Ring* decision, and so he did not benefit from its retroactive enforcement. The grounds argued by the State, based on what it believes to be legitimate and reasonable factors in the administration of justice, are not enough to deny Jeffrey Landrigan the benefit of such a review. The claim does not seek the guaranteed result of a more lenient sentence, but simply access to the review that was afforded to the other persons sentenced by means of the same unconstitutional procedure.

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<sup>22</sup> I/A Court H. R., Advisory Opinion OC-4/84 of January 19, 1984, *Proposed Amendments of the Naturalization Provisions of the Constitution of Costa Rica*, requested by the Government of Costa Rica, para. 55.

<sup>23</sup> IACHR, Report No. 3/87, Case 9.647, Roach and Pinkerton (United States), September 22, 1987, para. 62.

<sup>24</sup> IACHR, *Report on the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System*, OEA/Ser.L/V/II.106, Doc. 40 rev., February 28, 2000, para. 101.

54. The IACHR concludes that the distinction applied to Jeffrey Landrigan's case is not reasonable, and that the differentiated legal treatment received from the courts constitutes inadmissible discrimination. The State is therefore responsible for violating his right to equal treatment before the law by denying him, in an unjustified and discriminatory fashion, the determination of his basic rights including, possibly, the right to life itself.

### **C. Right to life (Article I of the American Declaration)**

55. In earlier decisions the Inter-American Commission has ruled that Article I of the American Declaration prohibits the use of the death penalty when its imposition would result in an arbitrary deprivation of life.<sup>25</sup> In addition, the Inter-American Commission has identified, among the shortcomings that would result in the arbitrary deprivation of life through the death penalty, the State's failure to afford the accused the strict and rigorous judicial guarantees of a fair trial.<sup>26</sup> Consequently, when a convicted prisoner's right to a fair trial has been violated in proceedings through which the death penalty was imposed, the IACHR has maintained that executing the person under such a sentence would be an extremely grave and deliberate violation of the right to life set forth in Article I of the American Declaration.

56. The information available to the IACHR at the time of adopting this report on the merits indicates that the decision to carry out Jeffrey Timothy Landrigan's execution has been made by the U.S. judicial authorities, in spite of the fact that his case is pending decision before the inter-American system and in spite of the reiterated precautionary measures requested by the Commission on his behalf. Thus, the warrant issued by the Supreme Court of Arizona on September 22, 2010, with respect to Jeffrey Timothy Landrigan reads:

This Court heard and considered the appeal in the above-entitled cause on March 31, 1992, and on February 25, 1993, affirmed the judgment of the Superior Court in Maricopa County, State of Arizona, and filed its OPINION, which is still in effect and has not been affected by any subsequent decision of this or any other Court.

On June 19, 1996, following the denial of relief in Appellant's first post-conviction proceeding, this Court denied Appellant's petition for review filed pursuant to Rule 32.9(c), Ariz. R. Crim. P.

On April 12, 2010, the Attorney General filed a motion to issue a Warrant of Execution, which motion was granted by this Court on September 21, 2010.

Therefore, pursuant to Rule 31.17(c)(2), Ariz. R. Crim. P.,

IT IS ORDERED fixing Tuesday, the 26th day of October, 2010, as the date for commencement of the execution time period when the judgment and sentence of death pronounced upon JEFFREY TIMOTHY LANDRIGAN by the Superior Court in Maricopa County shall be executed by administering to JEFFREY TIMOTHY LANDRIGAN by intravenous injection a substance or substances in a quantity sufficient to cause death, except that JEFFREY TIMOTHY LANDRIGAN shall have the choice of execution by either lethal injection or lethal gas. (*capitalized per original*)

57. The court of final appeal in Arizona further orders that Mr. Landrigan must choose between the two forms of execution referred to and notify that decision to the Director of the Department of Corrections at least twenty (20) days before the execution date, and that if no such choice is made, the penalty of death shall be carried out by lethal injection. The warrant for execution concludes by stating that once it has been carried out, the Superintendent or Prison Warder shall return the document to the Supreme Court of Arizona, showing the time, mode, and manner of execution.

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<sup>25</sup> IACHR, Report No. 52/02, Ramón Martínez Villareal, United States, Case No. 11.753, Annual Report of the IACHR 2002, para. 84.

<sup>26</sup> IACHR, Report No. 57/96 (William Andrews), United States, Annual Report of the IACHR 1997, para. 172.

58. In the case at hand, the Inter-American Commission has concluded that the State is responsible for failing to meet the obligations imposed on it by Articles XVIII and XXVI of the American Declaration, through its refusal to review a procedure that has already been ruled unconstitutional by the United States Supreme Court. The imposition of the death penalty in such circumstances would constitute a grave violation of Article I of the American Declaration.

## V. ACTIONS SUBSEQUENT TO REPORT No. 115/10

59. On October 22, 2010 the IACHR approved Report No. 115/10 on the merits of this matter, which comprises paragraphs 1 to 58 *supra*, with the following recommendations to the State:

1. Adopt immediately all the necessary internal measures to suspend the execution of Mr. Landrigan.
2. Grant Jeffrey Timothy Landrigan effective relief, including the review of his trial in accordance with the guarantees of equality, due process, and a fair trial enshrined in Articles I, II, XVIII, and XXVI of the American Declaration.
3. Review its laws, procedures, and practices to ensure that people accused of capital crimes are tried and, if convicted, sentenced in accordance with the rights established in the American Declaration, including Articles I, II, XVIII, and XXVI.

60. On that same date, the report was transmitted to the State with a request that it inform the Inter-American Commission on the measures taken to comply with its recommendations by October 25, 2010, and a reminder that Mr. Landrigan was protected by precautionary measures. Also on that same date, the pertinent parts of the report were transmitted to the petitioners, and a press release was published calling for the suspension of his scheduled execution.<sup>27</sup>

61. On October 25, 2010 the United States reported that "letters were submitted via facsimile and surface mail to the Governor, Attorney General, and Presiding Officer of the Arizona Board of Executive Clemency for their consideration, informing them of the report of the Commission." The IACHR acknowledged receipt of that communication on November 4, 2010.

62. Jeffrey Timothy Landrigan was executed on October 26, 2010. According to public information available to the IACHR, the execution proceeded after a majority of Supreme Court justices decided to vacate a federal judge's order that had temporarily stayed the execution scheduled for earlier that same day. The 9th U.S. Circuit Court of Appeals had upheld the ruling of a U.S. District Court Judge who had blocked Mr. Landrigan's execution 18 hours before it was scheduled. The attorneys for Mr. Landrigan had filed a civil rights complaint the previous week alleging the planned execution violated his constitutional rights to be free from cruel and unusual punishment and to due process. The temporary stay was issued on October 25 by the judge after she concluded that the state did not provide Mr. Landrigan's representatives enough information to make its case sufficiently about the safety and legality of the substances that would have been used to kill him. However, the United States Supreme Court ruling vacated the lower court order because it considered that "there is no evidence in the record to suggest that the drug obtained from a foreign source is unsafe."

63. The United States sent a communication on November 8, 2010 in which it expressed, among other things, that it "firmly supports the ability of individuals to turn to the Inter-American Commission of Human Rights" yet it also underscored its opinion that "the requests and reports of the Commission to the United States are recommendatory and are not binding in nature". With respect to the case of Mr. Landrigan, the State indicated that it had "taken due note of the Commission's observations, as well as the request of the Commission that Mr. Landrigan not be executed", which were sent to the authorities of Arizona. The State added that it "respectfully but firmly disagrees with any suggestion by

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<sup>27</sup> "IACHR concludes that the United States violated Landrigan's basic rights and asks that his execution be suspended," October 22, 2010, available at <http://www.cidh.oas.org/Comunicados/English/2010/107-10eng.htm>

the Commission that proceeding with an execution in the United States in accordance with law, including due process guarantees afforded under the United States Constitution and federal and state statutes, places the United States in violation of its international obligations”.

## VI. FINAL CONCLUSIONS AND RECOMMENDATIONS

64. Based on the arguments of fact and law set out above, and taking into account the events that took place after the transmittal of Report 115/10 to both parties, the Inter-American Commission concludes that the execution of Mr. Landrigan constitutes a serious and irreparable violation of the basic right to life enshrined in Article I of the American Declaration. The United States is responsible for violating Articles I, II, XVIII, and XXVI of the American Declaration with respect to Jeffrey Timothy Landrigan.

65. In addition, the Inter-American Commission notes that the petitioners' arguments invoking Articles XV (Right to leisure time and to the use thereof) and XXV (Right of protection from arbitrary arrest) of the American Declaration, submitted in their second set of additional comments on the merits, were not raised prior to the adoption of Report No. 100/09 on October 29, 2009, and, consequently, were not addressed in the decision on admissibility. As a result, those claims were not analyzed at the merits stage, nor are they dealt with in this report.

66. Jeffrey Landrigan was the beneficiary of precautionary measures adopted by the Inter-American Commission under Article 25 of its Rules of Procedure, which were reiterated on October 4, 2010, upon receiving notification that the date of his execution had been set. The Inter-American Commission must remind the State that carrying out a death sentence in such circumstances causes irreparable harm to the person and also denies his right to petition the inter-American human rights system. Such a measure is contrary to the fundamental human rights obligations of an OAS member state pursuant to the Charter of the Organization and the instruments deriving from it.<sup>28</sup>

67. Accordingly,

### THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS REITERATES ITS RECOMMENDATIONS THAT THE UNITED STATES:

1. Provide reparations to the family of Mr. Landrigan as a consequence of the violations established in this report.
2. Review its laws, procedures, and practices to ensure that people accused of capital crimes are tried and, if convicted, sentenced in accordance with the rights established in the American Declaration, including Articles I, II, XVIII, and XXVI.

## VII. PUBLICATION

68. On April 11, 2011 the Inter-American Commission transmitted to both parties, on a confidential basis, Report No. 25/11 on this case. In the communication addressed to the State, the IACHR was requested that it provide information within one month on the measures adopted to comply with the recommendations of the report and to solve the situation. No response was received from the State.

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<sup>28</sup> See: Case No. 12.243, Report No. 52/01, Juan Raúl Garza, United States, Annual Report of the IACHR 2000, para. 117; IACHR, *Fifth Report on the Situation of Human Rights in Guatemala*, Doc.OEA/Ser.L/V/II.11doc.21rev. (April 6, 2001) paras. 71 and 72. See also: International Court of Justice, *Case re. the Vienna Convention on Consular Relations (Germany v. United States of America)*, Request for the Indication of Provisional Measures, Order of March 3, 1999, General List, No. 104, paras. 22-28; United Nations Human Rights Committee, *Dante Piandiong et al. v. Philippines*, Communication No. 869/1999, UN Doc. CCPR/C/70/D/869.

69. On the basis of all of the above, and pursuant to Article 45(3) of its Rules of Procedure, the IACHR decides to publish the instant report and to include it in its Annual Report to the General Assembly of the Organization of American States. The Inter-American Commission, in accordance with the provisions of the instruments that define its mandate, shall continue evaluating the measures adopted by the United States with respect to the aforementioned recommendations, until full compliance is achieved.

Done and signed in the city of Washington, D.C., on the 21<sup>st</sup> day of the month of July, 2011.  
(Signed): José de Jesús Orozco Henríquez, First Vice-President; Rodrigo Escobar Gil, Second Vice-President; Paulo Sérgio Pinheiro, Felipe González, Luz Patricia Mejía, and María Silvia Guillén, Commissioners.