

REPORT No. 89/11¹
DECISION TO ARCHIVE
CASE 11.072
UNITED STATES
July 21, 2011

ALLEGED VICTIMS: Francisco Ruiz, Brian Wolfe, Ignacio Méndez-Pulido, Ramón García, Rogelio Hernández Álvarez and María Juana Contreras

PETITIONERS: Center for Human Rights and Constitutional Law, American Friends Service Committee, League of United Latin American Citizens, Comisión Mexicana de Defensa y Promoción de los Derechos Humanos, A.C., and the Academia Mexicana de Derechos Humanos

VIOLATIONS ALLEGED: Articles I, II, V, XVII, XVIII, XXV and XXVI of the American Declaration of the Rights and Duties of Man ("American Declaration")

PROCESSING STARTING DATE: October 19, 1992

I. POSITION OF THE PETITIONERS

1. On August 12, 1992, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the IACHR") received a complaint filed by the Center for Human Rights and Constitutional Law, the American Friends Service Committee, the League of United Latin American Citizens, the *Comisión Mexicana de Defensa y Promoción de los Derechos Humanos, A.C.*, and the *Academia Mexicana de Derechos Humanos* (jointly "the petitioners") against the United States of America ("the United States" or "the State") on behalf of Francisco Ruiz, Brian Wolfe, Ignacio Méndez-Pulido, Ramón García, Rogelio Hernández Álvarez and María Juana Contreras ("the alleged victims"), all Mexican nationals, with the exception of Mr. Wolfe, a United States national.

2. In their complaint, the petitioners allege that the United States' international responsibility has been engaged by the serious human rights violations committed along its border with Mexico in the form of an unjustified use of force. They contend that the U.S. Immigration and Naturalization Service and the United States Border Patrol have tolerated and thereby condoned acts of physical and verbal abuse, abusive use of firearms and acts of racism against immigrants, refugees and United States citizens traveling in the areas adjacent to the border with Mexico. They observe that this iron fist policy has escalated violence along the border and has resulted in the unnecessary death of a number of Mexican nationals.

3. The facts alleged, said to have occurred between 1978 and 1989, are described below with respect to each of the alleged victims. As for the rule requiring exhaustion of domestic remedies, the petitioners allege that because they are indigent, fearful of being deported and unaware of their rights, few migrants who are victims of these violations seek redress in the United States courts. They also point out that suits seeking reparations rarely succeed because of the complexities of the United States system and the various judicial "immunities" that border patrol agents enjoy.

4. According to the petitioners, on March 28, 1989 Francisco Ruiz was shot twice while trying to intervene in his wife's assault by a border patrol agent as they were entering the United States without inspection. The alleged victim was charged and tried for assaulting a police officer, and was

¹ Pursuant to Article 17(2) of the Commission's Rules of Procedure, Commissioner Dinah Shelton, a national of the United States, did not participate in the deliberations or decision on this case.

ultimately acquitted. They observe that the alleged victim and his wife brought a lawsuit against the United States, which was allegedly rejected by the lower court. They also contend that the alleged victim was without the necessary funds to appeal the decision.

5. The petitioners contend that on December 10, 1989, Brian Wolfe was allegedly stopped by border patrol agents as he was in his vehicle in the state of California. As he got out of his car, he was allegedly knocked to the ground by one of the agents and allegedly suffered permanent neck and shoulder injuries. The petitioners further contend that the claim for damages filed by Mr. Wolfe against the United States and the agents involved in the incident were dismissed. According to the petitioners, Mr. Wolfe did not have the funds to appeal the decision. The petitioners further state that on December 21, 1987, alleged victim Ignacio Méndez-Pulido was shot twice by border patrol agents, as a result of which he was rendered paraplegic. They point out that the U.S. District Court for the Southern District of California ruled that the agents' use of deadly force was justified. Because the alleged victim was indigent, he could not appeal the decision.

6. The petitioners assert that on December 14, 1982, Ramón García, was shot by a border patrol agent as he was attempting to cross without inspection into the United States. When the alleged victim filed suit, the federal court allegedly awarded him US\$2.1 million in damages; subsequently, however, the United States Court of Appeals reversed the lower court's ruling and dismissed the case. The alleged victim subsequently died of the injuries sustained. Rogelio Hernández Álvarez was allegedly wounded when shot by a border patrol agent while still on Mexican territory. The petitioners contend that the bullet remains in Mr. Hernández's hip and that he has lost use of his left foot. He allegedly did not have the economic means to file suit in the domestic courts.

7. On May 6, 1978, María Juana Contreras, who was eight-and-a-half-months pregnant at the time, was stopped by immigration agents as she and other persons were crossing the border in a vehicle. The alleged victim was reportedly questioned by immigration agents because her companion was undocumented. The petitioners observe that Mrs. Contreras fainted during the interrogation and was taken to the hospital, where a physician determined that she had died ten to fifteen minutes earlier from a heart attack brought on by the stress of the interrogation. The next of kin filed a lawsuit for damages against the immigration officers and the United States government. The petitioners observe that the court concluded that the agents were negligent by their failure to provide prompt medical attention, but did not order any compensation for the next of kin. The Court of Appeals confirmed the lower court's ruling.

II. THE STATE

8. In its original response and in subsequent communications, the State requested the Inter-American Commission to declare the petition inadmissible on the grounds of a failure to exhaust domestic remedies. As to the arguments claiming an exception to the domestic remedies rule based on the alleged victims' indigence, the State maintains that it is up to the alleged victims to prove their inability to obtain legal counsel. It points out that in the United States, there is an extensive network of providers of *pro bono* or low-cost legal services, many of which are in the area where the alleged incidents are said to have occurred and that these services are staffed with bilingual English/Spanish legal professionals. It also points out that the law allows waiver of court costs in the federal system.

9. The State also contends that the petitioners themselves stated that "some" of the alleged victims do not have the financial means to litigate cases in United States courts. It argues further that the fact that the petitioners were able to get legal assistance to file a petition with the IACHR suggests that they could have secured legal aid to litigate cases in the United States courts. It concludes by pointing out that the United States judicial system offers effective remedies accessible to the alleged victims, but that the alleged victims in this complaint failed to prove what measures they took to obtain legal aid.

10. The State further asserts that contrary to what the petitioners claim, border patrol agents do not have judicial immunities and can be sued in a case where a violation of rights has been clearly established. It maintains in this regard that with the exception of Mr. Hernández Álvarez, all the alleged

victims at least attempted to obtain some type of compensation in the United States courts, received a fair and impartial trial and were not denied the opportunity to present their arguments on the merits.

11. As for Mrs. María Juana Contreras, represented by Mr. Félix Contreras, the State alleges that the complaint is inadmissible for the reasons indicated above; the State also contends that the complaint is also inadmissible because it was filed well after the deadline, considering that the Fifth Circuit United States Court of Appeals issued its decision on December 28, 1984.

III. PROCESSING WITH THE IACHR

12. The petition was received on August 12, 1992. By a note dated October 19, 1992, the IACHR forwarded the relevant parts of the petition to the State and requested that it present its observations within 90 days. The State's reply was received on August 25, 1993, and duly forwarded to the petitioners, who responded on January 13, 1996. Observations were then received from the State on May 8, 1996. On October 10, 1996, during its 93rd session, the Inter-American Commission held a public hearing on this matter. A communication was received from the State on February 13, 1997, containing information that the Inter-American Commission had requested during the hearing.

13. To update the processing of the petition, on April 15, 2009 the IACHR asked the petitioners to send updated information within one month's time. In the communication the petitioners were advised that if no reply was received, the Commission would decide to close the record on the petition. That request was repeated on February 15, 2011. As of the date of approval of this report, the petitioners had not responded to the Commission's requests.

IV. GROUNDS FOR THE DECISION TO CLOSE THE RECORD

14. Article 42 of the Commission's Rules of Procedure provides that the Commission may decide to archive the file at any time during the proceedings, whenever the grounds for a petition do not exist or subsist; if it finds that they do not, it will adopt a decision to archive. The provision also states that the Commission may order to archive the file when the information necessary for the adoption of a decision is unavailable.

15. Eighteen years have passed since the processing of this case began and fourteen since the last information sent by the parties. The Commission requested updated information from the petitioners on two different occasions, but they did not reply.

16. Consequently, as of this writing, the IACHR does not have the up-to-date information that would enable it to adopt a final decision on the violations alleged. Therefore, pursuant to Articles 42 of its Rules of Procedure, the Inter-American Commission decides to close the record on the present petition.

Done and signed in the city of Washington, D.C., on the 22nd day 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 Guerrero, and María Silvia Guillén, Commission Members..