

REPORT No. 73/12¹
ADMISSIBILITY
PETITION 15-12
EDGAR TAMAYO ARIAS
UNITED STATES
July 17, 2012

I. SUMMARY

1. On January 6, 2012, the Inter-American Commission on Human Rights (the “Inter-American Commission” or the “IACHR”) received a petition from Sandra L. Babcock from Northwestern University School of Law (the “petitioners”) against the United States of America (the “State” or “the United States”). The petition was presented on behalf of Edgar Tamayo Arias (the “alleged victim” or “Mr. Tamayo”), a Mexican national who is deprived of his liberty on death row in the state of Texas.

2. The petitioners claim that Mr. Tamayo’s counsel failed to investigate and present relevant mitigating evidence; that the State failed to inform him of his right to consular notification in violation of Article 36 of the Vienna Convention on Consular Relations; and that the alleged victim is mentally disabled. In addition, the petitioners argue that the conditions of confinement on death row are inhumane and that the method of execution would subject Mr. Tamayo to excessive and avoidable pain and suffering. As of the date of approval of this report, the State has not submitted its observations.

3. As set forth in this report, having examined the information and arguments provided by the petitioners on the question of admissibility, and without prejudicing the merits of the matter, the Inter-American Commission decided to declare the petition admissible with respect to Articles I (Right to life, liberty and personal security), XVIII (Right to a fair trial), XXV (Right of protection from arbitrary arrest) and XXVI (Right to due process of law) of the American Declaration of the Rights and Duties of Man (the “American Declaration”). Consequently, the Inter-American Commission will notify the parties of the report, continue with the analysis of the merits of the case, and publish this report and include it in its Annual Report to the General Assembly of the Organization of American States.

II. PROCEEDINGS BEFORE THE IACHR

4. Following receipt of the petition on January 6, 2012, the Inter-American Commission transmitted the pertinent parts of the complaint to the State by means of a note dated January 18, 2012, with a request for observations within two months in accordance with Article 30(3) of the Commission’s Rules of Procedure. On February 2, 2012, the Commission received supplemental observations from petitioners; the pertinent parts of which were duly forwarded to the State.

5. By means of a note dated May 14, 2012, the IACHR reiterated the request for observations to the State. As of the date of the adoption of this report, the Inter-American Commission has not received any observations from the State.

Precautionary measures

6. On January 18, 2012, the IACHR notified the State that precautionary measures had been granted on behalf of the alleged victim, and requested a stay of execution until such time as it should pronounce on the merits of the petition.

¹ Commissioner Dinah Shelton did not take part in the discussion and voting on this case, pursuant to Article 17(2) of the Commission’s Rules of Procedure. Commissioner José de Jesús Orozco Henríquez, a Mexican national, felt that, based on Article 17(3) of the Rules of Procedure of the IACHR, he should abstain from participating in the study and decision of this matter. Commissioner Orozco Henríquez explained that the alleged victim in this case is one of the persons included in the *Case concerning Avena and Other Mexican Nationals (Mexico v. the United States of America)*, which Mexico filed with the International Court of Justice. The Inter-American Commission accepted his decision to excuse himself, with the result that Commissioner Orozco Henríquez did not participate in the deliberation or vote on this case.

III. POSITION OF THE PARTIES

A. Position of the petitioners

7. According to the information submitted by the petitioners, on January 31, 1994, shortly after 3.30am, Mr. Tamayo was arrested and charged with capital murder in connection with the death of a police officer earlier that same evening. Mr. Tamayo, who allegedly spoke little English, and was confused and disoriented from a night spent drinking and taking heroin, was taken to the police station shortly after 5.00am for interrogation. The petitioners indicate that, at the end of the interrogation, Mr. Tamayo gave two incriminating statements in which he admitted that he killed the officer. On October 31, 1994, the jury sentenced Mr. Tamayo to death.

8. The petitioners allege that Mr. Tamayo's death sentence violates the American Declaration for the following reasons: ineffective assistance of counsel; failure to inform him of his right to consular notification in violation of Article 36 of the Vienna Convention on Consular Relations; Mr. Tamayo is allegedly mental disabled; inhumane death row confinement conditions; and the method of execution would purportedly subject him to excessive and avoidable pain and suffering.

9. With regard to the first allegation, the petitioners state that court-appointed defense counsel failed to investigate and present evidence regarding Mr. Tamayo's traumatic childhood, brain damage and intellectual disabilities.² According to the petitioners this evidence would likely have resulted in a life sentence. They contend that neither defense counsel nor their investigator travelled to Mexico to meet with the alleged victim's family and friends.

10. According to the petitioners, trial counsel's investigator conducted a mere 15.3 hours of investigation prior to trial, which included two brief visits with Mr. Tamayo and one telephone conversation with a police officer. Mr. Tamayo's entire defense at the punishment phase barely filled 49 pages of the trial transcript, which included jury instructions. Further, the investigator allegedly met with Mr. Tamayo only twice in advance of trial and counsel did not seek funds for a mitigation specialist or for a psychiatric, neurological, or psychological examination of any kind.

11. The petitioners also indicate that the wealth of constitutionally relevant mitigating evidence that was readily available to the defense was discovered in post-conviction proceedings with the assistance of the Mexican Consulate. According to this evidence, Mr. Tamayo's childhood was marked by poverty and neglect, largely a result of his father's alcoholism. Because his father often drank away his income, Mr. Tamayo and his siblings often went without food and basic necessities. Further, both parents allegedly physically abused their children. According to declarations presented during post-conviction proceedings, Mr. Tamayo's mother used to chain him to a brick, had a special whip just to hit him, and broke Mr. Tamayo's nose once when he was young. In addition, his father would double a stiff lasso and wet it to hit him in order to make the blows more forceful, causing him to bleed.

12. The petitioners argue that, had counsel investigated and presented this abundant mitigating evidence, there could be no doubt that at least one juror would have answered at least one of the statutory special issues in such way that a life sentence would have been imposed. As a result, the petitioners conclude that Mr. Tamayo's trial fell far short of the standards set forth in Articles XVIII and XXVI of the American Declaration.

13. Concerning the alleged violation of Mr. Tamayo's consular rights, the petitioners contend that the state of Texas deprived him of even the most basic consular assistance after his detention and that the violation of Mr. Tamayo's Vienna Convention rights denied him due process and prejudiced the

² The petitioners imply that defense counsel was court-appointed (original petition received on January 6, 2012, p. 17, 2nd paragraph).

outcome of his case. The alleged victim is one of the 51 Mexican national named in the International Court of Justice's Avena judgment.³

14. The petitioners argue that Mr. Tamayo did not know, nor did anyone attempt to inform him of his right to consular assistance and that the State has never contested this fact. At the time of his arrest, Mr. Tamayo allegedly told the police that he had attended school in Mexico and could only speak some English. Therefore, according to the petitioners, police had reason to know that Mr. Tamayo was a Mexican national; however, they never informed him of his right under the Vienna Convention.

15. The petitioners point out that Mexico's involvement would have improved the quality of Mr. Tamayo's defense by ensuring that trial counsel was effective and prepared and by providing critical resources for experts and investigators at both stages of trial. In this respect, they indicate that the Government of Mexico has been actively involved in Mr. Tamayo's defense since learning about his case. The petitioners conclude that the imposition of a death sentence after a trial in which Mr. Tamayo was deprived of consular assistance constitutes a violation of Articles I, XVIII and XXVI of the American Convention.

16. Regarding the alleged mental disability, the petitioners indicate that at the age of seventeen a bull threw Mr. Tamayo to the ground and stomped on his head, leaving him hospitalized and comatose for several days. After the accident, Mr. Tamayo allegedly became more aggressive and started using drugs and alcohol to get rid of his headaches. In addition, his drug and alcohol abuse worsened, as did his explosive tendencies. Petitioners indicate that Mr. Tamayo was unable to afford the proper medication and psychiatric support to address his mental disabilities.

17. During state habeas proceeding, a psychiatrist specializing in brain injuries concluded that Mr. Tamayo suffered from an Intermittent Explosive Disorder and recommended that he be tested by a neuropsychologist to document the presence of significant brain injury. However, the Court of Criminal Appeals refused to provide the necessary funds for this testing. Petitioners indicate that, with the aid of the Mexican Consulate in Houston, Mr. Tamayo obtained the services of a neuropsychologist who concluded that the head injury laid the foundation for serious and ensuing behavioural problems. The expert also indicated that brain damaged individuals are at risk for substance abuse and in turn, the injured brain is highly susceptible and extremely sensitive to such substances. Finally, petitioners allege that cognitive testing has also revealed that Mr. Tamayo suffers from significant intellectual disabilities that meet the criteria for mental retardation.

18. The petitioners state that, because Mr. Tamayo is a mentally disabled individual, his death sentence constitutes a form of cruel, inhuman, or degrading treatment or punishment prohibited by Article XXVI of the American Declaration. They also allege that the court's refusal to allow Mr. Tamayo an adequate opportunity to present evidence of his mental disability violates his rights under Articles I and XVIII of the Declaration. Finally, petitioners state that the death sentence violates Article III of the Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities.

19. With regard to death row confinement conditions, the petitioners state that male Texas death row prisoners are incarcerated in the Polunsky Unit in Livingston, where they are housed in small cells of approximately sixty square feet. In addition to being single-celled, death row prisoners are allegedly segregated from other prisoners in every aspect of their lives. In this respect, they point out that prisoners are allowed no physical contact with family members, friends, or even their attorneys. Generally, a death row prisoner will allegedly have physical contact with no one other than prison staff from his entry onto death row until the time of his execution.

20. Further, petitioners mention that prisoners with the best disciplinary records are usually given only one or two hours per day for exercise in small "cages." Those with disciplinary problems are allegedly allowed outside of their cells only three to four hours per week. In addition, petitioners claim

³ *Case Concerning Avena and Other Mexican Nationals (Mex. v. U. S.)*, 2004 I.C.J. 12 (Judgment of March 31, 2004).

that death row prisoners are not provided any opportunity to participate in structured activities in or out of their cells and they receive no educational or occupational training. Further, referring to experts' studies, they indicate that prolonged confinement without sensory stimulation or human contact exacerbates pre-existing psychological disorders in individuals like Mr. Tamayo. Therefore, according to the petitioners, the conditions under which Mr. Tamayo has been confined constitute a grave violation of the United States' obligations to treat him humanely, in violation of Article XXV of the American Declaration.

21. Regarding the claim concerning the method of execution, petitioners point out that the numerous problems with Texas's lethal injection protocol, in combination with a lack of regulatory oversight by the U.S. Food and Drug Administration, and an absence of meaningful state oversight, makes lethal injection a cruel, infamous and unusual punishment.

22. According to the petitioners, most U.S. states, including Texas, execute prisoners by injecting them with a combination of three chemical substances. They indicate that pentobarbital, the first substance, is not approved by the U.S. Food and Drug Administration as an anesthetizing drug and that expert are not in agreement about the safety and efficacy of pentobarbital during executions. Therefore, in the event that it does not function properly to keep the inmate unconscious until death, there would be serious risk of the inmate experiencing suffocation and excruciating pain during the injection of the two subsequent drugs. Further, the petitioners argue that pavulon, the second substance, in combination with the first one, creates the risk that the prisoner will remain conscious but paralyzed, his pain masked by the pavulon.

23. Additionally, petitioners allege that state law fails to mandate a minimum level of training for executioners, who are purportedly not required by law to have any prior experience in the administration of anaesthesia. This lack of rigorous training requirements for members of the execution team allegedly creates an unacceptable risk that men and women may die at the hands of an executioner who lacks the training and experience to minimize suffering or even determine if the anaesthesia is working. Finally, petitioners refer to the fact that this drug combination has been found to be unacceptable for use in animal euthanasia.

24. Petitioners conclude that the numerous defects in Texas' current lethal injection protocol as well as the lack of federal and state oversight create a substantial and unnecessary risk of pain and suffering. Accordingly, they contend that the execution of Mr. Tamayo by lethal injection would clearly constitute cruel, infamous and unusual punishment in violation of Article XXVI of the American Declaration.

25. With regard to the exhaustion of domestic remedies, the petitioners indicate that Mr. Tamayo's ineffective assistance of counsel, Vienna Convention, and mental disability claims have already been presented to and rejected by state and federal courts. They argue that the Fifth Circuit Court of Appeals denied relief on December 21, 2011, and that the only remedy that remains pending is a petition for writ of certiorari with the United States Supreme Court. They contend that the remote possibility that the Supreme Court will exercise its discretionary power to grant certiorari in this case does not bar the IACHR from hearing Mr. Tamayo's petition.

26. In this respect, and referring to the Vienna Convention claim, they argue that the extended delay in the compliance with the Avena judgment implicates Article 31.2(c) of the IACHR's Rules of Procedure. Further, petitioners argue that, based on the U.S. Supreme Court's recent decision in *Leal Garcia v. Texas*, 131 S. Ct. 2866 (2011), it is certain that the courts will continue to deny Mr. Tamayo a remedy for his claim. They also indicate that, if the Commission waits until the Supreme Court denies certiorari, it is likely the Commission will have insufficient time to consider the merits of Mr. Tamayo's claim.

27. Regarding the prison conditions and lethal injection claims, the petitioners state that these claims have not yet been presented in the courts of the United States. According to the petitioners, Mr. Tamayo's claims need not be exhausted as there would be no reasonable prospect of success before

United States courts. They conclude therefore that these claims should be deemed admissible under Article 31 of the Commission's Rules of Procedure.

28. The petitioners state that both the Texas Court of Criminal Appeals and the United States Supreme Court have repeatedly refused to consider arguments relating to the conditions of confinement on death row as a violation of the prisoner's right to be protected from cruel and unusual punishment. Besides, with regard to the lethal injection claim, they indicate that in *Baze v. Rees* the Supreme Court held that the petitioner had failed to establish that lethal injection constitutes cruel and unusual punishment. Therefore, the petitioners allege that any attempt to exhaust this claim would be futile.

29. Finally, petitioners contend that, even if Mr. Tamayo attempted to present his claims in state or federal court, they would be procedurally defaulted. In this respect, they state that the alleged victim is barred from presenting these claims by state and federal legislation imposing draconian limitations on the presentation of "successive" post-conviction petitions. According to the petitioners, the Texas Court of Criminal Appeals has interpreted Article 11.071, section 5(a)(1) of the Texas Code of Criminal Procedure strictly. They mention that it has expressly held that courts are barred from considering the merits of claims raised in "successive" or "subsequent" applications, even where those claims were not previously raised due to the incompetence of post-conviction counsel.

30. With regard to the requirement set forth in Article 33 of the IACHR's Rules of Procedure, the petitioners state that the present petition clearly concerns matters distinct from those adjudicated in the *Avena* case. In this respect, they indicate that the *Avena* case conferred certain rights upon Mr. Tamayo that are enforceable in U.S. courts, but he was not and could not have been a direct party to the litigation as only States have standing before the ICJ. Therefore, the petitioners conclude that Mr. Tamayo's petition meets the exception to duplication under Article 33 of the Rules of Procedure.

31. On February 2, 2012, the petitioners informed that the Harris County District Attorney, who is responsible for seeking execution dates, has indicated that she will wait until approximately June 2012 before seeking an execution date. Therefore, the execution could be scheduled, according to the petitioners, as from sometime in September 2012.

B. Position of the State

32. The State has not submitted its response to the petition.

IV. ANALYSIS ON COMPETENCE AND ADMISSIBILITY

A. Competence

33. The petitioners are entitled, under Article 23 of the IACHR's Rules of Procedure, to lodge complaints with the IACHR. The petition names, as its alleged victim, an individual whose rights are protected under the American Declaration. The State is bound to respect the provisions of the American Declaration, and the 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 51 of its Rules of Procedure.⁴ The IACHR therefore has competence *ratione personae* to examine the complaint. The Commission has also competence *ratione loci* to deal with the petition since it alleges violations of rights protected by the American Declaration

⁴ Article 20(b) 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 IACHR, 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 50 and 51; I/A. Court H.R., Advisory Opinion OC-10/8 "Interpretation of the Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights," July 14, 1989, Ser. A N° 10 (1989), paras. 35-45; I/A Comm. H.R., *James Terry Roach and Jay Pinkerton v. United States*, Case 9647, Res. 3/87, 22 September 1987, Annual Report 1986-87, paras. 46-49.

occurring within the territory of the United States. With respect to the claim mentioned under the regional Convention concerning persons with disabilities (paragraph 18), the Commission notes that the United States has not ratified that treaty.

34. The Commission has competence *ratione temporis*, since the obligation of respecting and ensuring the rights protected by the American Declaration was already in force for the State on the date on which the incidents described in the petition allegedly occurred. Finally, the Commission has competence *ratione materiae* since the petition describes possible violations of human rights that are protected by the American Declaration.

B. Admissibility requirements

1. Exhaustion of domestic remedies

35. 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 Article 31(1) of its Rules of Procedure. However, Article 31(2) of the Rules specifies that this requirement does not apply if the domestic legislation of the state concerned does not afford due process of law for protection of the right allegedly violated; if the party alleging the violation has been denied access to domestic remedies or is prevented from exhausting them; or if there has been an unwarranted delay in reaching a final judgment under the domestic remedies.

36. With regard to Mr. Tamayo's ineffective assistance of counsel, Vienna Convention, and mental disability claims, the petitioners allege that all claims have already been presented to and rejected by state and federal courts and that the Fifth Circuit Court of Appeals denied relief on December 21, 2011. Regarding these claims, they indicate that the only remedy that remains pending is a petition for writ of certiorari with the United States Supreme Court. According to the petitioners, if the Commission waits until the Supreme Court denies certiorari, it is likely that the IACHR will have insufficient time to consider the merits of Mr. Tamayo's claim.

37. The requirement of exhaustion of domestic remedies does not mean that the alleged victims have the obligation to exhaust every possible remedy available to them. In this respect, the Inter-American Commission has maintained that "if the alleged victim endeavored to resolve the matter by making use of a valid, adequate alternative available in the domestic legal system and the State had an opportunity to remedy the issue within its jurisdiction, the purpose of the international legal precept is fulfilled."⁵ In Mr. Tamayo's case, through the state and federal post-conviction proceedings, the State had the opportunity to take cognizance of the alleged violations to the American Declaration.

38. The petitioners indicate that the prison conditions and lethal injection claims have not yet been presented in the courts of the United States and argue that it would be futile to do so. The petitioners state that both the Texas Court of Criminal Appeals and the United States Supreme Court have repeatedly refused to consider arguments relating to the conditions of confinement on death row as a violation of the prisoner's right to be protected from cruel and unusual punishment. With regard to the lethal injection claim, they argue that in *Baze v. Rees* the Supreme Court held that the petitioner had failed to establish that lethal injection constitutes cruel and unusual punishment. For these reasons, they assert that these claims should be deemed admissible under Article 31 of the IACHR's Rules of Procedure.

39. Based on the above factors, the Inter-American Commission concludes that the petitioners properly exhausted all domestic remedies available within the legal system with respect to the claims of ineffective assistance of counsel, violation of the Vienna Convention, and mental disability. Regarding the prison conditions and lethal injection claims, the IACHR concludes that they have been

⁵ IACHR, Report N° 70/04, Petition 667/01, Admissibility, Jesús Manuel Naranjo Cárdenas and others. Pensioners of the Venezuelan Aviation Company - VIASA, Venezuela, October 15, 2004, para. 52.

litigated multiple times before the domestic courts, including before the United States Supreme Court, and that it is not necessary for the petitioners to relitigate the same claim as a condition of admissibility.

2. Timeliness of the petition

40. Article 32(1) of the Rules of Procedure requires that for a petition or communication to be admitted, it must be lodged within a period of six months from the date on which the party alleging the violation of his rights was notified of the final judgment. That same article states that in those cases in which the exception to the requirement of prior exhaustion of domestic remedies is applicable, the petition must be lodged within a reasonable period, as determined by the Inter-American Commission, which “shall consider the date on which the alleged violation of rights occurred and the circumstances of each case.”

41. In the present case, the Fifth Circuit Court of Appeals denied relief on December 21, 2011, and the petition was filed on January 6, 2012. Therefore, the IACHR concludes that the requirement of Article 32(1) of the Rules of Procedure has been fulfilled with regard to the ineffective assistance of counsel, Vienna Convention, and mental disability claims.

42. The Inter-American Commission has ruled above that an exception to the rule requiring the exhaustion of domestic remedies is applicable regarding the prison conditions and lethal injection claims; it must now determine whether the petition was lodged within a reasonable time. Given the circumstances of the instant matter, and the fact that the alleged acts violating Mr. Tamayo’s rights would still be taking place, the IACHR concludes that the petition was lodged within a reasonable period of time, so the requirement set by Article 32(2) of the Rules of Procedure has been met.

3. Duplication of proceedings and international *res judicata*

43. Article 33(1) of the IACHR’s Rules of Procedure provides that the admissibility of a petition before the Inter-American Commission requires that the subject of the petition is not pending in another international proceeding for settlement.

44. The Commission notes that Mr. Tamayo’s claim regarding consular notification was included in the Avena Case litigated before the ICJ. The IACHR has examined claims of other persons named in the Avena Case. In this regard, the Commission has previously established, “[w]hile the basis for the claim before the Commission is essentially the same, and concerns the same alleged victim, the jurisdiction of the ICJ differs from that of the IACHR in significant respects, particularly insofar as the ICJ deals with interstate litigation whereas the Commission deals with petitions brought by individuals against states, and insofar as the rights at issue and the remedies provided by the Commission correspond directly to the individual presumably concerned.”⁶ Therefore, the Commission considers that the Avena litigation provides no bar to the admissibility of the present petition.

4. Colorable claim

45. For admissibility purposes, the Inter-American Commission must decide whether the alleged facts, if proven, could tend to establish a violation of the American Declaration, as required by Article 34(a) of the IACHR’s Rules of Procedure, or whether the petition is “manifestly groundless” or is “obviously out of order,” in accordance with section (b) of that same article. The level of conviction regarding those standards is different from that required in deciding on the merits of a complaint; the IACHR must perform a *prima facie* evaluation, not to establish the existence of a violation, but to examine if the petition establishes grounds for a possible or potential violation of a right guaranteed by the Declaration. That determination is a preliminary analysis and does not represent a prejudgment on the merits of the matter.

⁶ IACHR, Report 63/12, Petition 1762-11, Admissibility, Virgilio Maldonado Rodríguez, United States, March 29, 2012, para. 55.

46. The petitioners allege that court-appointed defense counsel failed to investigate and present evidence that would likely have resulted in a life sentence. They also state that the failure to inform Mr. Tamayo of his right to consular notification violated Article 36 of the Vienna Convention on Consular Relations and that Mexico's involvement would have improved the quality of the defense. Moreover, the petitioners contend that Mr. Tamayo is mentally disabled and that he suffers from significant intellectual disabilities that meet the criteria for mental retardation. In addition, death row prisoners are purportedly subjected to prolonged solitary confinement in what would constitute inhuman prison conditions. Finally, petitioners argue that numerous defects in Texas' current lethal injection protocol as well as the lack of federal and state oversight create a substantial and unnecessary risk of pain and suffering.

47. Taking into consideration the more rigorous degree of scrutiny that the Inter-American Commission has applied in death penalty cases,⁷ the IACHR observes that if proven, the petitioners' allegations would characterize violations of Articles I, XVIII, XXV and XXVI of the American Declaration. The IACHR must again underscore the point that it has an enhanced obligation to ensure that any deprivation of life which may occur through the application of the death penalty complies strictly with the requirements of the applicable inter-American human rights instruments, including the American Declaration.⁸

48. In conclusion, the Commission decides that the petition is not manifestly groundless or obviously out of order and finds that *prima facie*, the petitioners have complied with the requirements established in Article 34 of the Rules of Procedure of the Inter-American Commission.

IV. CONCLUSIONS

49. The Inter-American Commission concludes that it is competent to hear this case and that the petition is admissible according to Article 34 of its Rules of Procedure. Based on the arguments in fact and in law set forth above, and with no pre-judgment on the merits of the matters,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS DECIDES TO:

1. Declare the claims in the petition admissible with respect to Articles I, XVIII, XXV and XXVI of the American Declaration;
2. Give notice of this decision to the State and to the petitioners;
3. Continue with the analysis of the merits of the case; and
4. Publish this report and include it in the Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 17 day of the month of July, 2012.
(Signed): Tracy Robinson, First Vice-President; Felipe González, Second Vice-President; Rodrigo Escobar Gil, Rosa Maria Ortiz and Rose-Marie Antoine, Commissioners.

⁷ See, IACHR, Report No. 60/11, Petitions P-11.575 and others, Admissibility, Clarence Allen Lackey, March 24, 2011, para. 158; Report No. 77/09, Petition 1349-07, Admissibility, Orlando Cordia Hall, United States, August 5, 2009, para. 47; and Report No.61/03, Petition 4446-02, Admissibility, Roberto Moreno Ramos, United States, para. 66.

⁸ IACHR, Report No. 1/05, Case 12.430, Merits, Roberto Moreno Ramos, United States, January 28, 2005, paragraph 43.